

A Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2012 – June 30, 2013)

Prepared by

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Appendix 17

MITSC Analysis of LDs 72, 748 and 584

1. LDs 72 and 748 are identical bills.
2. All three LDs affect only the first two dams on the St. Croix water system: the Woodland Dam and the Grand Falls Dam.
3. All three LD's take into consideration concerns about the salmon hatchery above the Grand Falls Dam and the fishing enterprises on Spednic Lake.
4. LDs 72 and 748 provide for an expedited restoration of river herring (alewife and blueback herring), to the lower reaches of the St. Croix water system. (MITSC Recommendation #3)
5. LD 584 provides a conservative approach to this restoration contrary to MITSC's recommendation that the restoration of the alewife be expedited.
6. LDs 72 and 748 do not include scientific measures or monitoring.
7. LD 584 includes monitoring only of the bass population.

Additional Comments

1. We should be concerned with more than the bass population monitoring in studying the return of the alewife to their ancestral waters. The gathering of dependable scientific evidence at this first stage will strengthen MITSC's first recommendation: *That river herring (alewife and blueback herring) be restored to the St. Croix watershed at the natural carrying capacity of the river system.*
2. Although all of the bills under consideration accomplish the goal of the MITSC recommendations, consultation during the preparation of these bills did not happen. Consultation is the core of MITSC's second recommendation: *That the MITSC Executive Director work with the Passamaquoddy Tribe, the Passamaquoddy Tribal Representative to the Maine Legislature, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and other interested parties and stakeholders to craft and support legislation to open the Grand Falls dam fish passage for sea-run alewife.*
3. In an effort to achieve MITSC's third recommendation: *the State of Maine should work with the Tribes to coordinate fisheries management in the St. Croix watershed to better meet the mutual resource needs of the State of Maine and the Passamaquoddy People and to realize the Passamaquoddy vision of river herring (alewife and blueback herring) restoration within an expedited time framework*, therefore, **legislation relative to the restoration of the alewife and the watershed should include a project management board that includes all parties to the restoration of the St. Croix watershed.** We would like to state again that MITSC is one of these parties. We have jurisdiction over waters within the watershed and are committed to strong conservation measures.
4. All LD's will move the State of Maine forward in its commitment to restore our watersheds. We need only look at the Penobscot River Restoration Project to see how crucial the alewife is to this process.

**Testimony of the Maine Indian Tribal State Commission Offered by
Jamie Bissonette Lewey, Chair**

Good afternoon, Senator Johnson, Representative Kumiega and the members of the Joint Standing Committee on Marine Resources. I am honored to offer the following testimony on behalf of the Maine Indian Tribal-State Commission (MITSC). Even though MITSC is testifying in the "Neither for Nor Against" category, I want to make very clear that we are testifying thusly because the three bills before you have been framed as competitive. I will only testify on LD 72 today but my comments apply equally to all three bills.

In accordance with the "MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed," the Tribal-State Commission is in support of the restoration of alewife to the St. Croix watershed at its natural carrying capacity. By carrying capacity, I mean that every body of water has a maximum population level of fish that it can naturally sustain. This is its "carrying capacity." This level is determined by the quality of habitat, the amount of food obtainable, and the space available to the resident fish."¹

MITSC sees all three of these LDs as evidence of consensus that the imperative first step to achieve the goal of restoration of the water system and this species must be taken. All of these bills represent efforts in this direction. I do, however, need to comment on the details of the LDs as one of the bills takes a very different approach. Each LD has strong points but each represents only a first step to the restoration of this magnificent watershed.

I also want to recognize at the outset, that IF &W and DMR have been committed to return this species to its natural habitat over the last several years. The Adaptive Management Plan was developed in a time of great controversy and represents a way to move forward and balance the interests of all parties as expressed during that time of conflict. But we are in a different context now. There is a deepening understanding that the recommended re-entry process outlined in the AMP could be expedited². You will see this reflected in MITSC's third recommendation on the attached document, ***MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed***. This perspective was offered to MITSC repeatedly during our deliberations on this issue. We ask you to take this into consideration as you deliberate the restoration of this species.

Last June, the Passamaquoddy Tribal Chiefs and the members of the Schoodic River Keepers asked the Maine Indian Tribal-State Commission to re-visit and strengthen our position on the

¹ Page 9, *An Adaptive Plan for Managing Alewife in the St. Croix River Watershed, Maine and New Brunswick*, April 23, 2010. James Gibson, foremost scientist on carrying capacity of anadromous alewife, contributed to the AMP

² MITSC discussions with the IJC beginning in July of 2010.

restoration of the alewife (river or blue-back herring) to the Saint Croix watershed as a first step in the restoration of that watershed.

