



Friends of Merrymeeting Bay (FOMB) is a 501(c)(3) nonprofit organization. Our mission is to preserve, protect, and improve the unique ecosystems of the Bay through:

Education

Conservation & Stewardship

Research & Advocacy

Member Events

Support comes from members' tax-deductible donations and gifts.

Merrymeeting News is published seasonally and is sent to FOMB members and other friends of the Bay. Article hyperlinks and color images are available in our [online edition](http://www.fomb.org) at www.fomb.org

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FOMB Files Suit to Lock in Improved Water Quality on Androscoggin River and All Maine Rivers

Friends of Merrymeeting Bay (FOMB) filed suit in federal court Thursday, June 18, challenging the Maine Department of Environmental Protection's (DEP's) misuse of antidegradation policy under the Clean Water Act (CWA). Antidegradation policies were designed to improve water quality, lock in existing quality, and prevent backsliding of water quality. While the Androscoggin River is cited specifically in the lawsuit, the suit, if successful, will help improve the quality of all waters in Maine, many of which are currently held back by problematic policy implementation. FOMB is represented by the Sells Law Firm and Greenfire Law.

In virtually all states, administration of the antidegradation part of the CWA is delegated by the Environmental Protection Agency (EPA) to the states under continued supervision of the federal agency. As such, the FOMB suit also includes a claim against the EPA for failing to adequately monitor Maine's implementation of antidegradation policy and allowing this unlawful policy to continue in violation of the CWA.

FOMB claims the Maine Board of Environmental Protection (BEP) violated the language of state statute ("*shall recommend*") by failing to recommend to the legislature a classification upgrade on the Androscoggin River between Worumbo and Gulf Island Pond dams. In Maine, only the legislature can classify or reclassify water bodies.

All Maine waters are classified C, B, A, or AA, from lowest to highest quality, based on several parameters. Every 3 years the BEP and DEP solicit nominations for possible reclassifications through a Triennial Review process.

"The way the clean water statutes are supposed to work," explained Ed Friedman, FOMB Chair, *"is that when the quality of a water body is close to or meeting the standards of the next highest classification, it should be upgraded so the classification reflects actual quality and locks in the improved conditions. The next time discharger permits come up for renewal, the permits are tweaked to comply with the reclassification, and in this way water quality is ratcheted up while pollutants are ratcheted down, and the water moves ever towards the national goal of ending water pollution."*

The CWA does not allow a water's "designated use" to be waste reception and transport. But, it is still permitted. Dumping pollutants into waters is regulated by National Pollution Discharge Elimination System (NPDES) permits which are administered by the states.

"NPDES permits must be renewed every 5 years," attorney Scott Sells said, *"to facilitate improvements in pollution control technologies. Reclassification should be driving this regular technology-forcing of dischargers to reduce or eliminate water pollution through use of best available technologies. When the classification is lower than actual water quality, the difference between the two in chemical parameters creates room to pollute or degrade the water while still meeting the obsolete lower classification."*

"Maine's got it backwards," said Greenfire Law principal Rachel Doughty who worked at EPA in the Office of Water early in her career. *"The state DEP uses a worst-case*

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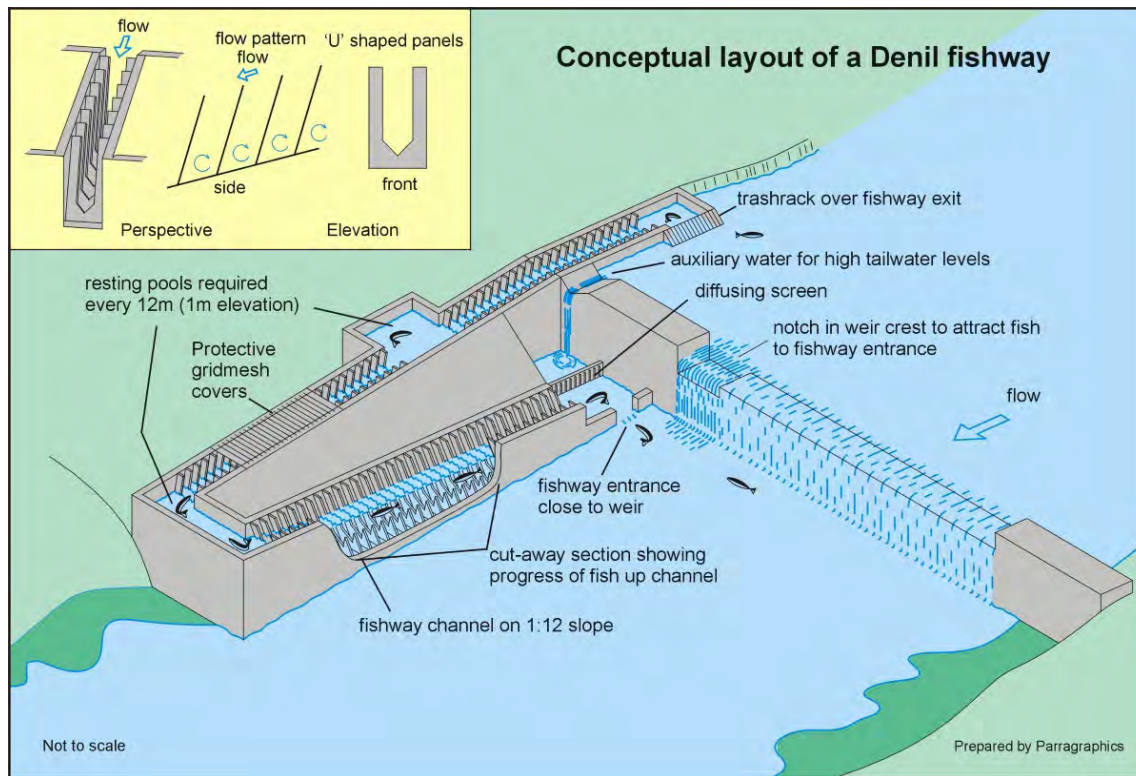
Pride cometh...

