

10-2006

# A Summary of the Activities of the Maine Indian Tribal-State Commission. April 19, 2003 – June 30, 2006

Maine Indian Tribal-State Commission

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# **A Summary of the Activities of the Maine Indian Tribal-State Commission (April 19, 2003 – June 30, 2006)**



*Prepared by*

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**October 2006**

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## I. Introduction

### A. Purpose and Organization of This Report

This report summarizes MITSC's work from April 19, 2003 to June 30, 2006. MITSC's bylaws specify an annual report will be transmitted to the State, the Penobscot Nation, and the Passamaquoddy Tribe at the close of each year. Considerable time (more than three years) has passed since the last report was issued. Reasons for the delay include the suspension of the Passamaquoddy Tribe's and Penobscot Nation's participation in MITSC from November 2003 until January 2005, the August 12, 2004 resignation of MITSC Executive Director Diana Scully (see Appendix 1 August 12, 2004 Diana Scully resignation letter) and associated 13 month vacancy in the position, and the December 2004 resignation of MITSC Chair Cushman Anthony and related year-long vacancy in the position.

*Section II* of this report entails an overview of MITSC. *Section III* describes the condition of Tribal-State relations and challenges confronting MITSC. *Section IV* explains MITSC's work organizing and supporting the Assembly of Governors and Chiefs held May 8, 2006. *Section V* describes one of the agreements reached at the May 8, 2006 Assembly of Governors and Chiefs to conduct a comprehensive review of the Maine Implementing Act and related issues. *Section VI* sets forth work to resolve differences between the State of Maine, Federal natural resource agencies and the Penobscot Nation to renew the Cooperative Agreement between U.S. Fish and Wildlife Service and NOAA Fisheries and the Maine Atlantic Salmon Commission. *Section VII* comprises other significant MITSC activities during the period profiled. Finally, *Section VIII* explains MITSC's major goals and responsibilities for fiscal year 2007 (July 1, 2006 to June 30, 2007.) When the term "Tribes" is used in this report, it refers to the Passamaquoddy Tribe and Penobscot Nation, unless the context indicates otherwise.

## II. Overview of MITSC

### A. Purpose and Responsibilities

MITSC is an inter-governmental entity created by An Act to Implement the Maine Indian Claims Settlement (known hereafter as the Maine Implementing Act (30 MRSA §6201 - §6214)). The Act specifies the following responsibilities for MITSC:

- Effectiveness of Act. Continually review the effectiveness of the Act and the social, economic, and legal relationship between the Passamaquoddy Tribe, the Penobscot Indian Nation, and the State of Maine.
- Land Acquisition. Make recommendations about the acquisition of certain lands to be included in Indian Territory.
- Fishing Rules. Promulgate fishing rules for certain ponds, rivers, and streams adjacent to or within Indian Territory.

- Studies. Make recommendations about fish and wildlife management policies on non-Indian lands to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or MITSC.
- Extended Reservations. Review petitions by the Tribes for designation as an “extended reservation.”

MITSC also performs an informal information and referral function for people looking for information about the Settlement, the Wabanaki, and State of Maine Tuition Waiver Program.

## **B. 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. Seven members constitute a quorum.

Cushman Anthony resigned midway through his second four-year term as Chair in December 2004. MITSC Commissioners elected Paul Bisulca chair on December 20, 2005. Mr. Bisulca is the first person of Wabanaki heritage to serve as a regular MITSC Chair. (Reuben “Butch” Phillips, a member of the Penobscot Nation, served as an interim MITSC Chair in the early 1980s tasked with finding a permanent chair when the position could be solely filled by a retired judge.)

Numerous changes occurred to MITSC’s membership during the 38 months covered by this report. In November 2003, the Passamaquoddy Tribe at Pleasant Point (Sipayik) replaced Craig Francis with Cliv Dore. Cliv Dore was replaced on May 22, 2006 by Governor Mark Altwater. Alan Brigham’s term expired January 4, 2004. He was replaced by Deputy Commissioner of Conservation Karin Tilberg on April 22, 2004. Evan Richert resigned February 12, 2004. The State already had one MITSC vacancy due to the resignation of then Dept. of Environmental Protection Commissioner Dawn Gallagher in February 2003. She was replaced by attorney Greg Cunningham on April 21, 2004. Wayne Newell, representing the Passamaquoddy Tribe at Indian Township (Motahkmikuk), resigned May 18, 2005. He was replaced by Donald Soctomah in August 2005. Paul Jacques filled the final State vacancy with his three-year term officially commencing April 28, 2006. Inland Fisheries and Wildlife (IF&W) Deputy Commissioner Paul Jacques’ appointment restored MITSC to a full complement of nine commissioners. Continuing MITSC members include John Banks and Mark Chavaree, representing the Penobscot Nation, and State appointee Michael Hastings, reappointed to a third term in the spring of 2006.

As noted earlier in this report, long-time MITSC Executive Director Diana Scully resigned on August 12, 2004. She remained under contract to MITSC until October 2006 to provide interim administrative support until the hiring of a executive director and then to orient the new person and assist with the staff transition. MITSC appreciates the many years of excellent service provided by Diana. John Dieffenbacher-Krall assumed the Executive Director position on September 6, 2005. Prior to working for MITSC, John served as the Executive Director of the Maine People’s Alliance and Maine People’s Resource Center.

