



Friends of Merrymeeting Bay (FOMB) 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

## 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](http://www.fomb.org)

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## Fixing Maine's State-Level Endangered Species Acts

The federal [Endangered Species Act](#) (ESA) was passed by the U.S. Congress in 1973 and signed into law by President Nixon. The bill was passed by the Senate unanimously and approved in the House 390 to 12, showing broad and bipartisan support.

The purpose of the ESA is to protect and restore at-risk species. It is administered by the U.S. Fish and Wildlife Service and National Marine Fisheries Service, also known as NOAA Fisheries. The former is responsible for inland species, and the latter for marine species, including anadromous fish such as salmon, sturgeon, shad, and river herring.

Under the ESA, *endangered* means that a species is at risk of extinction throughout all or a significant portion of its range. *Threatened* means a species is likely to become endangered within the foreseeable future. The ESA is imposed at the species, subspecies, life history strategies, and population levels, the latter of which are referred to as Distinct Population Segments (DPS).

State-level ESA programs allow for state-specific listings and up-listing of federally listed species (from threatened to endangered), when the situation at the state level is worse than it is at the national level. State-level ESAs are not intended to challenge the federal ESA, as by the time the federal government lists a species as threatened or endangered, it is by default in trouble throughout its range.

Maine has two state-level ESA programs: [Maine Endangered Species Act](#) (MESA) and [Maine Marine Endangered Species Act](#) (MMESA.) The former is administered by the Department of Inland Fisheries and Wildlife (DIFW), and the latter by the Department of Marine Resources (DMR). MESA was enacted in 1975, and MMESA was established in 2003. At that time, all previously listed marine species were transferred from MESA to MMESA.

In 1975, the 107th Maine Legislature stated:

*"...various species of fish and wildlife have been and are in danger of being rendered extinct within the state of Maine...these species are of esthetic, ecological, educational, historical, recreational and scientific value to the people of the State...it is the policy of the State to conserve, by according such protection as is necessary to maintain and enhance their numbers..."*

Between 1975 and 1994, all federally listed species were automatically listed at the state level under MESA. Unfortunately, in 1995, the Maine Legislature eliminated the



Canada lynx

Photo: [Vital Ground Foundation](#)

*Continued on next page*

## *Fixing Maine's State Level Endangered Species Acts, continued from page 1*

mandatory listing clause, and a year later, changed authorization for designation and recommendation of Endangered or Threatened status from the United State Secretary of the Interior (US Fish & Wildlife Service) to the Commissioner of DIFW.

Today, requesting the listing of any species under MESA or MMESA is at the discretion of the DIFW and DMR Commissioners, respectively. Once the listing is requested, the Maine legislature has the sole authority to approve or reject a species, placing the responsibility for state-level ESA listing in the hands of politicians not scientists. And to be clear, if DIFW or DMR doesn't request a listing, it never gets to the legislature.

Currently, just 10 out of 17 species listed as threatened or endangered at the federal level and found in Maine are listed at the state level. The seven that are not listed include Atlantic salmon, Atlantic sturgeon, blue whale, Canada lynx, green turtle, rusty patched bumble bee, and red knot. Three would fall under MESA and four under MMESA, and most were listed at the federal level after Maine abolished mandatory listing.

The most egregious omission is Atlantic salmon. Endangered at the national level, Atlantic salmon are found nowhere else in the United States except Maine, and they are hanging by a thread, propped up almost solely through stocking.

Since 2015, Atlantic salmon have been a focal species under the federal [Species in the Spotlight](#) program. This program provides additional exposure to those species most at risk of going extinct. Atlantic salmon are one of only nine species that meet the inclusion criteria for the program: "...extinction is almost certain in the immediate future because of rapid population decline or habitat destruction..."

