

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

A Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2009 – June 30, 2012)

Prepared by

**John Dieffenbacher-Krall, Executive Director
Maine Indian Tribal-State Commission (MITSC)
P.O. Box 241
Stillwater, ME 04489
(207) 817-3799
Email: mitsced@roadrunner.com
www.mitsc.org
July 2013**

MITSC Commissioners

Jamie Bissonette Lewey, Chair
Denise Altvater
John Banks
Harold Clossey
Matt Dana
Gail Dana-Sacco
H. Roy Partridge
Linda Raymond
Brian Reynolds

Table of Contents

	<u>Page</u>
I. Executive Summary	i
II. Introduction	1
A. Purpose and Organization of This Report	
III. Overview of MITSC	1
A. Purpose and Responsibilities	
B. MITSC Members and Staff	
C. Funding	
IV. MITSC Activities	2
FY 2010	
A. Gubernatorial Executive Order on Tribal Consultation, 06 FY 10/11, An Order to Promote Effective Communication Between the State of Maine and the Native American Tribes Located Within the State of Maine	
B. Enactment of LD 445, An Act To Improve Tribal-State Relations, Public Law 2009, Chapter 636	
C. MITSC Co-Sponsors and Organizes “Respectful or Disgraceful?: Examining Maine School Use of Indian Nicknames and Mascots”	
D. Recognizing the Athletic Accomplishments of Andrew and Louis Sockalexis	
E. University of Maine at Augusta Wabanaki Perspectives and Human Awareness Held 10/13 to 10/16/09	
F. Restoration of Alewives in the St. Croix Watershed	
G. Wabanaki/Bates/Bowdoin/Colby Collaborative (WBBC)	
H. MITSC Legislative Work	
I. Elimination of the Final Maine Place Names Using Squaw or Some Derivation of It	
FY 2011	
A. Jamie Bissonette Lewey Elected Chair of MITSC	
B. RSU 12 Drops Sport Mascot Redskins	
C. Legislative Visit to Meet Wabanaki Leaders Hosted by the Penobscot Nation March 4, 2011	
D. MITSC Tasked with Securing Support of Maine Governor for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC)	
E. MITSC Media Support for the TRC Declaration of Intent Signing May 24, 2011	
F. MITSC Presentation to the Judiciary Committee February 10, 2011	

- G. MITSC Examination of the International Joint Commission St. Croix Watershed Board's *An Adaptive Management Plan for Managing Alewife in the St. Croix River Watershed, Maine and New Brunswick* (AMP)
- H. Wabanaki/Bates/Bowdoin/Colby Collaborative (WBBC)
- I. Coordination of UN Permanent Forum on Indigenous Issues North American Representative Tonya Gonella Frichner Visit with Wabanaki Tribal Governments
- J. MITSC Analysis of the Conformance of the Maine Implementing Act with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- K. Governor LePage Executive Order 21 FY11/12 An Order Recognizing the Special Relationship Between the State of Maine and the Sovereign Native American Tribes Located within the State of Maine Issued August 26, 2011
- L. MITSC Legislative Work

FY 2012

- A. Sanford Drops Sport Mascot Redskins
- B. MITSC Responds to Request for Input from UN Special Rapporteur for the Rights of Indigenous Peoples James Anaya
- C. MITSC Positions on Natural Resources Management and River Herring Restoration to the St. Croix Watershed
- D. Research into the Development and Ultimate Adoption of the Maine Indian Claims Settlement
- E. Continuing MITSC Support for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC)
- F. MITSC Presentation at the Fourth Annual Meeting of the Native American & Indigenous Studies Association June 4, 2012

Appendices

- I. An Order to Promote Effective Communication Between the State of Maine and the Native American Tribes Located Within the State of ME February 24, 2010 06 FY 10/11
- II. Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning a Proposal to Change the Legal Status of Certain Penobscot Nation Land in Argyle from Trust to Reservation Status in LD 445, An Act To Improve Tribal-State Relations February 4, 2010
- III. News Release Symposium on Maine School Use Of Indian Nicknames and Mascots Set For Bangor Public Library, May 15, 2010
- IV. News Advisory Tribal Representative Wayne Mitchell to Present Legislative Resolutions Calling on the Baseball Hall of Fame, Others to Recognize the Achievements of Penobscot Baseball Great Louis Sockalexis; Legislature Urges Cleveland Indians to Drop Use of the Mascot Chief Wahoo, July 23, 2009
- V. Wabanaki perspectives event set at UMA by John Dieffenbacher-Krall The Quoddy Tides 10/9/09
- VI. August 26, 2009 letter of Paul Bisulca to Colonel Philip T. Feir, Co-Chair, International St. Croix River Watershed Board

- VII. Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FY 2011 contained in LD 1671, An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2010 and June 30, 2011 January 8, 2010
- VIII. Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FYs 2012 and 2013 contained in LD 1043, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013 March 15, 2011
- IX. July 28, 2011 letter US Board on Geographic Names to MITSC
- X. August 5, 2010 MITSC letter to Mr. Thomas Birmingham, Chair, Sheepscot Valley Regional School Unit #12 Board
- XI. February 14, 2011 invitation letter to Members of the 125th Legislature
- XII. Declaration of Intent to Create a Maine/Wabanaki Truth & Reconciliation Process
- XIII. Wabanaki Tribal Governments, State of Maine and Maine Indian Tribal State Commission (MITSC) Sign Declaration Committing Them to First-in-the-Nation Truth & Reconciliation Process Examining History of Indian Child Welfare Practices with Wabanaki Peoples mainetribalrc.org
- XIV. Report: MITSC to the Maine Joint Standing Committee on Judiciary February 10, 2011
- XV. Analysis of the Maine Implementing Act's (30 MRSA §6201 et. seq.) Conformance with the Standards Delineated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- XVI. An Order Recognizing the Special Relationship Between the State of Maine and the Sovereign Native American Tribes Located Within the State of Maine Executive Order 21 FY 11/12 August 26, 2011
- XVII. Testimony on LD 651 "An Act to Improve Tribal-State Relations"
- XVIII. Wabanaki Aboriginal Rights: A PowerPoint Presentation to Accompany LD 427, An Act to Extend the Same Privileges to the Wesget Sipu-Fish River Tribe as Are Extended to Other Maine Indian Tribes
- XIX. MITSC Testimony LD 427: An Act to Extend the Same Privileges to the Wesget Sipu-Fish River Tribe as Are Extended to Other Maine Indian Tribes April 26, 2011
- XX. MITSC Testimony Before the Joint Standing Committee on Inland Fisheries and Wildlife on LD 1456 "An Act Regarding the Right of Native Americans to be Issued Hunting, Fishing and Trapping Licenses"
- XXI. The Maine Implementing Act in 2011: A legislative analysis of bills conferring aboriginal rights to the Wesget Sipu and their impact on the Maine Implementing Act
- XXII. Testimony of Jamie Bissonette Lewey, Chairperson, Maine Indian Tribal-State Commission, in Support of the Nomination of Bonnie Newsom for a Seat on the University of Maine System Board of Trustees

- XXIII. Building the Beloved Community, Moving Forward with Respect: the Sanford HS Mascot
- XXIV. Statement of Maine Indian Tribal-State Commission Executive Director John Dieffenbacher-Krall on the Sanford School Committee's decision to stop using the mascot redskins
- XXV. May 16, 2012 MITSC letter to UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya
- XXVI. August 30, 2012 Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya The situation of indigenous peoples of the United States of America
- XXVII. MITSC Positions on Natural Resources Management and River Herring Restoration to the St. Croix Watershed
- XXVIII. Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission Mandate Signed 6/29/2012
- XXIV. News Release Wabanaki Tribal Governments, State of Maine Sign Mandate Commencing First-in-the-Nation Truth & Reconciliation Process Examining Wabanaki Experience with the Maine Child Welfare System mainetribalrc.org
- XXX. The Maine Implementing Act Through the Lens of the UN Declaration on the Rights of Indigenous Peoples MITSC PowerPoint Presentation to the Fourth Annual Meeting of the Native American and Indigenous Studies Association June 4, 2012

Note: All appendices can be found on the MITSC website, www.mitsc.org.

I. Executive Summary

The Maine Indian Tribal-State Commission (MITSC) principally exists “to continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.” MITSC has recently intensely focused on its principal responsibility to assess the Maine Indian Claims Settlement Agreement and its effects on the parties to the Agreement. Though the Houlton Band of Maliseets, Passamaquoddy Tribe, and Penobscot Indian Nation have achieved some marginal improvements in select areas of community health since the adoption of the Agreement, in many others conditions have markedly deteriorated. In May 2012, MITSC concluded, **“The Acts have created structural inequities that have resulted in conditions that have risen to the level of human rights violations** (bolded in original text).”

As someone has remarked about the living conditions and political situation endured by the Wabanaki, “No Indigenous Peoples negotiate for perpetual poverty.” The Wabanaki Tribes of Maine, including the Aroostook Band of Micmacs, live in a state of humanitarian crisis. MITSC wrote in a May 16, 2012 letter to the UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya:

Life expectancy for the four Maine Wabanaki Tribes averages approximately 25 years less than that of the Maine population as a whole. Only one percent of the Houlton Band of Maliseets’ population exceeds 55 years of age. Unemployment rates within Wabanaki communities range up to 70%, many times higher than the surrounding Maine communities. 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. At this time, the incarceration rate of Passamaquoddy people in state prisons is six times that of the general population.

In response to the MITSC letter, UN Special Rapporteur James Anaya concluded:

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.

Given the finding by the UN Special Rapporteur that the provisions of the Maine Indian Claims Settlement Act and Maine Implementing Act impose limitations on the Wabanaki Tribes of Maine self-determination and contribute to the harsh living conditions experienced by Wabanaki Peoples definitive action must be taken to amend the Agreement to remove the legal limitations stifling the Tribes. MITSC has committed itself to promoting changes to the Agreement that remove the legal limitations contributing to the Wabanaki Tribes of Maine extreme poverty. The Commission will also continue to explain that action on this humanitarian crisis not only benefits

the Wabanaki Tribes of Maine but also the State of Maine. While already some of the largest employers in their region, more economically vibrant Wabanaki communities can function as powerful engines of economic prosperity benefitting all people.

II. Introduction

A. Purpose and Organization of This Report

This report summarizes MITSC's work from July 1, 2009 to June 30, 2012. MITSC's bylaws specify an annual report will be transmitted to the State, the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians at the close of each year. Considerable time has passed since the last report was issued. MITSC is revamping its Annual Report to increase its accessibility and to ensure a more timely publication in the future.

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 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 water subject to regulation by the Passamaquoddy Tribe, the Penobscot Indian Nation, or MITSC.
- ⌚ Extended Reservations. Review petitions by the Tribes for designation as an “extended reservation.”

MITSC also performs an informal information and referral function for people looking for information about the 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.

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

C. Funding

MITSC finished fiscal year FY 2010 (July 1, 2009 to June 30, 2010) with a balance of \$560. During the 2010 fiscal year, MITSC took in \$83,611 and spent \$83,051. In FY 2011 (July 1, 2010 to June 30, 2011), MITSC received \$79,520 and expended \$76,844 with a balance of \$2,676. For the 2012 fiscal year (July 1, 2011 to June 30, 2012), MITSC received \$109,512 and spent \$97,402 for a balance of \$12,110.

III. MITSC Activities

FY 2010

Gubernatorial Executive Order on Tribal Consultation, 06 FY 10/11, An Order to Promote Effective Communication Between the State of Maine and the Native American Tribes Located Within the State of Maine

The Order enables the Wabanaki to provide meaningful and timely input into the development of legislation, rules and policies proposed by an agency on matters that significantly or uniquely affect those Tribes. It also directs every state agency to designate a tribal liaison. This Order responds to one of the Tribal-State Work Group (TSWG) recommendations, “require mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes.” MITSC worked closely with Governor Baldacci’s staff to provide input into the Executive Order and to encourage the issuance of the document.

Enactment of LD 445, An Act To Improve Tribal-State Relations, Public Law 2009, Chapter 636

MITSC worked closely with Representative Charles Priest, Senator Larry Bliss, and Penobscot Tribal Representative Wayne Mitchell to enact this multi-part legislation. The law creates a new tribal representative position for the Houlton Band of Maliseet Indians effective in the Second Session of the 125th, adds a parcel of land in Argyle to the Penobscot Reservation, establishes a more formal MITSC budget process acknowledging the full sovereignty of the Tribes and the State, and allows the Passamaquoddy Tribe and Penobscot Nation to access the benefits of multi-jurisdictional cooperative agreements.

MITSC Co-Sponsors and Organizes “Respectful or Disgraceful?: Examining Maine School Use of Indian Nicknames and Mascots”

MITSC co-sponsored and helped to organize a forum addressing Indian mascots, names, and associated imagery held at the Bangor Public Library May 15, 2010. The forum received extensive media coverage and helped provide the impetus for RSU 12 (Wiscasset High School) and Sanford High School to drop the offensive sport mascot redskins.

Recognizing the Athletic Accomplishments of Andrew and Louis Sockalexis

MITSC assisted the Penobscot Nation with organizing a news conference held July 28, 2009 during which Penobscot Tribal Representative Wayne Mitchell presented legislative resolutions passed by the Maine Legislature concerning the athletic accomplishments of Andrew Sockalexis and Louis Sockalexis.

University of Maine at Augusta Wabanaki Perspectives and Human Awareness Held 10/13 to 10/16/09

MITSC served on the planning committee and assisted with the media outreach for Wabanaki Perspectives and Human Awareness held 10/13 to 10/16 at the University of Maine at Augusta. The four-day event included presentations on Wabanaki spirituality, Native American military veterans, sovereignty, tribal identification, and basket making. The event culminated with a Wabanaki youth gathering to celebrate their culture.

Restoration of Alewives in the St. Croix Watershed

MITSC had extensive dialogue with the International Joint Commission St. Croix Watershed Board to have them acknowledge MITSC's jurisdiction on certain waters in the St. Croix Watershed and to urge the IJC to engage all three Passamaquoddy Tribal Governments in the region to hear their concerns about restoring sea-run alewives to the St. Croix Watershed.

Wabanaki/Bates/Bowdoin/Colby Collaborative (WBBC)

MITSC maintained its active support of the WBBC including its attendance at a 10/23/09 meeting to review WBBC activities conducted during the 2008-2009 academic year and to develop a work plan for the 2009-2010 academic year.

MITSC Legislative Work

MITSC testified on the biennial budget bill in regards to the Commission's budget for FYs 2010 and 2011 and LD 445 An Act To Improve Tribal-State Relations (contents of the bill described above).

Elimination of the Final Maine Place Names Using Squaw or Some Derivation of It

MITSC supported the work of Maliseet Tribal Administrator Brian Reynolds who encouraged the Aroostook County Commissioners to change seven different geographic features using the word squapan to scapan. The US Board on Geographic Names officially changed the names on July 14, 2011.

FY 2011

Jamie Bissonette Lewey Elected Chair of MITSC

MITSC Commissioners elected Jamie Bissonette Lewey on July 1, 2010 to serve a four-year term as Chair. She succeeded Paul Bisulca who resigned effective January 4, 2010.

RSU 12 Drops Sport Mascot Redskins

MITSC wrote to the RSU 12 (communities of Alna, Chelsea, Palermo, Somerville, Westport, Whitefield, Windsor, and Wiscasset) Chair August 5, 2010 requesting Wiscasset High School cease using the mascot redskins. After several meetings with RSU 12 officials, appearances before the RSU 12 Board, and an extensive media campaign, the RSU 12 Board voted on March 17, 2011 to drop the mascot redskins at the conclusion of the 2010-2011 academic year. The RSU 12 Board adopted wolverines as the new Wiscasset High School mascot.

Legislative Visit to Meet Wabanaki Leaders Hosted by the Penobscot Nation March 4, 2011

MITSC co-sponsored and actively supported a legislative visit with Wabanaki Leaders and other Tribal citizens hosted by the Penobscot Nation. Most of the funding for the event came from a grant obtained by the Episcopal Committee on Indian Relations (CIR) funded by the Episcopal Church. The Wabanaki Tribal Governments, MITSC, and CIR invited Maine Legislators to meet directly with Wabanaki Chiefs and other elected Wabanaki leaders to learn about some of the oldest continuous governments in the world and their priorities for better Wabanaki-Maine relations.

MITSC Tasked with Securing Support of Maine Governor for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC)

Representatives of the TRC Convening Group approached MITSC at the Commission's July 1, 2010 meeting asking MITSC to support the overall goals of the TRC. The TRC Convening Group specifically asked MITSC to help it gain the support of the Governor of Maine for a Declaration of Intent that would commit Maine State Government to undertake the TRC. MITSC began working with the Baldacci Administration in the late summer of 2010 and continued the work with the incoming LePage Administration in the winter of 2010. Governor LePage signed the Declaration of Intent along with the five Wabanaki Tribal Governments at a public ceremony held on Indian Island May 24, 2011.

MITSC Media Support for the TRC Declaration of Intent Signing May 24, 2011

MITSC wrote the news advisory, news release, and coordinated the press outreach for the Declaration of Intent signing that occurred May 24, 2011. Over a dozen print, radio, and TV stories were generated.

MITSC Presentation to the Judiciary Committee February 10, 2011

MITSC created a PowerPoint presentation for the Judiciary Committee to educate them about the Commission, the Maine Indian Claims Settlement Agreement, and tribal-state relations.

MITSC Examination of the International Joint Commission St. Croix Watershed Board's *An Adaptive Management Plan for Managing Alewife in the St. Croix River Watershed, Maine and New Brunswick (AMP)*

MITSC testified during a public meeting held at Princeton Elementary School on August 4, 2010 confirming its commitments to remain engaged in the restoration of alewife and facilitate ongoing conversation about alewife restoration.

Wabanaki/Bates/Bowdoin/Colby Collaborative (WBBC)

MITSC met on September 8, 2010 with the principal liaisons of Bates, Bowdoin, and Colby Colleges responsible for working with Wabanaki Tribal Governments on the Wabanaki/Bates/Bowdoin/Colby Collaborative. The meeting provided MITSC Chair Jamie Bissonette Lewey an opportunity to meet the principal people involved in the initiative.

Coordination of UN Permanent Forum on Indigenous Issues North American Representative Tonya Gonella Frichner Visit with Wabanaki Tribal Governments

MITSC coordinated and drove Onondaga Citizen Tonya Gonella Frichner to her October 23, 2010 meeting with Penobscot Nation Chief Kirk Francis and later visit with Passamaquoddy citizens hosted by the Motahkmikuk Tribal Government.

MITSC Analysis of the Conformance of the Maine Implementing Act with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Beginning with the April 26, 2010 meeting the Commission began discussing what does it mean that the State Legislature passed a Joint Resolution in Support of the UN Declaration on the Rights of Indigenous People on April 15, 2008. MITSC decided one primary thing to do is to examine how the Maine Implementing Act respects or impinges upon Indigenous rights as delineated in the UNDRIP. MITSC completed a draft analysis of MITSC conformance with UNDRIP on March 30, 2011. The analysis finds repeated MIA nonconformance with the minimum Indigenous rights specified in the UNDRIP.

Governor LePage Executive Order 21 FY11/12 An Order Recognizing the Special Relationship Between the State of Maine and the Sovereign Native American Tribes Located within the State of Maine Issued August 26, 2011

Governor LePage's Executive Order recognizes the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation as sovereign nations. The Order directs every Department and Agency of State Government

to implement a policy that “promotes effective two-way communication between the State and the Tribes.” It also requires every Department and Agency to name a tribal liaison to facilitate communication between that particular Department or Agency and the Tribes. MITSC assisted Governor LePage’s staff with the development of the Executive Order and offered comments during its drafting.

MITSC Legislative Work

MITSC testified on the biennial budget bill in regards to the Commission’s budget for FYs 2012 and 2013 before the joint public hearing of the Appropriations and Judiciary Committees on March 15, 2011. MITSC also presented testimony on LD 427 An Act To Extend the Same Privileges to the Wesget Sipu-Fish River Tribe as Are Extended to Other Maine Indian Tribes, LD 1456 An Act Regarding the Right of Native Americans to be Issued Hunting, Fishing and Trapping Licenses, and a comprehensive analysis of all three bills pertaining to the group Wesget Sipu, LD 270 An Act To Reserve a Number of Moose Permits for the Tribes of Maine, LD 427, and LD 1456. Jamie Bissonette Lewey authored testimony on LD 651 An Act to Improve Tribal-State Relations. She also testified in support of the nomination of Penobscot Nation citizen Bonnie Newsom for a seat on the University of Maine System Board of Trustees.

FY 2012

Sanford Drops Sport Mascot Redskins

MITSC began talking with Sanford School officials, principally Superintendent David Theoharides, during the fall of 2011 about Sanford High School dropping the mascot redskins. MITSC declined an invitation to debate or appear in a forum in which different views of the mascot issue would be discussed. MITSC assumed the position that the civil rights and perceived negative societal representations of an entire People should not be debated. MITSC organized an April 11 community forum with the clergy from North Parish Congregational Church, St. George’s Episcopal Church, and the Sanford Unitarian Universalist Church to provide Wabanaki citizens with an opportunity to discuss how they perceive the offensive mascot issue. The forum was well attended and received extensive media coverage. On May 7, 2012, the Sanford School Committee voted 4 to 1 to direct Superintendent David Theoharides to develop a process leading to a new mascot. The Sanford School Committee issued a press release June 7, 2012 stating it had adopted Spartans as the new high school mascot.

MITSC Responds to Request for Input from UN Special Rapporteur for the Rights of Indigenous Peoples James Anaya

The office of the UN Special Rapporteur of the Rights of Indigenous Peoples comprises one of the three United Nations (UN) entities charged with addressing the human and political rights of Indigenous Peoples. The two other UN bodies with Indigenous Rights responsibilities include the UN Permanent Forum on Indigenous Issues and the Human Rights Council’s Expert Mechanism on the Rights of Indigenous Peoples. Last year James Anaya conducted his first official visit to the US to investigate the human rights situation of Indigenous Peoples. He

invited testimony from MITSC and other interested parties as part of his official visit. MITSC hand-delivered to Mr. Anaya on May 16, 2012 a letter signed by the entire Commission that finds, “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.” In Mr. Anaya’s official report on his 2012 visit to the US, he finds:

Maine Indian Tribal - State Commission (MITSC): 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.

MITSC Positions on Natural Resources Management and River Herring Restoration to the St. Croix Watershed

MITSC began considering a position on the restoration of river herring in the St. Croix Watershed during the latter portion of FY 2012. The final statement was adopted at the October 17, 2012 Commission meeting. The Natural Resource Statement is still under review.

Research into the Development and Ultimate Adoption of the Maine Indian Claims Settlement

MITSC perceived a need to learn more about the history concerning the development of the Maine Indian Claims Settlement. MITSC reviewed archived materials housed at the University of Maine and by the Passamaquoddy Tribe to gain a better insight into how the Maine Indian Claims Settlement evolved into the final law that exists today.

Continuing MITSC Support for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC)

MITSC continued actively supporting the TRC throughout FY 2012 including MITSC Executive Director John Dieffenbacher-Krall regularly attending TRC Convening Group meetings, successfully applying for a grant from the Andrus Family Fund to support TRC activities, staffing the TRC Communications Subcommittee, and coordinating TRC media outreach including the press work for the June 29, 2012 TRC Mandate signing. Denise Altvater continued serving as the MITSC Commissioner liaison to the TRC.