### **C. Meetings and Other Events**

From April 19, 2003 through June 30, 2006, MITSC held 17 regular meetings, including seven in Augusta, nine at Indian Island, and one in Indian Township. The April 24, 2003 Assembly of Governors and Chiefs was held at Indian Township. Three years later, on May 8, 2006, the Assembly of Governors and Chiefs was held at the Veazie Salmon Club. As a result of a decision made at the May 8 Assembly of Governors and Chiefs, a meeting was held at Indian Island on May 31 to conduct a thorough review of the Maine Implementing Act and to identify other issues for the consideration of an anticipated Tribal-State Work Group (see section IV of this report). MITSC attended a meeting between the Sipayik Criminal Justice Commission and House Speaker John Richardson, Senate President Beth Edmonds, Dept. of Corrections Commissioner Martin Magnusson, state legislators and others on March 21, 2006. The Sipayik Criminal Justice Commission had requested the meeting to report on the abuse of Passamaquoddy individuals in particular and Wabanaki people in general who had contact with the criminal justice system in Maine.

MITSC was privileged to attend several special Tribal and State events in 2005-2006. These included a celebration of PIN Rx, the new discount pharmaceutical program operated by the Penobscot Nation, the signing of contracts between the five Wabanaki Tribal Governments and Citgo for discounted heating oil, the annual Maine State of the State Address, and a celebration of the Citgo/Wabanaki partnership held at Indian Island on March 23, 2006.

### **D. Committees**

In the past, MITSC conducted much of its work through committees, including Child Welfare and Tribal Courts, Economic Basis of Tribal Government, Education, and Natural Resources and Environment. During the past several years, MITSC has not been working through a committee structure, with one exception: The Natural Resources and Environment Committee conducted a conference call on October 28, 2003 to discuss enforcement provisions for MITSC fishing regulations.

### **E. Outreach**

With a new chair and executive director, MITSC leaders invested considerable effort reaching out to Tribal and State leaders and groups concerned with tribal-state relations. John Dieffenbacher-Krall met with Chief Brenda Commander and the Houlton Band of Maliseets Tribal Council in November 2005. In December 2005, John Dieffenbacher-Krall represented MITSC at a Joint Tribal Council Meeting held at Indian Island. Paul Bisulca and John Dieffenbacher-Krall met with four of the five elected Wabanaki Chiefs and Governors on January 12, 2006. Paul Bisulca and John Dieffenbacher-Krall met with the Maliseet elected leadership on January 27, 2006. On March 7, 2006, Paul Bisulca and John Dieffenbacher-Krall met with leaders from Indian Township and Pleasant Point at their respective reservations. They also received a tour of the Indian Township School conducted by former MITSC Commissioner Wayne Newell, and a tour of the Creative Apparel plant led by Donald Soctomah. Paul Bisulca

and John Dieffenbacher-Krall met individually and together with Penobscot Chief James Sappier on several occasions. John Dieffenbacher-Krall met with Gail Dana, Director of the Wabanaki Center, on December 8, 2005.

MITSC Chair Paul Bisulca met with Maine Attorney General Steve Rowe on three occasions, joined in the latter two meetings by John Dieffenbacher-Krall. Paul Bisulca and John Dieffenbacher-Krall met with Governor John Baldacci and his chief legal counsel, Thomas Federle, on January 23, 2006. Later that same day Paul Bisulca and John Dieffenbacher-Krall met with Senate President Beth Edmonds. At the invitation of the Penobscot Nation, Paul Bisulca attended a February 10, 2006 meeting with Dept. of Economic and Community Development Commissioner Jack Cashman, Penobscot Nation Economic and Business Development Advisor Tim Love and others to discuss Penobscot Nation economic development proposals. Paul Bisulca and John Dieffenbacher-Krall conferred with Speaker John Richardson and Senate President Beth Edmonds on May 15 to hear their response to the decision made at the Assembly of Governors and Chiefs to review the Maine Implementing Act.

Upon his hiring as MITSC Executive Director, John Dieffenbacher-Krall began regularly attending meetings of the Episcopal Committee on Indian Relations held at Indian Island. Paul Bisulca addressed the Episcopal group on May 1, 2006. That same day he also met with the Maine Coalition for Tribal Sovereignty.

## **F. Funding**

MITSC finished fiscal year (FY) 2004 (July 1, 2003 to June 30, 2004) with a balance of \$362. During the 2004 fiscal year, MITSC took in \$56,352 and spent \$55,990. In FY 2005 (July 1, 2004 to June 30, 2005), MITSC received \$36,080 from the State of Maine and earned \$30 in interest for a total of \$36,110. It spent \$18,658 with a balance of \$17,814. For the 2006 fiscal year (July 1, 2005 to June 30, 2006), MITSC received \$46,795 and spent \$61,806 for a deficit of \$15,011. Thanks to the rather large sum of money carried over from the previous fiscal year, MITSC finished the fiscal year with a balance of \$2,803.

