

Non-Governmental Organizations Sue Departments of Commerce and Interior over Atlantic Salmon

On May 12, 2008, Friends of Merrymeeting Bay, the Center for Biological Diversity, and Douglas Watts filed suit in the U.S. District Court for the District of Maine against the Departments of Commerce and Interior for failing to make a decision under the Endangered Species Act on the petition to list as an endangered species Atlantic salmon in the Kennebec River.

The Endangered Species Act provides that once a petition to list a species as threatened or endangered is received, the agency receiving the petition has, to the maximum extent practicable, 90 days to determine whether the petition presents substantial scientific information to warrant further consideration. The Act also provides that, if the 90-day finding is positive, the agency must make a 12-month finding as to whether the species should be listed. The 12-month finding must conclude that (i) listing is not warranted, (ii) listing is warranted, or (iii) listing is warranted but precluded for specified reasons. 16 U.S.C. § 1533(B)(3)(b).

In May 2005, FOMB, Watts, and the Maine Toxics Action Coalition petitioned the departments of Commerce and Interior to list as an endangered species the population of Atlantic salmon in the Kennebec River. In November 2006, on behalf of both departments, NOAA Fisheries issued a 90-day finding that the petition presented sufficient scientific information indicating that listing might be warranted. The departments, however, have not issued a 12-month finding on the petition. The plaintiffs filed suit requesting that the court (i) determine that the departments are in violation of the ESA, (ii) order the departments to make a 12-month finding expeditiously, and (iii) award costs of litigation, including attorneys' fees, to the plaintiffs. The departments have until mid-July to file their response.

A finding that Atlantic salmon in the Kennebec River is an endangered species could impose new regulatory requirements on Kennebec River hydropower owners to provide additional protection measures for Atlantic salmon.