

August 26, 2009

Colonel Philip T. Feir
Co-Chair, International St. Croix River Watershed Board
U.S. Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742

Dear Colonel Feir:

I write to inform you of the Maine Indian Tribal-State Commission's fishery management responsibilities within the State of Maine and to request that the IJC consult with MITSC on all decisions affecting sea-run alewife passage on the St. Croix River and within the watershed.

In my July 24, 2009 letter to you reporting on the positions of the Wabanaki Tribes on the restoration of unimpeded passage of sea-run alewives in the St. Croix River, I described MITSC's authority under the Maine Implementing Act (MIA) §6207, §§8. For the IJC's benefit, I want to expand on the explanation of our fishing authority.

Prior to the enactment of the Maine Indian Claims Settlement Act (MICSA) and MIA in 1980, the State of Maine enjoyed exclusive fisheries jurisdiction over inland waters with the exception of certain border waters. MIA §6207, §§3 gives MITSC "exclusive authority to promulgate fishing rules or regulations on"

A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;

B. Any section of a river or stream both sides of which are within Indian territory; and

C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.

Indian Territory comprises specific Passamaquoddy and Penobscot lands defined in MIA §6203. Certain waters within the St. Croix watershed are subject to MITSC jurisdiction. MITSC possesses a statutory responsibility for fishery management decisions on MITSC waters.

Beyond MITSC's statutorily delineated responsibilities for MITSC waters, the Commission also takes a more comprehensive view of fisheries as they affect the signatories to MIA and MICSA. The Houlton Band of Maliseet Indians and the Penobscot Indian Nation have an interest in the fisheries management decisions made in the St. Croix watershed. All the Wabanaki signatories to MICSA and MIA have cultural, economic, historical, jurisdictional, and spiritual interests over rivers that eventually flow into the Gulf of Maine. How aquatic species management decisions get made for one part of the Gulf of Maine ecosystem can affect other segments of the ecosystem connected to Maliseet and Penobscot fishery resources.

The Passamaquoddy Tribe and Penobscot Nation possess sustenance fishing rights within their respective reservations (MIA §6207, §§4). Both Tribes have the right to harvest sea-run alewives when present in Passamaquoddy or Penobscot waters. Besides the Tribe's legally guaranteed right to harvest fish within their reservation waters, sea-run alewives also provide an important food source for a number of other species that inhabit or seasonally migrate through Passamaquoddy and Penobscot waters. The overall abundance of sea-run alewives in the Gulf of Maine can affect other fish populations therefore affecting the availability of fish for Passamaquoddy and Penobscot sustenance fishing.

Though MITSC has not asserted its fishery jurisdiction in waters in and around the Passamaquoddy Reservation at Motahkmikuk, the Commission does have fishery management responsibilities for waters further upstream. MITSC has an interest in any fishery management decisions made in the lower watershed that can affect waters in the middle and upper St. Croix watershed.

For all the reasons stated above, MITSC requests that the IJC and the International St. Croix River Watershed Board consult with MITSC on all fishery management decisions and deliberations that could possibly affect sea-run alewives in the St. Croix River. I ask that standard IJC procedure include us on all communications concerning sea-run alewives in the St. Croix River and that MITSC receive an invitation to all meetings involving this subject area.

I imagine that you and all the IJC Commissioners do your utmost to fulfill your responsibilities as specified in the Boundary Waters Treaty and other governing documents. The other MITSC Commissioners and I possess a similar dedication to our responsibilities given to us by four Tribal Governments, the State of Maine, and the United States. I appreciate your personal and the IJC's anticipated collective assistance and cooperation to support MITSC's fishery management responsibilities.

Respectfully yours,

Paul Bisulca
Chairman
Maine Indian Tribal-State Commission

Cc: Wabanaki Chiefs
Bill Appleby, Canadian Co-Chair, International St. Croix River Watershed Board
Hon. Irene Brooks, Chair, U.S. Section, International Joint Commission
Hon. Herb Gray, Chair, Canadian Section, International Joint Commission
Governor John E. Baldacci