MITSC faces serious funding challenges. The Passamaquoddy Tribe has not paid its annual assessment since FY 2003. The Penobscot Nation did not pay its assessment in FYs 2004 and 2005. It did pay the \$11,900 assessment for FY 2006. The increasing demands and expectations placed upon MITSC reflect the need for a full-time executive director. The executive director's contracted time fluctuated between 20 and 30 hours per week in FY 2006 depending on the workload and funds available. The State of Maine has provided a gradually decreasing level of support to MITSC for many years. MITSC funding from the State of Maine peaked in FY 2001 at \$38,800 while declining to \$34,277 for FY 2007. MITSC has requested an increase of \$34,000 from the State of Maine for FYs 2008 and 2009. Even with that level of funding from the State MITSC can only afford to contract for 30 hours of executive director time per week assuming both Tribes pay their assessments of \$11,900.



### **III. Tribal-State Relations and Challenges Confronting MITSC**

#### **A. Tribal-State Relations Reach Recent Low Point November 2003**

On November 4, 2003, Maine voters rejected by a two to one margin an initiative question advanced by the Passamaquoddy Tribe and Penobscot Nation to open a casino in Sanford. That same election a question appeared seeking voter approval of racino facilities in Bangor and Scarborough if subsequently approved by local voters. The racino question passed by nearly 30,000 votes. Later, Bangor voters approved operation of a local racino while Scarborough and Westbrook voters rejected it.

The Tribes had placed great hopes in the casino question as a means to raise badly needed revenue and to boost their economic development. Unlike most other Federally Recognized Tribes who can operate casinos under the Indian Gaming Regulatory Act (IGRA), the Passamaquoddy Tribe and Penobscot Nation must seek State of Maine authorization to operate any casino. The reason is due to a provision in the Maine Indian Claims Settlement Act (MICSA) that does not include the Passamaquoddy Tribe and Penobscot Nation in any subsequent Federal law benefiting Tribes unless they are specifically named. IGRA was enacted in 1988, eight years after MICSA, with the Passamaquoddy Tribe and Penobscot Nation excluded from it.

MITSC met two days after the casino vote. At the beginning of the meeting, Wayne Newell, representing the Passamaquoddy Tribe at Motahkmikuk, announced that his Tribal Government had instructed him to inform the other commissioners that it was withdrawing from MITSC. Cliv Dore, representing the Passamaquoddy Tribe at Sipayik, said that his governor and tribal council had given him the same instructions.

John Banks, one of the Penobscot Nation's two representatives on MITSC, stated his Tribe had not discussed the issue of continued participation in MITSC. He expressed his discomfort with proceeding without the Passamaquoddy representatives. John Banks and Mark Chavaree, the other Penobscot representative, then left the room.

Before Cliv Dore departed, Cushman Anthony asked him if the Passamaquoddy decision was based on the November 4 casino vote. He answered "this question is the culmination of many years and many things. Question 3 was not the deciding factor for me."

MITSC could not function with half of its members absent. Tribal leaders privately discussed possible alternatives to MITSC. In 2004, Passamaquoddy Tribal Representative Fred Moore introduced legislation at his government's request to abolish MITSC and replace it with an Intergovernmental Tribal-State Board. The Passamaquoddy Tribe eventually withdrew the legislation in 2006.

## **B. Rebuilding Tribal-State Relations**

Though MITSC became dormant during the remainder of 2003 and initial eight months of 2004, contact and dialogue occurred at various levels between the Tribes and the State of Maine. The Baldacci Administration understood that the November 4 casino vote had angered the Tribes. Governor Baldacci pledged to assist the Tribes with other economic development initiatives not involving gaming. These overtures from Governor Baldacci and his staff helped persuade Tribal leaders of the potential value of the parties discussing issues of mutual interest and working together where possible.

While MITSC did not meet for 10 months, many commissioners were convinced they would have to come together to deal with the statutory authorities vested in MITSC including approval of additions to Tribal land holdings and regulating fishing on waters under MITSC jurisdiction. Either MITSC must continue or its regulatory and other responsibilities must be delegated to another entity or entities.

The Tribes decided to resume participating in MITSC in early 2005. MITSC Commissioners searched for a chair to replace Cushman Anthony who resigned in December 2004. At the March 15, 2005 MITSC meeting, the Commissioners voted to begin a search for a chair and executive director.

## **C. Confidence Building Measures to Strengthen Tribal-State Relations**

MITSC initiated an executive director search in April 2005. Twelve people submitted applications. MITSC offered the position to John Dieffenbacher-Krall, who began on September 6, 2005.

John Dieffenbacher-Krall brings extensive experience working with Wabanaki Tribes, especially the Penobscot Nation, to the executive director role. In addition to his experience working with the Wabanaki, John Dieffenbacher-Krall also possesses a thorough understanding of State Government. He edited the last eight editions of *A Citizen's Guide to the Maine Legislature*, the reference book concerning the Maine Legislature. He has testified and lobbied at the local, county, state and national levels and served as an expert witness on environmental policy questions. His background also includes 21 years of nonprofit management experience, 16 of those years as an executive director.