MITSC Presentation at the Fourth Annual Meeting of the Native American & Indigenous Studies Association June 4, 2012

MITSC Executive Director John Dieffenbacher-Krall gave a PowerPoint presentation titled *The Maine Implementing Act Through the Lens of the UN Declaration on the Rights of Indigenous Peoples.*

Appendix 1

An Order to Promote Effective Communication Between the State of Maine and the Native American Tribes Located Within the State of Maine

February 24, 2010

06 FY 10/11

WHEREAS, the State of Maine has a unique legal relationship with Native American Tribes located within the state, including the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs, and the Houlton Band of Maliseets, as affirmed and set forth in state and federal law; and

WHEREAS, the State of Maine is committed to ensuring an effective social, economic and legal relationship between the Native American Tribes and the State; and

WHEREAS, it is vital to the well-being and prosperity of the State of Maine that the State maintain and continue to foster long-lasting and committed relationships with the Native American Tribes in Maine; and

WHEREAS, there are numerous unexplored opportunities and possibilities for the State and Tribes to pursue mutual programs and policies in a collaborative partnership to enhance and preserve natural resources for the betterment of communities and citizens in Maine;

NOW, THEREFORE, I, John E. Baldacci, Governor of the State of Maine, do hereby order and direct that every state agency shall develop and implement a policy that:

1. Promotes effective two-way communication between the state agency and Maine's Native American Tribes;
2. Promotes positive government-to-government relations between the State of Maine and Maine's Native American Tribes;
3. Enables Maine's Native American Tribes to provide meaningful and timely input into the development of legislation, rules and policies proposed by an agency on matters that significantly or uniquely affect those Tribes;
4. Establishes a method for notifying employees of the state agency of the provisions of this Executive Order and the policy that the state agency adopts pursuant to this section; and
5. Encourages similar communication efforts by the tribes.

I further direct that every state agency shall designate a tribal liaison, who reports directly to the office of the head of the state agency, to:

A. Assist the head of the state agency with developing and ensuring the implementation of the communication policy set forth above; and

B. Serve as a contact person who shall maintain ongoing communication between the state agency and Maine's Native American Tribes.

Nothing in this order creates any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Maine, its agencies, or any person.

Effective Date

The effective date of this Executive Order is February 24, 2010.

John E. Baldacci, Governor

Appendix 2

**Testimony of John Dieffenbacher-Krall, Executive Director,
Maine Indian Tribal-State Commission (MITSC),
Concerning a Proposal to Change the Legal Status of Certain Penobscot Nation Land in
Argyle from Trust to Reservation Status in
LD 445, An Act To Improve Tribal-State Relations
February 4, 2010**

Senator Bliss, Representative Priest, and distinguished members of the Joint Standing Committee on Judiciary; my name is John Dieffenbacher-Krall. I live in Old Town, Maine and work on a contractor basis as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I appear today to express MITSC's support for changing the legal status of Penobscot Nation land located in Argyle from trust to reservation.

MITSC, after consultation with the Attorney General's Office, considered this issue at its April 9, 2008 board meeting. MITSC Commissioners voted unanimously to endorse LD 2306, An Act To Amend the Definition of the Penobscot Indian Reservation.

Both in 2008 and this year some Committee members have cited Maine Implementing Act (MIA) §6209, sub-§5 titled "Future Indian communities" as an alternative method of achieving the objective of adding the Argyle parcel to the Penobscot Reservation. This section of MIA was identified during the Tribal-State Work Group process as poorly constructed and in need of revision. I urge any Committee members who might argue that the Penobscots should use the existing law to change the legal status of the Argyle land to reconsider their position.

The Future Indian communities provision for enlarging the Penobscot Reservation (and in a separate section the Passamaquoddy Reservation) requires 25 adult members of the Penobscot Nation to petition for extended reservation status. This provision assumes an existing Penobscot settlement which comprises many Penobscot families. The trust land that the Penobscot Nation wants to add to its existing Reservation contains no structures. No Penobscots live there to petition the Tribal Government.

Another problematic aspect of this provision of MIA is it undermines the Penobscot Government's ability to plan its residential communities. Instead of the Penobscot People collectively deciding through their elected government where they want to expand residential housing, 25 adult members could potentially decide the matter for the entire Tribe. Such an outcome would undermine the authority of the Penobscot Government.

In addition, the "Future Indian communities" provision charges MITSC with determining "that the petitioning tribal members constitute an extended reservation." Yet MIA provides no criteria which MITSC should apply to make such a determination. Sub-§5 also tasks MITSC with setting the boundaries for such an extended reservation. MITSC does not possess land surveying capability. The Commission would rely on the information provided by the Penobscot Government.

For all the reasons outlined, this provision of MIA is unworkable. These problems with sub-§5 compelled Governor Baldacci two years ago to submit LD 2306 for your consideration. The only practical and reasonable approach for the Legislature to pursue is to change the definition of the Penobscot Reservation instead of using the process outlined in §6209, sub-§5.

Appendix 3

From: Ed Rice
P.O. Box 21
Orono, Maine 04473
385-3862
erice@emcc.edu
www.sockalexis.info

May 6, 2010

FOR IMMEDIATE RELEASE

Symposium on Maine School Use Of Indian Nicknames and Mascots Set For Bangor Public Library, May 15

BANGOR, MAINE—The continuing nationwide controversy about public school and college use of Native American images as sporting symbols will be addressed in a symposium, entitled “Respectful or Disgraceful?: Examining Maine School Use of Indian Nicknames and Mascots,” to be held on Saturday, May 15, from 1-4 p.m. in the Bangor Public Library.

Free and open to the public, the symposium will feature three panels: representatives from Maine’s four Native American tribes, Penobscot, Passamaquoddy, Micmac and Maliseet; statewide media representatives; and administrators, students and community members from schools still using such symbols, schools that no longer use such symbols, and school representatives with an interest in the issue.

The event is sponsored by the following: Passamaquoddy Tribe at Sipayik (Pleasant Point), Houlton Band of Maliseet Indians, Penobscot Nation, Passamaquoddy Tribe at Motahkmikuk (Indian Township), Aroostook Band of Micmacs; Maine Indian Tribal-State Commission (MITSC); Maine People’s Alliance; Episcopal Committee on Indian Relations; Friends Committee on Maine Public Policy; and the Peace and Justice Center of Eastern Maine.

In April, 2001, the U.S. Commission on Civil Rights recommended that all non-Native American schools drop their Native American mascots or nicknames. The commission declared that “the stereotyping of any racial, ethnic, religious or other group, when promoted by our public educational institutions, teaches all students that stereotyping of minority groups is acceptable, which is a dangerous lesson in a diverse society.” The commission also noted that these

nicknames and mascots are “false portrayals that encourage biases and prejudices that have a negative effect on contemporary Indian people.”

In August, 2005, the National Collegiate Athletic Association (NCAA) announced a ban from all post-season championship competitions for any college or university still using a Native American mascot.

To date, more than 220 schools, colleges and institutions have eliminated such Native American nicknames and mascots. Notable ones include: St John’s University, which switched from the Redmen to the Red Storm; Dartmouth College, from Braves to The Big Green; University of Massachusetts, from the Redmen to the Minutemen; Stanford, from the Indians to The Cardinal; and University of Miami of Ohio, from Redskins to Redhawks. And, just a few weeks ago, it was announced that the University of North Dakota will no longer use its controversial nickname, the “Fighting Sioux,” with no new nickname immediately announced.

Notable changes in nicknames in Maine include: Old Town High School, from Indians to Coyotes; Scarborough High School, from Redskins to Red Tide; and Husson University, from Braves to Eagles.

Adjunct college instructor and author of ***BASEBALL'S FIRST INDIAN*** and ***NATIVE TRAILBLAZER***, books on Penobscot Indian athletes Louis Sockalexis and Andrew Sockalexis, Ed Rice is one of the organizers of the symposium, and he recently looked into the status of so-called “continuing” use of nicknames and mascots in 31 listed cases from an Internet web site called “Schools Using Native American Racial Mascots in Maine,” located at www.aics.org/mascot/main.html.

By calling the administrative office of every school on the list, during the first two weeks of April, Rice discovered that 18 of the schools no longer use the nickname listed for them, and four more of them have the nickname but do not use it or do not use it with Native American images – leaving just nine schools in the entire state using an Indian nickname and image.

The following elementary and junior/middle schools have changed to the following: A.D. Gray Junior High School of Waldo, consolidated a couple of years ago into the Medomak Middle School, switched from Indians to River Hawks; Beals Elementary School, from Braves to Bees; Blue Hill Consolidated Elementary School, from Indians to Bobcats; Columbia Falls Elementary

School, used the name Braves but the school closed in 2009; Corinna, former junior high consolidated into one middle school, changed from Indians to Wildcats.

Also: Etna Dixmont School, elementary-middle school changed from Indians to Eagles; Joseph A. Leonard Middle School of Old Town, joined the high school in switching from Indians to Coyotes; Mildred L. Day Memorial School of Arundel, elementary school dropped name Indians for no nickname at all; Narragansett Primary School of Gorham, dropped name Indians for no nickname at all; Dirigo Elementary School of Peru, consolidated into new school, changed from Indians to Cougar Cubs; Philip W. Sugg Middle School of Lisbon Falls, from Indians to Greyhounds; Sabattus Elementary School, became Sabattus Central School, changed from Chiefs to Huskies.

And: Sanford Junior High School, dropped name Braves and uses no nickname at all; Scarborough Middle School, joined the high school in changing from Redskins to Red Storm; Temple Academy of Waterville, a Christian school that changed from Warriors to Bereans; Trenton Elementary School , changed from Warriors to Timberwolves; Wiscasset Primary School, changed from Indians to no nickname at all; Woodstock Elementary School of Bryant Pond, changed from Indians to Wolf.

Additionally, administrative office representatives from the following schools reported: Daniel W. Merritt Elementary School of Addison, has the name Warriors but is “phasing it out,” having taken the emblems off sports uniforms and school literature; Fort Kent Community High School, has removed all Native American symbols and is phasing into “generic” Warriors; Pemetic Elementary School of Southwest Harbor, has the nickname Indians “but we don’t use it”; and Saint Albans Elementary School, recently consolidated, has the nickname Indians, “but we don’t have any symbols around the school and we don’t really use it.”

The nine schools in Maine, using Native American nicknames and images, include the following three elementary schools: Athens Elementary School, Apaches; Strong Elementary School, Indians; and Beatrice Rafferty Elementary School of Perry, an Indian school on the Passamaquoddy Reservation at Sipayik, Indians.

The six high schools include: Nokomis High School of Newport, Warriors; Sanford High School, Redskins; Skowhegan High School, Indians; Southern Aroostook High School of Island Falls, Warriors; Wells High School, Warriors; and Wiscasset High School, Redskins.

Organizers of the event, along with Rice, are: Joe Pickering Jr., King of the Road Music writer of many songs on sports themes, including ones about Louis Sockalexis and the mascot issue; John Dieffenbacher-Krall, executive director of the Maine Indian Tribal-State Commission.

For more information about the symposium, contact Rice at 385-3862.

-30-

Appendix 4

News Advisory

For immediate release: Thursday, July 23, 2009

For more information, contact: Penobscot Nation Chief Kirk Francis 817-7350 or 478-6109

Penobscot Tribal Rep. Wayne Mitchell 299-2980

Ed Rice 506-529-3016

Tribal Representative Wayne Mitchell to Present Legislative Resolutions Calling on the Baseball Hall of Fame, Others to Recognize the Achievements of Penobscot Baseball Great Louis Sockalexis; Legislature Urges Cleveland Indians to Drop Use of the Mascot Chief Wahoo

On Tuesday, July 28 at 11:00 am the Penobscot Indian Nation will hold a press conference at the gravesite of Louis Sockalexis on Indian Island to receive two resolutions passed by the Maine Legislature last month calling on the Baseball Hall of Fame, the Cleveland Indians, and Sports Illustrated to respect and to honor the athletic achievements of Louis Sockalexis and his cousin, Andrew Sockalexis. Penobscot Tribal Representative Wayne Mitchell will present the resolutions to Penobscot Nation Chief Kirk Francis.

Who: Penobscot Nation including Chief Kirk Francis, Tribal Rep. Wayne Mitchell

When: Tuesday, July 28, 11 am

Where: gravesite of Louis Sockalexis, Center Street (across from the Baptist Church),
Indian Island, Old Town

What: presentation of two legislative resolutions calling on the Baseball Hall of Fame,
Cleveland Indians, and Sports Illustrated to acknowledge and to honor the athletic
achievements of baseball great Louis Sockalexis and Olympic marathon runner
Andrew Sockalexis

Additional

Information: Journalist and author Ed Rice will speak and be available to answer questions.
Rice is the author of *Baseball's First Indian and Native Trailblazer*, biographies
of Louis and Andrew Sockalexis

-30-

Appendix 5

Wabanaki perspectives event set at UMA by John Dieffenbacher-Krall The Quoddy Tides 10/9/09

Passamaquoddy Tribal Council members Wayne Newell and Elizabeth Neptune and Passamaquoddy veteran Hilda Lewis are among the featured speakers at the University of Maine at Augusta event "Wabanaki Perspectives and Human Awareness." The four-day event, from October 13 to 16, is designed to educate the non-Native public and campus community about the Wabanaki, one of the oldest continuous cultures in the world, while also creating opportunities for Wabanaki students and adults to meet and to celebrate their culture.

Wabanaki Perspectives and Human Awareness begins with an October 13 presentation at 7 p.m. on Wabanaki spirituality featuring Wayne Newell, the first Wabanaki individual appointed to an at-large seat on the University of Maine System board of trustees, and Reuben Phillips, former Penobscot Nation lieutenant governor and spiritual leader. A discussion by Native veterans, including Hilda Lewis, about the inherited role of Native veterans will be held at 1 p.m. on Wednesday, October 14. On Thursday, October 15, Tribal Councillor Elizabeth Neptune will participate in a panel on "Issues of Sovereignty: The Inherent Rights of the Wabanaki Nations." Other activities during the first three days include day time and evening panels and discussions on the experiences of Native American military veterans, tribal identification and basketmaking.

Wayne Newell says, "One of the reasons that I am profoundly interested in the Wabanaki Perspectives event is few non-Wabanaki people know much about our culture, history and traditions. Whenever we can create sacred spaces for dialogue and intercultural exchange we strengthen mutual understanding by celebrating both our differences and what we have in common." Newell also congratulates the University of Maine at Augusta for taking the initiative to create the Wabanaki Perspective event. "I look forward to participating in this year's event and hopefully many more to come."

On Thursday evening, October 15, the event shifts to a focus on youth with over 50 Wabanaki seventh graders arriving on the UMA campus for a range of activities that include storytelling, drumming, a film presentation, a bonfire and a campout. The next morning additional middle schoolers arrive from Indian Township for a day of traditional activities, a tour of the Holocaust and Human Rights Center of Maine and discussions on education and the future. The Wabanaki youth depart at 3 p.m. on Friday.

Throughout the week, there will also be several ongoing activities, including Talking Circles, music by native artists, traditional foods available in the UMA café, art exhibits and film presentations. A complete schedule of events may be found at: <www.uma.edu/wabankiperspectives.html>.

For more information, contact Norma Bisulca at 621-3451 or the Maine Indian Tribal-State Commission at 817-3799.

Appendix 6

August 26, 2009

Colonel Philip T. Feir
Co-Chair, International St. Croix River Watershed Board
U.S. Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742

Dear Colonel Feir:

I write to inform you of the Maine Indian Tribal-State Commission's fishery management responsibilities within the State of Maine and to request that the IJC consult with MITSC on all decisions affecting sea-run alewife passage on the St. Croix River and within the watershed.

In my July 24, 2009 letter to you reporting on the positions of the Wabanaki Tribes on the restoration of unimpeded passage of sea-run alewives in the St. Croix River, I described MITSC's authority under the Maine Implementing Act (MIA) §6207, §§8. For the IJC's benefit, I want to expand on the explanation of our fishing authority.

Prior to the enactment of the Maine Indian Claims Settlement Act (MICSA) and MIA in 1980, the State of Maine enjoyed exclusive fisheries jurisdiction over inland waters with the exception of certain border waters. MIA §6207, §§3 gives MITSC "exclusive authority to promulgate fishing rules or regulations on"

- A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;
- B. Any section of a river or stream both sides of which are within Indian territory; and
- C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.

Indian Territory comprises specific Passamaquoddy and Penobscot lands defined in MIA §6203. Certain waters within the St. Croix watershed are subject to MITSC jurisdiction. MITSC possesses a statutory responsibility for fishery management decisions on MITSC waters.

Beyond MITSC's statutorily delineated responsibilities for MITSC waters, the Commission also takes a more comprehensive view of fisheries as they affect the signatories to MIA and MICSA. The Houlton Band of Maliseet Indians and the Penobscot Indian Nation have an interest in the fisheries management decisions made in the St. Croix watershed. All the Wabanaki signatories to MICSA and MIA have cultural, economic, historical, jurisdictional, and spiritual interests over rivers that eventually flow into the Gulf of Maine. How aquatic species management decisions get made for one part of the Gulf of Maine ecosystem can affect other segments of the ecosystem connected to Maliseet and Penobscot fishery resources.

The Passamaquoddy Tribe and Penobscot Nation possess sustenance fishing rights within their respective reservations (MIA §6207, §§4). Both Tribes have the right to harvest sea-run alewives when present in Passamaquoddy or Penobscot waters. Besides the Tribe's legally guaranteed right to harvest fish within their reservation waters, sea-run alewives also provide an important food source for a number of other species that inhabit or seasonally migrate through Passamaquoddy and Penobscot waters. The overall abundance of sea-run alewives in the Gulf of Maine can affect other fish populations therefore affecting the availability of fish for Passamaquoddy and Penobscot sustenance fishing.

Though MITSC has not asserted its fishery jurisdiction in waters in and around the Passamaquoddy Reservation at Motahkmikuk, the Commission does have fishery management responsibilities for waters further upstream. MITSC has an interest in any fishery management decisions made in the lower watershed that can affect waters in the middle and upper St. Croix watershed.

For all the reasons stated above, MITSC requests that the IJC and the International St. Croix River Watershed Board consult with MITSC on all fishery management decisions and deliberations that could possibly affect sea-run alewives in the St. Croix River. I ask that standard IJC procedure include us on all communications concerning sea-run alewives in the St. Croix River and that MITSC receive an invitation to all meetings involving this subject area.

I imagine that you and all the IJC Commissioners do your utmost to fulfill your responsibilities as specified in the Boundary Waters Treaty and other governing documents. The other MITSC Commissioners and I possess a similar dedication to our responsibilities given to us by four Tribal Governments, the State of Maine, and the United States. I appreciate your personal and the IJC's anticipated collective assistance and cooperation to support MITSC's fishery management responsibilities.

Respectfully yours,

Paul Bisulca
Chairman
Maine Indian Tribal-State Commission

Cc: Wabanaki Chiefs
Bill Appleby, Canadian Co-Chair, International St. Croix River Watershed Board
Hon. Irene Brooks, Chair, U.S. Section, International Joint Commission
Hon. Herb Gray, Chair, Canadian Section, International Joint Commission
Governor John E. Baldacci

Appendix 7

Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FY 2011 contained in LD 1671, An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2010 and June 30, 2011
January 8, 2010

Senator Diamond, Representative Cain, and honorable members of the Joint Standing Committee on Appropriations and Financial Affairs, and Senator Bliss, Representative Priest, and honorable members of the Joint Standing Committee on Judiciary; my name is John Dieffenbacher-Krall. I serve as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I appear before you today to add information to the testimony MITSC State Commissioner Diana Scully has presented.

For Committee members who are unaware, MITSC is a creation of 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. 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 Federal Government funded the settlement of \$81.5 million 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.

MITSC plays a critical role in facilitating tribal-state relations. We fulfill many of the functions typically performed by a state office of Indian affairs. Signatories to the Settlement Act regularly turn to MITSC for contact information and diplomatic assistance. MITSC also staffs initiatives related to Wabanaki-Maine relations. From 2006 to 2008, MITSC staffed the Tribal-State Work Group, initially begun under a Governor Baldacci executive order, and later as a legislative creation via LD 1263, Resolve, To Continue the Tribal-State Work Group. MITSC also assists its Indian constituents with scheduling and organizing periodic Wabanaki Leaders meetings.

The Commission has increasingly focused during the last four years on implementing and supporting initiatives backed by the Settlement Act signatories. MITSC also monitors the progress of past achievements, such as LD 291, An Act to Require Teaching of Maine Native

American History and Culture in Maine's Schools, and the 2000 amendment to Maine's Offensive Place Names Law that added the words "squaw" and "squa" to the list of existing banned words. The Commission has a much higher public profile and maintains a website with extensive information about the Settlement Act, the Commission, the Wabanaki, and tribal-state relations.

MITSC is the entity the Settlement Act signatories turn to when they want something done in the area of tribal-state relations. During FY 2009, MITSC worked on a dozen different initiatives ranging from LD 1377, the law enacted last year to establish a Maliseet Tribal Court and create seats for the Maliseets on the Commission, writing and overseeing passage of LD 797, An Act To Fully Implement the Legislative Intent in Prohibiting Offensive Place Names, to supporting the Wabanaki/Bates, Bowdoin, and Colby Collaborative. This Collaborative formalized in May 2007 expands educational opportunities for Wabanaki students and strengthens the liberal arts missions of Bates, Bowdoin, and Colby Colleges. The Native American and Indigenous Studies Association informed the WBBC Collaborative earlier this week it will hold a roundtable discussion about this highly successful initiative at its annual meeting scheduled for May 20-22 in Arizona.

Appendix 8

Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FYs 2012 and 2013 contained in LD 1043, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013
March 15, 2011

Senator Rosen, Representative Flood, and honorable members of the Joint Standing Committee on Appropriations and Financial Affairs; and Senator Hastings, Representative Nass, and honorable members of the Joint Standing Committee on Judiciary; my name is John Dieffenbacher-Krall. I serve as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I appear before you today to address the State appropriation to MITSC for fiscal years 2012 and 2013 as proposed in LD 1043.

For Committee members who are unaware, MITSC is a creation of 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. 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 Federal Government funded the settlement of \$81.5 million 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.

MITSC plays a critical role in facilitating tribal-state relations. We fulfill many of the functions typically performed by a state office of Indian affairs. Signatories to the Settlement Act regularly turn to MITSC for contact information and diplomatic assistance. MITSC also staffs initiatives related to Wabanaki-Maine relations. From 2006 to 2008, MITSC staffed the Tribal-State Work Group, initially begun under an executive order, and later as a legislative creation via LD 1263, Resolve, To Continue the Tribal-State Work Group. MITSC also assists its Indian constituents with scheduling and organizing periodic Wabanaki Leaders meetings.

Though members of the Judiciary Committee have already received it, attached to my testimony you will find "Maine Indian Tribal-State Commission (MITSC) Accomplishments 2006 – 2011."

This document is not exhaustive but it does list many of MITSC's more significant achievements during the last five years, including LD 445, An Act To Improve Tribal-State Relations.

One of the four sections of LD 445 added requirements to Maine law concerning how the MITSC budget is addressed. MITSC raised concerns about the handling of the Commission's budget in testimony to these two committees in 2009 and 2010. MITSC applauds the work of the Judiciary Committee last session to address an unequal budget process that did not reflect the equality of the sovereign signatories party to the settlement.

To review, among the changes instituted by LD 445 include an amendment to 30 MRSA §6212 (6) that requires the "Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee" of the Tribes "to produce a proposed biennial budget for the commission and to discuss any adjustments to funding." Timing issues have primarily conspired to prevent a meeting between the signatories to take place. MITSC has been in communication with Dan Billings, Governor LePage's Chief Legal Counsel, to schedule the necessary meeting and any associated follow-up to produce a budget figure acceptable to the Wabanaki and the State in time for Governor LePage's change package to be submitted to the Legislature next month.

At the MITSC meeting held July 1, 2010, Commissioners directed me with the encouragement of the Governor's Chief Legal Counsel at the time to prepare a budget that includes a full-time executive director. During the last six years, the executive director position has fluctuated between 25 to 35 hours per week. The budget figures that you have recommend funding MITSC at \$78,000 per year for FYs 2012 and 2013. For MITSC to have a full-time executive director position, the Commission will need approximately \$122,850 in FY 2012 and \$126,900 in FY 2013.

The possibility exists that the Tribes may make contributions to support MITSC operations. No law requires the Tribes to support MITSC operations. In fact, Tribal negotiators to the settlement agreement contend that the State accepted responsibility to fund MITSC operations. In the past, Tribal Governments have voluntarily contributed to MITSC operations in order for the Commission to better meet its responsibilities and complete the work that the signatories asked it to perform. Three years ago the Wabanaki signatories suspended their voluntary contributions to MITSC to protest in their view the inequitable handling of the MITSC budget by the State of Maine. Last year MITSC was able to end the year with a small surplus thanks to a \$5,000 infusion from the Tribes that reflected a positive response to the enactment of LD 445.

