

2-2014

# A Summary of the Activities of the Maine Indian Tribal-State Commission, July 1, 2012 – June 30, 2013

Maine Indian Tribal-State Commission

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## Recommended Citation

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# **A Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2012 – June 30, 2013)**

*Prepared by*

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**February 2014**

## **MITSC Commissioners**

Jamie Bissonette Lewey, Chair

Denise Altvater

John Banks

Harold Clossey

Matt Dana

Gail Dana-Sacco

H. Roy Partridge

Robert Polchies

Linda Raymond

Brian Reynolds

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## **I. Executive Summary**

Throughout fiscal year 2012/13, the Maine Indian Tribal-State Commission (MITSC) focused on a series of issues at the request of one or more of the member governments. Among these issues were the return of sea-run alewives to the St. Croix watershed, the taking of land into trust by the Passamaquoddy Tribe, the seating of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, and the ongoing review and interpretation of the Settlement Acts.

While the LePage Executive Order 21 FY 11/12 on Tribal Consultation offers the framework for a strong, constructive relationship between the Tribes and the State, its potential for strengthening Wabanaki-Maine relations has been largely unrealized due to the lack of implementation policies. During the time period covered by this report, the MITSC worked with Tribal and State representatives to write a consultation policy for the Maine Department of Health and Human Services (DHHS) to guide its work with Tribal Health Services. There is hope that this policy will become a model for other departments to resolve issues between the State and the Tribes before they develop into conflicts.

The MITSC investigated health, economic and social disparities extant in Tribal communities. Even though the available research data was limited, the MITSC was able to present alarming statistical evidence of a humanitarian crisis in Wabanaki Communities. The MITSC reported these findings to Governor LePage, the Joint Committee on the Judiciary, and the UN Special Rapporteur on the Rights of Indigenous Peoples. In its analysis of the causes of this crisis, the MITSC found that the socio-economic legacy constructed by the Settlement Acts themselves have significantly hampered the Tribes' ability to implement self-determined solutions to these problems. Given that the Settlement Acts have failed in creating acceptable living conditions for Wabanaki people, the MITSC has recommended a serious review of these Acts with a commitment to amend the sections that are causing harm.

In order to develop a more nuanced public understanding of the Settlement Acts within the context both of Federal Indian Law and the United Nations Declaration on the Rights of Indigenous Peoples (the Maine Legislature officially expressed support for the human rights document 4/15/08), the MITSC collaborated with the Wabanaki Center based at the University of Maine to invite prominent Indigenous scholar and lawyer Walter Echo-Hawk to address how the Declaration can infuse human rights principles into both the Maine Indian Land Claims Settlement Act and Maine Implementing Act. Over 300 people attended the two days of lectures and workshops offered by Mr. Echo-Hawk.

After a thorough review of the MITSC's evidence of a humanitarian crisis in Wabanaki communities within the State of Maine, the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, listed the following finding in his August 30, 2012 report detailing his official visit to the US:

[The] Maine Indian Claims Settlement Act and Maine Implementing Act create structural inequalities that limit the self-determination of Maine tribes; structural inequalities contribute to Maine tribal members experiencing extreme poverty, high unemployment, short life expectancy, poor health, limited educational opportunities and diminished economic development.

Mr. Anaya has asked the MITSC for additional information on specific areas of our report. This development is encouraging. The MITSC hopes that Maine State Government will also examine our findings and then work with the Tribes to address the humanitarian crisis existing in Wabanaki communities within the State of Maine.

We offer this report with a sense of urgency and in the spirit of problem solving to advance tribal-state relations.

## **II. Introduction**

### **A. Purpose and Organization of This Report**

This report summarizes MITSC's work from July 1, 2012 to June 30, 2013. MITSC's bylaws specify 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. The Commission routinely provides the Aroostook Band of Micmacs Government its Annual Report as part of the standard report distribution.

## **III. Overview of MITSC**

### **A. Purpose and Responsibilities**

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

- Effectiveness of 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 MITSC.
- Extended Reservations. Review petitions by the Tribes for designation as an "extended reservation."

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

### **B. MITSC Members and Staff**

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 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. With a new Tribal Government taking office in May 2013, the Aroostook Band of Micmacs decided to designate two Micmac representatives to serve as official observers for the Tribe beginning June 18, 2013.

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

### **C. Funding**

MITSC finished fiscal year FY 2013 (July 1, 2012 to June 30, 2013) with a balance of \$3,568. During the 2013 fiscal year, MITSC took in \$108,894 and spent \$105,326.

## **IV. State Failure to Collect Data Hinders MITSC Ability to Fulfill Its Statutory Responsibilities**

The MITSC finds in a number of areas, including the incarceration rates of Wabanaki People and their overall involvement in the criminal justice system at all levels in Maine compared to other population groups, Tribal specific and collective public health data for Wabanaki communities, educational information pertinent to Wabanaki students, environmental and natural resource data critical to the management of resources in which MITSC has authority and/or lie within the aboriginal territories of the respective Wabanaki Tribes within the State of Maine, and economic statistics pertinent to Tribal communities, the State fails to collect, analyze, and report this data. Without quantitative data, in many instances MITSC must rely on anecdotal accounts and the best inferences it can make to assess “the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State.” In addition, the State makes little to no resources available for active collaboration between Wabanaki Tribal Governments and the State of Maine in the collection, analysis, and reporting of such data of mutual interest. We recommend that the State work with Wabanaki Tribal Governments to identify the priority missing data needs, develop systems for the collection of the data that include Wabanaki Tribal Government representatives in the overall gathering and management of such information, and establish protocols for the compilation and reporting of collected data always respecting Wabanaki intellectual property concerns.

## **V. MITSC Activities**

### **Reviewing Effectiveness of the Settlement Act**

#### **Collaboration w/ the Wabanaki Center at the University of Maine on Treaty Learning Series and Work to Bring Walter Echo-Hawk to Maine**

The MITSC collaborated with staff from the Wabanaki Center at the University of Maine to create a Treaty Learning Series in order to increase public awareness of Wabanaki treaties entered into with a number of governments. An important goal of the Treaty Learning Series is to increase overall understanding of treaties and how these agreements affect tribal-state relations today.

Staff and leaders for the MITSC and the Wabanaki Center decided to invite noted Indigenous rights attorney, scholar, and author Walter Echo-Hawk to appear as the initial guest speaker in the Treaty Learning Series. In conjunction with his visit, MITSC also arranged for Mr. Echo-Hawk to visit the Passamaquoddy Tribe at Motahkmikuk. During his visit to Passamaquoddy Territory on March 27, 2013, he conducted an afternoon workshop on the UN Declaration on the Rights of Indigenous Peoples and how the Maine Indian Claims Settlement and Federal Indian Law compare to the human rights principles delineated in the Declaration. On March 28, Mr. Echo-Hawk participated in an afternoon teach-in at the University of Maine followed by an evening lecture. The Wabanaki Center organized a panel to respond to Mr. Echo-Hawk's lecture that included Passamaquoddy Schoodic Band Chief Hugh Akagi; Jill Shibles (Penobscot) President of the National American Indian Court Judges Association; Dr. Andrea Bear Nicholas (Maliseet), Chair of Native Studies, St. Thomas University; and Vera Francis (Passamaquoddy) storyteller and environmental activist.

### **Letter Exchange with US Senator Susan Collins Prompted by Her Actions on the Robert T. Stafford Disaster Relief and Emergency Assistance Act**

In 2012, the US Congress considered an amendment to the Robert T. Stafford Disaster Relief and Emergency Assistance Act that would allow federally recognized tribes to apply directly to the Federal Government for disaster relief. Because of the language contained in the Maine Indian Claim Settlement Act (MICSA) in sections 1725(h) and 1735(b), a question arose whether the Stafford Act amendment would apply to the Wabanaki Tribes within the State of Maine. These sections selectively limit the applicability of Federal laws passed for the benefit of Indians enacted after the passage of MICSA on October 10, 1980.

Senator Collins through a staffperson contacted Maine Deputy Attorney General Paul Stern to request that he provide an opinion concerning the applicability of the Stafford Act amendment to the federally recognized tribes within the State of Maine. Paul Stern advised that in his opinion the Stafford Act amendments would not apply to the Wabanaki Tribes within the State of Maine. Later Senator Collins entered into a colloquy with US Senator Jon Tester on December 20, 2012 to record in the Congressional Record her individual understanding of the Stafford Act amendment applicability to the federally recognized tribes within the State of Maine.

The Commission wrote to Senator Collins on March 26, 2013 expressing concern that she consulted with the Maine Office of the Attorney General, legal representative for one party to the Settlement negotiations, without consulting with the Maine Indian Tribal-State Commission, the intergovernmental body statutorily charged with monitoring the effectiveness of the agreement. The MITSC also pointed out that Senator Collins never entered into formal consultation with the four affected Tribes before entering her opinion through her colloquy with Senator Tester in the US Senate. The complete exchange of letters appears in appendices 3, 4, 5, and 6.

## **Testimony on LD 308 An Act To Require the Attorney General To Consult with Federally Recognized Indian Tribes before Issuing an Opinion on Federal Legislation Affecting the Maine Indian Claims Settlement Act of 1980**

Penobscot Tribal Representative Wayne Mitchell sponsored LD 308, An Act To Require the Attorney General To Consult with Federally Recognized Indian Tribes before Issuing an Opinion on Federal Legislation Affecting the Maine Indian Claims Settlement Act of 1980. Given the importance of equal voice and interpretation of all parties to the Settlement negotiations, MITSC testified in support of the bill. The bill received an eventual unanimous ought not to pass vote ending consideration of it.

## **MITSC Conversations with Senator Collins and Staff for Senator King Concerning Our 5/16/12 Letter to UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya & the Human Rights Violations Occurring in Maine**

The MITSC met with Senator Collins via videoconference on June 17, 2013 to discuss our May 16, 2012 letter to UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya. The MITSC representatives who participated in the meeting explained the letter was submitted in response to the Special Rapporteur's general call for information as he conducted his official country visit to the US in 2012. In the letter to James Anaya, MITSC wrote, "The Acts [referring to the Maine Indian Claims Settlement Act and Maine Implementing Act] have created structural inequities that have resulted in conditions that have risen to the level of human rights violations." On June 27, 2013, MITSC met with staff for Senator King briefing them on the Commission's letter to Mr. Anaya and establishing the basis for an effective working relationship between MITSC and Senator King.

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

### **MITSC Support of the Seating of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission**

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC) is a joint undertaking of the Wabanaki Tribal Governments and the State of Maine to document the truth of what happened to Wabanaki People in the State of Maine child welfare system, to promote healing of people affected by that system, and to make recommendations.

A TRC Selection Panel, charged with selecting five commissioners with recognized integrity, empathy, stature and respect with a demonstrated commitment to the values of truth, reconciliation, equity and justice, was empaneled in July 2012. Thirteen people served on the TRC Selection Panel representing all five Wabanaki Tribal Governments, the State of Maine, the TRC Convening Group, and MITSC. State Commissioner Paul Thibeault served as the MITSC representative on the Selection Panel. The MITSC was asked to coordinate the media outreach to announce the call for nominations for people to serve on the TRC. As part of the media outreach, the MITSC composed and distributed a news release dated August 31, 2012.

The MITSC organized the news conference, composed the press release, distributed the press release, and conducted media follow-up related to the announcement of the five TRC Commissioners. On December 18, 2012, the TRC Selection Panel announced that Matt Dunlap, Old Town, Maine; gkisedtanamoogk, Otter Clan, Mashpee Wampanoag, Orono, Maine; Gail Werrbach, Bangor, Maine; Sandy White Hawk, Sicangu Lakota of the Rosebud Sioux Tribe, St. Paul, Minnesota; and Carol Wishcamper, Freeport, Maine had been selected as TRC Commissioners.

Following the December announcement of the selected TRC Commissioners, the MITSC wrote and distributed the February 4, 2013 news advisory describing the February 11 TRC Day of Reflection, Meditation & Prayer and the February 12 formal seating of the TRC Commissioners. The Day of Reflection, Meditation & Prayer was conceived as a means for people across Maine to help prepare the five TRC Commissioners for their difficult work. Several Day of Reflection, Meditation & Prayer events took place across the State of Maine. Extensive media coverage of the TRC Commissioner seating occurred.

### **Ensuring Consistent Implementation of Maine's Offensive Place Names Law 1 MRSA Section 1101- 1104**

In January 2013, the *Bangor Daily News* published an article titled "Squaw Mountain ski resort to open for first time in 3 years." The article referenced an organization Friends of Big Squaw Mountain responsible for an effort to open the closed ski resort. The MITSC contacted Maine Secretary of State Matt Dunlap to ask how the organization Friends of Big Squaw Mountain could register a nonprofit corporation name containing a place name prohibited under Maine law. In response to the MITSC inquiry, the Secretary of State's office notified Friends of Big Squaw Mountain that its "Articles of Incorporation were accepted in error by our office based on the offensive name designation found in 1 MRSA §1101, sub-§1." A Certificate of Correction was filed by the nonprofit group on 2/4/2013 changing its name to Friends of the Mountain.

### **MITSC Support of the Wabanaki Effort to Secure a Permanent Wabanaki Seat on the Maine Criminal Justice Academy Board of Trustees**

The MITSC voted at the December 19, 2012 Commission meeting to support an effort of Wabanaki Tribal Governments led by Wabanaki law enforcement officials to secure a designated Wabanaki seat on the Maine Criminal Justice Academy Board of Directors. To assist the Wabanaki effort, the MITSC drafted the legislation sponsored by Passamaquoddy Tribal Representative Madonna Soctomah that eventually became the proposed LD 140, An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy. At the request of Wabanaki law enforcement officials, the Commission arranged a March 4, 2013 meeting between them and Governor LePage's two legal counsels, Michael Cianchette and Carlisle McLean, to discuss LD 140. The MITSC also submitted written testimony in support of LD 140. Though the bill passed in the Maine House of Representatives, it was defeated in the Maine Senate.

### **Testimony on LD 45, An Act To Include a Representative of the Aroostook Band of Micmacs in the House of Representatives**

The MITSC supported the effort of the Aroostook Band of Micmacs to secure a tribal representative seat similar to the representation enjoyed by the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation. A bill to create a Tribal Representative position for the Micmacs was sponsored by Representative Alexander Willette. The bill emerged from the Judiciary Committee with a divided report with the majority favoring passage of the bill in an amended form. It passed the Maine House of Representatives but failed in the Maine Senate.

### **Testimony on LD 394, An Act To Add Members of the Aroostook Band of Micmacs to the Maine Indian Tribal-State Commission and Add Corresponding Members for the State**

The MITSC welcomed the decision of the Aroostook Band of Micmacs Tribal Government initially expressed in the spring of 2012 to pursue legislation to become official members of the Commission after having a Micmac observer attend MITSC meetings since September 2011. Representative Alexander Willette sponsored the bill, LD 394, An Act To Add Members of the Aroostook Band of Micmacs to the Maine Indian Tribal-State Commission and Add Corresponding Members for the State. At the public hearing on LD 394, the MITSC offered its enthusiastic support for adding the Micmacs to the Commission. The Maine Legislature passed LD 394, and Governor LePage approved it May 8, 2013. After State of Maine approval of the legislation, the MITSC uncovered some possible drafting errors in the legislation related to the approval process by the Wabanaki Tribal Governments. As a result, the Aroostook Band of Micmacs Tribal Government has decided to take no action on LD 394 meaning it will not become law.

### **MITSC Work Related to LD 451, An Act To Cap Certain Marine Resources Licenses Issued by the Passamaquoddy Tribe, to Promote Continued Dialogue Between the Passamaquoddy Tribe and State of Maine**

In 1997, the State of Maine passed a law concerning the Passamaquoddy Tribe's authority to issue fishing licenses to its citizens for the harvesting of certain marine species. One of the affected species included elvers, a juvenile life stage of the American eel. Unlike some other species affected by the 1997 law, no limits were placed on the number of licenses that the Passamaquoddy Tribe could issue for the harvesting of elvers. During the past few years, the elver fishery has become especially lucrative, ranking number two behind lobsters in terms of monetary value of the catch for 2012. Additionally, in much of its historic range, the American eel population has significantly declined causing concern about the species' health. However, a study of the eel decline points to a number of factors for the decrease.

