

Fight to get eels past dams heads to high court

Advocates say passages downstream are needed to protect a number of migratory species.

By DENNIS HOEY, Staff Writer

December 24, 2007

A midcoast conservation group has brought its fight to protect American eels and other migratory fish species that are killed by hydroelectric dam turbines to the state's highest court.

This month, Friends of Merrymeeting Bay filed a petition with the Maine Supreme Judicial Court in Portland, asking that it reverse a decision by a Superior Court judge in Bath.

Judge Andrew Horton had dismissed the Friends' appeal, ruling that he does not have the authority to review a decision by the Maine Board of Environmental Protection.

In that decision, the BEP says the state will not require several private dam owners on the Kennebec River to make modifications that would ensure the safe passage – upstream and downstream – of American eels or migratory fish.

"If the BEP can do whatever it wants for any reason, the board would be no different than the Wizard of Oz, exerting total control whilst hidden behind his curtain," said Ed Friedman of Bowdoinham, chairman of the Friends of Merrymeeting Bay.

Friedman said the lack of immediate action by the state threatens American eel and migratory fish species with extinction. State officials disagree.

The attorney representing the dams' owners could not be reached Friday, but Terry Hanson, a BEP administrative assistant, provided documents that explained the state's rationale.

The dams in question are in Waterville, Winslow, Fairfield and Skowhegan.

The Kennebec River flows into Merrymeeting Bay, a huge body of tidal water bordered by Woolwich, Bowdoinham, Bath and Brunswick.

According to BEP staff, all of the dams have installed upstream passageways for eels, but "efforts at providing downstream passage has reached an impasse."

Further studies to determine how eels are migrating downstream will need to be done before the issue can be addressed, the staff said.

BEP staff members said that while eel kills may occur during the study period, there is not enough evidence to suggest "this will result in a threat to the population of Kennebec River eels."

David Nicholas, a Boston-based attorney representing Friends of Merrymeeting Bay, views the outcome of his appeal to the Supreme Court as having statewide implications, for anyone who wants to challenge the decision of an agency like the BEP.

Nicholas said that if decisions by agencies like the BEP are not reviewable by the courts, then it leaves citizens with no other options.

"This case is not just about eels and migratory fish. It could affect anyone who wants to appeal a decision by a state or even local agency," Nicholas said.

A Maine Supreme Judicial Court official said Friends of Merrymeeting Bay's petition for a hearing has been received, but a date to hear arguments has not been scheduled.

Staff Writer Dennis Hoey can be reached at 725-8795 or at

dhoey@pressherald.com

Copyright © 2007 Blethen Maine Newspapers