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March 18, 2009

Irene B. Brooks, Chair
International Joint Commission
United States Section
2401 Pennsylvania Avenue, NW, 4th
Floor
Washington, DC 20440

Herb Gray, Chair
International Joint Commission
234 Laurier Avenue West
22nd Floor
Ottawa, ON K1P 6K6
Canada

Re: Request for Amendment of the Orders of Approval for Dams on the St.
Croix River to Allow Alewife Passage

Dear Chairs Brooks and Gray:

This request is submitted on behalf of the Natural Resources Council of Maine, the Atlantic Salmon Federation, and Maine Rivers. These organizations have members in the United States and Canada who have a vital interest in the St. Croix River and the damage occasioned by the prevention of alewife passage at dams subject to the jurisdiction of the Commission pursuant to the *Boundary Waters Treaty*. There are 47 U.S. and Canadian organizations listed in Annex A that also have an interest in alewife passage on the St. Croix and support this request.

In 1987 more than 2.6 million alewives swam up the St. Croix River to reach their ancestral breeding grounds. In 2008, only 12,261 alewives returned from the Atlantic. This extraordinary depletion of a valuable resource was caused by a Maine state law that closed fishways at the Grand Falls and Woodland Dams along the river. In 2008, the Maine Legislature again voted to keep alewives out of 98 percent of their ancestral waters, only opening up passage at the Woodland Dam, the second lowest dam on the St. Croix River.

Alewives are a critical component of river ecosystems in Maine and New Brunswick. They serve as a crucial food source for numerous species of fish and birds and are prized bait for lobstermen and ground fishermen. Unfortunately, opposition from a group of freshwater fishing guides has convinced Maine legislators over the past decade

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that alewives will hurt smallmouth bass, a non-native species in Maine that is popular with some anglers. Peer-reviewed science has demonstrated that sea-run alewives pose no threat to smallmouth bass, and in fact the two species coexist in lakes throughout Maine and the Northeast¹.

The International Joint Commission (“IJC”) has the power to authorize dams on the St. Croix River under the *Boundary Waters Treaty*.² We ask the IJC to act pursuant to its unique role and capabilities under the Treaty to condition its authorization for dams on the St. Croix River on allowing alewife passage. Restoration of fish passage for alewives on the St. Croix will provide tremendous ecological and economic benefits for the region.

I. The Importance of Alewife Passage

Alewives are an anadromous fish species native to the North Atlantic seaboard. As the IJC itself recently found in its Watershed Report, they serve as a critical component to the river ecosystem as a source of food for many species of fish including trout, salmon, striped bass, bluefish, cod, and pollock. They are also a food source for bald eagles, ospreys, otters, seals, and other species of birds and wildlife.³

In the 1980s the population of smallmouth bass, a non-native species, was sharply reduced in the St. Croix watershed, and a group of smallmouth bass fishing guides mistakenly blamed native alewives for this problem. Responding to their complaints, the Maine legislature enacted a requirement in 1995 that the St. Croix be closed to alewives, despite opposition from the Maine Department of Marine Resources (“DMR”), which had made substantial and successful efforts to restore alewife runs to the river. In 2001 and 2008 there were efforts in the Maine legislature to reverse the 1995 law, but they failed in the face of continued opposition from the smallmouth bass fishing guides.

Opponents of alewife passage have mistakenly relied on hunches in the face of solid scientific research showing that alewives pose no threat to the bass population. Alewives and smallmouth bass can coexist in the St. Croix, just as they do in other

¹ See: T.V. Willis et. al, 2006. Two reports on alewives in the St. Croix River. Accessed at: <http://www.mainerivers.org/MaineRiversStCroixReportFinal.pdf>. See also F.W. Kircheis, et al. Analysis of Impacts Related to the Introduction of anadromous Alewife into a small Freshwater Lake in Central Maine, Main DIFW, Maine DMR, Main DEP (2004).

² Boundary Waters Treaty, January 11, 1909, <http://www.ijc.org/rel/agree/water.html#text>.

³ See St. Croix River, State of the Watershed Report, Maine and New Brunswick, IJC, 2008 at 17-18. (“Anadromous alewives are important to the ecology of freshwater, estuarine, and marine environments.”)

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waterbodies from the Canadian Maritimes to the Carolinas. Importantly, alewife restoration has already seen tremendous success in the Kennebec River and other rivers across New England without adverse effect on other species.⁴

The St. Croix River basin is particularly important for the region, covering approximately 625 square miles in New Brunswick and 1,010 square miles in Maine. The DMR has stated that the potential St. Croix alewife run is almost as great as those of the Penobscot and Kennebec Rivers combined!⁵ It is time to restore the impressive alewife runs to this region and reestablish a key component of the river basin's ecosystem.