A dispute exists between the Passamaquoddy Tribe and the State of Maine concerning the Tribe's authority to manage elvers. The State of Maine claims that any Passamaquoddy saltwater fishing, including the harvesting of elvers, is subject to State law. To support its position, the State of Maine relies on 30 MRSA §6204 that says State law applies to the Passamaquoddy Tribe unless otherwise specified in the Maine Implementing Act. The Passamaquoddy Tribe disagrees

with this position asserting it never ceded any saltwater fishing rights during the Maine Indian Settlement Agreement negotiations. The MITSC was aware of the respective governments' differing positions. We urged the State of Maine to undertake early and in-depth consultation with the Passamaquoddy Tribe consistent with Governor LePage's Executive Order 21 FY 11/12 far in advance of the beginning of the 126<sup>th</sup> Maine Legislature. Unfortunately, such consultation did not occur. On the last day that bills could be submitted for consideration under the regular legislative process, a meeting took place in Bangor on January 18, 2013 where the State's proposed bill to limit the Passamaquoddy authority in the eyes of the State was first shared with the Tribe. This development added to the tension between the Passamaquoddy Tribe and the State.

On March 6, 2012, the MITSC Chair Jamie Bissonette Lewey provided oral testimony during the public hearing on LD 451, An Act To Cap Certain Marine Resources Licenses Issued by the Passamaquoddy Tribe, sponsored by Representative Walter Kumiega. She urged the Marine Resources Committee to examine the Maine Implementing Act for a solution to the political standoff between the Passamaquoddy Tribe and the State of Maine.

As political tension escalated, the MITSC consistently promoted dialogue between the parties, even when some actors within the State of Maine attempted to limit the Commission's involvement. Maine Attorney General Janet Mills issued an opinion on March 12, 2013 reinforcing the State position that the Passamaquoddy Tribe's saltwater fishing is subject to Maine law. She also stated MITSC had no authority under 30 MRSA §6207, §§8 to compel any action. This provision states:

**8. Fish and wildlife on non-Indian lands.** The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.

From the MITSC's perspective, this is one of the provisions of the Maine Implementing Act that specifically charges the MITSC with the responsibility for consulting with all concerned parties and acting to defuse certain disputes. The obstruction of MITSC's role in this regard works to the detriment of Wabanaki-Maine relations.

Despite the Attorney General's March 12 opinion, the MITSC participated in a number of meetings that same day to discuss the elver standoff and some of the political fallout. Our first meeting took place with top staff of the Speaker and President of the Maine Legislature. Following that meeting, a large gathering occurred including the Marine Resources Committee Chairs, Senator Chris Johnson and Representative Walter Kumiega, Marine Resources Commissioner Patrick Keliher, representatives from the Maine Office of the Attorney General, and others. The MITSC Chair Jamie Bissonette Lewey again encouraged dialogue and urged the

parties to seek a mutually agreeable solution. We also met with representatives from the Passamaquoddy Tribal Government and the Passamaquoddy Fisheries Committee.

Eventually, over the objections of the Passamaquoddy Tribe, the Legislature passed LD 451 as emergency legislation. The law limits the Passamaquoddy Tribe to 124 licenses that allow the taking of elvers with one piece of gear, either a fyke net or dip net, 26 licenses that authorize the harvesting of elvers with two pieces of equipment, and 50 limited licenses that permit the taking of elvers in the St. Croix River with a dip net only.

The Passamaquoddy Tribe refused to accept the new elver fishing limitations citing its inherent right to fish. A tense situation on Easter Sunday March 31, 2013 was defused when State enforcement officials agreed to leave the area of the Pennamaquan River without issuing any summons or seizing any equipment. In email communication and direct meetings with the Governor's Chief Legal Counsel and Senior Natural Resources Policy Adviser, the MITSC restated its concerns about the way this issue was being handled in light of specific guidelines for consultation on natural resource issues amply outlined in section 6207 of the MIA. Throughout the elver fishing season, the MITSC underscored the importance of non-violent conflict resolution and ongoing negotiation with the Passamaquoddy Tribe. The elver fishing season closed without any similar incidents.

### **MITSC Work with Legislative Leadership to Stop Racialized Speech and Combat Intimidation during Public Hearings, Work Sessions of Legislative Committees**

The MITSC Chair Jamie Bissonette Lewey attended the March 6, 2013 public hearing held by the Marine Resources Committee on LD 451, An Act To Cap Certain Marine Resources Licenses Issued by the Passamaquoddy Tribe. Bissonette Lewey heard several remarks that constituted racialized speech directed against the Passamaquoddy Tribe. Some Passamaquoddy citizens reported feeling intimidated due to the climate inside and immediately outside the hearing room. At least once during the legislative hearing, a person testifying turned around and addressed his testimony directly at an individual Passamaquoddy citizen present in the room.

The MITSC scheduled a meeting with top legislative staff for the Speaker and Senate President to report what the Commission witnessed during the public hearing on LD 451 and to ask for action to prevent a reoccurrence. Legislative staff expressed concern at what was reported and agreed action was needed to ensure every person wishing to testify or attend a legislative function felt safe and comfortable. In response, legislative leadership crafted a statement to be read at each public hearing. This statement was presented to all committee chairs. Additionally, State House security personnel were asked to increase their presence at hearings that were expected to be more controversial. When MITSC attended the public hearing for LD 72, An Act To Open the St. Croix River to River Herring, on March 25, an issue that had the same potential for creating an intimidating and hostile environment for Passamaquoddy citizens, Bissonette Lewey witnessed none of the menacing and hostile behavior that took place March 6 for LD 451.

### **Testimony on LD 604, An Act Regarding Commercial Elver Fishing Licenses Issued by the Penobscot Nation**

John Banks offered testimony on LD 604, both in his capacity as Director of Natural Resources for the Penobscot Nation and as one of the Penobscot Nation's representatives on the MITSC, during the public hearing held March 13, 2013. LD 604, sponsored by Penobscot Tribal Representative Wayne Mitchell, increases the number of commercial elver fishing licenses that the Penobscot Nation may issue to its citizens from 8 to 48. In the final version of the bill that became law, the Penobscot Nation may issue 8 elver licenses permitting fishing with two pieces of gear, a dip net and a fyke net, and 40 licenses allowing harvesting with either a dip net or fyke net. Governor LePage signed LD 604 (PL Ch 9) into law on March 21, 2013.

### **Testimony on LD 72, An Act To Open the St. Croix River to River Herring, LD 584, An Act To Provide for Passage of River Herring on the St. Croix River in Accordance with an Adaptive Management Plan, & LD 748, An Act Regarding the Passage of River Herring on the St. Croix River**

The MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed adopted October 17, 2012 provided the basis for an analysis of the three river herring bills considered by the Marine Resource Committee on March 26, 2013: LD 72 (sponsored by Passamaquoddy Tribal Representative Madonna Soctomah), LD 584 (sponsored by Representative Windol Weaver), and LD 748 (sponsored by Representative W. Bruce MacDonald). LDs 72 and 748 provided for unrestricted access for river herring to the fishways located at the Woodland and Grand Falls Dams. LD 584, a bill backed by Governor LePage and the Department of Marine Resources, constrained the number of river herring that could ascend the fishways based on an Adaptive Management Plan developed years earlier. The MITSC testified in support of the full restoration of the alewife to the St. Croix Watershed. Because the Department of Marine Resources and the coalition of Tribal and conservation groups introduced competing bills, the MITSC offered a comparison of the three bills relative to achieving the MITSC's recommendation of full restoration of the alewife. Ultimately, the Marine Resources Committee ended consideration of LDs 584 and 748 and reported out LD 72 with an ought to pass recommendation. It passed the Maine Legislature and became law without Governor LePage's signature.

### **Testimony on LD 1399, An Act To Provide for the Aroostook Band of Micmacs Certain Rights Regarding Hunting, Fishing and Wildlife Management**

The MITSC submitted written testimony in support of LD 1399, An Act To Provide for the Aroostook Band of Micmacs Certain Rights Regarding Hunting, Fishing and Wildlife Management, sponsored by Representative Alexander Willette. The MITSC cited Article 26 of the UN Declaration on the Rights of Indigenous Peoples as a basis for supporting the Micmac Government's pursuit of independent wildlife management authority from the State of Maine and defined access to a traditional protein source in their diet, moose meat. Article 26 reads:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

In the bill, the Aroostook Band of Micmacs sought to obtain the same wildlife management authority enjoyed by the Passamaquoddy Tribe and Penobscot Nation under 30 MRSA §6207, §§1. The bill also directed the Commissioner of the Department of Inland Fisheries and Wildlife (IF&W) to issue a moose permit to any Aroostook Band of Micmacs member upon request. A divided report emerged from the Inland Fisheries and Wildlife Committee with most Committee members favoring defeat of the legislation and others supporting an amended bill that would direct the IF&W Commissioner to issue 12 moose permits to the Micmacs limited to ceremonial or sustenance use with all hunting restricted to Aroostook County. The legislation ultimately failed.

### **MITSC Participation in the Development of a Wabanaki Proposal to the State of Maine Re: Tribal Consultation**

The MITSC encouraged the LePage Administration during its initial months in office to affirm and to strengthen the executive order addressing meaningful consultation with the Wabanaki Tribes within the State of Maine initially issued by Governor John Baldacci February 24, 2010. Governor LePage on August 26, 2011 issued Executive Order 21 FY 11/12. An Order Recognizing the Special Relationship Between the State of Maine and the Sovereign Native American Tribes Located Within the State of Maine requires every department and agency in State Government to designate a tribal liaison. According to the Executive Order, each tribal liaison must develop a communications plan to facilitate information sharing between the department/agency for whom the liaison works and Tribal Government. In addition, each liaison shall develop “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.”

Though the LePage Executive Order 21 FY 11/12 forms the framework for a potentially strong relationship between the Tribes and the State, its potential for strengthening Wabanaki-Maine relations has been unrealized as the State of Maine has yet to adopt any policies or guidance to implement it. MITSC believes the lack of such a policy has contributed to numerous instances of the State failing to consult with the Tribes “at the earliest possible juncture of the development of any legislation, rules, and policies ... that significantly or uniquely affect those Tribes.” Some examples include:

- The Department of Public Safety and the Maine Criminal Justice Academy adopting positions opposing LD 140, An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy, without speaking with Wabanaki law enforcement officials.
- The Department of Marine Resources waiting until the deadline for submission of bills to share the general contents of LD 451, An Act To Cap Certain Marine Resource Licenses Issued by the Passamaquoddy Tribe, with the Passamaquoddy Tribe.
- The Office of the Maine Attorney General failing to consult with the Penobscot Nation before changing its position on the definition of the Penobscot Reservation.

In the winter of 2012, Governor LePage's initial legal counsel, Dan Billings, invited the Tribes to provide input on how the State could best communicate with them to fulfill the Executive Order. Since 2012, Passamaquoddy citizen Elizabeth Neptune has coordinated a joint Wabanaki effort to develop an effective tribal consultation policy for the Maine Department of Health and Human Services. The MITSC has attended all of the planning and committee meetings for this work offering the Commission's assistance as requested.

## **Fulfilling MITSC Responsibility When the Passamaquoddy Tribe or Penobscot Nation Seek to Add to Their Land in Trust Holdings**

### **Testimony on LD 64, An Act To Place Land in Centerville in Trust for the Passamaquoddy Tribe**

Under the Maine Implementing Act, the MITSC has the responsibility for evaluating and making a recommendation to the Maine Legislature concerning any Passamaquoddy or Penobscot request that would add to their trust land holdings. In 2007, the MITSC reviewed and recommended approval of a Passamaquoddy initiative to place three separate parcels of land into the Tribe's collective trust land holdings. During the 2007 legislative process, one of the Centerville parcels was somehow omitted from the final legislation. The MITSC reiterated its support to add the Centerville parcel to the Passamaquoddy trust land holdings at a Commission meeting held February 20, 2013. At the public hearing held March 5, 2013, the MITSC provided testimony in support of LD 64 sponsored by Passamaquoddy Tribal Representative Madonna Soctomah. LD 64 eventually passed and was signed into law by Governor LePage on May 10, 2013.

## **MITSC Organizational Development/Resources**

### **MITSC September 2012 Retreat with a Formal Orientation for the Commission**

The MITSC held its second annual retreat in September 2012. Prior to the retreat the MITSC identified a need to ensure all Commissioners have basic information about the Commission, the settlement acts, and the five Wabanaki communities within the State of Maine. As part of the formal orientation, Commissioners viewed a PowerPoint presentation created by Jamie

Bissonette Lewey. Then Commissioners from each member government represented on the Commission spoke about their respective communities and government with the State Commissioners focusing on their role.

Following the formal orientation, Penobscot Nation citizen Maria Girouard presented on her thesis, *The Original Meaning and Intent of the Maine Indian Land Claims: Penobscot Perspectives*. Commissioners then engaged in a discussion concerning MITSC's research of the Maine Indian Claims Settlement. On day two of the retreat, the MITSC undertook a scan of the political landscape and discussed how it could be of best service to the State and the Tribes.

### **Adoption of MITSC Policy Position on Natural Resource Management and River Herring Restoration to the St. Croix Watershed**

The MITSC decided during the year to begin formally articulating its thinking on specific issues in policy position statements that would follow a consistent format. The first issue that the MITSC addressed is the restoration of river herring in the St. Croix Watershed. The Commission began working on its position in the early summer of 2012 and adopted its final formal position statement on October 17, 2012.

### **Testimony on MITSC Budget before a Joint Public Hearing of the Appropriations & Judiciary Committees**

The MITSC has a distinct budget process within the State of Maine appropriations process reflecting the unique nature of the Commission and special relationship between the Wabanaki Tribes within the State of Maine and State Government. Under 30 MRSA §6212, §§6, "The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the" Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation "shall communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding." Following this discussion and contemplated agreement, according to 5 MRSA §1665, sub-§1 the State Budget Officer is required to "request that the Governor provide the budget proposal for the Maine Indian Tribal-State Commission."

The discussions required under 30 MRSA §6212, §§6 occurred February 11, 2013 and March 14, 2013. Department of Administrative and Financial Services Commissioner H. Sawin Millett, Jr. and former Legal Counsel Michael Cianchette represented Governor LePage during the initial meeting with Carlisle McLean, then General Counsel and now Chief Legal Counsel, joining Commissioner Millett for the second meeting. Denise Altvater and Christine Downing represented the Passamaquoddy Tribe and Bonnie Newsom participated as Chief Kirk Francis' designee for the initial meeting with John Banks of the Penobscot Nation attending the second meeting. Linda Raymond represented Chief Brenda Commander during the March 14 phone call meeting. Jamie Bissonette Lewey and John Dieffenbacher-Krall attended both meetings.

John Dieffenbacher-Krall explained during the first meeting that the goal of the Commission is to increase the Executive Director consultant position to full-time. Commissioner Millett cited the challenging financial situation faced by the State. He stated a commitment from the Tribes to increase their support of the Commission would be viewed positively by Governor LePage. All

three Tribal Governments agreed to increase their support of MITSC by 25%. The State of Maine provided level financial support at \$89,144 for fiscal years 2014 and 2015, the same amount the State appropriated for FY 2013.

## **MITSC Outreach**

### **MITSC Meeting with Governor Paul LePage 2/7/13**

The entire MITSC met with Governor LePage in his Cabinet Room on February 7, 2013. As far as the MITSC is aware, the February 7 meeting represents the first such meeting between a sitting Maine Governor and the Commission as an entire body. In recognition of the historical nature of the meeting, Governor LePage's Press Secretary Adrienne Bennett issued a news release about the meeting.

### **MITSC Presentation to the Judiciary Committee 2/14/13**

Jamie Bissonette Lewey presented a PowerPoint presentation, "Report to the Joint Committee on the Judiciary," on February 14, 2013 as part of an overall MITSC presentation to brief and to familiarize the legislators about the Commission's responsibilities and to provide an assessment of the state of Wabanaki-Maine relations. During the PowerPoint presentation, Bissonette Lewey provided information concerning the MITSC's responsibilities and current composition, the ongoing humanitarian crisis experienced by the Wabanaki Tribes within the State of Maine documented in the Commission's May 16, 2012 letter to UN Special Rapporteur James Anaya, the nonconformance of the Maine Implementing Act with the UN Declaration on the Rights of Indigenous Peoples, and common misunderstandings of the Settlement Act.

### **MITSC Commissioner Gail Dana-Sacco Presentation to the Judiciary Committee 2/28/13**

Following the MITSC presentation to the Judiciary Committee on February 14, 2013, the Judiciary Committee Chairs invited the three Tribal Representatives to the Maine Legislature, Henry Bear, representing the Houlton Band of Maliseet Indians, Wayne Mitchell, representing the Penobscot Indian Nation, and Madonna Soctomah, representing the Passamaquoddy Tribe, to present tribal specific concerns and perspectives. As part of the Passamaquoddy presentation organized by Representative Soctomah, Gail Dana-Sacco shared with the Judiciary Committee some of her involvement in and knowledge of the Settlement Act.

