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2001: Year in Review: Annual Report of the Maine Indian Tribal-State Commission

Maine Indian Tribal-State Commission

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2001: Year in Review

Annual Report of the
Maine Indian Tribal-State Commission

March 2002

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Section 1: Introduction

A. Purpose and Organization of This Report

The purpose of this report is to review the work of the Maine Indian Tribal-State Commission (MITSC) during 2001 and identify a number of issues it faces during 2002. This section includes introductory information; Section 2 provides an overview of MITSC's members, meetings, and process; Section 3 reviews the addition of land to Indian Territory; Section 4 summarizes the major natural resources and environmental issues before MITSC; Section 5 describes MITSC's education activities; Section 6 is a status report of legislation before the first Regular Session of the 120th Maine Legislature that was of interest to MITSC; and Section 7 identifies possible areas of focus for MITSC during 2002.

B. Year 2000 Assembly

Hosted by the Aroostook Band of Micmacs, the Year 2000 Assembly of Governors and Chiefs was held in Presque Isle on December 1, 2000. The Assembly provided an opportunity for elected state and tribal leaders to have government-to-government dialogue and to give feedback to MITSC. Several issues for MITSC to address during 2001 emerged from the Assembly. These included:

- ❖ Render an opinion about the State's Freedom of Access Act (FOAA).
- ❖ Process requests to add land to Indian Territory.
- ❖ Support legislation to require that Wabanaki culture and history be taught in Maine schools.
- ❖ Work on licensing rules for commercial fishing on inland waters under MITSC's jurisdiction.
- ❖ Seek legislative changes to allow MITSC to directly submit legislation.
- ❖ Initiate an Assembly of Legislators and Tribal Council Members.
- ❖ Seek continuation of the one-time \$15,000 appropriation by the State.

C. Year 2001 Highlights

MITSC's biggest accomplishment during 2001 was maintaining the link between the Tribes and the State. MITSC also had two other major accomplishments. One was the enactment of LD 291 (the Wabanaki education bill) and the resulting creation of the Wabanaki Studies Commission. MITSC was active in this area because of the interest in education expressed by Governors and Chiefs during their 1999 Assembly. The second major accomplishment was that MITSC members were able to agree about FOAA and to adopt a unanimous statement regarding the initial decision by the Superior Court relating to the applicability of FOAA to the Tribes. MITSC published its statement, but did not submit it formally to the Court. Even though MITSC was not part of the lawsuit relating to FOAA, the statement was symbolic, important, and a major accomplishment.

MITSC also had some smaller accomplishments during 2001. These included the creation of MITSC's website which is almost ready; sponsoring Wabanaki Day; helping to shepherd through the legislative process the addition of land in T 19 MD to Passamaquoddy Indian Territory; improving the posting of waters under MITSC's jurisdiction; and coordinating the Assembly of Governors and Chiefs.

MITSC also put effort into its bill that did not pass. This bill would have allowed MITSC to sponsor legislation and would have enacted in law MITSC's responsibility to organize the Assembly of Governors and Chiefs, as well as an Assembly of Legislators and Tribal Council members.

Section 2: Overview of MITSC

A. MITSC Members and Staff

MITSC has nine members, including four appointed by the State of Maine, two by the Passamaquoddy Tribe, and two by the Penobscot Nation. The ninth member is the chair, who is selected by the eight appointees. Attachment 1 is a list of MITSC members. Cushman Anthony has completed three and a half years as MITSC's chair.

When state appointee Fred Hurley resigned, his colleagues honored him during a special luncheon. As one of MITSC's original members, Mr. Hurley was its longest serving member. MITSC welcomed Dawn Gallagher, who was appointed to fill this vacancy. State appointees Alan Brigham, Michael Hastings, and Evan Richert continued their service on MITSC. Governor Richard Doyle represented the Passamaquoddy Tribe at Pleasant Point (Sipayik) and Wayne Newell represented the Passamaquoddy Tribe at Indian Township (Motahkokmikuk). John Banks and Mark Chavaree represented the Penobscot Nation.

MITSC continued its contract with Diana Scully of Vantage Point for part-time Executive Director services. Ms. Scully, who has served in this capacity for twelve years, initiated discussions about succession planning and beginning to involve and mentor others in MITSC's staff work.

B. MITSC Meetings and Committees

From January through December 2001, MITSC held nine regular meetings throughout the State (Augusta, Indian Island, Indian Township, and Pleasant Point.) A quorum was lacking for three meetings. At the beginning of May 2001, MITSC sponsored Wabanaki Day at the Legislature. [See also Section 6.]

MITSC's Education Committee and Natural Resources and Environment Committee met during 2001, but MITSC's other committees were not active. MITSC recently has had discussions about which committees to continue and how to revitalize them. These are described in Attachment 2.

MITSC's year ended with the fifth annual Assembly of Governors and Chiefs, which was held on December 7, 2001 at Sipayik. This event was marked by expressions of good will and eagerness to continue tribal-state efforts to work together. Attachment 3 is a list of the tribal and state leaders who participated in the Assembly.