John Dieffenbacher-Krall's close relationship with several Tribal leaders sensitized him to the importance of MITSC electing an Indian chair of MITSC. No Indian had served as MITSC Chair since the circumscribed role played by Penobscot Nation member Butch Phillips during the early 1980s. Tribal members openly asked why people felt an Indian Chair could not render fair and objective decisions without raising the same concern about the potential bias of previous MITSC Chairs favoring State interests.

During his initial months in the Executive Director position, John Dieffenbacher-Krall made identification and recruitment of a suitable Wabanaki person for the MITSC Chair position a

priority. He worked closely with Tribal leaders to identify potential candidates to approach. Former Penobscot Chief James Sappier played an instrumental role in this work. Paul Bisulca, former Penobscot Nation Tribal Representative during the 117<sup>th</sup> and 118<sup>th</sup> Maine Legislatures, agreed to be considered for the position.

Paul Bisulca was unanimously elected MITSC Chair on December 20, 2005. His West Point education and career military background provide him with skills to attack problems and facilitate resolution of them. MITSC now had its chair and executive director positions filled for the first time since August 2004.

One of Paul Bisulca's initiatives as Chair includes strengthening MITSC's relationship with its constituents and those decision makers primarily affecting Tribal-State relations. As described in Section II.E., Paul Bisulca has made outreach to Tribal and State leaders a priority. MITSC's underfunding has constrained its outreach below the level that would have occurred without that impediment.

#### **D. 2006 Assembly of Governors and Chiefs**

With a growing cautious optimism within Indian Country that the revived MITSC might prove more effective, Commissioners faced a formidable test in helping to create an agenda and fashion a meeting for the 2006 Assembly of Governors and Chiefs that would prove productive and satisfy both Tribal and State interests. Wabanaki leaders expressed dissatisfaction to MITSC that previous assemblies had been mostly ceremonial without substantive discussion of issues of concern to the four Tribes. MITSC faced the challenge of crafting an agenda that allowed the face-to-face dialogue essential to improving Tribal-State relations while also focusing the discussion to advance tribal-state relations in concrete ways.

MITSC began discussing the 2006 Assembly of Governors and Chiefs at its September 21, 2005 meeting. MITSC benefited from the attendance at that meeting of both Passamaquoddy Tribal Governors, Melvin Francis and Robert Newell, and Penobscot Nation Chief James Sappier. Tribal leaders described the Settlement Act as broken. Tribal leaders and MITSC Commissioners agreed the upcoming Assembly should focus on issues concerning the Settlement Act.

Discussion continued regarding the agenda for the Assembly of Governors and Chiefs at the November MITSC meeting. Commissioners thought that the Assembly should be held in the spring early enough to prevent political pressures from the State of Maine June Primary Election from hindering the Assembly. At the December 20, 2005 meeting, John Dieffenbacher-Krall presented a draft framework document designed to coalesce some of the ideas under discussion. This document and issues suggested for discussion became the focus of MITSC work at its January, February, and March 2006 meetings.

Upon his election as Chair, Paul Bisulca quickly devoted himself to consulting with the stakeholders and strategizing about how to have the most successful Assembly outcome possible. He championed the idea that each sovereign have the ability to place items on the Assembly

agenda for discussion. Paul Bisulca also emphasized that any issue placed on the Assembly agenda would receive a fair and thorough discussion. While Paul Bisulca continually advocated the right for any party to identify any issue they wished to discuss, he also forcefully argued for a tight Assembly agenda that primarily focused on the most contentious issues of interpretation involving the Maine Implementing Act. Ultimately, five issues were agreed upon for consideration at the Assembly (see Section IV for issues list).

In discussing the 2006 Assembly of Governors and Chiefs, MITSC carefully considered where to hold the event. Several Commissioners felt strongly about the need to hold it on neutral ground, ideally neither a reservation nor state facility. Commissioners also agreed it should be held in a setting readily accessible yet also conducive to the high-level discussion all Commissioners wanted to occur. MITSC decided the Veazie Salmon Club, with its proximity to Bangor, Interstate 95, and cultural connections for both the Wabanaki and State of Maine due to its proximity to the Penobscot River, would serve as an ideal location.

Another new element introduced at the 2006 Assembly involved MITSC asserting its authority. At previous Assemblies, MITSC had functioned more as a facilitator and guest. In fact, a portion of previous Assemblies sometime included a session solely reserved for the six leaders and their top staff. MITSC was excluded from these discussions. MITSC informed the governmental leaders involved in the 2006 Assembly that MITSC was the convener of the meeting. MITSC took this position consistent with the recommendations contained in the Task Force on Tribal-State Relations which issued its report January 15, 1997.

#### **IV. May 8, 2006 Assembly of Governors and Chiefs**

##### **A. Meeting Setting, Attendance and Moderator Opening Statement**

Thirty-five people attended the Assembly of Governors and Chiefs held May 8, 2006 including the top elected leaders from the six sovereigns, all nine MITSC Commissioners, and many other Tribal and State officials. Paul Bisulca moderated the event. He opened the Assembly with the following statement:

Today's Assembly of Governors and Chiefs is in furtherance of the Maine Indian Tribal-State Commission's responsibility to continually review the effectiveness of the 1980 "Act to Implement the Maine Indian Claims Settlement". This Assembly is intended to improve tribal-state relations and is structured to generally follow procedures outlined in the January 1997 "Final Report of the Task Force on Tribal-State Relations", which was done pursuant to a Resolve of the 117<sup>th</sup> Maine Legislature. As such, the Assembly of Governors and Chiefs provides a forum for the leaders of all Maine Tribes and the Governor of Maine to meet and discuss issues which are of importance to each of the five sovereign governments.

