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Magistrate says suit over Androscoggin River salmon should proceed

By Scott Thistle, Regional Editor

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PORTLAND — A federal magistrate judge has recommended lawsuits filed by two environmental groups against two companies that operate hydro-electric dams on the lower Androscoggin River be allowed to go forward.

Friends of Merry Meeting Bay and Environment Maine say the recommendation is a preliminary victory in their efforts to save the endangered Atlantic salmon from extinction.

In their lawsuits the groups claim Miller Hydro and Topsham Hydro, which respectively operate the Worumbo Dam at Lisbon Falls and the Pejepscot Dam in Topsham, are in violation of the Endangered Species Act because the turbines on their dams injure and kill salmon trying to swim past them.

The suit also claims the dams block and delay salmon migration and prevent access to salmon spawning grounds further upstream.

On Friday, July 14, U.S. Magistrate Judge John H. Rich III, recommends that motions to dismiss the suits filed by attorneys for the dam operators be denied. That recommendation could set the stage for the suits to go forward and be heard and decided by Federal Judge George Singal.

The companies have 14 days to file their objections to Rich's recommendations.

"Congress gave private citizens access to the courthouse to enforce the Endangered Species Act, and we applaud Judge Rich for preventing Miller Hydro and Topsham Hydro from trying to take this away," Ed Friedman, Chair of Friends of Merry Meeting Bay said in a prepared statement. "The long-term viability of Maine's economy is directly proportional to environmental conditions. The judge's recommendation to move forward on our suit is a positive step for both Maine's economic and environmental health."

Officials with Miller Hydro declined comment on the ruling and attempts to reach officials at Topsham Hydro were unsuccessful Monday.

A phone message for Jeffrey Thaler, a Portland-base attorney for the dam operators, went unreturned Monday.

In his recommendation Rich rejected the operators' argument that Friends of Merry Meeting Bay and Environment Maine must await a decision by the National Marine Fisheries Service on whether the dams are hurting salmon.

The government's review of the dams' operations "is still apparently in the very early, informal consultation stage, making a rapid resolution [by NMFS] unlikely," Rich wrote. "Speculation that it might arise is not a reason to defer this court's consideration of a possible current violation of a federal statute."

Attorneys for the dam operators had argued the dams impact to salmon was currently under government review and that any federal court action on it would be premature before that process were complete.

Rich also notes in his ruling the Endangered Species Act allows citizens or in this case citizen groups to bring action in the federal courts when they believe the federal law is not be adequately enforced.

"Now that we've been given the green light, we will seek to use the power of the federal courts to push the dam owners to do the right thing and bring the iconic Atlantic salmon back from the brink of extinction," Emily Figdor, director of Environment Maine said in a prepared statement.

Friends of Merrymeeting Bay is a non-profit organization with just over 400 members. Environment Maine is a citizen-based advocacy group with more than 5,000 members, according to a press release issued by both organizations Monday.

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