# Merrymeeting News Winter 2011 VOLUME XXI, No. 1

The Newsletter of Friends of Merrymeeting Bay • Box 233 • Richmond Maine 04357 • www.friendsofmerrymeetingbay.org

# Friends of Merrymeeting Bay

Friends of Merrymeeting Bay (FOMB) mission is to preserve, protect and improve the unique ecosystems of the Bay through:

#### Education

Conservation & Stewardship

Research & Advocacy

#### **Member Events**

FOMB is 501(c)(3) nonprofit organization and support comes from members' tax-deductible donations and gifts.

Merrymeeting News is published by FOMB seasonally and is sent to FOMB members and other friends of the Bay.

For more information contact:

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## From the Chair: 2010 in Review

2010 found us continuing hard work, moving a number of critical issues towards hopeful fruition. Without member financial and volunteer support our accomplishments would not be possible so I thank you all very much. Special thanks are also due Misty Gorski our Executive Coordinator of the last few years; we are thankful, too, in welcoming Jim Mason on board as the new FOMB ExCo. Extra special thanks go to our Steering Committee, a dedicated bunch

willing to roll up their sleeves and tend to the mostly thankless work of running a nonprofit. More than 30% of our members volunteer in some fashion whether stuffing envelopes, collecting or analyzing water samples, leading

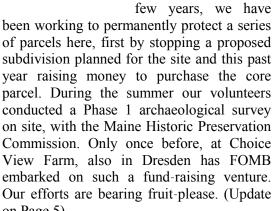
an outing or cutting invasive plants, stem by stem. This level of hands-on participation is astonishing. It's what makes the FOMB family a dedicated and effective organization accomplishing much on a small budget.

One of our core issues has always been water quality. In 2010, we continued monitoring sites around the Bay, north on the Kennebec to Gardiner and on the Androscoggin up to Auburn. On the Andro, still the dirtiest major river in Maine, our volunteers conducted the intensive sampling we hope will lead to a classification upgrade from Class C (the lowest in Maine) to Class B. By statute, classification is based on actual conditions and our sampling, year after year, has shown the Andro meets Class B parameters in nearly all samples. While 2009 was a wetter year than average, 2010 was considerably warmer and drier with low flows. Wet conditions are more conducive to elevated E. coli levels (a bad thing), while hot dry conditions lower dissolved oxygen

(also a bad thing). Despite the weather variation in the two years, actual river conditions between the Bay and Worumbo dam in Lisbon Falls continued to meet the Class B standard more than 99% of the time.

During the last ice age, between 8,500 and 5,000 years ago, head of tide on the Kennebec reached only as far as the north end of Little Swan Island where the tide was restrained by a series of ledges. Migratory

fish found this an obstacle and, as a result. Native fishing American "village" (probably seasonal) occupied a Dresden site in adjacent to the river. This location considered one of the premier prehistoric archaeological sites in Maine. For the last



Our education program reached over 1500 students in 2010, engaging many of them in hands-on activities on the shore of the Bay at our twice-a-year Bay Day or with our taxidermy mounts during in-school "Critter Visits." Students at these activities speak of becoming conservation biologists and emphatically exclaim how they are not stopping for lunch, they are going to stay and become an archaeologist. Many of us

had formative experiences



## There is Measure in all Natural Things

"There is measure in all natural things – in their size, speed, or violence. As a result, the system of nature, of which man is a part, tends to be self-balancing, self-adjusting, self-cleansing."

E.F Schumacher, **Small is Beautiful** 

If ever there were a reason to love nature, it would be for the profound example it provides humanity. To find such examples in everyday life requires careful observation, patience and a basic understanding of ecology. As a gardener I observe this rhythm daily, when the weather is hospitable, as I attend what amounts to an all-out intrusion upon the system of nature. Agriculture at large is a particularly destructive force in society with its tillage of the soil and its use of synthetic chemicals, to name a few. But nature rarely fails to find a fix, if it can, within its limits; bare soil is quickly colonized by weeds, crop plants are made more vulnerable to attacks by insects and plant diseases due to over-fertilization. The quick-fix chemicals used to abate these unwanted circumstances are the very pollutants that cause cancer in humans and the eutrophication and poisoning of waterways.

