

The Merrymeeting News



Summer/Fall 2007 Volume XVIII No 3

The Newsletter of Friends of Merrymeeting Bay • Box 233 • Richmond Maine 04357

Friends of Merrymeeting Bay

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

Education

Conservation & Stewardship

Membership Events

Research & Advocacy

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

www.friendsofmerrymeetingbay.org

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

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Kerry Hardy

Via Chris Stark, Belfast:

Message from the Hopi Elders

“You have been telling the people that this is the Eleventh Hour, now you must go back and tell the people that this is the Hour. And there are things to be considered...

Where are you living?

What are you doing?

What are your relationships?

Are you in right relation?

Where is your water?

Know your garden.

It is time to speak your Truth.

Create your community.

Be good to each other.

And do not look outside yourself for the leader.

Then he clasped his hands together, smiled, and said, “This could be a good time! There is a river flowing now very fast. It is so great and swift that there are those who will be afraid. They will try to hold on to the shore. They will feel they are being torn apart and will suffer greatly.

Know the river has its destination. The elders say we must let go of the shore, push off into the middle of the river, keep our eyes open, and our heads above the water.

And I say, see who is in there with you and celebrate. At this time in history, we are to take nothing personally. Least of all, ourselves. For the moment that we do, our spiritual growth and journey comes to a halt.

The time of the lone wolf is over. Gather yourselves!

Banish the word struggle from your attitude and your vocabulary. All that we do now must be done in a sacred manner and in celebration.

We are the ones we've been waiting for.”

Oraibi, Arizona
Hopi Nation

*“We don't inherit the Earth from our
ancestors; we borrow it from our children”*

-David Brower

(When asked about this years later, Brower remarked that he should have said “...we *steal* it from our children”)

Safe Fish and Eel Passage Update – Sorry, You Have No Rights!

As many of you know, the Maine Board of Environmental Protection, after a full adjudicated hearing, dismissed our petition for safe, effective and immediate fish and eel passage at four dams on the Kennebec despite overwhelming evidence presented that current water quality certifications were in violation of state and federal laws. The Board also dismissed our petition for a full hearing requesting eel passage at all hydro dams in the Maine section of the Androscoggin system. While most major Maine rivers including the Kennebec offer some eel passage, the Androscoggin has none. That's right, zero, zippo nada. After all, who cares about the Andro?

FOMB decided to appeal the Kennebec dismissal in part because we have an excellent record on which to base our arguments. FOMB Chair, Ed Friedman, one of about 60 individuals to file the Androscoggin 2 petition, appealed that decision personally [no hearing-no record-greater risk]. Both the state and dam owners filed motions to dismiss our collective appeals which were filed in Sagadahoc Superior Court; a tactic designed to move the issue out of the incestuous environment of Kennebec County Court where industry and state are used to playing their games.

With the excellent legal guidance of our attorneys David Nicholas and Bruce Merrill, we made our case on October 18 in oral arguments on the motions to dismiss our appeals. At issue, based on some previous legal decisions and an unparalled level of arrogance, was not just the fish kill issue but the fundamental right to appeal an agency decision which both state and dam owners argued did not exist, although spelled out specifically in statute. FOMB members should be interested to know the other side argued, regardless of fish kills or habitat blockage, FOMB had no standing to appear in court on this issue and that only the dam [property] owners had any rights. Remember that prior

to our public hearing on the Kennebec, the BEP made us file motions to intervene in our own case!

While there has been no decision at time of writing, it was clear the Judge was quite engaged and he allowed 2 hours for arguments. Had this occurred in Kennebec County we would have been shut down after 20 minutes. Afterwards, the bailiff noted this had been the most interesting case he'd heard in years.

Stay tuned. With fall rains, the migratory and killing season for eels has begun.



FOMB attorneys Dave Nicholas & Bruce Merrill with Ed Friedman

PS. The day after writing the above update we received the court decision ordering dismissal of both appeals primarily on the grounds that it lacked jurisdiction since there was no *final agency action* under the Administrative Procedures Act or APA. Now there is the language of 38 M.R.S.A. §346(1), which states that “*any person aggrieved by an order or decision of the board or commissioner may appeal to the Superior Court*. These appeals to the Superior Court shall be taken in accordance with Title 5 [the APA], chapter 375, subchapter VII.”

