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Maine Indian Tribal-State Commission Annual Report 2014-2015

Maine Indian Tribal-State Commission

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Maine Indian Tribal-State Commission Annual Report 2014-2015



A Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2014 – June 30, 2015)

Prepared by

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September 2015

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John Banks

Matt Dana

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Steven Holmes

Joan Nass

H. Roy Partridge

Robert Polchies

Linda Raymond

Brian Reynolds

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I. Executive Summary

In FY 2015, the MITSC attended to internal development and implementation processes. Significant Commission publications produced during FY 2015 included the *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine* published in July 2014 and the *MITSC Annual Report 2013-2014* completed in January 2015.

During the Commission's October 2014 retreat, the MITSC initiated a strategic planning process to assess the Commission's work and to develop a vision statement, guiding principles for its work, and a FY 2016 work plan. The strategic planning process was completed in the spring of 2015.

As a result of the strategic plan, the MITSC developed an implementation plan for the dissemination of the *Saltwater Fisheries Report's* findings and recommendations. Before the legislature convened, the MITSC met with the leaders of the Passamaquoddy Tribal Governments at Motahkmikuk and Sipayik and the Penobscot Nation, attended a joint gathering of all five Wabanaki Tribal Governments, and sent every member of the 127th Maine Legislature the *Saltwater Fisheries Report's* executive summary, findings and recommendations. During the first quarter of 2015, the MITSC met with Governor Paul LePage, Senate President Michael Thibodeau, House Speaker Mark Eves, the committee chairs of five joint standing committees and briefed the entire Judiciary, Marine Resources, Inland Fisheries and Wildlife, and Environment and Natural Resources Committees. In June, Chair Jamie Bissonette Lewey and Commissioner Gail Dana-Sacco presented the *Saltwater Fisheries Report* at the annual meeting of the Native American and Indigenous Studies Association.

The Commission adopted a new approach to the legislative session comprehensively analyzing all bills sponsored by the three Tribal Representatives— Penobscot Tribal Representative Wayne Mitchell; Passamaquoddy Tribal Representative Matt Dana; and Maliseet Tribal Representative Henry Bear, in addition to other bills that could affect the Maine Indian Claims Settlement, tribal-state relations, and/or one or more Tribes. We formed a Legislative Subcommittee charged with initially screening bills of interest and making recommendations to the full Commission on how the MITSC should approach particular bills. It met 14 times. The Commission testified on 11 different bills during the course of the legislative session.

This legislative session was fraught with conflict in tribal-state relations. At the close of this fiscal year, both the Passamaquoddy and the Penobscot Tribal Representatives had left the Maine Legislature. At the present time, all of the Tribes are participating in the MITSC and we close this fiscal year with a renewed commitment to the development of mutually beneficial solutions for all of the people who live within the State of Maine.

II. Introduction

A. Purpose and Organization of This Report

This report summarizes the MITSC's work from July 1, 2014 to June 30, 2015. The MITSC's bylaws specify that an annual report will be transmitted to the State, the Penobscot Indian Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians at the close of each year. In addition, the Commission routinely provides the Aroostook Band of Micmacs Government its *Annual Report* as part of the standard report distribution.

III. Overview of the MITSC

A. Purpose and Responsibilities

The 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 or MIA). The Act specifies the following responsibilities for the MITSC:

- Effectiveness of the Act. Continually review the effectiveness of the Act and the social, economic, and legal relationship between the Houlton Band of Maliseet Indians, 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 Passamaquoddy and Penobscot 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 waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or the MITSC.
- Extended Reservations. Review petitions by the Tribes for designation as an “extended reservation.”

B. MITSC Members and Staff

The MITSC has thirteen members, including six appointed by the State of Maine, two by the Houlton Band of Maliseet Indians, two by the Passamaquoddy Tribe, and two by the Penobscot Indian Nation. The thirteenth member is the chair, who is selected by the twelve appointees. Nine members constitute a quorum. Since September 2011, the Aroostook Band of Micmacs has sent an observer to participate in MITSC meetings. Beginning June 18, 2013, the Micmac Tribal Government designated two official observers, matching the complement of commissioners representing the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation.

In December of 2013, citing a desire to focus locally and directly on issues that impact their Tribe, the Houlton Band of Maliseet Indians gave the MITSC notice that they would no longer

be participating in the MITSC's regular Commission meetings. The Houlton Band of Maliseet Indians has not formally resigned; the appointed Maliseet MITSC Commissioners and Tribal Representative receive all information and the Executive Director calls them regularly to solicit feedback on the MITSC's proposed decision points and potential positions. Linda Raymond, one of the two appointed Maliseet Commissioners, participated in the MITSC Gaming Committee meeting held March 13, 2015. Brian Reynolds, the other appointed Maliseet Commissioner, joined the MITSC Legislative Subcommittee meeting held March 20, 2015 to discuss his assessment of LD 888, An Act To Recognize and Provide for the Right To Hunt for Sustenance in Aroostook County for Maliseet and Micmac Tribal Members.

The MITSC contracts for the services of an Executive Director, the sole paid position for the Commission.

C. Funding

The MITSC finished fiscal year FY 2015 (July 1, 2014 to June 30, 2015) with a balance of \$4,958. During the 2015 fiscal year, the MITSC received \$111,695 and spent \$106,737.

IV. MITSC Activities

Reviewing Effectiveness of the Settlement Act

Distribution & Implementation Plan for the Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine

Early in fiscal year 2015 the MITSC published the *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine* (hereafter referred to as the *Saltwater Fisheries Report*). For a full copy of the report, see http://www.mitsc.org/documents/148_2014-10-2MITSCbook-WEB.pdf). The development and writing of the *Saltwater Fisheries Report* was covered in the Commission's last Annual Report (http://www.mitsc.org/documents/149_2014-12-19MITSCAnnualReportLAYOUT.pdf). Given the significance of the *Saltwater Fisheries Conflict* report's research, findings, and recommendations, the MITSC developed an implementation plan to guide the report's distribution and educate stakeholders about the key findings and recommendations.

During its October 2014 organizational retreat, the full Commission formed a working group to develop an implementation plan for the *Saltwater Fisheries Report*. The working group focused on:

1. Advancing accountability to the MITSC recommendations.
2. Education about compliance with the act, the structure of the Settlement Acts, and the interface with federal Indian law with special attention to:
 - MICSA 25 U.S.C. § 1735 (a) In a conflict the MICSA prevails. (Article of Construction)
 - MICSA 25 U.S.C. § 1725 (e)(1) Provisions to Amend the MIA.
 - MIA 30 M.R.S.A. § 6204 "Laws of the State Apply to Indian Lands"

3. Highlighting ways that Memoranda of Understanding have been used by other states to successfully resolve contested jurisdictional issues.

Commissioners serving on the working group recommended an initial focus of presenting the *Saltwater Fisheries Report* to all Wabanaki Tribal Governments and both State of Maine legislative and administrative leadership. As part of its educational presentation on the *Saltwater Fisheries Report*, the MITSC developed a PowerPoint presentation (Appendix 1). It also advised the Commission to send a letter to each member of the 127th Legislature introducing them to the MITSC and its statutory charge along with the executive summary, findings, and recommendations of the *Saltwater Fisheries Report*. The full Commission approved the working group's suggestions at the December 1, 2014 meeting.

Shortly following the approval of the *Saltwater Fisheries Report* implementation plan the MITSC began meeting with Tribal Governments. MITSC Chair Jamie Bissonette Lewey, Executive Director John Dieffenbacher-Krall, and Penobscot Commissioner Bert Polchies met with Motahkmikuk Chief William Nicholas and Vice-Chief Leslie Nicholas on December 4, 2014. Four days later the MITSC met with Sipayik Chief Fred Moore and Vice-Chief Vera Francis. The same MITSC contingent that participated in the December 4 meeting represented the Commission along with the *Saltwater Fisheries Conflict Report* co-author Gail Dana-Sacco. On December 17, 2014, both Penobscot Commissioners to the MITSC, John Banks and Bert Polchies, along with Jamie Bissonette Lewey, Gail Dana-Sacco, and John Dieffenbacher-Krall met with the Penobscot Nation Tribal Government during a Penobscot Council meeting.

The MITSC was invited to present the *Saltwater Fisheries Report* during a Wabanaki leaders meeting held January 9, 2015. Jamie Bissonette Lewey reviewed the key recommendations from the *Saltwater Fisheries Conflict* report. After its initial presentation, the Commission listened to many comments offered by the gathered Wabanaki leaders.

As the Commission was concluding its initial round of presentations of the *Saltwater Fisheries Conflict* report to Wabanaki Tribal Governments, it sent every member of the 127th Maine Legislature a letter (Appendix 2) describing the MITSC, its statutory charge, a brief history of the Maine Indian Land Claims, information concerning the report, and advice on how to consider bills that might affect tribal-state relations and/or one or more Wabanaki Tribes. Every state legislator received a printed copy of the letter along with the *Saltwater Fisheries Conflict* report's executive summary, findings, and recommendations in her/his legislative post office box. The Commission also emailed the same information to every legislator.

As the legislature reconvened in January, the Commission began meeting with key legislators and legislative committees to present the *Saltwater Fisheries Conflict* report. The Commission met with the legislative chairs of the Judiciary Committee, Veterans and Legal Affairs Committee, Marine Resources Committee, Environment and Natural Resources Committee, and Inland Fisheries and Wildlife Committee. A meeting also took place with the House Chair of the Criminal Justice and Public Safety Committee. Briefings occurred with the entire Judiciary Committee, Marine Resources Committee, Inland Fisheries and Wildlife Committee, and the Environment and Natural Resources Committee. The MITSC met with Senate President Michael Thibodeau on February 24 and Speaker Mark Eves on March 5.

The Commission also formally presented the findings and recommendations contained in the *Saltwater Fisheries Report* to the executive branch of Maine State Government. Meetings took

place with Governor LePage's Chief Legal Counsel, Carlisle McLean, and her successor, Cindy Montgomery, in advance of the Commission discussing the *Saltwater Fisheries Conflict* report with Governor LePage on March 5, 2015.

MITSC NAISA Presentation of the *Assessment of the Intergovernmental Saltwater Fisheries Conflict Between Passamaquoddy and the State of Maine* Report 6/5/15

The Native American and Indigenous Studies Association (NAISA) describes itself as the premiere international and interdisciplinary professional organization for scholars, graduate students, independent researchers, and community members interested in all aspects of Indigenous Studies. Every year it holds an annual meeting. As part of the annual meeting, NAISA invites proposals for scholarly presentations addressing topics connected to Native American and Indigenous Studies. The MITSC proposed and NAISA accepted a presentation on the *Assessment of the Intergovernmental Saltwater Fisheries Conflict Between Passamaquoddy and the State of Maine*. Jamie Bissonette Lewey and Gail Dana-Sacco developed a PowerPoint presentation (Appendix 3) and presented it at the NAISA conference on June 5, 2015. The presentation was well attended and well received.

MITSC Education on Memoranda of Agreement/Memoranda of Understanding

One of the principal recommendations of the MITSC *Saltwater Fisheries Conflict* report suggests the value of Memoranda of Understanding (MOU) to resolve jurisdictional disputes between the State and the Tribes. MOUs and similar cooperative agreements offer practical, working solutions to resolve conflicts without compromising either party's legal position on more fundamental questions of jurisdictional authority. The *Saltwater Fisheries Conflict* report specifically recommends that "a MOU between the tribes and the state should be developed to address unresolved issues regarding the saltwater fishery conflict and it should replace 12 M.R.S.A. § 6302-A."