C. MITSC Funding

During FY 2001, MITSC received \$38,800 from the State and \$23,150 from the Tribes (\$11,575 from the Passamaquoddy Tribe and \$11,575 from the Penobscot Nation). In addition, the Maine Department of Economic and Community Development provided a grant of \$4,500 to support Wabanaki Day. For FY 2002, the State's contribution includes a Part II appropriation of \$15,000 included in the budget submitted to the Legislature by Governor Angus King. MITSC appreciates this support. Along with other agencies receiving state appropriations, MITSC has experienced a small reduction (\$300) in its state appropriation for FY 2002 necessitated by the down turn in the economy. During the year FY 2001, MITSC received two \$250 contributions from an individual who wishes to remain anonymous. The individual asked that these contributions be used for MITSC's education activities.

D. MITSC Audit

Because it had been several years since its previous audit, MITSC retained the firm of Macdonald, Page, Schatz, and Fletcher to review its financial statements for the fiscal year

ending June 30, 2000. The auditors found that MITSC's financial statements "present fairly, in all material respects, the financial position of the Maine Indian Tribal-State Commission as of June 30, 2000 and the results of its operations for the year then ended in conformity with generally accepted accounting principles." They suggested that it is not necessary for a small organization like MITSC to have a full audit each year.

E. Amendments to MITSC's Bylaws

MITSC amended its bylaws during 2001, the first major overhaul since they were written in 1985. One impetus for the rewrite was the tension between state and tribal members of MITSC relating to Passamaquoddy legislation to affirm that Albany Township is in Indian Territory. It was important to clarify whether, when, and how minority positions of MITSC should be communicated. After much discussion, there was consensus that the bylaws should read: *A statement of any minority position on any decision or action may be published only as an accompaniment to a statement of the majority position on that decision or action, or in response to questions asked of the Commission or a member of the Commission, or as authorized by vote of the Commission.*

Other issues addressed in the revised bylaws include the addition of provisions regarding executive sessions; notification about MITSC meetings; conduct of MITSC meetings, including participation of non-MITSC members; distribution of MITSC minutes; and a stipend for the Chair. In addition, after extensive discussion, MITSC made minor revisions in its procedures for reviewing recommendations to add land to Indian Territory. Finally, MITSC amended the budget and assessment provision of the bylaws to reflect how this process actually works. MITSC's revised bylaws are included in [Attachment 4](#).

F. Assembly of Legislators and Tribal Council Members

Under consideration is whether MITSC should be involved in organizing bi-annual assemblies of Legislators and Tribal Council members. MITSC is awaiting word back from the Tribes about whether there is interest in proceeding on this. [See also Section 6.]

Section 3: Adding Land to Indian Territory

A. Key Aspect of Settlement

The reacquisition of land by the Passamaquoddy Tribe and the Penobscot Nation is one of the key elements in the Maine Indian Claims Settlement Agreement. There were purchase options running from certain landowners to the Penobscot Nation and Passamaquoddy Tribe, in which landowners agreed to sell value 300,000 acres of land at fair market. As part of the \$81.5 million settlement, a Land Acquisition Fund was created which included \$26.8 million for each the Penobscot Indian Nation and the Passamaquoddy Tribe.

The Maine Implementing Act—in 30 MRSA §6205—includes long lists of areas from which the Penobscot Nation and the Passamaquoddy Tribe may purchase land to be held in trust by the Secretary of Interior and included as part of their Territory. The Act provides that the first 150,000 acres of land acquired by each Tribe is eligible for inclusion as part of its Indian Territory and to be held in trust by the United States for their benefit. To date, the Passamaquoddy Tribe has approximately 133,000 acres and the Penobscot Nation has about 60,000 acres in Indian Territory.

B. Township 19 MD

During 2001, MITSC received certification from the Passamaquoddy Tribe that they seek approval to add to Passamaquoddy Indian Territory any land in Township 19 MD in Washington County purchased by the Tribe before the year 2020. The Tribe indicated that to begin with they are interested in 465 acres adjacent to their blueberry lands. In accordance with its bylaws, MITSC placed a legal advertisement about the Tribe's proposal in three newspapers. It did not receive any public comments or questions. *MITSC unanimously supported approval to add to Passamaquoddy Indian Territory any land in Township 19 MD in Washington County purchased by the Passamaquoddy Tribe before the year 2020.* Passamaquoddy Representative Soctomah submitted legislation (LD 1648) to the 120th Legislature to get the State's approval of this amendment to Maine Implementing Act. The bill was passed and signed into law. [See also Section 6.]

C. Grand Lake Stream

At MITSC's June meeting, Representative Soctomah explained that the Passamaquoddy Tribe is interested in adding land to its Indian Territory and extending the reservation at Indian Township by adding the Webber lot in Grand Lake Stream, a community of 800 people. There are no people living on this lot of approximately 6,000 acres, which is adjacent to the reservation. The Tribe wants to manage this land in the same way it manages the reservation. Representative Soctomah worked with local elected officials to set up an information session for residents of Grand Lake Stream on December 6, 2001. Diana Scully, MITSC's Executive Director, attended this session. Because Grand Lake Stream is an organized plantation, its residents must vote on this. MITSC is awaiting the outcome at the local level before proceeding to follow the process delineated in its bylaws. Meanwhile, Representative Soctomah has submitted a bill to the Second Regular Session of the 120th Legislature to obtain state approval of this addition to the Passamaquoddy Tribe's land base.

