

Mr. Curt Spalding  
US EPA Regional Administrator  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

July 19, 2010

**RE: St. Croix River, Maine**

Mr. Spalding,

By this letter, Friends of Merrymeeting Bay [FOMB] requests you invoke your authority as Regional EPA Administrator to review the changes in Maine water quality standards and designated uses of the St. Croix River made by the Maine Legislature in 1995 and 2008. FOMB requests you determine if these changes are in compliance with the U.S. Clean Water Act [CWA]. These laws have never been reviewed or approved by US EPA for conformance and compliance with the Clean Water Act. These two laws have:

1. Caused 98 percent of the St. Croix River watershed to go from attainment to non-attainment of its legally assigned water quality classification standards.
2. Caused an existing, legally assigned designated use of the St. Croix River to go from being actually present to being non-existent.
3. Prevented the legally assigned water quality standards and designated uses of the St. Croix River from being attained in perpetuity.
4. For all intents and purposes, illegally downgraded/ degraded the river when banning the passage of migratory alewives from anywhere but the bottom few miles of the St. Croix. This major drainage once had one of the largest river herring populations in North America.

*Does the intentional extirpation [within the statutory CWA time parameters] of a native species trigger anti-degradation language in the CWA?*

*Is the EPA responsible for ensuring designated uses are maintained?*

Partly in an effort to avoid needless duplication and partly because his case is so well stated, FOMB herein incorporates by reference in its totality, the request sent you on July 9, 2010 by Douglas Watts of Augusta, ME.

By statute in 1995 and 2008 the Maine Legislature ordered the extirpation of alewives on the St. Croix, formerly home to probably the largest alewife run in North America. In so doing, the state has unilaterally made the decision to get rid of an "existing use" by shutting down over 90% of the river to alewives. In a recent proposal, The International

Joint Commission suggests expanding alewife access to only 30% of their former habitat still with no scientific or legal basis for the restriction.

As you well know, anti-degradation language in the CWA and Maine statute, prohibits the reduction of water quality [which includes fish populations not just water chemistry] without a Use Attainability Analyses [UAA] approved by EPA. A UAA has to our knowledge never been performed for the St. Croix River. Under the doctrine of “*constructive submission*”, just because the State did not conduct or submit a UAA or request a change in water quality classification the EPA is in no way relieved of its authority, obligation and responsibilities under the CWA to promulgate and or maintain water quality standards.

After your review of this and the Watts letter, please advise us of your intentions.

Thank you very much.

Sincerely,

Ed Friedman, Chair

*Founded in 1975, Friends of Merrymeeting Bay (FOMB) utilizes research, education, advocacy, and land conservation to preserve, protect, and improve the unique ecosystems of Merrymeeting Bay. Diadromous fish restoration in the Bay and Gulf of Maine is an important focus of the group.*

*In 2001, FOMB Chair Ed Friedman was the recipient of an Environmental Merit Award from Region 1 of the EPA.*