The Commission actively promoted the use of MOUs throughout its briefings with legislative committee chairs, legislative committees, and legislative leaders during the first quarter of 2015. We informed legislators and their staff about a National Conference of State Legislatures (NCSL)/National Congress of American Indians (NCAI) joint publication *Government to Government Models of Cooperation Between States and Tribes*. Thanks to the generosity of the NCSL the Commission was able to distribute a limited number of the booklets to legislators and staff (<http://www.ncsl.org/research/state-tribal-institute/models-of-cooperation-between-states-and-tribes.aspx>).

The Commission also met with Jerry Reid, Chief of the Natural Resources Division, and Assistant Attorney General Mark Randlett on May 12, 2015 to discuss the benefits of using MOUs to resolve jurisdictional disputes between the State and the Tribes.

Reviewing Effectiveness of the Social, Economic, and Legal Relationship Between the Tribes and the State

Letter to Governor LePage on the Department of Marine Resources Rule-making Process on "Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season Proposed Rule-making" 2/8/15

During the January 28, 2015 Commission meeting, the MITSC discussed the *“Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season Proposed Rule-making.”* The MITSC wrote a letter to Governor LePage highlighting significant problems with the process used to develop “Chapter 32 Eels” including a failure to consult with the Wabanaki Tribes as required under EO 21 FY 11/12 and advancing rulemaking based on a law that the MITSC had cited was in violation of the MICA. The letter (Appendix 4) was finalized and sent to Governor LePage February 8, 2015. Chapter 32 Eels went into effect March 9, 2015.

Creation of Legislative Subcommittee & Institution of Weekly Legislative Meetings

Historically, the MITSC has utilized a number of approaches to evaluate legislation pending before the Maine Legislature and to track bills. At times the Commission has depended on its member governments and individuals connected to those governments, e.g. the Tribal Representatives, to identify bills they wanted MITSC to consider. In other periods, the MITSC has designated a specific meeting usually prior to or early in the legislative session to invite people to present bills for the Commission’s consideration. The Commission had unsatisfactory experiences with these approaches and often found itself receiving late notice about public hearings, which made careful deliberative consideration of the bill in question nearly impossible.

People interacting with the Commission also questioned the criteria that the MITSC used to select bills for consideration and the basis for any Commission position. The Commission had some policies for the evaluation of legislation including an internal rule that no final position would be adopted on any bill when an affected member government was not represented. Nonetheless, the Commission did not possess a defined, mutually agreed upon process for the consideration of legislation.

In preparation for the 127th Legislature, the Commission met with Suzanne Gresser, Revisor of Statutes, and Marion Hylan Barr, Director, Office of Policy and Legal Analysis, to discuss how bills with the potential of affecting the MIA and/or Tribes could be efficiently identified and communicated to the Commission. Though both Ms. Gresser and Ms. Barr shared helpful information, the discussions concluded with no institutional commitment to identify bills with potential MIA or Wabanaki impacts. The Commission learned it would have to undertake its own initiatives to educate legislators and the associated staff.

Beginning in January 2015, the Commission began compiling a weekly list of bills sponsored by the Tribal Representatives and other bills that could affect the MIA, Tribes, and/or tribal-state relations. The Commission formed a Legislative Subcommittee to review bills and to make recommendations to the full Commission on how the MITSC should approach any particular bill.

During the March 25, 2015 meeting, the Commission approved “Suggested process for Commission consideration of legislation” (Appendix 5).

What follows is a list of the bills that the MITSC considered and testified on during the 127th Legislature.

Testimony on LD 239, An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy

In 2013, Passamaquoddy Tribal Representative Madonna Soctomah sponsored LD 140 at

the request of Wabanaki Law Enforcement officials to create a designated seat on the Maine Criminal Justice Academy Board of Trustees for a representative of all five Wabanaki Tribal Governments. The bill passed in the Maine House of Representatives but it was defeated in the State Senate. Passamaquoddy Tribal Representative Matt Dana, one of the law enforcement officials who worked for passage of LD 140 in 2013, reintroduced the bill in 2015. Wabanaki Tribal Governments remained interested in securing a seat on the Maine Criminal Justice Academy Board of Trustees as the Maine Implementing Act (30 MRSA §6210, §§4) requires Passamaquoddy and Penobscot law enforcement personnel to have the same training as non-Indian law enforcement personnel, yet Tribal Governments have no formal input into the training. The MITSC presented testimony in support of the bill at the public hearing held February 25, 2015 (Appendix 6). Again, Representative Dana's bill, LD 239, passed in the Maine House of Representatives but was rejected in the State Senate.

Testimony on LD 270, An Act To Reduce the Annual High-stakes Beano Fee from \$50,000 to \$12,500

The Penobscot Nation began operating a high-stakes bingo operation on Indian Island in 1973. Three decades later Maine voters approved the Maine Slot Machines at Commercial Horse Racetracks Initiative Question 2 that eventually resulted in the Hollywood Casino located in Bangor. The Penobscot Nation proved that their High-Stakes Bingo has been negatively impacted by Hollywood Casino, which is located 13 miles from the Sockalexis Bingo Palace. Representative Wayne Mitchell's bill originally specified a reduction in the annual licensing fee that the Penobscot Nation pays to the State of Maine from \$50,000 to \$12,500. The MITSC testified in support of Representative Mitchell's bill (Appendix 7). Eventually, the bill was amended to reduce the fee to \$25,000 annually. Governor LePage signed it as emergency legislation on April 16, 2015.

Testimony on LD 146, Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Major Substantive Rule of the Department of Environmental Protection

In 2012, the Maine Legislature enacted LD 1853, An Act To Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine. Concerns were raised by both the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs about the potential environmental harm relaxed mining standards could cause. The law required the Maine Department of Environmental Protection (DEP) to submit rules to implement the new statute by January 10, 2014. The MITSC testimony (Appendix 8) emphasized the need for the DEP to consult with the Wabanaki Tribes as required under EO 21 FY 11/12 before the adoption of any amended mining rules. After holding a number of work sessions on LD 146, the Environment and Natural Resources Committee voted ought not to pass on the bill.

Testimony on LD 493, An Act To Create the Ocean Acidification Council

LD 493 would establish an Ocean Acidification Council to advance the recommendations contained in the December 2014 report of the Commission To Study the Effects of Coastal and Ocean Acidification and Its Existing and Potential Effects on Species That Are Commercially

Harvested and Grown Along the Maine Coast. The MITSC testified neither for nor against on the substance of the bill (Appendix 9). The Commission's testimony focused on the benefits of including a Wabanaki representative on the proposed Ocean Acidification Council. LD 493 was held over for future consideration.

Testimony on LR 1852, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017

During its testimony presented to the Appropriations and Financial Affairs Committee on March 17, 2015 (Appendix 10), the MITSC outlined the changes to the MITSC budget development and approval process enacted by the Maine Legislature and approved by the Passamaquoddy Tribe and Penobscot Nation in 2010. The Commission reported on the agreement reached by the member governments in 2013 for each sovereign to increase their support by 25%. The MITSC relayed that all participating Wabanaki Tribal Governments increased their support by 25% for FY 2014 while the State funded the Commission at the same level in FYs 2014 and 2015 that it allocated in FY 2013. In a positive development, the Commission noted the 25% increase in FY 2015 funding Governor LePage had proposed in his supplemental budget bill and the new base State funding amount of \$111,614 for FYs 2016 and 2017. The final approved biennial budget proposes \$111,614 of funding for the MITSC in FYs 2016 and 2017.

Testimony on LD 1262, An Act To Authorize Tribal-state Memoranda in the Eel and Elver Fisheries

A key recommendation of the *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine* suggests "A MOU between the tribes and the state should be developed to address unresolved issues regarding the saltwater fishery conflict and it should replace 12 M.R.S.A. § 6302-A." LD 1262, sponsored by Passamaquoddy Representative Matt Dana, sought to advance the idea that the State and the Tribes should utilize some form of cooperative agreement to resolve contested issues concerning marine resources matters. The MITSC testified in support of LD 1262 at the public hearing held April 27, 2015 (Appendix 11). Eleven Marine Resources Committee members voted ought not to pass on the bill while two favored passage. The full Legislature accepted the ought not to pass report, ending consideration of the bill.

Testimony on LD 800, An Act To Amend the Alewives Restoration Program in the St. Croix River

Two years ago Passamaquoddy Tribal Representative Madonna Soctomah sponsored LD 72, An Act To Open the St. Croix River to River Herring, that removed barriers to river herring passage at the Grand Falls Dam and Woodland Dam on the St. Croix River. LD 800 sought to reinstitute barriers to river herring passage at the Grand Falls Dam. The MITSC opposed the bill (Appendix 12) based on the policy position it adopted on October 17, 2012, "MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed." The Marine Resources Committee voted ought not to pass on LD 800, ending consideration of the bill.

Testimony on LD 1066, An Act To Provide for the Licensing of a Casino Owned by the Maliseet Tribal Government on Tribal Lands in Aroostook County

LD 1066 proposed establishment of a Houlton Band of Maliseets-owned casino authorized to operate slot machines and table games. The Commission's testimony (Appendix 13) focused on the fact that some key circumstances had changed since the *Penobscot Nation v. Stilphen* and *Passamaquoddy v. State of Maine* decisions, in that the State of Maine now permits two Class III gaming facilities when previously such facilities were illegal within Maine. The Veterans and Legal Affairs Committee voted ought not to pass on LD 1066, ending consideration of the bill.

Following that action, the Veterans and Legal Affairs Committee introduced LD 1446, An Act To Authorize a Casino To Benefit Federally Recognized Indian Tribes in the State. The bill proposed a competitive bid process for a casino in either Washington County or Aroostook County designed to maximize economic and employment benefits for the four federally recognized Indian tribes in Maine. It received a divided report from the Committee. The bill passed in the Maine House of Representatives but it was defeated in the Maine Senate.

Testimony on LD 1094, An Act To Improve Tribal-state Relations

LD 1094, introduced by Passamaquoddy Representative Matt Dana, addressed one of the most contested provisions of the MIA. The bill amended wording concerning the municipality language in 30 MRSA §6206, §§1. The Commission did not offer specific comments at the public hearing held May 12, 2015 (Appendix 14) on the proposed changes to §6206, §§1 because Representative Dana was dissatisfied with the printed bill language. He asked the Committee to vote ought not to pass on his bill, stopping consideration of it.

Testimony on LD 893, RESOLUTION, Proposing an Amendment to Article X of the Constitution of Maine Regarding the Publication of Maine Indian Treaty Obligations

Maliseet Representative Henry Bear sponsored LD 893 to require that the text of Article X, Section 5 of the Maine Constitution be included in any printed copies of the Constitution included with the laws of the State. Article X, Section 5 describes Maine's responsibility to "assume and perform all the duties and obligations" of Massachusetts "towards the Indians" "whether the same arise from treaties, or otherwise." In 1875, Maine voters approved a change to the Maine Constitution that prohibited inclusion of the language in future printed versions with the stipulation that the language of Article X, Section 5 of the Constitution remains in effect. The MITSC supported restoring the deleted language to the Maine Constitution (Appendix 15) to ensure anyone reviewing the document can read Article X, Section 5 and know about Maine's "duties and obligations" to the Indians.

