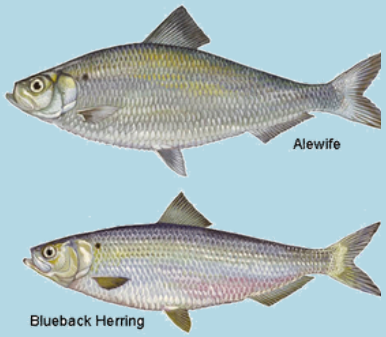
Native Sovereignty to The Rescue:

"Let Our Fish Run Wild and Free!"

Cape Cod Massachusetts has a herring problem! The Mashpee Wampanoag Nation, also known as People of the First Light, for time immemorial has inhabited the Waquoit region.[i] They were the first people to fish the waters of the cape, hunt along the banks and in the forests, and plant crops along the shores.[ii] During their reign, the productivity of the river and estuary supported an active ecosystem with a thriving herring population.[iii] The arrival and settlement of Europeans changed forever the lives and traditions of the Wampanoag, and thus, the ecology of the area.[iv]

Background: Herring are anadromous fish, meaning starting in early April, these fish migrate from the ocean into freshwater ponds to spawn.[i] Once they get into the ponds, herring lay anywhere between 30,000 and 200,000 eggs. Scientists say these massive beds of eggs resemble "carpeting on the seafloor."[ii] Of all the eggs laid, less than 1% make it back to spawn. This means that herring already have a high mortality rate.[iii]



As early as the 1700s, some sort of artificial management was needed in response to the mass industrialization of the cape to make up for the loss of natural streams many fish used to migrate.[iv] The Wampanoag Tribe constructed fish runs, also called "fish bridges" to continue the natural migratory process of the Herring through the rivers and streams on their territory. [v]Originally, the bridges were made with pallets of wood that would help contain the flow of water and fish were able to get through to the mating ponds with ease.[vi] In the 90's Massachusetts Department of Natural Resources replaced the original runs with concrete ladders with high pressure water.[vii] Together with the problems caused by building of dams, water pollution, and overfishing, the Tribe is in a state of emergency following the rapid decline of herring populations.[viii]

Today: Scientists in 2005 estimated that river herring had shrunk to only 5 percent of the historic population.[ix] There are three fish runs constructed in Mashpee. The Mashpee-Wakeby Pond Herring Run, the Santuit Pond Herring Run, the Johns Pond Herring Run leads into the Quashnet River. [xiii] One scientist says that the issue is the herring pool at the bottom of the ladder waiting to cross into the ponds because the path is undersized and there are problems with sediment build-up at the top of the ladder.[xiv]

Indigenous Sovereignty Rising: The Mashpee Wampanoag people have the legal right to regulate, restore, and protect the ecosystems inextricably linked to their people, culture, and way of life. The Mashpee Constitution establishes the authority to organize for the common good, “to protect our homeland, to conserve and develop its natural resources, and to promote the social, economic, and spiritual wellbeing” of the Mashpee People. Right now, the Herring are in need of protection. The fish bridges built by the state are impeding these fish from getting to their ancestral mating ponds and the population has been suffering immensely.

The Mashpee have been protecting the Herring from time immemorial, singing to them, praying for them, collecting and harvesting them, erecting wooden fish runs to help them navigate roads and dams built by settlers. The time is ripe for the Tribe to use the full force of its laws, Council, and regulatory departments to declare themselves the Herring Guardian.

Rights of Nature: There is a movement happening in Indian Country: Tribal Councils are passing laws declaring that Nature has the right to exist, thrive, and regenerate. From the Ponca Nation recognizing the rights to their rivers, to the White Earth Ojibwe declaring the Rights of Manoomin (wild-rice), to the Sauk Suital tribe suing the city of Seattle on behalf of the Salmon, Tribal governments are legislating for Nature.