## **B. Significant Decisions**

Three significant decisions were made by the six leaders. One, they agreed to create a group (later to become a work group under Governor Baldacci's Executive Order 19 FY 06/07) consisting of Tribal and State leaders to review portions of the Maine Implementing Act in which the parties have differing interpretations. The intent was to then present the recommendations of the group to the 123<sup>rd</sup> Maine Legislature to consider possible changes to the Maine Implementing Act. Two, the leaders agreed to convene a meeting at Indian Island on May 31, 2006 to conduct a thorough review of the Maine Implementing Act and identify other issues for consideration of the review group to be created. Three, everyone agreed that the possibility of establishing a Tribal College in Maine should be explored. Penobscot Nation Chief James Sappier volunteered to draft a resolution for consideration at the United South and Eastern Tribes meeting October 8 – 12, 2006 stating the Wabanaki Tribes' desire for the location of a Multi-Tribal College campus in Maine.

## **C. Assembly Evaluation**

MITSC had worked hard to ensure that the Assembly of Governors and Chiefs discussed substantive issues in which leaders reached decisions and people were clearly tasked with assignments. The leaders assembled gave the meeting a positive review. Houlton Band of Maliseets Chief Brenda Commander said, "I hope this could happen every year. Communication is extremely important at this and every level." Passamaquoddy Governor Mark Altvater stated, "I am very encouraged about what happened here." Maine Governor John Baldacci remarked, "I appreciated the Chiefs and Governors, Attorney General, Legislative Representatives taking the time to attend today." Yet MITSC fundamentally agrees with Aroostook Band of Micmac Chief William Phillips, who stated "It is always good to meet but the final product is what will be telling."

## **V. Atlantic Salmon Cooperative Agreement**

### **A. Background**

MITSC Commissioner John Banks placed the issue of the expired *Cooperative Agreement between US Fish and Wildlife Service and NOAA Fisheries and the Maine Atlantic Salmon Commission* for consideration at the February 27, 2006 MITSC meeting. The Federal natural resource agencies and the Maine Atlantic Salmon Commission signed the agreement in the late 1990s with it expiring December 31, 2003. It describes how the Federal natural resource agencies and State of Maine will cooperate to manage Atlantic salmon.

The proposed renewal agreement contains a provision, VI.F, that acknowledges the Federal agencies' Federal Trust Responsibilities to Native American Indian Tribes. The Penobscot Nation strongly supports the inclusion of this language in the agreement. The Maine Attorney General's office objects to the inclusion of this language based on its different interpretation of the scope and applicability of Federal Trust Responsibility vis-à-vis the Tribes residing in Maine.

## **B. MITSC Action to Date**

MITSC worked to understand each party's perspective concerning the source or sources of the disagreement. MITSC determined that the Penobscot Nation's and State of Maine's interests were best served by renewal of the agreement. In order to facilitate dialogue and a satisfactory resolution of the matter, MITSC proposed language to Maine Attorney General Steve Rowe in March 2006 that might facilitate an agreement between the parties. Attorney General Steve Rowe responded with a letter dated June 14, 2006 proposing alternative language. As of June 30, 2006, the matter remained unresolved.

## **VII. Other MITSC Activities**

### **A. Passamaquoddy Concerns with Dept. of Corrections, County and Local Law Enforcement**

MITSC Commissioner Donald Soctomah requested MITSC become involved with State of Maine, county and local treatment of Passamaquoddy people who had contact with the criminal justice system. Denise Altvater, Chair, Sipayik Criminal Justice Commission, and Jamie Bissonnette, Director, New England Criminal Justice Program of the American Friends Service Committee, were invited to address the Commissioners on March 21, 2006. Ms. Altvater and Ms. Bissonnette presented sometimes shocking information detailing alleged abuse of Passamaquoddy people in the criminal justice system. Later that day MITSC Executive Director John Dieffenbacher-Krall attended a meeting held in the office of House Speaker John Richardson to discuss the findings of the Sipayik Criminal Justice Commission. In addition to Speaker Richardson, Senate President Beth Edmonds, Passamaquoddy Tribal Representative Fred Moore, Criminal Justice and Public Safety House Chair Patricia Blanchette, Corrections Commissioner Martin Magnusson, and others attended. Commissioner Magnusson pledged to initiate a comprehensive investigation of all the alleged charges presented by the Sipayik Criminal Justice Commission. The investigation was still underway at the conclusion of this reporting period.

MITSC has diligently monitored the progress made by the Dept of Corrections in reporting back to the Sipayik Criminal Justice Commission. It has requested progress reports from Deputy Commissioner Denise Lord to learn the status of the investigation and the other commitments made on March 21, 2006.

