



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

JOHN ELIAS BALDACCI

GOVERNOR

August 10, 2009

Honorable Irene B. Brooks  
Chair, U.S. Section  
International Joint Commission  
Canada and United States  
2401 Pennsylvania Ave., NW, Suite 400  
Washington, D.C. 20440

The Rt. Honorable Herb Gray, P.C., C.C., Q.C.  
Chair, Canadian Section  
International Joint Commission  
Canada and United States  
234 Laurier Ave., W., 22<sup>nd</sup> Floor  
Ottawa, ON K1P 6K6

Dear Honorable Brooks and Honorable Gray:

Thank you for your letter dated July 10, 2009 expressing the concern of the International Joint Commission of the United States and Canada (IJC) regarding passage of sea-run alewife in the St. Croix River. I write to detail the efforts of my Administration to address this issue, describe a proposal we have presented to Governor William Nicholas, Passamaquoddy Tribe at Indian Township, and to suggest a process for moving forward in a constructive and effective manner.

First, two State of Maine agencies, the Department of Inland Fisheries and Wildlife (DIF&W) and the Department of Marine Resources (DMR) have worked closely over the past few years to develop a joint, science-based position on a recommended path forward for passage of sea-run alewife in the St. Croix River. Their collaborative work based on a number of scientific studies resulted in shared testimony on behalf of my Administration in favor of LD 1957, "An Act to Restore Diadromous Fish in the St. Croix River." In their testimony, they highlight an agreement between the state agencies as a way to move forward with restoration. (See Attachment A).

As the progress of legislative consideration of LD 1957 moved forward, Governor William Nicholas of the Passamaquoddy Tribe at Indian Township called me directly to voice their opposition to LD 1957. The reasons for the opposition are articulated in a March 4, 2008 letter to DIFW Commissioner Roland D. Martin. (See Attachment B). In these communications, Governor Nicholas indicates the Passamaquoddy Tribe's concerns of the potential negative biological and economic impacts that may occur if this bill is signed into law. We are in disagreement on these matters. He also states that "we have not addressed the fundamental breakdown in communication that has occurred between the State of Maine and the Passamaquoddy Tribe." He goes on to ask, **"Why hasn't the Passamaquoddy Tribe, a sovereign nation with physical, economic and cultural ties to the affected water been notified or contacted?"** (emphasis in original).

After consideration of Governor William Nicholas' position, and out of comity for the Passamaquoddy Tribe and their stated ties to the St. Croix River and watershed, I directed DMR and DIF&W to work with the Tribe and the Legislature to seek a process that would meaningfully involve the Tribe in decisions regarding passage of sea-run alewife in the St. Croix River. An example of this approach is found in a proposed Amendment to LD 1957 that my Administration supported. (See Attachment C). I also draw your attention to the fact that a number of state



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Senators strongly opposed the original bill and it was hoped that this amendment would help bring a greater degree of consensus to this challenging issue.

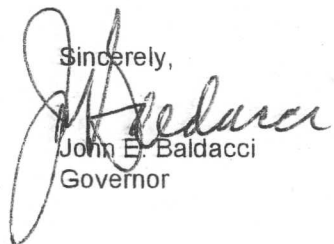
Ultimately, the Legislature approved passage of sea-run alewife only at Woodland Dam with a concurrent letter from the Chairs of the Joint Standing Committee on Marine Resources to the DIFW and DMR Commissioners as well as Governor William Nicholas, Passamaquoddy Tribe at Indian Township, and Governor Richard Doyle, Passamaquoddy Tribe at Pleasant Point, requesting that these parties enter into a Memorandum of Agreement (MOA) recognizing their joint management responsibilities within the St. Croix River as it pertains to the co-existence of diadromous species and resident species within the watershed. The Chairs asked the parties to respond to the legislative committee on or before January 5, 2009.

My Administration has endeavored to negotiate such an MOA and recommendations with Governor Nicholas and the Passamaquoddy Tribe at Indian Township but without success. As recently as April 16, 2009, my staff submitted a proposal to the Tribe, but as of this date, we have not received a formal response to that proposal. (See Attachment D).

