

**Testimony, Maine Indian Tribal-State Commission (MITSC), in opposition to
LD 800, An Act To Amend the Alewives Restoration Program in the St. Croix River
April 27, 2015**

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources. My name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony in opposition to LD 800, An Act To Amend the Alewives Restoration Program in the St. Croix River, to urge the Marine Resources Committee to reject blocking alewife passage at the Grand Falls Dam that threatens the nascent restoration of this species to its historical range.

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." Thank you for the opportunity to offer the MITSC's perspective on this legislation.

Two and a half years ago the MITSC completed a thorough, months long process producing a comprehensive policy position statement on this issue, "MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed." The policy position statement is attached to our testimony. Some of our principal findings include:

1. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed.
2. Spawning river herring return vital nutrients from the ocean to freshwater lakes and streams.
3. River herring are a food source to the Passamaquoddy and provide forage to other freshwater, estuarine and marine fish and mammals.
4. The presence of sea-run alewives is important to the watershed and will play a significant role in its restoration.
5. River herring successfully co-exist with other fish species in other Maine inland waters.

Since the publication of MITSC's policy position on October 17, 2012, no information has emerged to our knowledge to change any of these findings. The data from two years of unrestricted river herring passage at the Grand Falls Dam indicates that the restoration of the alewives to the portion of the St. Croix watershed above the Dam may take longer than originally projected. Any action to slow or impede the restoration of alewives is ill-advised.

We also remind the Committee of the Maine Legislature's adoption of a resolution on April 15, 2008 expressing its support for the UN Declaration on the Rights of Indigenous Peoples, the first governmental body in North America to take such action. The UN Declaration includes several articles that uphold the rights of Indigenous Peoples to their lands, utilizing the resources existing in those lands, and to practice their cultural traditions. Restoring river herring to the St. Croix watershed is consistent with many of the Declaration's provisions.

The passage of LD 72 two years ago represented a high water mark in tribal-state relations. It demonstrated what the Tribes and the State can do when we have the intentional goal of achieving mutually beneficial solutions. Let's build on that success and reject LD 800 that would harm the St. Croix watershed.

MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed

Adopted at the MITSC meeting held October 17, 2012

Background:

On June 20, 2012, the Maine Indian Tribal-State Commission (MITSC) visited the Pleasant Point Passamaquoddy Indian Reservation at Sipayik. In the morning, we met with Tribal Leadership. At that time, both Chief Reuben Cleaves and Chief Joseph Socobasin told MITSC that natural resource management issues and fresh and salt water fishing rights would take on greater political significance for the Tribe in the coming year.

During the MITSC meeting that afternoon, the Schoodic Riverkeepers addressed the Commission requesting that MITSC reaffirm and strengthen its 2008 position on the return of the sea-run alewife to the St. Croix watershed, its ancestral spawning ground. Even though the MITSC Commissioners were in consensus that the full restoration of the alewife to the St. Croix should be supported, MITSC was not able to pass a motion at the June 20, 2012 meeting. A review of the 2008 position revealed that it was simply support for a piece of legislation to restore sea run alewife to the St. Croix applicable to a specific point in time. In addition, Passamaquoddy Commissioner Matt Dana asked MITSC to wait until the Joint Tribal Council of the Passamaquoddy Tribe had passed their resolution to take a position. Commissioners united with Commissioner Dana's request, and decided to form a working group to prepare MITSC's position on this issue.

The working group was comprised of representatives from all of the Tribes and from the State. Eventually two positions are established: one on natural resource management and one specifically addressing the restoration of river herring to the St. Croix watershed.

MITSC Position on River Herring (Alewife and Blueback Herring) Restoration to the St. Croix Watershed

Given that:

- 1. 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."***

2. ***The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN General Assembly on September 13, 2007 was supported by a Joint Resolution of the Maine Legislature on April 15, 2008, and later embraced by the United States December 16, 2010; MITSC has used this framework along with its understanding of EO 21 FY 2011/12, the Maine Implementing Act and the Maine Indian Claims Settlement Act to interpret our findings and develop our recommendation.***
3. ***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.***

Given the above legislative mandate and the fact that MITSC has waters in the St. Croix watershed MITSC agreed to study the full restoration of alewife to the St. Croix system. In the course of this deliberation MITSC found that:

1. The St. Croix Watershed is the traditional and present home of the Passamaquoddy, and Maliseet Peoples.
2. The Passamaquoddy are culturally an inland and salt-water hunting and fishing People.
3. The Passamaquoddy Tribe at Indian Township and at Pleasant Point are located within the St. Croix Watershed and the Penobscot Indian Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs share their concern for the health of this water system.
4. The sea-run alewife has significant cultural and historic significance for the Passamaquoddy people.
5. The sea-run alewife is necessary to the health of the entire ecosystem of the watershed and the Passamaquoddy Bay.
6. A healthy alewife population is a significant component of the Passamaquoddy fresh and saltwater fishing plans.
7. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed.
8. Spawning river herring return vital nutrients from the ocean to freshwater lakes and streams.
9. River herring are a food source to the Passamaquoddy and provide forage to other freshwater, estuarine and marine fish and mammals.
10. According to a US Fish & Wildlife Service factsheet (<http://www.fws.gov/GOMCP/pdfs/alewife%20fact%20sheet.pdf>), 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.

11. The presence of sea-run alewives is important to the watershed and will play a significant role in its restoration.
12. The State of Maine has recognized that the restoration of the alewife in the St. Croix would be positive and has developed a plan to achieve that goal.
(Adaptive Management Plan - AMP)
13. The Passamaquoddy Tribe has found the AMP to be too slow a remedy.
14. 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.
15. River herring successfully co-exist with other fish species in other Maine inland waters.
16. The Passamaquoddy Tribe passed a Joint Tribal Resolution (attached) resolving the following:
 - a. That: the Joint Tribal Council insist the State of Maine immediately remove this blockage and allow the sea-run alewife to pass to access their ancestral spawning territory. Failing this, we urge the International Joint Commission to exercise its authority and open this blockage, and
 - b. That: the Tribal Representative to the Maine Legislature is authorized to submit, sponsor and support legislation requiring the Grand Falls dam fish passage be ordered open for sea-run alewife, and
 - c. That: the Tribal Chiefs are authorized to take appropriate action to open the fishway at Grand Falls for the free passage of sea-run alewife and to restore the indigenous fishery within the St. Croix River Watershed

Given these findings, we recommend:

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.