Testimony in Support of H.R. 6707, *Advancing Equality for Wabanaki Nations Act*
Hon. Clarissa Sabattis, Chief, Houlton Band of Maliseet Indians
United States House Natural Resources Subcommittee on Indigenous Peoples
March 31, 2022

I. The Houlton Band of Maliseet Indians.

We, the Houlton Band of Maliseet Indians, are a federally recognized Indian tribe with approximately1,900 tribal citizens located in Aroostook County, Maine. We are a riverine people who have fished, hunted, gathered aquatic and wetland plants for food and basket weaving, and used the rivers and streams of our ancestral territory for ceremonial purposes since time immemorial. We call ourselves Wolastoqewiyik or "People of the Beautiful, Flowing River." The "Wolastoq," the River of our name, is also known as the St. John, and is bisected by the international boundary with Canada. We call our Band "Metahksoniqewiyik" or People of the Meduxnekeag River, a tributary of the Wolastoq-St. John that flows through the Town of Houlton. Thousands of other Maliseet people are citizens of the seven recognized Maliseet First Nations in New Brunswick and Quebec, Canada.

Our unique tribal culture and traditions are intertwined with our environment. Our Band members and their Maliseet ancestors have camped; fished for searun fish such as alewives, American eel, blueback herring, Atlantic salmon, and shad; and gathered ash for baskets and fiddleheads (emerging ostrich fern) for food along the Meduxnekeag and other tributaries of the Wolastoq-St. John for generations. Maliseets are also renowned birch bark canoe builders. Our homelands, filled with the productive soils that now grow potatoes, once grew the biggest and best canoe birches. With these light, flexible, sturdy craft we traveled the rivers and streams of the Wolastoq-St. John watershed to reach our hunting grounds and to portage to streams and rivers in other watersheds. Evidence of prehistoric activities at least as old as 8,000 years exists in fields along the Meduxnekeag. A critical priority of our tribe is to maintain the natural environment that supports the fish, animals, and plants on our lands and waters in order to preserve and protect our culture and traditions, common welfare, and the health of our Maliseet citizens who sustain themselves with those resources.

The Houlton Band of Maliseet Indians' government-to-government relationship with the United States dates to the earliest days of our republic. The Maliseets, also known as the St. John's Indians, were signatory to the very first treaty entered by the United States – the Treaty of Watertown on July 19, 1776, just 15 days after the Declaration of Independence. Our Maliseet ancestors and those of the Micmacs agreed to send 600 of our warriors to fight alongside General Washington against Great Britain, and the United States solemnly promised to protect and provide for us. More than 200 years later, Congress confirmed our status as a federally recognized tribe in the Maine Indian Claims Settlement Act (MICSA), Pub. L. No. 96-420 (1980). The Houlton Band is "acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of [our] government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes." 86 Fed. Reg. 7554 (Jan. 29, 2021). We are one of the four federally recognized Wabanaki Nations, along with the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation.

Despite the 1776 Treaty of Watertown and the 1790 Nonintercourse Act (An Act to Regulate Trade and Intercourse With the Indian Tribes), which prohibited any sale or transfer of Indian lands to a state or person unless the sale or transfer was ratified through a treaty with the United States, we were unlawfully dispossessed of our lands. Beginning around 1870, the State of Maine encouraged the non-Indian settlement of Aroostook County by offering land to non-Indian settlers at bargain prices. These settlers occupied our traditional hunting and fishing grounds and gradually excluded us from our Maliseet aboriginal territory, which originally spanned more than one million acres. Thus, while we had neither signed a treaty ceding our lands to Massachusetts or Maine nor voluntarily left our lands, by the middle of the twentieth century we were landless and were treated as "squatters" in our own homeland. In MICSA, Congress provided the Houlton Band just $900,000 to reacquire lands and natural resources along the Meduxnekeag River where we could rebuild our community and preserve our traditional riverine way of life. *See, e.g.,* S. Rep. No. 96-957 at 11, 24; H.R. Rep. No. 96-1353 (Report of the Dep't of the Interior, Aug. 25, 1980); Pub. L. No. 96-420, §5(d) (formerly codified at 25 U.S.C. § 1724(d)). We have reestablished our community near one of the best fishing holes in the River; brown ash and fiddlehead ferns grow in abundance along the floodplains; harvesting fiddlehead ferns in the spring for food and as a spring tonic continues to be a very important traditional practice; and making beautiful, sturdy woven baskets from brown ash is a strong and vital part of our enduring culture.

