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# An Analysis of the Status of Wabanaki-State Relations along with a Summary of the Activities of the Maine Indian Tribal-State Commission (July 1, 2008 – June 30, 2009)

Maine Indian Tribal-State Commission

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**An Analysis of the Status of Wabanaki-State Relations  
along with a Summary of the Activities of the Maine  
Indian Tribal-State Commission  
(July 1, 2008 – June 30, 2009)**



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## **Table of Contents**

	<b><u>Page</u></b>
<b>I. Executive Summary</b>	<b>i</b>
<b>II. Introduction</b>	<b>1</b>
A. Purpose and Organization of This Report	
<b>III. Overview of MITSC</b>	<b>1</b>
A. Purpose and Responsibilities	
B. MITSC Members	
C. MITSC Meetings	
D. Governmental Outreach	
E. Media Outreach	
F. Religious and Non-Governmental Organization (NGO) Outreach	
G. Funding	
<b>IV. Failure of Signatories Advance Clear Positions and Implement Agreed Upon Decisions Hinders Tribal-State Relations</b>	<b>5</b>
A. Signatories Lack Structure and Capacity to Deal Effectively with Each Other	
B. Good Intentions Insufficient to Surmount Core Unresolved Issues	
C. Wabanaki Disunity and State of Maine Executive, Legislative Leadership Confusion	
D. Sustaining Decision Maker and Public Interest in Wabanaki-State Relations	
<b>V. Assessment of MITSC Activities for Fiscal Year 2009 (July 1, 2008 – June 30, 2009)</b>	<b>14</b>
A. Support of LD 1377, An Act To Amend the 1980 Maine Implementing Act To Authorize the Establishment of a Tribal Court for the Houlton Band of Maliseet Indians and Related Matters	
B. Strengthen Maine’s Offensive Place Names Law, LD 797, An Act To Fully Implement the Legislative Intent in Prohibiting Offensive Place Names	
C. Block State Funding for a Private Business Using an Offensive Place Name	
D. Expand Legal Gaming Parity for the Houlton Band of Maliseet Indians, LD 526, An Act To Clarify the Beano and Bingo Laws As They Apply to Federally Recognized Tribes	
E. Recognize Native American Veterans, LD 30, An Act To Establish Native American Veterans Day	
F. Establish Equitable Budget Setting Process for MITSC Involving All Signatories to MIA	

- G. Spur Effective Implementation of LD 291, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools
- H. Support Wabanaki/Bates, Bowdoin, and Colby Colleges Collaboration
- I. Support Work Between the Passamaquoddy Criminal Justice Commission and the Department of Corrections to Address Barriers Experienced by Wabanaki Inmates Attempting to Practice Their Religion
- J. Assert MITSC Fishery Management Responsibilities in St. Croix Watershed
- K. Eliminate Dated and Offensive Language from the 2009 Senate and House Registers
- L. Promote Resolution of Wabanaki-State Dispute over EPA Delegation of Legal Authority to the State of Maine over Waters Within Indian Territory

## **Appendices**

- I. Southern Aroostook Ministerial Association Letter to the Houlton Band of Maliseet Indians and the Towns of Houlton, Littleton, and Monticello May 2008
- II. Town of Houlton Letter to Chief Brenda Commander, Houlton Band of Maliseet Indians, July 15, 2008
- III. Testimony on LD 526 An Act To Clarify the Beano and Bingo Laws As They Apply to Federally Recognized Tribes Legal and Veterans Affairs Committee April 27, 2009
- IV. Chief Brenda Commander Letter to Governor John Baldacci, April 23, 2008
- V. Chief Kirk Francis Letter to Governor John Baldacci, April 30, 2008
- VI. MITSC Executive Director John Dieffenbacher-Krall letter to Catherine Bonner, August 13, 2008
- VII. Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriations Proposed for MITSC in FYs 2010 and 2011 contained in LD 353, 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, 2010 and June 30, 2011, and Recommendations for a Separate Budget Setting Process for Determining the MITSC Budget February 10, 2009