### INDIVIDUALS:

- *Edward Baum, Fisheries Scientist, Retired Program Coordinator for Maine Atlantic Sea-Run Salmon Commission*
- *Topher Browne, Journalist and author of "Atlantic Salmon Magic"*
- *Mark Des Meules, Former Science & Stewardship Director for The Nature Conservancy VT, Former Executive Director Land for Maine's Future, Maine Atlantic Salmon Collaborative, Former Executive Director Damariscotta River Association*
- *Joan Garner Trial, Ph.D., Retired MDIFW Fisheries Biologist, Atlantic Salmon Commission, DMR Bureau Sea Run Fisheries*
- *Albert M. Manville II, Ph.D., Retired Senior Wildlife Biologist for USFWS, Certified Wildlife Biologist for The Wildlife Society, Adjunct Professor at Johns Hopkins University, Sole Proprietor of Wildlife and Habitat Conservation Solutions, LLC*
- *Paul Nickerson, Retired USFWS and co-author of the federal rule listing Atlantic salmon in Maine*
- *Ray "Bucky" Owen, Ph.D., Former MDIFW Commissioner*
- *Catherine Schmitt, Journalist and author of "The President's Salmon: Restoring the King of Fish and its Home Waters"*
- *Matthew Scott, Emeritus, AFS, AIFRB; Retired Chief Biologist Maine DEP and former Deputy Commissioner MDIFW*
- *Mark Whiting, Ph.D., Retired DEP Biologist for DEP Salmon Rivers Program*

According to NOAA, "The Gulf of Maine DPS of Atlantic salmon was selected as one of the species under [the Species in the Spotlight program] because of its critically low abundance and its continuing decline."

Recent requests by conservationists, native fish advocates, scientists, and former DIFW, DMR, and Maine Department of Environmental Protection administrators and biologists to list Atlantic salmon as Endangered at the state level were declined.

The initial refusal came from DIFW, which stated that Atlantic salmon were a marine species and not eligible

### Wildlife professionals supporting state listing

for protection under MESA. The second refusal came from DMR. While the first request was sent to DIFW and was specific to MESA, DMR co-signed the refusal. The coalition sent a follow-up letter to DMR with a MMESA-specific request, which was also denied.

The joint DIFW/DMR initial refusal stated that since everyone was cooperating with the federal agencies, a state-level listing "...does not offer any conservation benefits..." and that a listing "...does however cause a workload issue that does not justify the ends." It was also referred to as "symbolic" and of no "meaningful benefit." This was in direct conflict with what DIFW says on the MESA web page:

*"Separating [listing and management] allows [DIFW] to recommend species for listing based solely on biological facts, thus purely reflecting the species' likelihood of extinction within Maine. The Department makes the decision without being constrained by political pressures; limits on agency funding, staffing, or management capabilities; the ease or difficulty of managing a species; or by a species' potential responsiveness or lack of responsiveness to management."*

*Continued on next page*

## *Fixing Maine's State Level Endangered Species Acts, continued from page 2*

As for DMR, their [2020 Kennebec River Management Plan Diadromous Resources Amendment](#), an amendment to the state's comprehensive 1993 Kennebec River Resource Management Plan, notes that "Restoration of Atlantic salmon, American shad, blueback herring, alewife, and sea lamprey has lagged on the mainstem Kennebec River," and refers to Atlantic salmon as "...one of the most iconic and imperiled species in the United States."

Unable to convince the agencies responsible for the well-being of Atlantic salmon and other at-risk species to act in regard to state-level ESA listings, the original coalition along with a number of other organizations (put together by FOMB & Native Fish Coalition) who have signed on, took their case to the Maine legislature. The coalition is working with legislators (Senator Dave Miramant, sponsor) in regard to [LD 883: An Act to Protect Endangered Species Whose Life Cycles Include Maine Land or Waters](#), to reinstate the mandatory state-level listing of federally listed species.\*

No one can challenge the basic premise that federally listed species are in trouble at the state level wherever they are found. This is especially true in cases like Atlantic salmon, where the species in question is found in only one state. From a commonsense perspective, if Atlantic salmon are endangered at the federal level, and they exist only in Maine, then they are by default endangered at the state level in Maine.

If MESA and MMESA don't offer any conservation benefits for federally listed species, why do we have them? And why would we list some federally listed species at the state level, but not all? DIFW and DMR are ignoring the intent of MESA and MMESA, respectively. There is no defense for their position, and it reeks of politics and turf.

Thirty-six states mandate state-level listing of federally listed species found in their state and at the same level or higher. Four states "recommended" or "highly recommended" it. Only 10 states, including Maine, do not require or even recommend listing federally listed species at the state level. And to be fair, in three of these states most federally listed species are listed at the state level.

Failing to list a federally listed species at the state level flies in the face of the federal ESA and ignores the intent of state-level ESA programs. It is bad science and even worse politics. But, unfortunately, that is exactly what Maine is doing and has done for the last 25 years. Listing some but not all federally-listed species invalidates any defense that there is no benefit.