Section 4: Natural Resources and Environment

A. NPDES and FOAA

At the end of the year 2000, MITSC offered to arrange a meeting involving the state governor, tribal governors and chiefs, the Attorney General, and the EPA Regional Director to discuss the possibility of having a facilitated session about issues relating to the dispute between the State and the Tribes relating to the delegated permitting process under the National Pollution Discharge Elimination System (NPDES.) The State was concerned about the Federal Government's decision to retain permitting authority over certain areas including tribal waters. In spite of some positive informal feedback with regard to MITSC's suggestion, there was no session because the Chair did not hear back officially from the parties.

Related to the NPDES dispute has been a major argument about whether the State's Freedom of Access Act (FOAA) applies to the Tribes. On November 9, 2000, a Superior Court Judge ruled that by November 13 three Tribal Governors must turn over tribal documents requested by paper companies, appeal his decision, or go to jail. The Governors reluctantly decided to appeal the decision.

Over several meetings at the end of 2000 and beginning of 2001, MITSC members engaged in intense discussions about the pending litigation. During their meeting of February 8, 2001, MITSC unanimously approved the following statement and distributed this to Governors and Chiefs, Legislative Leaders, and Tribal Council Members, with copies to the media:

The Maine Indian Tribal-State Commission has considered at great length the decision of Justice Robert E. Crowley which holds that the Maine Freedom of Access Act (FOAA) applies to the Penobscot Nation and the Passamaquoddy Tribe. We unanimously agree that this decision does not reflect our understanding of the Maine Indian Claims Settlement Act and its companion Implementing Act.

In general, under the settlement acts, "tribal government" is an internal tribal matter, over which the tribes have sole authority. "Government," by its common meaning, includes the right to set the procedures by which governmental decisions are made. Freedom of information acts are procedural mechanisms that may or may not be adopted by a tribe as part of its system of ruling. Because tribal government is defined by the settlement acts as an internal tribal matter, the State cannot impose its own governmental procedures upon the tribes.

This view of "tribal government" differs from the opinion of Justice Crowley in that it recognizes that the act of governing is a procedural matter. It distinguishes the process of governing from the actions that might flow from that process.

Any actions that flow from the tribal governmental process may or may not be internal tribal matters. They may, pursuant to Section 6204 of the Implementing Act and the several guidelines set forth in past court decisions, be subject to state law.

We note that MITSC's view of the decision-making process as being internal to the tribes does not necessarily extend to the issue that apparently motivated the paper companies to bring the FOAA case—the delegation by the federal Environmental Protection Agency to the State of Maine of National Pollution Discharge Elimination System (NPDES) authority. On that underlying issue, the State representatives believe state law applies pursuant to Section 6204 of the Implementing Act, and the Tribal representatives believe that to be an internal tribal matter. On the application of Maine's Freedom of Access Act to the present situation, however, we are in agreement.

The deliberative process that is the subject of the FOAA suit, which is now pending before the Maine Supreme Judicial Court, is part of "tribal government" and thus is an internal tribal matter to which the Maine Freedom of Access Act does not apply. It is our hope that, in this context, the right of Maine's tribal governments to make governmental decisions outside of the scrutiny of non-tribal members will be upheld.

Largely because of time constraints, MITSC did not present its February statement to the Maine Supreme Judicial Court. Since MITSC issued the statement, the Court has issued its decision. The Tribes were unhappy with the ruling and filed a petition to the US Supreme Court, which was denied. Further negotiations and legal action are ongoing regarding the implementation of FOAA.

B. MITSC Committee Work

During 2001, MITSC's Natural Resources and Environment Committee resumed an earlier discussion about having MITSC license commercial activities on waters under its jurisdiction. The Committee plans to examine the commercial licensing rules of the Maine Department of Inland Fisheries and Wildlife (DIFW) as part of the research needed to draft a rule for MITSC. The Committee also is working on a list of frequently asked questions to be included in MITSC's fishing rulebook and website.

As a result of the Committee's work during 2001, bright yellow MITSC signs were printed and posted to mark waters under MITSC's jurisdiction; certified copies of MITSC's rules were placed in the courts; a disagreement about the payment of permit fees for bass tournaments on Passamaquoddy reservation waters was resolved; and a discrepancy between MITSC's rule and DIFW lawbooks in descriptions of smelting bag limits on Duncan Pond was corrected. DIFW's Committee member is taking the lead on working with DeLorme to have Indian Territory added to their maps, on getting language added to DIFW's trapping rule books to clarify that trapping on tribal lands is regulated by the Tribe, and to develop a draft generic agreement relating to cross-deputization to discuss with each Tribe.

The Committee identified the following issues for their future agendas: requiring MITSC licenses for recreational fishing; developing tribal-state cooperative agreements concerning fishing bag limits; and developing reciprocal agreements relating to tribal and state guides.