## Appendix 1



The Wabanaki Center and the  
Maine Indian Tribal- State Commission present:

**Walter Echo-Hawk**

Thursday, March 28, 2013  
At the University of Maine

Orono

Minsky Hall ~ 7:00 PM

Walter Echo-Hawk is a Pawnee lawyer, professor, activist, and author. His latest book, *In the Courts of the Conquerors: The 10 Worst Indian Law Cases Ever Decided* explores the process behind legal decisions that adversely affect indigenous people today. Echo-Hawk, self-described as a “foot soldier” in the early days of the Native American sovereignty movement, will tailor his Maine visit to the Maine experience, examining the 1980 Maine Indian Land Claims Case, restrictive settlement acts in general, and discussing how UNDRIP (the United Nations Declaration on the Rights of Indigenous Peoples) provides a strong foundation for Indian rights in the United States and a potential path forward.

**WEDS. MARCH 27<sup>TH</sup> – AT MOTAHKMIKUK/INDIAN TOWNSHIP 1:00 – 4:00 PM**

Wabanaki workshop on the 1980 Maine Indian Claims Settlement Act and UNDRIP led by Walter Echo-Hawk. FMI contact Matt Dana: [mattdana@myfairpoint.net](mailto:mattdana@myfairpoint.net)

**THURS. MARCH 28<sup>TH</sup> – (UMAINE/ORONO) - BANGOR ROOM/ MEMORIAL UNION  
3:00 – 5:00 PM “Wabanaki Treaties, Petitions & Interpretations: A Teach-In”**

Join Walter Echo-Hawk and Wabanaki scholars in an examination of Wabanaki treaties and petitions from the 17<sup>th</sup> to the 21<sup>st</sup> century, and participate in shared learning about treaty interpretations and their significance to indigenous people today. FMI contact Maria Girouard: [maria.girouard@umit.maine.edu](mailto:maria.girouard@umit.maine.edu) or 581-1414.

**THURS. MARCH 28<sup>TH</sup> – (UMAINE/ORONO)- MINSKY HALL 7:00 – 9:00 PM**

**KEYNOTE PRESENTATION BY WALTER ECHO-HAWK** followed by a panel of Wabanaki respondents: Jill Shibles (Penobscot) President of the National American Indian Court Judges Association; Hugh Akagi (Passamaquoddy) Chief of the Schoodic Band of Passamaquoddy Indians; Dr. Andrea Bear Nicholas (Maliseet) Chair of Native Studies, St. Thomas University; and Vera Francis (Passamaquoddy) Storyteller and Environmental Activist.

Special thanks to sponsors: American Friends Service Committee Healing Justice Program New England, Cushman D. Anthony Charitable Giving Fund @ Maine Initiatives, the Episcopal Committee on Indian Relations of the Episcopal Diocese of Maine, and Maine Initiatives

# Native American lawyer, author says Maine's indigenous people at crossroads

3/29/2013 By [Dawn Gagnon](#), Bangor Daily News Staff



[Kevin Bennett](#) | BDN

Attorney, activist and author Walter Echo-Hawk address a group gathered at the Minsky Recital Hall on the University of Maine campus on Thursday.

ORONO, Maine — Indigenous people in Maine, the United States and the rest of the world are standing between two legal frameworks, a renowned Native American legal scholar, activist and author said Thursday night during a keynote address at the University of Maine.

From 1776 to 1970, the nation's indigenous peoples — including Maine's American Indian tribes — were governed by federal laws and treaties that referred to them as “imbeciles” and “savages” incapable of governing themselves, said [Walter Echo-Hawk](#), a Pawnee Indian from Oklahoma who has been at the forefront of the Native American rights movement since 1973.

The federal government's longtime approach to its indigenous people was the product of European colonialism, initially with the powers that be in England and later with the United States, said Echo-Hawk, who visited Maine for the first time this week.

More recently, Maine tribes have been subject to the [Maine Indian Land Claims Settlement Act](#) of 1980. The settlement, which appropriated \$81.5 million for tribes and provided for the reacquisition of native lands, also established a policy for the tribes to govern their own affairs, with some exceptions.

The [Declaration on the Rights of Indigenous Peoples](#) is a comprehensive statement addressing the human rights of indigenous peoples, according to the United Nations' website. It was crafted and formally debated for more than 20 years before it was adopted by the UN General Assembly in the fall of 2007.

The document emphasizes the rights of indigenous peoples to live in dignity, maintain and strengthen their own institutions, cultures and traditions and pursue their self-determined development, in keeping with their own needs and aspirations.

Maine was the first state in the nation to voice its support for the declaration in 2008, Echo-Hawk said. The United States did not endorse the declaration until two years later, he said.

Despite the gesture, however, Echo-Hawk said little has changed.

“Since 2010, neither Maine nor the U.S. have taken any affirmative steps to implement it in partnership with the indigenous peoples according to the roadmap provided by that declaration,” he said.

“But there has been a [U.S.] Senate oversight hearing to begin looking at the policy implications of this new framework that was held in 2011,” Echo-Hawk said. In addition, he said James Anaya, the UN’s special rapporteur on the rights of indigenous peoples, toured the United States, met with federal agencies that work with Indian tribes and issued a report with his recommendations to the U.S. last year.

“Now Indian tribes from around the country are sitting down to read this document, consulting with their tribal attorneys and thinking. ‘What does this mean?’” he said. “And so [now] we are on the threshold of implementing this.”

Though he said he would have needed more time at the podium to go into the declaration’s details, Echo-Hawk did offer some highlights.

“At the heart of it is self-determination principles, equality principles, the cultural rights of indigenous peoples. Land, property and territorial rights. The rights to sustain hunting and fishing and indigenous habitats. It’s all in there,” he said.

“I just want to say that the the promise of this declaration — if it’s fully implemented — will change the world. It will change the way that the world views indigenous peoples around the world — 375 million people in 72 countries,” he said. “It ushers in a new era. It allows us here in Maine to define the rights of Maine’s Indian tribes that’s inherent, inalienable, inalienable, inalienable human rights.”

As Echo-Hawk sees it, implementing the declaration would “strip away the dark side of federal Indian law and it would reaffirm the very best of the American legal culture as it pertains to the people,” he said.

“[It would] reaffirm the self-determination approach and significantly strengthen our laws and policies [so they would be] more appropriate in a post-colonial world. It will afford an answer to the perplexing political problem about what is the best way to incorporate Indians into our mainstream culture.”

Echo-Hawk also said it is time to heal the wounds of the past.

“You can try to heal the wound from a past that has torn you apart or you cannot heal it,” he said.  
“You could take the low road of revenge, of hatred, of being mired in injustice. Or you can try to heal,” he said.

Appendix 3  
March 26, 2013

Senator Susan M. Collins  
U.S. Senate  
413 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Collins:

We, the Maine Indian Tribal-State Commission (MITSC), function as an intergovernmental body under the Maine Implementing Act of 1980 (30 MRSA §§ 6201, *et. seq*) as ratified by the Maine Indian Claims Settlement Act (MISCA) (25 U.S.C. §§ 1721, *et. seq.*). Our charge is 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.” Accordingly, we understand that our primary function is to serve as the body charged by law to examine and offer recommendations in regard to questions or disputed provisions concerning the Maine Implementing Act (MIA).

Late last year we received a copy of a November 14, 2012 memo from Maine Assistant Attorney General Paul Stern to Carol Woodcock of your staff concerning the Stafford Act Amendments (S. 2283) that were pending before the US Senate. This letter details a singular interpretation of the Maine Indian Claims Settlement Act. While we recognize that the Maine Attorney General’s office provides a particular perspective on questions concerning MISCA, the body charged by the land claims settlement legislation to continually review the legislation is MITSC. MITSC, composed of equal numbers of Tribal and State appointees, has a deep knowledge and a long history examining these issues. We invite you to work with us to develop a formal protocol between your office and MITSC to better inform your understanding of the Maine Indian Claims Settlement Agreement.

**Background, Statutory Authority, and Responsibilities  
of the Maine Indian Tribal-State Commission (MITSC)**

During the extensive negotiations that culminated in the Maine Indian Claim Settlement Act (MISCA), the State of Maine and Wabanaki Tribal Governments recognized that unresolved matters remained. In the interest of completing the negotiations, negotiators for the State of Maine and the Tribal Governments involved decided to create by statute a *permanent intergovernmental body* to address both unresolved issues and issues that might arise over time. The legislative record amply demonstrates that MITSC was envisioned as a body that would consider issues related to the implementation of the Settlement Act.

John Patterson, a Deputy Attorney General for the State of Maine during the period of the Settlement Act negotiations and principal negotiator for the State, reiterated those expectations to the Tribal-State Work Group (TSWG) in November 2007. “It (referring to MITSC) was intended

to be a forum in which agreements could be reached and then go back to the Legislature and the Tribes, and to recommend that they both adopt -- the Tribes would have to adopt the change to the legislation and the Legislature would do it too.” The governments charged MITSC with continually reviewing the effectiveness of the Act and making recommendations for amendments to the Act and resolutions to lingering problems.

Reuben “Butch” Phillips, a member of the Penobscot Nation Negotiating Team, also spoke at the November 19, 2007 TSWG regarding MITSC’s origin and purpose.

He said (referring to Andrew Akins, head of the Tribal Negotiating Team) let’s form a commission or committee of State and Tribal people to look at these disputes on these waters and from there it expanded. This commission would be the liaison between the Tribes and the State, and they would listen to disputes and try to come up with some resolutions, and, if you recall, we had an equal number of Tribal members and State people.

MITSC derives its statutory authority directly from the Maine Implementing Act (30 M.R.S.A. §§ 6201, *et. seq.*), the legislation passed by the Maine Legislature in April 1980 and ratified as part of the Federal agreement upon the enactment of MICA in October 1980. MITSC’s mandate under 30 M.R.S.A. § 6212, §§ 3 is 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.

MITSC also holds responsibility for regulating fisheries in MITSC waters (30 M.R.S.A. § 6207, §§ 3) offering its recommendation on any additions to Passamaquoddy or Penobscot Indian Territory (30 M.R.S.A. § 6205, §§ 5); and responding to petitions from Passamaquoddy or Penobscot Nation citizens to establish extended reservations (30 M.R.S.A. § 6209-A, §§ 5 and 30 M.R.S.A. § 6209-B, §§ 5).

While MITSC faithfully strives to fulfill all of its statutory responsibilities, our recommendations for resolving disputed interpretations of MICA constitute our most essential function. In order to effectively carry out this responsibility, substantive issues related to the tribal-state relationship must specifically be brought to the attention of MITSC. The opinion of the Maine Attorney General’s Office is a one-sided interpretation of the MICA and the MIA. We would expect US Senators and Congresspeople representing the State of Maine to uphold federal and tribal as well as state interests. Thus, the actions of your office, undertaken after consulting only with the Maine Attorney General not only undermine and subvert MITSC’s role in resolving disputes but this practice has unnecessarily antagonized tribal-state relations.

## **Barriers to MITSC's Statutorily Mandated Function to Examine Disputed Interpretations of the Act and Render Recommendations to Resolve Them**

MITSC experiences two prevailing practices that hinder our ability to serve as the problem solving body envisioned by the Settlement Agreement negotiators:

- 1) the consistent lack of attention to the statutorily mandated process for addressing issues inherent in the Settlement Agreement by bringing issues to MITSC;
- 2) the repeated use of section 6204 of the MIA by the Maine Attorney General's Office to downplay the practical necessity of all of the parties to have a voice in resolving conflicts.

The result of this consistent pattern of response to Wabanaki-Maine disputes leaves no clear avenue for the Maliseets, Passamaquoddies, and Penobscots to have their concerns heard and acted upon in a forum that recognizes their right to participate in solving problems that arise from the Settlement Agreement. This failure to comply with this key provision of MICSA demonstrates a lack of commitment to the joint resolution of concerns fundamental to a well-functioning Tribal-State relationship. Such tensions don't comport with the vision expressed by the Settlement Act negotiators:

I cannot promise you that the adoption of this settlement will usher in a period of uninterrupted harmony between Indians and non-Indians in Maine. But I can tell you, however, that because we sat down at a conference table as equals and jointly determined our future relationship, in my view there exists between the State and the tribes a far greater mutual respect and understanding than has ever existed in the past in the State of Maine. I can also tell you that if this matter is litigated over a period of years, the atmosphere in Maine certainly will be quite different. I cannot put a price tag on human relationships, nor am I suggesting that this factor alone justifies enactment of the legislation before you. I am asking only that you give appropriate consideration to the historical significance not only of the settlement itself, but also of the manner in which it was reached. (Hearings Before the Select Committee on Indian Affairs, United States Senate On S. 2829, July 1 & 2, 1980, Maine Attorney General Richard Cohen, p.164.)

At the public hearing for the bill at the Augusta Civic Center, Andrew Akins, chair of the Tribal Negotiating Committee, stated: ““We are interested in building a new relationship with Maine, one of mutual trust and respect.”” (The Original Meaning and Intent of the Maine Indian Land Claims: Penobscot Perspectives, Thesis, Maria Girouard, May 2012, p. 57)

The key words in Attorney General Cohen's and Negotiating Committee Chair Akins' remarks involve the manner in which the Settlement Agreement was reached, through work “as equals and jointly determined our future relationship” and “building a new relationship...one of mutual trust and respect.” The promise of mutual determination of the meaning and interpretation of the Settlement Agreement operating in a relationship of trust and respect has

been badly damaged as state or federal courts have issued decisions interpreting some of the Act's most contentious provisions. The extensive litigation that has taken place over nearly three decades has eroded the relationship between the State of Maine and the Tribes. This tension is exacerbated when, outside of a lawsuit, only the Maine Attorney General—the legal representative of only one of the three parties—is sought out for comment.

During its history as the body charged to “continually review the effectiveness of this Act,” MITSC has consistently received reports that efforts to include the federally recognized tribes residing in Maine in federal legislation intended to benefit all tribes has been met with efforts to exclude them. We must remind you that section 1735 (b) of the MICA was intended to limit the automatic inclusion of Maine tribes in federal Indian legislation only under certain conditions. 1735 (b) is tempered by 1725 (h) which states:

the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

This section of law was crafted to provide the means to ensure that federal legislation that is not in conflict with Maine civil and criminal code *would* benefit the Maine Wabanaki Tribes, and thus the State of Maine.

Our job, along with all who inherit the trust of all of the negotiators, is to look for the best solution to conflicts arising from different interpretations of the legislation. Finding the best solution requires hearing all of the voices. We want to work with you and other members of the Maine Congressional Delegation to practice inclusion rather than exclusion when dealing with these issues. The State of Maine and the Tribes stand to gain when the Wabanaki Tribes are included as recipients of essential federal services and benefits that accrue to all federally recognized tribes.

For example, the amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act passed by the Congress in January would not have adversely affected the State of Maine in any way. In fact, the Tribes' ability to declare emergencies in their communities has the potential to draw more total dollars coming into Maine than is currently the case when only the Governor of the State of Maine can make such declarations. Likewise, applying the Tribal Law and Order Act can provide hundreds of thousands of dollars in new law enforcement resources flowing into Maine. Inclusionary language making explicit the applicability of the acts to the Wabanaki should be added to this law and to the Violence Against Women Act.

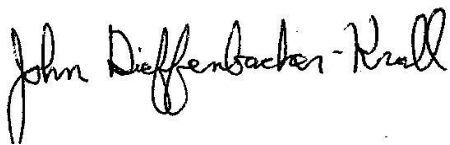
MITSC encourages you to use the power of your office to improve the relationship between the Wabanaki Tribes and the State of Maine to recognize the inherent sovereignty of the Wabanaki Tribal Governments, which are the oldest formal allies of the US based on the Treaty of Watertown signed July 19, 1776. The State of Maine has committed itself to respecting the human rights of the Wabanaki and all Indigenous Peoples when it expressed its support on April 15, 2008 for the UN Declaration on the Rights of Indigenous Peoples. Yet Maine's commitment to the human rights of the Maliseets, Micmacs, Penobscots, and Passamaquoddies is called into question by UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya. In his report on his official visit to the US conducted last year, Rapporteur Anaya reports:

Maine Indian Claims Settlement Act and Maine Implementing Act create structural inequalities that limit the self-determination of Maine tribes; structural inequalities contribute to Maine tribal members experiencing extreme poverty, high unemployment, short life expectancy, poor health, limited educational opportunities and diminished economic development. (*Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in the United States of America*, p. 36)

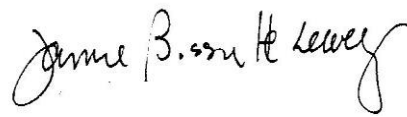
We recommend that when you examine federal legislation that may benefit Wabanaki Tribal Governments you consider how that legislation might benefit both the State and the Tribes and work to include them whenever possible. We stand ready to work with you to advance this process. Additionally, we recommend a formal protocol be established between the congressional delegation and MITSC that ensures that the statutorily mandated process of reviewing issues relative to the Settlement Agreement is routinely followed rather than ignored. The designation of one of your staff as the MITSC point of contact might be a helpful action to ensure the desired communication takes place.