The APA defines final agency action as “*a decision by an agency which affects the legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, and for which no further recourse, appeal or review is provided within the agency.*” The Board, the court and the dam owners all argue that a decision by the Board to dismiss without hearing, or even after a full adjudicated hearing, is not a final decision since one can always submit a new petition. **What they refuse to admit, nor care about, is that the result; that no final agency action is ever possible given a perpetual right to submit new petitions, is a defacto revocation of a citizen's right to appeal granted under statute.**

Fun with Fish

One of the functions central to Friends of Merrymeeting Bay's mission and something that we do very well is to educate people, especially children, about the ecological and historical significance of Merrymeeting Bay. Our *Hands Around the Bay* program, for which FOMB has received recognition through numerous grants over the years, brings the Bay into the classrooms of neighborhood schoolchildren *and* brings the classrooms to the Bay.

Throughout the school year FOMB volunteers make "critter visits" with some of our many mounted mammals, fish and birds of the Bay. Twice a year—once in the fall and again in the spring—FOMB flips that equation and invites local fourth grade students to locations on the Bay. FOMB members come together to put our best collective foot forward and share the impressive body of expertise we have to offer about the Bay.

Since I participated in my first Bay Day this past spring, I have come to appreciate that Bay Day is a rite of passage for students of the local grade schools and is a memory that these fourth graders take with them for the rest of their lives. During my school visits, the "older" kids speak vividly and excitedly about the day they went to that "classroom" that is the Bay itself and the younger students look forward to their turn.



Happy fish printers

Months of preparation culminated with our ten volunteer guides putting on three sessions of programming for 113 students from three area schools. Students were gathered in small groups and led by our chaperones to three programs, each fifty minutes in length. The day flew by as students took part in watershed modeling with mud, fish printing, environmental art, mapping, and tree identification among others.

Nate Gray, FOMB Board Member, and the State's Kennebec River Restoration Project Leader, demonstrated beach seining, a method of netting fish seeking warmth of the shallows. In this staple Bay Day program Nate asks the students to imagine how vital the Bay was to the every day survival of native peoples and

European settlers. Gleeful students assisted Nate in catching actual specimens of eels and anadromous fish that sustained former Bay residents before returning the fish to water.



Nate Gray beach seines with help

Taking a lunch break under a big oak tree, chaperone Fritz Kempner told the other chaperones about the archaeology program he'd just accompanied his young charges to, "Those kids learned more about archaeology in ten minutes of that program than they would learn for days in the classroom," he marveled. Judging by his and the smiles of the other chaperones and volunteers, Bay Day is as rewarding for our volunteers as it is for the students.

Before we knew it another Bay Day had come and gone. Guides and chaperones packed up, debriefed about the day and discussed what worked and what could be improved upon for the next Bay Day in the spring. As always, we received stellar feedback from teachers and students.

I would like to personally thank all of our guides and chaperones who made this Fall Bay Day possible. A lot of planning and preparation goes into Bay Day and we already have a waiting list of schools intent on attending in the spring. We'll need all the hands we can get. Things are already underway for a day in May to be determined. We would love to have you come see what it's all about. Please join us for this singular opportunity to share our beloved Bay with our future generations. Please give me a call any time to sign up. (871-0317 or fomb@gwi.net).

Thanks to all of our volunteers who made this possible: Steve Eagles, Kent Cooper, Lee Cranmer, Bill Burgess, Jay Robbins, Jamie Silvestri, Allison Baird, Meg Wooster, Caitlin Kerstin, Nate Gray, Tom Weddle, Kathleen McGee, Robin Brooks, Paul Dumdey, Kate Doiron, Carol Dyer, Ed Friedman, Patrick Quinlan, Suzy Gideon, Dick Nickerson, Milo Stanley, Joan Llorente, Martha Spiess, Fritz Kempner and Veva Kendig. Thanks also to Jim Connolly of the Maine Department of Inland Fisheries & Wildlife and to Wild Oats Bakery.

