



April 2, 2019

Committee on Environment and Natural Resources
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333
Attention: Caleb Roebuck, Committee Chair
cc. via email to ENR@legislature.maine.gov
Brownie.Carson@Legislature.Maine.gov
Ralph.Tucker@legislature.maine.gov

RE: LD 1287 and LD 1336

Dear Co-Chairs Carson and Tucker, Senators Chenette and Foley, and Representatives Blume, Campbell, Fay, Gramlich, Hobbs, Johansen, Lyford, Skolfield and Zeigler:

It is our understanding that you will review and accept testimony related to LD 1287, An Act To Protect the Penobscot River and Penobscot Bay from Mercury Contamination, and LD 1336, Resolve, Directing the Governor To Renominate Penobscot Bay for Inclusion in the United States Environmental Protection Agency National Estuary Program at a hearing scheduled for April 11, 2019. Please accept this statement in support of the intent and scientific basis for both legislative acts from Islesboro Islands Trust (IIT), on behalf of its members.

IIT is a non-profit trust organized under the laws of the State of Maine and composed of residents of the Penobscot Bay region. IIT's mission is "to enhance the quality of residents' lives through the preservation of open space, educate all residents as to the value of the islands' natural ecosystems, and act as an environmental advocate on behalf of Islesboro and the surrounding Penobscot Bay region." IIT works closely with the Town of Islesboro and other Penobscot Bay communities to protect and restore the ecological integrity of the Bay and its watershed, including working closely with the Islesboro Shellfish Committee and local lobstermen to protect and enhance lobster habitat and shellfish resources.

In particular, IIT actively participated in the 1995 Penobscot Bay National Estuary Program nomination, intervened in a 2013 Army Corps of Engineers proposal, since withdrawn, to dredge approximately 929,000 cubic yards of material from an area located adjacent to IIT-owned Turtle Head, and more recently offered commentary to District Court appointed consultants preparing remediation alternatives in the HoltraChem mercury contamination matter.

LD 1287, An Act To Protect the Penobscot River and Penobscot Bay from Mercury Contamination

IIT enthusiastically supports the dredging compliance standards for sampling Penobscot River and Bay sediment articulated in the new paragraph beginning, "In determining whether dredging..." The sampling and testing protocols called for here are consistent with findings made during the extensive research done for the District Court in the HoltraChem mercury contamination case. The highly relevant scientific findings during all three phases of mercury research clearly demonstrate that proper sampling and testing is crucial to measure accurately the presence and impact of mercury in the environment.

With respect to new language allowing only navigation maintenance dredging ("The department may not approve an application for dredging if the dredging is not necessary for maintenance of navigation."), potential permitted dredging activities should include other maintenance and minor dredging and trenching that would not have an adverse effect on wildlife and plant habitat and fisheries. As one highly significant example, the recommended mercury remediation proposal currently before the Court in the HoltraChem case calls for very limited dredging and upland disposal of mercury contaminated sediment. IIT supports the proposed remediation of mercury and therefore recommends amending this bill to preserve the court's responsibility to determine the best available remedy.

Further to this point, utility cables buried underwater for several hundred feet in near-shore locations, such as those serving Islesboro, need periodic replacement or improvement. Numerous licensed and apparently benign outfall pipelines buried within the geographic region in question, including one in the Dark Harbor neighborhood on Islesboro, also require occasional maintenance or replacement. As above, IIT recommends amending the limitation on dredging to exempt minor dredging or trenching associated with placement, replacement or improvement of municipally approved pipelines and utility cables.

Finally, IIT suggests adding text to the proposed new language at Section 9 Dredging to broaden environmental protections. We would encourage adding the highlighted term "benthic habitat and" in the following manner:

"The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site, as well as impacts to the benthic habitat and fishing industry caused by dredging or disposal of dredge spoils, whether or not the dredge spoils contain contaminants or toxic substances."

LD 1336, Resolve, Directing the Governor To Renominate Penobscot Bay for Inclusion in the United States Environmental Protection Agency National Estuary Program

The Penobscot River, tributaries and Penobscot Bay constitute the largest watershed in the State of Maine, draining approximately one third of the State (approximately 8,570 square miles) and contributes some 20% of all fresh water entering the Gulf of Maine. Together, the river, the bay, the coastline and the islands of the Penobscot Watershed form a distinct region inhabited by the Penobscot Nation for at least ten thousand years.

If the United States Environmental Protection Agency (EPA) again accepted nominations to the National Estuary Program (NEP), the Penobscot Watershed would be an indisputably strong candidate with vigorous support from IIT and many others. However, the National Estuary Program added no new locations since EPA accepted the Piscataqua Region Estuaries Partnership nomination in 1995 instead of the Penobscot.

That said, a resolution by the 129th Maine Legislature acknowledging the significance of this region would (1) support a possible NEP application in the future and (2) establish a mechanism for proactive environmentally appropriate economic development and natural resource and protection in the region.

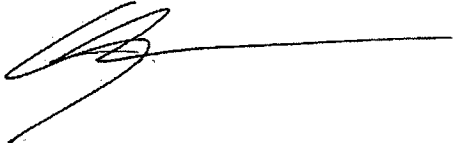
We recommend amending the Resolution such that:

Sec. 1 Resolved: That the Governor shall:

1. Identify the Penobscot Bay as an estuary of state and national significance;
2. Convene a management conference at which public and private agencies will develop both short-term and long-term action plans for Penobscot Bay and create a Penobscot Bay partnership; and
3. Commit to implementing action plans for Penobscot Bay that protect and restore aquatic and benthic habitats, maintain and improve healthy water quality, support and encourage watershed-based recreation and appropriate economic development, and improve the vibrancy and resiliency of coastal and riverine communities in the region.

Thank you for your time.

Sincerely,



Stephen Miller, Executive Director

cc. Representative Janice Dodge (Jan.Dodge@legislature.maine.gov)
Senator David Miramant (David.Miramant@legislature.maine.gov)