At one time, the State of Maine was required to fund MITSC operations. That provision was later rescinded. From MITSC's perspective, the most important aspect of the MITSC budget setting process is that it be consensual with no signatory dictating to any other signatory what MITSC will do. The process should also produce an agreed upon allocation of contributions from the signatories.

Governor LePage and his staff have taken a number of steps to improve Wabanaki-Maine relations. The Tribes have expressed cautious optimism about the actions of the LePage

Administration to date. MITSC believes that the State and the Wabanaki Tribal Governments are acting in good faith. We need to ensure appropriate consultation and deliberation takes place as required under the amendment to 30 MRSA §6212 (6). With everyone continuing to operate in good faith and a spirit of cooperation, MITSC believes it can get done.

Appendix 9



UNITED STATES BOARD ON GEOGRAPHIC NAMES

In reply please use this address:
U. S. Geological Survey
523 National Center
Reston, Virginia 20192-0523

July 28, 2011

Maine Indian Tribal-State Commission
P.O. Box 241
Stillwater, Maine 04489

Dear Commissioners:

This is to inform you that the U.S. Board on Geographic Names, at its July 14, 2011 meeting, approved the proposals to change the names of Squapan, Squapan Inlet, Squapan Knob, Squapan Lake, Squapan Mountain, and Squapan Stream in Aroostook County to Scopan, Scopan Inlet, Scopan Knob, Scopan Lake, Scopan Mountain, and Scopan Stream, respectively. The changes have been entered into the Geographic Names Information System, the nation's official geographic names repository, which is available and searchable online at <http://geonames.usgs.gov>. The entries read as follows:

Scopan: populated place (unincorporated); located in the Town of Masardis, along State Route 11, 4 mi. S of Ashland; Aroostook County, Maine; 46°33'47"N, 68°22'41"W; USGS map – Scopan 1:24,000; Not: Scapin, Squa Pan (BGN 1961), Squapan (BGN 1911 2001), Squa-Pan, Squatpan, Squawpan.

Scopan Inlet: stream; 4 mi. long; heads in Castle Hill Township, 1.5 mi. W of Haystack Mountain at 46°37'15"N, 68°38'50"W, flows S to enter Scopan Lake; Aroostook County, Maine; 46°39'58"N, 68°15'18"W; USGS map – Scopan Lake East 1:24,000 (mouth of stream); Not: Squa Pan Inlet, Squapan Inlet.

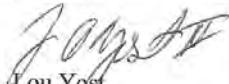
Scopan Knob: summit; elevation 1,460 ft; located on Scopan Mountain, 11 mi. SW of Presque Isle; Aroostook County, Maine; 46°34'15"N, 68°12'01"W; USGS map – Scopan Lake East 1:24,000; Not: Bald Knob, Squa Pan Knob, Squapan Knob.

Scopan Lake: lake; located 14 mi. SW of Presque Isle; Aroostook County, Maine; 46°33'23"N, 68°19'31"W; USGS map – Scopan Lake West 1:24,000 (central point); Not: Scapin Lake, Squa Pan Lake, Squapan Lake, Squawpan Lake.

Scopan Mountain: summit; elevation 1,475 ft.; located 9.5 mi. WSW of Presque Isle; Aroostook County, Maine; 46°36'34"N, 68°11'30"W; USGS map – Scopan Lake East 1:24,000; Not: Bald Knob, Hedgehog Mountain, Squa Pan Mountain, Squapan Mountain.

Scopan Stream: stream; 3.5 mi. long; heads at the NW end of Scopan Lake at 46°33'24"N, 68°19'34"W, flows W into the Aroostook River; Aroostook County, Maine; 46°33'36"N, 68°23'13"W; USGS map – Scopan 1:24,000 (mouth of stream); Not: Squa Pan Stream, Squapan Stream.

Sincerely yours,



Lou Yost
Executive Secretary
Domestic Names Committee
U.S. Board on Geographic Names

Appendix 10

August 5, 2010

Mr. Thomas Birmingham, Chair
Sheepscot Valley Regional School Unit #12 Board
69 Augusta Road
Whitefield, ME 04353

Dear Mr. Birmingham:

I write to express the Maine Indian Tribal-State Commission's request that Sheepscot Valley Regional School Unit #12 (RSU 12) stop using the sports name redskins and any associated artwork, imagery, or references to that name. Please share this letter with your fellow board members and Superintendent Greg Potter.

The Maine Indian Tribal-State Commission (MITSC) consists of 13 Commissioners, six Commissioners representing the State of Maine and six Commissioners representing the Wabanaki signatories to the Act. I serve as the elected Chair of the Commission. We exist to monitor the effectiveness of the Maine Implementing Act, the companion legislation to the 1980 Maine Indian Claims Settlement Act. Besides our obligation to monitor the implementation of the Act, by statute the Commission shall continually review "the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State."

The Commission's duty in part to monitor the social relationship between the signatories to the Act causes us to ask that RSU 12 cease using the offensive name redskins. MITSC strives to strengthen Wabanaki-Maine relations whenever we can. One source of tension in the tribal-state relationship involves some Maine schools' use of offensive sports mascots and nicknames referencing or associated with Indigenous People.

Last May we co-sponsored along with the four Wabanaki federally recognized tribes and a number of religious and non-governmental organizations a symposium titled "Respectful or Disgraceful?: Examining Maine School Use of Indian Nicknames and Mascots." Wabanaki elected leaders, educators, tribal officials, and historians along with other Indigenous People described the many harmful effects of Indian nicknames and mascots. The symposium generated considerable news coverage and editorials by the *Times Record* and *Bangor Daily News*.

People attending the May 15 symposium along with MITSC Commissioners concur that the most offensive of all Indian related nicknames currently used by Maine schools is redskins. Many people consider redskins an ethnic slur in the same category as "chink" or "darkie" (see

Brief of Psychology Professors As Amici Curiae in Support of Petitioners in *Harjo v. Pro-Football, Inc.*). Quoting from the same brief, “Social science research shows that the use of ethnic slurs like “redskin” perpetuates harmful stereotypes and leads to discrimination.”

The RSU 12 website states part of the body’s mission is “to educate each and every student to the fullest of his/her potential.” Yet research shows the negative effects of Indian sports mascots such as Redskins “impose harmful psychological costs on American Indians in general and on American Indian children and young adults in particular” (see Brief of Psychology Professors As Amici Curiae in Support of Petitioners in *Harjo v. Pro-Football, Inc.* p. 14). RSU 12’s continued use of the sports nickname redskins compromises its ability to fulfill its educational mission for every child, especially those of Native American ancestry.

Psychologists specializing in the harmful effects of stereotypes cite possible harm to Indian culture by the use of such names as redskins. One of the stated purposes for passing the Maine Indian Claims Settlement Act (MICSA) included guarding against the acculturation of the Wabanaki or anything that could disturb the culture or integrity of the Indian people of Maine. The use of the sports nickname redskins poses the potential to harm individual Wabanaki and Wabanaki Tribes as a whole. Some individuals in the targeted group can respond by hiding their Indigenous identify to protect themselves from further harm. One of the Indigenous panelists at the May 15 symposium described how she resorted to that highly painful act when in high school to escape from the abuse directed at her because of her Indian identity. Only in the relatively safer environment of college did this individual reassert her Indigenous identity.

For all these reasons, we trust that the RSU 12 Board will move quickly to discontinue its use of the redskins nickname. MITSC stands ready to assist you with any information you feel that you might need to take action. We believe nobody would purposely continue an action that could harm an entire people. MITSC encourages RSU 12 to join the many other Maine schools that have abandoned offensive Indian mascots and names in favor of more appropriate alternatives.

Sincerely,

Jamie Bissonette
Chair, Maine Indian Tribal-State
Commission

Cc: Angela Faherty, Commissioner, Maine Dept. of Education
 Patricia Ryan, Executive Director, Maine Human Rights Commission

Appendix 11

February 14, 2011

Dear Member of the 125th Legislature:

The Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, Penobscot Indian Nation, Maine Indian Tribal-State Commission (MITSC), and Episcopal Committee on Indian Relations (CIR) invite you to join them for a day at the Penobscot Nation Reservation on Friday, March 4, 2011. The Wabanaki Tribal Governments, MITSC, and CIR want to provide Maine Legislators with an opportunity to meet directly with Wabanaki Chiefs and other elected Wabanaki leaders to learn about some of the oldest continuous governments in the world and their priorities for better Wabanaki-Maine relations. Likewise, the Wabanaki Tribal Governments look forward to hearing from Maine elected leaders and to answer questions about the Tribes' legislative and policy priorities for the 125th Legislature.

We will arrange for buses to depart from the State House at 8 am on March 4. During the trip north to Indian Island, Wabanaki citizens will brief you about the Tribes, some of their history, culture, and traditions, and current political challenges. Once the group arrives at Indian Island, Wabanaki and Maine officials will gather at the Sockalexis Bingo Palace. Visitors will have an opportunity to hear from the elected leadership of each Wabanaki Tribal Government. Lunch will be provided. Everyone taking the bus will return to Augusta by 6 pm.

Wabanaki leaders face many of the same challenges experienced by Maine legislators – how to provide critically needed services with limited financial resources. In addition, Wabanaki leaders take an oath of office that commits them to uphold the ancient laws, customs, and traditions of the Wabanaki People. The preservation and strengthening of Wabanaki culture comprises a critical component of the daily work of Wabanaki Tribal Governments.

The March 4 event will provide an opportunity to learn about the many dimensions of the Wabanaki and their rich cultural, spiritual, and traditional past along with their vibrant, living presence here today within the State of Maine. Ultimately, this exchange will promote stronger government-to-government relations, a mutually shared goal of the Wabanaki and the State of Maine.

Please join us on March 4. A pre-paid, pre-addressed postcard has been enclosed with this letter to make it easy for you to RSVP. Don't miss this special opportunity to learn about some of the oldest peoples on earth and their unique relationship with the State of Maine.

For Stronger Tribal-State Relations,

Chief Victoria Higgins
Aroostook Band of Micmacs

Chief Brenda Commander
Houlton Band of Maliseet Indians

Governor Joseph Socobasin
Passamaquoddy Tribe @ Motahkmikuk

Chief Reuben Clayton Cleaves
Passamaquoddy Tribe @ Sipayik

Chief Kirk Francis
Penobscot Indian Nation

Jamie Bissonette Lewey
Chair, ME Indian Tribal-State Commission

Rev. Leonetta Burns
Chair, Episcopal Committee on Indian Relations

Appendix 12

Declaration of Intent to Create a Maine/Wabanaki Truth & Reconciliation Process

This document is a statement that gives context to the Truth and Reconciliation Process being created by the State of Maine child welfare agency and the Wabanaki tribes. This process will illustrate what has happened, what is happening and what needs to happen. We commit to uncover the truth and acknowledge it, creating opportunities to heal and learn from the truth. We commit to working together, collaboratively focusing our efforts on activities that will move us forward as equal partners invested in promoting best child welfare practice for Wabanaki people of Maine.

“We are not supposed to be here”

~Contemporary Wabanaki people

The Wabanaki people are indigenous to the land now known as the State of Maine. Since European contact began in the 15th century, Wabanaki have experienced a significant population depletion. There were over 20 tribes of the Wabanaki Confederacy. Today, there are four Wabanaki tribes still in existence; over 16 other tribes were completely destroyed. Within the remaining four tribes, there are nearly 8,000 tribal members alive today.

Beginning in the late 1800's, the United States government established boarding schools intended to solve the "*Indian problem*" through assimilation. Henry Richard Pratt, the founder of Carlisle Indian Industrial School, described his effort as an attempt to "*kill the indian and save the man*" In the 1950's and 1960's the Bureau of Indian Affairs and the Child Welfare League of America created the Indian Adoption Project which removed hundreds of native children from their families and tribes to be adopted by non-native families. In 1978, the U.S. Congress passed the Indian Child Welfare Act (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).

“We can work together to make sure that everyone simply follows laws and policies, or we can go deeper and figure out how to make changes because it is the right thing to do.”

~Denise Yarmal, Passamaquoddy

Important progress has been made with the passage of the ICWA. There has been positive collaboration between the state of Maine and Wabanaki tribes to bring about lasting positive change. Since 1999, this effort has resulted in ICWA trainings for state workers, an Indian Child Welfare policy and a better working relationship.

In spite of this progress, Maine's child welfare history continues to impact Wabanaki children and families today. We have come to realize that we must unearth the story of Wabanaki people's experiences in order to fully uphold the spirit, letter and intent of the ICWA in a way that is consistent and sustainable. In 2010 the Wabanaki communities and the state of Maine government worked collaboratively with the Truth and Reconciliation Convening Group to draft this Declaration of Intent, outlining the overall purpose of the Truth Commission. The Convening Group is comprised of representatives from each of Maine's Tribal Child Welfare programs and other agencies, Maine's Department of Health and Human Services Office of Child and Family Services and staff from the Muskie School of Public Service.

This collaboration will continue between the present date and early 2012 as the Truth and Reconciliation Convening Group and the Maine Indian Tribal-State Commission coordinates with Wabanaki and state of Maine governments on the following activities:

- Drafting the Mandate for the Truth and Reconciliation Commission which creates and provides instruction to the Commission, as well as authorizes the Commission structure, activities and products.
- Drafting the Letters of Commitment that Wabanaki governments and Maine governments will sign identifying what steps each will agree to in support of the Truth and Reconciliation Commissions work.
- Participating in the selection of suitable commissioners.

Disclaimer- Nothing in this Joint Declaration --

- (1) authorizes or supports any claim against any individual, the state of Maine or any of the Wabanaki Tribes; or
- (2) serves as a settlement of any claim against any individual, the state of Maine or any of the Wabanaki Tribes.

We, the undersigned, commit ourselves to work diligently and honestly to carry out this process with integrity; promoting truth, understanding and genuine reconciliation.

Aroostook Band of Micmacs

Date

Houlton Band of Maliseet Indians

Date

Passamaquoddy Tribe at Motahkmikuk

Date

Passamaquoddy Tribe at Sipayik

Date

Penobscot Indian Nation

Date

State of Maine

Date

Maine Indian Tribal-State Commission

Date

Appendix 13

NEWS RELEASE

For Immediate Release: Tuesday, May 24, 2011

For More Information: Penobscot Nation Tribal Chief Kirk Francis (c) (207) 817-7349
Adrienne Bennett, Office of Governor LePage (207) 287-2531
Esther Attean, Muskie School of Public Service (c) (207) 615-3189
John Dieffenbacher-Krall, MITSC (c) (207) 944-8376

**Wabanaki Tribal Governments, State of Maine and
Maine Indian Tribal State Commission (MITSC)
Sign Declaration Committing Them to First-in-the-Nation
Truth & Reconciliation Process Examining History of
Indian Child Welfare Practices with Wabanaki Peoples
mainetribaltrc.org**

(Indian Island) Wabanaki Chiefs, Governor Paul LePage and MITSC Commissioner Denise Yarmal signed a Declaration of Intent committing the entities to conduct a collaborative Truth and Reconciliation Process examining what has happened, what is happening, and what needs to happen regarding Maine child welfare practices with Wabanaki people. The public signing ceremony, which took place at Indian Island, represents a historic agreement between Wabanaki Tribal Governments, the State of Maine, and MITSC to uncover and acknowledge the truth, creating 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 Declaration of Intent.

Chief Francis adds, “This is truly a historic event. This TRC process is unique in that parties on both sides have come together with the best interest of Wabanaki children and families at heart. It is a model of collaboration that can be replicated in other areas of tribal-state relations in Maine and has the potential to be a model for other states as well.”

The Maine Tribal-State Child Welfare Truth and Reconciliation Commission (TRC) Process represents the first truth and reconciliation effort within US territory that has been collaboratively developed between Indian nations and a state government. 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 Mental Health Associates. All five Wabanaki Tribal Governments, Governor LePage and MITSC have endorsed this process today.

Governor LePage declares, “Many people have worked over a long period of time to help us reach this point, and I am pleased we are now able to move the process forward. It is worthwhile to consider how our child welfare system has failed in the past so we can continue to improve the system. I see this process as a way to continue the strong working relationship that has developed in recent years between the Tribes and the Department of Health and Human Services. I hope this is another step in strengthening state-tribal relations.”

Wabanaki and State representatives have been collaborating for more than a decade, which has and will continue 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.

Molly Newell, a member of the TRC Convening Group who has been a part of this change process for over a decade, says, “I am proud of the work we have done over the years to improve child welfare practice and realize it has only been possible because of the energy we’ve put into developing and strengthening relationships. We hold ourselves and each other accountable, asking tough questions and sharing difficult thoughts, feelings and opinions. Although at first I wasn’t sold on this idea of opening old wounds, I now realize it is necessary to look back at the truth before we can heal and move forward. I am optimistic and hopeful - I know we can do this.”

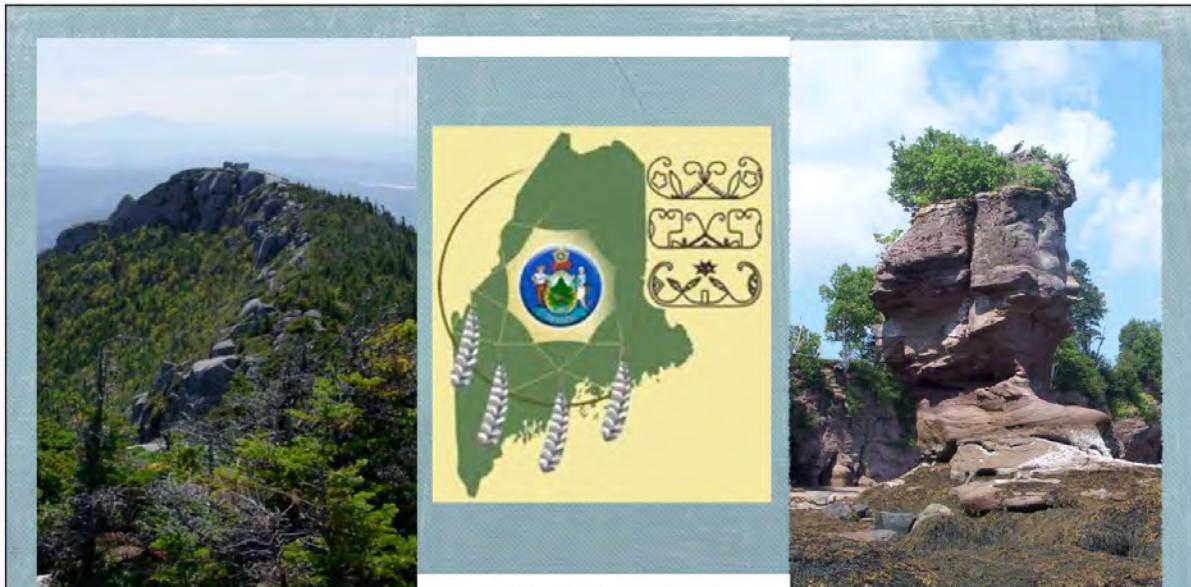
The impetus for the TRC comprises three key purposes: 1) to create a common understanding between the Wabanaki and the State of Maine concerning what happened and is happening to Wabanaki children in the child welfare system; 2) to act on the information revealed during the TRC to implement systems change to improve the system and to better support the children and families served; and 3) to promote healing both among Wabanaki children and their families and the people who administered a widely acknowledged less than ideal system.

In 1978, the U.S. Congress passed the Indian Child Welfare Act (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).

All the signatories to the Declaration of Intent thanked the Andrus Family Fund for its financial support for the Convening Group, creating support for Wabanaki communities, and other aspects of the TRC. Next steps will include the signatories agreeing to a specific plan for conducting the TRC process, selecting members of the TRC, and securing additional funding. The TRC will be housed within the Maine Indian Tribal-State Commission (MITSC). Throughout the process Wabanaki Community Groups led by community members will provide support and a local point of contact for all Wabanaki people who become involved in the TRC process.

-30-

Appendix 14



The collage consists of three photographs. The left image shows a rugged, rocky mountain peak covered in sparse vegetation under a clear sky. The middle image is a graphic representation of the state of Maine, featuring a yellow background with a green silhouette of the state's coastline. Inside the silhouette is a circular emblem containing a Native American figure, a moose, and a fish. The right image shows a large, craggy rock formation with patches of green vegetation growing on top, set against a blue sky with white clouds.

Report: MITSC

Maine Joint Standing Committee on Judiciary
February 10, 2011

Good afternoon, my name is Jamie Bissonette Lewy, I am a member of the fresh water otter clan of the Abenaki Tribe. We are the most western of Wabanaki people. My people call the eastern shore of Lake Champlain home. I am honored to address you today as Chair of the Maine Indian Tribal State Commission and explain the framework that the Maine Indian Tribal State Commission uses to address its charge. I am also humbled because I speak to you today in the presence of Wabanaki people who “lived” through the negotiations that resulted in the Maine Implementing Act and the Maine Indian Claims Settlement Act.

I would like to recognize the two Tribal Representatives: Rep. Wayne Mitchell who has shepherded many of the legislative initiatives that MITSC has worked on and Rep. Madonna Soctomah who I would like to thank Rep. Soctomah for encouraging me to focus on the framework MITSC would use to define our work. Today we also have two MITSC Commissioners present: John Banks and Paul Thibeault; and we are joined by Esther Attean who is staff to the Child Welfare Truth and Reconciliation Commission and who will speak to you later.

Our presentation will have three parts: 1) The Framework which I will present 2) Esther Attean will briefly describe the work of the Truth and Reconciliation Commission 3)MITSC’s Executive Director, John Dieffenbacher-Krall will report on the MITSC accomplishments from 2006 to the present.

Paul Thibeault and John Banks are here to answer any questions you might have regarding MITSC’s interpretation of MIA or MICSA; and the Tribe and Nation’s management of the extensive natural resources that are under their care.

I know I speak for our dedicated Executive Director, John Deiffenbacher-Krall when I extend my thanks to all former MITSC Chairs and Executive Directors. I extend a special thanks to Diana Scully for the paper she wrote: "Maine Indian Claims Settlement: Concepts, Context and Perspectives." I relied on her work in preparing today's presentation.

Slide 1:

These photographs represent two sacred sites: Mount Katahdin and the Medeowin Rocks. I chose these photographs because I think it is very important for us today to remember, this discussion began with the land and, for us, the land is our living, breathing relative. She is our mother.

Maine Indian Tribal State Commission was established by the Maine Implementing Act of 1980

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 MLA and the social, economic and legal relationship of the Passamaquoddy Tribe and Penobscot Indian Nation and the State; and to make recommendations to the Tribes or the State as it determines appropriate.



Slide 2:

So, what are MITSC's responsibilities?

The first 4 responsibilities of the MITSC are easily defined. These issues come up periodically and are addressed as they arise.

The last responsibility is more complicated and it this portion of our charge that demands the majority of our attention.

The Commission:

Passamaquoddy Representatives

Matt Dana and Denise Altvater

Penobscot Representatives

John Banks and Bonnie Newsom

Maliseet Representatives

Linda Raymond and Brian Reynolds

State Representatives

Cushman Anthony

William Osborne

H. Roy Partridge

Diana Sculley

Paul Thibeault

[Vacancy]

John Dieffenbacher-Krall, Executive Director

Jamie Bissonette Lewey, Chair

Slide 3

With the addition of the Houlton Band of Maliseet Indians, MITSC has increased from 8 representatives and a chair to 12 representatives. They are as indicated.



The Land Claims Settlement Agreement

Slide 4:
Read

Basic elements of the Maine Indian Claims Settlement Agreement:

Maine Implementing Act (MIA) was enacted by the Maine legislature. This specifies the laws that are applicable to Indians and Indian lands in Maine.

Purchase options running from certain landowners to the Maine Indians in which the landowners agreed to sell 300,000 acres, at fair market value, to the Tribes.

Congress enacted the Maine Indian Claims Settlement Act (MICSA) that extinguished the land claim, compensated the Tribes for their claim and ratified the MIA

Slide 5:

There were three parts to the Land Claims Settlement Agreement.

