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Alewives: Sustained? - The Situation on the St. Croix

by Brenda Tredwell

The St. Croix River Alewife population, considered the largest in North America, has thinned from 2.6 million in 1987, to several thousand in 2011.

Alewives and blueback herring (collectively referred to as "river herring") are critical species not just to the Gulf of Maine, but the entire ecosystem of the Atlantic Ocean. Both alewives and blueback herring migrate between the marine environment and freshwater and spawn in lakes and ponds throughout the Gulf of Maine.

The National Marine Fisheries Service (NMFS) lists alewives and blueback herring as "Species of Concern." Science supports that diminished populations of alewives were a key factor in the collapsed condition (1995) of New England groundfish stocks.

On April 22, 2011, advocates filed a complaint against the state of Maine in Federal court. The plaintiffs oppose Maine Alewife laws, which block river herring and alewives from accessing historic habitat and spawning grounds in the St. Croix River Basin, through the use of barriers called stop-blocks, which prevent alewife and river herring migration past Grand Falls Dam (north of Princeton).

According to the 28-page legal complaint, the 2008 Maine Alewife Law, "An Act to Restore Diadromous Fish in the St. Croix River," accomplishes the opposite, reducing alewife populations by placing stop-blocks in the watershed, and "directing the Dept. of Marine Resources and Inland Fisheries and Wildlife Commissioners to eradicate alewives and blueback herring from their historic spawning and nursery habitat in the St. Croix River Basin."

This legal case filed against Maine, claims an illegal downgrading of water quality standards for the St. Croix watershed occurred after Maine enacted the 2008 Alewife law, which obstructs fish passage, barring alewives and river herring from access to native inland habitats.

Allegedly, Maine never sought Environmental Protection Agency (EPA) approval before constructing stop-blocks. As established by Congress, "Any state law or regulatory action that directly, or constructively, amends water quality standards but that fails to receive EPA approval, cannot have legal effect."

According to arguments by the plaintiffs, under the U.S. Constitution the 2008 Maine Alewife Law is preempted by the federal Clean Water Act, and is therefore, unconstitutional.

This legal case claims an illegal downgrading of water quality standards for the St. Croix and barring alewives and river herring from access to native inland habitats.

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Friends of Merrymeeting Bay, plaintiffs in the case, issued a press release, stating: “Two Maine fisheries officials responsible for placing physical barriers called “stop logs” that prevent fish from migrating past the Grand Falls Dam on the St. Croix River are named in the suit filed today in U.S. District Court.”

Defendants are Norman H. Olsen, Commissioner of Maine’s DMR, and Chandler E. Woodcock, Commissioner of Maine’s Department of Inland Fisheries and Wildlife—neither were serving as fisheries commissioners during the time of the alleged offense. Defending actions of the DMR or IFW is the job of officials acting in the capacity of Commissioner for either agency.

While commercial fishermen support measures to replenish groundfish stocks in the Gulf of Maine, those voicing differences with Commissioner Olsen’s stand on fishing issues said they “don’t feel it’s fair to go after him, or Woodcock, as they were not responsible for the situation.” That is one reason more fishermen’s groups, such as Downeast Lobstermen’s Association (DELA) and Maine Lobstermen’s Association (MLA), did not join this case. While the end result could benefit baitfish stocks crucial to the lobster industry, and replenish groundfish in the Gulf, fishermen from several industries agreed, suing the Commissioners of the DMR and IFWS is the wrong path.

Plaintiffs include Friends of Merrymeeting Bay, a Richmond, Maine-based non-profit conservation group with 400-plus members; Douglas H. Watts, researcher/ photographer from Augusta, and Kathleen McGee, of Bowdoinham, coordinator for FOMB’s “Healthy Rivers, Healthy Gulf” Program.

Capt. Edward (Ted) Ames, founding member and senior advisor to Penobscot East Resource Center, Stonington, participates as an individual. PERC is not involved in this case.

Plaintiffs are represented by Attorneys Roger Fleming of Earth Justice, and independent counselor, Atty. David Nicholas.

Plaintiffs are asking the US District Court to declare Section 1, paragraph 2 of the 2008 Alewife Law, invalid, under the Supremacy Clause of the Constitution. Plaintiffs requested injunctions preventing fisheries Commissioners from placing barriers in the watershed (per direction of the 2008 Law) and an order for Commissioners Olsen and Woodcock to remove all existing barriers to alewife passage from the St. Croix River basin.

As claimed by plaintiffs, Maine legislation passed laws in 1995 and 2008, barring alewife passage, preventing alewives from getting into the St. Croix watershed. The law was allegedly established in response to pressure from sport fishermen pursuing small-mouth bass along the river. Commercial fishing and environmental groups claim alewives, written off as forage fish, are mismanaged in favor of the small-mouth bass sports fishery and related interests along the St. Croix River.