II. Why H.R. 6707 Is Critical to the Self-Government and Self-Determination of the Wabanaki Nations' and to the Health and Welfare of Wabanaki Citizens.

As Chief of the Houlton Band of Maliseet Indians, I stand firmly alongside the other Wabanaki Nations and unanimously support the *Advancing Equality for Wabanaki Nations Act*, H.R. 6707. H.R. 6707 would ensure that our Nations receive equal treatment – with more than 550 other federally recognized tribes nationwide – under future laws passed by Congress for the benefit of Indians. This is a small request, but it is an incredibly important one.

While the fundamental purpose of MICSA in 1980 was to settle the Wabanaki Nations' claims to our historic lands in Maine, MICSA also imposed a restrictive jurisdictional model, granting the State of Maine broad civil and criminal jurisdiction, including civil regulatory authority, over the Wabanaki Nations, our citizens, and our reservation and trust lands, unlike the rest of Indian Country. But MICSA went even further, denying to our Nations and our citizens the benefits of any federal Indian law passed by Congress that might "affect or preempt" state jurisdiction, including both statutes enacted *before* 1980 and statutes enacted *after* MICSA's passage. Pub. L. No. 96-420, §§6(h), 16(b) (formerly codified at 25 U.S.C. §§1725(h), 1735(b)). Section 16(b) provides:

> The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

Since 1980, Congress has enacted more than 150 laws generally applicable to Indian tribes, native people, and Indian lands, but many of these laws "affect or preempt" the application of Maine law in some way. Section 16(b) of MICSA has thus had a devastating effect on the Wabanaki Nations' ability to pursue economic development opportunities, provide governmental services to our communities, access federal programs and funding, and protect our natural resources under a host of federal laws enacted by Congress for the benefit of Indians. Here are a few examples. Under the Stafford Act, the Wabanaki Nations have been denied the authority that other tribes have to directly request a disaster or emergency declaration from the President in response to natural disasters and public health emergencies in our communities. This denies us the ability to directly access critical federal funding to respond to emergencies like the opioid epidemic. As a Registered Nurse, I am painfully aware that immediate access to drug treatment can be the difference between life and death. I truly can't imagine that anyone in Congress in 1980 ever imagined or intended that MICSA would threaten the Maliseet people with such harm. Another example is the Violence Against Women Reauthorization Act of 2013 (VAWA), which authorized Indian tribes to prosecute non-Indian defendants for certain domestic violence crimes against tribal members. Because VAWA affected state jurisdiction, the State of Maine took the position that the Wabanaki Nations could not pursue this jurisdiction – jurisdiction that Congress specially found necessary to fill a public safety gap in Indian Country that led to alarming rates of violence against native women and children. Nor are the Wabanaki Nations eligible for treatment as a state (TAS status) under environmental laws such as the Clean Water Act. This lack of authority has hampered our decades-long efforts (discussed further below) to improve water quality and to restore native salmon populations to the Meduxnekeag River, which are especially significant to Maliseet sustenance, spiritual, and ceremonial cultural practices. Finally, because the Indian Gaming Regulatory Act (IGRA) would preempt state jurisdiction over tribal gaming activities, the First Circuit Court of Appeals has held that IGRA does not apply in Maine. Thus, we cannot game under IGRA. And while the State has authorized two non-Indian corporations to conduct Las Vegas-style gaming in Maine – from which they derive tens of millions of dollars in private profits each year – it has refused to authorize tribal gaming.