Fish passage season at China Lake rapidly ended this early summer. The annual count of the river herring headed up Outlet Stream in Vassalboro was over. Post-spawn adults were dropping out of the lake in tumbling schools, plopping into the pool below the dam, and scurrying back downstream to the Gulf of Maine.

I had pulled the counting array from the exit of the Denil fishway and stored that away in our gear storage barn. Now it was time to shut the fishway all the way off and concentrate on getting the post-spawn adults out. It was a fantastic run. Some 3.1 million fish made the ascent from the Sebasticook River. There were still some stragglers that could have made it, but it's near impossible to count fish into the lake when tens of thousands of fish are trying to get out of the lake. Best bet is to shut down upstream passage and concentrate on downstream passage. And that was why I was here. To close the fishway.

In my early career I could bound in and out of a fishway. After 35 years I no longer bound. I carefully crawl in and out. Today is no exception. A standard Denil fishway is 4 feet wide and 5 feet deep. This “trough” has a series of baffles in the sloped sections of the trough to slow the water flow and allow the fish to ascend. Once I get the gate sections installed, I can inspect the baffles and clean out any debris from the trough.

I've brought a step ladder with me to lower into the fishway so I can easily climb down in and then lower each gate section into position. The gate sections are made from welded aluminum plate—thick plate to withstand the abuse of years of winter and the pressure ice can inflict. The gate sections fit into slots at the fishway exit and are simply lowered into position. Each gate section is 4 feet 4 inches wide and 6 inches tall. Even though they're aluminum, they are heavy. It takes several sections of gate to turn off the fishway which has 3 feet of water going into it.



Denil fishway diagram

them while I'm down in the fishway. At this point I removed all the contents of my pockets because the water is warm now and it will feel great. I climb down the ladder and begin setting the sections.

There are two extra deep sections, and I will install these first. These are also extra heavy. As each section drops in, the flow in the fishway diminishes. I take a break after the first two sections and watch a guy across the way methodically fish his way down to the dam. He's wearing shorts and flip flops. Nothing else. He sees me and continues to fish along. Casting and covering the water with effective accurate casts.

I lug the step ladder from the truck past the Vassalboro Historical Society and down to the dam. I crawl through the railing of the gate house and pull the ladder through after me. A short jaunt and I crawl down onto the dam's spillway toward the entrance of the fish ladder. Here the fishway has a small compression that will raise the water elevation, and I can easily step across with the ladder in tow. A short walk later and I'm at the exit of the fishway into the lake.

I lower the step ladder into the fishway. I retrieve each gate section and set it in position so I can reach

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“Pride Cometh...” continued from page 2

I stepped onto the spillway with the ladder in my right hand and took one step. And I knew.

in the dam now and drop out. I inspect the fishway up and down and then climb out and drag the ladder up behind me. The fishing guy was on the dam now at the gatehouse and fishing upstream. I filled my pockets, grabbed the ladder, and headed back to the fishway entrance to cross over to the spillway.

I stepped onto the spillway with the ladder in my right hand and took one step.

And I knew.

I knew, in that instant, that I was going to fall into the fishway. The section of the spillway I stepped on was coated in a fine green algae. Slicker than axle grease. My footwear would rival a formula one car for traction on ANY surface but this one. On this surface my footwear was doom.

My left foot slid an inch. My right foot followed suit. The ladder dangled from my right hand; I dropped the ladder and assumed the position. My left foot slipped and my right foot too, and now the slip was a slide. With inches to go before the drop off I lunged to get my body flat. At least hit the water square on my back to increase my surface area so I wouldn't strike the bottom of the fishway too hard. Remember, I just got through shutting off the water.