### **B. Legislative Matters**

The Penobscot Nation requested MITSC's endorsement for two bills, LD 1807, An Act To Establish the Penobscot Language Preservation Fund in the Department of Education, and LD 1911, An Act To Provide Funding for Tribal Economic Development for the Penobscot Indian Nation and Other Federally Recognized Tribes. Both bills were emergency measures. MITSC Commissioners voted to support both bills.

LD 1807 proposed that the State of Maine support the Penobscot Nation's language preservation efforts with a \$150,000 contribution for two years. The Maine Legislature ultimately approved a one-time appropriation of \$50,000. LD 1911 provided a \$200,000 grant to each Tribal Government to support economic development. This funding request was rejected.

### **C. MITSC Website**

MITSC completed work on a website begun in 2001. It can be viewed at [www.mitsc.org](http://www.mitsc.org). The site features information about MITSC and the nine commissioners, all the settlement acts specifically applicable to Tribes within Maine, and resource links to Tribal and non-Tribal sites.

### **D. Relocation of MITSC Office and Transfer of Records**

The MITSC office that had been based in Hallowell for approximately 20 years was relocated to Hudson in September 2005. On October 1, 2005, a substantial portion of MITSC's records were donated to the Special Collections Department at the Raymond H. Fogler Library, University of Maine, Orono. Anyone wishing to access the records should contact Paige Lilly, Archivist, 581-2665, or Richard Hollinger, Head of Special Collections, 581-1688.

## **VIII. MITSC Plans for Fiscal Year 2006 – 2007 (July 1, 2006 to June 30, 2007)**

### **A. Provide Administrative and Staff Support to Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act and Related Issues**

MITSC will staff the Tribal-State Work Group discussed at the Assembly of Governors and Chiefs held May 8. Governor Baldacci issued the anticipated executive order on July 10, 2006.

### **B. Assist Wabanaki, State of Maine and Other Leaders to Make a Decision on Whether to Pursue Hosting a Campus in Maine as Part of a Multi-Tribal College to Serve Tribes Residing East of the Mississippi River**

MITSC pledges its support to the Penobscot Nation that took responsibility for drafting a resolution on the matter for submission to United South and Eastern Tribes (USET) at the organization's October 2006 annual meeting.

### **C. Resolve Differences Blocking Renewal of Atlantic Salmon Cooperative Agreement**

MITSC will continue promoting dialogue and suggest solutions to achieve a satisfactory solution for renewing an agreement that has gone unsigned for two and half years.

**D. Build Effective Working Relationships with New Tribal and State Leaders Elected in 2006/2007**

Both of the Passamaquoddy Tribe's reservations and the Penobscot Nation will hold elections for their top two elected leaders and their respective Tribal Councils. In addition, the Passamaquoddy Tribe and Penobscot Nation will elect new representatives to the Maine Legislature. MITSC intends to establish strong working relationships with the elected leaders and will strive to visit all of them at their reservations provided sufficient funds are available for travel.

**E. Secure Additional Funding for MITSC**

MITSC faces a budget deficit in fiscal year 2007 (July 1, 2006 – June 30, 2007). MITSC will advocate for increased funding from the State of Maine. In addition, it will continue talking to the Passamaquoddy Tribe to resume its financial support of MITSC. It will also consider exploring Federal support for its activities. MITSC will adjust the contracted hours of the executive director depending on the funds available.

**F. Establish Strong Presence on Any Bills Supported or Opposed by MITSC and Monitor Other Legislation Potentially Affecting Tribal-State Interests during 1<sup>st</sup> Session of the 123<sup>rd</sup> Maine Legislature**

MITSC in part is charged with monitoring the legal relationship between the parties to the Settlement Act. It will closely monitor legislation before the Maine Legislature that could affect any of the parties to the Settlement Act.

**G. Hold Meeting Focused on MITSC Fishery Responsibilities with Tribal, State and Federal Natural Resources Staff and Managers**

MITSC is responsible for promulgating fishing regulations for certain waters under its jurisdiction. Section 6207(3)(c) of MIA states, "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 non-Indian fishing 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 in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State." MITSC has held meetings or workshops in the past to promote understanding of its fisheries responsibilities. Such a meeting has not been held in a number of years. It anticipates holding one in 2007, most likely in the spring.



## **H. Continue Upgrading MITSC Website**

After many years of planning, development and testing, MITSC launched its website in June 2006. MITSC does not have a dedicated staffperson to maintain and upgrade the website. It is one of the duties of the Executive Director. As time and funding permits, MITSC will continue adding content to the site and keeping it current.

## **I. Convert *Wabanaki: A New Dawn* from VHS to DVD Format and Make New Format Available to Interested Parties**

MITSC commissioned a 28 minute documentary in 1989 to inform the general public about the Wabanaki and to serve as a source of pride for Wabanaki people. As the project progressed with the film completed in 1995, *Wabanaki: A New Dawn* also became a recording and reaffirmation of the Wabanaki culture and values. When the film was produced, it was printed in VHS format. The VHS format is slowly becoming obsolete as people increasingly turn to material produced in DVD format. MITSC will explore conversion of *Wabanaki: A New Dawn* to DVD format should it find a means to raise sufficient funds to pay for the conversion that do not come from regular MITSC operating funds.

