

Friends of Merrymeeting Bay

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Friends of Merrymeeting Bay to Sue EPA over St. Croix Alewives

St. Croix River Alewife population has plummeted by over 90 percent

RICHMOND, ME – Monday, Friends of Merrymeeting Bay, Doug Watts and Kathleen McGee filed a 60-day Notice of Intent (NOI) to sue the Environmental Protection Agency (EPA) under the Clean Water Act for EPA's complicity in eradicating native alewives from Maine's St. Croix River. The three parties assert EPA violates the Clean Water Act by refusing to strike down a 2008 Maine law that eliminates alewife access to their necessary spawning habitat, located above Grand Falls Dam near Princeton.

Maine's law prevents a native run of 21 million alewives, the largest on Earth, from ever being restored to the St. Croix.

"The 2008 law is like ordering cardinals, bluebirds and chickadees be eradicated from Maine," said Doug Watts, a wildlife photographer who has captured images of alewives for years.

Under this law, the Commissioners of Maine Departments of Marine Resources, and Inland Fisheries and Wildlife are directed to eradicate alewives and blueback herring from their historic spawning and nursery habitat in the St. Croix River basin. This is accomplished using stop logs to block the dam's fishway, installed some years ago and paid for by US Fish and Wildlife Service.

"What the Maine legislature did in response to a few shrill voices is absolutely unconscionable and in total violation of the Clean Water Act," said Ed Friedman, Chairman of Friends of Merrymeeting Bay, one of the plaintiffs. "By ignoring this, the EPA has only added insult to injury. Neither fish species dependent on river herring, nor the endangered Gulf of Maine ground-fishing industry can afford the continued collapse of St. Croix alewives. We need healthy rivers to maintain a healthy Gulf and alewives make that connection."

Earlier this year, U.S. Federal District Court Judge Nancy Torreson dismissed a complaint brought by the same parties directed at the State of Maine. There the plaintiffs challenged the 2008 Alewife law arguing Maine law was preempted by the federal Clean Water Act. In her decision, Judge Torreson stated, “The CWA is structured to provide an administrative process for working out any conflicts between a state law and the CWA, and the citizen suit provision provides a safety net for correcting any administrative missteps that might occur along the way. This process must be given a chance to work.”

Since the original law suit was filed, the National Marine Fisheries Service began an evaluation of whether to list alewives as “threatened” under the Endangered Species Act.

The three parties, represented by Earthjustice attorneys Roger Fleming and Erica Fuller, claim the EPA has ignored their non-discretionary duty to review a *de facto* water classification/quality change made when Maine blocked the river off to alewives and other native fish. States are required to submit water quality classification changes to the EPA for approval prior to the change becoming effective.

“Good law is based on sound fact,” said Fleming. “Maine misses on both counts here and the EPA is shirking its obligation to veto Maine’s action.”

This case specifically challenges, via the EPA’s failure to act, the 2008 Maine law ordering Maine fish and wildlife officials to prevent alewives from migrating past the Grand Falls Dam. The law was put in place at the request of sport fishermen who catch non-native species of bass in the St. Croix watershed and mistakenly believe alewives negatively affect their fishery. Prior to the implementation of a similar law in 1995, the St. Croix River contained perhaps the largest population of alewives in North America and now only a small remnant remains. Elimination of a pre-existing river use (alewives) is illegal under the CWA.

“In our original lawsuit, we attempted a direct approach, naming Maine as the defendant since they were the responsible party that passed the extinction law and actually blocked fish passage” said Erica Fuller. “We are not happy with Judge Torreson’s decision and will continue to pursue legal challenges until the alewife barrier is removed.”

“A vibrant Maine economy requires a healthy environment, in turn dependent on complete biodiversity in our rivers,” said Kathleen McGee. “The St. Croix must be opened to alewives to rebuild and assure strong economic and environmental vitality in eastern Maine and in the Gulf of Maine.”

Alewives are ecologically, economically, historically, and culturally important to the St. Croix River basin and the entire Gulf of Maine ecosystem. The St. Croix River once produced the largest population of alewives in New England. Today, however, only a small fraction of that former population is found in a short section of the St. Croix River. Alewives play a keystone role in the river and coastal ocean ecosystem, serving as food for many other species of fish, marine mammals, and birds. They are fished for by commercial and recreational fishermen, and are valuable to fisherman and related coastal economies as bait for lobster and recreational fishermen, and as forage for commercially valuable species like cod, halibut, and tuna.