Given the lack of progress on this matter, the keen interest of the IJC on this matter, and the IJC's offer to provide a bi-national forum for public discussion, I would like to propose that the IJC convene a gathering of the key parties, including representatives of the Passamaquoddy Tribe at Pleasant Point, and seek to reach a consensus on legislation moving forward. We suggest that you begin with a slightly revised version of our most recent proposal to Governor Nicholas as a starting point for discussions as found in Attachment E. I commit my Administration's staff and resources to assist in these discussions. If an agreement is reached, I would be pleased to introduce legislation this coming January to implement any necessary changes in state law to effectuate such an agreement. If an agreement is not reached, then I would assume the IJC would consider moving forward on its own to resolve a matter that has been in stalemate for some time.

I would be pleased to speak with you about this letter and about a process moving forward.

Sincerely,



John E. Baldacci  
Governor

cc: Honorable Shawn Graham, Premier of New Brunswick  
Cindy Warwick, Acting Deputy Director, Canada/U.S. Relations,  
Department of Foreign Affairs and International Trade Canada  
Edwin R. Nolan, Director, Western Hemisphere Affairs, Canada,  
U.S. Department of State  
Honorable William Nicholas, Governor, Passamaquoddy Tribe, Indian Township, Maine  
Honorable Richard Doyle, Governor, Passamaquoddy Tribe, Pleasant Point, Maine  
Chief Hugh Akagi, Passamaquoddy St. Croix Schoodic Band, New Brunswick  
Rep. Leila Percy, Co-Chair, Joint Standing Committee on Marine Resources  
Sen. Dennis Damon, Co-chair, Joint Standing Committee on Marine Resources  
Sen. Kevin Raye, District 29, R-Washington County)  
George LaPointe, DMR Commissioner  
Roland Danny Martin, DIFW Commissioner  
Patrick Keliher, DMR  
Patrick Ende, Governor's Chief Legal Counsel  
Karin Tilberg, Governor's Senior Policy Advisor on natural resources

Attachment A – Testimony of Patrick Keliher, DMR, on LD 1957

Attachment B – Letter dated March 4, 2008 from Governor Nicholas to Roland Martin, DIFW Commissioner

Attachment C – Proposed Amendment to LD 1957

Attachment D – Proposal dated April 16, 2009 submitted to Governor Nicholas

Attachment E – Proposal dated April 16 2009 (and Revised July 9, 2009)

"A"

**TESTIMONY OF**

**PATRICK KELIHER, DIRECTOR  
BUREAU OF SEA RUN FISHERIES AND HABITAT  
MAINE DEPARTMENT OF MARINE RESOURCES**

**SPEAKING IN SUPPORT OF LD 1957**

**"AN ACT TO RESTORE DIADROMOUS FISH IN THE  
ST. CROIX RIVER"**

**BEFORE THE JOINT STANDING COMMITTEE ON**

**MARINE RESOURCES**

**DATE OF HEARING**

**March 3, 2008**

Senator Damon, Representative Percy, Members of the Joint Standing Committee on Marine Resources. My name is Pat Keliher. I am the Director of the Bureau of Sea Run Fisheries and Habitat within Department of Marine Resources.

I am here to speak on behalf of the Administration in favor of LD 1957, An Act To Restore Diadromous Fish in the St. Croix River. While the Departments of Inland Fisheries and Wildlife (DIFW) and the Department of Marine Resources (DMR) support the intent of this legislation, we believe that a conservative approach to alewife recovery in the St Croix is needed. At the end of my testimony I will outline an approach that allows the Agencies to collaborate on diadromous fish restoration within the St Croix.

Both juvenile and adult alewives are prey for fishes, birds, and mammals. Nesting eagles and their young depend on alewife runs when the need for high quality food is at its highest. Nesting pairs have been stable since 1995, but the large foraging aggregations seen daily along the Saint Croix below Grand Falls Dam during the 1980s and early 1990s no longer occur. Large alewife runs were historically important as seasonal forage for groundfish as they moved to inshore ledges to spawn in the spring. They are also very effective in transferring nutrients from the marine system to less productive freshwater environments. Conversely, juvenile out-migrants complete the cycling by transferring nutrients back to the ocean environment. The alewife is also a very important source of bait for the lobster industry in the spring months. Small coastal fisheries supplied 1.2 million pounds of bait to the industry in 2006.

Anadromous (sea-run) alewives enter our coastal rivers in May, migrating upriver to spawn in lakes and ponds. The juveniles spend 45 to 120 days in the system before starting their outward migration back to the ocean. They will spend the next 4 to 5 years in the ocean before returning to their natal waters to begin the cycle again. It is this life history that makes the alewife such a keystone species in our river and coastal ecosystems.