We would welcome an opportunity to speak to you about this matter in Maine. MITSC Executive Director John Dieffenbacher-Krall will be in contact with your scheduler to set up the meeting.

*Sincerely,*



John Dieffenbacher-Krall  
Executive Director



Jamie Bissonette Lewey  
Chair



Denise Altvater  
Passamaquoddy Representative to MITSC



John Banks  
Penobscot Representative to MITSC



John Boland  
State Representative to MITSC



Harold Clossey  
State Representative to MITSC



Matt Dana  
Passamaquoddy Representative to MITSC



Gail Dana-Sacco  
State Representative to MITSC



Roy Partridge  
State Representative to MITSC



Linda Raymond  
Maliseet Representative to MITSC



Brian Reynolds  
Maliseet Representative to MITSC

Cc: Chief Reuben Clayton Cleaves  
Chief Brenda Commander  
Chief Kirk Francis  
Chief Richard Getchell  
Chief Joseph Sockabasin  
U.S. Senator Angus S. King  
Representative Michael H. Michaud  
Representative Chellie Pingree  
Governor Paul R. LePage  
Attorney General Janet T. Mills

## Appendix 4

SUSAN M. COLLINS  
MAINE

413 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1904  
(202) 224-2523  
(202) 224-2693 (FAX)

United States Senate  
WASHINGTON, DC 20510-1904

COMMITTEES:  
SPECIAL COMMITTEE  
ON AGING,  
RANKING MEMBER  
APPROPRIATIONS  
SELECT COMMITTEE  
ON INTELLIGENCE

April 8, 2013

Jamie Bissonette Lewey, Chair  
Maine Indian Tribal-State Commission  
PO Box 241  
Stillwater, ME 04490

Dear Chair Bissonette Lewey:

I am writing in response to your letter of March 26, 2013. I appreciate your taking the time to describe the Maine Indian Tribal-State Commission and its functions, which were included in the Maine Implementing Act (MIA) and are codified at 30 MRSA §6212.

Some background on the Stafford Act amendments, which appears to have prompted your letter, may be helpful. While I was serving on the Senate Committee on Homeland Security and Governmental Affairs, this issue was first brought to my attention because Senator Tester (D-MT) was hoping to have his bill, S. 2283, approved by the Committee. S. 2283, which applied nationally, would have authorized Indian tribes to bypass the governor of their states and petition the federal government directly for natural disaster status.

When the Committee's professional staff reviewed Senator Tester's proposed amendments, it was not clear whether they were consistent with the jurisdictional provisions of the MIA and the Maine Indian Claim Settlement Act.

In September 2012, my staff and I sought the input of Chief Francis on this proposed legislation when he was in Washington for the National Congress of American Indians (NCAI) Tribal Unity Week. Based on these conversations, it was my understanding that the Stafford Act amendments were not of significant concern to the Penobscot Tribe. Chief Francis raised other issues with which the Penobscot Indian Nation was deeply concerned such as the impact sequestration could have on programs that are part of the "trust obligation" to Native Americans.

The Committee's staff also discussed the proposed amendments with Rob McAleer, the head of the Maine Emergency Management Administration. Mr. McAleer indicated that the tribes had received a little more than \$130,000 in disaster relief since 1999 and that, in general, the tribes and MEMA worked well together.

After reviewing the proposed amendments with my staff, I understood their concerns that S. 2283 was unclear in its application and might create a point of friction between the State of Maine and the tribes. In your letter, you noted the unhappy history of litigation that has characterized the enactment of the MIA and its companion, the Maine Indian Claims Settlement, as well as the post-settlement act legislation for the Houlton Band of Maliseet Indians and the

Aroostook Band of Micmacs. I share your view that litigation tends to be divisive, consume great resources, create winners and losers, and establish lasting legal facts.

With this in mind, my staff contacted the Maine Attorney General's Office and asked for comment on the proposed Stafford Act amendments. The Attorney General's Office found a potential ambiguity in the amendments which, in turn, prompted my colloquy with Senator Tester during consideration of the Sandy Supplemental Appropriations bill.

Following the colloquy, I received a letter signed by all four Maine tribes expressing unhappiness with the colloquy. I was quite surprised to receive this letter because Chief Francis was the only tribal leader who had shared his views on the bill, and I had not heard concern from the other tribes leading up to this point. When I received this correspondence, I responded to all four tribes by letter dated January 14, 2013. In that letter, I explained my understanding of the Maine Implementing Act-Maine Indian Claims Settlement and my reasons for entering into the colloquy with Senator Tester. None of the tribes responded to this letter.

With the arrival of your letter, I have the opportunity to address this matter once again. First, as noted, I believe one of my responsibilities includes assessing federal legislation to determine whether, notwithstanding 25 USC §1735(b), it might introduce ambiguity into the jurisdictional relationship between the State of Maine and the tribes of Maine.

I appreciate your reference to Section 1735(b). I am familiar with the origins of this provision and its relationship to 25 USC §1725(h)(6). These revisions originated in the Senate version of the Maine Indian Claims Settlement Act, S. 2829, passed in 1980. The purpose behind and reasons for these changes were set forth at length in the report of the Senate Select Committee on Indians Affairs, Senate Report 96-957. As you note, over the years, Section 1735(b) and Section 1725(6)(h) have been interpreted by the First Circuit Court of Appeals.

Your letter appears to suggest that my office consulted only with the Attorney General's Office on the proposed Stafford Amendments, which is not accurate. In the future, if legislation is proposed which could raise jurisdictional or other significant questions about the various settlement acts, I would encourage the MITSC and each of the tribes of Maine to contact my office, and it would be most helpful if your analysis were in writing. This is not to say that oral discussions are not desired; they are, but written comments would go a long way toward avoiding any future misunderstandings.

My staff and I have frequent exchanges with tribal leaders and individual members, who often contact my office for assistance or to express their views on issues. For instance, the Penobscot Tribe sought and received my assistance when pursuing their 8(a) certification. A MITSC member often expresses his opinions to me regarding the Penobscot River Restoration project. Individual tribe members have contacted my state offices for help with the Veterans Administration, Social Security, and other benefits. Moreover, any member of a Tribe has a constitutional right to contact my office to express views on legislation without my contacting the MITSC to determine if the Commission agrees with those opinions. It would be inappropriate, and in the case of Native Americans seeking help with their individual problems, a

violation of their privacy, for my office to contact the Commission in such cases. I, of course, always welcome hearing MITSC's own views.

You recommend in your letter that I appoint a particular person on my staff to act as point person with the Commission. As you know, tribal needs and interests are as broad-ranging as any community of size. They include housing, healthcare, child welfare, education, the environment, infrastructure, law enforcement, economic development, and a host of other matters. These issues are far too numerous for a single person to handle, but I would suggest that the following senior staff are well-equipped to direct you to the right person: Aroostook State Office Representative Phil Bosse, Bangor State Office Representative Carol Woodcock, Legislative Director Betsy McDonnell, and Legislative Assistant Olivia Kurtz.

You may be assured that my door is open to the Maine Indian Tribal-State Commission, either as such or through its individual members. At the same time, the Penobscot and Passamaquoddy tribes and the Houlton Band of Maliseets and Aroostook Band of Micmacs and any member of them, is always welcome to bring questions, comments or initiatives to my attention or to that of my staff.

Thank you again for taking the time to share your views and to afford me the opportunity to address these important issues. I look forward to working with you in the future.

Sincerely,



Susan M. Collins  
United States Senator

CC: Chief Reuben Clayton Cleaves  
Chief Brenda Commander  
Chief Kirk Francis  
Chief Richard Getchell  
Chief Joseph Socobasin  
Governor Paul LePage

Appendix 5

May 13, 2013

Senator Susan M. Collins  
U.S. Senate  
413 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Collins:

Thank you for your prompt and thorough response to the March 26, 2013 letter from the Maine Indian Tribal-State Commission. I appreciate your attention to the points we raised in our letter and your constructive suggestions for continued dialogue on the points we raised.

In your letter, you explained that your colloquy on the Stafford Act Amendments was prompted by a “potential ambiguity in the amendments,” and that you did solicit the thinking of Penobscot Chief Kirk Francis. I am concerned that the thinking of the Passamaquoddy Chiefs was not solicited.

Overall, I remain concerned on two levels:

1. A potential ambiguity does not necessarily mean that the proposed legislation has met the legal threshold of “affect or preempt” which is the actual language of the Maine Indian Claim Settlement Act Sections 1735 b and 1725 h. There appears to be no specific process for assessing when legislation for the benefit of Indian Tribes would rise from an ambiguity to actually adversely affecting or preempting State authority.
2. There does not seem to be an adequate mechanism to assess pending legislation for potential positive impact on the Tribes and the State thus triggering inclusive language.

Over the course of the next few months I will be advancing discussion about the creation of a 1735 b “test” to address these concerns in an orderly and productive way so that constructive thinking can be advanced early on in a particular law’s development. As these conversations take place, I will make every effort to include the appropriate staff as indicated in your letter.

Lastly, I am in the process of reviewing pending federal legislation. When this review is completed, I will be in touch with your office to schedule a meeting in order to review legislation MITSC has decided would benefit both the Tribes and the State of Maine. Again, thank you for your thoughtful response and for your public service.

Sincerely,

A handwritten signature in black ink, reading "Jamie Bissonette Lewey". The signature is fluid and cursive, with the first name "Jamie" being the most prominent.

Jamie Bissonette Lewey, Chair  
Maine Indian Tribal-State Commission

## Appendix 6

SUSAN M. COLLINS  
MAINE

413 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1904  
(202) 224-2523  
(202) 224-2693 (FAX)

United States Senate

WASHINGTON, DC 20510-1904  
May 28, 2013

COMMITTEES:  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS,  
RANKING MEMBER  
APPROPRIATIONS  
ARMED SERVICES  
SPECIAL COMMITTEE  
ON AGING

Jamie Bissonette Lewey, Chair  
Maine Indian Tribal-State Commission  
PO Box 241  
Stillwater, ME 04489

Dear Ms. Bissonette Lewey:

Thank you for your letter of May 13, 2013. You have advised that you have two points of concern, and I appreciate the opportunity to respond.

First, you suggest that a "test" might be developed for determining when proposed congressional legislation might be ambiguous under 25 USC §§1735(b) and 1725(h). To remedy that possibility, you propose to develop a "test" which, if I understand you correctly, will reveal whether proposed legislation is, in fact, ambiguous or not. Although it is not clear to me how a test could be devised to predict whether legislation that has not yet been written would be ambiguous or not, I look forward to learning more about your discussions.

Second, you suggest the absence of a mechanism by which pending legislation could be assessed for its "potential impact on the Tribes and the State" with the possible consequence of "triggering inclusive language." I am not certain what you mean by "triggering inclusive language." With respect to a "mechanism" for assessing the potential impact of legislation, I would like to reiterate that I always welcome hearing directly from the Tribes and often do on pending legislation.

As you know, the Tribes are sovereign entities. Therefore, it is important that they have every opportunity to communicate with me directly on issues that may affect them. Accepting the views of other entities ostensibly on their behalf would be inconsistent with the Tribes' sovereign status.

Should the Maine Indian Tribal-State Commission at any time wish to offer its perspective on federal legislation or other issues, I would welcome that. As I am sure you will understand, however, I will not view the opinions expressed by the MITSC as substituting for the views of the Tribes unless the Tribes expressly and unequivocally advise me that that is their wish.

Thank you again for your additional views.

Sincerely,



Susan M. Collins  
United States Senator

Appendix 7

**MITSC Testimony on LD 308 An Act To Require the Attorney General To Consult with Federally Recognized Indian Tribes before Issuing an Opinion on Federal Legislation Affecting the Maine Indian Claims Settlement Act of 1980**

**April 4, 2013**

**Offered by Jamie Bissonette Lewey, Chair**

Good afternoon Senator Valentino, Representative Priest, Tribal Representative Wayne Mitchell and distinguished members of the Joint Committee on the Judiciary, I come before you today to testify in favor of LD 308 “An Act To Require the Attorney General To Consult with Federally Recognized Indian Tribes before Issuing an Opinion on Federal Legislation Affecting the Maine Indian Claims Settlement Act of 1980.”

This bill is practical and accurately reflects the understandings of the framers of both the Maine Indian Claims Settlement Act and the Maine Implementing Act. It was the understanding that the parties to this historic agreement would work together to interpret, hone and amend this agreement. It was envisioned as a “living document.” You have heard Tribal members describe the hope and promise that this unique settlement agreement was to have offered.

To date, the Settlement Acts have been interpreted outside of the context of the relationship they were to define. This approach is extremely problematic because it does not consider the human relationship this law was meant to describe while the intent of all of the framers is routinely ignored. I must believe that all of the framers, State and Tribal, intended for these laws to lay the foundation for a relationship, a good relationship, between Maine’s federally recognized Tribes and the State.

These outcomes of these interpretations have harmed the very people these acts were supposed to benefit. This 33-year framework has resulted in a humanitarian crisis in Tribal communities: a crisis that must be addressed in order to live up to the hope and promise of these agreements. LD 308 is a practical step that would take the Tribes and the State a long way in understanding each other’s perspectives. It mandates a very necessary and practical conversation. It simply says that when an evaluation of pending federal legislation for the benefit of Indian Tribes is requested, that the State’s attorney general consult with the Tribes in order that a full understanding of the benefits and the potential problems be achieved. I have to believe that in the course of these conversations, the problems unique to the Tribes, will be better understood and thus, more likely solved.

I have no doubt that this practice will be awkward and uncomfortable at first. But I am convinced these consultations will eventually play a part in healing this important relationship, and that these consultations will give a fuller perspective of how federal Indian policy could benefit both Maine Tribes and all of the people of Maine.

## Appendix 8

### **Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission Selection Panel Members**

Houlton Band of Maliseet Indians	Brian Reynolds
Aroostook Band of Micmacs	Norman Bernard
Passamaquoddy Tribe at Sipayik	Tina Downing
Passamaquoddy at Motahkmikuk	Stephanie Bailey
Penobscot Nation	Mark Chavaree
Maine Executive Branch	Lisa Sockabasin
Maine Health & Human Services Committee	Beth O'Connor
Maine Judiciary Committee	Kim Monaghan-Derrig
Maine Office of the Attorney General	Janice Stuver
Maine District Court Family Division (GAL/CASA)	Libby McCullen
Maine Indian Tribal State Commission	Paul Thibeault
TRC Convening Group	Molly Newell
TRC Convening Group	Martha Proulx

## **NEWS RELEASE**

For Immediate Release: Friday, August 31, 2012

For More Information: John Dieffenbacher-Krall, MITSC (207) 817-3799 (c) (207) 944-8376

Carolyn Morrison, Interim Director, TRC (207) 896-3042

Esther Altvater, Muskie School of Public Service (c) (207) 615-3189

### **Maine Wabanaki-State Child Welfare Truth & Reconciliation (TRC)**

#### **Selection Panel Issues Call for Commissioner Nominations**

**[www.mainetribaltrc.org](http://www.mainetribaltrc.org)**

The Maine Wabanaki-State Child Welfare Truth & Reconciliation (TRC) Selection Panel, the group tasked by the Wabanaki Tribal Governments and the State of Maine to select five Commissioners to serve on the TRC, invites the public to nominate people for the Selection Panel's consideration. The Selection Panel seeks individuals of recognized integrity, empathy, stature and respect with a demonstrated commitment to the values of truth, reconciliation, equity, and justice. Nominations must be received by October 1, 2012.

The Maine Wabanaki-State Child Welfare Truth & Reconciliation process is a first-in-the-world effort of Indigenous Peoples and a political subdivision of a state to examine an issue, in this instance what happened to Wabanaki People in the State of Maine child welfare system, to develop a common understanding of what happened, to support healing of everyone affected by the system, and to identify possible system reforms to create the best child welfare system possible. On May 24, 2011, the five Wabanaki Tribal Governments, the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, and Penobscot Indian Nation, joined the State of Maine to sign a Declaration of Intent committing the signatories to undertake a truth and reconciliation process exploring what happened to Wabanaki People in the child welfare system focusing on the period since the passage of the Indian Child Welfare Act in 1978. The governments followed that initial step by signing the TRC Mandate on June 29, 2012 which provides the instructions for how the TRC will be carried out.

