



# EPA Finds Maine River Herring Exclusion Law is Illegal

Barriers to native habitat must be removed to restore this “keystone” species

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Richmond, ME

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The U.S. Environmental Protection Agency has found Maine’s 2008 Alewife Law preventing the passage of river herring past the Grand Falls Dam on the St. Croix River to be illegal under the federal Clean Water Act. River herring migrate from the ocean, upriver to spawn during spring.

In the finding, the EPA states:

“EPA is not aware of any sound scientific rationale for excluding indigenous river herring (or other migratory species) from the St. Croix River.... To address EPA’s disapproval and protect designated and existing uses, Maine should take appropriate action to authorize passage of river herring to the portions of the St. Croix River above the Grand Falls Dam.”

[Read the complete finding.](#)

In April 2011, fishermen and river herring advocates challenged the law which directed Maine Fisheries officials to eradicate alewives and blueback herring by erecting “stop logs” to prevent native fish migration past the Grand Falls Dam on the St. Croix River. The law was put in place at the request of sport fishermen under the mistaken belief native fish hurt non-native, bass fisheries.

Attorneys Roger Fleming and Erica Fuller with the public interest law firm Earthjustice, and Attorney David Nicholas, represented Friends of Merrymeeting Bay, nature photographer Doug Watts, and Kathleen McGee in the lawsuit.

Ed Friedman, Chair of FOMB said, “This is a huge victory not only for all of us plaintiffs but for all Mainers and for the Gulf of Maine. How the Maine AG, Governor and legislature respond will determine if further legal action on our part is needed, but there is legal precedent in a situation like this for the pre-existing bad law to be automatically nullified.”

Roger Fleming of Earthjustice said, “The Clean Water Act does not allow a state to arbitrarily exclude native species from their essential habitat. Alewife and river herring are essential food sources for ocean fish, marine mammals, and water fowl because these big animals eat small fish. If we kill off river herring, we kill off Maine’s fishing and tourism industry.”

“This law made no sense. It would be like ordering that cardinals, bluebirds and chickadees be eradicated from Maine,” said Doug Watts, a wildlife photographer who has captured images of alewives for years.

“Maine’s economy requires biodiversity in our rivers,” said Kathleen McGee. “Access to the St. Croix is

essential for native species like alewives to assure strong economic and environmental vitality of our state.”

The EPA's decision follows a case decided earlier this year in which U.S. Federal District Court Judge dismissed a suit brought by the Friends of Merrymeeting Bay, Watts, and McGee directed at the State of Maine. In the suit, the plaintiffs challenged the 2008 Alewife law arguing Maine law was preempted by the federal Clean Water Act, which requires EPA approval of changes to state water quality standards. In agreeing to dismiss the suit, for the time being, the Court 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.”

In the wake of the decision the same parties filed a 60-day notice of intent to sue the EPA. Portland's Conservation Law Foundation also filed a notice to sue following the earlier litigation.

Earthjustice's Fleming praised the EPA decision, noting “This is a good example of how the ‘citizen suit’ provision of the Clean Water Act should work, with a well-crafted letter informing the agency of a problem and notice of an intent to sue, and as a result ultimately preventing an unnecessary lawsuit. I give credit to the EPA for their response to our clients' letter and reaching a well-reasoned decision.”

## **Background**

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.

Maine's actions caused the St. Croix River alewife populations to plummet from recent high of 2.6 million fish 1987 to only a few thousand fish today.

For More information visit:

<http://www.friendsofmerrymeetingbay.org/>

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**URL:** <http://earthjustice.org/news/press/2012/epa-finds-maine-river-herring-exclusion-law-is-illegal>