

New Maine Times

EPA overrules Maine on alewives

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photo by John Burrows

AUGUSTA -- The Environmental Protection Agency has overruled the state of Maine on the issue of alewives in the St. Croix River.

Earlier this year, U.S. Federal District Court Judge Nancy Torreson dismissed a complaint brought by the Friends of Merrymeeting Bay and several other environmental groups, 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, claimed 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 challenged, 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.

However, the EPA decision, in a letter written to Attorney General William Schneider on July 9, effectively overturned laws passed in 1995 and the 2008 law that the environmental groups sued to have overturned.

The EPA said the law, passed to protect the sport fishing guide industry in interior Washington County, violated the federal Clean water Act and EPA regulations and ordered Maine to take appropriate action to authorize river herrings to portions of the St. Croix River above the Grand Falls Dam.

The alewives fishery has been under attack for nearly 200 years. Dams built on the St. Croix from 1825 on closed the river to the herring. Later, pollution owing to lumber and paper mills made the river uninhabitable to many species of fish, not just alewives. However, as the river was cleaned up in accordance with the Clean Water Act, the alewives began to recover, and by 1987, the annual run was pegged at more than 2.6 million.

In 1995, the first law closing the river to the small fish was passed, because of fears of a large run on the smallmouth bass populations upstream. By 2002, the alewives' run was a mere 900 fish.

In 2008, alewives were returned to part of the river, but the vast majority of their habitat was unavailable to them.

Ironically, alewife fry are a food source for many sport fish, including the smallmouth bass.