MICSA's restriction on the application of beneficial federal laws to the Wabanaki Nations makes it very challenging on a day-to-day basis to exercise our basic governmental functions and to develop new tribal institutions. Like any government, our tribe must make difficult decisions about how to allocate its limited financial and staff resources to best serve our community. There are scores of federal statutes that recognize a key role for tribal governments in administering federal programs, including in the health care, law enforcement and public safety, and environmental arenas. But we cannot confidently pursue, invest in, and staff these programs because we don't know whether – or when – the State may challenge our authority to administer the programs due to some effect on state jurisdiction. As a result, for decades we have watched tribes across the country celebrate laws enacted by Congress that promote tribal self-government, self-determination, and economic development in a host of ways, but we have watched from the sidelines, knowing that MICSA denies us an equal opportunity to exercise our sovereignty. With the passage of H.R. 6707, we would be guaranteed that certainty. We could devote our time and resources to solving the problems that Congress has decided must be addressed in Indian County, instead of wondering whether MICSA denies us the right to solve them. And we would finally put an end to costly litigation with the State over whether our tribe can access the benefits of new Indian laws passed by Congress.

Depriving our tribe of access to the full range of programs, services, and authorities that Congress has provided to help build strong tribal governments and thriving native communities has very real consequences. According to a 2010 study, Maliseet citizens lag well behind other Mainers in education and employment (17% of Band members had not completed high school and 18% were unemployed, nearly twice the rate of non-Indians), income (72% of Band members had an annual household income of less than $25,000, compared to only 33% of non-Indians), and other public health indicators, including depression, alcoholism, and diabetes. Four of the five tribal reservations sit within the two rural counties that garner the lowest socioeconomic rankings in Maine.

Despite our inability to access the full range of benefits provided to Indian tribes under federal statutes, we have worked hard to build our governmental capacity and to exercise our right of self-government for the benefit of neighboring communities. For example, the Houlton Band has recently donated a police cruiser to the Town of Houlton and donated new snow rescue equipment for emergency medical services in the Town of Littleton; helped secure grant funding for road improvements and a large culvert replacement to provide access to a major employer in Houlton (Tate & Lyle Ingredients) and fish passage on an important tributary of the Meduxnekeag River; partnered with the Town of Houlton on a $15M road improvement project; and is working closely with the Houlton Water Company on water and wastewater infrastructure improvement projects serving Maliseet trust lands. And for more than 30 years the Band has been engaged in comprehensive efforts to restore the Meduxnekeag River watershed and restore native fish species, including reducing contamination from legacy pollutants such as arsenic and DDT, planting riparian buffers, helping farmers implement best agricultural management practices, completing more than five miles of instream habitat restoration, and partnering with the local Conservation District. H.R. 6707 will enhance our ability to advance all of these governmental partnerships by enabling the Band to participate fully in new services, programs, and funding opportunities created by future Congresses.

H.R. 6707 is a narrow bill. It makes the Wabanaki Nations eligible to enjoy the same benefits and to exercise the same authority as more than 550 other federally recognized tribes under laws enacted by Congress *in the future*. *H.R. 6707 applies only to future laws and new programs created by Congress*. It does not change the application in Maine of federal statutes that already exist. Nor does it change the overall jurisdictional framework of MICSA, under which the State exercises broad jurisdiction over the Wabanaki Nations and our lands. Although H.R. 6707 will *not* change how any *existing* federal law operates in Maine – such as the Stafford Act, the Clean Water Act, and IGRA – it will provide us clarity moving forward. When Congress is considering Indian legislation, we will be able to prepare to implement the new law without wondering if the State will later challenge our ability to do so. And we can advocate hand-in-hand with other tribes for national legislation without having to use our scarce resources to fight for Maine-specific language, as we do currently. That effort is generally futile – Congress has expressly included the Wabanaki Nations in national Indian legislation only one time since MICSA's passage in 1980.