The MIA was passed first. It is very detailed and describes the laws that are applicable to Indians and Indian land in Maine. Today, the majority of our time will be spent looking at the MIA and how it has become a static document that is far from the dynamic, living vehicle it was intended to be.

Since the Act was intended to settle a Land Claim, land had to be identified and secured and resources had to be appropriated to both buy the lands and settle the claim.

After these two pieces were in place, the Federal Maine Indian Claims Act was passed ratifying the MIA, extinguishing the land claim and compensating the Tribes for the loss of their ancestral territory.



A Living Document

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

Final Report of the Tribal State Work Group, January 2008

Slide 6

The MIA was always intended to be a living document. After interviewing many of the original negotiators on both the State and Tribal sides, the TSWG—which we will discuss in detail later on—came to the conclusion that “The negotiators themselves designed MIA to be a dynamic living agreement.”

"The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts." MICSA, 1980

Slide 7

But this was more than intent. This understanding is written into the MICSA which is the enabling statute for the MIA. (Read)

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 8

So, has MIA been amended? After careful and exhaustive review, I had to conclude that there has been no substantive amendment over the course of the past 30 years with the possible exception of addressing a few of the ways that MIA did not provide the same rights and resources to the Houlton Band of Maliseet Indians.

(Read)

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.

Areas of Conflict



Slide 9

This lack of amendment does not equate either a lack of lively debate or challenge to the statute. I will focus on two sections of the MIA that have been the most problematic for the Passamaquoddy Tribe and the Penobscot Indian Nation.

The first is the concept of Home Rule (read)

We are tempted to pose a simple question: “Do the Tribes retain their inherent sovereignty or do they simply enjoy the ‘rights, privileges, powers and immunities’ of a municipality?” As reflected in this section of the law, the answer would be both simple and confusing. It is clear from the statute that the municipality language was employed in a comparative manner. Just before the MIA was finalized, law was passed in Maine defining the elements of “Home Rule” as they applied to municipalities. According to negotiators for the State who testified before the TSWG, it was this element of “Home Rule” they intended to memorialize.

In addition, the statute recognized a bundle of rights that are inherent to Tribal sovereignty. These rights, labeled “internal Tribal matters,” would not be subject to “regulation by the State.” The Tribal State Work Group focused on the intent and clarification of this section of the MIA ultimately making recommendations for amendment, which we will review later.

The second is the idea that new Federal Indian Law would not apply in the state of Maine unless inclusionary language stipulates its applicability. This section of the law was meant as a qualification but, in practice, it has not served the state or the Tribes well. A most recent example of this is the Tribal Law and Order Act which has embedded within it multiple lines of funding for Tribes and surrounding communities that have entered into compacts in the provision of criminal justice services. Early commentators have advised that Maine Tribes and the communities they border will not benefit from this law.



Tribal State Work Group 2006-2008

Slide 10 &11 Read

This group met three times and reported that there was still much to review. The Governor responded.

A week ago, when MITSC met with the Chiefs and Governors, we heard that they felt the work of the Tribal State Work Group needed to continue.

On July 10, 2006, Governor John Baldacci issued and Executive Order creating a group of Tribal and State representatives tasked with examining potential changes to MIA.

In June of 2007, LD 1263 "Resolve to Continue the Tribal State Work Group passes the State Legislature. (TSWG)

Charge of the TSWG

- ◆ To examine the issues identified in the framework document prepared for the Assembly of the Governors and Chiefs held May 8, 2006, the minutes for that meeting, Tribal-Maine Issues: Issues That Have Been Litigated or Are in Litigation, and Tribal-Maine Issues: Macro Issues prepared for the May 31, 2006 review of AN ACT to Implement the Maine Indian Claims Settlement, the federal Maine Indian Claims Settlement Act of 1980 and other settlement acts pertaining to the Wabanaki Tribes for the meeting held at Indian Island May 31, 2006, the minutes for the May 31, 2006 meeting and the final report of the tribal-state work group created by Executive Order 19 FY 06/07.

Slide 12

When the LD 1263 was passed, this charge was given. I am not going to read this to you. This is a long and complicated sentence that outlines the documents the TSWG was to examine and the issues it was to address. The Work Group met 5 times not only reviewing documents, but also listening to the testimony of negotiators from both sides of the process. Ultimately they prepared a report documenting their recommendations and their findings, which I will review in a moment.



Seven Unanimous Recommendations Were Reached

Slide 13 and 14 Read

This, in essence, becomes a work plan for the Maine Indian Tribal State Commission.

Change the heading for Title 30 from "Municipalities and Counties" to "Municipalities, Counties and Indian Tribes"

Amend the law to achieve jurisdictional parity for all Tribes

Institute mandatory mediation by MITSC for tribal-state disputes prior to going to court with deadlines and requiring all parties to act in good faith

Require mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes.

MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to the amend the Act to the Judiciary Committee every two years, or more often as it deems appropriate, with MITSC having the power to introduce such legislation.

The Maine Tribes should not be subject to the Freedom of Access laws (FOA) for any purpose. In MLA, the TSWG said this should be included under the internal tribal matters language, not the municipality status language.

That the statement of intent, for the settlement acts specify that the documents are to be viewed as dynamic, flexible, and to be regularly revisited. In addition, that the Aroostook Band of Micmacs should be added to MITSC with a corresponding additional seat(s) for the State.





TSWG Findings

Slide 15 read

The negotiators designed MIA to be a dynamic, living agreement with the flexibility to make adjustments in the jurisdiction and powers of each signatory and in the relationship between the Tribes and the State.

The negotiators of the settlement agreement never intended to equate the Passamaquoddy Tribe and the Penobscot Indian Nation with Maine municipalities.

Despite the intentions of the settlement act negotiators that the agreements enhance Tribal Governments, Wabanaki living conditions, and Tribal culture, gains in these areas have been modest and lag far behind other population groups in Maine.

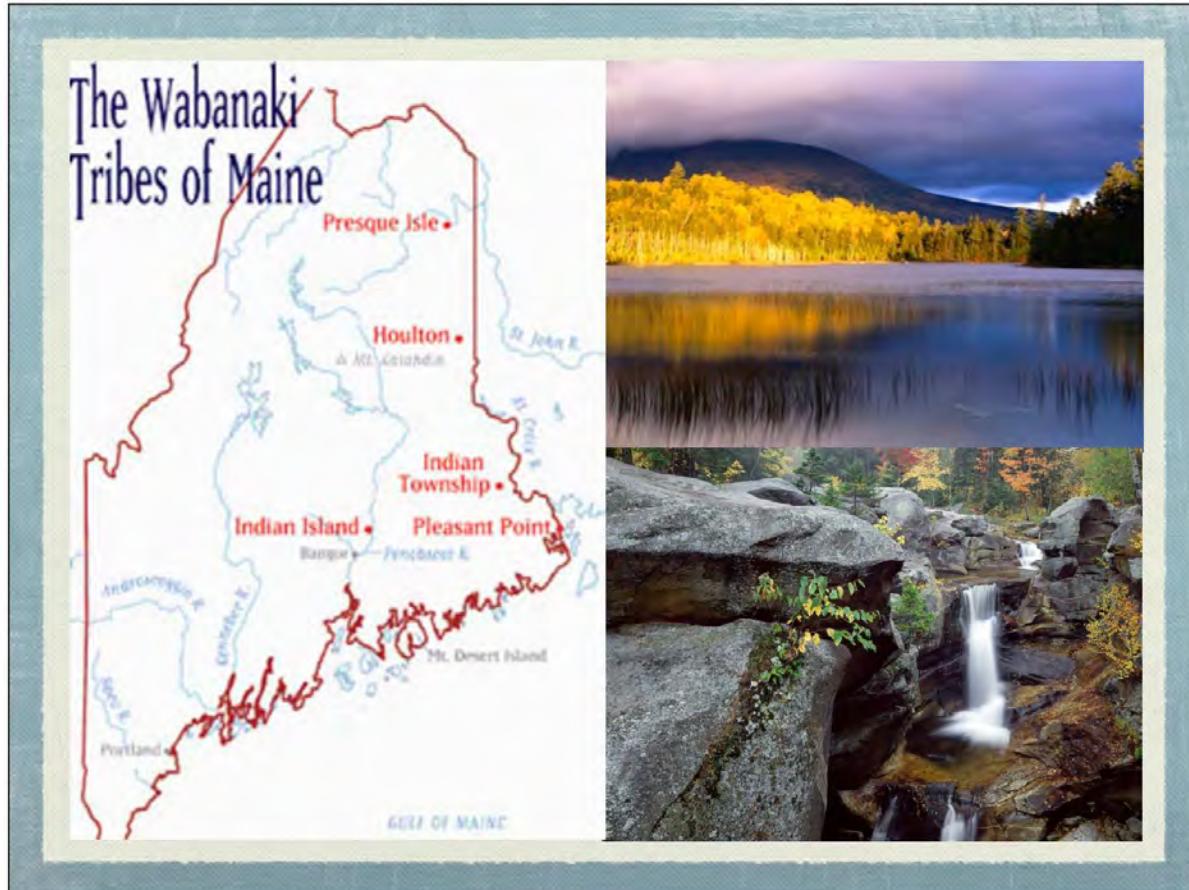
The Wabanaki's principal motivation for agreeing to MIA, MICSA, and the Aroostook Band of Micmacs Settlement Act (ABMSA) was to regain the freedom to control their lives and governments that they had lost due to European settlement in Maine and Maine becoming a state.

The Houlton Band of Maliseet Indians and Aroostook Band of Micmacs have different concerns about the interpretation and implementation of their settlement acts.

The Houlton Band of Maliseet Indians desires some accommodation to enjoy sustenance hunting rights.

Slide 16 read

It is important to keep these findings in mind as we continue our work making sure that the MIA is indeed beneficial to the 4 Tribal communities who are signatories to this act.



Slide 17

I have included a map which indicates the location of the 5 reservations in the state of Maine. At the request of this committee, we have begun to assemble maps of the Tribal lands and we would like to create a map that shows all of the Tribal Lands; and indicates both Tribal waters and MITSC waters.



STAYING FOCUSED: the MITSC Work Plan

Slide 18: (read)

Achieving the recommendations of the Tribal State Work Group.

Developing the consultation process between the state and the Tribes (Executive Order, February 24, 2010).

Advancing the Child Welfare Truth and Reconciliation Commission.

Resolving Wabanaki natural resource issues.

Slide 19: (read)



Slide 20

I include this slide because I think it is very important to stay focused on the reason we need to get this “right.” It is crucial that we develop a way to both create a mechanism to address and to actually work out the problems that have arisen as a result of the MIA.

I chose these three pictures to share with you. The young man to the left has just finished his first basket; you can see his pride in his accomplishment. On the top right, you see an adult working with a young man on a draw horse to shape an oar. Learning how to do things the way our ancestors did them helps us to understand who we are, and the final image is the children from Wiscasset High School who were struggling with changing their mascot, and the children from Sipayik who wanted to these students to “know” them. They are exploring what they have in common.

The paper on the floor has two columns; one to list the things they love about their home communities and the other to list what they called the “bad things.” On the other side of the page, they envisioned what an ideal community might look like.

They are getting ready to pick up where we leave off. It is important that we pass this work off in good order.

Appendix 15

DRAFT

Analysis of the Maine Implementing Act's (30 MRSA §6201 et. seq.) Conformance with the Standards Delineated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Maine Indian Tribal-State Commission

30 §6202. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

Statutory language or reference in conflict: *The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.*

Conflicts with UNDRIP Articles:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Source of conflict: HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: HBMI not free to determine their political status. See MIA sections 6204, 6206-A. Section 6206 which protects internal tribal matters does not apply to the HBMI.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: HBMI do not enjoy full autonomy or self-government. See MIA sections 6204, 6206-A. Section 6206 which protects internal tribal matters does not apply to the HBMI.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. See MIA sections 6204, 6206-A. Section 6206 which protects internal tribal matters does not apply to the HBMI. They are

also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the HBMI.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Source of conflict: The Towns of Houlton and Littleton and State of Maine have a mixed record of consulting and cooperating with the HBMI on legislative or administrative measures that may affect the Tribe. Local and state governments do not seek HBMI consent before acting.

Article 26

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.

Source of conflict: See MIA sections 6204, 6206-A. The HBMI are also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Source of conflict: See MIA sections 6204, 6206-A. The HBMI are also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe. Other governments regularly take actions that affect Maliseet territories or resources without receiving their free, prior, and informed consent.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: See MIA sections 6204, 6206-A. The HBMI are also precluded from operating their own tribal school committee as section 6214 does not apply to the Tribe.

30 §6203. DEFINITIONS

5. Passamaquoddy Indian Reservation.The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of \$350,000, provided that the consent of the Town of Perry would be voided unless the payment of the \$350,000 is made within 120 days of the effective date of this section. Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.

Statutory language or reference in conflict: *Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.*

Conflicts with UNDRIP Articles:

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Source of conflict: §§5 requires Sipayik to seek approval of Perry voters before undertaking any commercial development.

Article 26

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.

Source of conflict: §§5 requires Sipayik to seek approval of Perry voters before undertaking any commercial development.

30 §6204. LAWS OF THE STATE TO APPLY TO INDIAN LANDS

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other

person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. [1979, c. 732, §§ 1, 31 (NEW).]

Statutory language or reference in conflict: Entire section

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Source of conflict: The State and the Tribes have disagreed about the applicability of the Land Use Regulatory Commission (LURC) jurisdiction on Tribal trust land. Reservation land is specifically exempted from LURC jurisdiction under State law (12 MRSA §682, §§1). The Passamaquoddy Tribe and Penobscot Nation have proposed regulating development activities on Tribal trust lands under their own laws. The State has repeatedly rejected these proposals.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which

were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Source of conflict: Disputes arising between the Tribes and the State concerning MIA are often heard in Maine courts. The Tribes contend holding a legal proceeding in the courts of one of the parties to the dispute is inherently biased.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Source of conflict: The Penobscot Nation in particular has been blocked from pursuing treatment as a state (TAS) status for regulatory authority under several Federal environmental statutes in part due to an interpretation that MIA preempts such authority. Tribes do not have the authority to regulate wastewater discharges to the Meduxnekeag, Penobscot, and St. Croix watersheds, ancestral waters for the Maliseet, Penobscot, and Passamaquoddy Peoples.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Source of conflict: A large portion of Passamaquoddy and Penobscot land holdings lie within Unorganized Territories in which the Land Use Regulatory Commission (LURC) wields zoning and permitting authority. The Tribes have asserted that the exemption they possess from LURC authority over reservation lands should also apply to trust lands. LURC has disagreed. The State has an uneven record of consulting with the Tribes on projects that could affect their lands or territories. The Tribes are forced to litigate in the courts of the State or Federal Government when they disagree with State actions affecting their territories, a mechanism that has not proven “just and fair” from a Tribal perspective.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures

and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: §6204 specifies Tribes “shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.”

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Source of conflict: Tribes contend that the resolution of legal disputes in the courts of one of the parties to the legal dispute is inherently unfair. The decisions rendered are based on State and Federal law, with little or no consideration given to “the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

30 §6205. INDIAN TERRITORY

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.
Statutory language or reference in conflict: Tribes must obtain permission of MITSC and the State in the case of unorganized territory and local government in the case of any land within a city, town, village or plantation.

Conflicts with UNDRIP Articles:

Article 26

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.

Source of conflict: Passamaquoddy and Penobscot acquisition of lands that they wish to add to their respective Indian territories are subject to a positive recommendation from MITSC and the

State for land in unorganized territories. Lands within any city, town, village or plantation must also be approved by the relevant local government.

30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES

1. General Powers. 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. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

Statutory language or reference in conflict: The requirement that the Passamaquoddy Tribe and Penobscot Nation “shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State.” In addition, the circumscribed limits to the internal tribal matters language.

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: §6206 circumscribes Passamaquoddy and Penobscot sovereignty. The section requires the Passamaquoddy Tribe and Penobscot Nation to designate individuals to implement and administer State laws applicable to the Tribes. Court decisions and subsequent interpretation of the section have further limited Passamaquoddy and Penobscot sovereignty.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: Though §6206 seemingly protects the internal affairs of the Passamaquoddy Tribe and Penobscot Nation, court decisions have decided that protection is narrower than the

understanding the Tribes possessed at the time the signatories approved the agreement. In addition, the protections and responsibilities of §6206 do not apply to the Houlton Band of Maliseet Indians.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Source of conflict: §6206 requires the Passamaquoddy Tribe and Penobscot Nation to implement the laws of the State of Maine applicable to them regardless of their “free, prior and informed consent.” Governor Baldacci did issue EO 06 FY 10-11 on tribal consultation that Governor LePage has indicated will remain in effect. However, it only applies to the Executive Branch of State Government. The Maine Legislature remains able to enact, rescind, or amend Maine laws with the exception of MIA without the “free, prior and informed consent” of the Wabanaki.

30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES

2. Power to sue and be sued. The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

Statutory language or reference in conflict: The language equates the Passamaquoddy Tribe and Penobscot Nation with any other entity or person when in fact they have a unique status under state, federal, and international law.

Conflicts with UNDRIP Articles:

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: §6206, §§2 limits Passamaquoddy and Penobscot judicial autonomy by allowing individuals and other entities to sue them in State Court except when the Tribe or Nation and its representatives act in a governmental capacity.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Source of conflict: §6206, §§2 says nothing of how State Courts should incorporate the “customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights” of the Passamaquoddy and Penobscot People when they utilize the Maine Judiciary.

30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.
Statutory language or reference in conflict: The statute limits Passamaquoddy and Penobscot authority to its own citizens.

Conflicts with UNDRIP Articles:

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: §6206, §§3 limits Passamaquoddy and Penobscot jurisdiction to its own citizens.

30 §6206-A. POWERS OF THE HOULTON BAND OF MALISEET INDIANS

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

Statutory language or reference in conflict: entire section

Conflicts with UNDRIP Articles:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Source of conflict: HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: HBMI not free to determine their political status.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: HBMI do not enjoy full autonomy or self-government.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.

Article 26

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.

Source of conflict: Under §6206-A, the HBMI have limited powers on their lands.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Source of conflict: The HBMI possess less authority to determine development on their land as compared to the Passamaquoddy Tribe, Penobscot Nation, or many other federally recognized tribes. A mixed record exists of state and local municipal government consultation with the HBMI on issues affecting the Meduxnekeag River and its tributaries. Consultation does not equal the standard free and informed consent.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: §6206-A states the Maliseets “shall not … exercise civil or criminal jurisdiction within their lands” prior to the enactment of legislation granting such powers.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Source of conflict: Wabanaki signatories to the Settlement Act, including the HBMI, have contended the manner of resolving legal disputes between the parties, in the courts of the State or Federal Government, are inherently unfair. State and Federal court decisions give little to no consideration of “the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES

1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

- A. Hunting, trapping or other taking of wildlife; and [1979, c. 732, §§1, 31 (NEW).]
- B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area. [1979, c. 732, §§1, 31 (NEW).]

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

Statutory language or reference in conflict: Section 6207 does not apply to the Maliseets, an Indigenous party to the same agreement.

Conflicts with UNDRIP Articles:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and

have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Source of conflict: HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. The Maliseets are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to them.

Article 26

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.

Source of conflict: The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Source of conflict: The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Source of conflict: The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES

2. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.

Statutory language or reference in conflict: The statutory language requires the Passamaquoddy Tribe and Penobscot Nation to report about the harvesting of wildlife on their land. The records of registration for the two Tribes shall be available at all times to the Commissioner of Inland Fisheries and Wildlife with no reciprocal provision for the Tribes to access State records.

Conflicts with UNDRIP Articles:

Article 26

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.

Source of conflict: §6207, §§2 mandates that the Passamaquoddy Tribe and Penobscot Nation shall establish registration stations, report the results, and maintain State access to their records at all times, constraining the Tribes' "right to own, use, develop and control the lands, territories and resources that they possess."

30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES

4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

Statutory language or reference in conflict: Sustenance fishing rights do not apply to the HBMI.

Conflicts with UNDRIP Articles:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Source of conflict: HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement. They neither possess a reservation within the meaning of MIA nor enjoy sustenance fishing rights on the Meduxnekeag or other waters.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: The Maliseets do not enjoy sustenance fishing rights under §6207, §§4. Sustenance fishing falls within the traditional harvesting activities most associated with Indigenous people. By excluding the Maliseets from the right to sustenance fishing afforded under §6207, §§4, their ability “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions” is compromised.

Article 26

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.

Source of conflict: The HBMI are precluded from using the Meduxnekeag River and other waters for sustenance fishing, an exclusion that infringes upon their right “to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation.”

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Source of conflict: The HBMI are precluded from exercising sustenance fishing rights on the Meduxnekeag River and other waters, infringing on their “right to determine and develop

priorities and strategies for the development or use of their lands or territories and other resources.”

6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

Statutory language or reference in conflict: The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State... If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State.

Conflicts with UNDRIP Articles:

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Source of conflict: The section allows the IF&W Commissioner to conduct fish and wildlife surveys within the Indian territories subject to MITSC jurisdiction regardless of Passamaquoddy or Penobscot permission. The section also sanctions the IF&W Commissioner to rescind a Tribal ordinance, rule or regulation without their “free, prior and informed consent.”

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Source of conflict: Article 20 states Indigenous Peoples have a right to be secure in the enjoyment of their own means of subsistence. Despite this right the IF&W Commissioner can supersede it if he/she finds “a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.”

Article 26

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.

Source of conflict: Provisions in §6207, §§6 violate the right of the Passamaquoddy and Penobscots to “control the lands, territories and resources that they possess.”

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Source of conflict: If the Passamaquoddy and/or Penobscots contest a decision of the IF&W Commissioner, the matter “may be appealed in the manner provided by the laws of the State for

judicial review of administrative action,” not a body that is “independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems.”

30 §6208. TAXATION

2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.

Statutory language or reference in conflict: entire section

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: The section mandates that the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation shall make payments in lieu of taxes or pay taxes depending on the location and use of the property. The three Tribes are not free to determine whether they wish to make such payments or pay such taxes.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statutory requirement that the three Tribes shall make certain payments or pay specified taxes restricts their right to self-determination as well as impacting on their ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: The mandatory language of the section concerning payments in lieu of taxes or remittance of taxes conflicts with the discretion Indigenous Peoples possess to participate in the political life of the State, including its financing.

Article 26

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.

Source of conflict: State imposition of payments in lieu of taxes or various taxes infringes on the right of the Tribes to control their lands and ignores key aspects of Wabanaki customs, traditions, and land tenure when considering those lands.

30 §6208. TAXATION

3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.

Statutory language or reference in conflict: entire section

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: Article 3 guarantees Indigenous Peoples the right to self-determination. The statute makes no distinction between Maliseet, Passamaquoddy, and Penobscot citizens and other residents of the State of Maine. The statute specifies an equivalency between Wabanaki citizens and other Maine residents when in fact the Wabanaki possess certain rights and status enjoyed by no other people.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or

self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statute infringes upon the Wabanaki right to self-determination.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: Article 5 acknowledges Indigenous Peoples' right to maintain their distinct economic institutions. The statute mandates taxation of the Tribes when they act in a business capacity distinct from their governmental functions. According to Article 5, the Wabanaki should choose when they want to participate in the political and economic life of the State.

Article 26

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.

Source of conflict: The statute limits Wabanaki rights to their lands by specifying when they shall pay taxes ignoring Tribal customs, traditions and land tenure.

30 §6209-A. JURISDICTION OF THE PASSAMAQUODDY TRIBAL COURT

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, except when committed against a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;

Statutory language or reference in conflict: Passamaquoddy criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation on the reservation of the Passamaquoddy Tribe;

Statutory language or reference in conflict: Passamaquoddy juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under

Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;

Statutory language or reference in conflict: Passamaquoddy civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.

Statutory language or reference in conflict: Passamaquoddy jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

Statutory language or reference in conflict: Passamaquoddy jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

Statutory language or reference in conflict: Passamaquoddy jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system due to State and Federal restrictions.