But I am not taken to such nonsense, at least most of the time. Out in nature, with my face down in the thick of it, I have become acquainted with all animals that live below and above the surface of the soil. There are those that directly and indirectly reap the benefits of my efforts, and there are those that don't. I have come to the conclusion, only with a daily intimacy with nature can man overcome his tendency to senselessly destroy it. Whatever one may be doing, the question of how one can even be part of this society without being destructive is a looming one. In the production of food it is virtually impossible.

Once, in a rage, I pondered the use of poisons. Mice had colonized the ornamental gardens of an important client. Signs of the impending disaster had been appearing over the past few years but never had the proportions been as dramatic. With the coming of winter and resulting leaf litter blanketing the garden, mice began migrating into the garden areas in preparation for the cold. In a matter of days the root systems of a large number of plants had been eaten entirely, only their tops remaining as a façade. Tunnels networked under the stewing detritus, and shreds of grass cushioned their nests. As this garden was my creation, I took this as an attack upon me. I was angry and looking wildly for a solution, be it destructive in its own right, or not. As I had no poison bait on hand I took to uncover the entirety of the gar-

dens of their protective covering. No sooner had I started then who should arrive but one of nature's greatest sources of pest control, in this case a hawk. There was no mistaking its intent, circling directly twenty feet above my head. In an instant, I felt both ashamed and inspired.

In conclusion, the outbreak of mice was partly my fault. I had left the garden standing the past two years, and the result after having been covered first with leaves then snow, was nothing less then the best and biggest rodent metropolis in Harpswell. The abundance of seed from both native oak trees and imported ornamental plants, provided all the fodder the mice would need to grow exponentially. The hawk knew well were to go to find the best food and the situation was made all the better with me here facilitating the hunt. This was the inspiration. The shame was the result of my anger and my potential willingness to inflict untold violence not only upon the mice but the snakes, the foxes, maybe the neighborhood cat, and yes, my friend the hawk. This was the ecology lesson of the day. Nothing new to a student of environmental science, except now I was directly a part of it.

Finally, there is the great metaphor: we, humanity, are the mice, growing exponentially, thriving on our clever ways, steadily devouring the world around us to our demise. Without the hawk and other denizens, the mice too would eventually exhaust their resources. Where is the winged and clawed creature to save us from our slow and eminent misery? Never mind the poison, let's just wake up.

Andrew Fiori



Continued from page 1

like this as youngsters. Seeing the levels of engagement many of our students have, it's hard to imagine FOMB is not offering this same long-lasting influence. Hopefully, we are not too late.

Sweaty volunteers once again hit the only invasive stand of phragmites we know of on the Bay, near head of tide on the Abbagadassett River. Utilizing a clip and drip method of selective cutting followed by herbicide application to individual stems we successfully brought this stand under control in our second year of effort. We also confirmed large stands of phragmites on the Muddy River were the native variety growing in a much less dense fashion allowing other species to also flourish. For the most part, I believe most invasive plants are beyond control. When we look at vast areas of purple loosestrife, Japanese knotweed or some of the aquatic invasives, the genie is out of the bottle. If however there is a discrete stand of the invader (as on the Abby), control measures coupled with future monitoring can and are effective.

Continuing our long-time partnership with brilliant and fierce river advocate Doug Watts, we moved forward from the expanded Endangered Species listing we gained for Atlantic salmon, to filing sixty day notices of intent to sue owners of seven dams on the Kennebec and Androscoggin for illegal "take" of salmon. "Take" is the official euphemism for kill, harm or harass. Without a permit from federal fishery and wildlife services to do so (an Incidental Take Permit), take of an endangered species is illegal. Sixty

day notice letters are a requirement of those bringing a complaint under citizen suit provisions of the Endangered Species and Clean Water Acts. Before our letters were written and even after, we had cast about for nearly a year soliciting national partners willing to join us and bankroll up -front costs for our primary attorney Dave Nicholas. Finally joined by the National Environmental Law Center representing Environment Maine, we re-filed the notice letters and filed the actual complaints early in 2011 (see story on page 6). Atlantic salmon runs in the Kennebec and Androscoggin, historically numbering in the hundreds of thousands, now are down to single and double digit numbers in large part due to blockage of dams and turbine mortality. Like the bald eagle once extirpated from Maine due to DDT, given a fighting chance Atlantic salmon may once again ascend our rivers in sustainable numbers.