III. Why Congress Must Enact H.R. 6707 to Fulfill the Federal Trust Responsibility.

The United States has a trust responsibility to the Wabanaki Nations, a responsibility first established with the Maliseets in the 1776 Treaty of Watertown. To fulfill the trust responsibility, the federal government must support tribal sovereignty and self-government; advance tribal self-determination and economic development; protect tribal lands, natural resources, and treaty rights; and ensure that tribal citizens receive essential social, health, and education services. *See*, *e.g.*, *United States v. Kagama*, 118 U.S. 375, 383-84 (1886); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). Congress has enacted laws to ensure that all federally recognized tribes have access to the same benefits under federal statutes as other tribes, and that all tribes are treated equally by federal agencies that are implementing the trust responsibility. Congress did so in 1983 for the Houlton Band of Maliseet Indians. Although we were formally recognized as a tribe in 1980, we had no land base at that time. Because the eligibility of tribal citizens for benefits under many federal statutes turns on the existence of an Indian "reservation," Congress amended MICSA to ensure that the Maliseet people would have access to these benefits until we obtained our reservation lands. Public Law 97-428, §3 ("Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Houlton Band of Maliseet Indians in or near the town of Houlton, Maine, shall be eligible for such programs and services without regard to the existence of a reservation or of the residence of such member on or near a reservation."). It was only after Congress passed the Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986, Public Law 99-566 (1986), that we were able to acquire our trust lands, which the federal government recognizes as having reservation status. The 1983 amendment illustrates how Congress can, and why Congress should, amend MICSA to enable the Wabanaki Nations and our citizens to benefit – on equal terms with other tribes – from future laws enacted by Congress to advance tribal self-government and self-determination.

For the past three decades, the United States' clear and strong policy has been to treat all federally recognized tribes equally. In 1994, Congress amended the Indian Reorganization Act to guarantee the privileges and immunities of tribes and to prohibit federal agencies from treating certain Indian tribal governments as if they had lesser sovereign powers than others:

> (f) PRIVILEGES AND IMMUNITIES OF INDIAN TRIBES; PROHIBITION ON NEW REGULATIONS.—Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.
>
> (g) PRIVILEGES AND IMMUNITIES OF INDIAN TRIBES; EXISTING REGULATIONS.—Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on the date of enactment of this Act and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and

immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

Pub. L. No. 103-263, §5(b) (1994) (codified at 25 U.S.C. §5123(f)-(g)); *see also* H.R. Rep. 103-781 at 3-4 (Oct. 3, 1994) (discussing the unequal treatment of the Pascua Yaqui Tribe and other tribes). Just a few months later, Congress cemented this policy in the Federally Recognized Tribe List Act of 1994, Pub. L. No. 103-454, which requires the Secretary of the Interior to publish an annual "list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians," 25 U.S.C. §5131, thus providing one uniform list for all agencies to reference in administering such programs. Since the passage of the List Act, the Secretary has included the Houlton Band and other Wabanaki Nations on the annual list, and we are "acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of [our] government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes." 86 Fed. Reg. 7554 (Jan. 29, 2021).

Despite this congressional policy, the Wabanaki Nations – unique among more than 550 federally recognized tribes – have continued to be denied access to all beneficial federal laws that may "affect or preempt" the application of State law to the Nations, our citizens, and our lands. It is time to fix this inequality. While H.R. 6707 is a small step in advancing equality for the Wabanaki Nations, it is an important one. We cannot undo the past, but we can create a better future for our future generations of Maliseet people. The Houlton Band is also committed to continuing its work with the State of Maine to achieve win-win outcomes for the state-tribal jurisdictional relationship, including through state legislation that recognizes the crucial role of sovereign tribal governments in providing services, infrastructure, and economic development for the benefit of all Mainers, particularly in rural communities. H.R. 6707 will help to advance these efforts. The Maine Attorney General and Governor of Maine have taken the position that even if the State chooses to withdraw its jurisdiction over a particular subject matter involving the Wabanaki Nations – so that existing or future federal laws would not "affect or preempt" such jurisdiction – Congress must nevertheless amend MICSA to ensure that federal laws with respect to that particular subject matter will apply in Maine. H.R. 6707 clarifies that MICSA is not a barrier to the State making its own policy determination that it is in the State's best interests for the Wabanaki Nations to have access to federal laws enacted for the benefit of Indians.