C. The Wesget Sipu

In March 2001, MITSC asked its Natural Resources and Environment Committee to look into the issuance of fish and wildlife licenses by the Wesget Sipu based in Fort Kent. The 119th Legislature enacted Public Law 1999, Chapter 558 which authorizes this group to issue free fishing and hunting licenses on behalf of DIFW to members of the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs, and Houlton Band of Maliseets. It is MITSC's understanding that the group does not issue free licenses to members of the four Tribes, but it does issue licenses to people of Native American descent, including people with Micmac and Abenaki ancestors. The four Tribes have pointed out that tribal membership is an internal tribal matter—only a Tribe may determine and certify its members.

MITSC discussed the apparent need to tighten up on the issuance of free hunting and fishing licenses by the Wesget Sipu. MITSC members expressed concern that the Wesget Sipu appear to be taking a backdoor approach to becoming recognized as a tribal government and they appear not to be in compliance with Public Law 1999, Chapter 558.

Section 5: Education

LD 291: Wabanaki Studies Bill

In January 2001, MITSC voted unanimously in support of legislation sponsored by Penobscot Representative Donna Loring to require that Wabanaki history and culture be taught in Maine schools. In February 2001, MITSC testified in support of LD 291 at its hearing before the 120th Legislature's Education Committee.

As LD 291 made its way through the legislative process, Representative Loring became concerned that a fiscal note might be attached to the bill, which would kill it. She proposed having the new Commission created by LD 291 meet under the auspices of MITSC with MITSC providing staffing assistance. In March and April 2001, MITSC voted unanimously to support the work of the new Commission, provided that this would be done in collaboration with the Department of Education and the University of Maine System and provided that financial resources would be available to support this work. MITSC agreed to provide \$6,000 to support the work of the new Commission (contingent on the receipt of \$15,000 in Part II appropriations funds), and the Department of Education and University of Maine System each agreed to provide \$3,800. (The Legislature did fund the Part II request for MITSC.)

LD 291 was enacted by the Legislature and signed into law by Governor King as Public Law 2001, Chapter 403. The new Wabanaki Studies Commission includes 8 appointments by the four Tribes in Maine, including one appointee who also serves on MITSC; 6 appointees by the Commissioner of Education; and one appointee by the Chancellor of the University of Maine System.

MITSC's responsibilities include convening the first meeting, which it did on October 19, 2001, and providing staffing assistance to the Wabanaki Studies Commission, which MITSC Executive Director Diana Scully has been doing. The Commission is discussing hiring a tribal member to share in the staffing responsibilities.

During its first meeting, the new Commission voted unanimously to have Maureen Smith, Ph.D. (Oneida) serve as chairperson. Dr. Smith, the University System's appointee, is the Director of the Native Studies at the University of Maine in Orono. Attachment 5 is the list of members of the Wabanaki Studies Commission.

The law requires the Wabanaki Studies Commission to issue preliminary recommendations by June 1, 2002 and final recommendations by September 1, 2003. By July 30, 2004, the Commission must develop a plan to help school districts implement instruction in Wabanaki Studies, including how to assist schools having difficulty in implementing this instruction.

B. MITSC's Education Committee

MITSC's Education Committee held an energizing, productive meeting in March 2001. During that meeting four subcommittees were created: Curriculum, Speakers, Archives, and Resources. Each of the subcommittees met at least once.

However, as MITSC supported LD 291 and the new Wabanaki Studies Commission, its focus faded away from its own education activities. It has been struggling with how to refocus its own education activities to supplement the work of the new Commission and to concentrate on areas not addressed by the new Commission (e.g. educational activities for adults, a settlement archives.)

MITSC's *Speakers Subcommittee* met in April and June 2001 to discuss how to develop a list and description of tribally approved people who go out to schools and community groups to talk about the Wabanaki people. The subcommittee developed and reviewed a draft application packet for potential speakers to fill out, but this requires more work before it is a shared.

MITSC's *Curriculum Subcommittee* met in early May 2001, but MITSC has decided that curriculum related work can best be carried out by the Wabanaki Studies Commission. MITSC still needs to determine whether and how people interested in its subcommittee might be redirected to support the work of the new Commission.

MITSC's *Archives Subcommittee* has been working on getting a Maine Indian Claims Settlement Archives established at the University of Maine in Orono. MITSC has worked with both the University of Maine and the State Archivist. The State Archivist asked the Department of Attorney General whether the State could agree to have material about the Settlement Act placed in an archives located at the University of Maine. An Assistant Attorney General responded that this is acceptable, provided that the State does not lose the option at some time in the future to take custody of these records. MITSC believes that if the State preserves this option, then the Tribes also need to have this option. The Assistant Attorney General agreed that this makes sense. During its November 2001 meeting, the subcommittee decided to meet with the University's Provost and Dean, who are in charge of the university library, to describe the need for the archive and a resource center and to determine the degree to which the University is willing to assist the subcommittee in meeting the need.

MITSC's *Resources Subcommittee* met once in May 2001, but only a few people participated in the meeting. This mission of this subcommittee needs to be clarified and more people need to participate if it is to continue.