Your support has enabled our past and present accomplishments. These are trying times like no others we have seen. As it is for the salmon and other migratory fish, only your continued strong support can sustain FOMB into the future. Thank you again for the past help and in advance for your future support and confidence.

Respectfully Submitted,

Ed Friedman, Chair

## ExCo's Corner

As we approached the Chops, motoring up the Kennebec, my wife taps me on the shoulder and says over the hum of the engine, "We've got company." And we do. Despite the fact that we are humming along at top speed in a zippy Mako, a bald eagle is racing us parallel to our course, just off the shore. Racing is not really the appropriate word. First, the eagle is paying us no mind. Second, with only the slightest bit of effort, the eagle easily outpaces us and then flies off over the treetops, leaving us in our motorized conveyance behind as if we were drifting in the current.

That early autumn morning trip was my first introduction to Merrymeeting Bay. My wife, Sherry, who is a compulsive birdwatcher, counted 12 bald eagles as we traveled up the river from Fort Popham to Augusta. For the first time from the water, I saw the Swan Island of the Abenaki and Benedict Arnold's expedition to Quebec. And like those adventurers before us, each bend in the river held some new surprise and natural beauty for us to marvel.

I have come to Merrymeeting Bay and FOMB on a circuitous route. Starting as an environmental instructor in the Florida Keys and slowly heading north, I ran a university education program at a marine lab in Louisiana. I coordinated a state-operated community-based land-use planning program in coastal North Carolina. Eventually, I went to law school and practiced in both North Carolina and here in Maine. While the law was intellectually challenging, it didn't hold the key to my heart, and, eventually, I found myself in a library in Bowdoinham interviewing for this job. Perhaps the eagle that day knew something I didn't.

Six years ago, I was a trial lawyer armed with a seersucker suit and ensconced in the balmy summers of eastern North Carolina. Now, I am part of a group of dedicated people protecting one of the prettiest places in all of northern New England. Life can be an interesting journey if you only allow yourself to follow it.

Jim Mason

#### **RESEARCH & ADVOCACY**

#### Androscoggin River Upgrade Goes to Augusta

Clean rivers enhance the local economy and vitality of the communities surrounding them. A clean, healthy river attracts people, new businesses, and increases property value. A clean river is good for business, the environment and quality of life. Because we believe it will enhance the surrounding communities, FOMB has continued efforts to upgrade, from Class C to Class B, the lower Androscoggin between Worumbo Dam and an extension of the Bath-Brunswick line across Merrymeeting Bay.

For over a decade, FOMB has monitored and sampled the lower Andro. We continued to do so in 2010, collecting *E. coli* and dissolved oxygen (DO) data. By comparison, 2010 had low water flows and high temperatures versus 2009 conditions of higher than median flows and mixed temperatures, yet, 2010 results confirmed those of 2009 and prior years; ambient river conditions consistently exceed Class B standards for *E. coli* and DO.

DEP's own classification proposal submission guidelines state: "Maine's Water Quality Classification System is goalbased. When proposing an upgrade in classification, recommend waters that either presently attain or with reasonable application of improved treatment or Best Management Practices (BMPs), could reasonably be expected to attain, the standards and criteria of a higher proposed class." FOMB has petitioned the BEP, to in accordance with both statute and goal-based or aspirational DEP guidelines and the Clean Water Act, recommend a classification upgrade of this river segment to the legislature and the legislature reclassify it as Class B. The DEP is erroneously applying a relicensing portion of the statute to this issue rather than the correct classification standard, which says: "When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that water be reclassified in the next higher classification." 38 M.R.S.A. § 464(4)(F)(4).

For the moment, fate of the upgrade effort rests with members of the Joint Legislative Committee on Environment and Natural Resources who are considering an upgrade bill, LD 154, introduced by Sen. Seth Goodall of Richmond. Goodall, as former co-chair of the Committee. Sen. Goodall gets a *Thumbs Up* for terrific testimony in support of the bill before the Committee. Of nine co-sponsors, the only ones to testify were Sen. Margaret Craven and Rep. Peggy Rotundo both from the Lewiston area.