IV. Why H.R. 6707 is Essential to Enable the Houlton Band of Maliseet Indians to Protect Maliseet Children and Strengthen Maliseet Families.

H.R. 6707 makes another modest amendment to MICSA by equalizing the treatment of the Maliseets and the Mi'kmaq Nation with the treatment of the Passamaquoddy Tribe and Penobscot Nation under the Indian Child Welfare Act (ICWA). The National Indian Child Welfare Association (NICWA) has voiced its full support for this amendment and H.R. 6707. In section 8 of MICSA, Congress recognized the eligibility of the Passamaquoddy Tribe and Penobscot Nation to reassume jurisdiction over Indian child custody proceedings under section 108 of ICWA. Section 108 provides that an Indian tribe subject to state jurisdiction (under Public Law 280 or another federal statute) may petition the Secretary of the Interior to reassume jurisdiction over child custody proceedings and must submit a suitable plan for exercising that

jurisdiction, subject to the Secretary's approval. 25 U.S.C. §1918. To be absolutely clear, H.R. 6707 does not amend ICWA in any way – it merely equalizes the treatment of the Wabanaki Nations under that statute.

This amendment is critical to the Houlton Band of Maliseet Indians' ability to keep Maliseet children and families safe, healthy, and strong. As a result of our inability to exercise jurisdiction over child custody proceedings, we have been unable to access federal funding to expand our governmental capacity to provide effective and culturally-appropriate child welfare services, including the development of a tribal court system and child welfare code. The State of Maine cannot fill this void. During the five-year period from 1996 to 2001, the State removed 29 Maliseet children from Maliseet families – more than 10% of Maliseet children under the age of 18 – and placed only 4 of them in the homes of tribal families. Our tribe is at the mercy of individuals when dealing with state HHS, and in my time as Chief I have had to schedule meetings regarding the application of ICWA with local, regional, and state HHS leadership with little improvement in the relationship. I have had to spend time advocating for funds that come to the state on behalf of the tribe to support Indian Custodians and tribal foster families. Not being able to access benefits for a child while they are in care was just another barrier to placement of our children into Maliseet homes. While the success is felt by all, I feel that I should not have had to ask for what should already be coming to our families to help us successfully place our children in tribal homes. There is a deep and traumatic *multi-generational* impact on the Houlton Band and the Maliseet people when we are unable to keep our children within the tribal community and to provide them the services they need to thrive. H.R. 6707 will give us an essential tool, and make available new funding opportunities, to build and maintain the institutions and services we need to protect our families.

V. Conclusion.

On behalf of the Houlton Band of Maliseet Indians, I urge you to support the *Advancing Equality for Wabanaki Nations Act*, H.R. 6707. Each year Congress enacts legislation that gives tribal governments new tools to protect our citizens, create jobs and economic opportunities, and provide health care, housing, and other essential services to our tribal communities and non-Indian neighbors. We are only asking for the same equal access to these future programs as the other 570 federally recognized tribes have, so that we can continue to rebuild our Wabanaki communities, preserve our unique culture and traditions, and protect our natural resources.

Thank you for your attention. I want to extend the Houlton Band of Maliseet Indians' deep gratitude to our Congressman Jared Golden and his staff for listening, for taking the time to learn and understand our history and the federal trust responsibility, and for standing with the Wabanaki Nations in our efforts to improve the lives of Wabanaki people and everyone in Maine's rural communities, both today and for many generations to come. Thank you also to Congresswoman Chellie Pingree for her strong support and advocacy for the *Advancing Equality for Wabanaki Nations Act*.