## Appendix I

August 12, 2004

Dear MITSC Members:

I am writing to let you know that I am resigning as Executive Director of the Maine Indian Tribal-State Commission (MITSC.) After almost 15 years of self-employment as a consultant and your part-time Executive Director, it is time for a change.

I have been offered and have accepted a job as “Continuity of Care Manager” in the newly consolidated Department of Health and Human Services. This is a new position created to address issues relating to the implementation of the AMHI (Augusta Mental Health Institute) Consent Decree. In the late 1980s, when I chaired the Board of Directors of the Maine Advocacy Services (now Maine Disability Rights Center), we voted to bring a class action lawsuit against the State of Maine because several patients had died at AMHI. Thus, it somehow seems right (could this be kismet or karma?) that I now try to help the State reach compliance with the terms of the AMHI Settlement Agreement. In writing this, it occurs to me how ironic it is that I will be involved with another unsettled settlement.

As I resign, I want to make sure you understand how grateful I am that I have been able to work with MITSC for so many years. In spite of the ups and downs on this roller coaster ride of tribal-state relations, I have been intrigued by this work and blessed by the friends and acquaintances I have made. As I said each time MITSC renewed my contract, it has been an honor and a pleasure to work with both MITSC members and the many people who have helped MITSC in its work. Thank you! Woliwon!

Over the years, I have observed some things about tribal-state relations that I would like to share with you. I hope these thoughts are helpful as you think about what tribal-state relations should look like in the future:

- One of the greatest challenges to MITSC, and to tribal-state relations in general, is the fact that the dominant society (including State Government) usually can carry on without thinking about the Wabanaki. The hopes, dreams, contributions, challenges, and worries of the Wabanaki and their Tribal Governments do not even register in the consciousness of the vast majority of individuals and public/private organizations in Maine today. At the same time, the Wabanaki and their Tribal Governments are affected every single day by the decisions and actions of individuals and organizations in the dominant society. So many of these decisions and actions—sometimes purposefully and often unwittingly—are disrespectful, are based on ignorance, and/or impinge on the inherent rights of the Passamaquoddies, Penobscots, Maliseets, and Micmacs to exist as distinct cultures and peoples.
- People in the dominant society and the Wabanaki come from fundamentally different cultures and have fundamentally different views of the world. Each of their governments reflects their particular culture and world view. In spite of

appearances to the contrary, people who work for Tribal Governments see, understand, and communicate things differently from people who work for State Government (and other levels of government in Maine and the U.S.). Because of these dramatically different perspectives, I think it is unlikely that the Tribes and the State ever will agree about the extent to which Wabanaki people and their Tribal Governments are sovereign. However, I hope that some day the State of Maine will understand that the Tribes' pursuit of sovereignty is not just an annoying flexing of tribal muscle, but is inextricably linked to their quest for survival both as peoples and as cultures.

- MITSC has been criticized for being ineffective, because state and/or tribal leaders often disregard its recommendations. I think it is doubtful that MITSC or any other tribal-state entity that might be created in the future will be able to resolve the most central and controversial issues related to sovereignty. It is my theory that when the stakes are really high, neither the State nor the Tribes want to compromise, because they fear that they will have to give up more jurisdiction over something than if that particular issue remains ambiguous or is likely to be resolved in their favor in court.
- From participating in and observing countless MITSC discussions about a broad range of tribal-state issues over the past 15 years, I have learned that respect can bridge the significant differences in perspectives between the State and the Tribes. Respect comes from listening and beginning to understand why something is important to a person with a different view. I have also learned that there can be agreement about some things, even if there cannot be agreement about everything.

It is my hope that people from State Government and people from Tribal Governments will keep talking, keep trying to understand each other, and keep trying to resolve the issues that affect the ability of the Wabanaki to survive and thrive.

Peace,

Diana

## Appendix II

# FRAMEWORK FOR DISCUSSION WABANAKI/STATE OF MAINE LEADERS MEETING **Mutual Freedom, Partnership, and Prosperity: The Social, Economic and Legal Relationship between the Wabanaki Tribes and the State of Maine**

**May 8, 2006**

### **Rationale for meeting**

The approach most likely to enhance tribal-state relations consists of honest, open discussions in which each party to the discussions identifies problems in the relationship and recommends solutions after genuinely listening and attempting to understand each other's point of view. Decision makers entering the process must also be willing to use the power of their offices to work for the approval of any recommended changes with their respective governments.

For tribal-state relations to improve, the sovereign leaders must be willing to commit resources, including their personal time and that of appropriate staff, to support the committee work and other collaboration that will lead to concrete results. A safe space must be created in which the genuine issues causing differences between the parties are fully aired. We should recognize an inherent tension at the outset of the process between those who may wish to focus on less controversial issues that may provide opportunities for quicker resolution and others who want to engage in fundamental underlying issues at the core of the relationship. Neither view is exclusively right or wrong. The parties must be willing to allow themselves to trust in the process and in the individuals assigned to facilitate the process in order for the structured dialogue to work.