John Eder



Illustration by Nate Gray

Nature,

it began in May. We waited and checked the stream expectantly. The alewives should have been here by now. We would travel to the mouth of the stream where it dumps into the main stem of the mighty Kennebec River to check for the presence of these fish on a daily basis. The temperature was right. The timing was right. It even smelled right. But still no alewives had arrived. Where were they? Well the short answer was they were doing what alewives do; swimming up the river getting ready to spawn. Soon enough they arrived. Much to our collective relief. At first just a small school of the ten inch long silvery herring showed up and we went after them with a vengeance. Dip nets flying, we chased the fish in the pool. But a small school is hard to corner in a big pool. Our numbers were poor. In 12 hours we only managed to net, sort and count a few thousand. There should be more. In a few days our fears would be laid to rest. The alewives showed up. An army of them. Now you could hardly set the net near the water and not catch an alewife. In all we captured, sorted and stocked 92,000 fish into roughly 2500 surface acres of habitat available on the Webber Pond – Seven Mile Stream drainage. All the work we had done since the first stockings in 1997 had borne fruit. And it was good.

Just getting those fish into their historical habitat was no small feat. Months were spent collecting background information in the Seven Mile system. Consultations with other resource departments were a must. We had a good idea that Edwards Dam was on its way out and we knew that Webber Pond, Three Mile Pond and Three Cornered Pond were historically accessible by alewives. Back in the colonial period these fish were a necessity of life. Imagine food swimming right to your doorstep. Fertilizer for your garden and survival through the long harsh months of winter guaranteed provided you managed to salt and smoke a bunch to keep in a barrel in your root cellar.

Soon enough the spawning season had passed and we set to work on other species such as American shad and blueback herring. We had not forgotten about the alewives. They had made it to where they needed to be to complete their life cycle. Later in the season we began thinking about the Webber alewives and how they were doing. Specifically we wanted to know if some of the fish had migrated through Webber Pond and up the stream into Three-Mile Pond. We brought the jet boat and beach seine to Three-Mile and to set about sampling the pond for the presence of juvenile alewives. We captured a handful of young alewives. The adults had apparently managed to navigate the stream and make it into Three-Mile. All the previous years we had to truck adults in from Ft. Halifax to ensure we were getting fish into their habitat. So far, so good.

The summer advanced and the weather was fine for field work. Every other week we would sample with the beach seine on the Kennebec between Waterville and Augusta. Eight sites we routinely check. No great changes in diversity other than the mass change experienced when Edwards' dam was removed. We can tell for the most part what we'll get for fish at each site. That's not a bad thing. Certain fish like certain sites. On the off weeks we do "dams and outlets". Here we visit sites throughout our range to check for the free passage of fish out of their natal waters. As summer passes to fall the alewives search for a way downstream driven by their urge to return to the Atlantic as light levels fall along with the temperature and food availability. This urge is built into their very existence. It is part of their nature.

Two weeks ago the crew checked the outlet of Three-Mile Pond to see if there were any obstructions to downstream passage. A small beaver or muskrat dam had partially blocked what little flow remained from this summer's lack of precipitation. A small breach was made in this dam to allow the water to pass more freely rather than "straining" through the twigs and branches. No alewives were noted in the area. The following Monday I received a call from the Region B fisheries biologist forwarding a phone number from a concerned citizen. Curious, I called and subsequently was informed of a fish kill on the outlet stream of Three-Mile Pond. The crew went to investigate. I already had my suspicions as to the species and the cause. It was the magnitude that caught my breath. Lining the banks, bottom and half a mile of stream were the bodies of hundreds of thousands of juvenile alewives. In their attempt to leave Three-Mile Pond the alewives had consumed all the available oxygen in the stream and suffocated themselves. Their very nature had been their undoing.