Rights of Herring: The Mashpee Wampanoag Nation has the authority and capacity to pass a law codifying the Herring’s right to migrate and procreate. This law can serve as an alarm bell to the surrounding township, county, and state that there is a problem. However, the Tribe within the text of this Rights of Herring law can offer a profound solution: the Mashpee Wampanoag Nation becomes the legal guardian and steward of not only the Herring, but also the ecosystems on which they rely. By passing this law, the Mashpee Wampanoag Nation could lay the groundwork for its Sovereign right to rebuild the fish runs built by the State of Massachusetts.

Tribal Sovereignty: The Mashpee Wampanoag Nation is in a strong position to assert its sovereignty in the form of a Rights of Nature law to protect the Herring. First, as a Federally Recognized Tribe with land in trust, the Tribe has sovereign jurisdiction over its territories and the federal government has a trust duty in benefit of the Tribe. Secondly, the Tribe has successfully acquired Treatment as a State by the EPA, demonstrating the Tribe's capacity to handle its own environmental regulations. Thirdly, the Tribe has successfully litigated its treaty rights to hunt and gather wild Herring. In addition to all these advantages, the town Mashpee has a unique and a rich history of being an "Indian Town", a town where the boundaries of Indian Country and Township are indistinguishable. The Mashpee Wampanoag Nation also has access to federal grants to rebuild and protect ecosystems. All of these factors culminate to put the Nation in a great position to pass a law to protect the Herring while asserting sovereignty.



The Mashpee Wampanoag are a people of Firsts: Creating a Guardian model Rights of Nature law with the goal of rebuilding a habitat is a first. There have been Rights of Nature laws passed for the purpose of filing litigation or passed for symbolic purposes. There have been Indigenous Land stewardship programs enshrining Tribe's authority to protect natural resources. There are federal grants to support Tribally led habitat restoration. However, these ecological movements and policies at present are existing in isolation from each other. The Mashpee Wampanoag can become a national leader in the movement to give Nature legal rights while simultaneously advocating for Tribal Sovereignty and Natural Stewardship by passing a law declaring the Rights of Herring to Run Free!

"This all sounds great, but where do we start?"

Circle, Listen, and Learn- Elders in the community hold the history and the wisdom as to how the Herring's migration has changed. The process of passing a traditional law should start in a traditional way.

Create a Working Group- Whether through the Natural Resource Committee, the Education Committee, or through the forming of a new group, big legal changes require a small group of dedicated people.

Draft, Plan, and Promote- This working group of Tribal members, can draft the language of the bill, plan how to spread the word throughout the community, and promote the spirit of the bill to the council.

Listen to **Technological Ecological Knowledge** (hereafter, TEK) is one way the federal government can honor the federal trust responsibility to tribes regarding resources of mutual interest. TEK is the evolving knowledge acquired by indigenous and local peoples over hundreds or thousands of years through direct contact with the environment.[i] TEK is often highly developed relating to specific Indigenous areas and can span hundreds of years back through multiple generations, therefore, it is incomparable in terms of the depth, breadth, and holistic perspectives that it provides for a given ecosystem.[ii] A critical aspect of conservation biology and associated environmental management is acquiring information that is not only accurate but trusted by those who make and abide by decisions based on that information.[iii]






Are You Herring Us?

The Alewife and Blueback herring play a vital role in the food web in the Mashpee marine ecosystem[iv] Many predators, including cod, striped bass, tuna, and whales, river otters and seals feed on these species. Herring also help conserve endangered Atlantic salmon, by being prey to these predators and thus reducing the predation on salmon.

Many local bird species also feast on the river herring as they make their yearly migration upstream. Great Blue Herons, Black-crowned Night-herons, Herring Gulls, Cormorants, eagles, Osprey, can be seen gathering at the yearly fish buffet.[v] Diving birds, like osprey and heron, can easily get caught in the concrete structures looking for food.[vi]

These fish supported some of the oldest fisheries in the United States. River herring historically were used as bait for sport and lobster fishing, and other important commercial fishing. Their historically high abundance, wide distribution, and migratory life cycle are intertwined with the human experience along the Atlantic seaboard of North America.[vii]

They are culturally important to several Native American tribes, who celebrate the runs of river herring adults into freshwater spawning habitats along the East Coast. Herring are a staple of the traditional Mashpee diet and a hallmark of Cape Cod’s ecosystem.

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