

**Testimony of the  
Maine Indian Tribal-State Commission (MITSC), in support of  
LD 1262, An Act To Authorize Tribal-state Memoranda in the Eel and Elver Fisheries  
April 27, 2015**

Good Morning, Senator Baker, Representative Kumiega, Representative Dana and members of the Joint Standing Committee on Marine Resources. My name is Jamie Bissonette Lewey. I am the chair of the Maine Indian Tribal-State Commission (MITSC). I thank you for this opportunity to offer testimony in strong support of LD 1262, *An Act To Authorize Tribal-State Memoranda in the Eel and Elver Fisheries*.

As many of you know, the MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.”

LD 1262, the bill we are reviewing today, would implement the core recommendation of the recent MITSC *Saltwater Fisheries Conflict* report and would resolve the contraventions of the required amendment provisions in the Maine Indian Claims Settlement Act (MICSA) that occurred in 1998, 2013, and 2014. The MITSC recommendation reads, “Where the tribal-state jurisdictional relationship remains contested, the state and the tribes should commit to good faith negotiations at the highest level in order to execute Memoranda of Understanding (MOU) using model MOU that have proven to be effective in other states.”

On June 17, 2014, the MITSC released a special report detailing the three decades long conflict between Passamaquoddy and the State over the management of Tribe’s saltwater fishery. The MITSC findings are instructive in the consideration of LD 1262. The MITSC found the intergovernmental saltwater fishery conflict between the Passamaquoddy Tribe and the State of Maine arises from cultural distinctions and opposing interpretations of how the federal Maine Indian Claims Settlement Act of 1980 (MICSA) and the Maine Implementing Act (MIA) impact the Passamaquoddy fishery. Additionally, the Passamaquoddy Tribe stands on its retained aboriginal rights to fish within its traditional territory, which extends beyond the reservation boundaries, without interference from the state. They contend that these rights have never been extinguished. While the State of Maine, through the OAG, counters that the MIA Sec. 6204 “LAWS OF THE STATE APPLY TO INDIAN LANDS” means that the tribes have no rights except as specified in the MIA. This position is amply supported in case law and the OAG has advised that the Passamaquoddy Tribe retains no rights to the saltwater fishery, and that the state of Maine has the sole authority to regulate that fishery and to prosecute Passamaquoddy fishers who fish according to Passamaquoddy tribal law rather than State law.

The escalating conflict between the Passamaquoddy Tribe and the State of Maine about the reach and jurisdiction of the Passamaquoddy saltwater fishery described in the MITSC report illustrates a number of things. When saltwater fishery issues have arisen the governor of the state and/or the Commissioner of Marine Resources have made concerted efforts to cooperate, negotiate in good faith and develop mutually acceptable agreements. Through these negotiations, prospects for employing conservation-based measures to ensure a sustainable fishery have emerged, and

promising strategies for cooperation and co-management of the fishery through a formal Tribal-State agreement have been developed.

In contrast, legislation passed to resolve the saltwater fisheries conflict have been problematic. The 1998 LD 2145 constituted an amendment to the Maine Implementing Act. In 1998, both OPLA and the OAG provided legal opinions to the Joint Standing Committee on Marine Resources that LD 2145 constituted an amendment to the MIA. By passing LD 2145 the state unilaterally codified contested jurisdictional issues without the approval of the affected tribe and it arbitrarily changed the sustenance definition specified in 30 M.R.S.A. § 6207 (1) (4) (6). This contravention was repeated in 2013 and 2014, and could be repeated with LD 1262. In order to avoid further contravention of the MIA, we recommend the inclusion of the amendment language requiring the approval of the Tribes for LD 1262 to be enacted:

3. Tribal Approval. This bill will not take effect until it is approved by the respective tribal governments of the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians in accordance with United States Code, Title 25, Section 1725(e)(1).”

We recommend the inclusion of the following language in paragraph one, “Any memorandum of agreement entered into between the commissioner and the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians in accordance with this section shall not take effect until the agreement has been authorized by the respective tribal government.” Finally, we recommend a change of wording from “commercial fisheries” to “species management and eel and elver fisheries,” because we are aware that the Tribe fisheries are community fisheries and encompass both commercial and sustenance practices, and that these practices are rooted in species management.

Earlier this session the MITSC had an opportunity to brief the Marine Resources Committee on our mission and the *Saltwater Fisheries Conflict* report. During that briefing, Dr. Gail Dana-Sacco (MITSC Commissioner appointed by the State of Maine), discussed some of the benefits of cooperative agreements. She also referred to a joint National Council of State Legislators/ National Congress of American Indians publication, *Government to Government Models of Cooperation Between States and Tribes*. Subsequent to our presentation to the Marine Resources Committee, we gave copies of this booklet to the Marine Resources Committee Chairs. This publication is a valuable resource that explains the many benefits of a cooperative approach to resolving areas of contested jurisdiction. We also suggest that the Committee review the extensive information provided by the Passamaquoddy Tribe last year on cooperative agreements that included several actual MOAs or MOUs in effect in other areas of the country.

The State of Maine and the Tribes have much to gain by working together to serve their respective constituents. We urge adoption of LD 1262 as a better approach to manage the contested elver and eel fisheries.

I would like to close this testimony by thanking you for this opportunity to testify before you on this very important legislation.

### Spoken Testimony

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agreements. Through these negotiations, prospects for employing conservation-based measures to ensure a sustainable fishery have emerged, and promising strategies for cooperation and co-management of the fishery through a formal Tribal-State agreement have been developed.

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