An assumption is that all the parties recognize the inherent worth of every other party to the deliberations and benefits from the existence and prosperity of the others. Governor Baldacci unequivocally stated his belief on January 23 that Maine is stronger because of the presence of the four Wabanaki Tribes. Though the Wabanaki people pre-existed the State of Maine by thousands of years, they do benefit from a positive government-to-government relationship with the State.

The MITSC Commissioners have identified five suggested topics for discussion after six months of deliberation and input from Tribal and State leaders. Careful consideration must be given to the order in which these issues are discussed. However, the trust and mutual confidence necessary to produce positive concrete results will not last unless there is a genuine willingness to eventually engage in all of the issues as they are identified by Wabanaki and State leaders.

While every Sovereign's issues must be heard and addressed, we cannot tackle every issue. Our challenge is to identify the most important issues. The set of issues may involve some combination of areas where some collaboration and agreement already exist and areas in which the parties hold strongly divergent points of view.

## **I. Venue for resolution of disputes**

**Problem Statement:** Two of the sovereigns belonging to MITSC have consistently maintained that resolving disputes between the parties in the courts of the third sovereign, the State of Maine, is inherently unjust. An alternative dispute resolution process that could be independent of the judicial system of the State of Maine ought to be evaluated.

## **II. Internal Tribal Matters**

**Problem Statement:** The Tribes perceive a steady diminishment of what constitutes Internal Tribal Matters since enactment of the Settlement Act. Many individuals involved in the original Settlement Act negotiations contend that the status of Internal Tribal Matters as it exists today does not reflect the intent of the agreement signed in 1980. The Tribes want to return to their understanding of the original intent of the Settlement Act regarding the scope of their authority.

## **III. Municipal Language of the Settlement Act**

**Problem Statement:** One of the most contested provisions of the Maine Implementing Act involves the intent providing the Tribes with the powers of municipalities. Tribal negotiators consistently claim this language was introduced to allow the Tribes to seek the same funding opportunities as municipalities (see §6211). State negotiators, fearful of the creation of "a nation within a nation," assert that the municipality language provided comfort to them with a recognizable model subject to control of the State (see §6206 subsection 1 General Powers). Several paper corporations successfully argued that the Tribes are subject to certain responsibilities under the Maine Freedom of Access Act as any Maine municipality (see *Great Northern Paper, Inc. et. al. v. Penobscot Nation et. al.* (2001)). On February 8, 2001 and May 17, 2002, MITSC publicly expressed its view that the Tribal deliberative process is part of "Tribal Government" and therefore an Internal Tribal Matter not subject to state laws applying to municipalities. From a Tribal perspective, attempting to shoehorn Tribal Governments into a municipal government model is a poor cultural and functional fit. Tribal Governments undertake many functions and possess many powers not applicable to municipalities.

#### **IV. Maliseets, Micmacs relationships with MITSC/State of Maine**

**Problem Statement:** Though part of the Maine Indian Claims Settlement Act, the Maliseets were not granted seats on MITSC. The Micmacs obtained federal recognition at a later time and enjoy a different legal status vis-à-vis the State and Federal Government. Tribal-state relations might benefit from having a formal structure in which all four Tribes could belong in order to assert concerns and or issues with the State of Maine and vice versa. One way this might be accomplished is including the Maliseets and Micmacs within MITSC. Recommendation #8 of the At Loggerheads report suggests adding Maliseet and Micmac representatives to MITSC. Another approach may be abolishing MITSC as was proposed in LD 1569 and replacing it with a new entity. The Maliseets and Micmacs must decide if they desire such membership.

#### **V. New England intertribal college feasibility study**

**Problem Statement:** The United South and Eastern Tribes, Inc. (USET) and the New England Board of Higher Education (NEBHE) conducted a year-long feasibility study completed late last year examining the potential of creating a Tribal college more conveniently located for the eastern and southern Tribes. Currently, the only Tribal colleges east of the Mississippi River operate in far northern Michigan. The study was funded by the Office of Minority Health in the U.S. Department of Health and Human Services. It examined the feasibility of establishing an intertribal college initially focused on health sciences, technology and pre-medical education that will serve the Tribes located in the USET region. This new institution could include a physical hub campus with numerous satellite-learning centers located on reservations and in urban Indian centers. The potential exists to have the central hub campus located in Maine. The challenge is how do Tribal and State of Maine leaders work together to realize this opportunity.

#### **VI. Next steps**

**Problem Statement:** A necessary prerequisite for the ultimate success of resolving tribal-state disagreements is a commitment from the five Wabanaki leaders and Governor Baldacci to follow-up work after the spring gathering. Clear steps should be outlined before the event ends Saturday so every person in attendance understands what will be done by whom. One of the surest ways to break trust is to argue about the process for change while engaged in making policy changes. Inevitably, someone will think one of the parties is seeking a negotiating advantage when specific process changes are recommended or attempts are made to clarify the process. All the parties would benefit from having a universally understood and accepted process on how Settlement Act changes are made before initiating the process for such changes. Whatever body or bodies that are created to continue the work identified by the governmental

leaders should have their members identified, who is responsible for staffing them, desired work product specified, and deadlines agreed upon. Interim progress reports with firm reporting dates should also be outlined. A fall target date should be set for completion of the work with the leaders gathering to review and act on it.