The idea for the Tribal-State TRC originated within a Truth and Reconciliation Convening Group, individuals representing Maine Tribal Child Welfare, Maine State DHHS Office of Child and Family Services, and staff from the Muskie School of Public Service, American Friends Service Committee, and Wabanaki Health and Wellness. Prior to the formation of the Convening Group, Wabanaki and State representatives had been collaborating for years, achieving substantial progress with the collective goal to improve the child welfare system for Wabanaki children. In spite of this progress, Maine's child welfare history continues to impact Wabanaki children and families today. The governments have come to realize that they must unearth the story of Wabanaki people's experiences in order to fully uphold the spirit, letter and intent of the Indian Child Welfare Act (ICWA) in a way that is consistent with the law and promotes healing.

In 1978, the U.S. Congress passed ICWA, which codified higher standards of protection for the rights of Native children, their families and their Tribal communities. Within the ICWA, Congress stated that, "No resource is more vital to the continued existence and integrity of Indian tribes than their children" and that "Child welfare agencies had failed to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families" (25 U.S.C. & 1901).

Everyone is encouraged to nominate individuals who meet the selection criteria established by the six signatories. People can nominate other individuals or themselves. To nominate an individual, people should use the Commissioner Nomination Form created by the TRC Selection Panel. Nominations may also be submitted by going to the TRC website, [www.mainetribaltrc.org](http://www.mainetribaltrc.org). Any questions about the TRC nominations process or the TRC in general can be directed to Interim Director Carolyn Morrison at (207) 896-3042 or [carolyn.morrisontrc@gmail.com](mailto:carolyn.morrisontrc@gmail.com).

Appendix 10

## **NEWS RELEASE**

For Immediate Release: Tuesday, December 18, 2012

For More Information: John Dieffenbacher-Krall, MITSC (207) 817-3799 (c) (207) 944-8376  
Carolyn Morrison, Interim Director, TRC (207) 896-3042  
Esther Attean, Muskie School of Public Service (c) (207) 615-3189

### **Selection Panel Announces Names of Wabanaki-State Child Welfare Truth & Reconciliation Commissioners**

(Indian Island, Penobscot Indian Nation) Today the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission (TRC) Selection Panel, the group tasked by the Wabanaki Tribal Governments and the State of Maine to select five Commissioners to serve on the TRC, announced the names of the five Commissioners it had chosen. TRC Interim Director Carolyn Morrison announced that the thirteen-member Selection Panel had unanimously chosen Matt Dunlap, Old Town, Maine; gkisedtanamoogk, Otter Clan, Mashpee Wampanoag, Orono, Maine; Gail Werrbach, Bangor, Maine ; Sandy White Hawk, Sicangu Lakota of the Rosebud Sioux Tribe, St. Paul, Minnesota; and Carol Wishcamper, Freeport, Maine.

Selection Panel member Lisa Sockabasin, Director of the Office of Minority Health at the Maine Center for Disease Control and Prevention, Maine Department of Health and Human Services, commented, “This work was incredibly rewarding. We came together as individuals who didn’t know each other for the most part, and we were able to solidify as a group and complete this task of choosing, by consensus, a Commission of five people that all the signatories agreed upon. We took this work very seriously. We all understood the critical nature of our role within the larger TRC process. I am very grateful to have been given this opportunity.”

“I am very proud of the TRC process and privileged to have been able to participate in the selection process. It was one of the most difficult tasks I have been part of - to choose five out of the many qualified, passionate, dedicated people that came forward was a daunting task that we didn’t take lightly. We are honored that so many individuals shared their time with us and let us into their lives through this process. I am truly moved to know that such people exist here in our state,” stated Molly Newell, Director of Sipayik Human Services, and a Selection Panel member.

The TRC represents a historic agreement between Wabanaki Tribal Governments and the State of Maine to uncover and acknowledge the truth about what happened to Wabanaki children and families involved with the Maine Child Welfare system, create opportunities to heal and learn from the truth, and collaborate to operate the best child welfare system possible for Wabanaki children, a goal shared by all the signatories to the TRC Mandate. The work to organize a tribal-state TRC started in 2008. It has been carried out by the Truth and Reconciliation Convening Group, individuals representing Maine Tribal Child Welfare, Maine State DHHS Office of Child and Family Services, and staff from the Muskie School of Public Service, American Friends Service Committee, and Wabanaki Health and Wellness.

“When the Convening Group researched other Commission selection processes and began creating a process that would work for this TRC, we understood the magnitude of this task. We also knew that the Selection Panel was going to face challenges being such a large group whose members represented diverse entities and were not centrally located geographically. I admire them for not only completing this task, but for having done it with the utmost respect and reverence for those that applied. I applaud the integrity of this group,” said Esther Attean, staffperson to the TRC working through the Muskie School of Public Service and a key participant in all the TRC deliberations since its inception.

Last June all five Wabanaki Tribal Government Chiefs and Governor LePage signed the Mandate document and accompanying Selection Panel description delineating how the TRC Commissioners would be selected. Today’s announcement fulfilled the first part of the agreement signed by the six collaborating governments on June 29, 2012.

Selection Panel members remarked how much they enjoyed serving on the body and how many of them found it a highlight of their professional careers. Selection Panel members included Libby McCullum, representing the Maine judicial system; Kimberly Monaghan-Derrig representing the Judiciary Committee of the Maine Legislature; Beth O’Connor representing the Health and Human Services Committee of the Maine Legislature; Lisa Sockabasin, representing the Executive Branch of State Government; Janice Stuver, representing the Maine Attorney General’s Office, Stephanie Bailey, representing the Passamaquoddy Tribe at Motahkmikuk; Norman Bernard, representing the Aroostook Band of Micmacs; Mark Chavaree, representing the Penobscot Indian Nation; Tina Downing, representing the Passamaquoddy Tribe at Sipayik;

Connie Smith, representing the Houlton Band of Maliseet Indians; Molly Newell and Martha Proulx, representing the TRC Convening Group; and Paul Thibeault, representing the Maine Indian Tribal-State Commission.

The Commission process represents the first truth and reconciliation effort within US territory that has been collaboratively developed between Indian nations and a state government. Tuesday's announcement completes the TRC Selection Panel's work.

Next steps for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission include the swearing in and formal seating of the five Commissioners expected to take place in the first quarter of 2013, hiring of a staff to work with the Commission, orienting of the Commission to be done by the TRC Convening Group and others, and the Commission establishing its operating procedures. Under the Mandate document, the Commission has 27 months from the date of its first meeting to complete its work with the possibility of petitioning the six governments for an extension of up to six more months.

For more information about the TRC, visit the website at <http://mainetribaltrc.org>.

Appendix 11

Department of the Secretary of State

Bureau of Corporations, Elections and Commissions

**January 14, 2013**

Burky & McCarthy Law Office  
Attn: Elton A Burky, Registered Agent  
PO Box 1437  
Greenville, ME 04441

RE: Nonprofit corporation name of THE FRIENDS OF SQUAW MOUNTAIN, INC.

Dear Mr. Burky:

Our records indicate that on February 29, 2012 we filed Articles of Incorporation for THE FRIENDS OF SQUAW MOUNTAIN, INC. However, these Articles of Incorporation were accepted in error by our office based on the offensive name designation found in 1 MRSA §1101, sub-§1. Pursuant to this provision our office requires this corporation to change their name, eliminating the offensive name of “squaw”.

In order to correct this problem, you must file the enclosed Certificate of Correction changing the name of to a name that is distinguishable upon the record and does not contain an offensive name as defined in 1 MRSA §1101, sub-§1. Due to our oversight in this matter, there will be no fee for filing this document with our office. To avoid further action or the removal of the corporation from our records we must receive the Certificate of Correction on or before February 14, 2013.

I want to work with you to resolve this matter. If you have any questions, please contact me at (207) 624-7748. Thank you in advance for your cooperation with this situation.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Beaudoin".

Cathy Beaudoin  
Director,  
Corporations, UCC & Commissions

## Appendix 12

**From:** Beaudoin, Cathy  
**Sent:** Monday, February 11, 2013 10:41 AM  
**To:** Dunlap, Matthew  
**Subject:** RE: Request to change offensive name

Update - The Certificate of Correction was filed 2/4/2013. The name is now Friends of the Mountain.

**Cathy Beaudoin**

Director of Corporations, UCC & Commissions  
Department of the Secretary of State  
Bureau of Corporations, Elections & Commissions  
101 State House Station, Augusta, ME 04333-0101  
Tel. 207.624.7748  
Fax 207.287.5874  
[cathy.beaudoin@maine.gov](mailto:cathy.beaudoin@maine.gov)

## Appendix 13

### **Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), in support of LD 140, An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy March 4, 2013**

Senator Gerzofsky, Representative Dion, and members of the Joint Standing Committee on Criminal Justice and Public Safety; my name is John Dieffenbacher-Krall. I live in Old Town, Maine and I appear before you today in my capacity as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). For those of you unfamiliar with MITSC, we are an intergovernmental body described in 30 MRSA §6212 charged with reviewing the effectiveness of the Maine Implementing Act, the state companion legislation to the Maine Indian Claims Settlement Agreement, “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 MITSC’s support for LD 140 An Act To Create a Permanent Wabanaki Law Enforcement Seat on the Board of Trustees of the Maine Criminal Justice Academy.

I deeply regret that MITSC did not appear at the public hearing that your committee held on LD 140 last Monday. I say that because I would have liked to have been present to correct immediately the terribly wrong information that you received concerning LD 140. To begin, both Ms. Berry and Mr. Rogers described Wabanaki Tribal Governments as a special interest group. Special interest groups are generally considered a group of people working for some particular cause, such as an item of legislation, an industry, or a special segment of society. In political discourse, labeling a group of people a special interest group is generally meant to dismiss or diminish the importance of the group’s position.

Wabanaki Tribal Governments are not a special interest group. They are Indigenous Nations, some of the oldest continuous governments in the world, far older than the State of Maine or the United States. The first treaty ever signed by the United States, the Treaty of Watertown, was negotiated with three of the four Wabanaki Tribal Governments that remain in Maine today, the Maliseets, Micmacs, and Passamaquoddy Tribe. On February 21 of this year, the Maine Legislature acknowledged the significance of the Treaty of Watertown by unanimously passing a legislative resolve that recognizes “the United States and the Tribes of Indians shall henceforth be at peace with each other and be considered as friends and brothers united for their mutual defense, safety and happiness.” The Aroostook Band of Micmacs, Houlton Band of Maliseets, Passamaquoddy Tribe, and Penobscot Indian Nation are sovereign governments recognized by the State of Maine, United States, and international law. No person should ever call these Indigenous Peoples a special interest group. They were among the first allies of the United States who helped secure America’s freedom against the world’s greatest superpower at the time.

Representatives of the Maine Criminal Justice Academy and Department of Public Safety have suggested that the Wabanaki Tribal Governments could gain occasional representation on the Academy Board of Trustees by appointment to either the seat reserved for a chief of a

municipal police department or one of the seats designated for an officer of a municipal police department. Such an offer is inappropriate and insensitive to some of the tensions that have existed in tribal-state relations since the passage of the Maine Indian Claims Settlement. Tribal governments are not municipalities. They are a distinct form of government completely separate from the State of Maine. Though the Passamaquoddy Tribe and Penobscot Nation do enjoy some powers of municipalities as enumerated under the Maine Implementing Act, to suggest they should gain possible representation on the Maine Criminal Justice Academy Board of Trustees through seats created for municipalities could be perceived by them as another attempt to mischaracterize them and undermine their inherent sovereignty.

Mr. Rogers cited in his testimony possible problems that would be created should the Maine Criminal Justice Academy Board of Trustees be expanded from 17 to 18 seats. Many solutions could be devised to address the possible situation of a tied vote on some issue. This concern pales in importance to including the Wabanaki Tribal Governments with their own seat.

The Maine Legislature has recognized the importance of seating the Wabanaki Tribal Governments with their own representatives. Today the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation all have formal representation as governments in the Maine House of Representatives. Should LD 45 An Act To Include a Representative of the Aroostook Band of Micmacs in the House of Representatives be enacted all four federally recognized tribes will enjoy that status. Though total Wabanaki Tribal citizenship only ranges from somewhere between 7,000 and 8,000 people within the State of Maine, I have heard no one in the Maine Legislature question the importance of having that governmental perspective directly represented in the Maine's legislative branch. I question what point Mr. Rogers is attempting to make in his testimony when he cites the number of Wabanaki law enforcement officials except the fact that the overall Wabanaki population is much small than the settler population.

Instead of opposing the creation of a Wabanaki seat on the Maine Criminal Justice Academy Board of Trustees, the Academy's leadership should embrace it. With direct Wabanaki representation on the Board of Trustees, the Maine Criminal Justice Academy will be better positioned to develop and refine its training program to meet the needs of all the Wabanaki law enforcement personnel who attend the Maine Criminal Academy and all other law enforcement personnel who may interface with these independent Tribal police departments. Wabanaki Tribal Governments deserve direct representation on the Maine Criminal Justice Academy Board of Trusts as all of their law enforcement personnel are required to meet the same training standards as non-tribal law enforcement (see 30 MRSA §6210, §§4).

The opinions expressed by Ms. Berry and Mr. Rogers in their testimony in opposition to LD 140 reinforce for MITSC why Wabanaki Tribal Governments need direct representation on the Maine Criminal Justice Academy. The two top leaders of the Maine Criminal Justice Academy mischaracterized the status of Wabanaki Tribal Governments and their relationship with the State of Maine and United States. MITSC is concerned that this lack of understanding may permeate the Maine Criminal Justice Academy curriculum, a deficiency given Wabanaki law enforcement officials and their non-indigenous counterparts will find themselves working together in many instances. The Maine Criminal Justice Academy should be focusing on building understanding of the Wabanaki to help ensure tribal and non-tribal Academy graduates work together as well as possible. A minimum of one Maine Criminal Justice Academy seat reserved for the Wabanaki would provide Tribal Governments with decision making authority to guide the curriculum and training programs.

Appendix 14

## **NEWS ADVISORY**

For Immediate Release: Monday, February 4, 2013

For More Information: John Dieffenbacher-Krall, MITSC (207) 817-3799 (c) (207) 944-8376

Carolyn Morrison, Interim Director, TRC (207) 896-3042

Esther Altvater, Muskie School of Public Service (c) (207) 615-3189

### **TRC Calls for Day of Reflection, Meditation & Prayer 2/11 To Precede Seating of TRC Commissioners 2/12**

The Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission (TRC), the group tasked by the Wabanaki Tribal Governments and the State of Maine to uncover the truth about what happened to Wabanaki children and families involved with the Maine child welfare system, calls upon all people to help prepare them for their difficult work by participating in a Day of Reflection, Meditation and Prayer on February 11. A focal point of the Day of Reflection, Meditation and Prayer will occur at 11 am when people are asked to pause to consider the importance of the TRC and how everyone can support its three-fold purpose of uncovering the truth, promoting healing, and making recommendations for best child welfare practices.

Following the Day of Reflection, Meditation and Prayer, the five TRC Commissioners, Matthew Dunlap, gkisedtanamoogk, Dr. Gail Werrbach, Sandra White Hawk, and Carol Wishcamper, will be officially sworn in on February 12 at an event to take place at Morgan Hill Event Center, Hermon, beginning at 10 am. The Seating of the TRC Commission will include remarks from the six governmental signatories, lunch, learning sessions, a Commission listening session, and closing Tobacco Ceremony and song. The public is invited to attend the event.

The TRC represents a historic agreement between Wabanaki Tribal Governments and the State of Maine to uncover and acknowledge the truth about what happened to Wabanaki children and families involved with the Maine Child Welfare system, create opportunities to heal and learn from the truth, and collaborate to operate the best child welfare system possible for Wabanaki children. The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission process represents the first truth and reconciliation effort within US territory that has been collaboratively developed between Indian nations and a state government. Last June all

five Wabanaki Tribal Government Chiefs and Governor LePage signed a Mandate document specifying how the TRC should be conducted.

People moved to organize an event to acknowledge the Day of Reflection, Meditation and Prayer are kindly requested to provide details about it to TRC Interim Director Carolyn Morrison. She can be reached at [carolynnmorrisontrc@gmail.com](mailto:carolynnmorrisontrc@gmail.com) or (207) 896-3042. People planning to attend the TRC Commissioner seating event should register with Esther Altvater Attean at [eattean@usm.maine.edu](mailto:eattean@usm.maine.edu) or call (207) 615-3189.

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Appendix 15

**Testimony of John Dieffenbacher-Krall, Executive Director,  
Maine Indian Tribal-State Commission,  
Regarding LD 45,  
An Act To Include a Representative of the Aroostook Band of Micmacs  
in the House of Representatives  
February 19, 2013**

Senator Valentino, Representative Priest, and members of the Joint Standing Committee on Judiciary: my name is John Dieffenbacher-Krall. I live in Old Town, Maine and I appear before you today in my capacity as Executive Director of the Maine Indian Tribal-State Commission. The Commission supports LD 45, An Act To Include a Representative of the Aroostook Band of Micmacs in the House of Representatives, and we hope the Judiciary Committee will act favorably on it.