It's time for Maine to put science ahead of its parochial concerns and fully embrace the intent of the federal ESA program, as well as MESA and MMESA. The current administration of MESA and MMESA by DIFW and DMR is arbitrary, capricious, and indefensible, especially when it comes to Atlantic salmon, a species that exists only in Maine and is not only federally endangered but critically so.

**BOB MALLARD** is a writer and author, as well as a founding member and current Executive Director for Native Fish Coalition. Look for his latest book, *Squaretail: The Definitive Guide to Brook Trout and Where to Find Them*. Bob can be reached at [www.BobMallard.com](http://www.BobMallard.com) or [info@bobmallard.com](mailto:info@bobmallard.com).

\*Of about 40 individuals and organizations (including Maine Audubon, the Nature Conservancy, and Trout Unlimited) presenting oral and/or written testimony for the public hearing on LD 883, only four (DMR, IFW, Maine Professional Guides Association, and Maine Forest Products Council) were against the proposed legislation. LD 883 was, however, defeated in the joint IFW-MAR session with only Senators Miramant and Curry voting for it. See page 6 for excerpts from the public testimony.



**Organizations working to reinstate mandatory state-level listing of federally listed species. See page 6 for testimony highlights.**

*See page 6 for testimony*

## Who's Zoomin' Who?

The only constant is change, and that statement has proven quite profound during the struggles with COVID. FOMB constantly strives to stay current, with the currents of change, resulting in several creative adaptations to preserve our program offerings. One innovation has been to migrate our Speaker Series from local lectures to Zoom presentations. I wanted to share the appeal of this offering, because the sessions are compelling and, for me, the one and only bright spot of the pandemic.

Once upon a time I lived outside of Brunswick and first joined FOMB in 1993, becoming treasurer in 1994. My family moved to Scarborough in 2001, and I resigned, but I eventually returned to the fold as your 'virtual' treasurer and have served in the capacity across the years from Texas, North Carolina, and Ohio. Being remote cripples my ability to offer hands-on participation, and though I have recruited speakers, I never got to savor the Speaker Series before it moved to Zoom.

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*It's not about science. Science plays a role. You use science, but it's really about what we value. And we value a living ocean.*

*Chris Clark*

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It is a breeze to attend the Speaker Series through Zoom, and having attended every one so far this season, I wanted to entice you by sharing my fascination. A broad range of topics are covered, and there is no downside. I was keen to enjoy sessions featuring subjects in which I already had an interest: the speakers did not fail to expand my knowledge base and prod me to consider additional aspects. Better yet, for topics where the speaker was introducing me to something new, I was captivated by the wonder of unexplored worlds.

Part of the allure is hearing the speakers talk live and learning of their endeavors to preserve our environment. The April session introduced me to the Native Fish Coalition, an organization I was previously ignorant of, whose mission is the conservation, preservation, and restoration of wild native fish. An organization spawned in Maine, the NFC has expanded to seven state

chapters. I was particularly impressed with Emily Bastian, the organization's National Vice-Chair. Emily works in the Hunting and Fishing department at LL Bean, the first woman to be a department lead there. She earned a degree in ecology, has worked as a National Park Ranger, and is a registered Maine Guide.

One of the tidbits I acquired from this presentation was that Maine is pretty much the final refuge of native brook trout, as it is for several other fish species that the NFC works to preserve through a variety of innovative methods. A particularly powerful attribute of the Zoom series in this day and age of social distancing is being able to pose questions to speakers. For the Q&A during the Native Fish talk, I asked Emily why Alabama was one of the states that adopted a local chapter of their organization, since I only associated the state with catfish. The speaker's breadth of knowledge was readily affirmed when Emily replied without hesitation that Alabama is home to more species of fish than any other state! I was delighted as she elaborated with some riveting details about several of their unique river inhabitants. Although I won't share the fun details here, I will point out that these talks are [archived](#) on the FOMB web site and invite you to check out past presentations.