While LD 893 appeared to enjoy widespread general support among Judiciary Committee members, a concern was raised about the cost of presenting the proposed change on a Maine ballot. Maine Attorney General Janet Mills also expressed concern about the bill in a May 12, 2015 letter to the Judiciary Committee. The Judiciary Committee dramatically revised LD 893 to change it from a potential amendment to the Maine Constitution to a resolve requiring "that the Secretary of State, Maine State Library and Law and Legislative Reference Library, within

existing resources, shall make the Articles of Separation of Maine from Massachusetts, including the fifth subsection, more prominently available to educators and to the inquiring public.” Governor LePage vetoed the bill. The Maine House and Senate overrode the Governor’s veto on June 30, 2015.

Testimony on LD 268, An Act Regarding the Penobscot Nation’s and Passamaquoddy Tribe’s Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013

As stated in the title of the bill, LD 268 proposes expanding Tribal authority under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013. The bill, sponsored by Penobscot Representative Wayne Mitchell, also amends 30 MRSA §6206, §§3 to transfer jurisdiction over violations of tribal ordinances from the State to the Passamaquoddy Tribe and Penobscot Nation over individuals who are not members of the Tribe or Nation. The MITSC also focused on the crisis of dating, domestic, and sexual violence experienced by Indian women (Appendix 16). The Judiciary Committee decided to hold the bill over for future consideration.

Summary of Bills Introduced by Tribal Representatives

Collectively, the Tribal Representatives to the Maine Legislature—Rep. Wayne Mitchell representing the Penobscot Indian Nation, Rep. Matt Dana representing the Passamaquoddy Tribe, and Rep. Henry Bear representing the Houlton Band of Maliseet Indians—sponsored 20 bills for consideration during the 1st session of the 127th Legislature (2015). Of the 20 bills, 10 were placed in the legislative files effectively ending their consideration. Three bills received divided committee reports, with the majority of committee members voting ought not to pass. Eventually, at least one house of the Maine Legislature accepted the majority ought not to pass report thereby stopping further consideration of the bill. Two bills were held over for consideration during the second session of the 127th. Governor LePage vetoed two bills. In one instance, the veto was overridden and for the other bill the veto was sustained. Three bills were enacted and became law.

Non-Legislative Concerns Acted Upon by the MITSC

MITSC Involvement Ensuring Equal Application of Maine Capitol Mass Gathering/ Demonstration Rules

On April 9, 2015, Penobscot Commissioner Bert Polchies forwarded an email he had received from a Penobscot citizen concerning an interaction with the Maine Capitol Police in connection to a rally outside the Maine State House entrance on April 7. Commissioner Polchies raised concerns about how the organizer was treated and the perception of disparate treatment of Wabanaki drummers as contrasted to others who play musical instruments inside the State House. The Penobscot Commissioners asked the Commission to follow up on the concerns. MITSC Executive Director John Dieffenbacher-Krall contacted Maine Capitol Police Chief Russell Gauvin to obtain all applicable guidelines/regulations concerning events/protests located in and/or around the State House and Cross Office Building. Chief Gauvin promptly

responded to the MITSC request and consented to a meeting with the Commission to discuss what happened on April 7 and how conflict could be avoided in the future. Jamie Bissonette Lewey, Passamaquoddy Tribal Representative and Motahkmikuk Commissioner Matt Dana, and John Dieffenbacher-Krall spoke with Chief Gauvin on April 17. A summary of that meeting was shared with the Penobscot Commissioners (Appendix 17).

MITSC Meetings with the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission 2/25, 5/1

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC) was formed to uncover and acknowledge the truth, create opportunities to heal and learn from that truth, and collaborate to operate the best child welfare system possible for Wabanaki children. As the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC) neared the completion of its work, it requested opportunities to meet with the MITSC to provide updates and to receive feedback. The MITSC met with representatives of the TRC during a regular Commission meeting held February 25, 2015. On May 1, 2015, the MITSC held a meeting exclusively scheduled to receive a presentation about the TRC's draft findings and recommendations.

MITSC Organizational Development/Resources

MITSC October 20 & 21, 2014 Retreat

The MITSC held its fourth consecutive annual retreat on October 20 and 21, 2014 at the Schoodic Institute located in Winter Harbor, Maine. On day one of the retreat, an orientation was conducted for new Commissioners and it functioned as a refresher for Commissioners who had served a longer period. Commissioners then reviewed the *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine* report recommendations and discussed the development of an implementation plan. Day two activities began with the commencement of a MITSC strategic planning process and a regular Commission meeting was held in the afternoon.

MITSC Strategic Planning Process

The Commission initiated a strategic planning process in conjunction with the MITSC retreat held in October 2014. For the first time in the Commission's history, it developed a vision statement and guiding principles (Appendix 18). The Commission has also examined factors for improving and impeding tribal-state relations. In conjunction with the factors discussion, the Commission has identified key individuals/groups/institutions with the power to affect tribal-state relations.

MITSC Outreach

Publication of MITSC Report *Assessment of the Intergovernmental Saltwater Fisheries Conflict Between Passamaquoddy and the State of Maine*

The MITSC released the *Assessment of the Intergovernmental Saltwater Fisheries Conflict Between Passamaquoddy and the State of Maine* on July 11, 2014. To read the entire

report and accompanying addenda, go to http://www.mitsc.org/documents/148_2014-10-2MITSCbook-WEB.pdf.

Publication of *MITSC Annual Report 2013-2014*

The Commission published the *Maine Indian Tribal-State Commission Annual Report 2013-2014* on December 19, 2014. It can be found on the MITSC website at http://www.mitsc.org/documents/149_2014-12-19MITSCAnnualReportLAYOUT.pdf.

MITSC News Releases/Media Assistance

The Commission collaborated with the American Friends Service Committee (AFSC) to issue a news release (Appendix 19) highlighting George Soctomah Neptune's selection to attend the 14th World Summit of Nobel Peace Laureates: Global Youth Indaba in Cape Town, South Africa October 11 – 16, 2014. Media outlets that picked up the story included the Associated Press, Indian Country Today Media Network, the Bangor Daily News, The Quoddy Tides, and WMTW-TV.

In June 2015, MITSC Commissioner John Banks achieved the distinction of becoming the first Indigenous person to serve as a member of the US delegation to the North Atlantic Salmon Conservation Organization (NASCO). The Commission issued a news release (Appendix 20) touting this historic accomplishment. Daniel Morris, head of the US delegation to NASCO and Deputy Regional Administrator, Greater Atlantic Region, for the National Oceanic and Atmospheric Administration (NOAA) Fisheries, remarked about John Banks' participation,

“Mr. Banks’ perspective was a critical part of the positions the US delegation took into the meeting. He described and celebrated the accomplishments of the Penobscot Trust with technical precision while also taking the time to explain why recovery of Atlantic salmon is so important to the Penobscot Nation. By forgoing a sustenance fishery since 1989, the Penobscot Nation has set a compelling example of the sacrifice that all the NASCO parties might have to make to enable the protection and recovery of Atlantic salmon. It was a real pleasure and education to have John on the team.”

MITSC Commissioners’ Meetings with Their Respective Appointing Governments

During the last quarter of the MITSC fiscal year (April 1 – June 30, 2015), tribal-state relations became increasingly strained. On April 16, 2015, Governor LePage rescinded his Executive Order 21 FY 11/12, An Order Recognizing the Special Relationship Between the State of Maine and Sovereign Native American Tribes Located Within the State of Maine (Appendix 21). He replaced it with Executive Order 2015-006, An Order Respecting Joint Sovereignty and Interdependence (Appendix 22). The Commission was not briefed on Governor LePage's action.

As the rescission of EO 21 FY 11/12 and other events unfolded, the need to listen to and to understand executive leaders' rationale for taking certain actions became increasingly important. On April 24, 2015, the Wabanaki Commissioners representing the Passamaquoddy and Penobscot Governments, Matt Dana, Steve Holmes, John Banks, and Bert Polchies, attended a meeting of Wabanaki leaders to listen to their concerns and contemplated actions. MITSC State Commissioners met with Governor LePage May 11, 2015. To our knowledge, the May 11, 2015

meeting was the first time State Commissioners met with the chief executive of Maine as a group without the other Commissioners or Executive Director. On May 26 the Passamaquoddy and Penobscot representatives walked out of the State Legislature.

Participation in the 4th Annual Tribal Career Expo 5/27-5/28/15

For a fourth consecutive year, the Passamaquoddy Tribe and Maine Indian Education organized the Tribal Career Expo held at the Wabanaki Culture Center in Calais, Maine. The Tribal Career Expo offers to junior high, high school, and college students the opportunity to interact with professionals, and aims to promote positive and lively conversations regarding career fields, training, and higher education. MITSC Executive Director John Dieffenbacher-Krall represented the Commission during the second day of the two-day event staffing a table and fielding questions from dozens of Wabanaki youth about the MITSC.

Assessment of the Intergovernmental Saltwater Fisheries Conflict Between Passamaquoddy and the State of Maine



MITSC SPECIAL REPORT 2014/1

why did the mitsc choose to examine the saltwater fisheries?

The MITSC has a unique responsibility to look at the Tribal-State relationship relative to the Settlement Acts and we were charged in LD 2145 to examine this issue.

Just like many conflicts over natural resource management, the conflict between the Passamaquoddy and the State over the saltwater fishery is long-standing and pervasive.

The MITSC has a commitment to develop a cooperative problem solving relationship between the Tribes and the State.



Relevant areas of the settlement acts examined

- MICSA 25 U.S.C. § 1735 (a) In a conflict the MICSA prevails.
- MICSA 25 U.S.C. § 1725 (e)(1) Provisions to Amend the MIA.
- MIA 30 M.R.S.A. § 6204 “Laws of the State Apply to Indian Lands”

timeline of the conflict

- 1980: The MIA and MICSA are passed.
- 1984: The Passamaquoddy bring saltwater conflicts to the MITSC.
- 1994: First Passamaquoddy arrested for fishing without a state license and the Passamaquoddy come to the MITSC.
- 1997: Task Force on Tribal-State Relations Acknowledges the saltwater fishery conflict and LD 273 is passed.
- 1998: Judge Romei rules in *State v. Beal* and Amendment “A” to LD 2145 is passed including the “blow-up” clause.
- 2013: LD 451 further constricts Passamaquoddy management of the saltwater fishery.
- 2014: LD 1625 and LD 1723 further amend the law



Key recommendations

- The Article of Construction must be applied by all parties.
- The statutory process to amend the MIA must be followed by all parties.
- Where the Tribal-State jurisdictional relationship remains contested, the Tribes and the State should execute Memoranda of Understanding.
- The OAG, the Tribes and the MITSC should routinely review proposed legislation that could be considered a potential amendment to the Settlement Agreement.
- The Judiciary Committee should consider the development of reporting standards for the OAG when reviewing any aspect of the MIA or MICSA.
- All parties to the Settlement Agreements should engage in pragmatic and constructive dialogue.
- The MITSC must be fully resourced to carry out its role.



we conclude that open dialogue, negotiations, and formal agreements are mechanisms that are both pragmatic and constructive.