We believe that the opposition to alewives comes from a misunderstanding of how they interact with other species. In an effort to determine if there was a negative interaction between alewife and smallmouth bass, Maine Rivers, a local NGO, sponsored a study by Dr. Theo Willis (Willis 2006). *The St. Croix River Study* analyzed data collected by biologists from the Department of Inland Fisheries and Wildlife (DIFW) over a period of time when alewives were present in both low and high densities. This thorough study found that:

- The presence of alewives did *not* harm smallmouth bass in terms of length, condition or growth;
- Alewives were not significant predators on smallmouth bass, and only a tiny proportion of the diet of adult anadromous alewives consisted of other fish;

- In most lakes, young-of-year smallmouth bass and young-of-year alewives did not have an ecologically significant overlap in diet, and competition for food between the two species did not appear to be important; and
- In the one lake in which diets were similar, populations of bass and alewives had coexisted for over a century.

Also important to note, smallmouth bass tournament returns in the past few years were similar in lakes with and lakes without alewives, suggesting that the quality of sport fishing for bass does not differ systematically between lakes with and lakes without anadromous alewives.

DIFW and DMR are aware that landlocked alewives exist within the St Croix watershed. Genetic tests have shown that these landlocked alewives are genetically distinct from the anadromous alewife populations in the St. Croix and in other investigated watersheds. They are most certainly the result of an independent - illegal - introduction from lakes outside the watershed, and are not the result of a shift in alewife life history strategy within the watershed.

The most comprehensive study conducted in Maine concerning interactions of sea-run alewives with freshwater fish species is *The Lake George Study*. This was a 10-year collaborative study conducted in the 1990s by DMR, DIFW, and the Department of Environmental Protection. *The Lake George Study* investigated the effects of anadromous alewives on water quality, zooplankton communities, and freshwater fisheries.

This comprehensive study examined the effects of stocking alewives at a rate of six adults per surface acre of lake habitat and found:

- Brown trout in Lake George showed no change in average length or weight when compared to the period before alewives were present;
- Young-of-the-year (YOY) landlocked rainbow smelt grew significantly faster during the three years when alewives were present in the lake;
  - Trawl catch rates of smelt were lowest during the period when alewives were stocked in the lake. The lower catch rate of smelt represented a lower density due to high trawl catches in the early years of the study and commercial harvest of adults in 1990 and 1991.
- Young-of-the-year smelt and YOY alewives both fed heavily upon zooplankton, but statistical tests indicated little dietary overlap; and
- The dietary overlap between smelts and YOY alewives occurred during the first year that alewives were present, and declined each year for the next two years.

The *Lake George Study* concluded that alewives had no negative impacts to the overall water quality, zooplankton community, or recreational fisheries.

More recently the local guides have been questioning the potential impact of the reintroduction of alewives on rainbow smelt and landlocked salmon. The principal fishery in the portion of the watershed that alewives will access is for smallmouth bass. The best available science shows that there is no impact to smallmouth bass, rainbow smelt or landlocked salmon. Big Lake does have limited landlocked salmon habitat that DIFW stocks annually with 1500 to 2000 landlocked salmon.

After a thorough review of the science and consultation between DIFW and DMR, the agencies are confident no negative impact to local fisheries will occur with recovery rates consistent with the *Lake George Study* (6 per acre).

Some people have questioned the historical presence of alewives in the St Croix. On the basis of a recently completed report on the *Historical and Current Distribution and Abundance of the Anadromous Alewife*, which summarized historical documents and archeological findings, the Agencies agree with the reports conclusion that anadromous alewives *did* historically migrate above Salmon Falls and Grand Falls.

The St Croix River watershed holds the biggest potential for the restoration of native river herring in the State. Even at lower recovery rates several million adults could return if access to the habitat is allowed. However, in light of the emotion surrounding this species, in this river, the Administration would suggest that the Agencies take a conservative approach, allowing for additional monitoring to be done as the population responds to open, free swim, access to the lower portions of the watershed.

Both agencies are in agreement that allowing diadromous fish to return to the St Croix at low levels will in no way cause harm to other species within the watershed. As such, the Commissioners of DMR and DIFW will enter into a Memorandum of Agreement stating the following:

- Fishways on the Woodland and Grand Falls Dams be reconfigured to operate in a manner that allows the passage of alewives and other native diadromous species.
- That fishways on the Vanceboro Dam (controlled by Canada) and Grand Lake Steam Dam (closed seasonal to protect a DIFW hatchery) remain closed.
- That a population-monitoring program for river herring be developed and implemented at the Milltown and Grand Falls Dams.
- DIFW, with assistance from DMR, will continue to monitor smallmouth bass populations and growth rate.