Today the site of the alewife kill does not stink nearly as bad as it did a week ago. I pass by the site on my way to work daily and in retrospect I remember the stench on the Monday I received the call from Region B. Two weeks from now you will have to visit the site to know there was a fish kill at all. All that will remain will be the scales and skulls to tell the tale. Meanwhile the local raccoons, minks, otters, weasels, aquatic insects, terrestrial insects and two hundred fifty billion bacteria will do their part and eagerly consume the bounty. Was that all the alewives in Three-Mile Pond? No. There are more and some will make it back to the ocean much like their parents did in 2003. It's their nature.

Nate Gray

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FOMB depends on you for donations. We ask twice a year, once for membership dues and once with our Annual Appeal. Please be as generous as you can, we can't continue our critical work and accomplishments without your support.

Eels on "This Issue"

Bruce Gagnon is coordinator of the Global Network Against Weapons & Nuclear Power in Space. He frequently travels and offers reflections on organizing and the state of America's declining empire....

Thursday, September 27, 2007

EELS DIE AS DAM OWNERS STAND AND WATCH

I taped my latest cable TV show today that runs on eight stations in Maine. My show today featured Ed Friedman, chairman of the [Friends of Merrymeeting Bay](#) (FOMB), a local environmental group fighting to stop the killing of eels and other fish as they try to navigate Maine's rivers.

Most of the dam owners in Maine, controlled by big corporations, won't spend the money to put in technologies like ladders and other devices to help the eels from being destroyed in the turbines inside the dams. These greedy corporate entities, who use the public rivers for profit without paying "rent" for use of the public waterway, could care less about the consequences of their dams. FOMB has been appealing to the state Department of Environmental Protection and the governor for a long time but the state government is pretty much under the control of these same greedy corporations. Ed calls it the Department of Economic Protection.

So FOMB has gone into court to try to get the judicial system to help with this problem but that door is increasingly closed and locked shut as well. In the meantime, as the eel population diminishes, people fail to see the link to the declining fish populations in the ocean - the eels are a source of food for the larger fish. It's all connected.

Ed says that the 3rd and 6th grade kids get it right away. But the big time boys, the corporate types and the politicians they own, can't see it because they are blinded by their love for the almighty dollar. Or as the Native Americans called it, the green frog skin. The white man is sick and is killing his mother earth.

Watch this show at:

<http://space4peace.blogspot.com/2007/09/eels-die-as-dam-owners-stand-and-watch.html>

And, on the radio...

Nov. 28th, WMPG's "Sound Ecology" at 7:30 pm, host Karen d'Andrea interviewed guests Ed Friedman, Doug Watts and FOMB attorney Bruce Merrill discussing the fight for safe and effective fish passage and how to save the planet. Special guest was "Elvira the Eel." The show is broadcast from Portland but you can listen live on the web:

http://www.soundecology.org/index_files/Page396.htm

Giving Green.

If you are shopping for the holidays consider giving some business to F.W. Horch Sustainable Goods & Supplies at 56 Maine St. in Brunswick. Horch will donate 10% of all profits made from December 18-December 22 Friends of Merrymeeting Bay. Consider shopping locally, purchasing some energy-saving devices and supporting FOMB all at the same time!



Water Quality Monitoring

We have completed another successful season of water quality monitoring at over twenty sites from Woolwich to Solon on the Kennebec, Topsham to Turner on the Androscoggin and numerous locations on the Bay's smaller tributaries. Tests are for a range of parameters from pH and turbidity to dissolved oxygen and fecal coliform bacteria. Thanks to program coordinators Bill Milam and Kermit Smyth and to Ruth Innes for her laboratory analyses of fecal samples. Thanks to our many water monitors: Pippa Stanley, Melinda & Ken Emerson, Bill Milam, Nancy Murphy, Kathleen McGee, Steve Eagles, Richard Nickerson, Helen Watts, Bill Kunitz, Bill Briggs, Dave Hedrick, Jim Thibideau, David Whittlesey, Art Carrano, Don Taylor, Bruce Trembly, Craig Denis, Judith Hunnewell, John McMullen, Maggie Soulman, David Wall, Kermit Smyth, Paul Dumdey, and backup monitor Ed Friedman.