- VIII. WBBC Annual Report September 2008
- IX. Report Sweat Lodge Ceremony at Maine State Prison September 27, 2008
- X. Paul Bisulca Letter to Department of Corrections Commissioner Martin Magnusson, October 28, 2008
- XI. Extract of Minutes of a Regular Pleasant Point Governor and Council Meeting Held on Tuesday, February 17, 2009 at 5:00 P.M.
- XII. Paul Bisulca Letter to Colonel Philip T Feir, Co-Chair International St. Croix River Watershed Board, July 24, 2009
- XIII. Paul Bisulca Letter to Colonel Philip T Feir, Co-Chair International St. Croix River Watershed Board, August 26, 2009
- XIV. Andrew Fisk, Bureau Director, Land & Water Quality, ME DEP, Letter to Stephen Perkins, US EPA, July 1, 2008
- XV. Paul Bisulca Letter to Governor John Baldacci, November 21, 2008
- XVI. Testimony on LD 796, An Act To Direct Fines Collected on Tribal Lands to the Passamaquoddy Tribe and Penobscot Nation Judiciary Committee April 7, 2009

## **I. Executive Summary**

### **A Summary of the Activities of the Maine Indian Tribal-State Commission (2008 – 2009)**

Tribal-State relations remained deeply strained at the conclusion of June 2009 though some positive steps by the new chairs of the Maine Legislature's Judiciary Committee helped to relieve some of the tension in the relationship. Incremental progress was made, especially for the Houlton Band of Maliseet Indians, who gained some new powers and obtained the right to conduct high stakes bingo. Yet at the end of the reporting period the Penobscot Nation had maintained its withdrawal from MITSC making the Commission's ability to hold official meetings more difficult. More importantly, the political forum that MITSC provides for the Tribes and the State to discuss and to resolve issues was weakened due to the Penobscot Nation's absence, and political momentum for resolving the more difficult problems largely dissipated.

The State of Maine continued to demonstrate a willingness to address cultural and historical concerns of the Tribes by instituting a day to honor Native American veterans, strengthening the offensive geographic place names law by prohibiting a variant usage of squa, and dropping the History of Maine section from the *Senate and House Register* which contained inaccurate information concerning the Wabanaki. Wabanaki leaders and citizens told MITSC that they appreciated these State actions. However, these positive actions have also prompted questioning by the Tribes concerning the State's willingness to address deep-seated differences between the parties concerning sovereignty, jurisdiction, and differing interpretations of the Maine Implementing Act (MIA).

The Tribal-State Work Group (TSWG) was conceived as a small but certain step to address some of the fundamental differences between the Tribes and the State concerning MIA. The TSWG recommendation concerning the applicability of the Freedom of Access Act to the Passamaquoddy Tribe and Penobscot Nation is especially important to the Wabanaki as positive action on that recommendation through amending MIA would have boosted Tribal confidence that the State was willing to address the most deeply held differences between the parties. MITSC believes the State underestimated the impact failing to act on the Freedom of Access Act applicability and the other TSWG recommendations would have on overall Wabanaki-Maine relations.

Though thirty years have passed since the signing of the Maine Indian Claims Settlement Act, the signatories are still adjusting to their new relationship after a nearly 160 year period of State dominance and control. Maine's failure to address tribal understandings and expectations produced by MIA result in conflict. MITSC continues to argue that the State does not need to fear greater Wabanaki autonomy and independence. Changing the Wabanaki-Maine relationship to one focused more on collaboration instead of conflict will yield significant benefits for both the State and the Tribes. MITSC contends its recommendations made in its last Annual Report remain valid as steps likely to produce better tribal-state relations. Those four recommendations include adoption of a new process for determining the MITSC budget, acting on the remaining TSWG recommendations, instituting a permanent process for orienting new legislators, and ensuring the effective implementation of LD 291, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools.

## **II. Introduction**

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

This report primarily summarizes MITSC's work from July 1, 2008 to June 30, 2009. MITSC's bylaws specify an annual report will be transmitted to the State, the Penobscot Nation, and the Passamaquoddy Tribe at the close of each year. MITSC issued its last annual report in October 2008. It covered a 12 month period from July 1, 2007 to June 30, 2008.

*Section III* of this report entails an overview of MITSC and outreach it performed to governments, the media, religious community, and non-governmental organizations (NGOs). *Section IV* describes the condition of Tribal-State relations and challenges confronting MITSC as it assists the Wabanaki and the State to improve tribal-state relations. *Section V* explains MITSC's activities implementing its 2008-2009 work plan. When the term "Tribes" is used in this report, it refers to the Passamaquoddy Tribe and Penobscot Nation, unless the context indicates otherwise.

## **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 Maine Implementing Act (MIA) directs MITSC 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."

On October 1, 2009, the Houlton Band of Maliseet Indians became official members of MITSC due to enactment of LD 1377, An Act To Amend the 1980 Maine Implementing Act To Authorize the Establishment of a Tribal Court for the Houlton Band of Maliseet Indians and Related Matters (Public Law Chapter 384). The successful enactment of LD 1377 follows two previous failed attempts in 2007, LD 373, and 2008, LD 2221, to effect the same change. The changes made to MIA by Public Law Chapter 384 now require MITSC to also consider "the social, economic and legal relationship" between the signatories and the Houlton Band of Maliseet Indians and to report to the newest tribal member along with the other signatories.