C. MITSC Website

The Wabanaki Center at the University of Maine introduced MITSC to Director of ASAP Media Services at the University. As a result of this introduction, MITSC retained ASAP to develop a MITSC website at a cost of \$4,000. In October 2001, three MITSC members and MITSC's Executive Director met with the ASAP team members who are constructing MITSC's website. MITSC believes that the Website will help it carry out its responsibility to monitor the effectiveness of the Settlement Act and the relationship between the State and the Tribes.

Section 6: Year 2001 at the Legislature

A. Legislation of Interest to MITSC

MITSC had an interest in a dozen pieces of legislation during the First Regular session of the 120th Legislature. Attachment 6 describes the bills, MITSC's position on them, and their final status as of the end of the session.

Six of eight bills sponsored by Passamaquoddy Representative Donald Soctomah passed, all of which MITSC supported. These included:

- ❖ LD 107 (enforcement of laws by Passamaquoddy Wardens);
- ❖ LD 516 (exempting archaeological work from certain permitting requirements);
- ❖ LD 517 (accepting the identification card of a Maine Indian Tribe as an acceptable form of identification);
- ❖ LD 618 (removing state road signs with offensive names from Route 95 and the Maine Turnpike); and
- ❖ LD 1658 (Passamaquoddy Land in Township 19, MD).

With respect to two bills proposed by Representative Soctomah and supported by MITSC, LD 523 (Indian health clinics) will be addressed through rulemaking and LD 523 (tribal license plates) will be addressed as part of a study.

Two bills sponsored by Penobscot Representative Loring passed—an amended version of LD 108, (expanding the number of tribal high stakes beano games) and LD 291 (the Wabanaki studies bill. Described in Section 5.) MITSC supported both of these bills.

MITSC was pleased that its one-time appropriation of \$15,000 (enacted by the 119th Legislature) was continued by the 120th Legislature.

B. MITSC's Bill

As part of its December 2000 report to the Legislature pursuant to Resolves 1997, Chapter 45, MITSC recommended a bill to amend the Settlement Act to allow MITSC to introduce legislation; continue the annual Assembly of Governors, Chiefs, and Tribal Legislative Representatives; and initiate a biannual Assembly of Legislators and Tribal Council Members. The 120th Legislature passed an amended version of the bill, which included the annual Assembly of Governors and Chiefs and a semi-annual assembly of Legislators and Tribal Council Members, but did not include a provision to allow MITSC to introduce legislation. However, the Tribes did not ratify the legislation, because they felt that its guts had been taken out. They felt that the amended version was not substantive enough to warrant an amendment to the Settlement Act.

MITSC members and Governors and Chiefs agreed that it is important for MITSC to continue to convene the Annual Assembly of Governors and Chiefs. MITSC is awaiting word back from the Tribes about whether they would like to participate in an assembly of Legislators and Tribal Council Members. Meanwhile MITSC is considering a proposed amendment to its bylaws to include the responsibility for MITSC to organize assemblies.

C. Wabanaki Day

May 2, 2001 was Wabanaki Day at the 120th Maine Legislature. This event was coordinated by MITSC in collaboration with Passamaquoddy Representative Donald Soctomah and Penobscot

Representative Donna Loring. The Department of Economic and Community Development provided major financial support, and the Maine State Museum played a key role in several of the Day's activities. This year's event did not "feel" as successful as the first Wabanaki Awareness Day held in 1999 for a number of reasons for this.

There were a number of occurrences beyond one's control. First, it was a very hot day, and it was uncomfortable in the Atrium of the Maine State Museum where many activities were held. Second, the fire alarm went off in the Museum in the middle of the noontime formal ceremony, at which point the ceremony moved outside into the hot sun. Third, the Maine Law Court

decision about Maine's Freedom of Access Act came down the day before Wabanaki Day. The timing was terrible, because the decision was a disappointment to many tribal members.

There also were a number of logistical shortcomings. It was difficult to have Wabanaki Day activities in two locations: the State House and Atrium. At lunchtime, too many things were happening at once in the Atrium. It was too noisy, too hot, and too crowded. The food line was so long that many legislators and others were not able to get food.

Finally, Wabanaki Day tried to be too many things for too many different audiences. Rather than just focusing on legislators, the day also attempted to be an event for the public and for school children. One type of event does not necessarily fit all audiences.

Lessons learned from Wabanaki Day 2001 suggest a number of things to consider for the future:

- ❖ Retain someone on a project basis to handle the logistical details of Wabanaki Day.
- ❖ Have a small, but clearly identified Wabanaki Day Committee to help plan and carry out this event.
- ❖ Be careful about mixing audiences.
- ❖ Consider whether Wabanaki Day is the most effective way to educate legislators.
- ❖ There is a huge interest by schools and the public in the Wabanaki people. Consider raising funds for Wabanaki awareness activities specifically targeted to them.