5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

Statutory language or reference in conflict: This section infringes upon Passamaquoddy self-determination by requiring the Tribe to seek the approval of MITSC and the Maine Legislature to extend the boundaries of its reservation within lands already owned by the Passamaquoddy Tribe.

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: This section of MIA limits the Passamaquoddy Tribe's ability to determine which areas among its land holdings are most appropriate for housing and extending the boundaries of its reservation.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statute infringes upon the Passamaquoddy right to self-determination by requiring the Tribe to obtain the approval of MITSC and the State to expand its reservation boundaries.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Source of conflict: The statute gives authority to MITSC and the State over a question that should be a Passamaquoddy internal tribal matter.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Source of conflict: According to the law, MITSC and the State have authority over a question that under UNDRIP should be determined by the Passamaquoddy People.

Article 26

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.

Source of conflict: The statute conflicts with this UNDRIP article, especially section 2 that states “Indigenous peoples have the right to own, use, develop and control” their lands. Under the MIA provision, the Passamaquoddy Tribe needs MITSC’s and the State’s consent to expand their reservation within existing land holdings.

30 §6209-B. JURISDICTION OF THE PENOBCOT NATION TRIBAL COURT

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

- A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any

federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

Statutory language or reference in conflict: Penobscot criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;

Statutory language or reference in conflict: Penobscot juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation;

Statutory language or reference in conflict: Penobscot civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.

Statutory language or reference in conflict: Penobscot jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

Statutory language or reference in conflict: Penobscot jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

Statutory language or reference in conflict: Penobscot jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Penobscot Nation to develop its judicial system due to State and Federal restrictions.

5. Future Indian communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

Statutory language or reference in conflict: This section infringes upon Penobscot self-determination by requiring the Tribe to seek the approval of MITSC and the Maine Legislature to extend the boundaries of its reservation within lands already owned by the Penobscot Nation.

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: This section of MIA limits the Penobscot Nation's ability to determine which areas among its land holdings are most appropriate for housing and extending the boundaries of its reservation.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statute infringes upon the Penobscot right to self-determination by requiring the Tribe to obtain the approval of MITSC and the State to expand its reservation boundaries.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Source of conflict: The statute gives authority to MITSC and the State over a question that should be a Penobscot internal tribal matter.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Source of conflict: According to the law, MITSC and the State have authority over a question that under UNDRIP should be determined by the Penobscot People.

Article 26

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.

Source of conflict: The statute conflicts with this UNDRIP article, especially section 2 that states “Indigenous peoples have the right to own, use, develop and control” their lands. Under the MIA provision, the Penobscot Nation needs MITSC’s and the State’s consent to expand their reservation within existing land holdings.

30 §6209-C. JURISDICTION OF THE HOULTON BAND OF MALISEET INDIANS TRIBAL COURT

(CONFLICT)

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians, except when committed against a person who is not a member of the Houlton Band of Maliseet Indians or against the property of a person who is not a member of the Houlton Band of Maliseet Indians;

Statutory language or reference in conflict: Maliseet criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Houlton Band of Maliseet Indians on the Houlton Band Jurisdiction Land;

Statutory language or reference in conflict: Maliseet juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians;

Statutory language or reference in conflict: Maliseet civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land.

Statutory language or reference in conflict: Maliseet jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures

and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Houlton Band of Maliseet Indians shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each of the subject areas described by paragraphs A to E may be made separately. Until the Houlton Band of Maliseet Indians notifies the Attorney General that the band has decided to exercise exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to exercise or chooses to terminate its exercise of exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters until the Houlton Band of Maliseet Indians chooses to exercise its exclusive jurisdiction. When the Houlton Band of Maliseet Indians chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas of the exclusive jurisdiction authorized by this subsection it must first provide 30 days' notice to the Attorney General. Except as provided in subsections 2 and 3, all laws of the State relating to criminal offenses and juvenile crimes apply within the Houlton Band Trust Land and the State has exclusive jurisdiction over those offenses and crimes.

Statutory language or reference in conflict: Maliseet jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and

juvenile crimes over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

Statutory language or reference in conflict: Maliseet jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: MIA limits the ability of the Maliseet Tribe to develop its judicial system due to State and Federal restrictions.

30 §6210. LAW ENFORCEMENT ON INDIAN RESERVATIONS AND WITHIN INDIAN TERRITORY

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

Statutory language or reference in conflict: The enforcement of all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation have exclusive jurisdiction.

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: Article 3 guarantees Indigenous Peoples the right to self-determination. The statute makes all State laws applicable and enforceable on Passamaquoddy and Penobscot lands with certain exceptions, limiting the Tribes' ability to freely determine their political status.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statute infringes upon the Wabanaki right to self-determination.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: Article 5 acknowledges Indigenous Peoples' right to maintain their distinct political and legal institutions. All State laws with some limited exceptions apply on Passamaquoddy and Penobscot lands, compromising their rights under Article 5.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Source of conflict: As the body of State law expands with every new law enacted by the Maine Legislature, Article 19 is violated in every instance when the Wabanaki have not been consulted and given their free, prior and informed consent that the new law applies to them.

Article 26

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.

Source of conflict: The statute limits Wabanaki rights to their lands by specifying which Tribal and State laws apply and who can enforce them, ignoring Passamaquoddy and Penobscot customs, traditions and land tenure.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: The Passamaquoddy and Penobscot right to promote, develop and maintain their judicial systems is constrained by the statute in question.

30 §6214. TRIBAL SCHOOL COMMITTEES

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.

Statutory language or reference in conflict: The State assumes the authority to grant what the Passamaquoddy Tribe and Penobscot Nation possess as inherent rights articulated throughout the UNDRIP. Additionally, the statute specifies tribal school committees shall operate under the laws of the State.

Conflicts with UNDRIP Articles:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Source of conflict: Article 3 guarantees Indigenous Peoples the right to self-determination. The statute permits the Passamaquoddy and Penobscot Governments to form tribal school committees when under Article 3 they have the ability to freely determine their political status.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Source of conflict: The statute infringes upon the Wabanaki right to self-determination by granting the authority to the Passamaquoddy and Penobscot Governments to form tribal school committees which under Article 4 whether they desire them and what form and powers they might possess should be considered a matter of self-government relating to their internal and local affairs.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Source of conflict: The Passamaquoddy and Penobscots have the right to form tribal school committees with the structure, duties, and responsibilities that suit the respective Tribal Governments while possessing the ability to access any sources of State funding available to municipalities or other administrative school units.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Source of conflict: The statute conflicts with the Passamquoddy and Penobscot right “to establish and control their educational systems and institutions.”

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Source of conflict: As State law changes as it applies to school committees, Article 19 is violated in every instance when the Wabanaki have not been consulted and given their free, prior and informed consent that the new law applies to them.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Source of conflict: Education is vital to the economic and social programs of the Passamaquoddy Tribe and Penobscot Nation. The statute constrains their ability to develop and determine their own institutions, in this instance tribal school committees.

Article 26

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.

Source of conflict: The statute limits Wabanaki rights to their lands by specifying which Tribal and State laws apply and who can enforce them, ignoring Passamaquoddy and Penobscot customs, traditions and land tenure.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Source of conflict: The Passamaquoddy and Penobscot right to promote, develop and maintain their judicial systems is constrained by the statute in question.

Appendix 16

Appendix 17

Testimony on LD 651 “An Act to Improve Tribal-State Relations”

Good afternoon Senator Hastings, Representative Nass and members of the Joint Standing Committee on Judiciary, I thank you for the opportunity to address you on LD 651, “An Act to Improve Tribal-State Relations.”

The issue that this proposed legislation references is a very important issue. I thank Representative Charles Priest for the work he has done to advance Tribal-State Relations. As Chair of the Maine Indian Tribal State Commission, I will restrict my comments to the impact the proposed legislation would have on the Maine Implementing Act and recommendations toward development of policy involving the interpretation of the comparative municipality language and the area of sovereign jurisdiction under “internal Tribal matters.” This section of the Maine Implementing Act (MIA) has been the most controversial aspect of the settlement. Today, I want it to be clear that I am here only to offer cautions in my capacity as Chair of MITSC. I have not had an opportunity to discuss LD 651 with the Tribal Chiefs. I know they are deeply concerned about this issue, but I do not know what their position is on this specific piece of legislation.

I ask that LD 651 be placed on a two-year schedule to allow time to develop the legislation with full consultation of all signatories. I ask this because LD 651, as written, is in conflict with both the MIA and the Court’s interpretation of MIA.

Firstly, in Great Northern Paper v Penobscot Nation, the Court interpreted the MIA and decided that certain Tribal meetings, and meeting minutes are protected from scrutiny under the FOAA:

We conclude that the Act does not apply to the Tribes when they act in their municipal capacities with respect to internal Tribal matters.

The proposed legislation waives the applicability of the State FOAA contingent on the Tribes “adopting a freedom of access ordinance certified by the Secretary of State to be equivalent to Title 1, Chapter 13 with **respect to the bands meetings and documents.**” The Band’s meetings and documents, in statute and through Court interpretation of that statute, are in most instances, protected.

Additionally, a statute “equivalent to Title 1, Chapter 13,” would place undue burden on the Tribes who are already struggling under heavy economic burdens. The Tribes do not have the same level of resources as State, county or municipal governments to address these requests. As a point of fact, the Tribes are only similar to municipalities and have unique responsibilities distinct from any other government in that they have a primary responsibility to protect and enhance the culture of a People. Therefore a statute “equivalent to Title 1, Chapter 13” may not be the best vehicle to address the issues embedded within the “internal tribal matters” language.

Finally, LD 651, as drafted, would constitute an amendment to the MIA. The federal, Maine Indian Claims Settlement Act or MICSA clearly outlines the procedures for amending the MIA. I would contend that these procedures have not been followed.

I have argued before you that the “internal Tribal matters” section of the MIA should be clarified. LD 651 might be a good vehicle to advance that clarification, but it must be modified so that that it is not in conflict with the MIA, it does not place an undue burden on the Tribes and it preserves the Tribes role as protector of culture. Resolving the “internal Tribal matters” language is one area of the MIA that MITSC is currently studying. I ask that you take a step back and allow the process outlined in the MICSA to unfold.

LD 651 should be placed on a 2-year track so that the law carefully outlined in the MICSA can be followed. If consensus among the signatories cannot be reached on a solution, the law must be withdrawn.

Appendix 18

Slide 1



Slide 2

The Treaty of Falmouth 1726-1727

- In 1726, the Wabanaki agreed to allow the provincial government certain rights upon their lands.
- And reserved certain rights for themselves that they considered inherent and inseparable.
- Among these rights were fishing and hunting rights.

Slide 3

Saving unto the penobscot, Norridgwoock, and other Tribes, within his Majesty's province aforesaid, and their Natural Descendants, respectively . . . the privilege of hunting and fishing as formerly.
Treaty of Falmouth 1726-1727

Slide 4



**Brief History of
Wabanaki
aboriginal
rights**

The first statutory
recognition of inherent
aboriginal rights came 40
years after the State of
Maine began requiring
hunting and fishing licenses

Slide 5



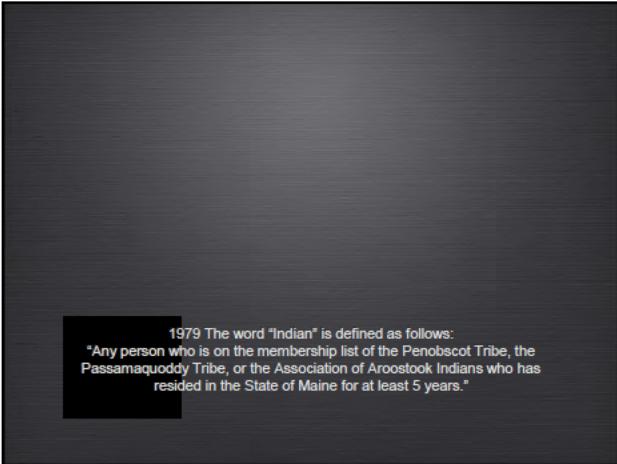
"An Act Relating to Indians" was passed in 1937.
This law applied to the Passamaquoddy and Penobscot Tribes.
"For the purpose of this section no person shall be considered an Indian
unless his father or mother was an Indian."

Slide 6

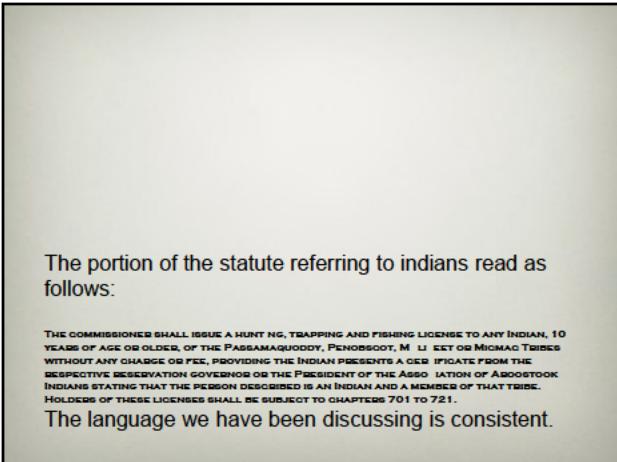


1947 Trapping is added to the list of Aboriginal Rights
1953 The age was dropped to 16 years old
1959 The language was changed defining Indian status according to Tribal
lists.
1971 The age was dropped to 10 years old, no change in status language.

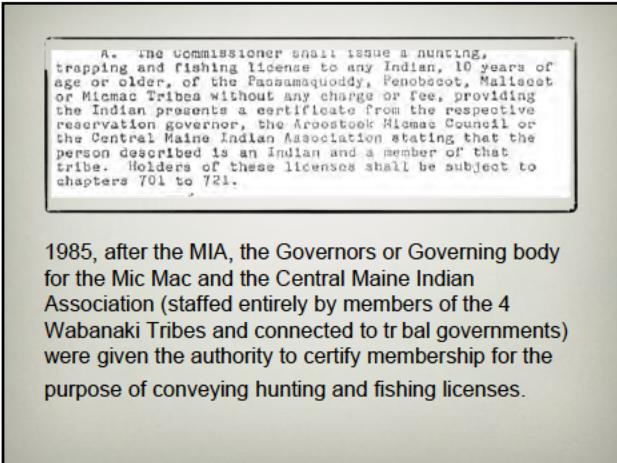
Slide 7



Slide 8



Slide 9



Slide 10

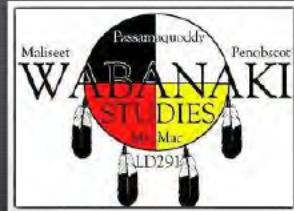
Changes in 2000

- **Whereas** the Central Maine Indian Association no longer exists, and
- **Whereas** until Wesget Suppo is recognized in the statutes as the organization authorized to issue fishing, hunting and trapping licenses, Native Americans will unfairly be denied benefits under the inland and fisheries law.

Slide 11

8. Native American. The commissioner shall issue a hunting, trapping and fishing license, including permits, stamps and other permission needed to hunt, trap and fish, to a Native American, 10 years of age or older, of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton band of Maliseet Indians or the Aroostook Band of Micmacs that is valid for the life of that Native American without any charge or fee if the Native American presents a certificate from the tribe or band, or the council or "Wesget-Sipu," stating that the person described is a Native American and a member of that nation, born or into. Holders of these licenses are subject to law, rules, regulations, but not limited to a lottery or drawing system for issuing a particular license or permit.

Slide 12



LD 427

FOR THE FIRST TIME, THE WESGET SIPU ARE REFERRED TO AS A "TRIBE."

Slide 13

Recommendations

- LD 427 be voted ought not to pass. Modifying a generous and efficient policy that is working well through legislation is an extreme action.
- Pass LD 1456: Remove Wesget Sipu from all existing statutes and restore the legally accepted word, "Indian."
- Carefully consider whether Maine should recognize state Tribes.

Slide 14



Appendix 19

LD 427: Testimony

Before the Joint Standing Committee on Judiciary on Behalf of the Maine Indian Tribal State Commission 4/26/2011

Good afternoon, Senator Hastings, Representative Nass and members of the Joint Standing Committee on Judiciary. I thank you for this opportunity to testify on behalf of MITSC about LD 427: An Act to Extend the Same Privileges to the Wesget Sipu-Fish River Tribe as Are Extended to Other Maine Indian Tribes. Before I go to the crux of my testimony, I feel it is very important to frame this conversation.

Introduction

I would like to begin by acknowledging that the history of the Wabanaki Tribes goes back thousands of years. The 300 years after contact with Europeans were brutal to Tribal Peoples. Numbers dropped so drastically that by the late 1700's the recorded census of some Tribal communities in Maine reflected a male population in the single digits. During this time of genocide, upheaval and displacement we know that many Tribes and Bands disappeared. Over the past 100 years, the Wabanaki have sought to document the genealogy of home communities and assist those who come seeking their ancestors. Each federally recognized Tribe in Maine has staff that focuses entirely on census and genealogy. Native identity is cherished.

Additionally, the Judiciary Committee needs to know that there is a certain protocol among Indian people and communities. When one travels into a new region or returns home, it is customary to check in. If this is a family visit, it is informal. But if the visit involves a request or an acknowledgement or a serious discussion, the Tribal leadership is notified in a formal way—usually by letter and by visit. If the request impacts many people, it is generally heard in a Tribal Council meeting. This request before the Judiciary Committee today has never been placed before any Wabanaki Tribal Council in the state of Maine.

I am not here to comment on whether or not the Wesget Sipu are Wabanaki, but I have checked with all of the Chiefs and it appears that some of these individuals did approach the Aroostic Band of Mic Mac requesting to be put on their rolls. When these individuals could not verify their genealogy in accordance with the established tribal membership process, their applications for membership were denied. Shortly after this refusal, the non-profit organization, Wesget Suppo (later Wesget Sipu) emerged. One or two Tribal people (Mic Mac and possibly Maliseet from Tobique) were employed to provide cultural teaching, a board of directors was formed and a federal grant was obtained to research Native American presence in the St. John Valley, to gather oral history and documentary evidence. This evidence was to be shared with the Acadian Archives.

I need to say that I am indeed aware of the suffering of the Acadian people. Their history is a profoundly tragic one that does cross paths and ancestry with the Wabanaki Tribes throughout the Northeast. Perhaps it is time that the state of Maine recognizes this and offers Acadians certain entitlements, but this should be distinct from Aboriginal rights, which are inalienable and inherent.

The Wesget Sipu web site explains, "Wesget Sipu is a Native American Tribe of Mi'qmak and Maliseet from the St. Johns Valley in Northern Maine." Membership requires "verifiable genealogy" that reflects "Native American Ancestry with ties to the St. John River Valley." This is extraordinarily confusing language. The commonly accepted descendancy language is replaced

by the word “ties” and the term “Indian¹,” which has been used in federal Indian law for two hundred years, is replaced by the generic descriptor “Native American.” Over the last 11 years, this language has been crafted into Maine statutes.

In February, I met with all of the Wabanaki Chiefs to discuss pending legislation that references Wesget Sipu. All expressed genuine concern for all people who have Native ancestry and explained that they wanted no part in refusing rights to Native people, but they are not familiar with the Wesget Sipu organization, and Wesget Sipu has never approached the Tribes to open a dialog or establish a relationship. If these families are Wabanaki, they are relations of the Tribes. I strongly urge them to follow traditional Tribal protocol and contact the Tribes, ask to be placed on a Tribal Council agenda and obtain the advice of the Tribal Leaders in the five Wabanaki communities. Such consultation with Tribal leaders, which has not happened, should be the first step—not State legislation.

LD 427

The legislation before us today is about far more than tuition waivers. In essence this legislation would convey capital “T” Tribal status to a non-profit organization through a small change of descriptors in an already existing law. Were this law to pass, as written, Maine would have created a new but inadequately defined status: that of state recognized “Native American” Tribes distinct in legal status from the four federally recognized Indian Tribes. I urge you great caution. The era of so-called “state tribes” was formally ended in Maine with the Settlements. Since that time, the only Tribes in Maine with any legal status have been the four federally recognized Tribes. Creation of a new category of “state tribes” is a serious step for the state that will undoubtedly have major legal, monetary and political implications.

It is first necessary to trace the evolution of the language that is before you today; then I would like to address the issue of “de-facto state recognition” alluded to by Wesget Sipu legal advisor, Duane Belanger in his email dated, January 4, 2011.

I ask your indulgence because I am going to present a brief history lesson tracing the language used to describe Aboriginal rights in Maine. I will begin with the Hunting and Fishing statutes, where the language is first introduced, then track the evolution of the language, and finish with the proposed Wesget Sipu legislation now before the Judiciary Committee.

This history begins with the recognition of the inherent Aboriginal rights of the Wabanaki. The earliest reference to these rights occurs in the “Treaty of Falmouth of 1726-1727 between the Government of the Massachusetts Province and various ‘Eastern Indians.’” In this Treaty, the Indians granted certain rights to the Province and reserved rights for themselves as they formerly held them. Among these rights were the rights to hunt and fish:

Saving unto the Penobscot, Norridgawock, and other Tribes, within his Majesties Province aforesaid and their Natural Descendants, respectively, . . . the Privilege of Fishing, Hunting, as formerly.

Hunting and fishing licenses were first issued in Maine in 1897. In 1934, a survey by the Bureau of Indian Affairs of Maine Indians noted that most Maine Indians could not afford the state licenses. In 1935, the cost of the licenses jumped by 15 cents. It was at this time that the first piece of legislation issuing free hunting and fishing licenses for the Penobscot and

¹ The formal, legal context of the term “Indians” in Title 25 of the US Code and in most legal contexts requires being regarded as an Indian by an established Tribal community; usually this is a federally recognized Tribe.

Passamaquoddy was enacted. This bill, *An Act Relating to Indians* (S.P. 710, L.D. 808) was introduced in 1935. The language was simple:

All Indians of both the Passamaquoddy and Penobscot tribes in the state upon presentation of their certificate of registration shall be issued a hunting and fishing license without charge.

This bill was tabled in the 87th Legislature, but brought to the floor and passed in the 88th Legislature with a more precise definition of eligibility.

numbered section 295-A, and to read as follows:

Sec. 295-A. Indians to have free hunting and fishing. All Indians of over 18 years of age of both the Passamaquoddy and the Penobscot tribes may procure from the commissioner of inland fisheries and game a license to hunt and fish free of charge upon presentation to the commissioner of a certificate from the Indian agent of their respective tribe stating that the person described therein is an Indian and a member of that tribe. Holders of such licenses shall be subject to all the laws of the state and rules and regulations of the commissioner relative to fishing and hunting, and for violation of said laws of the state or rules and regulations of the commissioner said licenses shall be revoked as provided in chapter 38 of the revised statutes as revised. For the purposes of this section, no person shall be considered an Indian unless his father or mother was an Indian.'

Sec. 2. Inconsistent acts repealed. All acts and parts of acts inconsistent with this act are hereby repealed.

In this statute **an Indian** had to be of 18 years of age, be a member **of the Passamaquoddy and Penobscot tribes**, be able to present a certificate from the Indian agent of their Tribe, and agree to be subject to the laws of the State and regulations of the commissioner. In order to meet the definition of Indian, the individual had **to have one parent who was an Indian.²** **Here I need to underscore that every version starting in 1935 has required Tribal membership.**

In 1947, when trapping was added to the list of Aboriginal rights, the language we are concerned with today, that defining who was an Indian, was tightened, requiring **both parents to be Indian**. In 1953, the age was dropped to 16: the language we are concerned with remained consistent. In 1959, the definition of Indian was changed to specifically coincide with the **Tribal membership lists of the Penobscot and Passamaquoddy Tribes**. This reflected a tightening of the definition ruling out the provision of free licenses to descendants.

In 1971, the statute was amended to drop the age to 10; the defining language remained unchanged.