It remains to be seen if Sen. Goodall or any other members of the Committee will continue support of the bill in the

face of long-term opposition from the DEP who continues to push for application of the wrong statute and, most likely, the Committee will go along. Relicensing language requires a discharger to meet the classification standard under the worst case flow conditions that might be expected to occur once in ten years. If Maine water classification and the Clean Water Act are indeed "goal oriented" as the DEP maintains and the courts have decided, then waiting for *actual* water conditions to meet *relicensing standards* makes no sense. Water quality in a proposed Class B section might need to actually be Class AA in order to allow enough built in buffer to meet that once in ten year standard. Only by having the differential between the two parts of statute do we slowly ratchet water quality levels up.



#### **MEMBERSHIP**

#### Free Gift Memberships!

As Winter's icy grip slowly starts to loosen its hold, Spring's awakening brings on the potential of new life and new opportunities. In that spirit, FOMB's Membership committee has created an limited time program of **free gift memberships!** That's right: free! Each FOMB household can grant the gift of one free membership to FOMB for 12 months. Hopefully, they will eventually blossom into a contributing member of FOMB. To grant a free membership (you can still buy one too!), please contact Jim Mason, 619-1945 or **jmason@fomb.org**.

#### **Update Your Email Information!**

A big records and membership review project is underway and we are finding for many members we have incomplete or incorrect email information, especially given the recent "suscom-maine.net" shut down. If you haven't gotten email from us in 2011 (we only send out 2-3 per month), then please send Jim an email and update your address.

#### **EDUCATION**

#### **Budding Artists Learn About the Bay**

Recounting the successes of our education programs is more than just the numbers of students reached each year. That is not to say those numbers aren't impressive, because they are: 260 students attended our two Bay Day programs from 8 different schools; 767 students from 15 schools were reached by our in-school programs and 506 were reached through our out-of-school programs; 1533 total children and adults were reached by our education programs. Our programs were delivered to people from each of our Bay communities. 2010 was successful by any measure.

However, numbers aren't the only way we know that we are reaching people. When FOMB volunteers go into the classroom and give talks on the Bay and the plants and animals that make their home in around it, students pay rapt attention. As Betsy Steen, co-chair of our Education Committee and frequent classroom volunteer put it, "There is never a problem with discipline when the critters are around." This was clearly seen in a recent visit to the Richmond and Dresden art classes this January. Betsy took some

of our most loved critters into the classroom where she told them about adaptation and reinforced it by pointing out just

how their eyes help them to see from great heights or how their beaks help catch fish or their talon let them catch prey.

Their teachers. Tina Wood and Jane Frost. an **FOMB** member, then had the students paint, sketch and sculpt the critters, paying attention to the shapes that these adaptation resembled. The excitement of the students clearly spilled over into their



art and their representations of the FOMB critters will take part in the schools' annual art celebrations.

#### **CONSERVATION & STEWARDSHIP**

# First Houdlette Conservation Project Parcel Acquired!

Three years after our involvement began to protect this significant series of parcels on the Kennebec River in Dresden, a partnership between FOMB, the Maine Historic Preservation Commission (MHPC) and The Archaeological Conservancy (TAC) has successfully acquired the core property. We continue our fundraising efforts to protect the rest of the site located on an adjacent parcel. These properties at the nexus of extremely important archaeology, highest value wildlife habitat, scenic beauty and an unusually high popula-



tion of rare plants. The properties will be owned by The Archaeological Conservancy a nationwide non-profit that owns and protects significant archaeological sites. The parcels will receive additional levels of protection through a preservation agreement with MHPC and a conservation easement to be negotiated with FOMB. Funding for the core parcel purchase came from the Land for Maine's Future program, MHPC, TAC and FOMB. The site has been designated Site 25.45, or the Dresden Falls Archaic Site by MHPC.