MIA specifies additional responsibilities for MITSC:

- Land Acquisition. Make recommendations about the acquisition of certain lands to be included in Indian Territory.
- Fishing Rules. Promulgate fishing rules for certain ponds, rivers, and streams adjacent to or within Indian Territory.

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

MITSC also performs an informal information and referral function for people looking for information about the Settlement, the Wabanaki, Tribal enrollment, State of Maine Tuition Waiver Program, tribal-state relations, and tracing possible tribal ancestry. It also provides to the Executive and Legislative Branches of State Government staff support pertaining to Indian-related legislation and other Indian matters. Additionally, MITSC assists Wabanaki Governments with legislation, their diplomatic efforts with the State and non-governmental entities, and helps organize and coordinate periodic Wabanaki Leaders meetings.

## **B. MITSC Members**

Due to the changes stemming from enactment of Public Law Ch. 384, MITSC operates with 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. At the date of this report’s publication, the State of Maine had not named its two new appointees to the Commission.

Three Commissioner changes occurred in FY 2009. Passamaquoddy Chief Richard Phillips-Doyle appointed Denise Altvater to replace Hilda Lewis on January 27, 2009. Mike Hastings, the longest serving State Commissioner at the time, resigned from MITSC effective March 31, 2009. James Nimon resigned on March 27, 2009. Governor Baldacci named William Osborne and Diana Scully, a former MITSC Executive Director, to replace Mr. Hastings and Mr. Nimon. The State Senate confirmed Mr. Osborne and Ms. Scully for their MITSC appointments on June 10, 2009.

## **C. MITSC Meetings**

From July 1, 2007 through June 30, 2008, MITSC held 2 meetings, both at Colby College. MITSC meeting frequency declined compared to recent years (7 in FY 07, 8 in FY 08) due in part to the Penobscot Nation deciding to suspend its participation in MITSC. With the Penobscot Nation withdrawal from MITSC and the State’s need to appoint two new commissioners to the Commission, MITSC must achieve perfect attendance to have a quorum.

Another contributing factor to the reduction in MITSC meetings during FY 09 involved the reduction in MITSC funding. Though State of Maine support declined slightly from a FY 08 total of \$73,397 to an FY 09 amount of \$72,652, Wabanaki support of MITSC dropped to nothing as a result of the Tribes refusing to make contributions to MITSC operations until the adoption of an equitable budget process. MITSC sustained an overall \$32,271 reduction in



operating income from FY 08 to FY 09. In order to conserve limited MITSC financial resources, the Commission reduced the number of meetings it held.

#### **D. Governmental Outreach**

MITSC views regular and substantive communications with all four signatories to MIA as essential to fulfilling its responsibilities under 30 MRSA §6212. MITSC Executive Director John Dieffenbacher-Krall regularly emails Wabanaki and State leaders news articles and other updates covering topics that could potentially or do impact tribal-state relations. The MITSC Chair and the Executive Director strive to meet with Wabanaki and State Leaders whenever the situation in MITSC's judgment would benefit from face-to-face discussion. MITSC also keeps a number of staff employed by the Tribes and the State informed of important tribal-state developments. MITSC maintains a policy of meeting with any official representative of any of the signatories whenever requested. The Commission finds that the Wabanaki far more regularly seek consultation with MITSC as compared to the State.

MITSC continued to travel around the State to meet with Tribal and Maine leaders. MITSC also helped convene three Wabanaki Leaders meetings on August 27 and November 20, 2008 and June 1, 2009. The Commission also hosted a conference call January 13, 2009 the day before Wabanaki leaders met with State leaders. MITSC Chair Paul Bisulca considers the Wabanaki Leaders meetings to be highly valuable forums at which he can communicate with the chiefs, hear their individual and collective concerns, and then articulate Tribal leaders' concerns to other Maine leaders.

Besides the collective Wabanaki meetings that MITSC attended, the Commission also met with individual Wabanaki Tribes. MITSC traveled to the Passamaquoddy Tribe at Sipayik on July 10, 2008 to talk to elected officials and community members in order to update them on the state of Wabanaki-State relations. MITSC met with then newly elected Penobscot Tribal Representative Wayne Mitchell on September 19, 2008 to congratulate him and to establish an effective working relationship. The Penobscot Nation invited MITSC on October 21, 2008 to make its arguments before the Tribal Council concerning why the Tribe should resume its participation in MITSC. Both MITSC Chairman Paul Bisulca and Executive Director John Dieffenbacher-Krall attended the Penobscot Nation Inaugural held January 16, 2009.