Section 7: Areas of Focus for Year 2002

During the Assembly of Governors and Chiefs held at Sipayik on December 7, 2001, there was discussion about possible areas of focus for MITSC during 2002. There appeared to be consensus that MITSC should work on the following areas:

- ❖ Organize a mid-year meeting of Governors and Chiefs.
- ❖ Provide staffing to the Wabanaki Studies Commission.
- ❖ Refocus MITSC's Education Committee now that the new Wabanaki Studies Commission is underway.
- ❖ Follow MITSC's process to develop a recommendation concerning the addition of the Webber Lot in Grand Lake Stream to Passamaquoddy Territory.
- ❖ Adopt a rule regarding commercial licensing for fishing on tribal waters under MITSC's jurisdiction.
- ❖ Reactivate MITSC's Child Welfare Committee to examine concerns about the number of Wabanaki children who are placed by the State's child welfare system with families who are not Wabanaki.
- ❖ Take a position on bills submitted to the Legislature that have an effect on the Tribes and/or tribal-state relations.
- ❖ Rethink Wabanaki Day and consider whether it should occur in a different format.
- ❖ Continue work on creating an archives for materials relating to the Settlement Act and MITSC.
- ❖ Complete and fine-tune MITSC's website.

During the 2001 Assembly, participants also identified the following possible areas of focus for MITSC during 2002:

- ❖ Examine issues relating to the use of mascots and, possibly, Columbus Day.
- ❖ If supported by the Tribes, move forward on holding an Assembly of Legislators and Tribal Council members.
- ❖ If requested by the Malseets, continue to support legislation to give them the same status as the Passamaquoddy Tribe and Penobscot Nation under the Settlement Act.
- ❖ Explore how to resolve disagreements in organized areas about the placement of tribal lands in trust.
- ❖ Reactivate MITSC's Economic Development Committee, put together a catalogue of resources available for the Tribes, and help the Tribes get connected to resources.
- ❖ Become involved in substance abuse issues, and help link the Tribes to the State.
- ❖ Review *At Loggerheads*, the 1995 report of the Task Force on Tribal-State Relations, to determine what progress there has been toward implementing its recommendations.

Attachment 1

**Maine Indian Tribal-State Commission
2001 – 2002**

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November 2001**

Committee	Members	Committee's Charge
Natural Resources and Environment	John Banks, Chair* Dawn Gallagher* Other participants: Don Boston, Ralph Dana, David Peppard, Clayton Socobasin <u>Note</u> : Rick Doyle said he would check to see if a member of the Passamaquoddy Natural Resources Committee wants to serve on this Committee.	Identify and, when possible, address and propose solutions to tribal-state issues relating to MITSC's regulation of fishing on waters in Indian Territory, other inland fisheries and wildlife issues, and natural resources issues.
Education	Mike Hastings, Co-Chair* Wayne Newell, Co-Chair* There is a mailing list of over 40 people for the Education Committee. It is not clear who is a "member" and who is not.	Explore and recommend how to educate non-native people about the Wabanaki people. There are four subcommittees: Curriculum, Speakers, Resources, and Archives. The Committee needs to regroup and reorganize in light of the new Maine Native American History and Culture Commission.
Events Planning	Cushman Anthony*	Plan Wabanaki Day, Assemblies, and other special MITSC activities.
Child Welfare and Tribal Courts	Mark Chavaree, Chair* This committee has not been active for a long time.	Focus on tribal-state issues concerning child welfare and tribal courts. Reactivate, if needed.
Economic Basis of Tribal Governments	Alan Brigham, Chair* This committee has not been active for a long time.	Address tribal-state issues relating to revenues for Tribal Government. Reactivate, if needed.

* MITSC Member

Attachment 3

**Leaders Participating in
Fifth Annual Assembly of Governors and Chiefs**

Brenda Commander, Chief, Houlton Band of Maliseets

Barry Dana, Chief, Penobscot Nation

Richard Doyle, Governor, Passamaquoddy Tribe at Pleasant Point (Sipayik)

Angus King, Governor, State of Maine

William Phillips, Jr., Chief, Aroostook Band of Micmacs

Donald Soctomah, Passamaquoddy Tribal Representative

Representing Richard Stevens, Governor, Passamaquoddy Tribe at Motahkmikuk

Bylaws of the Maine Indian Tribal-State Commission

The Maine Indian Tribal-State Commission is established pursuant to the Maine Indian Claims Settlement Act (30 MRSA §6212.) The Commission serves as a joint tribal-state governing body with authority principally of an advisory nature.