Maine Indian Tribal-State Commission

January 7, 2015

Jamie Bissonette Lewey
John Banks
Matt Dana
Gail Dana-Sacco
Vera Francis
Richard Gould
Joan Nass
H. Roy Partridge
Robert Polchies
Linda Raymond
Brian Reynolds

Dear Member of the 127th Legislature:

Congratulations on your election to the Maine Legislature. The Maine Indian Tribal-State Commission (MITSC) wishes you well as you represent your constituents and all of the people who reside in Maine.

We write to familiarize you with the MITSC and the role it plays in reviewing all actions that affect the implementation of Maine Indian Claims Settlement Acts and to highlight some important considerations should you decide to introduce or co-sponsor legislation that may affect the Maine Indian Claims Settlement Acts; any individual Wabanaki Tribe or the Tribes collectively; and/or tribal-state relations.

The MITSC was created and charged by the Maine Implementing Act (MIA) (30 MRSA §6212) to:

Continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

The MITSC consists of an equal number of representatives from the State and the Tribes with those twelve Commissioners electing a Chair. The Commission was purposefully designed to have equal numbers of tribal and state appointed commissioners. We are the only entity under state or federal law specifically charged with reviewing the effectiveness of the MIA and offering recommendations when differences of interpretation concerning the Settlement Acts arise.

In 1980, the State of Maine and the United States settled a lawsuit filed by the Federal Government on behalf of the Passamaquoddy Tribe and Penobscot Nation in which the Tribes sought to regain control of approximately 12.5 million acres of their ancestral territory. Although not part of the original lawsuit, the Houlton Band of Maliseet Indians became involved in the latter stages of the multi-year negotiations. Two laws resulted from these claims: the Maine Implementing Act (30 MRSA §6201) and the Maine Indian Claims Settlement Act (25 USCS § 1721).

The Maine Implementing Act (MIA) was enacted in April 1980. It lays out the jurisdictional framework delineating how the Tribes and the State relate to one another on a government-to-government basis. Under the US Constitution (Article I, Section 8, Clause 3), the Federal Government alone possesses the primary authority to engage in relations with Indian Tribes so it was necessary to pass a federal law that would allow for the MIA to take effect. In October of 1980, the federal Maine Indian Claims Settlement Act (MICSA) was passed, thus ratifying the state MIA. The MICSA specifies that when any conflicts between the State and Federal Acts arise the parties should defer to the provisions of the federal act.

John Dieffenbacher-Krall
Executive Director
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Stillwater, ME 04489
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mitsced@roadrunner.com

The MICSA delegated advance authority to amend the MIA, and delineated a specific process to do so. The amendment process requires the mutual consent of the Passamaquoddy Tribe, Penobscot Nation, and State of Maine. This is the only area of Maine law where the Maine Legislature shares its legislative power with other governments.

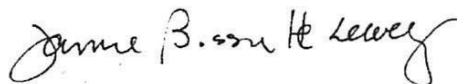
Beyond the specific statutory provisions of MIA, the Tribes retain reserved rights, not specifically delineated in the MIA or MICSA, but fully articulated under the extensive canon of federal Indian common law. The status of these reserved rights and how the MIA and MICSA should apply to them remains a politically and judicially contested area between the parties.

Legislative proposals to amend the MIA or legislate in the area of reserved rights require proper consultation, acknowledgement of the powers of all the governments involved, and a climate conducive to achieving mutually acceptable solutions. The MITSC has recently published a report, *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine*, documenting how these issues emerged in the saltwater fishery conflict between the Passamaquoddy Tribe and the State of Maine. (http://www.mitsc.org/documents/148_2014-10-2MITSCbook-WEB.pdf) The executive summary, findings and recommendations are included for your review.

Should you decide to introduce or co-sponsor legislation potentially affecting the MIA; one or more of the Wabanaki Tribes within Maine (the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, or Penobscot Indian Nation); and/or dealing with contested areas of jurisdiction between the Tribes and the State, you may wish to avail yourself of the resources available from the MITSC; the Tribal Representatives to the Maine Legislature: Representative Bear, Representative Dana, and Representative Mitchell; and the Office of the Attorney General (OAG). The Tribal Representatives serve as the official representatives of their governments and can respond to how potential laws may affect their particular Tribe. After 35 years of experience examining the settlement acts, the MITSC is well prepared to offer in-depth analysis jointly developed by tribal and state appointed commissioners. The OAG is responsible for advising the legislative and executive branches of State Government on matters of law.

We recognize that you will deal with hundreds of bills during the 127th Legislature involving dozens of discrete subjects and issues. We offer our expertise and experience to assist you in carrying out a very demanding job. Please contact our Executive Director John Dieffenbacher-Krall at mitsced@roadrunner.com or 817-3799 if you have a question or seek some information related to the Settlement Act.

Sincerely yours,



Jamie Bissonette Lewey
Chair
Maine Indian Tribal-State Commission

**Assessment of
the
Intergovernmental
Saltwater
Fisheries Conflict
Between
Passamaquoddy
and the State of
Maine**

Maine Indian Tribal State
Commission
2014



D. Soctomah photo

**Maine Indian Tribal State Commission
(MITSC)**

Intergovernmental organization created in 1980 to:

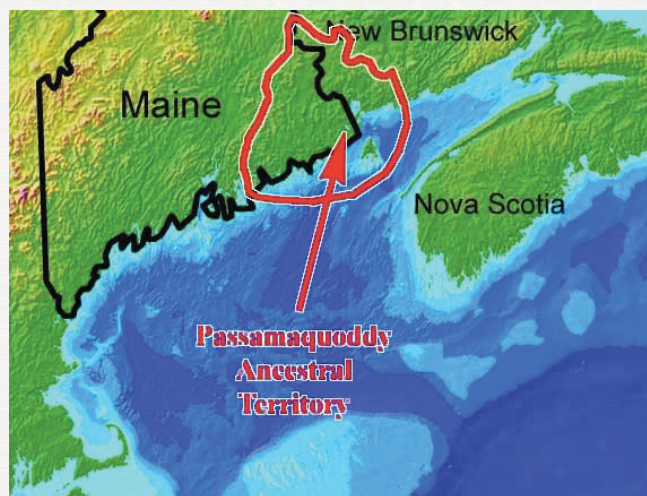
***Continually review the effectiveness of the Maine
Indian (Land) Claims Settlement Act and the social,
economic and legal relationship between the Houlton
Band of Maliseet Indians, Passamaquoddy Tribe, the
Penobscot Indian Nation and the State***

Principal co-authors:

Jamie Bisonette-Lewey, DD - Chair;
Gail Dana-Sacco PhD, MPH – former commissioner

Scope and Implications

- Scope of the report:
 - emergence of the conflict soon after land claims settlement legislation
 - attempts to resolve saltwater fisheries issues
 - criminal prosecution and litigation
 - legislation – tribal and state
 - findings and recommendations
- Implications for Passamaquoddy, Wabanaki, and other indigenous peoples



www.wabanaki.com

Maine Indian (Land) Claims Settlement Acts



- Culmination of 12.5 million acre land dispute
- Federal and State legislation – MISCA and MIA
- Establishes complex jurisdictional parameters

Cultural Distinctions and Opposing Interpretations

- Pskudmookudeag responsibility for the fishery
- Passamaquoddy stand on reserved aboriginal treaty rights
- Federal law recognizes retained aboriginal rights (MISCA)
- State of Maine recognizes only the rights specified in the state settlement act (MIA)

Important provisions of the legislation

Federal - MISCA

- Federal law supersedes state law
- Reserved treaty rights acknowledged
- Amendment provisions established
- New federal Indian law enacted for the benefit of Indians that would affect or preempt state law does not apply unless specifically enacted for Maine tribes (1735B)

State - MIA

- State law generally applies except as specified in the MIA (6204)
- MITSC to continually assess and recommend

State response

- State legislation in 1998 created a definition of sustenance that was not included in MISCA and overrides provisions for tribal participation in any amendments to settlement acts
- Criminal prosecution and litigation
- Additional saltwater fisheries legislation and rulemaking in 2013 and 2014 and 2015, passed without tribal approval or consent

Select Findings

- Good faith negotiations by the tribe and the executive
- Important responsibilities of the Office of the Attorney General to the legislature and all of the citizens of the State
- Widespread lack of knowledge about political and legal status of tribes affects relationship
- Deeper understanding and respect needed to resolve issues

Key recommendations

- All parties must adhere to provisions of federal MICSA
- Commit to good faith negotiations at the highest level to develop intergovernmental agreements.
- Structural and procedural changes in the Maine state legislature the Office of the Attorney General and the MITSC

Identifying Solutions

We conclude that open dialogue, negotiations, and formal agreements are mechanisms that are both pragmatic and constructive.

We offer this report with sincere hope for a renewed commitment to advance conflict resolution among all of the people who live within the State of Maine.



Implications for Tribal-State Relations

- Cultural conflicts about tribal responsibilities to the fishery and the people
- Deep rooted institutional practices that reinforce state authority
- Competition over control of and access to diminishing natural resources
- Impact on tribal health, culture and lives



Since the report was filed... the State has retreated from the Tribal-State relationship by rescinding policy and introducing retrogressive legislation

Tribal leaders confused by LePage's reversal on state relations



BDN (06-04-2014)

Since the report was filed...the federal government has intervened on behalf of the tribes in regulatory procedures

Feds want to take Penobscots' side in suit over river rights

By: NAOMI SCHALIT AND JOHN CHRISTIE @MAINE CENTER FOR PUBLIC INTEREST REPORTING | August 21, 2013

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UPDATE, MARCH 24, 2014:

PORTLAND, Maine - A U.S. District Court judge is allowing the federal government to join the Penobscot Indian Nation in its [lawsuit](#) against the state over fishing and hunting rights on their ancestral river.

In his Feb. 7 [ruling](#), U.S. District Court Judge George Singal wrote, "the Court believes that the United States has a unique interest in this case."

That interest, wrote Singal, stemmed from "the inevitable interaction between federal administrative agencies and any government or sovereign that might regulate activities on the Penobscot River."

Since the report was filed...the tribes have called for a federal inquiry and restructuring of the diplomatic relationship

Tribes withdraw from Maine Legislature

Next 1 of 5



Christopher Cousins | BDN

Members of Maine's Native American tribes rallied outside the State House on Tuesday, May 26, 2015, after tribal representatives in the House of Representatives resigned from their seats over conflicts with state government and Gov. Paul LePage. *Bur Photo*

BDN (05-26-2015)





Maine Indian Tribal-State Commission

Jamie Bissonette Lewey
John Banks
Matt Dana
Gail Dana-Sacco
Vera Francis
Richard Gould
Joan Nass
H. Roy Partridge
Robert Polchies
Linda Raymond
Brian Reynolds

February 8, 2015

Governor Paul R. LePage
1 State House Station
Augusta, ME 04333

**Re: Department of Marine Resources rule-making process on "Chapter 32 Eels.
Requirements for 2015 Elver Harvesting Season Proposed Rule-making."**

Dear Governor LePage:

The Maine Indian Tribal-State Commission (MITSC) writes concerning the rule-making process and the proposed rules developed by the Department of Marine Resources (DMR) entitled, "Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season Proposed Rule-making." Our commitment to advance mutually beneficial solutions to conflicts between the State of Maine and the federally recognized Indian Tribes in Maine through consultation and the use of negotiated cooperative agreements remains steadfast.