Ruth Innes analyzes samples

Thanks also to John Lichter and Bowdoin College for use of their lab and to Peter Milholland and Mike Doan of Friends of Casco Bay for their training assistance.

Thwings Pt. Archaeology Survey

From September 10-14 FOMB volunteers joined with archaeologists from the Maine Historic Preservation Commission to conduct a Phase One archaeology survey of Thwings Pt. in Woolwich. FOMB had led the effort to protect this parcel now owned by the State of Maine and managed by the Department of Inland Fisheries & Wildlife, and it took several years to come to fruition. The site was that of the first European government in the Bay area .



Tristan and Will Zell go deep

A Phase One survey is the initial archaeological exploration given a new site. The purpose is to quickly cover a large area in a methodical manner. Small test pits are dug, soil stratigraphy and any artifacts found are recorded and the pits are back-filled. Results from this survey will help determine whether any possible future and more complete excavations are called for.

Citizens met here at the home and trading post of Thomas Ashley on May 23, 1654 to form the first "European" government in the Merrymeeting Bay area. Under the "authority and full power" granted him by Governor William Bradford, a Mr. Thomas Prence was directed to "settle a government upon the said river of Kennebecke". Prence issued a warrant to the Marshall of New Plymouth on May 15, 1654 "requiring all the inhabitants of said river to make their personall appearance at the home of Thomas Ashley, at Merrymeeting, on the 23rd of the present month." ["Records of Plymouth Colony-Pilgrim Laws on the Kennebecke River 1654."]

Change in the Steering Committee

Steve Musica, FOMB treasurer for the last several years has stepped down from this position while remaining on the board. We thank Steve for his services and welcome back Vance Stephenson who held the position in the early 1990s. Vance is a financial professional slowly circling back to Maine via Ohio, Texas and now North Carolina. Leaving the Board to better pursue her work on fair Trade and water rights is vice chair Martha Spiess. Martha has been invaluable both for her insights and participation as well as video documentation of FOMB highlights. A reminder that we are always looking for enthusiastic and committed Bay-lovers to serve on the Steering Committee and sub-committees. Please contact Ed Friedman.

Annual Meeting

A reminder that our FOMB annual meeting will be held at 6pm on January 9, 2008 at the Bowdoin College Cram Alumni House, 83 Federal St. in Brunswick. The short business meeting and annual elections will follow a potluck supper and precede our guest speaker, artist and author *Rob Shetterly*, whose topic will be: *End of Compromise: Martin Luther King Jr. and the Future of Activism*.

Thanks!

Thanks to Ruth Gabey, Suzanne Eder, Nancy Bailey, Nate Gray & Kathleen McGee for their work on the Annual Appeal and to Martha Spiess, Bruce Gagnon and Karen D'Andrea for their media work and opportunities. Thanks also to Kent Cooper for keeping our Speaker Series provided with wonderful refreshments and to Stan Moody and Martin McDonough for their website work.

HELP! STORAGE/OFFICE SPACE

The Steering Committee is considering leasing storage/office space in the Merrymeeting Bay area. Does anyone out there know of an available space? Please contact John Eder, Ed Friedman, or anyone on the SC with any leads. We can't afford much, but an organized "base camp" could prove very valuable as we grow. It could also help clean up Ed's house! Thank You.



Bob Wessel sifts

Friends of Merrymeeting Bay

In the late 1800s there were two ice houses on the site as well and ice workers bunked in the yellow home on the north end of the Pt. The survey covered both state land and two private parcels. The state land was protected through the efforts of FOMB in partnership with the Maine Wetlands Protection Coalition and acquired with funds from the Land for Maine's Future Bond approved several years ago. Materials were found on site dating back several thousand years [a few flakes] but mostly they were more recent going back to the early 17th century with some clay pipe fragments, and ceramic pieces.



Kathy Bridge slings some dirt

Thanks to Lee Cranmer, Bill Burgess, Art Spiess, Leith Smith, Kathy Bridge, Bob and Diane Weggel, Kent Cooper, Sarah Cowperthwaite, Ed Friedman, Cheryl Yeaton, Kathy Sylvester, Will and Tristan Zell, Barry Rodrigue and his two students, and Lonnie Ganter. Special thanks to our hosts Claire and Michael Robinson, John Farrington and to Jim Connolly of MDIF&W.