The talk which struck me most deeply was the [Sonic Sea](#). This sobering presentation made me painfully aware of the many paths through which humans devastate wildlife. On a single



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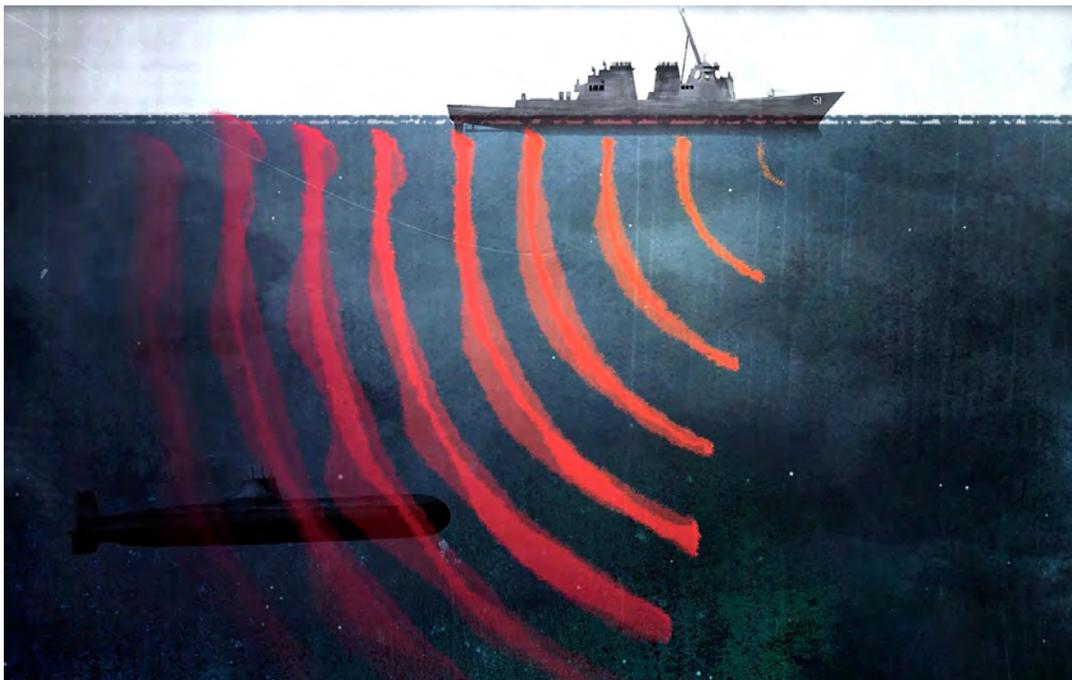
*Who's Zooming Who?, continued from page 4*



Chris Clark. "The ears are the entrance to the soul of the whale," Inupiat whaling captain.



There are sixty thousand ships traversing the world's ocean at any given moment.



day in 2001, eighteen whales beached themselves upon the shores of Bahama Islands. The culprit would eventually be proven to be the US Navy's deployment of sonar devices, but of course it would take years to compel a confession. Chris Clark, the senior scientist at Cornell's Department of Neurobiology & Behavior was the speaker for this segment, and he expanded on the many ways we drown the seas with sonic pollution, while reinforcing the beauty of how aquatic mammals use their highly developed sense of hearing to thrive.

The carryover benefits of the Speaker Series struck me when I learned of a book during the talk about the Bahama whale stranding ([War of the Whales](#) by Joshua Horowitz). I immediately ordered the book after enjoying this segment and was floored. Not only did I learn a ton about whales and dolphins, the saga of how a handful of determined individuals legally pressured the US Navy over many years to admit culpability reads like a best-selling thriller.

I have become a seriously devout fan of FOMB's Zoom Speaker Series and invite you to partake as well. A confession is that it is simply fun to see friends enjoying these talks during days of social distancing, though I will stress that you do not need to have a camera to participate. If you do have a camera on your PC, there is no requirement to activate video, so another plus is that you can enjoy these engaging segments in your pajamas!

*Vance Stephenson*

Navy antisubmarine sonar is like an enormous predator. For years the Navy was operating training exercises without permits or environmental review. Marine mammals suffered brain/inner ear damage like the bends, caused by pressure damage to the internal organs.

## *LD 883 Testimony Snips: Notes from the Trenches*

“I co-wrote the rule listing the Atlantic salmon as endangered some 20-plus years ago. I support LD 883 because it reinforces the state/federal partnership to protect and recover endangered species, regardless of which entity listed them.”