My genius plan worked perfectly. I landed flat in about two feet of water from what amounted to a seven-foot fall.

I stood up. No pain. I looked up and there was the fishing dude. “Are you all right? Do you need help?” I paused a moment plopping my soaked hat back on my head and laughed. “I’m good. No, I’m fine; I’ll be right up.”

He watched me crawl out of the fishway entrance and met me on the spillway a foot away from the algae of doom. “I slipped on that stuff.” I said and grabbed the ladder and tossed it onto the gatehouse deck. “I heard you fall.” He said. “Yeah, there was nothing for it, I started going and knew I was going, so I went.”

I asked him about the fishing, and he’d caught quite a few bass. We parted ways at the railing, and I lugged the ladder back to the truck.

When I got to the truck, one of the lovely volunteers who runs the Vassalboro Historical Society museum was just opening the place up. She paused and looked at me as water poured off my shirt. I was obviously soaked, and she instinctively asked how I was. I told her what had just happened. We both had a good laugh at my expense, but it was well worth the price. I got off Scott free. This time.

Break time over, I finished the installation of the gate sections. Except the last one. I cannot put the last one in. There are probably a hundred blueback herring sprinting around my feet. I leave the last board cocked sideways on the slot to allow about 3 inches of water into the fishway, which is enough to keep the fish alive and allow them to drop back out of the fishway,

My job is done for now, and I’ll come back and fully shut down the fishway once the herring run out of steam. So little flow is going through the fishway now, that the post-spawn adults won’t be attracted to it. They’ll go to the gate



Blueback herring sprinting around my feet
Photo: Ed Friedman

Sturgeon in Flight

Each spring FOMB uses an underwater sonar camera to record shad trying in vain to pass the Brunswick/Topsham dam on the Androscoggin. There are 10-12,000 fish on one tide, and usually less than 50 ascend the fishway.

Sometimes John Lichter will set up his camera on a tripod and put it in video mode, hoping a sturgeon will leap into the frame. Today, he got lucky. On our last day of filming in 2026 we watched 135 sturgeon leaps!



Hoping for the right place and right time.
Photo: Ed Friedman

Sturgeon photos: John Lichter



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6



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8



9



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“Sharing eagle flights...”

Photo: Chris Gutscher

In My Childhood Days

In my childhood days
I baked gingerbread and would
have brought some to you

If we’d been neighbors
I’d have raced my bike to you
life cupped in my hands

Look! Here is the nest
and the baby bird that fell
in the great night storm

And I’d have asked you
to my mouse cemetery
beside the garden

Where Tissy the cat
left his small offerings and
I said my prayers

Now we’re all grown up
living on the same river
sharing eagle flights

Watching fish runs surge
up the water’s strong flow
silver in the sun

The writing went well
a perfect retreat, too brief
its glow lingering

Now words move slowly
like a late-season fish run

fighting the current

Bunny McBride



“Watching fish runs surge...”

Photo (Maine alewives): Robert F. Bukaty, AP



“Here is the nest...”

Photo: Ed Friedman

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modeled scenario of simultaneous 10-year low flows, high temperatures, and all NPDES dischargers operating at full discharge capacity (which never happens), as a barrier to reclassification. Rather than basing water body classification on actual water quality as the law requires, the Department imposes this modeled ‘Trifecta of Horribles,’ to prioritize pollution capacity. That’s the precise inversion of what the CWA and Maine law requires.”

Peter Rubins, of Grow L+A, filed the most recent upgrade proposal for this section of the Androscoggin, supported by past Brookfield, CMP, DEP, and FOMB data. Adding to this was the recent comprehensive 2025 sampling data collected by FOMB.

“The Board is required to recommend a reclassification upgrade to the legislature based on actual data and they refused to follow their statutory requirements during this past Triennial Review,” Rubins said.

The June 18 complaint was brought under the Administrative Procedures Act (APA) and on June 27, FOMB submitted a companion 60-day Notice of Intent (NOI) to file a citizen suit under the Clean Water Act against the EPA for their failure to act on these issues. Wording on EPA responsibilities differs slightly between the APA and CWA, hence our actions under both.

Bringing a lawsuit like this on behalf of our rivers costs tens to hundreds of thousands of dollars (over \$40K thus far). Your special tax-deductible donations in cash or appreciated securities will be welcome! Thank you.

WE NEED YOU! PLEASE SUPPORT OUR IMPORTANT WORK

FOMB Leadership

Our accomplishments 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 Ed Friedman. We always welcome member input and we’d love for you to join us!

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| ☐ New Member | ☐ I would like a FOMB flying ducks sticker |

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(optional)
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for book, \$2
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Thanks to Rebecca Bowes for newsletter layout.



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Muddy River paddle
Photo: Ed Friedman



Yellownecked caterpillars (*Datana ministra*) with stomachs full
of blueberry leaves
Photo: Ed Friedman