On January 28, 2015, the Commission considered "Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season Proposed Rule-making." Two MITSC Commissioners, Passamaquoddy Tribal Representative Matt Dana, and John Banks, one of the two Penobscot representatives serving on the Commission, reported they were unaware of any consultation with either Tribe regarding the proposed rules regarding Chapter 32 Eels.

Your Executive Order 21 FY 11/12 requires "every Department and Agency of State Government" to "implement a policy" that "Enables the Tribes to provide meaningful and timely input into the development of legislation, rules, and policies proposed by the State agency on matters that significantly or uniquely affect those Tribes." Chapter 32 Eels significantly affects both Passamaquoddy and Penobscot interests thus providing the impetus for meaningful participation in the rule-making process.

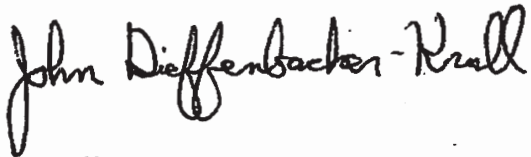
In the 2014 *Assessment of the Intergovernmental Saltwater Fisheries Conflict between Passamaquoddy and the State of Maine* we clearly articulated how Chapter 32 results from a contravention of the amendment provisions of the Maine Indian Claims Settlement Act. Accordingly, we urge scrupulous caution and adherence to both the letter and the spirit of the settlement acts and the EO 21 FY 11/12.

John Dieffenbacher-Krall
Executive Director
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(207) 817-3799
mitsced@roadrunner.com

We urge you to direct the DMR to comply with EO 21 FY 11/12 and to consult specifically with all of the federally recognized Indian Tribes in Maine, in advance of the DMR's scheduled public hearings on February 9 and 10. Should your administration and the respective Tribal Governments find you cannot effectively complete the consultation before February 9, we recommend that the DMR suspend the rulemaking process insofar as the rules affect the Wabanaki Tribes until that consultation is complete.

We thank you for your dedication to improving tribal-state relations and your consideration of our remarks.

Sincerely,

A handwritten signature in black ink that reads "John Dieffenbacher-Krall". The signature is written in a cursive, flowing style.

John Dieffenbacher-Krall, Executive Director
On Behalf of the Maine Indian Tribal-State Commission

cc: Patrick Keliher
Cindy Montgomery, Esq
Marine Resources Committee
Craig Nale

Suggested process for Commission consideration of legislation

approved at the 3/25/15 Commission meeting

Throughout the Legislative Session the Legislative Working Sub-Committee will meet weekly to review legislation. All notes will be shared with the full Commission.

1. Only bills that have text will be considered.
2. If the sub-committee decides that a bill should be testified on, that testimony will be built on previous MITSC positions:
 1. Alewife Position
 2. Saltwater Fishery Report
 3. Letters To Anaya
3. Additionally, the Commission will draw the Legislative Committee's attention to relevant documents or legislation:
 1. MIA
 2. MICSA
 3. DOI Letter on water quality and protected Aboriginal sustenance fishing rights.
 4. LePage Executive Order on Tribal Consultation
 5. HP 1681 Joint Resolution in Support of the United Nations Declaration on the Rights of Indigenous Peoples
4. If legislation arises that needs a fuller discussion within the MITSC, the subcommittee will:
 1. Put together a specific working group
 2. Gather relevant documentation
 3. Initiate examination of the data and the Acts to establish a full MITSC position
5. If the bill goes to hearing before this process is completed, the MITSC will:
 1. Testify stating that this piece of legislation is under examination by the MITSC
 2. Report on the documents being examined
 3. Request participation in the work group based on the importance of the MITSC testimony
6. Proposed testimony involving previous MITSC positions 2-3 will be circulated within the Commission for commentary at least two full days before the hearing. If this is impossible, and the Subcommittee decides that MITSC testimony is necessary, a meeting will be arranged with the Chairs, preliminary information will be shared and a request for time in the work session to testify will be placed.

**Testimony of John Dieffenbacher-Krall, Executive Director,
Maine Indian Tribal-State Commission (MITSC), in support of
LD 239, An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of
Trustees of the Maine Criminal Justice Academy
February 25, 2015**

Senator Rosen, Representative Fowle, and members of the Joint Standing Committee on Criminal Justice and Public Safety; my name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony on behalf of the MITSC.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Thank you for the opportunity to express the MITSC’s support for LD 239 An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy.

Overall, the MITSC recommends inclusion of designated seats on state governing and oversight bodies for Wabanaki representatives to strengthen tribal-state relations and to benefit the particular body by incorporating the unique, practical knowledge that the Wabanaki possess.

Under the Maine Implementing Act (30 MRSA §6210 §§4), all law enforcement officers appointed by the Passamaquoddy Tribe and Penobscot Nation must undergo the same training requirements as law enforcement officers serving non-tribal governments. Therefore, every Passamaquoddy and Penobscot law enforcement candidate attends the Maine Criminal Justice Academy, yet the Wabanaki Tribes have no direct voice in development and implementation of the curriculum, and no formal participation in its governance.

The MITSC is very aware of the extensive and excellent cooperation that takes place between tribal and non-tribal law enforcement within the State embodied in several memoranda of understanding and other cooperative agreements. Creating a seat for Wabanaki Tribal Governments on the Maine Criminal Justice Academy would underscore the importance of the regular joint work done in the field.

During 2013 when this same legislation was considered, it was inferred that Wabanaki Tribal Governments were special interest groups. Wabanaki Tribal Governments are not a special interest group. The State of Maine and the United States have explicitly recognized the sovereign status of the federally recognized Indian Tribes in Maine in the Maine Implementing Act and in the subsequent Executive Orders issued in 2010 and 2011. Because the Tribes are sovereigns and because of the unique role law enforcement plays in service and protection of their communities, the MITSC supports direct Wabanaki representation in the governing body of the Maine Criminal Justice Academy. This direct participation by Wabanaki criminal justice experts can only strengthen the Criminal Justice Academy and lead to the development of mutually beneficial solutions for all citizens in the State.

**Testimony of John Dieffenbacher-Krall, Executive Director,
Maine Indian Tribal-State Commission (MITSC),
on
LD 270, An Act To Reduce the Annual High-stakes Beano Fee from \$50,000 to \$12,500
February 25, 2015**

Senator Cyrway, Representative Luchini, and members of the Joint Standing Committee on Veterans and Legal Affairs; my name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony on behalf of the MITSC.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Thank you for the opportunity to testify on LD 270, An Act To Reduce the Annual High-stakes Beano Fee from \$50,000 to \$12,500.

The Penobscot Nation established the Penobscot High Stakes Bingo operation in 1973. It developed this gaming operation to create jobs and to generate revenue for vital governmental services. Three decades after the Penobscot Nation established its successful gaming operation Maine voters approved Question 2 that led to the development of Hollywood Casino.

Hollywood Casino operates approximately 13 miles from the Sockalexis Bingo Palace. It has had a negative impact on the Penobscot High Stakes Bingo. LD 270 represents a modest proposal to reduce the licensing fee paid by the Penobscot Nation to the State of Maine from \$50,000 to \$12,500. The MITSC believes the license fee reduction proposed in LD 270 is warranted and deserves your support.

**Testimony of John Dieffenbacher-Krall, Executive Director,
Maine Indian Tribal-State Commission (MITSC),
on
LD146, Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral
Exploration, Advanced Exploration and Mining, a Major Substantive Rule of the
Department of Environmental Protection
February 25, 2015**

Senator Saviello, Representative Welsh, and members of the Joint Standing Committee on the Environment and Natural Resources; my name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony on behalf of the MITSC.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Thank you for the opportunity to testify on LD 146, Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Major Substantive Rule of the Department of Environmental Protection.

Wabanaki Peoples’ ability to fish, hunt, trap, and gather food and medicines sustained them for thousands of year. Many Wabanaki individuals and their families continue to rely on sustenance harvesting practices to meet their dietary, medicinal, and spiritual needs. The Maine Implementing Act (30 MRSA §6201 - §6214) explicitly protects Passamaquoddy and Penobscot sustenance fishing (§6207, §§4). Recently, Department of the Interior Solicitor Hilary Tompkins affirmed the sustenance fishing rights of all the Wabanaki Tribes in Maine (see 1/30/15 letter from Hilary Tompkins, Solicitor, US Dept. of Interior, to Avi Garbow, General Counsel, US EPA). In order for Wabanaki People to continue to conduct these ancient harvesting practices, they require healthy animal and plant populations free from toxic contamination.

The environmental and public health risks posed by metallic mining are well documented. Before any mining rules are adopted, Maine State Government should consult with the Wabanaki Tribes as required under Executive Orders issued by Governor Baldacci and Governor LePage (EO 21 FY 11/12). Effective consultation can strengthen tribal-state relations and preempt conflict between the governments.

**Testimony of John Dieffenbacher-Krall, Executive Director,
Maine Indian Tribal-State Commission (MITSC), in support on
LD 493, An Act To Create the Ocean Acidification Council
March 11, 2015**

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources; my name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony neither for nor against on LD 493, An Act To Create the Ocean Acidification Council, to share the general MITSC position on the benefits of creating designated Wabanaki seats whenever State advisory/governing/oversight bodies are created.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Thank you for the opportunity to offer the MITSC’s perspective on this legislation.

Whenever the State of Maine creates advisory, governing and oversight bodies that could impact interests of the Wabanaki Tribes in Maine the MITSC recommends inclusion of designated seats for Wabanaki representatives to strengthen tribal-state relations and to benefit the particular body by incorporating the unique, practical knowledge that the Wabanaki possess. All of the Wabanaki Tribes have a deep historical and ongoing connection to marine resources. As you know, one of the Passamaquoddy home communities, Sipayik, encompasses a coastal area. The Wabanaki possess knowledge, experiences and a history no other People can offer to advance the purpose of the proposed Ocean Acidification Council. We strongly recommend that the legislation be amended to include a seat for a Wabanaki representative on the Ocean Acidification Council.

Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), on LR 1852, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017

March 17, 2015

Senator Hamper, Representative Rotundo, and honorable members of the Joint Standing Committee on Appropriations and Financial Affairs; and Senator Burns, Representative Hobbins, and honorable members of the Joint Standing Committee on Judiciary. My name is John Dieffenbacher-Krall. I serve as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I appear today to speak on the State of Maine proposed allocations to the MITSC as stated in the biennial budget for FY 2016 and FY 2017. I thank you for the opportunity to come before you today.

The MITSC is an intergovernmental body formed by statute (30 MRS §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” The Maine Implementing Act represents Maine’s codification of the legal settlement it reached in 1980 with the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation that took effect upon Congressional passage of the Maine Indian Claims Settlement Act. This settlement resolved a land claim initiated by the Passamaquoddy Tribe and Penobscot Nation in 1972 and later joined by the Houlton Band of Maliseet Indians.

In addition to the Commission’s charge to “continually review the effectiveness of this Act” and “the social, economic and legal relationship” between three of the Wabanaki Tribes and the State, it exercises regulatory authority over certain waters within Indian authority; makes recommendations about fish and wildlife management policies on non-Indian lands to protect fish and wildlife stocks on lands and waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or the MITSC; offers recommendations about the acquisition of certain lands to be included in Passamaquoddy and Penobscot Indian Territory; and reviews petitions by the Tribes for designation as an “extended reservation.”