I. Organization

- A. Membership.** The Commission consists of nine full-voting members, four appointed by the Governor of the State, subject to review by the Joint Standing Committee on Judiciary and confirmation by the Legislature, two each appointed by the Passamaquoddy Tribe and the Penobscot Nation, and a Chair selected in accordance with the procedure specified in section I-D.
- B. Terms.** Other than the Chair, each member shall serve a term of three years and may be reappointed. The Chair serves a four-year term, except when appointed for an interim term as specified in section I-D. The Chair may be reappointed.
- C. Vacancies.** In the event of death, resignation, or disability of any member or the Chair, the appointing authority may fill the vacancy for the unexpired term.
- D. Chair.** The Commission, by a majority vote of its eight members, shall select a person who is a resident of the State to act as Chair. In the event that Commission members are unable to select a Chair within 120 days of the expiration of the Chair's term or the occurrence of a vacancy, the Governor of the State, after consulting with the Governors of the Penobscot Nation and Passamaquoddy Tribes, shall appoint an interim Chair for a period of one year or until such time as the Commission selects a Chair by a majority vote of its eight members, whichever is sooner.
- E. Quorum; Vote.** Seven members shall constitute a quorum and no decision or action shall be valid unless five members vote in favor of such decision or action. A statement of any minority position on any decision or action may be published only as an accompaniment to a statement of the majority position on that decision or action, or in response to questions asked of the Commission or a member of the Commission, or as otherwise authorized by vote of the Commission.
- F. Call of Meetings.** The Chairman or any five members of the Commission may call a meeting. There shall be seven days' notice given to the members prior to a meeting. In addition, notice of all meetings, including location, date, time, and the identity and phone number of a contact person who may be contacted for more information, shall be placed in the Legislative Calendar and sent to the Tribal Governors and Councils.
- G. Conduct of Meetings.** All meeting proceedings shall be open to the public. Only members of the Commission may request that an item be placed on the agenda for discussion. As to each agenda item, the Chair or another member will define the issue to be discussed, then members may discuss the item, then the Chair may open the discussion up to the public for their comments within the limits of available time, then further discussion may be held by members only, and then a vote may be taken.
- H. Record.** A written record of each meeting shall be prepared and approved by the Commission, and kept permanently on file in the archives of the Commission, except that no written record shall be taken during executive sessions. Minutes of any meetings of the Commission may be released before

they have been approved by the Commission, provided that they are clearly marked with the following statement: “Not for attribution until formally approved by the Commission.”

I. Executive Sessions. Commission may go into executive session only pursuant to the following requirements:

1. No rules, resolutions, contracts, appointments or other official actions may be finally approved at executive sessions.
2. Executive sessions may be called only by a public recorded vote of five Commission members present and voting.
3. A motion to go into executive session shall indicate the nature of the business to be discussed. No other matters may be considered in that particular executive session.
4. A motion to go into executive session may include participants other than Commission members, as the Commission deems appropriate.
5. Deliberations may be conducted in executive sessions only on the following matters:
 - a. The employment, appointment, assignment, duties, compensation, evaluation, disciplining, resignation, or dismissal of any appointee serving on the Commission or any employee or independent contractor working for the Commission;
 - b. Consultations between the Commission and an attorney concerning its legal rights and duties or pending or contemplated litigation;
 - c. Matters where, in the Commission’s view, premature general public knowledge would cause substantial harm to a Tribe, the State, or the Commission or to the relationship between the State and one or more of the Tribes; and
 - d. Discussions of information contained in records made, maintained, or received by the Commission when access by the general public to those records is prohibited by statute or tribal ordinance.

II. Duties

The Commission is charged under the terms of the Act to continually review the effectiveness of the Act; to assist with the implementation of certain provisions of the Act; to continually review to social, economic, and legal relationship between the Passamaquoddy Tribe, Penobscot Nation, and the State; and to make such reports and recommendations to the Legislature, the Passamaquoddy Tribe, and the Penobscot Nation as the Commission deems appropriate. With respect to the Commission’s duties to assist with implementation, the following specific charges are authorized under the Act.

A. Inclusion of Lands as Indian Territory. No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation other than those described in 30 MRSA §6205, sub-§§1, 2, 3, and 4 shall be included within or added to Passamaquoddy Indian Territory or Penobscot Indian Territory except upon recommendation by the Commission to the State, the Passamaquoddy, and the Penobscot Governments. In reaching this recommendation, the Commission shall verify the following:

1. The Tribal Government seeking the addition of lands to Indian Territory certifies that it has approved such action in accordance with its governing laws and procedures.
2. In the case where the lands are within a city, town, village, or plantation, the legislative body of that municipality certifies that it has approved such action in accordance with its governing laws and procedures.

Upon receiving the certification(s), the Commission shall place a legal advertisement which requests public comment on the matter in at least two newspapers of statewide distribution and, when appropriate, one of regional circulation. At least ten days from the latest date the advertisement appears shall be allowed for comments to be received. If, after reviewing the comments, the Commission determines that there are important issues of regional or statewide significance involved, the Commission may choose to conduct a public hearing. At least ten days' public notice shall be given for the hearing.

In making a recommendation the Commission shall consider the comments received and any issues raised which are of regional or statewide significance; suggest any inconsistency with the Act; or concern the social, economic, or legal relationship between the State and Tribal Governments. The Commission may consider the proposed usage of the land as set forth by the Tribal Government, but shall not consider any issues regarding possible restrictions which might be put on the use of the lands by the Tribal Government if they are restrictions which any landowner, Indian or non-Indian, has the right to implement.

B. Promulgation of Fishing Rules and Regulations. Subject to any limitations of 30 MRSA §6207 sub-§6 (Supervision of Commissioner of Inland Fisheries and Wildlife), the Commission shall have exclusive authority to promulgate fishing rules and regulations on:

1. Any pond other than those specified in 30 MRSA §6207, sub-§1, paragraph B, 50% or more of the linear shoreline of which is within Indian Territory;
2. Any section of a river or stream both sides of which are within Indian Territory; and
3. 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.

In promulgating such rules or regulations the Commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical Indian and non-Indian interests, the needs or desires of the Tribes to establish fishery practices for the sustenance of the Tribes or to contribute to the economic independence of the Tribes, the traditional fishing techniques employed by and ceremonial practices of Indians of Maine, and the ecological inter-relationship between the fishery regulated by the Commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag, and size limits and season for fishing.