In 1979, in the definition section of the law, the definition of "Indian" for the purpose of awarding free hunting and fishing licenses was again clarified as follows:

17. Indian. "Indian" means any person who is on the membership list of the Penobscot Tribe, the Passamaquoddy Tribe or the Association of Aroostook Indians and who has resided in the State of Maine for at least **5** years.³

The Commissioner was also given the authority to award free licenses to members of a number of non-Indian groups.⁴

The portion of the statute specifically referring to Indian hunting and fishing licenses reads as follows:

The commissioner shall issue a hunting, trapping and fishing license to any Indian, **10** years of age or older, of the Passamaquoddy, Penobscot, Maliseet or Micmac Tribes without any charge or fee, providing the Indian presents a certificate from the respective reservation governor or the President of the Association of Aroostook Indians stating that the person described is an Indian and a member of that tribe. Holders of these licenses shall be subject to chapters **701** to **721**.

The language we are discussing remained consistent.

This statute was further amended in 1985 to read.

~~A. The Commissioner shall issue a hunting, trapping and fishing license to any Indian, 10 years of age or older, of the Passamaquoddy, Penobscot, Maliseet or Micmac Tribes without any charge or fee, providing the Indian presents a certificate from the respective reservation governor, the Aroostook Micmac Council or the Central Maine Indian Association stating that the person described is an Indian and a member of that tribe. Holders of these licenses shall be subject to chapters 701 to 721.~~

To highlight the changes:

- The governors, or governmental body in the case of the Mic Macs, are authorized to certify Tribal members.
- Recognizing that a number of Wabanaki people had migrated from the Tribal Areas, the Central Maine Indian Association, staffed entirely by Tribal members from the four Tribes with the exception of their grant writer, and tasked to respond to the needs of Tribal members living off the reservations was authorized to act on behalf of the 4 listed Tribes.

The key language to highlight here is as follows: ***is an Indian and a member of that tribe.***

In 2000, a very confusing statute was passed that added the Wesget Suppo while deleting the Central Maine Indian Association, which had closed its doors. There is no discernable organizational connection or similarity of purpose between the CMIA and the Wesget Suppo.

³The **5**-year requirements reflected the migratory nature of the lives of Mic Mac who held seasonal jobs in Aroostook County and extended free licenses to those who had made their homes in Aroostook County. The Aroostook Association of Indians maintained rolls and served these people.

⁴Medal of Honor recipients, those in the armed forces, patients in the veterans hospital, and patients and inmates at certain state institutions.

The CMIA was staffed by and worked with the 4 federally recognized Tribes to provide services to Tribal members who were outside of the Indian Service Area the Wesget Suppo is not connected to the 4 Tribes nor does it provide services to their members. The preamble to the legislation had to argue the necessity of an immediate fix to a constitutional crisis, given that the legislation was not properly introduced prior to cloture. I will quote from the most troubling section, which upon my read, is at least misleading if not entirely false:

Whereas, the Central Maine Indian Association no longer exists; and

Whereas, until "Wesget-Suppo" is recognized in the statutes as the organization authorized to issue fishing, trapping and hunting licenses, Native Americans will be unfairly denied benefits under the inland and fisheries laws; and

Recognizing now that MITSC should have raised questions immediately: What follows is the text of the 2000 law.

8. Native American. The commissioner shall issue a hunting, trapping and fishing license, including permits, stamps and other permission needed to hunt, trap and fish, to a Native American, 10 years of age or older, of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Aroostook Band of Micmacs that is valid for the life of that Native American without any charge or fee if the Native American presents a certificate from the respective reservation governor, the Aroostook Micmac Council or "Wesget-Suppo" stating that the person described is a Native American and a member of that nation, band or tribe. Holders of these licenses are subject to this Part, including, but not limited to, a lottery or drawing system for issuing a particular license or permit.

The list of Tribes that are referred to is not changed, but we see the first change of descriptors. "Indian," a term that has both a legal and a statutory definition gets changed to "Native American." This is of concern because "Indian" commonly connotes a member of a formally recognized Tribe while Native American is a generic term that refers to a person of North American Indigenous ancestry—indeed a potentially much larger group of people. While there are slightly more than 8,000 people on current Tribal rolls, there are an additional 13,000 people in Maine who claim dual ancestry on the 2010 census. Additionally, with no formal consultation, the Central Maine Indian Association, which had a close working relationship with the 4 federally recognized Indian Tribes, was *replaced by the "Wesget-Suppo," which at that time had no formal connection to the 4 federally recognized Indian Tribes, and still has no formal connection to those Tribes.*

For the first time a non-profit with no relationship with an existing Tribe was given the authority to certify that an individual was "**a member of that nation, band or tribe.**" Here tribe, nation, or band clearly refers to the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet and the Aroostook Band of Mic Mac. I urge you to read this carefully, "Wesget Suppo" was not listed as a Tribe in this legislation; it was simply awarded an authority to certify "Native Americans "with no definition added for that descriptor. We are unaware of the criteria that "Wesget Suppo" was or Wesget Sipo is using since they have not checked with the Tribes to confirm status of individuals seeking these licenses nor have they given notice when a license has been conferred.

It is here we may have a conflict with the MIA: under both fundamental principles of Federal Indian law and the specific terms of the Maine Implementing Act, the determination of Tribal membership status is exclusively controlled by the Tribes as an internal Tribal matter.

This brings us to the two pieces of legislation introduced in this session; one of which is under consideration today:

2. Issuance of moose hunting permits. In accordance with section 11552, the commissioner may issue moose hunting permits and may establish the number of moose hunting permits to be issued for each wildlife management district established by the commissioner by rule open to moose hunting. The commissioner shall reserve 200 moose hunting permits to be distributed equally among the federally recognized Indian tribes of the State and 25 moose hunting permits for the Wesget Sipu Tribe. No more than 10% of the moose hunting permits may be issued to nonresident and alien hunters.

§ 12581. Tuition waiver

A postsecondary educational institution that establishes a practice or policy of waiving tuition charges for Native Americans must include within that practice or policy equivalent treatment of any person who is certified to be a member of the Wesget Sipu - Fish River Tribe by the board of directors of a nonprofit corporation formed to represent and promote the traditions of the Wesget Sipu - Fish River Tribe. For purposes of this section, "postsecondary educational institution" means the University of Maine System, the Maine Maritime Academy and the Maine Community College System.

In both pieces of legislation the Wesget Sipu are, for the first time in any Maine legislation, referred to as a Tribe. In LD 427, “a board of directors of a nonprofit corporation, with no connection to the 4 federally recognized Tribes is given the authority to certify tribal membership status. If these two pieces of legislation were to pass, the Wesget Sipu—a nonprofit corporation—may have been conferred a specific albeit inadequately defined status: that of state recognized Tribe. I urge you to proceed with caution and take into consideration the numbers from the 2010 census I quoted earlier. Along with the status of state recognition, will come additional state fiduciary responsibilities. We are already seeing this with the legislation providing 225 moose hunting permits; a statute that was not been crafted by the four federally recognized Indian Tribes, and LD 427, which would allow for tuition waivers.

I recommend that LD 427 be tabled. It is unnecessary. Currently, tuition waivers are awarded by the University of Maine system through a very generous policy that applies to the members of the 4 federally recognized Tribes in Maine, their descendants (if their parents or grandparents were on the census), and all members of North American Tribes and their descendants (if their parents or grandparents were on the census) and if they have resided in Maine for a period of a year previous to application. Modifying a generous and efficient policy that is working well through legislation is an extreme action. I would like to re-emphasize here that it does not make any sense to enact a statute whose only purpose is to obtain waivers for the Wesget Sipu under a program that is not otherwise governed by Maine statutes.

I urge you to immediately work with the Tribal Representatives for the Passamaquoddy Tribe and Penobscot Indian Nation, in consultation with the Houlton Band of Maliseet Indians and the Aroostook Band of Mic Mac to remove “Wesget Sipu” or “Wesget Suppo” from all existing statutes and to restore the legally accepted word “Indian” in place of the generic descriptor “Native American.”

Additionally, from my review of the few states that do have state recognized Indian Tribes (14), all refer to historic Tribes within their borders. The only state that has an active, formal process for recognizing new Tribes is Vermont, a state trying to rectify the legacy of a eugenics program that targeted at its Abenaki population. **If there were intent to recognize state Tribes in Maine, I would also recommend that this issue be referred to a Tribal State Work Group to be thoroughly examined rather than create such a status in a haphazard manner.**

Appendix 20

**Testimony before the Joint Standing Committee on Inland Fisheries
and Wildlife on LD 1456**
**Offered by John Dieffenbacher-Krall on behalf of the Maine Indian
Tribal-State Commission**

First I would like to thank both Senator Martin and Representative Davis for the opportunity to offer this testimony on behalf of the Maine Indian Tribal-State Commission. I would also like to thank Representative Madonna Soctomah for introducing this crucial legislation that will ultimately fix a conflict with the Maine Implementing Act.

In 2000, a very confusing amendment to the free lifetime license provision added the Wesget Suppo (later Wesget Sipu) while deleting the Central Maine Indian Association, which had closed its doors. There is no discernable organizational connection or similarity of purpose between the CMIA and the Wesget Suppo. The CMIA was staffed by and worked with the 4 federally recognized Tribes to provide services to Tribal members who were outside of the Indian Service Area, the Wesget Suppo is not connected to the 4 Tribes nor does it provide services to their members.

Because the amendment was not introduced prior to cloture, its proponents had to argue that there was a compelling need for the amendment. The following is from the most troubling section of the preamble, which upon my read, is at least misleading if not entirely false:

Whereas, the Central Maine Indian Association no longer exists; and

Whereas, until "Wesget-Suppo" is recognized in the statutes as the organization authorized to issue fishing, trapping and hunting licenses, Native Americans will be unfairly denied benefits under the inland and fisheries laws; and

Recognizing now that MITSC should have raised questions immediately: What follows is the text of the 2000 law, as amended:

8. Native American. The commissioner shall issue a hunting, trapping and fishing license, including permits, stamps and other permission needed to hunt, trap and fish, to a Native American, 10 years of age or older, of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Aroostook Band of Micmacs that is valid for the life of that Native American without any charge or fee if the Native American presents a certificate from the respective reservation governor, the Aroostook Micmac Council or "Wesget-Suppo" stating that the person described is a Native American and a member of that nation, band or tribe. Holders of these licenses are subject to this Part, including, but not limited to, a lottery or drawing system for issuing a particular license or permit.

The list of Tribes that are referred to was not changed, but the term "Native American" was inserted, without definition, in place of the term "Indian." This is of great concern because the

term “Indian” has an established legal and statutory meaning that connotes a member of a formally recognized Tribe while Native American is a generic term that refers to a person of North American Indigenous ancestry—indeed a potentially much larger group of people. While there are slightly more than 8,000 people on current Tribal rolls, there are an additional 13,000 people in Maine who claim dual ancestry on the 2010 census. Additionally, with no formal consultation, the Central Maine Indian Association, which had a close working relationship with the 4 federally recognized Indian Tribes, was *replaced by the “Wesget-Suppo,” which at that time had no formal connection to the 4 federally recognized Indian Tribes, and still has no formal connection to those Tribes.*

As a result of the 2000 amendment, for the first time a non-profit with no relationship to the legally recognized Tribes was given the authority to certify that an individual was a member of one of those Tribes. The reference in the statute to “that Nation, Band or Tribe” clearly refers to the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet and the Aroostook Band of Mic Mac. I urge you to read this carefully, “Wesget Suppo” was not listed as a Tribe in this legislation; it was simply awarded an authority to certify “Native Americans” who are members of the named Tribes. No definition added for the new descriptor, “Native Americans.” We are unaware of the criteria that “Wesget Suppo” was or Wesget Sipo is using since they have not checked with the Tribes to confirm status of individuals seeking these licenses nor have they given notice when a license has been conferred.

It is here that we see a conflict with the MIA: under both fundamental principles of Federal Indian law and the specific terms of the Maine Implementing Act, the determination of Tribal membership status is exclusively controlled by the Tribes as an internal Tribal matter.

This brings us to LD 1456, “An Act Regarding the Right of Native Americans to be Issued Hunting, Fishing and Trapping Licenses,” which provides the necessary fix to the problem created in 2000 with the addition of the Wesget Suppo (Sipu) to the fish and wildlife statute. This act replaces the word Native American with “person of the Passamaquoddy Tribe, Penobscot Indian Nation, Houlton Band of Maliseet Indians or Aroostook Band of Mic Mac” and deletes the Wesget Sipu from the statute.

The only change MITSC would recommend for consideration in the work session is a change of the word “person” to the term “Indian,” a term defined in the Fish and Wildlife Statute as members of the Passamaquoddy, Penobscot, Maliseet and Mic Mac Tribes.

Appendix 21

The Maine Implementing Act in 2011: A legislative analysis of bills conferring aboriginal rights to the Wesget Sipu and their impact on the Maine Implementing Act.

BY: JAMIE BISSONETTE LEWEY AND JOHN DIEFFENBACHER-KRALL

WITH MUCH THANKS TO: MITSC COMMISSIONER: PAUL THIBEAULT; AND MARK KNIERIM, JENNIFER LOCKE AND ELAINE APOSTOLA OF THE MAINE STATE LAW AND LEGISLATIVE REFERENCE LIBRARY.

Three important bills were introduced in the 125th Session of the Maine Legislature. Two bills concern the conveying of certain aboriginal rights to a non-profit organization comprised of individuals with ties to Native people who lived in the St. John River Valley. These individuals have formed a non-profit known as Wesget Sipu.

LD 270 provides free moose hunting to the Tribes and lists the Wesget Sipu as a Tribe and LD 427 allows tuition waivers for the Wesget Sipu to attend the University of Maine system. Both of these bills have recently been voted, “Ought not to pass.”

These bills rely on an earlier bill passed in 2000 that allowed Wesget Sipu to issue free hunting, trapping and fishing licenses. This bill is in conflict with the Maine Implementing Act (MIA) in that it constitutes a challenge to the internal tribal matters provision of that Act.

The third bill, LD 1456, introduced by Passamaquoddy Representative Madonna Soctomah, would remedy the conflict with the MIA caused by the 2000 law. This paper offers an analysis of the development of aboriginal rights within the hunting and fishing law, why the 2000 law is in conflict with the MIA, and the necessity for LD 1456.

Introduction

We would like to begin by acknowledging that the history of the Wabanaki Tribes goes back thousands of years. The 300 years after contact with Europeans were brutal to Tribal Peoples. Numbers dropped so drastically that by the late 1700's the recorded census of some Tribal communities in Maine reflected a male population in the single digits. During this time of genocide, upheaval and displacement we know that many Tribes and Bands disappeared. Over the past 100 years, the Wabanaki have sought to document the genealogy of home communities and assist those who come seeking their ancestors. Each federally recognized Tribe in Maine has staff that focuses entirely on census and genealogy. Native identity is cherished.

MITSC will not discuss whether or not the Wesget Sipu are Wabanaki, but has checked with all of the Chiefs and it appears that some of these individuals did approach the Aroostic Band of Mic Mac requesting to be put on their rolls. When these individuals could not verify their genealogy in accordance with the established tribal membership process, their applications for membership were denied. Shortly after this refusal, the non-profit organization, Wesget Suppo (later Wesget Sipu) emerged. One or two Tribal people were employed to provide cultural teaching, a board of directors was formed and a federal grant was obtained to research Native American presence in the St. John Valley, to gather oral history and documentary evidence. This evidence was to be shared with the Acadian Archives.

MITSC is aware of the suffering of the Acadian people. Their history is a profoundly tragic one that does cross paths and ancestry with the Wabanaki Tribes throughout the Northeast. Whether the state of Maine should recognize this and offer Acadians certain entitlements is beyond the scope of MITSC. Any such entitlements should be distinct from Aboriginal rights, which are inalienable and inherent.

The Wesget Sipu web site explains, “Wesget Sipu is a Native American Tribe of Mi’qmak and Maliseet from the St. Johns Valley in Northern Maine.” Membership requires “verifiable genealogy” that reflects “Native American Ancestry with *ties* to the St. John River Valley.” This is extraordinarily confusing language. The commonly accepted descendancy language is replaced by the word “ties” and the term “Indian⁵,” which has been used in federal Indian law for two hundred years, is replaced by the generic descriptor “Native American.” Over the last 11 years, this language has been crafted into Maine statutes.

In February, MITSC met with all of the Wabanaki Chiefs to discuss pending legislation that references Wesget Sipu. All expressed genuine concern for all people who have Native ancestry and explained that they wanted no part in refusing rights to Native people, but they are not familiar with the Wesget Sipu organization, and Wesget Sipu has never approached the Tribes to open a dialog or establish a relationship. If these families are Wabanaki, they are relations of the Tribes. We strongly urge them to follow traditional Tribal protocol and contact the Tribes, ask to be placed on a Tribal Council agenda and obtain the advice of the Tribal Leaders in the five Wabanaki communities. Such consultation with Tribal leaders, which has not happened, should be the first step—not State legislation.

LD’s 427 and 270

The legislation introduce in the 125th Session is about far more than moose hunting permits and tuition waivers. In essence this legislation would convey capital “T” Tribal status to a non-profit organization through a small change of descriptors in an already existing law. Were these laws to pass as written, Maine would create a new but inadequately defined status: that of state recognized “Native American” Tribes distinct in legal status from the four federally recognized Indian Tribes. MITSC urges great caution. The era of so-called “state tribes” was formally ended in Maine with the Settlements. Since that time, the only Tribes in Maine with any legal status have been the four federally recognized Tribes. Creation of a new category of “state tribes” is a serious step for the state that will undoubtedly have major legal, monetary and political implications.

History of Wabanaki Aboriginal Hunting, Trapping and Fishing Rights in Maine:

To understand the implications of the proposed legislation, it is necessary to trace the evolution of the language in these two bills; then address the issue of “de-facto state recognition” alluded to by Wesget Sipu legal advisor, Duane Belanger in his email dated, January 4, 2011.

In order to do this, it is necessary to present a brief history lesson tracing the language used to describe Aboriginal rights in Maine. We will begin with the Hunting and Fishing statutes, where the language is first introduced, then track the evolution of the language, and finish with the proposed Wesget Sipu legislation now before the Judiciary Committee.

This history begins with the recognition of the inherent Aboriginal rights of the Wabanaki. The earliest reference to these rights occurs in the “Treaty of Falmouth of 1726-1727 between the Government of the Massachusetts Province and various ‘Eastern Indians.’” In this Treaty, the Indians granted certain rights to the Province and reserved rights for themselves as they formerly held them. Among these rights were the rights to hunt and fish:

⁵ The formal, legal context of the term “Indians” in Title 25 of the US Code and in most legal contexts requires being regarded as an Indian by an established Tribal community; usually this is a federally recognized Tribe.

Saving unto the Penobscot, Norridgowock, and other Tribes, within his Majesties Province aforesaid and their Natural Descendants, respectively, . . . the Privilege of Fishing, Hunting, as formerly.

Hunting and fishing licenses were first issued in Maine in 1897. In 1934, a survey by the Bureau of Indian Affairs of Maine Indians noted that most Maine Indians could not afford the state licenses. In 1935, the cost of the licenses jumped by 15 cents. It was at this time that the first piece of legislation issuing free hunting and fishing licenses for the Penobscot and Passamaquoddy was enacted. This bill, *An Act Relating to Indians* (S.P. 710, L.D. 808) was introduced in 1935. The language was simple:

All Indians of both the Passamaquoddy and Penobscot tribes in the state upon presentation of their certificate of registration shall be issued a hunting and fishing license without charge.

This bill was tabled in the 87th Legislature, but brought to the floor and passed in the 88th Legislature with a more precise definition of eligibility.

^{numbered} section 295-A, and to read as follows:

'Sec. 295-A. Indians to have free hunting and fishing. All Indians of over 18 years of age of both the Passamaquoddy and the Penobscot tribes may procure from the commissioner of inland fisheries and game a license to hunt and fish free of charge upon presentation to the commissioner of a certificate from the Indian agent of their respective tribe stating that the person described therein is an Indian and a member of that tribe. Holders of such licenses shall be subject to all the laws of the state and rules and regulations of the commissioner relative to fishing and hunting, and for violation of said laws of the state or rules and regulations of the commissioner said licenses shall be revoked as provided in chapter 38 of the revised statutes as revised. For the purposes of this section, no person shall be considered an Indian unless his father or mother was an Indian.'

'Sec. 2. Inconsistent acts repealed. All acts and parts of acts inconsistent with this act are hereby repealed.'

In this statute **an Indian** had to be of 18 years of age, be a member **of the Passamaquoddy and Penobscot tribes**, be able to present a certificate from the Indian agent of their Tribe, and agree to be subject to the laws of the State and regulations of the commissioner. In order to meet the definition of Indian, the individual had **to have one parent who was an Indian.⁶** **Here we need to underscore that every version starting in 1935 has required Tribal membership.**

In 1947, when trapping was added to the list of Aboriginal rights, the language we are concerned with today, that defining who was an Indian, was tightened, requiring **both parents to be**

Indian. In 1953, the age was dropped to 16: the language we are concerned with remained consistent. In 1959, the definition of Indian was changed to specifically coincide with the **Tribal membership lists of the Penobscot and Passamaquoddy Tribes**. This reflected a tightening of the definition ruling out the provision of free licenses to descendants.

In 1971, the statute was amended to drop the age to 10; the defining language remained unchanged.

In 1979, in the definition section of the law, the definition of "Indian" for the purpose of awarding free hunting and fishing licenses was again clarified as follows:

17. Indian. "Indian" means any person who is on the membership list of the Penobscot Tribe, the Passamaquoddy Tribe or the Association of Aroostook Indians and who has resided in the State of Maine for at least 5 years.⁷

The Commissioner was also given the authority to award free licenses to members of a number of non-Indian groups.⁸

The portion of the statute specifically referring to Indian hunting and fishing licenses reads as follows:

The commissioner shall issue a hunting, trapping and fishing license to any Indian, 10 years of age or older, of the Passamaquoddy, Penobscot, Maliseet or Micmac Tribes without any charge or fee, providing the Indian presents a certificate from the respective reservation governor or the President of the Association of Aroostook Indians stating that the person described is an Indian and a member of that tribe. Holders of these licenses shall be subject to chapters 701 to 721.

The language we are discussing remained consistent.

This statute was further amended in 1985 to read.

~~A. The Commissioner shall issue a hunting, trapping and fishing license to any Indian, 10 years of age or older, of the Passamaquoddy, Penobscot, Maliseet or Micmac Tribes without any charge or fee, providing the Indian presents a certificate from the respective reservation governor, the Aroostook Micmac Council or the Central Maine Indian Association stating that the person described is an Indian and a member of that tribe. Holders of these licenses shall be subject to chapters 701 to 721.~~

To highlight the changes:

- The governors, or governmental body in the case of the Mic Macs, are authorized to certify Tribal members.
- Recognizing that a number of Wabanaki people had migrated from the Tribal Areas, the Central Maine Indian Association, staffed entirely by Tribal members from the four Tribes with the

⁷The 5-year requirements reflected the migratory nature of the lives of Mic Mac who held seasonal jobs in Aroostook County and extended free licenses to those who had made their homes in Aroostook County. The Aroostook Association of Indians maintained rolls and served these people.

⁸Medal of Honor recipients, those in the armed forces, patients in the veterans hospital, and patients and inmates at certain state institutions.

exception of their grant writer, and tasked to respond to the needs of Tribal members living off the reservations was authorized to act on behalf of the 4 listed Tribes.

The key language to highlight here is as follows: ***is an Indian and a member of that tribe.*** In 2000, a very confusing statute was passed that added the Wesget Suppo while deleting the Central Maine Indian Association, which had closed its doors. There is no discernable organizational connection or similarity of purpose between the CMIA and the Wesget Suppo. The CMIA was staffed by and worked with the 4 federally recognized Tribes to provide services to Tribal members who were outside of the Indian Service Area, the Wesget Suppo is not connected to the 4 Tribes nor does it provide services to their members. The preamble to the legislation had to argue the necessity of an immediate fix to a constitutional crisis, given that the legislation was not properly introduced prior to cloture. The following is from the most troubling section, which upon our read, is at least misleading if not entirely false:

Whereas, the Central Maine Indian Association no longer exists; and

Whereas, until "Wesget-Suppo" is recognized in the statutes as the organization authorized to issue fishing, trapping and hunting licenses, Native Americans will be unfairly denied benefits under the inland and fisheries laws; and

Recognizing now that MITSC should have raised questions immediately: What follows is the text of the 2000 law.