MITSC met with both executive and legislative leadership and staff for the State of Maine during the period covered by this report. MITSC briefed Senator Elizabeth Schneider and Representative Dick Blanchard and legislative candidate Adam Goode (Goode was later elected by Bangor voters in House District 15) on July 10, 2008 about the status of tribal-state relations. On November 3, 2008, Paul Bisulca and Mike Hastings met with Governor Baldacci along with his aide Pat Ende. Paul Bisulca, Greg Cunningham, and John Dieffenbacher-Krall met with Representative Charles Priest on November 7, 2008. The next month Paul Bisulca and John Dieffenbacher-Krall met separately with House Majority Leader John Piotti on December 5 and Senate President Elizabeth Mitchell along with her aide Peggy Schaeffer on December 10. Paul Bisulca met with House Speaker Hannah Pingree on December 16. Judiciary Committee Chairs

Senator Larry Bliss and Representative Charles Priest invited Paul Bisulca and John Dieffenbacher-Krall to talk to them January 15, 2009.

MITSC again encouraged the Maine Development Foundation to incorporate visits to Wabanaki communities during the biennial legislative bus tour it organizes. The 2009 bus tour stopped at Indian Island on January 9. MITSC helped to coordinate the event and provided logistical support including arrangements for lunch.

#### **E. Media Outreach**

As part of increasing its political relevance and effectiveness and to enhance public understanding of tribal-state relations, MITSC has actively worked to raise its public profile. Reporters and editorial writers regularly receive updates from MITSC concerning important developments affecting tribal-state relations and/or news affecting one or more of the Wabanaki Tribes. MITSC conducted six editorial board meetings during the report year with editors working for five different daily newspapers. The Commission also responded to numerous reporter inquiries during the year.

MITSC has provided various forms of support to the Wabanaki/Bates, Bowdoin, and Colby Collaborative. During its early spring 2009 visits to Wabanaki communities, Colby College asked MITSC to assist it with media outreach. MITSC generated three print articles in the *Bangor Daily News*, *Penobscot Times*, and *The Quoddy Tides* along with a radio report by *Maine Public Radio* aired April 3, 2009.

#### **F. Religious and Non-Governmental Organization (NGO) Outreach**

MITSC knows that Tribal and State decision makers respond to the demands of their constituents. Tribal-state relations can easily languish as political leaders devote their attention to other issues. Ideally, Tribal and State decision makers would afford MITSC sufficient deference so they would seriously consider any issue the Commission brought to their attention. Unfortunately, MITSC still has considerable work to do to gain the institutional stature it was intended to have under MIA. For instances when MITSC solely speaking to an issue appears to have insufficient impact on the relevant decision makers, we encourage both Tribal and State constituents to contact their governmental leaders.

Besides ongoing relationships with the Friends Committee on Maine Public Policy, a Quaker group, and the Episcopal Committee on Indian Relations, MITSC reached out to several new groups and/or renewed relationships that had lapsed. On September 9, 2008, Paul Bisulca and John Dieffenbacher-Krall met with several senior staff from the Maine Humanities Council. The meeting focused on Maine Public Law 2001, Chapter 403, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools.

In October 2008, MITSC representatives appeared as featured speakers at two events. Paul Bisulca addressed the Stockton Springs Historical Society on October 5. John Dieffenbacher-

Krall spoke at the Annual Maine Association Meeting of the Swedenborgian Church on October 19.

John Dieffenbacher-Krall traveled to Portland January 14, 2009 to meet with Interfaith Maine. The organization promotes “peace and justice through deepening interfaith relationships and understanding.” MITSC sought a meeting with Interfaith Maine to encourage their involvement in tribal-state issues. Interfaith Board Member Cynthia Jane Collins testified in support of LD 797, An Act To Fully Implement the Legislative Intent in Prohibiting Offensive Place Names.

MITSC NGO outreach also resulted in support for LD 797 from the Center for the Prevention of Hate Violence. The Center for the Prevention of Hate Violence works with young people and adults to prevent and respond to bias, harassment and violence by providing training, education and advocacy in schools, colleges, government agencies, non-profit organizations and communities. Stephen Wessler, the Center for the Prevention of Hate Violence Executive Director, testified in support of LD 797 on April 14, 2009.