Outside 2007

We had another very successful series of paddles and walks this past summer. Some were so popular that we ran out of room [Swan Island], and some so enticing participants sniffed their way to the location even without directions [Mushrooms]. Thanks to our many volunteer leaders who made the series possible: Piers Beirne, Will Broussard, Warren Whitney, Ed Friedman, Bruce Trembly, Anne Hammond, Andy Cutko and Michaeline Mulvey.



Burnt Jacket Channel in the Kennebec

Steering Committee

- Clancy Cummins (Richmond) Secretary
- Ed Friedman (Bowdoinham)..... Chair
- Nate Gray (Freeport)
- Steve Musica (Richmond)
- Pippa Stanley (Richmond)
- Vance Stephenson (Wilmington, NC).... Treasurer
- David Whittlesey (Bowdoinham)

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- Ed Friedman.....666-3372

Water Quality Monitoring Coordinators

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- Kermit Smyth.....725-8420

Executive Coordinator

- John Eder871-0317
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Thank you to David Hansen for designing this issue of Merrymeeting News and to all of our contributing writers.



Friends of Merrymeeting Bay, P.O.Box 233, Richmond, Maine 04357

MEMBERSHIP LEVELS

- \$1,000+Sturgeon
- \$750 American Eel
- \$500 Wild Salmon
- \$250 Striped Bass
- \$100 Shad
- \$50 Alewife
- \$20 Smelt
- \$_____other

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\$7.00 enclosed for a copy of Conservation Options: A Guide for Maine Landowners. (\$5 for the book, \$2 for postage)

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International Trade Agreements, Merrymeeting Bay and Global Warming

Concerns have been raised about “free trade” negotiations and how these agreements might impact policies undertaken to stabilize greenhouse gas emissions. As we know, laws implemented to reduce CO2 emissions will help reduce the expected water level rises predicted within this century and will help preserve the nature and heritage of Merrymeeting Bay.

Investor-to-state provisions came into effect when the North American Free Trade Agreement (NAFTA) was signed in 1994. Under these rules, foreign investors are accorded privileges and protections and have the same status as a nation/state for enforcement purposes. Corporate investors have used these new rights to challenge a variety of national, state, and local policies. These include a US chemical company challenging Canadian environmental regulation of the gasoline additive MMT. It includes a US water company challenging a Canadian Province’s moratorium on (bulk) large quantities of water exports. It includes a US waste treatment company challenging a Canadian ban of PCB exports. If multi-national corporations use these trade agreements to challenge and avoid environmental regulations (local, state or national), they can continue to harm the environment in the name of profit.

Newer negotiations, involving the GATS, are also raising concerns. The General Agreement on Trade in Services (signed in 1995), one of a family of agreements within the World Trade Organization (WTO) involves trade in “services”. Current negotiations on domestic regulation would cover qualification requirements (e.g. professional licenses), licensing requirements and technical standards (for operating or providing a service). The United States offers cover regulation of: coastal zones (bulk storage of fuels-LNG terminals, wastewater-desalination), energy and climate, libraries, utility companies, waste management, zoning and land use, among other commitments. Again, avoiding regulations designed to protect consumers and the environment is a possibility under these trade rules.

The WTO Agreement on Agriculture incorporates the globalization of food production, packaging and distribution systems, yet climate change negotiator goals are not integrated within the international agricultural trade agreements. 70% of the global biofuels production is from the US and Brazil. Impacts on biodiversity, labor standards, and human food supply are missing from the discussion.

How can complex regulatory agencies or newly developing regulatory systems move forward in this mesh of international trade law in order to implement policy that will help regulate greenhouse gas emissions? Several states, Maine included, have formed a state citizen Trade Policy Commission to oversee impacts of trade agreements upon their states and to help keep the legislature and the public informed. It is imperative that “water keepers” be engaged in the “trade” part of the discussion and help promote awareness of conflict.

Martha Spiess