*Paul Nickerson (USFWS, retired)*

“As John Muir said: ‘When we try to pick out anything by itself, we find it hitched to everything else in the Universe.’ By protecting and restoring endangered wildlife and their habitats, we are protecting and restoring the earth we all share and that all life on earth needs to live.”

*Bob Goldman*

“Having spent 37 years (1968–2005) involved in the Maine Atlantic salmon restoration and management program, I am perplexed by the state’s apparent reluctance to list Atlantic salmon under Maine ESA statutes. Logically, the species should have automatically been listed concurrently with the federal ESA listing.”

*Ed Baum, Certified Fisheries Scientist, statewide Atlantic Salmon Program coordinator,  
Maine Atlantic Sea Run Salmon Commission (retired)*

“If a species is Federally Endangered, Maine has a duty as a member of the United States to protect Endangered and Threatened populations for the sake of the whole, in order to protect genetic diversity and to expand populations of species, which are in danger of extinction in other parts of the country if not necessarily in Maine.”

*Mary Throckmorton*

“I urge you to support LD 883: An Act to Protect Endangered Species Whose Life Cycles Include Maine Land or Waters. It makes no sense to have a listing at the Federal level for an Endangered Species and not have the complementary support at the state level. If a species is listed at the federal level, this means that every state where this species occurs, by definition, truly needs to be part of the solution.”

*Mark Des Meules, former Science & Stewardship Director, The Nature Conservancy, VT;  
former Executive Director, Land for Maine’s Future*

“Our federally listed endangered species, among them the Atlantic salmon, live their lives with the daily threat of extinction. They are the last of their kind on the Eastern seaboard, a place that once supported their vibrant and large numbers. And the rivers of Maine are their last stand.”

*Geri Vistein, wildlife biologist*

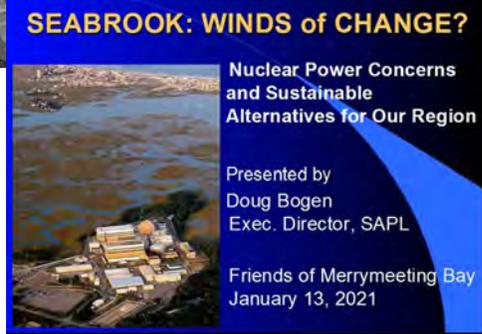
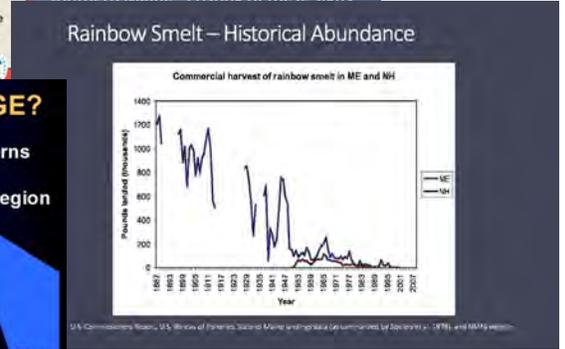
“Maine is one of only ten states (and the only one in the northeast) that does not mandate or highly recommend in statute the state-level listing of federally listed species. There is no biological reason for Maine not to list a species that the US Fish and Wildlife Service and National Marine Fisheries Service have listed as endangered or threatened. Listing these species at the state level means better management and enhanced cooperation among all relevant state agencies.”

*Ted Ames, McArthur “Genius” Award recipient, fisherman,  
former Director, Penobscot East Resource Center*

“We hope LD 883 will close some management loopholes in Maine and help to bring these and other species back from the brink. Maximizing E/T species management and protection, informed by the best available science rather than politics, hastens the recovery process, enabling a relaxation of possible restrictions sooner rather than later.”

*Ed Friedman, FOMB*

# From the FOMB Winter Speaker Series



## 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!

#### Steering Committee

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- Vance Stephenson, Treasurer (Kettering, OH)
- Tom Walling, Secretary (Bowdoinham)
- Simon Beirne (Gardiner)
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\$7 Enclosed (optional) for a copy of Conservation Options: A Guide for Maine Land Owners [\$5 for book, \$2 for postage].

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Photo: *Sonic Sea*

Shipping noise from vessels transiting Stellwagon Bank Marine Sanctuary, while entering and leaving Boston, obliterates the ability of humpback, fin, minke, northern right and other whales, and marine mammals to hear by 80%.