II. IJC Authorization for the St. Croix Dams

The St. Croix River forms an international boundary between the United States and Canada, and the river basin spreads across both New Brunswick and Maine. As a result, the freshwater and anadromous fish resources of the St. Croix are inter-jurisdictional resources.

Trans-boundary problems can be particularly difficult for state and provincial governments to address, and so it has been with this issue. Narrowly focused special interests on one side of the border can assert disproportionate influence within local governments, leading to public policies that fail to adequately reconcile competing interests and harm the trans-boundary region as a whole. The United States and Canada created the International Joint Commission precisely to provide a solution for issues such as the St. Croix alewife controversy.

Under the *Boundary Waters Treaty* the IJC has the authority to approve dams built on boundary waters. Specifically, Article VIII of the Treaty provides the commission with "jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of water..." in circumstances such as those involved in the matter at issue here.

In November of 1997, the IJC completed a review of its orders of approval for the St. Croix River and largely maintained the status quo. Since there are new developments and evidence, particularly as presented in the Watershed Report, we ask that the IJC

⁴ See State of the Watershed Report, *supra* at 18 and the numerous authorities cited.

⁵ See attached "alewife map" of Maine (Annex B). Received via personal communication from Gail Wipplehauser, Maine DMR, on December 29, 2008.

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again review its orders of approval for these dams, and this time condition approval on opening all of the dams on the river to alewives. It is evident that the current orders of approval fail to address the full biological and economic potential of native alewives as a resource as required by Article VIII of the Treaty. In addition, closing fishways at dams on the St. Croix during the alewife migration also results in a lack of safe, timely and effective fish passage for landlocked and sea-run Atlantic salmon, brook trout, blueback herring, sea lamprey and other resident and diadromous fish native to the St. Croix watershed. New science also suggests that Gulf of Maine ground fisheries, once so important to both Maine and coastal Canadian communities, will never recover without healthy alewife runs. The Commission's Report on the State of the Watershed provides a compelling case to reconsider the prior approval.

The U.S. Department of the Interior, the U.S. Department of Commerce, the Canadian Department of Fisheries and Oceans, and the Maine DMR all supported the 2008 legislation to restore alewife passage on the St. Croix⁶. In addition, there is substantial public support behind restoring alewives to the St. Croix, as evidenced by the many organizations from the United States and Canada that have indicated their support for this petition. (See Annex A.) Their position demonstrates the broad-based support for fish passage on both sides of the border.

The United States and Canada have granted the IJC the power to resolve this matter under Article VIII of the Treaty through issuing revised orders of approval for dams on the St. Croix. Revised orders would restore native alewives to the watershed, allowing citizens in both the United States and Canada to realize this valuable international resource's potential.

III. Conclusion

This is not an unprecedented request. Recently the IJC decided to review its orders of approval for the Lake Ontario-St. Lawrence River System because of the environmental concerns of many members of the public. The fish passage problem on the St. Croix presents similar and equally important reasons for review and modification of the orders of approval.

We strongly urge you to initiate proceedings appropriate to a comprehensive review of the orders of approval for the St. Croix River in light of the harm caused by

⁶ See attached testimony from DOI, DFO and Maine DMR on LD 1957, An Act to Restore Anadromous Fish in the St. Croix River (Annex C).

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dams closed to fish passage. We are confident that a public review, and the scientific evidence that is available for consideration, will demonstrate compelling reasons for the IJC to condition its approval for the St. Croix dams on opening the existing fish passage at the dams on the river to alewives.

We are prepared to work with you and your staff to develop equitable procedures for the initiation and conduct of the review that would permit all interested persons to present their views. Thank you for your time and consideration for this important matter.

Sincerely,

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Annex A
Organizations that Support the Request
For Amendment of Approval for Dams on the St. Croix River to Allow Passage of
Alewives