8. Native American. The commissioner shall issue a hunting, trapping and fishing license, including permits, stamps and other permission needed to hunt, trap and fish, to a Native American, 10 years of age or older, of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Aroostook Band of Micmacs that is valid for the life of that Native American without any charge or fee if the Native American presents a certificate from the respective reservation governor, the Aroostook Micmac Council or "Wesget-Suppo" stating that the person described is a Native American and a member of that nation, band or tribe. Holders of these licenses are subject to this Part, including, but not limited to, a lottery or drawing system for issuing a particular license or permit.

The list of Tribes that are referred to is not changed, but we see the first change of descriptors. "Indian," a term that has both a legal and a statutory definition gets changed to "Native American." This is of concern because "Indian" commonly connotes a member of a formally recognized Tribe while Native American is a generic term that refers to a person of North American Indigenous ancestry—indeed a potentially much larger group of people. While there are slightly more than 8,000 people on current Tribal rolls, there are an additional 13,000 people in Maine who claim dual ancestry on the 2010 census. Additionally, with no formal consultation, the Central Maine Indian Association, which had a close working relationship with the 4 federally recognized Indian Tribes, was ***replaced by the "Wesget-Suppo," which at that time had no formal connection to the 4 federally recognized Indian Tribes, and still has no formal connection to those Tribes.***

For the first time a non-profit with no relationship with an existing Tribe was given the authority to certify that an individual was "**a member of that nation, band or tribe.**" Here tribe, nation, or band clearly refers to the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet and the Aroostook Band of Mic Mac. I urge you to read this carefully, "Wesget Suppo"

was not listed as a Tribe in this legislation; it was simply awarded an authority to certify “Native Americans” with no definition added for that descriptor. We are unaware of the criteria that “Wesget Suppo” was or Wesget Sipo is using since they have not checked with the Tribes to confirm status of individuals seeking these licenses nor have they given notice when a license has been conferred.

It is here we may have a conflict with the MIA: under both fundamental principles of Federal Indian law and the specific terms of the Maine Implementing Act, the determination of Tribal membership status is exclusively controlled by the Tribes as an internal Tribal matter.

This brings us to the two pieces of legislation introduced in this session:

LD 270: Issuance of moose hunting permits. In accordance with section 11552, the commissioner may issue moose hunting permits and may establish the number of moose hunting permits to be issued for each wildlife management district established by the commissioner by rule open to moose hunting. The commissioner shall reserve 200 moose hunting permits to be distributed equally among the federally recognized Indian tribes of the State and 25 moose hunting permits for the Wesget Sipu Tribe. No more than 10% of the moose hunting permits may be issued to nonresident and alien hunters.

LD 427: Tuition waiver

A postsecondary educational institution that establishes a practice or policy of waiving tuition charges for Native Americans must include within that practice or policy equivalent treatment of any person who is certified to be a member of the Wesget Sipu - Fish River Tribe by the board of directors of a nonprofit corporation formed to represent and promote the traditions of the Wesget Sipu - Fish River Tribe. For purposes of this section, "postsecondary educational institution" means the University of Maine System, the Maine Maritime Academy and the Maine Community College System.

LD 427 is unnecessary. Currently, tuition waivers are awarded by the University of Maine system through a very generous policy that applies to the members of the 4 federally recognized Tribes in Maine, their descendants (if their parents or grandparents were on the census), and all members of North American Tribes and their descendants (if their parents or grandparents were on the census) and if they have resided in Maine for a period of a year previous to application. Modifying a generous and efficient policy that is working well through legislation is an extreme action. It did not make any sense to enact a statute whose only purpose is to obtain waivers for the Wesget Sipu under a program that is not otherwise governed by Maine statutes.

In both pieces of legislation the Wesget Sipu are, for the first time in any Maine legislation, referred to as a Tribe. In LD 427, “a board of directors of a nonprofit corporation, with no connection to the 4 federally recognized Tribes is given the authority to certify tribal membership status. If these two pieces of legislation were to pass, the Wesget Sipu—a nonprofit corporation—may have been conferred a specific albeit inadequately defined status: that of state recognized Tribe. When considering these kinds of policy changes, it is important to be cautious and take into consideration the numbers from the 2010 census quoted earlier. Along with the status of state recognition, will come additional state fiduciary responsibilities. This is evident in LD 270, which provides 225 moose hunting permits; a statute that was not been crafted by the

four federally recognized Indian Tribes, and LD 427, which would allow for tuition waivers.

Fortunately, both LD 427 and LD 270 were voted “Ought Not to Pass.”

LD 1456

This brings us to LD 1456, “An Act Regarding the Right of Native Americans to be Issued Hunting, Fishing and Trapping Licenses, which provides the necessary fix created in 2000 with the addition of the Wesget Suppo (Sipu) to the fish and wildlife statute. This act replaces the word Native American with “person of the Passamaquoddy Tribe, Penobscot Indian Nation, Houlton Band of Maliseet Indians or Aroostook Band of Mic Mac” and deletes the Wesget Sipu from the statute.

The only change MITSC would recommend for consideration in the work session is a change of the word “person” to the term “Indian.” We encourage this because the Indian was defined in the Fish and Wildlife Statute in 1979 and this language would bring consistency in Maine statutes.

Additionally, from our review of the few states that do have state recognized Indian Tribes (14), all refer to historic Tribes within their borders. The only state that has an active, formal process for recognizing new Tribes is Vermont, a state trying to rectify the legacy of a eugenics program that targeted at its Abenaki population. **If there were intent to recognize state Tribes in Maine, we would also recommend that this issue be referred to MITSC for consideration and then to a Tribal State Work Group for examination rather than create such a status in a haphazard manner.**

Appendix 22

Testimony of Jamie Bissonette Lewey, Chairperson, Maine Indian Tribal-State Commission, in Support of the Nomination of Bonnie Newsom for a Seat on the University of Maine System Board of Trustees

Good afternoon Senator Langley, Representative Richardson, Representative Soctomah and members of the Joint Standing Committee on Education and Cultural Affairs. My name is Jamie Bissonette Lewey, I am Chair of the Maine Indian Tribal-State Commission and I am honored to offer testimony in support of Bonnie Newsom's nomination to the University of Maine's Board of Trustees.

Since my appointment as chair of MITSC, I have worked closely with Ms. Newsom who is one of two Penobscot Indian Nation representatives on the Commission. In her capacity as a MITSC Commissioner, Ms. Newsom has been diligent in her responsibilities and generously offered her time and her expertise to the Commission. Her intelligence and constructive guidance have contributed vastly to the Commission's work this year.

Occasionally, MITSC will be asked to weigh in on matters where there is a conflict over land use that involves a site of cultural or historic significance to the Tribes. At these times, I have relied on Bonnie Newsom's skill as a Tribal Historic Preservation Officer and her ability to thoughtfully listen to all sides of a conflict. In each instance, Ms. Newsom has been able to work with the affected communities to bring about a good resolution that all can be proud of while assuring that the cultural heritage of Native people in Maine is protected.

Bonnie Newsom is both a scholar and a dedicated anthropologist focused on Indigenous anthropology and archeology in the Northeast. She has excelled in her field. At a time when many young Native people are all too aware of the barriers they face in pursuing a career that requires a considerable amount of higher education, Bonnie is a role model demonstrating both a high level of academic achievement and the quiet leadership that is the hallmark of our culture. I have a niece who is in Kuwait with the US Air Force and I have a nephew in the US Army that just returned from Afghanistan. I am very aware of the sacrifice an individual makes when they serve their country in this way; this is a particular kind of contribution. Bonnie Newsom is a veteran who not only did a tour of duty, but she continued to serve in the reserves for an additional seven years. I am grateful to her for her service and I am humbled by her commitment to this country. Undoubtedly, the skills that made Bonnie Newsom a successful soldier, leader, trainer and non-commissioned officer will also contribute to her work should she be appointed a trustee of the University of Maine.

Most recently, I had the opportunity to co-author an article with Bonnie Newsom on the re-introduction of the Spencer Phipps proclamation in Wabanaki communities. Co-authoring can be a complicated process, but Ms. Newsom made the work easy through thorough preparation and consistent follow up.

There are many qualities that would make Ms. Newsom an excellent Trustee for the University of Maine. Two of these qualities stand out for me. Firstly, she is a very thoughtful person who

will be scrupulous in meeting her duties as a Trustee. Finally, Bonnie Newsom exemplifies a quiet leadership that builds consensus within a group. It is this second quality that has developed a deep respect for Ms. Newsom's perspectives and has enriched the Maine Indian Tribal-State Commission.

I highly recommend Bonnie Newsom to serve on the Board of Trustees at the University of Maine System. If there are any questions I can be reached at 207 853 6022 or by email at, jbissonnette@afsc.org.

Appendix 23

Building the Beloved Community, Moving Forward with Respect: the Sanford HS Mascot

A community conversation will take place Wednesday, April 11 at 7 pm at the North Parish Congregational Church located on 893 Main Street with representatives of the Wabanaki Tribes and Maine Indian Tribal-State Commission (MITSC) to promote dialogue and healing about the Sanford HS mascot. The event is free and everyone is encouraged to attend.

All five Wabanaki Tribal Governments have asked the Maine Indian Tribal-State Commission to work to have all schools drop the use of the redskins mascot. Sanford HS is the last school in the State of Maine to use this particular mascot. The Sanford School Committee is currently considering abandoning or retaining the current mascot.

Wabanaki and MITSC representatives will explain the origin of the term redskins and place it in a historical context of the relationship between Indigenous Peoples of this region and settlers. Speakers will address the benefits of discontinuing the use of a mascot with genocidal and violent connotations. The audience will also have an opportunity to meet contemporary 21st century Wabanaki People and hear about their hopes and concerns for their communities. Speakers will also answer questions.

Appendix 24

Statement of Maine Indian Tribal-State Commission Executive Director John Dieffenbacher-Krall on the Sanford School Committee's decision to stop using the mascot redskins

The Maine Indian Tribal-State Commission (MITSC) applauds the Sanford School Committee for voting tonight to stop using immediately the offensive high school mascot redskins. The Commission hopes Sanford will build on this positive step by becoming a model school system teaching about Wabanaki history, culture, government, and the political challenges that the Wabanaki Peoples face today. MITSC also thanks the Sanford faith community, especially the Episcopal, United Church of Christ, and Unitarian Universalist Churches, for opening themselves to listen, learn, and speak with a powerful moral voice for justice.

Appendix 25

May 16, 2012

Mr. James Anaya
Special Rapporteur on the Rights of Indigenous Peoples
c/o OHCHR-UNOG
Office of the High Commissioner for Human Rights
Palais Wilson
1211 Geneva 10, Switzerland

Dear Mr. Anaya:

We are writing this letter on behalf of the Maine Indian Tribal-State Commission, or MITSC. The Tribal-State Commission was formed under the Maine Indian Claims Settlement Act or MICSA (25 USCS § 1721) and Maine Implementing Act or MIA (30 MRSA §6201) and is an intergovernmental body charged 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.”

MITSC requests an investigation into the impact of the implementation of the aforementioned MICSA and MIA. These Acts are in serious nonconformance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) both in the process leading up to their enactment and in how they have been implemented. The Acts have created structural inequities that have resulted in conditions that have risen to the level of human rights violations. We ask you to raise this structural violation of Maine Wabanaki Tribes' collective rights during your upcoming meetings with the US government. While the current administration of Maine Governor Paul LePage has consistently demonstrated a high interest and responsiveness to Wabanaki governmental concerns, these structural inequities have become entrenched over the past 30 years.

The Maine Indian Claims Settlement was intended to prevent the acculturation and to safeguard the sovereignty of the Maine Wabanaki Tribes: the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Indian Nation, hereinafter referred to as the Wabanaki. Later the Aroostook Band of Micmacs was recognized with a distinct agreement in 1991, the Aroostook Band of Micmacs Settlement Act (25 USC 1721 (1991 Amendment)). As Reuben Phillips, one of the Penobscot Nation's negotiators of the settlement agreement, told the Tribal-State Work Group on November 19, 2007, “... 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.”

Despite some small gains due to federal recognition and accompanying funding from the federal government, the four Tribes continue to experience extreme poverty, high unemployment, markedly shorter life expectancy, much poorer health, limited educational opportunities, and thwarted economic development. MITSC has determined that the entrenchment of these social and economic factors is a direct result of the framework created by the MICSA and MIA.

The expectation that the Maliseet, Passamaquoddy, and Penobscot Peoples' quality of life would significantly improve with passage of MIA and MICSA has not been realized. No Tribe enters into an agreement with a state to remain impoverished. The Maine Wabanaki Tribes' understanding of the agreement is very clear and is articulated in the many court cases brought on their behalf. Since the adoption of MICSA and MIA, the State of Maine has utilized the full range of its powers, including its judicial and legislative branches, to promote an interpretation of the Settlement Acts without regard to the equally valid Wabanaki interpretation. Largely as a result of court decisions, the Maine Indian Claims Settlement has changed from a collectively negotiated agreement between co-equals to a unilateral determination by one signatory.

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 four Maine Wabanaki Tribes averages approximately 25 years less than that of the Maine population as a whole. Only one percent of the Houlton Band of Maliseets' population exceeds 55 years of age. Unemployment rates within Wabanaki communities range up to 70%, many times higher than the surrounding Maine communities. 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. At this time, the incarceration rate of Passamaquoddy people in state prisons is six times that of the general population. When the Maine Wabanaki Tribes attempt to address the causes of many of these problems, they consistently encounter structural roadblocks due to MICSA and MIA.

Location and context:

The Passamaquoddy Tribe and Penobscot Indian Nation filed a lawsuit compelling the US Department of Justice to sue the State of Maine in 1972 in order for the two Tribes to recover approximately 12.5 million acres of land taken from them. Later the Houlton Band of Maliseet Indians became a party to the proceeding. Key court decisions decided after the filing of the land claims affirmed Passamaquoddy and Penobscot inherent sovereignty, including Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975), Bottomly v. Passamaquoddy Tribe, 599 F.2d 106 (1st Cir. 1979), and State v. Dana, 404 A.2d 551 (Me. 1979).

The land claim was settled in two phases. The State of Maine enacted the Maine Implementing Act (MIA) in April 1980 that primarily addresses jurisdictional issues and the government-to-government relationship between the State and the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and the Penobscot Indian Nation. On October 10, 1980, President Carter signed the Maine Indian Claims Settlement Act (MICSA) that ratifies the Maine Implementing Act and determines the settlement among the US, the State of Maine, and the Tribes.

Evidence exists that Tribal members were not made aware of important changes made to the MICSA during the final stages of its consideration. First, the Maine Legislature enacted and Governor Joseph Brennan signed the Maine Implementing Act in April 1980. Second, the Passamaquoddy and Penobscot Peoples gave preliminary approval to the settlement agreement contingent upon any changes coming back to them for their approval in the same month. Third, Congress actively worked on the Maine Indian Claims Settlement Act from July to September 1980 with significant changes made to the proposal during the legislative deliberations. There is no record of these changes ever returning to the Passamaquoddy and Penobscot Tribes for approval. Clearly, this action conflicts with the UN Declaration on the Rights of Indigenous Peoples Article 19 that specifies:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

Affected Indigenous Peoples:

All of the Maine Wabanaki Tribes were affected by the MICSA and MIA in that the MICSA stipulates that all other Maine Tribes that would be recognized by the Federal Government in the future would be subject to state law in the same way as the Passamaquoddy Tribe, Penobscot Indian Nation, and the Houlton Band of Maliseet Indians. Recent court decisions regarding the Aroostook Band of Micmacs’ settlement agreement have borne out that truth. We list the Wabanaki Tribes of Maine:

1. Aroostook Band of Micmacs, 7 Northern Road, Presque Isle, Maine 04769 (Though not a party to MICSA and MIA, provisions of the two Acts affect the Tribe.)
2. Houlton Band of Maliseet Indians, 88 Bell Road, Littleton, ME 04730
3. The Passamaquoddy Tribe consists of one people with two communities in Maine.
 - a. Passamaquoddy Tribe at Motahkmikuk, Box 301, Princeton, ME 04668
 - b. Passamaquoddy Tribe at Sipayik, 9 Sakom Road, Perry, ME 04667
4. Penobscot Indian Nation, 12 Wabanaki Way, Indian Island, ME 04468

Factual Background:

Two provisions of the federal and state agreements especially illustrate the compromised rights of the Tribal governments under MICSA and MIA. Section 1735(b) of MICSA states:

The provisions of any Federal law enacted after the date of enactment of this Act [enacted Oct. 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 Act and the Maine Implementing Act, shall not apply within the State of

Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

MIA section 6204 states:

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

These two sections of law conflict with multiple articles of UNDRIP, including Articles 3, 4, 5, 19, 23, 27, 29, 32, 34, and 40. The imposed diminishment of Maine Wabanaki Tribes' inherent rights of self-determination as compared to hundreds of other federally recognized tribes has caused severe negative impacts within Wabanaki communities. As a result of section 1735(b) of MICSA, Maine Wabanaki Tribes have not been able to utilize the Indian Gaming Regulatory Act (25 USC §2701 et. seq.) as a possible means of economic development. This same section blocks Wabanaki utilization of "Treatment As a State" status under the Clean Air Act ([40 CFR Part 49 Tribal Clean Air Authority](#)) and Clean Water Act ([40 CFR 123.31 – 123.34](#)) to assume regulatory authority over polluters contaminating the air and water of Wabanaki territory. In addition, the non-applicability of post-1980 laws limits the impact of pre-1980 laws that supported tribal self-determination, such as the Indian Civil Rights Act, passed by Congress in 1968. Economic and legal tools available to hundreds of other federally recognized tribes are not available to the Wabanaki due to the legal limitations imposed by MICSA and MIA.

Responsible Parties:

The principal actors have been the governments and courts of the State of Maine and the United States federal government.

Despite executing its first foreign treaty (Treaty of Watertown July 19, 1776) with some of the Wabanaki Peoples, the Mi'kmaq and St. John's Tribes (Maliseet and Passamaquoddy), the US abdicated its responsibility for acting as the primary manager for the relationship between the American people and the Wabanaki, allowing initially Massachusetts and then Maine to determine the relationship. The State of Maine did not recognize Indigenous sovereignty until compelled to do so by *Passamaquoddy v. Morton* decided January 20, 1975. Until that Federal District Court decision, the State of Maine's disposition toward the Wabanaki is reflected in a portion of the decision *Murch v. Tomer*, 21 Me. 535; 1842 Me. Lexis 141. "Imbecility on their part [Indians], and the dictates of humanity on ours, have necessarily prescribed to them their subjection to our paternal control; in disregard of some, at least, of abstract principles of the rights of man."

Passamaquoddy v. Morton provided a brief period in which the State of Maine had no control over the Passamaquoddy Tribe and Penobscot Indian Nation. Following the *Passamaquoddy v. Morton* decision and during the intensive negotiations leading up to the settlement of the Maliseet, Passamaquoddy, and Penobscot land claims, the State of Maine insisted that state laws apply to the Tribes except in narrow instances (30 MRSA §6204). Maine's insistence on its continued control over the Wabanaki except in certain instances has resulted in the crisis experienced by Wabanaki peoples and threatens their ability to function as distinct, independent governments, something MICSA was supposed to guarantee.

At the time MICSA was signed, all the parties agreed that, though it was a significant diplomatic accomplishment, it was also one that would necessitate continuous review and adjustments to reflect the changing relationship between the Tribes and the State. Despite Congress' clear intent to provide for these periodic adjustments (25 USCS §1725(e)(1)), a conviction among State and Federal officials emerged sometime after enactment of MICSA that the agreement should never be adjusted despite Congressional authorization to do so. The State of Maine reaction to the Wabanaki contention that MICSA should be viewed as a living, dynamic document and adjusted as changed conditions and circumstances dictated, was to align increasingly with powerful private economic interests in opposition to Tribal rights. Key State of Maine and corporate decision makers claimed the Tribes were attempting to renege on a fundamental aspect of the agreement.

During the 2006 – 2008 deliberations of the Tribal-State Work Group, an initiative that emerged from the May 2006 Assembly of Governors and Chiefs intended to address problems with the MIA, the principal negotiators of the Settlement Act for the State of Maine and federal government verified by their testimony the Wabanaki understanding that MIA should be viewed as a dynamic document and periodically adjusted. Tim Woodcock, staff person to the Senate Select Committee on Indian Affairs during the period that the US Senate deliberated about the settlement, told the Tribal-State Work Group on November 19, 2007:

It [referring to MICSA] also ratified and approved and sanctioned agreements prospectively that the State and Tribes might make respecting jurisdiction and other important issues that otherwise you might have to go to Congress to get approval for so you have that authority in advance... And I recognized that the MICSA and the MIA might well just be the beginning of an ongoing relationship that might well have a considerable amount of dynamism in it and it might well be revisited from time to time to be adjusted. There was a mechanism for that to happen and I have to say in retrospect it's been a surprise to me that it really hasn't been amended at some point but I also recognize certainly that these are knotty issues.

Though the negotiators understood that MICSA and MIA would need periodic adjustments and created a provision within the agreement for the signatories to take such action, actual structural change has never occurred. The Wabanaki have become increasingly frustrated with the failure of the State of Maine to agree to any substantial changes to the settlement. Litigation has arisen. As a result, instead of the signatories negotiating changes to the Settlement Agreement, state and

federal judges have consistently interpreted in favor of state and private interests, further diminishing Wabanaki self-determination and violating UNDRIP Article 19.

The Maine Supreme Judicial Court has expressed an extremely narrow interpretation of “internal tribal matters” under the Maine Indian Claims Settlement. The court has disregarded the rules of federal Indian common law and statutory interpretation that evolved from almost two centuries of Indian law jurisprudence. The trend began in 1983 with *Penobscot Nation v. Stilphen* 461 A.2d 478 (Me. 1983), the case in which the court held that the Tribe could not operate gaming operations without state licensing.

Not only have Maine courts adopted an extremely narrow interpretation of “internal tribal matters,” but also certain Maine regulatory bodies have as well. Despite MITSC offering a contrary opinion on three separate occasions, the Land Use Regulation Commission (LURC), a body with planning and regulatory responsibility over areas of Maine without local governments, has asserted jurisdiction over Tribal projects on Wabanaki trust land. As a result, the Maine courts and executive branch have impeded the efforts of the Tribal communities to economically self-develop in order to preserve their cultures, protect their natural environments, and improve living conditions for Native people.

The federal courts have also been unfriendly to the Maine Tribes. By narrowly interpreting Tribal rights under the settlements, the federal courts have dealt some devastating blows to the Tribes, including the cases of *Houlton Band of Maliseet Indians v. Ryan*, 484 F.3d 73 (1st Cir. 2007) and *Aroostook Band of Micmacs v. Ryan* 484 F.3d 41 (1st Cir. 2007). The immediate impact of the court decisions subjects tribal employment disputes to state employment laws. But the full impact is much greater. After the *Ryan* decision, from the viewpoint of the First Circuit Court of Appeals, the historical Tribal sovereignty of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs is severely constricted because, in contrast to the Passamaquoddy Tribe and Penobscot Nation, their internal tribal matters are not protected under MICSA. Neither the Maliseet nor the Micmac have accepted the First Circuit Court of Appeals’ interpretation of their inherent right to self-determine their governmental affairs, including their relationships with their employees.

In 2007, the First Circuit Court of Appeals decided *State of Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). That case involved a decision by the Environmental Protection Agency (EPA) which gave the State of Maine permitting authority, under the Clean Water Act and MICSA, with regard to discharge of pollutants into territorial waters of the Penobscot Nation and Passamaquoddy Tribe, but exempted two Tribal-owned facilities from the State’s permitting program. Despite a detailed Opinion Letter from the U.S. Department of the Interior supporting the Tribe’s claims, the court upheld the State’s authority to regulate all of the disputed sites, including the two tribal-owned sites located on tribal lands which the EPA had found to have insignificant consequences for non-members of the tribes. With respect to the “internal tribal matters” exemption from state regulatory power in the MIA, and in keeping with the restrictive *Stilphen* rationale, the court stated that discharging pollutants into navigable waters is not of the same character as the list of Tribal powers which were intended to be shielded from state control, such as tribal elections, tribal membership or other exemplars that relate to the structure of Indian

government or the distribution of Tribal property. Significantly, the court held that the issue at hand was not even a close call and therefore did not require consideration of the balancing tests and factors that the First Circuit had previously applied in cases involving MICSA.