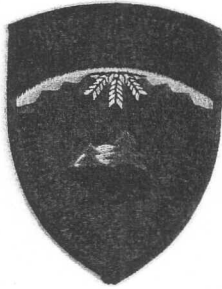


- The population of river herring (alewives) will be allowed to reach an interim minimum recovery level that equals 6 fish per surface acre of current available habitat– estimated to be 120,000 fish.
- DMR or its agent will allow staggered escapement into the Grand Falls Flowage, Lewy Lake, Long Lake, and Big Lake (see attached map). The excess population will be harvested or used for restoration purposes in other watersheds.
- DMR will not move beyond the interim minimum recovery level of 6 fish per acre until both DIFW and DMR mutually agree on an increase. This increase would be based on new and best available science.

DMR staff has estimated that it will take 10 to 15 years for the population of alewives to reach this minimum interim recovery level. During this time, both DMR and DIFW will continue to collaborate on population and species interaction monitoring within the watershed, and together determine if population growth beyond the interim recovery level should be exceeded.

Thank you for your time, I would be happy to answer any questions.





DATE: March 4, 2008

TO: Roland D. Martin, Commissioner  
Inland Fisheries & Wildlife, 284 State Street, 41 State House Station,  
Augusta, ME 04333-0041

FROM: William Nicholas, Tribal Governor

SUBJECT: Alewives and Passamaquoddy Reservation Waters

Dear Commissioner Martin:

The Passamaquoddy Tribe at Indian Township would like to submit these comments as related to L.D. 1957 – "An Act To Restore Diadromous Fish in the St. Croix River".

I attended and testified at the public hearing on Monday and I would like to clarify a few points that weren't addressed completely. We already know the potential negative biological and economic impacts that may occur if this bill is signed into law, but we have not addressed the fundamental breakdown in communication that has occurred between the State of Maine and the Passamaquoddy Tribe.

The Dept. of Marine Resources (DMR) and the Dept. of Inland Fisheries and Wildlife (IF&W) have been working together on various aspects of the proposed legislation. This is the proper avenue since these two agencies will be directly affected if this legislation passes. **The question is: Why hasn't the Passamaquoddy Tribe, a sovereign nation with physical, economic and cultural ties to the affected water been notified or contacted?**

As admitted by members of DMR (Pat Keliher), they do not fully know the impacts that alewives will have on Passamaquoddy Reservation waters. To support such legislation would be irresponsible of any state or joint agency with obligations to The Passamaquoddy Tribe.

The Maine Indian Tribal State Commission (MITSC) has testified in favor of LD 1957. There should be no weight given to this testimony because MITSC has no jurisdiction on any of the waters that this legislation would affect. Furthermore, both Passamaquoddy MITSC representatives abstained from this vote.

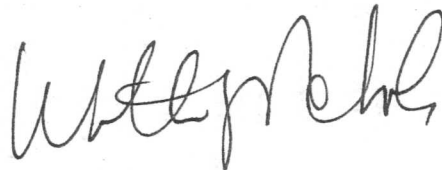
The Passamaquoddy Joint Tribal Council last addressed this issue in 2001 and a resolution was passed. There have been no resolutions regarding alewives since.

**Passamaquoddy Tribe Joint Tribal Council Resolution # 3/19/01-4** “ Now therefore be it resolved that the Passamaquoddy Joint Tribal Council supports the continued ban on introduction of Alewives into the waters above Grand Falls.”

Lastly, it is in the Tribes opinion that IF&W has not followed through with the Maine Indian Land Claims Settlement Act as it pertains to potential negative affects on our reservation waters.

Please call me at (207) 796-2301 if there are any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Nicholas', written in a cursive style.

William Nicholas, Tribal Governor

- Cc: John Baldacci, Governor  
#1 State House Station,  
Augusta, ME 04333-0001
- Cc: George Lapointe, Commissioner  
Maine Department of Marine Resources  
21 State House Station  
Augusta ME 04333-0021

"C"

**PROPOSED AMENDMENT TO LD 1957: AN ACT TO RESTORE  
DIADROMOUS FISH TO THE ST. CROIX RIVER**

**MARCH 10<sup>TH</sup>, 2008**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and  
**Whereas**, this legislation needs to take effect before the expiration of the 90-day period to allow for the spring migration of alewives in the St. Croix River; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 12 MRSA §6134**, as enacted by PL 1995, c. 48, §1, is amended to read:

**§ 6134. Alewives passage; fishways on the St. Croix River**

By May 1, ~~1995~~2008, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishways on the Woodland Dam ~~and the Grand Falls Dam~~, both located on the St. Croix River, ~~are~~ is configured or operated in a manner that ~~prevents~~ allows the passage of alewives.

