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Fish fight suit filed in U.S. court

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ST. STEPHEN - A judge in Bangor, Ma., will decide the next step in a legal battle over alewives in the St. Croix River.

On April 22 the conservation organization Friends of Merrymeeting Bay and three private individuals filed a suit in the United States District Court. They contend the state of Maine breached the constitution in 2008 by blocking these anadromous fish from water above the Grand Falls Dam on the St. Croix.

The Maine law breaches the United States Clean Water Act, the plaintiffs contend. Under the "supremacy" clause, the federal law should prevail, they argue.

The federal law allows states to set their own water quality standards, the named defendants - commissioner of the Department of Maine Resources Norman H. Olsen and commissioner of the Maine Department of Inland Fisheries and Wildlife Chandler E. Woodcock - responded.

On June 30 the plaintiffs moved for summary judgment. On the same day the defendants moved for dismissal.

Judge John A. Woodcock Jr. will first rule on the motion for dismissal - then, if necessary, the motion for summary judgment. The matter could end very quickly or go to a full trial.

The fight over the lowly alewife, actually two species fish also called gaspereau and river herring, began in 1981 when New Brunswick opened a better fishway at the Milltown Dam across the St. Croix between St. Stephen and Calais.

It may have begun in 1877 with the introduction of the exotic smallmouth bass in the St. Croix River.

With the improved fishway the number of alewives returning to spawn increased from 169,620 in 1981 to 2,624,700 in 1987 according to annual counts reported by the St. Croix International Waterway Commission.

Maine fishing guides blamed alewives for the drop in the numbers of smallmouth bass through the 1980s and 1990s, affecting their livelihoods. In 1995 Maine blocked passage at the Woodland Dam above Milltown, restricting the alewives to a tiny portion of the lower St. Croix.

The official count at Milltown dropped to 900 in 2002. Canada's Department of Fisheries and Oceans began trucking alewives around Woodland, allowing them up as far as the Grand Falls Dam.

Maine opened the Woodland fishway in 2008 allowing the fish up to the foot of the Grand Falls Dam, giving them access to two per cent of their traditional spawning grounds.

In 2008 the St. Croix International Waterway Commission counted 12,261 alewives at Milltown, up from 1,294 in 2007. The commission reported 10,450 alewives in 2009, 58,773 last year and 25,142 this year.

The drop this year likely reflects the poor return in 2007, commission executive director Lee Sochasky wrote in July in her final weekly report on alewife numbers.

"Typically, four-year-old fish make up half or more of the St. Croix run, hence the depressed return of 2007 is likely impacting this year's return (few spawners equals fewer offspring). Five-year-old fish make up a large portion of the run, so some of this effect may still be felt next year," she wrote.

This year's run still counted as the second largest since 1999, the first year Maine's move to block alewives at Woodland was felt, she wrote.

Another agency other than the commission will have to count alewives in the St. Croix River next year.

"After operating the Milltown trap for 21 years, and securing funding for it for 19 years, the commission is returning the responsibility to Fisheries and Oceans Canada and other government agencies, beginning in 2012," Sochasky wrote.

Alewives dominated discussion at the three most recent annual public meetings of the International Joint Commission's St. Croix Watershed Board: McAdam in 2009, Princetown, Ma., last year and St. Stephen this year.

The commission proposes to open the Grand Falls fishway allowing alewives into 30 per cent of their spawning grounds but still blocking them from Spednic Lake above the Vanceboro Dam as well as from West Grand Lake on the West Branch of the river in Maine.

Alewives sell for lobster bait as well as food for people. Bears, eagles, other fish and many creatures, including smallmouth bass, eat them.

"Alewives are fundamental to the health of the entire ecosystem of the St. Croix River that forms the boundary between the state of Maine and the province of N.B.," the Atlantic Salmon Federation's director of regional programs Geoff Giffin, based in St. Andrews, said in a news release following the commission's public meeting this year.

The federation, like other conservation organizations, expressed frustration with the International Joint Commission for not forcing the issue. The federation's news release called the meeting "very disappointing."

The Friends of Merrymeeting Bay and its supporters took the legal route.

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