In 2010, the Legislature and the Maliseet, Passamaquoddy, and Penobscot Tribal Governments approved important changes to the budget process for the MITSC that better reflect the MITSC’s unique status as an intergovernmental body. Title 30, § 6212, §§6 describes the MITSC budget process. “The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the” Maliseets, Passamaquoddies, and Penobscots “shall communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding.” The governments that comprise the Commission have not yet held that meeting for this budget cycle. While all the governments are committed to the statutory specified budget process, finding an appropriate time to hold this meeting that harmonizes all the election cycles of the respective governments has proven challenging.

Two years ago, the representatives of the member governments agreed that the Commission should have funding sufficient to support a full-time Executive Director. All four Wabanaki Tribal Governments pledged to increase their voluntary support of the MITSC by 25% for FYs 2014 and 2015 in order to help achieve that goal. Representatives from Governor LePage's office welcomed the pledge of increased support from the Tribes, but they expressed uncertainty about what the State could do given its overall financial situation. The Commission received the 25% increase in support from all participating Wabanaki Tribal Governments in FY 2014 and they remain committed to that increase in FY 2015. The State funded the Commission at the same levels in FYs 2014 and 2015 as FY 2014, \$89,114. We appreciated Governor LePage's commitment to match the initiative of the Tribes by proposing a 25% in the State's allocation to MITSC for FY 2015 as proposed in LD 234. In addition, Governor LePage has proposed retaining that increased funding level in FYs 2016 and 2017, amounting to \$111,614 per year.

The Commission stands ready to assist and to support the participating governments to hold the budget discussions required in 30 MRS, § 6212, §§ 6. Again, I thank you for your consideration of these remarks and for your continued support of the valuable work of advancing open dialogue and mutually beneficial solutions between the State of Maine and the federally recognized Indian Tribes in Maine.

**Testimony of the
Maine Indian Tribal-State Commission (MITSC), in support of
LD 1262, An Act To Authorize Tribal-state Memoranda in the Eel and Elver Fisheries
April 27, 2015**

Good Morning, Senator Baker, Representative Kumiega, Representative Dana and members of the Joint Standing Committee on Marine Resources. My name is Jamie Bissonette Lewey. I am the chair of the Maine Indian Tribal-State Commission (MITSC). I thank you for this opportunity to offer testimony in strong support of LD 1262, *An Act To Authorize Tribal-State Memoranda in the Eel and Elver Fisheries*.

As many of you know, the MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.”

LD 1262, the bill we are reviewing today, would implement the core recommendation of the recent MITSC *Saltwater Fisheries Conflict* report and would resolve the contraventions of the required amendment provisions in the Maine Indian Claims Settlement Act (MICSA) that occurred in 1998, 2013, and 2014. The MITSC recommendation reads, “Where the tribal-state jurisdictional relationship remains contested, the state and the tribes should commit to good faith negotiations at the highest level in order to execute Memoranda of Understanding (MOU) using model MOU that have proven to be effective in other states.”

On June 17, 2014, the MITSC released a special report detailing the three decades long conflict between Passamaquoddy and the State over the management of Tribe’s saltwater fishery. The MITSC findings are instructive in the consideration of LD 1262. The MITSC found the intergovernmental saltwater fishery conflict between the Passamaquoddy Tribe and the State of Maine arises from cultural distinctions and opposing interpretations of how the federal Maine Indian Claims Settlement Act of 1980 (MICSA) and the Maine Implementing Act (MIA) impact the Passamaquoddy fishery. Additionally, the Passamaquoddy Tribe stands on its retained aboriginal rights to fish within its traditional territory, which extends beyond the reservation boundaries, without interference from the state. They contend that these rights have never been extinguished. While the State of Maine, through the OAG, counters that the MIA Sec. 6204 “LAWS OF THE STATE APPLY TO INDIAN LANDS” means that the tribes have no rights except as specified in the MIA. This position is amply supported in case law and the OAG has advised that the Passamaquoddy Tribe retains no rights to the saltwater fishery, and that the State of Maine has the sole authority to regulate that fishery and to prosecute Passamaquoddy fishers who fish according to Passamaquoddy tribal law rather than State law.

The escalating conflict between the Passamaquoddy Tribe and the State of Maine about the reach and jurisdiction of the Passamaquoddy saltwater fishery described in the MITSC report illustrates a number of things. When saltwater fishery issues have arisen the governor of the state and/or the Commissioner of Marine Resources have made concerted efforts to cooperate, negotiate in good faith and develop mutually acceptable agreements. Through these negotiations, prospects for employing conservation-based measures to ensure a sustainable fishery have emerged, and

promising strategies for cooperation and co-management of the fishery through a formal Tribal-State agreement have been developed.

In contrast, legislation passed to resolve the saltwater fisheries conflict has been problematic. The 1998 LD 2145 constituted an amendment to the Maine Implementing Act. In 1998, both OPLA and the OAG provided legal opinions to the Joint Standing Committee on Marine Resources that LD 2145 constituted an amendment to the MIA. By passing LD 2145 the State unilaterally codified contested jurisdictional issues without the approval of the affected tribe and it arbitrarily changed the sustenance definition specified in 30 M.R.S.A. § 6207 (1) (4) (6). This contravention was repeated in 2013 and 2014, and could be repeated with LD 1262. In order to avoid further contravention of the MIA, we recommend the inclusion of the amendment language requiring the approval of the Tribes for LD 1262 to be enacted:

3. Tribal Approval. This bill will not take effect until it is approved by the respective tribal governments of the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians in accordance with United States Code, Title 25, Section 1725(e)(1)."

We recommend the inclusion of the following language in paragraph one, "Any memorandum of agreement entered into between the commissioner and the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians in accordance with this section shall not take effect until the agreement has been authorized by the respective tribal government." Finally, we recommend a change of wording from "commercial fisheries" to "species management and eel and elver fisheries," because we are aware that the Tribe fisheries are community fisheries and encompass both commercial and sustenance practices, and that these practices are rooted in species management.

Earlier this session the MITSC had an opportunity to brief the Marine Resources Committee on our mission and the *Saltwater Fisheries Conflict* report. During that briefing, Dr. Gail Dana-Sacco (MITSC Commissioner appointed by the State of Maine), discussed some of the benefits of cooperative agreements. She also referred to a joint National Conference of State Legislatures/ National Congress of American Indians publication, *Government to Government Models of Cooperation Between States and Tribes*. Subsequent to our presentation to the Marine Resources Committee, we gave copies of this booklet to the Marine Resources Committee Chairs. This publication is a valuable resource that explains the many benefits of a cooperative approach to resolving areas of contested jurisdiction. We also suggest that the Committee review the extensive information provided by the Passamaquoddy Tribe last year on cooperative agreements that included several actual MOAs or MOUs in effect in other areas of the country.

The State of Maine and the Tribes have much to gain by working together to serve their respective constituents. We urge adoption of LD 1262 as a better approach to manage the contested elver and eel fisheries.

I would like to close this testimony by thanking you for this opportunity to testify before you on this very important legislation.

**Testimony, Maine Indian Tribal-State Commission (MITSC), in opposition to
LD 800, An Act To Amend the Alewives Restoration Program in the St. Croix River
April 27, 2015**

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources. My name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony in opposition to LD 800, An Act To Amend the Alewives Restoration Program in the St. Croix River, to urge the Marine Resources Committee to reject blocking alewife passage at the Grand Falls Dam that threatens the nascent restoration of this species to its historical range.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” Thank you for the opportunity to offer the MITSC’s perspective on this legislation.

Two and a half years ago the MITSC completed a thorough, months long process producing a comprehensive policy position statement on this issue, “MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed.” The policy position statement is attached to our testimony. Some of our principal findings include:

1. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed.
2. Spawning river herring return vital nutrients from the ocean to freshwater lakes and streams.
3. River herring are a food source to the Passamaquoddy and provide forage to other freshwater, estuarine and marine fish and mammals.
4. The presence of sea-run alewives is important to the watershed and will play a significant role in its restoration.
5. River herring successfully co-exist with other fish species in other Maine inland waters.

Since the publication of MITSC’s policy position on October 17, 2012, no information has emerged to our knowledge to change any of these findings. The data from two years of unrestricted river herring passage at the Grand Falls Dam indicates that the restoration of the alewives to the portion of the St. Croix watershed above the Dam may take longer than originally projected. Any action to slow or impede the restoration of alewives is ill-advised.

We also remind the Committee of the Maine Legislature’s adoption of a resolution on April 15, 2008 expressing its support for the UN Declaration on the Rights of Indigenous Peoples, the first governmental body in North America to take such action. The UN Declaration includes several articles that uphold the rights of Indigenous Peoples to their lands, utilizing the resources existing in those lands, and to practice their cultural traditions. Restoring river herring to the St. Croix watershed is consistent with many of the Declaration’s provisions.

The passage of LD 72 two years ago represented a high water mark in tribal-state relations. It demonstrated what the Tribes and the State can do when we have the intentional goal of achieving mutually beneficial solutions. Let's build on that success and reject LD 800 that would harm the St. Croix watershed.

**Testimony of the Maine Indian Tribal State Commission on
LD 1066, An Act To Provide for the Licensing of a Casino Owned by the Maliseet Tribal
Government on Tribal Lands in Aroostook County
April 27, 2015**

Good morning, Senator Cyrway, Representative Luchini, Representative Bear and members of the Joint Standing Committee on Veterans and Legal Affairs. My name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to encourage the Veterans and Legal Affairs Committee to work to resolve the inequities in tribal access to gaming as an economic development tool. Today you have before you LD 1066, An Act To Provide for the Licensing of a Casino Owned by the Maliseet Tribal Government on Tribal Lands in Aroostook County. Thank you for the opportunity to offer the MITSC's perspective on this legislation.

The MITSC is an intergovernmental body formed by statute (30 MRSA §6212) and charged, in part, "with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State."

The MITSC is in the process of developing a policy position statement on the general issue of Indian gaming in the State of Maine. Key facts have changed since two court decisions, *Penobscot Nation v. Stilphen* (461 A.2d 478 (Me. 1983), and *Passamaquoddy v. State of Maine* 75 F.3d 784 (1996) were issued. We request the opportunity to present our policy position statement when completed at an upcoming work session.

**Testimony of the Maine Indian Tribal State Commission on
LD 1094, An Act To Improve Tribal-state Relations
Presented to the Joint Standing Committee on Judiciary
May 12, 2015**

Good afternoon, Senator Burns, Representative Hobbins, Representative Mitchell and members of the Joint Standing Committee on Judiciary. My name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to encourage the Judiciary Committee to work with Representative Dana to craft the appropriate legislative language that properly recognizes the governmental powers of the Passamaquoddy Tribe and Penobscot Nation as you consider LD 1094, An Act To Improve Tribal-state Relations. Thank you for the opportunity to offer the MITSC's perspective on this legislation.

LD 1094 proposes amending the municipality language in 30 MRSA §6206 of the Maine Implementing Act (MIA). This section stands out as one of the regularly contested sections of the MIA. Unfortunately, we understand that the language in the printed bill does not reflect Representative Dana's intent and while the MITSC supports the necessity to address the divergent interpretations of this section, the MITSC opposes the proposed language.

During the Tribal-State Work Group created by Resolve 2007, Chapter 142, 123rd Maine State Legislature, John Patterson who was before the Work Group on November 19, 2007 explained, "the idea was not to make the tribes municipalities like cities and towns but to use the idea of municipal powers as a way of identifying those sovereign powers which the tribe would have."