The first dam on the St. Croix is Woodland. Around 1987, bass stocks took a big hit: Sports fishermen reportedly blamed it on one source, that alewives were getting into bass habitats. After individuals voiced interest in opening the river up for fish passage from Woodland to the Grand Falls dam, battle lines were drawn, and hotly defended.

Anecdotally, it’s been repeated that one particular river guide, with interests in the small-mouth bass recreational fishery, had his opinions on opening up Woodland dam. “If you don’t keep the alewives out,” he said, “I’m going down to Walmart to buy ammo.”

According to a plaintiff in this case, “Sport fishermen, guides, and outfitters consider alewives as an intrusive species despite scientific evidence that alewives do not feed on smallmouth bass, it’s the other way around, with bass—an introduced, non-native species—preying on alewives. Alewives, of the herring family, are native to waters from Nova Scotia to North

Carolina. As they run down river, alewives serve as decoys to preying birds, hunting salmon running up river.”

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On April 27, 1995, Maine enacted emergency legislation “An Act to Stop the Alewives Restoration Program in the St. Croix River.” With no opportunity for public comment before legislation, it became law.

The law directed that “DMR and Inland Fisheries and Wildlife Commissioners shall ensure that fishways on the Woodland and Grand Falls Dams, located on the lower reaches of the St. Croix River, are configured or operated in a manner that prevents the passage of alewives.”

The DMR later concluded: “...in 1995 the Maine Legislature passed legislation to block migrating alewives from ascending state-controlled fishways on the St. Croix to reach their spawning grounds. Restricted access to spawning grounds is accepted to be the primary cause of a precipitous decline in the St. Croix alewife population, from hundreds of thousands of fish in the mid-1990s, to just 900 fish in 2002.”

“Ted Ames came across historically relevant relationships between diminished fish landings, and dams being built. Loss of discreet inshore cod populations occurred.”

In 2008, the Maine legislature reviewed “LD 1957, an act to repeal 1995 laws, closing fishways at Woodland and Grand Falls Dams to anadromous alewives.” The action would have opened 52 percent of alewife spawning habitats.

Instead, an amended bill passed, opening Woodland dam, but directing Maine’s fisheries commissioners to utilize stop-logs at Grand Falls, obstructing upstream migration for spawning alewives from April through June, yearly. The 2008 Alewife Law eliminated access to 98 percent of spawning and nursery habitats, downgrading water quality standards in the St. Croix River basin.

The 2008 law not only prevents Maine’s DEP from issuing certification and licensing for upstream dams, it prevents consulting agencies, including Maine’s DMR and U.S. Fish & Wildlife Service, from executing tasks related to those processes.

Dams upstream from Grand Falls are subject to licensing, through the Federal Energy Regulatory Commission. During that process, owners of hydro- power operations consult with fisheries agencies to evaluate fish and eel passages. Fish ladders and eel passages ease mobility for some, but not all species. Several groups feel those measures are inadequate.

According to Ed Friedman of Friends of Merrymeeting Bay, “Maine has no jurisdiction over (Great Falls) dam. Neither does the International Joint Commission. The IJC has no jurisdiction over that dam, or in setting any fish management policies for the watershed. Technically, and legally, the only body authorized to make any decisions regarding dams on the US side of the St. Croix, or other sites, is the US Congress. The 1909 Boundary Lines Treaty between Canada and the US, from which the IJC inherited its mission regarding shared waters, is limited regarding issues involving tributaries or inland waters.”

Friedman explained, “As the EPA was never notified by the state regarding the placement of stop-blocks, and the 2008 Alewife Law was never submitted to the EPA for review and approval, they were not negligible. The state is on the hook because plaintiffs claim Maine placed the obstacles there, both physically and legislatively.”

Roughly 15 dams line the corridors of the St. Croix River, which flows into Passamaquoddy Bay from the north, marking the US/Canada border. Opening up at least some of these dams, many of them obsolete, would allow several important species of fish to regain safe and effective passage into the Gulf of Maine and naturally assist in re-building stocks.

Friedman said, “Ted Ames came across historically relevant documentation regarding the effects of dams upon groundfish from a direct source. The records kept by US Fish Commissioner, Spencer Baird and George Brown Goode during the 1800s, document relationships between diminished fish landings, and dams being built. Loss of discreet inshore cod populations occurred.”

“The passage of local and migratory fish—herring, alewives striped bass, blue backs, adult eels, elvers, lampreys, and salmon—are impeded. Pollution and dams restrict alewives’ access to spawning grounds, cutting off passage to inland waterways. Young migratory fish that leave the river and go out to sea generally return to the river in two years’ time. Migratory fish such as alewives are one of 11 anadromous species that return to rivers from the sea to breed,” said Friedman.

“There’s a tremendous amount of protein transfer from inland to the Gulf of Maine. There’s a real ebb and flow movement between rivers and seas, but (it) also feeds larger land animals. Bears eat salmon, other critters come down to feed when fish are running. Rivers feed not only fish and wildlife living along their banks, but the ocean itself, with minerals and forage for lobster, ground fish, and all other saltwater species.”