Understandably content with the strong advantage they have enjoyed in state and federal courts, the State of Maine has resisted Wabanaki efforts to have the parties agree to structural changes to MICSA and MIA that would address provisions that limit Wabanaki rights of self-determination and jurisdiction on their lands. By way of example, the State of Maine chose to join litigation initiated by three private paper corporations to diminish Passamaquoddy and Penobscot authority under the MIA's internal tribal matters provision (30 MRSA §6206). (See *Great Northern Paper v. Penobscot Nation*, 770 A.2d 574 (Me. 2001).

Action taken by government authorities:

The Maine Tribes' longstanding concerns with these Acts predate the current administrations in Washington, DC and Augusta, Maine. The initiatives undertaken by the administrations of President Barack Obama and Governor Paul LePage to recognize and strengthen the government-to-government relationship between their governments and Maine Tribes are appreciated.

State Government:

Governor LePage 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.

The last two administrations (Baldacci and Le Page) have appointed distinguished Indigenous People to important positions, with Governor LePage nominating Penobscot citizen Bonnie Newsom to the University of Maine System Board of Trustees and Passamaquoddy citizen Dr. Gail Dana-Sacco to a State seat on the Maine Indian Tribal-State Commission.

In addition, Governor LePage has been a strong supporter of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission to address what happened to Wabanaki children and families who have had involvement with the Maine child welfare system. On May 24, 2011, Governor LePage joined representatives from all five Tribal governments to sign a Declaration of Intent committing the parties to undertake a Truth and Reconciliation Commission (TRC). In March 2012, Governor LePage stated his support for the next step in the TRC process by committing to signing the Mandate document specifying how the Truth and Reconciliation Commission would be seated, its charge, and time allowed to conduct its work. Though all these actions have been positive, they do not address the deep-seated structural flaws of the Maine Indian Claims Settlement Act (MICSA) and Maine Implementing Act (MIA).

Pertinent to this discussion, on April 15, 2008, the Maine Legislature passed a joint resolution "to express support for the United Nations Declaration on the Rights of Indigenous Peoples."

MITSC:

MITSC, as an intergovernmental body, has focused its energy during the last decade on attempting to persuade the State of Maine to listen to Wabanaki grievances concerning the content, interpretation, and implementation of MICSA and MIA and the need to amend the Acts. In 2002 – 2003, MITSC worked on crafting possible amendments to the MIA that would have been presented to Wabanaki governments and the State of Maine for legislative action. That process ended when the Wabanaki signatories withdrew from MITSC for a period of 14 months to protest the results of a statewide vote on a Wabanaki gaming initiative and other longstanding grievances. At the Assembly of Governors and Chiefs in 2006, a seeming diplomatic breakthrough occurred when Maine Governor John Baldacci agreed to create a work group comprised of Tribal and State representatives to examine specific aspects of MIA and report back to the signatories with recommended changes.

The Tribal-State Work Group made eight unanimous recommendations in its January 2008 report. In the second session of 123rd Legislative Session, the Maine Legislature's Judiciary Committee substantially altered the recommendations, resulting in the Wabanaki withdrawing their support for the final bill and causing extreme ill will between the parties, with Wabanaki accusations that the State had acted in bad faith.

Despite these major diplomatic initiatives by MITSC, Tribal leaders and State legislators, the fundamental differences between the Wabanaki and the State of Maine remain. Over the years, some minor changes have been made to MIA but never any amendments that address the core of Wabanaki concerns and which have been the direct cause of the disparate living conditions for Tribal peoples.

Federal Government:

President Obama issued his Presidential Memorandum on November 5, 2009 directing implementation of Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments.

On December 16, 2010, the US issued its “Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples.”

With regard to the Wabanaki specifically, the Federal Government that holds ultimate responsibility for the relationship with the Indigenous Peoples living within the borders of the US has been completely absent from any initiative to address the framework of the MICSA and MIA. The Federal Government has the responsibility to fix what was promoted in 1980 as a model settlement because it has not only failed to end the stark disparities in Wabanaki living conditions, but it continues to restrict the Houlton Band of Maliseets', Passamaquoddy Tribe's, and Penobscot Nation's capacity to self-determine solutions to these issues.

In closing, MITSC raises these concerns to you with the hope that your office can engage the US to address the human rights concerns of the Maine Tribes and the flawed MICSA and MIA that conflict with UNDRIP. **There are also other Tribes located in the Eastern US that entered into similar settlement agreements that restrict their inherent rights to self-determination. Ideally, all of these flawed agreements should be reviewed with the aim to restructure them to conform with UNDRIP and other international agreements and covenants applicable to Indigenous peoples.**

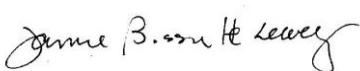
Sincerely,



John Dieffenbacher-Krall
Executive Director



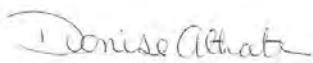
Matt Dana
Passamaquoddy Representative to MITSC



Jamie Bissonette Lewey
Chair



Gail Dana-Sacco
State Representative to MITSC



Denise Altvater
Passamaquoddy Representative to MITSC



Bonnie Newsom
Penobscot Representative to MITSC



Cushman Anthony
State Representative to MITSC



Roy Partridge
State Representative to MITSC



John Banks
Penobscot Representative to MITSC



Linda Raymond
Maliseet Representative to MITSC



John Boland
State Representative to MITSC



Brian Reynolds
Maliseet Representative to MITSC

6

Harold Clossey
State Representative to MITSC

Paul Thibeault

Paul Thibeault
State Representative to MITSC

Appendix 26

Human Rights Council

Twenty-first session

Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya

Addendum

The situation of indigenous peoples in the United States of America***

A/HRC/21/47/Add.1

p. 36

Appendix II

Summary of information and allegations presented by indigenous peoples, groups, and organizations to the Special Rapporteur on the rights of indigenous peoples

8. Maine Indian Tribal - State Commission (MITSC): 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.

Appendix 27

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, Sysladopsis (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 28

Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission Mandate Signed 6/29/2012

The Convening Group to establish the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission is comprised of individuals with a connection to Tribal child welfare and social services from each of the five Wabanaki communities (Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motabkmikuk, Passamaquoddy Tribe at Sipayik, Penobscot Indian Nation), as well as staff from the Muskie School of Public Service, Wabanaki Mental Health Associates and American Friends Service Committee (AFSC), and the State of Maine Department of Health and Human Services Office of Child and Family Services (including the Child Welfare Director, Director of Policy and Practice, District Operations Managers and the Manager of Program and Quality Improvement).

Preamble

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC) is formed to uncover and acknowledge the truth, create opportunities to heal and learn from that truth, and collaborate to operate the best child welfare system possible for Wabanaki children, a goal shared by all the signatories to the Declaration of Intent. The Commission's investigation shall focus on the period from passage of the 1978 Indian Child Welfare Act (ICWA) to the authorization of the Mandate. This investigation will also include information that contributed to the passage of the ICWA in order to put understanding of the truth in a proper context.

Truth and reconciliation is an ongoing process with commitment from Wabanaki people and their respective governments, state government and the Maine Indian Tribal-State Commission. This TRC will learn and benefit from the participation of those affected including the Wabanaki people who were formerly clients of Maine child welfare, their families, communities, religious entities, former state and tribal child welfare employees, and the people of Maine. Reconciliation may occur within or between any of the above groups and includes relational, systemic and cultural change. The Convening Group will continue to support the Commission by promoting the TRC in each community, creating community and individual supports for those who will participate in or be touched by the Commission's work, acting in an advisory capacity to the Commission as they engage each community, and assuring that the intention of the TRC Mandate is being addressed and honored. However, the governmental signatories affirm the independence of the TRC to make such findings and recommendations as they deem appropriate given the testimony and information that comes before them.

The Wabanaki Tribes and the State of Maine cannot change the events that occurred and their impact on individuals, families, and communities. However, genuine healing can begin with an honest recognition of events that have occurred. By honestly examining the truth and recognizing what has been done, the State of Maine, in collaboration with the Tribes, can implement changes in child welfare practice to prevent recurrence and identify how truth and reconciliation may benefit other areas of Maine tribal-state relations. Through this, forgiveness and reconciliation may be achieved.

Establishing the Commission

The Convening Group that worked with the Wabanaki and Maine governments drafting the Declaration of Intent and this Mandate will ensure the selection of suitable commissioners and organizing the orientation process for the Commission members. The Declaration of Intent was signed on May 24, 2011 by the Governor of Maine, Chiefs and representatives of the five Wabanaki communities, and Maine Indian Tribal-State Commission (MITSC) committing the signatories to undertake a truth and reconciliation process.

This document creates the Truth and Reconciliation process between the State of Maine and the Wabanaki Tribes. The Mandate for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission was written by the Convening Group, supported by the Maine Indian Tribal-State Commission and endorsed by the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, Penobscot Indian Nation, and the State of Maine. The parties to this Truth and Reconciliation Commission process and mandate will work in good faith with the Commission in accordance with the expressed commitments made in this document. This will include cooperation in providing public information and confidential information when a legal release of information has been executed to help the Commission fulfill its mandate, as well as reviewing and considering the Commission's findings and recommendations. The Commission may request the production of documents in the possession of governmental and private interests in addition to testimony from individuals the Commission believes possess information important to fulfilling its work.

The Mandate sets forth the general parameters that will shape the Truth and Reconciliation Commission's (TRC) work.

The Commission shall be an autonomous body comprised of five Commissioners that are trusted by both tribal and state governments and their respective citizens. The criteria for Commissioners shall be persons of recognized integrity, stature, empathy and respect with a demonstrated commitment to the values of truth, reconciliation, equity and justice.

At least 4 of the commissioners will be current residents of the State of Maine. All will be selected in accordance with "The Selection Process for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission" document, which is attached. The Commission will designate the Commission chair(s) from within its own membership.

Objectives

Through the Declaration of Intent, the Wabanaki Tribes and State of Maine have agreed that a historic Truth and Reconciliation Commission will be established to contribute to truth, healing and reconciliation.

Built upon the Declaration of Intent, the objectives for this Truth and Reconciliation Commission are to:

1. Give voice to Wabanaki people who have had experiences with Maine state child welfare;
2. Give voice to state and tribal child welfare staff, care providers and legal community in regard to their work with Wabanaki families;
3. Create and establish a more complete account of the history of the Wabanaki people in the state child welfare system;

4. Work in collaboration with the TRC Community Groups and Convening Group to provide opportunities for healing and deeper understanding for Wabanaki people and state child welfare staff;
5. Improve child welfare practices and create sustainable change in child welfare that strives for the best possible system;
6. Formulate recommendations to state and tribal governments and other entities to ensure that the lessons of the truth are not forgotten and to further the objectives of the Commission; and
7. Promote individual, relational, systemic and cultural reconciliation.

Commission's Activities

The Truth and Reconciliation Commission will clarify the experiences of Wabanaki people with the Maine child welfare system during the time period from 1978 to the date of this Mandate with historical references as appropriate. It will seek to understand why these experiences occurred and determine any causes that yet need remedying. The Commission will seek to recognize the impact of these experiences on individuals, families, communities, cultures and state child welfare services.

The Commission will carry out its work over a three-year period, allowing initial time for securing funding and staff, developing an operational plan and beginning its activities. The Commission will convene a first meeting, as determined by the Commissioners, within 30 days of being sworn in. Within 90 days of that first meeting the Commission will undertake orientation with the Convening Group to the background, purpose and direction of the TRC, initial planning and set-up, the determination of its internal procedures and selection and appointment of its key staff. From its first meeting, the Commission will have a period of 27 months to fulfill the terms of its mandate. The Commission may call upon outside resources for administrative support during its initial planning and set-up phase. If necessary, the period of the Commission's mandate may be extended for up to 6 more months, with the permission of the signatories.

To achieve the objectives set out by this mandate and to fulfill the Declaration of Intent, the Commission and its staff shall conduct such research and receive statements and documents from Tribal people formerly in state custody, their families, community members, current and former child welfare professionals, and all other interested participants, make use of all documents and materials produced by the parties for the purpose of articulating an accurate and comprehensive understanding of the experiences of Wabanaki people in state child welfare, and analyze and discuss the information and statements it has gathered to create a common understanding, promote healing, and to make recommendations. The Commission will have no authority to either pursue criminal or civil claims or to grant immunity from such claims. The objectives of the Commission are to create a common understanding, promote healing, and make recommendations for child welfare systems reform through seeking, learning and reporting the truth, which will be accomplished by activities that include, but are not limited to:

1. Utilizing the Convening Group's support and guidance regarding TRC activities and engagement of the communities, including participating in up to 6 statewide events that may be hosted by each community.
2. Engaging communities in identifying individuals to be interviewed and to provide information to be reviewed by the Commission.
3. Seeking any information that would be relevant to creating common understanding, promoting healing, and making recommendations towards child welfare systems change.
4. Coordinating truth seeking activities with Wabanaki communities and the State of Maine.

5. Planning and implementing public outreach and media activities to fulfill the purpose of the Commission.
6. Within the parameters of state and tribal law, ensuring that ownership of information produced through the proceedings respects requests for confidentiality and assures privacy to protect individuals from experiencing further harm.
7. Summarize truth seeking activities (e.g., statement taking, hearings, examination of archives, etc.) with each community in a format that is preferred by each community (e.g., circles, forums, written draft findings and/or celebration, etc.).
8. Publish an overall report at the conclusion of its investigation. The report shall document an accurate accounting of the experiences of Wabanaki people with Maine state child welfare from 1978 to the signing of this Mandate with historical references as appropriate. The report shall include any recommendations to effect individual, family, community and cultural healing as well as changes to child welfare practice that can assure that detrimental experiences will not be repeated.
9. Providing the Commission's report to the public and specifically to the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, Penobscot Indian Nation, the State of Maine, Maine Indian Tribal-State Commission and the Convening Group for review and consideration of the Commission's findings. Additional individuals and organizations which are recognized as parties to the TRC will be provided with the final report as well.
10. Holding a closing ceremony that includes the presentation of its report and recognizing the findings and recommendations that have been determined.
11. Archiving all such documents, materials, and transcripts or recordings of statements received, in a manner that will ensure their preservation and accessibility to the public and in accordance with agreements with individuals, between the Maine State and Wabanaki governments and any other applicable legislation.

We believe that these goals and activities will promote healing for Wabanaki people and communities which have been impacted by generations of trauma and will result in recommendations towards child welfare systems improvement.

By signing this mandate, the governments of the State of Maine, Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, and Penobscot Indian Nation are expressing their support for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission's exploration of what has happened, what is happening and what needs to happen in relation to state child welfare practices with Wabanaki children and families. Our commitment is to uncover the truth, embrace its lessons and collaboratively focus our efforts on activities that will help us learn from the past so that we might move forward as equal partners invested in promoting best child welfare practice for the Wabanaki people of Maine.

To support the purpose of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, the governments of the State of Maine, Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe at Motahkmikuk, Passamaquoddy Tribe at Sipayik, and Penobscot Indian Nation agree to:

- Publicize and encourage participation in the Commission events and hearings.
- Educate and inform state agency staff about the Commission's purpose, proceedings and implications for their role.

- Provide state agency staff release time and ensure that they are not penalized if they talk with or present to the Commission.
- Produce documents requested by the Commission in a manner consistent with applicable laws, in a timely manner, and at no cost to the Commission. This may necessitate advance investigatory work to identify the storage locations of historical documents and records.
- Provide meeting space for the Commission's events, meetings and hearings in spaces suitable to provide access for these activities.
- Encourage and make available government representatives to attend Commission events, meetings, ceremonies and hearings.
- Encourage state agency participation on sub-committees and workgroups that support the work of the Commission.
- Make space available for visible display of information and exhibits about the Commission and its work.
- Read and take into consideration the report and recommendations of the Commission. This includes participating in presentations of and discussion forums about the Commission's report.

We welcome the Commission to our communities, facilities and agencies as it carries out its activities as spelled out in the Commission mandate. We commit ourselves to carry out this process with integrity; promoting truth, understanding and genuine reconciliation.

Aroostook Band of Micmacs

Date

Houlton Band of Maliseet Indians

Date

Passamaquoddy Tribe at Motahkmikuk

Date

Passamaquoddy Tribe at Sipayik

Date

Penobscot Indian Nation

Date

State of Maine

Date

Appendix 29

NEWS RELEASE

For Immediate Release: Friday, June 29, 2012

For More Information: Evan Beal, Office of Governor LePage (207) 287-5086

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

John Dieffenbacher-Krall, MITSC (207) 817-3799 (c) (207) 944-8376

Wabanaki Tribal Governments, State of Maine Sign Mandate Commencing First-in-the-Nation Truth & Reconciliation Process Examining Wabanaki Experience with the Maine Child Welfare System mainetribealtrc.org

(Hall of Flags, State Capital, Augusta) Five Wabanaki Chiefs and Governor Paul LePage signed a Mandate document commencing the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission process involving a collaborative effort to examine what has happened, what is happening, and what needs to happen regarding Maine child welfare practices affecting Wabanaki people. The public signing ceremony, which took place at the Hall of Flags in the State Capital, represents a historic agreement between Wabanaki Tribal Governments and the State of Maine to uncover and acknowledge the truth, 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 Mandate.

Governor LePage declared, “I am happy we are able to take this next step to continue this important effort. I see this Commission as a critical step to improve relations between the State and the Tribes. As Governor, I believe my administration’s relations with the Tribes have always been good. Repairing damage from prior administrations is a gesture that is important to me.”

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (TRC) Process represents the first truth and reconciliation effort within US territory that has been collaboratively developed between Indian nations and a state government. 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. Last year all five Wabanaki Tribal Governments and Governor LePage signed the Declaration of Intent to undertake the TRC. Today's signing ceremony fulfills that May 24, 2011 commitment.

Chief Francis stated, "The TRC process stands out as a model of collaboration that can be replicated not only in other areas of Wabanaki-Maine relations, but between tribes and states across the country that are dealing with ICWA issues. One of the most distinct aspects of this initiative is that there is no shame and blame, but just people from the Tribes and the State who are committed to making sure this never happens again."

Wabanaki and State representatives have been collaborating for more than a decade, which has and will continue 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.

Chief Brenda Commander of the Houlton Band of Maliseet Indians affirmed, "As the Chief of the Houlton Band of Maliseet Indians, a mother, and a grandmother, I know the incredible importance of our children. At one time, 16% of all Maliseet children were in State custody. The disproportionate taking of our children threatened the survival of our Tribe. I am pleased that the State of Maine stands ready to acknowledge the mistakes of the past and move forward on a new path guided by systems reform and best practices for our children."

The impetus for the TRC comprises three key purposes: 1) to create a common understanding between the Wabanaki and the State of Maine concerning what happened and is happening to Wabanaki children in the child welfare system; 2) to act on the information revealed during the TRC to implement systems change to improve the system and to better support the children and families served; and 3) to promote healing both among Wabanaki children and their families and the people who administered a widely acknowledged less than ideal system.

Chief Richard Getchell of the Aroostook Band of Micmacs cited the impact of boarding schools on the Micmac People. "Many of our people survived the Canadian and American boarding school system. The trauma that those children, who are now the elders of our Tribe,

grandmothers and grandfathers, have unwittingly passed down through the generations needs to be acknowledged so we can heal as individuals, families and as a Tribe. This Truth and Reconciliation Commission process is crucial to that healing. We must give our people the opportunity to share their experiences, to bring voice to all that has been suppressed and repressed for far too many years.”

Chief Joseph Socobasin of the Passamaquoddy Tribe at Motahkmikuk added, “By unearthing and acknowledging the truth, we are able to deal with the pain and heal from the trauma. The past informs the future and once Wabanaki and State citizens are able to share their experiences and tell their stories, we can reconcile the past with the present to make a better future. I look forward to appointing a commission member from Indian Township and participating in the final outcome of the TRC goals and objectives.”

In 1978, the U.S. Congress passed the Indian Child Welfare Act (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).

Chief Reuben Clayton Cleaves of the Passamaquoddy Tribe at Sipayik concluded, “Today’s event is another step in the right direction for recovery and a perfect example of ‘government-to-government relations.’ In the Passamaquoddy language, one word summarizes this special event – WILIPOMAWSAWKON. I want to thank all tribal members for making this special event possible. Thank you to the Maine Indian Tribal- State Commission and a special thanks to State of Maine Governor Mr. Paul LePage for the support you have given to Wabanaki Tribes since the beginning of this special and historical endeavor.”

All the signatories to the Mandate thanked the Andrus Family Fund for its financial support for the Convening Group, creating support for Wabanaki communities, and funding positions that will staff the Selection Panel and initial start-up phase of the TRC. Next steps will include the seating of a 13-member Selection Panel who will choose the five TRC Commissioners, selecting the members of the TRC, the TRC organizing itself, and the Commission securing additional funding. Throughout the process Wabanaki Community Groups

led by community members will provide support and a local point of contact for all Wabanaki people who become involved in the TRC process.

-30-

Appendix 30

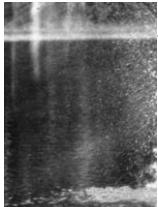
“The Maine Implementing Act Through the Lens of the UN Declaration on the Rights of Indigenous Peoples” presented by John Dieffenbacher-Krall at the Fourth Annual Meeting of the Native American & Indigenous Studies Association, June 4, 2012

Slide 1

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 2



“. . . 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 Philips Penobscot negotiator

Slide 3



The UNDRIP was adopted
September 13, 2007

143 in favor
11 abstain
4 oppose Australia, Canada, New Zealand, and the United States, all 4 would eventually endorse the UNDRIP.

Slide 4



"This is an historic moment when United Nation member states and Indigenous Peoples have reconciled with their painful histories and are resolved to move forward together on the path of human rights, justice and development for all."

UN General Secretary Ban Ki-moon at the signing of the UNDRIP

Slide 5



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 6



Slide 7

In a non-binding text, the declaration sets out the individual and collective rights of Indigenous Peoples, as well as their rights to culture, identity, language, employment, health, education and other issues.

Slide 8

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 9



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

Slide 10

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 11

No Tribe enters into an agreement to remain impoverished.

- The subjugation of Wabanaki people under the framework of these laws severely impact 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 1% of the Houlton Band of Maliseets population exceeds 55 years of age.
- 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 12



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 13

Responsible Parties:

The principal actors have been the State of Maine and the US Government.

Despite executing its first foreign treaty with the Wabanaki, the State of Maine did not recognize Indigenous sovereignty until compelled to do so by *Passamaquoddy v. Morton* decided January 20, 1975.

Slide 14

30 §6204. LAWS OF THE STATE TO APPLY TO INDIAN LANDS

The State of Maine insisted that state laws apply to the Tribes except in Narrow instances.

Maine's insistence on its continued control over the Wabanaki except in certain instances has resulted in the crisis experienced by Wabanaki peoples and threatens their ability to function as distinct, independent governments, something the MICSA was supposed to guarantee.

Slide 15

2006-2008: The Tribal State Work Group:

Principal negotiators for the State and Federal Governments verify that the MIA should be viewed as dynamic and flexible.

To this day, there has never been a substantial amendment to the MIA.

Slide 16

Courts:

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

Penobscot Nation v. Stilphen

Houlton Band of Maliseet Indians v. Ryan

Aroostook Band of Micmacs v. Ryan

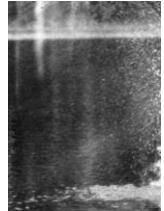
State of Maine v. Johnson.

Slide 17

Trust and Responsibility: The role of the US Federal Government

The Federal government has been completely absent from any initiative to address the framework of the MICSA and MIA. The Federal government has the responsibility to fix what was promised in 1980 as a model settlement because it has not only failed to end the stark disparities in Wabanaki living conditions, but continues to restrict their capacity to self-determine solutions to these issues.

Slide 18



" . . . 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 Philips Penobscot negotiator