MITSC ties each of our investigations to the statute that governs our existence. According to 30 MRSA §6207, §§8, the Commission shall “consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.” MITSC has a concern over any policy that might advance the restoration of waters that are in our jurisdiction and MITSC has waters in the St. Croix watershed subject to its regulation including Lower Chain Lake (T5 ND), Middle Chain Lake (T4 ND), Selmore Pond (Killman Pond) in T4 ND, Sysladobsis (Lakeville and T5 ND), Upper Chain Lake (T4 ND) and Mill Privilege Lake (mostly in T5 R1), all in Passamaquoddy Territory. Lastly, we utilize the guiding principles in the United Nations Declaration on the Rights of Indigenous Peoples, supported unanimously by the Maine legislature through resolution on April 15, 2008 as a framework to do our work.

Therefore MITSC engaged in a four-month study of the restoration of this species. We listened to the concerns of MITSC Commissioner John Boland of IF&W; we reviewed both the Adaptive Management Plan and Dr. Theo Willis’ report: *St. Croix River Alewife – Smallmouth Bass Interaction Study* and discussed them; we met with Commissioner Keliher and understand the complex interests he is balancing; we met with the International Joint Commission on the St. Croix Watershed, we listened to the evidence compiled by the Schoodic River Keepers; and reviewed the traditional wisdom combined with modern scientific data that the Passamaquoddy Tribe offered us. We also watched a 90-minute documentary, “*Sigonomeq*,” produced by the Schoodic River Keepers.

After this review we authored a MITSC position. This position was adopted on October 17, 2013 by unanimous decision of those present (10 in favor, 2 absent for the vote). I would like to take the time now to offer some of our findings and all three of our recommendations as guidance in your deliberations. I will only focus on a few of these findings in my oral testimony but you will find the entire position in the package I am offering you. The package also contains an analysis of the three bills before you today based on the recommendations we made to the parties last October.

Among our findings you will read the following evidence. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed. The sea-run alewife has cultural and historic significance for the Passamaquoddy people. River herring remain a food source to the Passamaquoddy while providing forage to other freshwater, estuarine and marine fish and mammals. We are convinced that sea-run alewife are necessary to the health of the entire ecosystem of the watershed and the Passamaquoddy Bay. When we looked outside of the material provided by either the State or the Tribes we discovered, according to a US Fish & Wildlife Service factsheet, (<http://www.fws.gov/GOMCP/pdfs/alewife%20fact%20sheet.pdf>) that river herring spawn in

such vast numbers that their absence may reasonably be expected to have an adverse impact on other fish and mammalian populations on Passamaquoddy lands and waters and may explain at least in part declines of cod and other marine species in the Gulf of Maine. We also noted that Dr. Theo Willis' report, *St. Croix River Alewife – Smallmouth Bass Interaction Study*, found there is no scientific evidence that the presence of river herring harm non-native bass populations at the levels of sea-run alewife densities present during the study period.

Our review leads us to the following recommendations:

1. That river herring (alewife and blueback herring) be restored to the St. Croix watershed at the natural carrying capacity of the river system.
2. That the MITSC Executive Director work with the Passamaquoddy Tribe, the Passamaquoddy Tribal Representative to the Maine Legislature, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and other interested parties and stakeholders to craft and support legislation to open the Grand Falls dam fish passage for sea-run alewife.
3. That in the spirit of EO # 21 FY 11/12 “An Order Recognizing the Special Relationship between the State of Maine and the Sovereign Native Tribes Located Within the State of Maine” and Article 19 of United Nations Declaration on the Rights of Indigenous Peoples adopted by the State of Maine through resolution on April 15, 2008; the ***State of Maine should work with the Tribes to coordinate fisheries management in the St. Croix watershed to better meet the mutual resource needs of the State of Maine and the Passamaquoddy People and to realize the Passamaquoddy vision of river herring (alewife and blueback herring) restoration within an expedited time framework.***

I would like to draw your attention to two of our recommendations. MITSC's recommendations reach farther than the LDs that are being considered here today. MITSC encourages the restoration of this species to its full natural habitat at the carrying capacity of the river system. We also encourage a collaborative approach to designing this first step and all subsequent steps in the process. All of the LDs we are reviewing today have a common goal and share some strengths. These strengths and the weaknesses are outlined in our attached analysis of the legislation. MITSC suggests that a collaborative approach be taken to crafting legislation when that legislation directly impacts a Tribe or Tribal people. Collaboration is practical in that it brings everyone to the table in search of the best solution.

We hope that the wisdom of the Passamaquoddy people; and their traditional and scientific knowledge of the river system that feeds their homeland guides the restoration of that system along with the State's scientific knowledge, collaboration and contribution of resources in seeking the best solution for all involved parties, all of the species that live within this system, and the alewife who have brought us to the table today. I thank you for your attention this afternoon and hope that you find MITSC's work product helpful in your deliberations.