Heartfelt thanks go to the following FOMB donors as of 2/23/11: Peter Axelson, Bath Savings Institution, David & Nancy Barber, Bob & Beverly BaRoss, Piers Beirne, Ed and Ruth Benedikt, Bob's Auto Sales & Service, Janet Booth, Stephen Clark, Kent Cooper, John Ferdico, Inge Foster, Ed Friedman & Kathleen McGee, Mike & Caryl Giggey, Chris & Dianne Gutscher, Gallery Framing, Nancy Gray, Gulf of Maine Books, Anne & Steve Hammond, Hopkinson & Abbondanza, P.A., Harraseeket Inn, Angela Kimberk & Bert Singer, Peter & Ann LeBourdais, Merrymeeting Bay Trust, Morning Glory Natural Foods, Sam Morris & Connie Jones, Niehaus Fund, NLT Foundation, Fred & Lillian Pease, Mary Perkins, Tina Phillips, Reed & Reed, Margaret Schuler, Karen & Scott Silverman, Betsy & David Steen, Karen Stram, Emily & Ben Swan, Andy Vavolotis, Kadee Vitelli, Gretta Wark, Bob & Diane Weggel, Eric Zeise & Ellen Henry.

#### FOMB Files Lawsuits Against Maine Hydro Dam Owners Seeking Protections For Atlantic Salmon

Seeking protections for endangered and nearly-extinct Atlantic salmon populations of the Kennebec and Androscoggin Rivers, FOMB and Environment Maine, filed lawsuits in federal court in Portland and Bangor on January 31, 2011 against multiple dam owners and operators on the rivers, for violating the federal Endangered Species Act (ESA) and Clean Water Act (CWA). Salmon populations in both rivers are on the Endangered Species List and are due full protection under the ESA. The lawsuits were due in large part to the long-time efforts of FOMB member and president of Friends of Kennebec Salmon, Doug Watts, along with attorney Dave Nicholas, also an FOMB member. To our knowledge, these are the first lawsuits ever for illegal take of Atlantic salmon, and the first time, at least in New England, that ESA suits have been filed against corporations.

Complaints filed in the cases cite findings by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service that dams "are among the leading causes of both historical declines and contemporary low abundance" of Kennebec and Androscoggin salmon, and that "dams remain a direct and significant threat to Atlantic salmon." We also allege owners and operators of Weston and Shawmut dams, Lockwood dam, and Hydro Kennebec dam are violating specific language of their "water quality certifications" issued by the State of Maine (incorporated verbatim into their federal licenses) under the Clean Water Act, by allowing downstream-migrating adult salmon and adult shad to pass through dam turbines without first conducting studies to prove such passage is safe.



Billion dollar dam owner vs. migratory fish

Photo Courtesy of Doug Watts

#### What is "take"?

Under the ESA: the term "take", means "to harass, harm, pursue, hunt, shoot, kill, trap, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). By USFWS regulation: *Harass* in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. *Harm* in the definition of "take" in the Act means an act which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. 50 C.F.R. § 17.3.

NMFS has listed the some of following as examples of activities that may modify habitat and thus cause a take:

Constructing or maintaining barriers that eliminate or impede a listed species' access to habitat or ability to migrate;

Removing or altering rocks, soil, gravel, vegetation or other physical structures that are essential to the integrity and function of a listed species' habitat;

Removing water or otherwise altering stream-flow when it significantly impairs spawning, migration, feeding or other essential behavior patterns; [and]

Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat...

The ESA authorizes citizens to sue those who kill, harm, or harass (known as a "take" under the ESA) an endangered species. Take" under the ESA may be allowed if an Incidental Take Permit (ITP) has been issued by the appropriate federal fish or wildlife service. The permit process is a compromise, permitting some take if incidental to the course of normal business and if operational efforts have been made to minimize it. The ITP application is applicant-driven and until a permit has been issued, killing of an endangered species remains illegal.

Dam owners continue to stall on implementing basic salmon protection measures such as preventing salmon from swimming into spinning turbine blades. Kennebec and Androscoggin River dams kill and injure migrating salmon when fish attempt to pass through the dams' rotating turbine blades. Dams also impede upstream and downstream salmon passage, preventing salmon from gaining access to significant amounts of spawning and rearing habitat; and altering the natural habitat to such a degree their essential behavior patterns are significantly impaired. Collectively, these dams are pushing an iconic Maine fish to the brink of extinction and with almost no Atlantic salmon returning to the Kennebec and Androscoggin Rivers, where runs historically reached 100,000 or more, the need for action to protect the fish and their habitat is urgent. In 2010, five adult salmon returned to the Kennebec and 10 returned to the Androscoggin.