Ultimately, this provision of the MIA can only be changed with the explicit approval of the State, Passamaquoddy Tribe, and Penobscot Nation. You have an opportunity to demonstrate how the advance delegation of Congressional authority to the Tribes and the State can be used to resolve one of the long-standing contested sections of the MIA. We believe that your effort will be rewarded with not only clearer language in §6206 but also a positive example of the governments working together to resolve a contested provision of the MIA.

**Testimony of the Maine Indian Tribal-State Commission (MITSC) in support of
LD 893 RESOLUTION, Proposing an Amendment to Article X of the Constitution of
Maine Regarding the Publication of Maine Indian Treaty Obligations
May 12, 2015**

Senator Burns, Representative Hobbins, Representative Mitchell and members of the Joint Standing Committee on Judiciary. My name is John Dieffenbacher-Krall. I am the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony in support of LD 893, RESOLUTION, Proposing an Amendment to Article X of the Constitution of Maine Regarding the Publication of Maine Indian Treaty Obligations, that would require the State to print Article X, Section V of the Maine Constitution that describes Maine's responsibility to "assume and perform all the duties and obligations" of Massachusetts "towards the Indians" "whether the same arise from treaties, or otherwise." I thank you for this opportunity to appear before you.

As part of its agreement to separate and to become a distinct political entity from the Commonwealth of Massachusetts, the negotiators for Maine statehood agreed to assume all of the duties and obligations held by the Bay State towards the Indians in the former district of Massachusetts. The acceptance of these duties and obligations became part of the original Maine Constitution of 1820. No Maine duty or obligation could receive higher legal recognition.

In 1875, a Resolve Concerning an Amendment of the Constitution of Maine directed in part that Article X, Section 5 no longer be printed in future editions of the Maine Constitution. The Resolve also states that Article X, Section 5 should remain fully in effect. The MITSC has not researched the reasons why the 54th Legislature proposed this change. We can say in 2015 that this action unnecessarily renders invisible to the readers of the Maine Constitution the State's legal duties and obligations to Indians within Maine formerly agreed to by the Commonwealth of Massachusetts.

We anticipate that the Committee may receive testimony that the Maine Indian Claims Settlement negates Article X, Section 5 of the Maine Constitution. The MITSC is not aware of any provision in the Settlement Acts that has such an effect. In a January 30, 2015 letter to Mr. Avi Garbow, General Counsel for the US Environmental Protection Agency, Department of the Interior Solicitor Hilary Tompkins interprets the significance of Article X, Section 5 in a footnote. Solicitor Tompkins concluded that "Maine later adopted the responsibility to implement these treaty rights in its state constitution," and that the Settlement Acts uphold these commitments. (Context and footnote attached.)

Since the duties and obligations Maine assumed toward the Indians remain, we urge the Judiciary Committee to support LD 893 to require the printing of Article X, Section 5 of the Maine Constitution.

Again, I thank you for this opportunity to offer testimony on LD 893.

¹ “These statutorily-acknowledged fishing rights are rooted in treaty guarantees¹¹ that were upheld through the Settlement Acts.” Footnote ¹¹ states:

These treaties were State treaties, negotiated not with the United States but with the Commonwealth of Massachusetts; Maine later adopted the responsibility to implement these treaties in its state constitution.

See Maine Constitution, Art. X, Sec. 5:

The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise.

Available at <http://www.maine.gov/legis.lawlib/const1820.pdf>. (Note that per Art. X, Sec. 7, the text quoted here is omitted from printed copies of the Maine Constitution, but still remains in full force and effect.). The Settlement Acts preempt any contrary language in the treaties, but the legislative history discussed in *supra* note 8 explains that expressly reserved riparian rights under the treaties were retained under the Settlement Acts.

**Testimony of the Maine Indian Tribal-State Commission on
LD 268
*An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority
To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and
the Federal Violence Against Women Reauthorization Act of 2013*
Before the Judiciary Committee May 12, 2015**

Senator Burns, Representative Hobbins, Representative Mitchell, Representative Dana, Representative Bear and members of the Joint Standing Committee on Judiciary: my name is Jamie Bissonette Lewey. I am the Chair of the Maine Indian Tribal-State Commission (MITSC). I am here to offer testimony in support of LD 268, *An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013*. I thank you for this opportunity.

The 2013 Reauthorization of the Violence Against Women Act (VAWA 13) includes Title IX: *Safety for Indian Women* because Indian people are two times more likely to be victims of violent crime and 34% of Native women will be raped in their lifetime. These numbers are greatly enhanced when this victimization takes place in the home: 39% of Native women are victims of domestic violence. If the perpetrator of this violence is not a tribe member, tribal law enforcement cannot prosecute the crime beyond the initial detention of the perpetrator resulting in an incomplete circle of protection for Native families and leading to further, increasingly more dangerous victimization.

LD 268 is an essential bill that recognizes tribes' inherent responsibility to close the circle of protection for domestic violence victims who reside in reservation communities by amending the jurisdictional framework in 30 MRSA Chapter 601, the Maine Implementing Act (MIA), to include the capacity to prosecute all perpetrators of domestic violence, dating violence and violations of protection orders.

The VAWA has been reauthorized three times. Each time, the tribal provisions of the VAWA have been expanded and each time the tribal courts in Maine have successfully implemented these provisions. In 2005, the reauthorization of the VAWA included the issuance of protection orders against Indians and non-Indians. These expanded tribal provisions were successfully implemented in the Passamaquoddy Tribe and the Penobscot Indian Nation tribal courts.

There are many reasons to support LD 268. Wabanaki tribal domestic violence programs and the Wabanaki Women's Coalition are individually and collectively recognized at the national level as exemplary models of providing services to victims of domestic violence. These services that are rooted in Indigenous problem solving are offered to all those who reside in tribal communities regardless of their tribal status. The Passamaquoddy Tribe and Penobscot Indian Nation tribal courts have decades of experience and untarnished records in adjudicating the kinds of

cases that would be covered by the tribal provisions of VAWA 13. Additionally, both Tribes have adopted Maine state law and provide the same due process protections as any other court in the state.

The MITSC does have one concern about LD 268. We strongly recommend that the tribal provisions in VAWA 13 be equally available to any tribal court in Maine that chooses to implement them. Even though only the Passamaquoddy Tribe and the Penobscot Indian Nation currently have tribal courts, the MIA gives the Houlton Band of Maliseet Indians the same authority to develop one. The MITSC recommends that the expanded jurisdictional provisions in LD 268 be written so that they apply equally to all Wabanaki Tribes in Maine.

I thank you for this opportunity to offer testimony on this very important piece of legislation.

Memo

DATE: April 23, 2015

TO: John Banks, Bert Polchies, Representative Mathew Dana

FROM: John Dieffenbacher-Krall

RE: Summary of MITSC call held with Maine Capitol Police Chief Russell Gauvin 4/17/15

Jamie Bissonette Lewey, Matt Dana, and I participated in the conference call with Maine Capitol Police Chief Russell Gauvin. Jamie opened by explaining that the Penobscot Commissioners to the MITSC had requested that the MITSC follow up on the treatment of Penobscot citizens who had travelled to Augusta to a protest on April 6, 2015. One of the issues raised to the MITSC involved the use of Native drums and rattles in the capital building. The MITSC reviewed the existing regulations and wished to discuss how they are generally implemented.

Chief Gauvin explained that the Capitol Police don't distinguish between rallies, protests, and other events. They focus on the activities people want to do and their potential impact. He said they do not review the message of the event and that they prefer not to know it. He readily acknowledged that the Capitol Police had not enforced some of the rules in the past concerning noise and disturbance. He explained that a number of events in the past three months have lead to many complaints. He specifically mentioned a prolonged clogging event. As a result of these complaints, the Legislative Council is requiring full enforcement of the existing rules pertaining to noise and disturbance. The Capitol Police are now specifically required to be more aware and mindful of noise in the State House. They have also been reminded it is a workspace and staff have reported that they find it difficult to work when the noise becomes excessive, long in duration, or both.

There were specific concerns about the Hall of Flags, which is designated as a memorial to soldiers who have lost their lives in service to the country. Some veterans groups and some legislators who are veterans had complained about the use of the Hall of Flags for protest events. The Legislative Council is requiring specific scrutiny of use of the Hall of Flags and a requirement that the solemnity of the memorial is maintained.

For any activity that may produce sound, the Capitol Police consider the expected duration, nature of the sound, and where it will take place. He said that they are not too concerned about activities conducted outside that generate sound. They are much more sensitive about activities that can produce noise inside the State House.

Chief Gauvin explained that advance notice is preferred although he also stated they can work with groups on short notice. He said that no one has ever been denied a permit for activity on Capitol grounds. The Legislative Council sets the rules and gives permission to hold activities

inside the State House itself. Advance conversations can be initiated either by phone or email, and there is no fee for an activities permit (outside of Capitol Park).

We specifically discussed the use of drums and rattles and their significance as sacred items. Chief Gauvin said musical instruments are allowed inside the State House. Their mere presence is not a reason to exclude them. However, their use might be restricted given the duration, type of sound, and location. Jamie raised the incident that took place with the rattle on April 6. She explained how the rattle, drum, and other instruments are sacred objects and that their use constitutes prayer.

Chief Gauvin expressed appreciation learning about the role of drums and rattles in Wabanaki culture. There was discussion about whether the rattle was temporarily taken because it was considered a possible threat as a weapon. He explained that they do look at objects from the perspective of whether they can be “weaponized” explaining that US Military Honor Guard are not permitted to wear their ceremonial swords in the building even though these are treated with reverence by the Guard. Again, he encouraged working together and acknowledged the difficulty in relationships caused by the way Penobscot citizens were treated on April 6th. He also thanked Jamie for educating him that the objects carried by Wabanaki People should be treated with the utmost reverence as sacred items.

Mandate:

The [Maine Indian Tribal-State] Commission shall continually review the effectiveness of the [Maine Implementing Act] and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

Vision Statement:

The Maine Indian Tribal-State Commission (MITSC) envisions a future where all residents of Maine realize the universal benefit of healthy Tribal-State relations, and this understanding brings renewed commitment to resolve disputes through negotiations that equitably share power and yield mutually beneficial solutions. Tribal sovereignty is fully acknowledged and leads to respectful dialogue between the State and each Tribe and the development of a common interpretation of the settlement acts. Through collaborative work, the socio-economic disparities between tribe communities and non-native communities are erased and the standard of living for all residents in Maine improves.

Guiding Principles

The MITSC strives to maintain open lines of communication, advance mutually beneficial solutions and do no harm through employing the following guiding principles:

1. A shared commitment to the MITSC mandate.
2. Welcome.
3. Respect.
4. Integrity.
5. Valuing different ways of being.
6. Working with compassion for all parties.
7. Boldness.
8. Courage.
9. Openness.



**American Friends
Service Committee**

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For Immediate Release

Tuesday, October 7, 2014

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**Passamaquoddy Youth Leader George Soctomah Neptune Nominated to
Attend
14th World Summit of Nobel Peace Laureates: Global Youth Indaba
Cape Town, South Africa October 11 – 16;
Neptune Part of Delegation from the
American Friends Service Committee (AFSC)**

(October 7, 2014) George Soctomah Neptune, a Passamaquoddy citizen from Motahkmikuk (Indian Township), will travel to Cape Town, South Africa as part of a youth delegation from the American Friends Service Committee (AFSC), who accepted the Nobel Peace Prize in 1947, to attend the **Global Youth Indaba: Leading by Example, a special conference** created after the postponement of the 14th World Summit of Nobel Peace Laureates.