The practice of the Tribes sending Tribal Representatives to represent them in their relationship with settler governments predates the State of Maine originating with colonial Massachusetts. Historically, this practice has only included the Passamaquoddy Tribe and Penobscot Indian Nation. Yet the first Tribes with whom the fledgling United States signed a treaty with are the St. John's Indians, the Maliseet and Passamaquoddy Peoples, and the Mi'kmaq. LD 45 corrects this historical omission of the Aroostook Band of Micmacs and gives them the same formal relationship with the Maine Legislature currently enjoyed by the Houlton Band of Maliseets, Passamaquoddy Tribe, and Penobscot Indian Nation.

MITSC has long viewed as desirable providing for full representation of the Aroostook Band of Micmacs in all formal governmental positions with the State of Maine. We cannot identify any reason to deny the Aroostook Band of Micmacs a Tribal Representative position while that position is extended to the other three Tribes. We believe the State of Maine will benefit from this position by having the opportunity to communicate with an official representative of the Micmac Tribal Government present in Augusta.

For all the reasons delineated above, I urge the Committee to vote unanimously ought to pass to strengthen the relationship between the Aroostook Band of Micmacs and State of Maine.

Appendix 16

**Testimony of John Dieffenbacher-Krall, Executive Director,  
Maine Indian Tribal-State Commission (MITSC),  
in support of  
LD 394 An Act To Add Members of the Aroostook Band of Micmacs to the  
Maine Indian Tribal-State Commission and Add Corresponding Members for the State  
March 5, 2013**

Senator Valentino, Representative Priest, and members of the Joint Standing Committee on Judiciary; my name is John Dieffenbacher-Krall. I live in Old Town, Maine and I appear before you today in my capacity as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). Thank you for the opportunity to express MITSC's support for LD 394 An Act To Add Members of the Aroostook Band of Micmacs to the Maine Indian Tribal-State Commission and Add Corresponding Members for the State.

When MITSC was initially created via the Maine Implementing Act (30 MRSA §6212) only the Passamaquoddy Tribe, Penobscot Nation, and State of Maine had representation on the Commission. Three years ago the Maine Legislature enacted a bill that was later approved by the Passamaquoddy Tribe and Penobscot Nation to add the Houlton Band of Maliseet Indians to the Commission. LD 394 would seat the only remaining federally recognized tribe located within the border of Maine that does not possess official representation on MITSC. We view this proposal as a logical and beneficial action that will enhance Wabanaki-Maine relations.

Providing for the seating of the Aroostook Band of Micmacs Tribal Government on MITSC brings all of the Wabanaki Tribes together in an intergovernmental forum to discuss their respective concerns concerning their individual and collective relationship with the State of Maine. The State of Maine will benefit from adding the Micmacs to MITSC by having an intergovernmental body to which it can appeal when it has concerns that would impact tribal-state relations. The ability to have regular dialogue within an official body can strengthen tribal-state relations.

Passage of LD 394 would complement another bill currently before this committee, LD 45 An Act To Include a Representative of the Aroostook Band of Micmacs in the House of Representatives. Together these bills will properly recognize the Aroostook Band of Micmacs Tribal Government and formally acknowledge the Micmac People who have resided in this region for thousands of years. We urge a unanimous ought to pass report for LD 394.

## Appendix 17

### MITSC Analysis of LDs 72, 748 and 584

1. LDs 72 and 748 are identical bills.
2. All three LDs affect only the first two dams on the St. Croix water system: the Woodland Dam and the Grand Falls Dam.
3. All three LD's take into consideration concerns about the salmon hatchery above the Grand Falls Dam and the fishing enterprises on Spednic Lake.
4. LDs 72 and 748 provide for an expedited restoration of river herring (alewife and blueback herring), to the lower reaches of the St. Croix water system. (MITSC Recommendation #3)
5. LD 584 provides a conservative approach to this restoration contrary to MITSC's recommendation that the restoration of the alewife be expedited.
6. LDs 72 and 748 do not include scientific measures or monitoring.
7. LD 584 includes monitoring only of the bass population.

### Additional Comments

1. We should be concerned with more than the bass population monitoring in studying the return of the alewife to their ancestral waters. The gathering of dependable scientific evidence at this first stage will strengthen MITSC's first recommendation: *That river herring (alewife and blueback herring) be restored to the St. Croix watershed at the natural carrying capacity of the river system.*
2. Although all of the bills under consideration accomplish the goal of the MITSC recommendations, consultation during the preparation of these bills did not happen. Consultation is the core of MITSC's second recommendation: *That the MITSC Executive Director work with the Passamaquoddy Tribe, the Passamaquoddy Tribal Representative to the Maine Legislature, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and other interested parties and stakeholders to craft and support legislation to open the Grand Falls dam fish passage for sea-run alewife.*
3. In an effort to achieve MITSC's third recommendation: *the State of Maine should work with the Tribes to coordinate fisheries management in the St. Croix watershed to better meet the mutual resource needs of the State of Maine and the Passamaquoddy People and to realize the Passamaquoddy vision of river herring (alewife and blueback herring) restoration within an expedited time framework*, therefore, **legislation relative to the restoration of the alewife and the watershed should include a project management board that includes all parties to the restoration of the St. Croix watershed.** We would like to state again that MITSC is one of these parties. We have jurisdiction over waters within the watershed and are committed to strong conservation measures.
4. All LD's will move the State of Maine forward in its commitment to restore our watersheds. We need only look at the Penobscot River Restoration Project to see how crucial the alewife is to this process.

**Testimony of the Maine Indian Tribal State Commission Offered by  
Jamie Bissonette Lewey, Chair**

Good afternoon, Senator Johnson, Representative Kumiega and the members of the Joint Standing Committee on Marine Resources. I am honored to offer the following testimony on behalf of the Maine Indian Tribal-State Commission (MITSC). Even though MITSC is testifying in the "Neither for Nor Against" category, I want to make very clear that we are testifying thusly because the three bills before you have been framed as competitive. I will only testify on LD 72 today but my comments apply equally to all three bills.

In accordance with the "MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed," the Tribal-State Commission is in support of the restoration of alewife to the St. Croix watershed at its natural carrying capacity. By carrying capacity, I mean that every body of water has a maximum population level of fish that it can naturally sustain. This is its "carrying capacity." This level is determined by the quality of habitat, the amount of food obtainable, and the space available to the resident fish."<sup>1</sup>

MITSC sees all three of these LDs as evidence of consensus that the imperative first step to achieve the goal of restoration of the water system and this species must be taken. All of these bills represent efforts in this direction. I do, however, need to comment on the details of the LDs as one of the bills takes a very different approach. Each LD has strong points but each represents only a first step to the restoration of this magnificent watershed.

I also want to recognize at the outset, that IF &W and DMR have been committed to return this species to its natural habitat over the last several years. The Adaptive Management Plan was developed in a time of great controversy and represents a way to move forward and balance the interests of all parties as expressed during that time of conflict. But we are in a different context now. There is a deepening understanding that the recommended re-entry process outlined in the AMP could be expedited<sup>2</sup>. You will see this reflected in MITSC's third recommendation on the attached document, ***MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed***. This perspective was offered to MITSC repeatedly during our deliberations on this issue. We ask you to take this into consideration as you deliberate the restoration of this species.

Last June, the Passamaquoddy Tribal Chiefs and the members of the Schoodic River Keepers asked the Maine Indian Tribal-State Commission to re-visit and strengthen our position on the

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<sup>1</sup> Page 9, *An Adaptive Plan for Managing Alewife in the St. Croix River Watershed, Maine and New Brunswick*, April 23, 2010. James Gibson, foremost scientist on carrying capacity of anadromous alewife, contributed to the AMP

<sup>2</sup> MITSC discussions with the IJC beginning in July of 2010.

restoration of the alewife (river or blue-back herring) to the Saint Croix watershed as a first step in the restoration of that watershed.

MITSC ties each of our investigations to the statute that governs our existence. According to 30 MRSA §6207, §§8, the Commission shall “consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.” MITSC has a concern over any policy that might advance the restoration of waters that are in our jurisdiction and MITSC has waters in the St. Croix watershed subject to its regulation including Lower Chain Lake (T5 ND), Middle Chain Lake (T4 ND), Selmore Pond (Killman Pond) in T4 ND, Sysladobsis (Lakeville and T5 ND), Upper Chain Lake (T4 ND) and Mill Privilege Lake (mostly in T5 R1), all in Passamaquoddy Territory. Lastly, we utilize the guiding principles in the United Nations Declaration on the Rights of Indigenous Peoples, supported unanimously by the Maine legislature through resolution on April 15, 2008 as a framework to do our work.

Therefore MITSC engaged in a four-month study of the restoration of this species. We listened to the concerns of MITSC Commissioner John Boland of IF&W; we reviewed both the Adaptive Management Plan and Dr. Theo Willis’ report: *St. Croix River Alewife – Smallmouth Bass Interaction Study* and discussed them; we met with Commissioner Keliher and understand the complex interests he is balancing; we met with the International Joint Commission on the St. Croix Watershed, we listened to the evidence compiled by the Schoodic River Keepers; and reviewed the traditional wisdom combined with modern scientific data that the Passamaquoddy Tribe offered us. We also watched a 90-minute documentary, “*Sigonomeq*,” produced by the Schoodic River Keepers.

After this review we authored a MITSC position. This position was adopted on October 17, 2013 by unanimous decision of those present (10 in favor, 2 absent for the vote). I would like to take the time now to offer some of our findings and all three of our recommendations as guidance in your deliberations. I will only focus on a few of these findings in my oral testimony but you will find the entire position in the package I am offering you. The package also contains an analysis of the three bills before you today based on the recommendations we made to the parties last October.

Among our findings you will read the following evidence. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed. The sea-run alewife has cultural and historic significance for the Passamaquoddy people. River herring remain a food source to the Passamaquoddy while providing forage to other freshwater, estuarine and marine fish and mammals. We are convinced that sea-run alewife are necessary to the health of the entire ecosystem of the watershed and the Passamaquoddy Bay. When we looked outside of the material provided by either the State or the Tribes we discovered, according to a US Fish & Wildlife Service factsheet, (<http://www.fws.gov/GOMCP/pdfs/alewife%20fact%20sheet.pdf>) that river herring spawn in

such vast numbers that their absence may reasonably be expected to have an adverse impact on other fish and mammalian populations on Passamaquoddy lands and waters and may explain at least in part declines of cod and other marine species in the Gulf of Maine. We also noted that Dr. Theo Willis' report, *St. Croix River Alewife – Smallmouth Bass Interaction Study*, found there is no scientific evidence that the presence of river herring harm non-native bass populations at the levels of sea-run alewife densities present during the study period.

Our review leads us to the following recommendations:

1. That river herring (alewife and blueback herring) be restored to the St. Croix watershed at the natural carrying capacity of the river system.
2. That the MITSC Executive Director work with the Passamaquoddy Tribe, the Passamaquoddy Tribal Representative to the Maine Legislature, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and other interested parties and stakeholders to craft and support legislation to open the Grand Falls dam fish passage for sea-run alewife.
3. That in the spirit of EO # 21 FY 11/12 "An Order Recognizing the Special Relationship between the State of Maine and the Sovereign Native Tribes Located Within the State of Maine" and Article 19 of United Nations Declaration on the Rights of Indigenous Peoples adopted by the State of Maine through resolution on April 15, 2008; the ***State of Maine should work with the Tribes to coordinate fisheries management in the St. Croix watershed to better meet the mutual resource needs of the State of Maine and the Passamaquoddy People and to realize the Passamaquoddy vision of river herring (alewife and blueback herring) restoration within an expedited time framework.***

I would like to draw your attention to two of our recommendations. MITSC's recommendations reach farther than the LDs that are being considered here today. MITSC encourages the restoration of this species to its full natural habitat at the carrying capacity of the river system. We also encourage a collaborative approach to designing this first step and all subsequent steps in the process. All of the LDs we are reviewing today have a common goal and share some strengths. These strengths and the weaknesses are outlined in our attached analysis of the legislation. MITSC suggests that a collaborative approach be taken to crafting legislation when that legislation directly impacts a Tribe or Tribal people. Collaboration is practical in that it brings everyone to the table in search of the best solution.

We hope that the wisdom of the Passamaquoddy people; and their traditional and scientific knowledge of the river system that feeds their homeland guides the restoration of that system along with the State's scientific knowledge, collaboration and contribution of resources in seeking the best solution for all involved parties, all of the species that live within this system, and the alewife who have brought us to the table today. I thank you for your attention this afternoon and hope that you find MITSC's work product helpful in your deliberations.

**Testimony of John Dieffenbacher-Krall, Executive Director,  
Maine Indian Tribal-State Commission (MITSC),  
LD 1399 An Act To Provide for the Aroostook Band of Micmacs Certain Rights Regarding  
Hunting, Fishing and Wildlife Management  
May 9, 2013**

Senator Dutremble, Representative Shaw, and members of the Joint Standing Committee on Inland Fisheries and Wildlife; my name is John Dieffenbacher-Krall. I live in Old Town, Maine and I submit this testimony in my capacity as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). The Maine Indian Tribal-State Commission appreciates the opportunity to address LD 1399 An Act To Provide for the Aroostook Band of Micmacs Certain Rights Regarding Hunting, Fishing and Wildlife Management. MITSC does not have an official position on this bill but we do feel compelled to address the importance of enhancing Indigenous Peoples' access to traditional food sources and cultural practices for obtaining that food.

One of the defining characteristics of Indigenous Peoples includes their intimate relationship with the natural world and their historical dependence on the wild foods that their aboriginal homeland provides for them. The Aroostook Band of Micmacs, like most other Indigenous Peoples, relied on wild game, fish, and plants to sustain them. Research points to the many severe problems Indigenous Peoples suffer when they are cut off from their traditional foods. LD 1399 represents an initiative to support the Aroostook Band of Micmacs' effort to preserve an essential aspect of their culture and to improve community health by the restoration of healthy protein sources to their diet.

Five years ago the Maine Legislature became the first legislative body in the United States to express its support for the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly on September 13, 2007. The Declaration on the Rights of Indigenous Peoples describes the minimum human rights all Indigenous Peoples possess formally recognized by all of the nation-states belonging to the United Nations. Article 26 specifically addresses Indigenous Peoples' rights to resources they have "traditionally owned, occupied or otherwise used or acquired."

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

We encourage the Legislature to work with the Aroostook Band of Micmacs so they can maintain the cultural practices and realistically access the wild food sources they have enjoyed for millennia.

## Appendix 20

Good afternoon Senator Valentino, Representative Priest, Representative Soctomah, Representative Mitchell and Members of the Joint Standing Committee on Judiciary.

I am here to offer MITSC's favorable recommendation on the taking of land in Centerville into trust for the Passamaquoddy Tribe. This matter is here before you in LD 64.

Under the Maine Implementing Act, MITSC has the responsibility to review all requests to take land into trust that originate with the Passamaquoddy Tribe or the Penobscot Indian Nation. This statutory responsibility is outlined under Sec. 6205 Subsec. 5, which I include for your reference:

5. Limitations. No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

In 2007, MITSC was asked to review the Passamaquoddy intention to take three parcels of land into trust. Among them was the land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated May 4, 1982, recorded in the Washington County Registry of Deeds in Book 1178, Page 35.

MITSC followed its process and opened a public commentary period. We requested public commentary in the Calais Advertiser on January 25, 2007 and February 12, 2007. Copies of these ads are included in this package. We received no public commentary.

At the MITSC meeting on March 14, 2007 the following resolution was passed:

Greg Cunningham moved that based on the lack of public input after two rounds of legal advertising that MITSC not hold a public hearing on LDs 73 and 169. Chief Phillips-Doyle seconded it. It passed unanimously.

John Banks moved MITSC support LDs 73 and 169 and authorize the chair to develop testimony to present to the appropriate committee of the Legislature. Chief Phillips-Doyle seconded the motion. It passed unanimously.

For reasons unknown, in 2007 when the LD 73 was released only one of the two Centerville properties was referenced. The Bertram C. Tackeff property to the Passamaquoddy Tribe by quitclaim deed dated May 4, 1982, recorded in the Washington County Registry of Deeds in Book 1178, Page 35 was left out of the bill.

MITSC sees LD 64 as righting this omission. We stand behind our previous position and recommend that the parcel in question today be taken into trust on behalf of the Passamaquoddy Tribe.