The Commission's rules or regulations shall be applicable equally on a non-discriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the Commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and Penobscot Nation. In adopting rules or regulations, the Commission shall comply with the Administrative Procedures Act.

The Chair shall appoint, with the approval of the Commission, a committee representative of the State, Penobscot Nation, and Passamaquoddy Tribe that shall develop draft fishing rules and regulations for the Commission to consider, and shall monitor and report to the Commission the effectiveness of these rules and regulations. The committee shall be prepared to draft on behalf of the Commission, study reports and recommendations for presentation to the Commissioner of Inland Fisheries and Wildlife and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on land and water subject to regulation by the Passamaquoddy Tribe, Penobscot Nation, or the Commission.

- C. Future Indian Communities.** Any 25 or more adult members of either the Passamaquoddy Tribe or the Penobscot Nation residing within their respective Indian Territory and in reasonable proximity to each other may petition the Commission for designation of an “extended reservation.” If the Commission determines, after investigation, that the petitioning tribal members constitute an “extended reservation”, the Commission shall establish the boundaries of this “extended reservation” and shall recommend to the Legislature that, subject to the approval of the governing body of the Tribe or the Nation involved, it amend this Act to extend the jurisdiction of the respective Tribe or Nation to the “extended reservation.” The boundaries of any “extended reservation” shall not exceed those reasonable and necessary to encompass the petitioning tribal members.

In addition to the above duties, legislative bills amending 30 MRSA §6205, sub-§1, paragraph B or sub-§2, paragraph B, and adding lands to or including land within Indian Territory shall receive the recommendation of the Commission to the Legislature prior to enactment.

III. Operations

- A. Budget.** The Commission shall operate on a July 1 to June 30 fiscal year. It shall prepare and submit an annual request for funding to the State, the Passamaquoddy Tribe, and the Penobscot Nation. The Commission shall ask the State to finance at least 50% of the annual cost of the budget and shall ask the Tribes to share equally in the financing of the remainder of the annual cost of the budget.
- B. Per Diems and Expenses.** Commission members shall be paid \$75 per day for their services and shall be reimbursed for reasonable expenses including travel at the same rate as the State pays its employees. Upon the vote of the Commission, the Chairman also may be paid a supplementary stipend for his services each month.
- C. Personnel.** The Commission shall employ or contract with such personnel as it deems necessary and desirable in order to effectively discharge its duties and responsibilities. The Commission may establish a job description for its personnel.
- D. Financial Reports.** At each meeting, the Commission shall receive from its personnel or the Chair a statement of current financial condition.
- E. Annual Report.** At the close of each year the Commission shall prepare an annual report to be transmitted to the State, the Penobscot Nation, and the Passamaquoddy Tribe.

Attachment 5

Wabanaki Studies Commission

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Attachment 6

**First Regular Session, 120th Maine Legislature (2001)
Final Status of Bills Relating to Tribes in Maine**

LD #	Bill Title	MITSC Position	Final Status
LD 107	An Act Regarding the Enforcement of Laws in the Maine Revised Statutes, Title 12, by Passamaquoddy Wardens	Support	Public Law 2001, Chapter 30
LD 108	An Act Regarding the Taxation of Goods Purchased in Connection with the Operation of High Stakes Beano and High-Stakes Bingo and Expanding the Number of Authorized Games.	Support amended version (letter)	Public Law 2001, Chapter 295
LD 291	An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools.	Support (testimony)	Public Law 2001, Chapter 403
LD 516	An Act to Regarding Prehistoric and Historic Archaeological Work from Permitting Requirements under the Natural Resources Protection Laws and the Shoreland Zoning Laws.	Support (letter)	Public Law 2001, Chapter 207
LD 517 2001,	An Act to Establish the Identification Card of a Maine Indian Tribe as an Acceptable Form of Identification.	Support (letter)	Public Law Chapter 80
LD 523 pass;	An Act to Create a Special Maine Indian Tribe License Plate.	Support (letter)	did not to be studied
LD 618	An Act to Remove State Road Signs with Offensive Names from Interstate Route 95 and the Maine Turnpike.	Support (letter)	Public Law 2001, Chapter 244
LD 855 2001,	Governor's Part II Budget Request (including request to continue a one-time appropriation of \$15,000 to MITSC.)	Support (testimony)	Public Law Chapter 439
LD 1171 173	An Act to Authorize the Maine Indian Tribal-State Commission to Introduce Legislation and to Organize Assemblies of State and Tribal Leaders.	MITSC Bill Support (testimony)	Public Law 2001, Chapter
LD 1178	Resolve, Directing the Department of Human Services to Adopt Rules Regarding the Indian Health Clinic.	Support (letter)	did not pass; to be addressed through rules
LD 1658	An Act Regarding Passamaquoddy Land in Township 19, M.D.	Support (testimony)	Public Law 2001, Chapter 251

LD 1753	An Act Regarding the Treatment of American Indian Tribes under the Federal Unemployment Tax Act.	No position	Public Law 2001, Chapter 381
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