George is one of 23 young people nominated by AFSC to attend the World Summit to meet with other youth delegations sponsored by Nobel Peace Laureate organizations from around the world. This is the second group of youth delegates sponsored by AFSC to participate in the World Summit of Nobel Peace Laureates. **Neptune is the first North American Indigenous youth ever nominated to attend the Summit event.**

Recently, the Nobel Peace Laureates Summit was postponed because the government of South Africa refused to grant a visa to the Dalai Lama to attend the summit, prompting Laureates to refuse to attend, which resulted in the postponement. In the wake of this last minute decision, AFSC has been working closely with individual and organizational Nobel Peace Laureates,

academic institutions, and other international peace organizations to offer an alternative youth gathering in Cape Town on October 13-15 around the theme, “*Leading by Example.*”

So far, 117 youth delegates from 20 countries will travel to the **Indaba** later this week. Some of the Nobel laureates have decided to attend the **Indaba** and others will Skype in to talk with the youth delegates. The Nelson Mandela Foundation will host the **Global Youth Indaba**.

While reflecting on the postponement of the Summit and circumstances that the Tibetan people endure, Neptune said, “The colonization of Indigenous Peoples is an ongoing process. Too many people view it as a piece of history, as something that happened in the past, and that couldn't be farther from the truth. By denying His Holiness entry, South Africa and other countries have proved that. Even today, the world's most powerful countries refuse to acknowledge the struggles of Indigenous Peoples out of fear of the political and economic consequences that the acknowledgement will bring. While I am disappointed about the events surrounding the World Summit of Nobel Peace Laureates, and agree with other Laureates’ decisions to protest by refusing to attend, I am still excited for and humbled by the opportunity to be in Cape Town and raise my voice on behalf of my Indigenous brothers and sisters.”

Neptune, chosen to attend after a competitive nomination and selection process, looks forward to the opportunity to meet and learn from other summit participants from around the world about the ways they work for peace in their communities.

“As a member of the Passamaquoddy tribe, the continued colonization of Indigenous Peoples in North America is a reality that we must live through on a daily basis. We are denied our histories and identities, and often prevented from preserving our cultures by the same governments that made treaties with our nations. I see the **Indaba** as an opportunity to raise awareness of the rights of Indigenous Peoples—not only in North America, but worldwide—and to educate others about the devastating effects that colonialism has on indigenous cultures,” George said.

The World Summit of Nobel Peace Laureates (<http://www.nobelforpeace-summits.org/>) attracts Nobel Peace Laureates, leaders in the peace movement, and organizations from around the world. The first World Summit of Nobel Peace Laureates took place in the City of Rome in

1999, which hosted the initial eight events. Since 2008, the annual event location has rotated among cities around the world.

Neptune and other youth delegates will participate in a three-day program comprised of sessions with Nobel Laureate organizations and individual Nobel Laureate recipients around the theme of “*Leading by Example*.” By attending the **Global Youth Indaba**, Neptune “hopes that my experience in Cape Town will help me to inspire others in my community to promote peace within our communities, and to collaborate with others who wish to heal and reverse the trauma that Indigenous Peoples have suffered throughout history.”

George Neptune serves as the Museum Educator at the Abbe Museum and his relationship with the Museum started in his childhood. He graduated from Dartmouth College in 2010 with a BA in Theater, and was active in the Native American Studies Program. In 2007 and 2009, George was an Interpretive Ranger at Saint Croix Island International Historic Site and, after graduating from Dartmouth, worked in the After School/Summer programs at Indian Township School as the Cultural Activities Coordinator and Drama Instructor. Prior to his employment at the Abbe Museum, George was the Unit Director/Mentor Program Coordinator of the Passamaquoddy Boys and Girls Club at Indian Township.

AFSC participates in the World Summit of Nobel Peace Laureates with a clear goal in mind: To develop a cadre of youth leaders with the increased motivation, peace-building skills, and contacts necessary to spur innovation in their local peace-making work. Through workshops and networking the young people will use intergenerational learning and best practices to foster peace with justice around the world.

The next step is for Indaba participants to plan a local project together with an AFSC staff mentor. George will be working with Jamie Bissonette Lewey, his Nobel Summit nominator and mentor, to help youth create dramatic monologues on the [Wabanaki](#) cultural legacy of protecting and advancing children.

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The American Friends Service Committee is a Quaker organization that includes people of various faiths who are committed to social justice, peace and humanitarian service. Its work is based on the belief in the worth of every person and faith in the power of love to overcome violence and injustice.

NEWS RELEASE

For Immediate Release: Thursday, June 11, 2015

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MITSC Commissioner John Banks First Indigenous Person to Participate As Official Member of US Delegation to the North Atlantic Salmon Conservation Organization Annual Meeting 6/2 – 6/5

John Banks, a Penobscot Nation citizen and member of the Maine Indian Tribal-State Commission (MITSC) since 1987, recently participated in the North Atlantic Salmon Conservation Organization (NASCO) Annual Meeting held in Happy Valley – Goose Bay, Labrador, Canada from June 2 to June 5. John is the first Indigenous Person to serve as an official member of the US delegation to the NASCO Annual Meeting.

“It was an honor to be part of the US delegation to the 32nd annual NASCO convention in Goose Bay, Labrador. This is the first time a tribal representative has been asked to attend the NASCO convention,” stated John Banks, Natural Resources Director for the Penobscot Indian Nation. He added, “The conservation of the wild Atlantic salmon is a priority of the Penobscot Nation.”

Daniel Morris, head of the US delegation to NASCO and Deputy Regional Administrator, Greater Atlantic Region, for the National Oceanic and Atmospheric Administration (NOAA) Fisheries, invited John Banks to join the US delegation to tap his expertise concerning and extensive involvement in the Penobscot River Restoration Project. The Penobscot River Restoration Project comprises one of the largest river restoration projects ever undertaken with the removal of the Great Works Dam in 2012, Veazie Dam in 2013, and decommissioning of the Howland Dam and construction of a bypass this year. John gave a special presentation on the Penobscot River Restoration Project during a NASCO theme-based special session, “Maintaining and Improving River Connectivity with Particular Focus on Impacts of Hydropower.”

“Mr. Banks' perspective was a critical part of the positions the US delegation took into the meeting,” said Daniel Morris. “He described and celebrated the accomplishments of the Penobscot Trust with technical precision while also taking the time to explain why recovery of Atlantic salmon is so important to the Penobscot Nation. By forgoing a sustenance fishery since 1989, the Penobscot Nation has set a compelling example of the sacrifice that all the NASCO parties might have to make to

enable the protection and recovery of Atlantic salmon. It was a real pleasure and education to have John on the team,” emphasized Mr. Morris.

The MITSC is an intergovernmental body formed by statute as part of the Maine Indian Claims Settlement. It is charged, in part, “with reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” The Commission also promulgates fishing rules for MITSC waters, certain water bodies bordered by Passamaquoddy and/or Penobscot land, and makes recommendations about fish and wildlife management policies on non-Indian lands to protect fish and wildlife stocks on lands and waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or the MITSC. John Banks is the longest serving MITSC Commissioner in the Commission’s history, serving 28 years.

NASCO is an intergovernmental organization formed by a treaty in 1984 and is based in Edinburgh, Scotland. Its objectives are the conservation, restoration and rational management of wild Atlantic salmon stocks, which do not recognize national boundaries. It is the only intergovernmental organization with this mandate which it implements through international consultation, negotiation and co-operation.



OFFICE OF
THE GOVERNOR

NO. 21 FY 11/12
DATE August 26, 2011

**AN ORDER RECOGNIZING THE SPECIAL RELATIONSHIP
BETWEEN THE STATE OF MAINE AND THE SOVEREIGN NATIVE
AMERICAN TRIBES LOCATED WITHIN THE STATE OF MAINE**

WHEREAS, the State of Maine is a sovereign state in its own right;

WHEREAS, the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs, and the Houlton Band of Maliseets are sovereign nations in their own right;

WHEREAS, the unique relationship between the State of Maine and the individual Tribes is a relationship between equals;

WHEREAS, the individual members of the Tribes are citizens of State of Maine; and

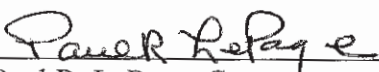
WHEREAS, the State and Tribes should work together as one to solve issues facing all Maine citizens;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. Every Department and Agency of State Government shall develop and implement a policy that:
 - a. Recognizes the relationship among sovereigns that exists between the State of Maine and Maine's Native American Tribes;
 - b. Promotes effective two-way communication between the State and the Tribes;
 - c. Enables the Tribes to provide meaningful and timely input into the development of legislation, rules, and policies proposed by the State agency on matters that significantly or uniquely affect those Tribes;
 - d. Establishes a method for notifying employees of the State agency of the provisions of this Executive Order and the policy that the State agency adopts pursuant to this section; and
 - e. Encourages similar communication efforts by the tribes.

2. Every Department and Agency of State Government shall designate a “Tribal Liaison” to facilitate effective communication between the State and the Tribes.
3. The duties of the “Tribal Liaison” shall include:
 - a. Establishment of a communications plan to facilitate information sharing between the State agency and Tribal government;
 - b. Creating and adopting standard operating procedures to engage Tribal Governments at the earliest possible juncture of the development of any legislation, rules, and policies proposed by the State agency on matters that significantly or uniquely affect those Tribes;
 - c. Advising the Chief Executive of the State agency of issues of concern to the Tribes and the impact on the Tribes of proposed legislation, rules, and policies; and
 - d. Other such duties as the Department or Agency may require.
4. In delivering necessary services, every Department and Agency should strive to partner with the Tribes to utilize existing resources to efficiently provide services. Further, Departments and Agencies shall take into consideration the traditions and customs of the Tribes to prevent unnecessary interference.
5. Nothing in this Order creates any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Maine, its agencies, or any person. This order simply recognizes the unique and distinct Tribal Governments in Maine and a process for communicating on an equal level. This order supersedes Executive Order 06 FY 10/11.

The effective date of this Executive Order is August 26, 2011.


Paul R. LePage, Governor



OFFICE OF
THE GOVERNOR

NO. _____ 2015-006
DATE _____ April 16, 2015

AN ORDER RESPECTING JOINT SOVEREIGNTY AND INTERDEPENDENCE

WHEREAS, the State of Maine is a sovereign state in its own right;

WHEREAS, the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs, and the Houlton Band of Maliseets are sovereigns in their own right;

WHEREAS, the relationship between the State of Maine and the individual Tribes is a relationship between equals, each with its own set of responsibilities;

WHEREAS, all tribe members, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them or held in trust for them are subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein;

WHEREAS, previous efforts by the Governor on behalf of the State of Maine to promote collaboration and communication with the Tribes have proved to be unproductive because the State of Maine's interests have not been respected in the ongoing relationship between sovereigns;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. Executive Order 21 FY 11/12, dated August 26, 2011, is hereby rescinded, effective immediately.
2. Nothing in this Order creates or establishes any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Maine, its agencies, or any person.

The effective date of this Executive order is April 16, 2015.


Paul R. LePage, Governor

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Maine Indian Tribal-State Commission

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