Prior to allowing fish passage for river herring at Grand Falls Dams on the St Croix River The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall develop a river herring management plan that recognizes their joint management responsibilities within the St. Croix River as it pertains to the co-existence of diadromous species and resident species within the watershed. The agencies shall promulgate regulations to facilitate the implementation of the management plan. The agencies shall consult with the Joint Tribal Council of the Passamaquoddy Tribe in the development of the management plan and in the promulgation of rules developed in accordance with this section. Any rules promulgated in accordance with this section are major substantive rules as defined in Title , Chapter, 375, subchapter 2-A.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect

"D"

DRAFT – FOR DISCUSSION PURPOSES ONLY – NOT APPROVED

April 16, 2009

DMR and IF&W shall adopt a management plan to:

- At Woodland dam, re-establish a full fish passage (done per 2008 legislation)
- At Grand Falls dam, allow a limited spawning escapement of four adult alewives per water surface acre for a watershed upstream of Grand Falls and downstream from West Grand and Spednic Lakes. Upstream passage to Spednic and West Grand lakes shall remain closed to alewives.

<b>Flowage</b>	<b>Acreage (estimate)</b>	<b># of fish @ 4 per</b>
Grand Falls Flowage	6691	26,764
Lewy Lake	336	1,344
Long Lake	595	2380
Big Lake	10305	41220
Habitat via New Brunswick	2000 + or -	8000
Total Available Area	19927	* 80,000

- At Grand Falls dams, establish an alewife monitoring program (annual count) to be implemented by the \*\* Maine Department of Marine Resources, and develop a plan for alewife harvest should stock levels exceed escapement targets.
- On key lakes (Woodland Flowage, Grand Falls Flowage and Big Lake) establish a smallmouth bass monitoring program, to be implemented by the \*\* Maine Department of Inland Fisheries and Wildlife.

This plan shall be implemented for an initial 5-year period, than reviewed and revised as warranted.

\* This starting point for restoration is roughly 2.5 million fish below estimated returns in the early 1990's..

\*\* Cost associated with this monitoring would need to be secured before passage would be made available at Grand Falls Dam.

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## Grand Falls Dam – Passage Proposal for Alewives into the Grand Falls Flowage

April 16, 2009

DRAFT

Revised July 9, 2009

DMR and IF&W shall create and adopt an adaptive management plan to:

- At Woodland dam, re-establish a full fish passage (done per 2008 legislation)
- At Grand Falls dam, allow a limited spawning escapement of four adult alewives per water surface acre for the watershed upstream of Grand Falls and downstream from West Grand and Spednic Lakes. Upstream passage to Spednic and West Grand lakes shall remain closed to alewives. To mitigate for lost habitat at Spednic and West Grand Lakes the acreage is measured at current level, not historic or pre dam levels:

<u>Flowage</u>	<u>Acreage (estimate)</u>	<u># of fish @ 4 per</u>
Grand Falls Flowage	6691	26,764
Lewy Lake	336	1,344
Long Lake	595	2380
Big Lake	10305	41220
<u>Habitat via New Brunswick</u>	<u>2000 + or -</u>	<u>8000</u>
Total Available Area	19927	* 80,000

- At Grand Falls dams, establish an alewife monitoring program (annual count) to be implemented by the Maine Department of Marine Resources, and develop a plan for alewife harvest should stock levels exceed escapement targets.
- If the DMR believes that a harvest should occur any such harvest will only be allowed in accordance with good conservation practices. Upstream conservation escapement shall be staggered to ensure proper run development.
- On key lakes (Woodland Flowage, Grand Falls Flowage and Big Lake) establish a smallmouth bass monitoring program, to be implemented by the Maine Department of Inland Fisheries and Wildlife.

This plan shall be implemented for an initial 5-year period and will be reviewed and revised as warranted.

After the initial 5-year period, or when the run surpasses the four (4) fish per surface acre level (whichever comes last), DMR and IF&W shall review the best available information regarding the health of the watershed and in consultation with the parties, begin to increase the population of alewives within the watershed as described above.

\* *This starting point for restoration is roughly 2.5 million fish below estimated returns in the early 1990's.*