

**CONSERVATION LAW FOUNDATION TESTIMONY IN OPPOSITION
TO LD 800, AN ACT TO PREVENT THE PASSAGE OF ALEWIVES
THROUGH THE GRAND FALLS DAM ON THE ST. CROIX RIVER**

**BEFORE THE MARINE RESOURCES COMMITTEE
MONDAY, APRIL 27, 2015**

Good Morning Senator Baker, Representative Kumiega and Members of the Joint Standing Committee on Marine Resources. My name is Sean Mahoney and I am the executive vice-president of the Conservation Law Foundation and director of our office here in Maine. CLF has worked to restore Maine's rivers for four decades, including actions in court and before the legislature to restore the alewife fishery to the St. Croix River watershed. Accordingly, we oppose LD 800 which seeks to extirpate that fishery.

Two years ago this Committee heard significant testimony – including evidence developed by the Department of Marine Resources – that firmly established: (1) the historical presence of sea run alewives throughout the St. Croix River watershed; (2) that alewives and small mouth bass can, have, and will continue to successfully coexist in that watershed and others throughout Maine; and (3) that the St. Croix River watershed has the potential to be the largest run of alewives on the East Coast at a time when alewives and their cousins, blueback herring, are being considered for listing under the Endangered Species Act. In response to that testimony and the significant support from a wide array of stakeholders, including the Commissioner of the Department of Marine Resources, the Passamaquoddy Nation, the Regional Administrator of the National Marine Fisheries Service, the Environmental Protection Agency and many other organizations dedicated to restoring Maine's rivers and fisheries, the legislature passed LD 72, which opened the fish passage at the Grand Falls Dam for the first time since 1995.

Alewives are a critical forage fish for some of New England's iconic fish, such as Atlantic cod and salmon and also serve as a key baitfish for Maine's most important fishery, lobster. As

an anadromous fish, alewives begin their lives in rivers and lakes, spend most of their lives in the ocean, and return to their native river system to spawn and begin the cycle again. The 1995 law that blocked alewives from passing beyond the Grand Falls Dam prevented them from reaching 98% of their native spawning habitat in the St. Croix watershed. It was, and remains, CLF's position that as a legal matter blocking alewives from passing the Grand Falls Dam is a violation of the water quality standards established by the Legislature for the St. Croix River under the Clean Water Act.

In 2012, CLF initiated a legal action based on that position that resulted in the Environmental Protection Agency concluding in a July 9, 2012 letter to then Attorney General Schneider (attached) that there was "no sound scientific rationale" to exclude alewives from the St. Croix River and that the then existing law banning their passage at the Grand Falls Dam violated the Clean Water Act and should be repealed. In light of that conclusion, combined with the support of the Department of Marine Resources for restoring alewives to the St. Croix River watershed, the Legislature righted that wrong and passed LD 72, avoiding the cost of litigation under the Clean Water Act.

In the two years since passage of LD 72, not to mention the celebration of the reopening of the fishway that brought together representatives of state and federal agencies, several of Maine's federally recognized Indian tribes, members of both political parties and community leaders, the only thing that has changed are the numbers of alewives returning to their native habitat. Nothing has changed that warrants repealing LD 72 or that would make closing the Grand Falls Dam fishway any less of a violation of the Clean Water Act. LD 800 would only create an impermissible conflict between federal and state law. For these reasons, we urge you to recommend that LD 800 ought not to pass.