#### **FOMB Committees**

FOMB's accomplishment are due to the hard work of dedicated volunteers, especially those who serve on our committees. If you want to get involved and serve, please contact the committee chair or Jim Mason. Please join us!

#### **Steering Committee**

Ed Friedman, Chair (Bowdoinham) Nate Gray, Secretary (Freeport) Vance Stephenson, Treasurer (Wilmington, NC) Tom Walling (Bowdoinham) Sarah Cowperthwaite (Topsham) Andrew Fiori (Bowdoinham)

Meets every 4th Wednesday at the Bowdoinham Library 7PM

#### **Conservation and Stewardship Committee**

Monique Lucarelli, Chair, 443-8477 Ed Friedman Nate Gray Steve Musica

Meets on the 3rd Wednesday of June and November at the FOMB office in Bowdoinham at 7PM

#### **Membership and Fundraising Committee**

Nate Gray, Chair, 865-9377 Ed Friedman Kathleen McGee Vance Stephenson David Whittlesey

Meets on the 2nd Monday of April and November at the Bowdoinham Library at 7PM

#### **Research and Advocacy Committee**

Ed Friedman, Chair, 666-3372 Nate Gray Andrew Fiori Ruth Innes Monique Lucarelli Kathleen McGee

Steve Pelletier Kermit Smyth - Water Quality Monitoring Coordinator, 725-8420

Bill Milam - Water Quality Monitoring Coordinator, 443-9738

Tom Walling

Meets on the 1st Monday of April and November at the FOMB office in Bowdoinham at 7PM

#### **Education Committee**

Betsy Steen, Co-Chair, 666-3468 Tom Walling, Co-Chair, 666-5837 Sarah Cowperthwaite Andrew Fiori Ed Friedman Kathleen McGee Joan Llorente Peggy Muir Nancy Murphy

Meets on the 1st Wednesday of April, August and November at the FOMB office in Bowdoinham at 4PM

Friends of Merrymeeting Bay · Box 233 · Richmond, Maine 04357				
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Town/State/Zip				[\$5 for book, \$2 for postage].
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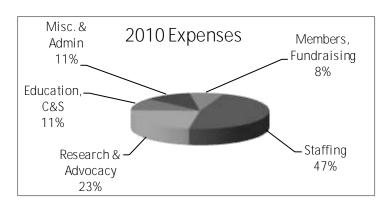


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### **Treasurer's Report**

A late surge of fundraising for the Houdlette initiative drove FOMB into cash positive territory for 2010. Total receipts last year were just shy of \$78K, exceeding \$62K of expenditures during this time frame. This operating result improved total cash in our bank accounts to \$219K at year end, almost \$10K higher than a year ago. Included in this total is \$42K of funds restricted for use in protecting conservation easements.

FOMB has an additional \$65K of liquid assets on account with Wells Fargo: \$54K of equities, mostly in Calvert Social Investment Mutual Funds plus \$11K in money market funds. FOMB remains a 'passive' investor (i.e., all of the equity positions resulted from in -kind stock donations) and \$10K of the \$54K at year end was a security donation in support of the Houdlette initiative and has already been sold and converted into cash in the first days of 2011. Tallying up assets in the bank and with Wells Fargo, FOMB's pool



of liquid funds at year-end totaled \$279K. The biggest chunk of 2010 income was \$31K of donations restricted for use to the Houdlette initiative. Grants included \$5K from the Niehaus Foundation towards Houdlette and \$9K from the Merrymeeting Bay Trust to wrap up the organization's commitment for our Current Study.

On the expense side, \$8K was spent last year to wrap up the Aerial Photography/GIS project. Other ventures requiring relatively sizable spending included \$4K for the Houdlette initiative and \$2K for the Healthy Rivers, Healthy Gulf (HRHG) program. FOMB continues to dedicate the vast bulk of expenses directly towards benefiting the Bay – Membership & Fundraising (which includes the newsletter and postage for the annual appeal) represented the smallest bucket of our expense categories and weighed in at a meager 8% of overall spending.

Respectfully submitted, Vance Stephenson, Treasurer