On February 20, 2013, MITSC passed the following resolution:

Harold Clossey moved, Linda Raymond seconded authorizing MITSC Executive Director John Dieffenbacher-Krall to respond to an anticipated request from the Passamaquoddy Chiefs concerning what they would like MITSC to do in terms of its responsibilities for placing land in Centerville into trust. The motion passed unanimously.

Copies of the 2007 bills, the MITSC minutes these resolutions were extracted from and the two advertisements for public commentary are included with this testimony. I have also included the unapproved minutes from the February 20, 2013 meeting for your review.

## **MITSC Positions on Natural Resource Management and River Herring Restoration to the St. Croix Watershed**

**Adopted at the MITSC meeting held October 17, 2012**

### ***Background:***

On June 20, 2012, the Maine Indian Tribal-State Commission (MITSC) visited the Pleasant Point Passamaquoddy Indian Reservation at Sipayik. In the morning, we met with Tribal Leadership. At that time, both Chief Reuben Cleaves and Chief Joseph Socobasin told MITSC that natural resource management issues and fresh and salt water fishing rights would take on greater political significance for the Tribe in the coming year.

During the MITSC meeting that afternoon, the Schoodic Riverkeepers addressed the Commission requesting that MITSC reaffirm and strengthen its 2008 position on the return of the sea-run alewife to the St. Croix watershed, its ancestral spawning ground. Even though the MITSC Commissioners were in consensus that the full restoration of the alewife to the St. Croix should be supported, MITSC was not able to pass a motion at the June 20, 2012 meeting. A review of the 2008 position revealed that it was simply support for a piece of legislation to restore sea run alewife to the St. Croix applicable to a specific point in time. In addition, Passamaquoddy Commissioner Matt Dana asked MITSC to wait until the Joint Tribal Council of the Passamaquoddy Tribe had passed their resolution to take a position. Commissioners united with Commissioner Dana's request, and decided to form a working group to prepare MITSC's position on this issue.

The working group was comprised of representatives from all of the Tribes and from the State. Eventually two positions are established: one on natural resource management and one specifically addressing the restoration of river herring to the St. Croix watershed.

### **MITSC Position on River Herring (Alewife and Blueback Herring) Restoration to the St. Croix Watershed**

Given that:

- 1. According to 30 MRSA §6207, §§8, the Commission shall “consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.”***
- 2. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN General Assembly on September 13, 2007 was supported by a Joint***

***Resolution of the Maine Legislature on April 15, 2008, and later embraced by the United States December 16, 2010; MITSC has used this framework along with its understanding of EO 21 FY 2011/12, the Maine Implementing Act and the Maine Indian Claims Settlement Act to interpret our findings and develop our recommendation.***

- 3. MITSC has waters in the St. Croix watershed subject to its regulation including Lower Chain Lake (T5 ND), Middle Chain Lake (T4 ND), Selmore Pond (Killman Pond) in T4 ND, Sysladobsis (Lakeville and T5 ND), Upper Chain Lake (T4 ND) and Mill Privilege Lake (mostly in T5 R1), all in Passamaquoddy Territory.***

Given the above legislative mandate and the fact that MITSC has waters in the St. Croix watershed MITSC agreed to study the full restoration of alewife to the St. Croix system. In the course of this deliberation MITSC found that:

1. The St. Croix Watershed is the traditional and present home of the Passamaquoddy, and Maliseet Peoples.
2. The Passamaquoddy are culturally an inland and salt-water hunting and fishing People.
3. The Passamaquoddy Tribe at Indian Township and at Pleasant Point are located within the St. Croix Watershed and the Penobscot Indian Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs share their concern for the health of this water system.
4. The sea-run alewife has significant cultural and historic significance for the Passamaquoddy people.
5. The sea-run alewife is necessary to the health of the entire ecosystem of the watershed and the Passamaquoddy Bay.
6. A healthy alewife population is a significant component of the Passamaquoddy fresh and saltwater fishing plans.
7. Sea-run river herring (alewife and blueback herring) are indigenous species that historically had been present in the St. Croix watershed.
8. Spawning river herring return vital nutrients from the ocean to freshwater lakes and streams.
9. River herring are a food source to the Passamaquoddy and provide forage to other freshwater, estuarine and marine fish and mammals.
10. According to a US Fish & Wildlife Service factsheet (<http://www.fws.gov/GOMCP/pdfs/alewife%20fact%20sheet.pdf>), river herring spawn in such vast numbers that their absence may reasonably be expected to have an adverse impact on other fish and mammalian populations on Passamaquoddy lands and waters and may explain at least in part declines of cod and other marine species in the Gulf of Maine.
11. The presence of sea-run alewives is important to the watershed and will play a significant role in its restoration.
12. The State of Maine has recognized that the restoration of the alewife in the St. Croix would be positive and has developed a plan to achieve that goal. (Adaptive Management Plan - AMP)
13. The Passamaquoddy Tribe has found the AMP to be too slow a remedy.

14. Dr. Theo Willis' report, *St. Croix River Alewife – Smallmouth Bass Interaction Study*, found there is no scientific evidence that the presence of river herring harm non-native bass populations at the levels of sea-run alewife densities present during the study period.
15. River herring successfully co-exist with other fish species in other Maine inland waters.
16. The Passamaquoddy Tribe passed a Joint Tribal Resolution (attached) resolving the following:
  - a. That: the Joint Tribal Council insist the State of Maine immediately remove this blockage and allow the sea-run alewife to pass to access their ancestral spawning territory. Failing this, we urge the International Joint Commission to exercise its authority and open this blockage, and
  - b. That: the Tribal Representative to the Maine Legislature is authorized to submit, sponsor and support legislation requiring the Grand Falls dam fish passage be ordered open for sea-run alewife, and
  - c. That: the Tribal Chiefs are authorized to take appropriate action to open the fishway at Grand Falls for the free passage of sea-run alewife and to restore the indigenous fishery within the St. Croix River Watershed

Given these findings, we recommend:

1. That river herring (alewife and blueback herring) be restored to the St. Croix watershed at the natural carrying capacity of the river system.
2. That the MITSC Executive Director work with the Passamaquoddy Tribe, the Passamaquoddy Tribal Representative to the Maine Legislature, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and other interested parties and stakeholders to craft and support legislation to open the Grand Falls dam fish passage for sea-run alewife.
3. That in the spirit of EO # 21 FY 11/12 "*An Order Recognizing the Special Relationship between the State of Maine and the Sovereign Native Tribes Located Within the State of Maine*" and Article 19 of United Nations Declaration on the Rights of Indigenous Peoples adopted by the State of Maine through resolution on April 15, 2008; the State of Maine should work with the Tribes to coordinate fisheries management in the St. Croix watershed to better meet the mutual resource needs of the State of Maine and the Passamaquoddy People and to realize the Passamaquoddy vision of river herring (alewife and blueback herring) restoration within an expedited time framework.

## Appendix 22

### **Testimony of John Banks, Penobscot Nation Commissioner, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FYs 2014 and 2015 contained in LR 1046, The Governor's 2014-2015 Biennial Budget March 15, 2013**

Senator Hill, Representative Rotundo, and honorable members of the Joint Standing Committee on Appropriations and Financial Affairs; and Senator Valentino, Representative Priest, and honorable members of the Joint Standing Committee on Judiciary; my name is John Banks. I serve as one of the two Penobscot Indian Nation representatives on the Maine Indian Tribal-State Commission (MITSC). I appear before you today to address the State appropriation to MITSC for fiscal years 2014 and 2015 as proposed in LR 1046.

For Committee members who are unaware, MITSC functions as a statutorily authorized intergovernmental body under the Maine Implementing Act found in Title 30, §6201 et. seq. 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. The United States provided the funding to implement the 1980 Settlement Act with the condition that the State and the Tribes reach agreement on jurisdictional issues. The Maine Implementing Act delineates that jurisdictional agreement.

MITSC exists 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." The settlement negotiators recognized that despite years of extensive talks gray areas remained in the final agreement. They also anticipated issues of interpretation would arise in the future. MITSC was created to serve as the balanced body with equal representation from the Tribes and the State to examine questions related to the Maine Implementing Act and offer suggested resolution of contested matters to the signatories.

The Legislature and the Maliseet, Passamaquoddy, and Penobscot Tribal Governments approved important changes to the budget process for MITSC in 2010 that better reflects the fact that MITSC exists as an intergovernmental body of sovereign signatories. Title 30 Section 6212 subsection 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 first of those discussions for this budget cycle took place February 11. The governmental representatives who met via conference call all expressed a desire to achieve the goal of having the equivalent of a full-time Executive Director. We have been recently able to have MITSC Executive Director John Dieffenbacher-Krall work nearly full-time due in part to some funding

we have received via the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC). There is no secured funding for John's time beyond the end of this fiscal year. Therefore we believe the signatories need to make a sufficient financial commitment to reach that goal. The governmental representatives discussed consulting with their respective governments to ascertain what level of increase they might be prepared to make to achieve the mutual goal of a full-time Executive Director. All four Wabanaki Tribal Governments have pledged to increase their voluntary support by 25% for FYs 2014 and 2015. Documentation for those financial commitments is being assembled by John Dieffenbacher-Krall and will be provided to Commissioner Millett and Carlisle McLean. When they receive that information it will be presented to Governor LePage. The Commission hopes that the State of Maine can respond in the same spirit as the Tribal Governments to provide the necessary financial resources for MITSC to do its job.

## **Governor Meets with Maine Indian Tribal-State Commission**

**For Immediate Release: Friday, Feb. 8**

**Contact: Adrienne Bennett, Communications Director (207) 287-2531**

### *Governor Meets with Maine Indian Tribal-State Commission*



AUGUSTA – On Thursday, Governor Paul R. LePage met with members of the Maine Indian Tribal-State Commission. The meeting, held at 3 p.m. in the Governor’s Cabinet Room at the State House, gave Commission members an opportunity to speak with the Governor about various issues that affect Maine Tribes and Tribal-State relations.

The Maine Indian Tribal-State Commission is an inter-governmental entity created by the Maine Implementing Act of 1980. Six members are appointed by the State, two by the Houlton Band of Maliseet Indians, two by the Passamaquoddy Tribe and two by the Penobscot Indian Nation. The twelve appointees select the thirteenth, who serves as the chair. In 2011, Governor LePage nominated two members, John J. Boland and Harold W. Clossey, to the Commission. Last year, Governor LePage nominated Gail Dana-Sacco to fill a State seat.

The Commission meets regularly; however, this is the first time the Commission has met with Executive leadership of the State of Maine as an entire body. Individual Tribes have met with previous governors, and Governor LePage has worked closely with the Tribes to improve relations between the State and Tribes.

***Photo from left to right:***

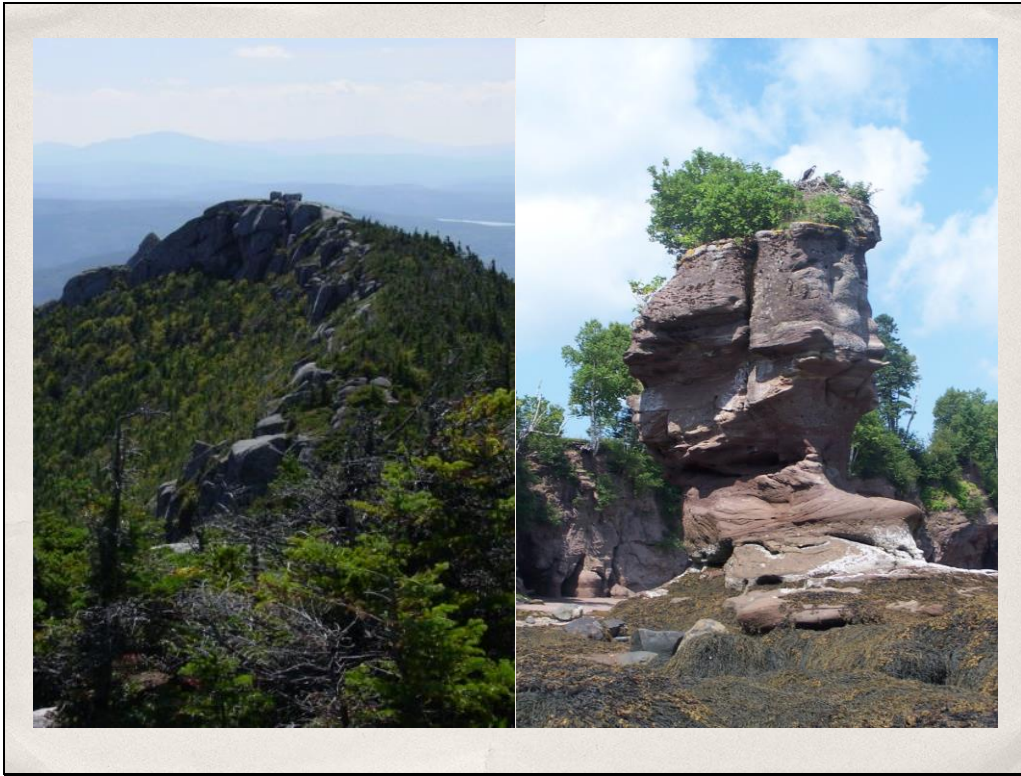
Linda Raymond, MITSC Commissioner, appointed by the Houlton Band of Maliseet Indians, Jamie Bissonette Lewey, Chair, MITSC, John Dieffenbacher-Krall, MITSC Executive Director, Governor LePage, Denise Altvater, MITSC Commissioner, appointed by the Passamaquoddy Tribe at Sipayik, Bonnie Newsom, MITSC Commissioner, appointed by the Penobscot Indian Nation, and Gail Dana-Sacco, MITSC Commissioner, appointed by the State of Maine

## Appendix 24

Good afternoon Representative Priest, Senator Valentino and the members of the Joint Judiciary Committee. I would also like to recognize Chief Kirk Francis of the Penobscot Indian Nation; the Tribal Representatives who are with us today: Representatives Wayne Mitchell, Madonna Soctomah and Henry Bear. I would also like to recognize Maria Girouard, Penobscot Tribal Counselor.

My name is Jamie Bissonette Lewey and I am chair of the Maine Indian Tribal State Commission. I have with me today Mr. John Dieffenbacher-Krall, our Executive Director, Bonnie Newsom (Penobscot Commissioner) and John Banks (Penobscot Commissioner). Today, I plan to address the following points:

1. The work of the Maine Indian Tribal State Commission
2. The extensive work we accomplished last spring with James Anaya, the UN Rapporteur on the United Nations Declaration on the Rights of Indigenous Peoples, to document the socio and economic factors that are pressing on Tribal people as a direct result of the framework of the Maine Settlement and its accompanying legislation.
3. Common misconceptions regarding the settlement agreement.



#### Slide 1

I open this presentation with these two photographs of sacred sites here in Maine. I chose to do this because we must remember that the discussion we are involved with today began with the land and the Indigenous people who have always inhabited and taken care of this particular land. While the Tribes entered into extensive negotiations with the state and the federal government, certain things were never on the table. Among these things is the relationship of a people to their ancestral land and the waters that border and flow through it. This relationship is rooted in mutual responsibility. The people are responsible to the land and it is responsible to them. This relationship is not only non-negotiable, it is inalienable.

# The Maine Indian Tribal-State Commission

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Report to the Joint Committee on the  
Judiciary:

February 14, 2013



**“To continually review the effectiveness of the  
Maine Indian Settlement Agreement”**

## Slide 2

The theme of today’s report is the central focus of MITSC’s work: “To continually review the effectiveness of the Maine Indian Settlement Agreement.”

## MITSC was established by the Maine Implementing Act of 1980

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### MITSC has the following

**responsibilities:** **Promulgate** fishing rules and regulations over waters where it has authority.

**Make recommendations** about fish and wildlife policies on non-Indian lands in order to protect fish or wildlife stocks on land and water subject to regulation by the Tribes or the commission.

**Make recommendations** about the addition of new lands to Tribal territory

**Review petitions** for designation as an extended reservation.

**Continually review** the effectiveness of the MIA and the social, economic and legal relationship of the Passamaquoddy Tribe, Houlton Band of Maliseet Indians and Penobscot Indian Nation and the State; and to **make recommendations** to the Tribes or the State as it determines appropriate.



### Slide 3

What are the statutory responsibilities that MITSC is entrusted with? Here I have highlighted the number of times we are charged to make recommendations to address various issues. MITSC was crafted into law as the first stop in dispute resolution. Once, Representative Madonna Soctomah explained to me that it was as if there was a trashcan in the middle of the room during the negotiation period of the settlement agreement. Every time an issue could not be resolved, it would be thrown into the can and the Tribes were told MITSC would address that issue. I am sorry to tell you the MITSC can has not been emptied. In fact, it is overflowing.

