Testimony of Patrick Strauch, Executive Director
Maine Forest Products Council
on H.R. 6707, Advancing Equality for Wabanaki National Act
Before the Committee on Natural Resources,
Subcommittee on Indigenous Peoples of the United States
March 31, 2022

My name is Patrick Strauch, Executive Director of the Maine Forest Products Council. I appreciate this opportunity to testify on H.R. 6707, "Advancing Equality for Wabanaki Nations Act."

The Maine Forest Products Council ("MFPC") represents the forest industry with over 30,000 direct and indirect jobs in the forest management and wood manufacturing business, covering 8 million acres of forest land. Our members cut across the whole spectrum of forest-related jobs from landowners, loggers, truckers, tree farmers, foresters to paper mills and lumber processors.

In 1980, the State of Maine and the Penobscot, Passamaquoddy Tribes and the Houlton Band of Maliseet Indians, with the approval of the Department of the Interior, settled land claims against the State of Maine. This settlement required state legislation, known as the Maine Implementing Act ("MIA") and federal legislation, the Maine Indian Claims Settlement Act ("MICSA"), which ratified and approved MIA and provided the Penobscot and Passamaquoddy Tribes with the $54,5000,000 to purchase pre-designated lands located in a breadth swath covering central and parts of northern Maine. Congress passed legislation including the Aroostook Band of Micmacs in 1989.

Over the years, the Penobscot and Passamaquoddy Tribes used these monies to acquire those lands and, today, together they have significant land holdings which, under the MIA, have the status of "Indian Territory." I have included a map of the state of Maine which shows these lands—identified as "Tribal"—with acreage estimated at slightly under 250,000 acres. This map shows that these Tribal lands are spread out over a large area with sizeable holdings far removed from the Penobscot and Passamaquoddy Reservations.

As the Tribes acquired these lands, they become neighbors to many MFPC members. MFPC has welcomed this development and, over the last several decades, Council members have developed close working relationships with the Tribes. We and the Tribes share a commitment to the responsible stewardship of these incomparable natural resources.

MFPC members and the Tribes have shared and supported each other in maintaining roads, fighting fires, combatting insect infestation, and, in general, protecting and nurturing the environment and all forms of life dependent on a healthy forest. Thus, for decades, the interests and commitments of MFPC members and the Tribes have been intertwined. We value our relationship with the Tribes and know that our shared commitment to these natural resources will continue.

Unfortunately, MFPC has reached the conclusion that it must oppose the jurisdictional changes proposed in H.R. 6707. The points of particular concern are the proposed amendments to Section 6(h) (25 USC § 1725(h)) and Section 16(b) (25 USC § 1735(b)) of MICSA. In its current form, Section 6(h) provides that general federal Indian law applies in Maine except to the extent it would affect or preempt Maine state jurisdictional laws. Section 16(b) provides that following the enactment of MICSA, new federal legislation that would affect or preempt Maine state jurisdictional law will not apply in Maine unless Congress specifically so provides.

These provisions of MICSA are interrelated and were intended to protect the complex and detailed jurisdictional settlement set forth in MIA. The MIA jurisdictional settlement has remained in place for more than 40 years and has provided the forest products industry and all who are dependent on it with a stable and reliable jurisdictional framework for our operations.

H.R. 6707 would change this. H.R. 6707 would reverse the wording of Section 6(h), making "laws and regulations which are generally applicable to" Indians and Indian tribes, including jurisdictional laws, applicable to Maine. Where statutory law is concerned, this would not happen overnight. Section 6(h) would apply prospectively. But, with the amendment to Section 6(h) and the repeal of Section 16(b), it would appear that every newly-enacted federal law on tribal jurisdiction, including reauthorizations of standing laws, would apply in Maine.

Over time, the longstanding jurisdictional framework in the MIA, which was an essential element of the settlement between the Tribes and the State of Maine, would disappear. It would be replaced, piecemeal, by new laws which would provide the Tribes with significant regulatory and other authority over their far-flung holdings—including "treatment as a state" status for such laws as the Clean Water Act and the Clean Air Act. For MFPC members this would introduce great uncertainty into our ability to manage our lands.

Beyond that, Section 6(h) appears to be written to apply only to statutory law because it does not expressly refer to the enormous body of court decision that constitute the common law of federal Indian law. Congress was well aware of federal Indian case law when it enacted MICSA and ratified MIA. For example, at several points the Report of the Senate Select Committee on Indian Affairs on MICSA refers to Supreme Court decisions on Indian law to illustrate the interrelationship between MICSA and MIA—statutory law—and the Supreme Court decision—federal Indian common law. In short, it is not clear to MFPC how the amendment to Section 6(h) will relate to federal Indian common law. For MFPC, that is a very big question.

Finally, we are concerned that Congress, itself, would be considering such a significant change in MISCA and MIA's jurisdictional framework When Congress approved MICSA, it clearly understood that the relationship between the Tribes and the State of Maine and it citizens was going to evolve. Knowing this, Congress provided a safety valve. In Section 6(e) (25 USC § 1725(e), Congress gave its consent to the State of Maine and the Tribes to amend MIA, provided that the State and the Tribes agreed. Over the years, the Maine Legislature has amended MIA with the Tribes' consent. Section 6(e) has enabled the State and Tribes to work through jurisdictional questions at the local level with maximum opportunity for all concerned to be heard.

In fact, right now in the 130th Maine Legislature, the State and the Tribes are working on different pieces of legislation that would affect tribal jurisdiction. These jurisdictional proposals have been closely examined and publicly aired. However the Legislature and our governor, Governor Janet Mills, address these proposals, in the end MFPC strongly believes that the best place to consider these questions is in Maine, with the full participation of the Tribes and, through the Legislature and the Governor, the people of Maine.

We do not question that Congress had the authority to enact H.R. 6707 and that, if Congress did that, it would govern the jurisdictional terms of MISCA and MIA. At the same time, the imposition of jurisdictional changes by Congress would be unprecedented. MFPC believes that, if enacted, H.R. 6707 would set a troubling precedent with the Tribes and the State turning to Congress to unilaterally impose jurisdictional solutions that the Tribes and the State are perfectly capable of working out between themselves; including, where necessary, jointly petitioning Congress address federal issues beyond the reach of the Legislature acting pursuant to Section 6(e).

In closing, we at MFPC understand that the Tribes have serious concerns about the jurisdictional and regulatory laws under the settlement acts. We stand ready to participate in an inclusive and searching review of the settlement acts as they now stand, listen in good faith to the Tribes' concerns, and, work with all concerned towards changes in the Maine Implementing Act that work for the Tribes and for us all.

I appreciate your consideration of these remarks.

###