1. ACAP Saint John, Tim Vickers, Executive Director, 506.652.2227
2. Alewife Harvesters of Maine, Jeffrey Pierce, 207.737.9051
3. American Rivers, Andrew Fahlund, Vice President for Conservation,, 202.347.7550
4. Ardea EcoExpeditions LLC, Darrin Kelly, President, 207.460.9731, info@ardea-ecoexpeditions.com
5. Bar Harbor Whale Watch Company, Zack Klyver, President, 207.288.2386, zackklyver@yahoo.com
6. Blue Ocean Institute, Carl Safina, Ph.D., President, 516.922.9500
7. Canadian Parks and Wilderness Society (CPAWS), Roberta Clowater, Executive Director, NB Chapter, 506.452.9902
8. Canadian Wildlife Federation, Leigh Edger, Conservation Researcher, 613.599.9594
9. Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible, Long-Term Development (CHOIR), Steve and Chris Weiner, 207.646.7321
10. Conservation Council of New Brunswick Inc., David Coon, Executive Director, 506.458.8747
11. Conservation Law Foundation, Sean Mahoney, Maine Advocacy Center Director, 207.729.7733
12. Downeast Lobstermen's Association, Sheila Dassatt, Executive Director, 207.338.1406
13. Downeast Salmon Federation, Dwayne Shaw, Executive Director, 207.483.4336, dsf@panax.com
14. Earthjustice, on behalf of The Herring Alliance, Roger Fleming, Esq., 978.846.0612
15. Eastern Charlotte Waterways Inc., Peggy Thompson, Executive Director, 506.456.6001

16. Fort Folly First Nation, Joseph Knockwood, Band Chief, 506.379.3400
17. Fort Folly First Nation Habitat Recovery Program, Wendy Epworth, Biologist/Manager, 506.379.3401
18. Friends of Merrymeeting Bay, Ed Friedman, Board Chair, Research and Advocacy, 207.666.3372
19. Fundy Baykeeper, David Thompson, Baykeeper, 506.650.5849
20. Hammond River Angling Association, Barry Carr, President, 506.832.1230
21. Kennebecasis Watershed Restoration Committee, Ben Whalen, Project Manager, 506-433-4394
22. The Lobster Conservancy, Diane Cowan, Ph.D., Executive Director and Senior Scientist, 207.832.8224
23. Maine Audubon, Jennifer Burns Gray, Staff Attorney and Advocate, 207.781.6180, ext 224 jgray@maineaudubon.org
24. Maine Chapter of the Sierra Club, Ken Kline, Esq., Conservation Chair, 207.288.5015, ksc@coa.edu
25. Maine Council of the Atlantic Salmon Federation of America, Don Foster, President, 207.989.6688 Donfoster@aol.com
26. Maine Council, Trout Unlimited, Dan Daly, Chair, 207-236-8834
27. Maine Lobstermen's Association, Patrice McCarron, Executive Director, 207.967.4555
28. Maliseet Nation Conservation Council, Tim Paul, Executive Director, 506.472.8803
29. Meduxnekeag River Association, Inc., Stephen Wilson, President, 506.328.8227
30. Moncton Fish and Game, Clarence Donelle, President, 506.388.3175
31. Nashwaak Watershed Association, Inc., Bill Gammon, President, 506.459.6663
32. Nature Conservancy of Canada - Atlantic Region, Linda Stephenson, Regional Vice President, 506.450.6010, Pamela Noel, Program Manager
33. National Wildlife Federation, Northeast Regional Center, National Wildlife Federation, Don Hooper, Northeast Regional Representative, 802.229.0650
34. New Brunswick Salmon Council (NBSC), Tom Benjamin, President, 506.832.1230

35. Nature Trust of New Brunswick, Ken Hirtle, President, 506.457.2398, Margo Sheppard, Executive Director(Two trustees are on the St. Croix Committee of the IJC)
36. New Brunswick Environmental Law Society, Michel DesNeiges, Supervising Attorney and Director, 506.389.8999
37. New Brunswick Wildlife Federation, Roland Michaud, President, 506.459.7197
38. Ocean Conservancy, John Richardson, New England Fish Conservation Program Manager, 207.879.5444
39. Oromocto Watershed Association Inc., Robin Hanson, President, 506.357.8888
40. Penobscot East Resource Center, Ted Ames, Vice-Chair and Hatchery Director, 207.367.2473
41. Petitcodiac Sportsman Club, John Corbett, President, 506.756.8644
42. Quoddy Futures Foundation, Art MacKay, President, Kim Reeder, Executive Director, 506.467.9905
43. Quoddy Regional Land Trust, Alan Brooks, Executive Director, 207.733.5509
44. Recreational Fishing Alliance, Barry Gibson, New England Regional Director, 609.404.1060
45. Sentinelles Petitcodiac Riverkeeper, Tim Van Hinte, Riverkeeper, 506.388.5337
46. Trout Unlimited Canada (TUC), Jack Imhoff, National Biologist, 519.824.4120
47. Trout Unlimited, Elizabeth Maclin, VP Eastern Conservation, 703.284.9437
48. The Wilderness Society, Jeremy Shaeffer, Marine Projects Director, 207.626.5553 JeremyShaeffer@tws.org