# The Commission:

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**Passamaquoddy Representatives:**

Denise Altvater and Matthew Dana

**Penobscot Representatives:**

John Banks and Bonnie Newsom

**Maliseet Representatives:**

Linda Raymond and Brian Reynolds

**Micmac Observer:**

Richard Silliboy

**State Representatives:**

H. Roy Partridge

Harold Clossey

Vacancy

John Boland

Gail Dana-Sacco

Vacancy

**Ex Officio:**

State Representatives Madonna Soctomah, Wayne Mitchell, Henry Bear

**Executive Director:** John Dieffenbacher-Krall

**Chair:** Jamie Bissonette Lewey

Slide 4

We have a very dedicated group of MITSC Commissioners. Currently, we have two vacancies on the state side. The Governor's office is looking at nominations for those positions and they will be filled imminently.



## A Living Document

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*"The negotiators themselves designed MIA to be a dynamic living agreement"*

*The Report of the Tribal State Work Group, January 2008*

### Slide 5

In this way, and in the way that the Maine Indian Claims Settlement Agreement was crafted, the Maine Implementing Act was always supposed to be "a living document" that reflected a "living relationship" between the Wabanaki of Maine and the modern State of Maine.

# Amendments to the MIA:

*There have been no substantive amendments to the jurisdictional relationship outlined in the MIA*

**With the exception of the Maliseet amendments, all have been modest:**

- ♦ The deadline for tribal governments to acquire trust lands identified in the Settlement Act has been extended several times.
- ♦ Additional parcels of land which can be held in trust for the Tribe and the Nation have been added to the list of lands in the Settlement Act.
- ♦ There have been several clarifications and expansions of tribal court jurisdiction.
- ♦ The computation of state funding for Indian schools has been clarified.
- ♦ There have been amendments concerning the acquisition of trust land by the Houlton Band of Maliseets and the use of this land for governmental purposes.
- ♦ The Houlton Band of Maliseets has equal political participation in MITSC and in the State Legislature. (Beginning 2012).



## Slide 6

Despite the intent for lively implementation and righting of mistakes, there has never been any substantial amendment to the Maine Implementing Act.



## We are in a A Time of Humanitarian Crisis

### Slide 7

Because the significant shortcomings of MIA and profound issues that have arisen because the MIA is flawed, we now find ourselves in the midst of a humanitarian crisis. I will discuss the areas of the Acts that have allowed this crisis to evolve and encourage you engage in study on these issues.

## Areas of Conflict

### Internal Tribal Matters

Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. (MIA)

### Application of New Federal Indian Law

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.



## Slide 8

There are two sections to the Acts that have consistently been problematic in the arena of Tribal-State relationships. I am flagging them for you here. Remember them because they will surface again later in my presentation.

# The UN Declaration on the Rights of Indigenous Peoples.

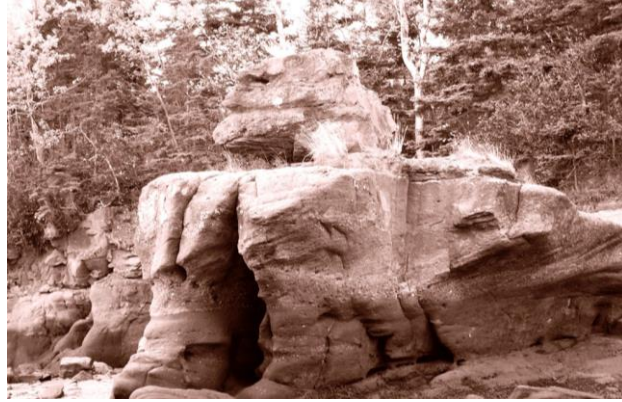
“We the Indigenous People,  
walk to the future in the foot  
prints of our ancestors.”

Preamble of the Indigenous  
People's Earth Charter.



## Slide 9

There is a worldview distinct from the modern interpretation of property and law that reflects the depth of relationship that Aboriginal people have with the natural world. This worldview knits together the people who are alive today with the commitment of their ancestors and their commitment to the children who will follow.



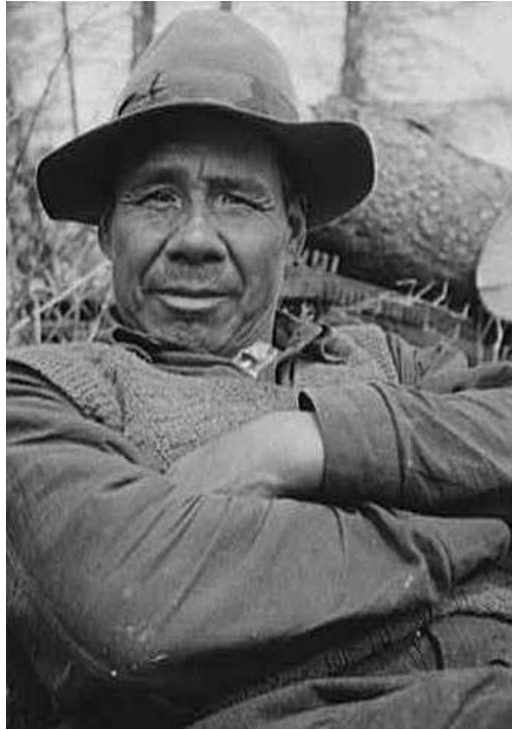
April 18, 2008 the State of Maine, under the leadership of Tribal Representatives Donna Loring and Donald Soctomah, passes a resolution in support of the UNDRIP.

#### Slide 10

This worldview is critical to us today for many reasons but we will focus on one: on April 18, 2009, Maine became the first North American governmental body to pass a resolution in support of the United Nations Declaration on the Rights of Indigenous Peoples. This declaration was not an aspirational document. It was to set a minimum standard for state relations with Indigenous peoples. John Dieffenbacher-Krall has provided Peggy Reinsch with copies of both the UNDRIP and the Maine Resolution. I recommend that you review both documents.

## What does it do?

- Emphasizes the rights of Indigenous Peoples to maintain and strengthen their own institutions, cultures and traditions.
- Prohibits discrimination.
- Promotes full and inclusive participation in all matters that concern them.
- Protects the right to pursue economic development in keeping with their own visions of economic and social development.
- Protects their right to remain distinct.



### Slide 11

#### What does the UNDRIP do?

- a. Emphasizes the rights of Indigenous Peoples to maintain and strengthen their own institutions, cultures and traditions.
- b. Prohibits discrimination.
- c. Promotes full and inclusive participation in all matters that concern them.
- d. Protects the right to pursue economic development that is in keeping with their visions of economic and social development.
- e. Protects their right to remain distinct.

These acts have created structural inequities that have resulted in conditions that have risen to the level of human rights violations. These structural inequities have become entrenched over the past 30 years.

Slide 12

After a careful and exhaustive review of the socio and economic conditions confronting the Tribes of Maine, MITSC has come to the following conclusion:

These acts have created structural inequities that have resulted in conditions that have risen to the level of human rights violations. These structural inequities have become entrenched over the past 30 years.

*I will add that I believe this was neither the intent nor the hope of any of the negotiators: leaders do not negotiate to deepen the poverty of their own people.*

We reported this conclusion, along with supportive evidence, to the UN Rapporteur on the UNDRIP, James Anaya. After careful review and a meeting with MITSC Tribal Commissioners, Anaya concluded that the human rights of Maine's Aboriginal People have been violated. This was reported to the US Federal Government who will be reviewing the evidence presented to the UN and answering with a plan to address these violations.

## No Tribe enters into an agreement to remain impoverished.

- The subjugation of Wabanaki people under the framework of these laws severely impacts the capacity of the Wabanaki in economic self-development, cultural preservation and the protection of natural resources in Tribal territory.
- Life expectancy for the 4 Maine Wabanaki Tribes averages approximately 25 years less than that of the Maine population as a whole.
- Only 40% of Native children graduate high school.
- Unemployment rates within Wabanaki communities range up to 70%.
- Many traditional Wabanaki Food sources are no longer safe to eat due to toxic contamination by the paper mills that discharge pollutants into Wabanaki waters.
- The incarceration rate of Passamaquoddy people in state prisons is 6 times that of the general population.



Slide 13

An examination of some of the evidence.



The MICSA and the MIA are in serious nonconformance  
with the UNDRIP.

Slide 14

Because of the dire statistics I have just reviewed with you, MITSC has come to the conclusion that sections of the MIA are in serious non-conformance with the UNDRIP.



**Compromised rights:**  
Section 1735(b) of the  
MICSA and Section 6204 of  
the MIA

These two sections of law are in conflict with multiple articles of the UNDRIP, including articles 3,4,5,19,23,37,32,34 and 40.

Slide 15

Paramount among these are the two previously mentioned “Areas of conflict.”

## Courts:

The court has disregarded the rules of Federal Indian Law and statutory interpretation that evolved from almost two centuries of Indian Law jurisprudence.

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Penobscot Nation v. Stilphen

Houlton Band of Maliseet Indians v. Ryan

Aroostook Band of Micmacs v. Ryan

State of Maine v. Johnson.



## Slide 16

After reviewing the legal decisions rendered in state court, MITSC came to three conclusions:

1. The Courts not the signatories, as was intended, have interpreted the MIA.
2. This has seriously undermined the intended role of MITSC as the first venue of conflict resolution.
3. In these decisions, the courts have disregarded the rules of Federal Indian Law and statutory interpretation that evolved from almost two centuries of Indian Law jurisprudence.

I chose this picture of the kindergarten class at Sipayik because they are all looking to us. They remind me of the responsibility to build a world for them that offers both promise and hope: the same world we all struggle to give our own children.



*"... the most important part of the negotiated settlement as far as the Tribes are concerned was that we would exercise self-government without interference of the State of Maine as they had controlled our lives for the last 160 years" Reuben Phillips, Penobscot negotiator*

#### Slide 17

I want to read this quote from Penobscot negotiator, Reuben Phillips, because it is universal. All of the negotiators understood that they had negotiated an agreement that safeguarded their sovereignty. Keep that in mind as we go through the following slides.



## Common Misrepresentations

Of The Maine Indian Claims Settlement Agreements and subsequent Acts

### Slide 18

In my tenure as chair of MITSC, a number of “understandings” surface repeatedly in meetings or in conversations. These understandings are damaging because they are fundamentally incorrect. Over the spring MITSC will be making appointments with legislators in an effort to deepen the knowledge base of the legislature and to correct these mischaracterizations.



The Tribes took all that land and they took all that money, a deal is a deal!

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*"Not one inch, not one Dollar!"*

# Passamaquoddy v. Morton

## And subsequent litigation

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In 1972, the Passamaquoddy Tribe sued in federal court seeking assistance from the federal government in regaining their lands lost as a result of treaty abrogation. They were joined by the Penobscot Indian Nation. The federal court decisions in their favor provoked 8 long years of negotiation while title to 1/3 of the land in Maine was clouded. The Tribes negotiated from the following principles:

- The Tribes were entitled to the special services allowed all Federally recognized Tribes.
- That they still possess their inherent sovereignty
- That the state of Maine had no power to interfere with their self-government.

They understood the Settlement Act to comport with these principles.

Slide 20

# MAINE RSA: Monetary and Land Terms

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81.5 million dollars was set aside in trust with the federal government to resolve the Maine Indian Land Claims brought by the Passamaquoddy and Penobscot. \$54.5 million was set aside for land acquisition. Out of the total \$54.5 million, the Passamaquoddy and Penobscot gave \$900,000 to the Maliseet. The Purchase options for nearly 300,000 acres were negotiated with the paper companies who were paid directly from the trust. \$27 million was allocated to a Maine Indian Claims Settlement Fund divided evenly between the Passamaquoddy and Penobscot. The Maliseet received no settlement fund. Distribution of any of the principal of the \$27 million is prohibited. The Passamaquoddy and the Penobscot were required to expend \$1,000,000 of income from their portion of the settlement fund for the benefit of their citizens over the age of sixty. Once a year, the interest is disbursed among Tribal members. This averages between 200 and 300 dollars per person annually depending on the interest rate at the time.

Slide 21



The Federal Trust Relationship has been “all but extinguished.”

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*Not only is this untrue, but this would be disastrous for the State of Maine*

Slide 22

# Tangible Evidence that the Trust Relationship is Intact

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The federal government holds money and land in **trust** for the Tribes.

All federal Indian law passed previous to 1980 applies to Tribes in Maine. (1735 b MICSA).

It was crucial to the State of Maine that the resources available to all federally recognized Tribes be available to Maine Tribes.

The MICSA itself stands as a stark reminder that the Federal Government gave permission for the State and the Tribes to implement the MIA because it has the primary trust responsibility.

No where in the MICSA, does the Federal Government extinguish its trust relationship with the Tribes.

Slide 23



## The Maine Implementing Act accords the Passamaquoddy and Penobscot Nation the status of municipalities under State Law

*In fact, the municipality language was meant to be comparative and not to diminish the sovereignty of the Tribes.*

Slide 24

# Beginning with the language of the MIA

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The language is clearly for comparative purposes; when framing the the rights, privileges, powers and immunities municipality comparison was offered:

"[The Tribes] shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State"

And then there are times when the comparison does not work because the Tribe, as a sovereign, has significantly more self-determination than a municipality would :

"internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State."

Slide 25

## But do not take MITSC's word on this.

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"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."

John Patterson, Deputy AG for the State of Maine 1975-1981 in testimony before the Tribal State Work Group, November 19, 2007



Federal Indian Law existing at the time of the settlement in 1980 or enacted thereafter would not apply in Maine if it affected Maine's civil and regulatory jurisdiction.

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*This is not only a mis-representation, but it is directly contrary to the actual Language of the MICSA.*

Slide 27

5 (g) Except as provided in this Act, the laws of the  
6 United States which relate or accord special status or rights  
7 to Indians, Indian nations, tribes, and bands of Indians,  
8 Indian lands, Indian reservations, Indian country, Indian ter-  
9 ritory, or lands held in trust for Indians, shall not apply  
10 within the State of Maine: *Provided, however,* That the  
11 Passamaquoddy Tribe, the Penobscot Nation, and the Houl-  
12 ton Band of Maliseet Indians shall be eligible to receive all

## Original Language of 1735 b of the MICSA

THE NEGOTIATIONS WERE EXTENSIVE BEGINNING IN APRIL OF 1980 UP UNTIL THE SIGNING OF THE ACT.

Section 6(g) should be revised to read as follows:

(g) The following statutes shall not be applicable to Indian lands or tribes in the State of Maine;

- (1) Section 5 of the Act of August 15, 1876 (19 Stat. 200);
- (2) Section 1 of the Act of March 3, 1901 (31 Stat. 1066), as amended;
- (3) Section 2132 and Section 2133 of the Revised Statutes, as amended;
- (4) Sections 405(k) and 710 of the Act of August 3, 1977 (91 Stat. 459, 523);
- (5) Section 164(c) and (e) of the Clean Air Act, as amended by section 127(a) of the Act of August 7, 1977 (91 Stat. 735);
- (6) Act of October 31, 1979 (93 Stat. 721);
- (7) Section 8(d) of the Act of November 16, 1977 (91 Stat. 1397);
- (8) Section 23 of the Federal Insecticide, Fungicide, and Rodenticide

## Example of early DOI Revision of 1735 b

The DOI made the above revision in light of its significant trust responsibility to the Tribes

(b) General legislation

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

## Final Language of the 1735 b

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Federal Law up to 1980 does apply in the state of Maine and the inclusion of mitigating language and language to increase flexibility.

# Analysis of 1735 b

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**Flexibility:**

The drafters suspected that there would be federal laws that would be beneficial to the State and the Tribes. They created a mechanism through the specific inclusion of the Tribes of Maine could be accomplished.

**To date, this has never happened even when the federal bills could be very helpful to both the State and the Tribes in accessing resources:**

Tribal Law and Order Act

Indian Arts and Crafts Bill

IGRA

The Stafford Amendment to the FEMA which would allow the Tribes to work directly with the government to declare a state of emergency and draw down on discrete funding to address natural disasters that directly affect Tribal areas.

(h) General laws and regulations affecting Indians applicable, but special laws and regulations inapplicable, in State of Maine

Except as otherwise provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

## 1735 b is mitigated by 1725 h

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1735 b is triggered only when the act in question: 1) accords special status 2) affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine.



The Settlement Acts are not simply laws,  
they are a trust that carries huge  
responsibility.

The Settlement Acts hold within them a promise of possibility and a hope for better times.  
It is time to take our responsibility in hand, honor the promise and fulfill the hope.

Slide 33

Legislators, we have a duty here. Daily, more and more evidence crosses my desk that Maine Wabanaki are in crisis. The time has come for all of us to put our heads together and remove the barriers to health, success and balance for Wabanaki people. MITSC will be assembling recommendations for these long overdue changes and putting them out to comment to the signatories. It is time to begin unpacking that trashcan. I hope we can count on you for support.