MITSC also met with the Maine People’s Alliance Penobscot Valley Chapter, the National Association for the Advancement of Colored People (NAACP) Bangor Chapter, and a staffperson for Maine Indian Education. The Maine People’s Alliance (MPA) has expressed interest in tribal-state issues going back to the 1990s. MITSC hopes to strengthen its relationship with the NAACP and Maine Indian Education.

#### **G. Funding**

MITSC finished fiscal year (FY) 2009 (July 1, 2008 to June 30, 2009) with a balance of -\$348 comprising a balance of -\$11,368 for FY 09 and a carry-over of \$11,020 from FY 08. During the 2009 fiscal year, MITSC took in \$73,368 and spent \$84,736. The previous fiscal year (July 1, 2007 to June 30, 2008), MITSC received \$105,639 and expended \$104,564 for a balance of \$1,075. MITSC also carried forward a sum of \$9,945 from FY 08 to FY 09.

Without the large carryover of \$11,020 from FY 08 to FY 09, MITSC would have incurred a much larger deficit than the -\$348 recorded for FY 09. Almost all of MITSC’s reduction in income from FY 08 to FY 09 derives from the Wabanaki signatories withdrawing their voluntary financial support for MITSC. In response to the loss in income, MITSC has reduced the hours of the executive director from 35 to 30 hours per week. Should the Wabanaki and State fail to resolve their dispute regarding the MITSC funding process the Commission will need to make a further reduction in the executive director hours sometime during FY 2010.

#### **IV. Failure of Signatories to Advance Clear Positions and Implement Agreed Upon Decisions Hinders Tribal-State Relations**

##### **A. Signatories Lack Structure and Capacity to Deal Effectively with Each Other**

Both the Wabanaki and State of Maine lack organizational structures to formulate, coordinate, and implement Wabanaki-Maine policy goals concerning tribal-state relations. Upon the signing of MICSA, Maine disbanded its Department of Indian Affairs originally created in 1965. Maine

lost the only State entity responsible for dealing with Indian matters. The defunct Department possessed several responsibilities including the distribution of direct financial aid to the Tribes. But it also functioned as an office that both the executive and legislative branches of State Government could consult on issues concerning the Wabanaki.

Today, Maine lacks a single person or office responsible for tribal-state relations and for the development of Maine's Indian policies across all branches and offices of State Government. At the beginning of the Baldacci Administration, Daryl Fort, who no longer works for Governor Baldacci, held responsibility for Wabanaki-State relations along with other duties. Since Daryl Fort's resignation in early 2007, Governor Baldacci has assigned his Chief Legal Counsel responsibility for tribal-state relations. All of the individuals who have held the position have been overwhelmed by the many responsibilities they must address in their position. Too often tribal-state relations fail to rise to the top of their priority lists. MITSC finds it must expend inordinate amounts of time attempting to engage the Governor's Legal Counsel to address tasks related to tribal-state relations.

While the Executive Branch of State Government's ability to respond to tribal-state issues especially suffers from overloaded staff, the Legislative Branch lacks a single person to deal with the Wabanaki. MITSC has dealt with an array of legislative staff including the chiefs of staff for the Senate President and House Speaker, legal counsel for the Speaker, other Speaker staff, and the committee analyst for the Judiciary Committee. The issue of diffused responsibility for Wabanaki relations has become compounded by the Legislature, especially the Senate President, seeming to play a more direct role in tribal-state relations. The persistent Wabanaki question, who speaks for the State of Maine, has become even more acute and problematic.

The Wabanaki, the politically weaker party in the tribal-state relationship, have recognized they fare better achieving their political goals *vis-à-vis* the State when they speak and act in a united fashion. Though the Wabanaki Tribes residing in Maine have many inter-tribal connections, these familial, cultural, and political ties can't surmount the absence of a formal, permanent policy development and coordination structure. Wabanaki Chiefs, the elected officials that MITSC, the State, and their people look to for the official positions of their respective governments, face many challenges that limit their ability to focus on tribal-state relations on a consistent, ongoing basis.

More than 30 years ago the Wabanaki created Maine Tribal Governors Inc., initially an employment and training agency for on-reservation Wabanaki People. Tribal Governors Inc. comprised the Association of Aroostook Indians, which included the Aroostook Band of Micmacs and Houlton Band of Maliseets, Passamaquoddy Tribe, and Penobscot Nation. Tribal Governors Inc. branched out beyond administering grants to commission the film *Abnaki: The Native People of Maine*. The organization no longer exists. An entity similar to Tribal Governors Inc. with an explicit mission to develop joint policy for the Wabanaki and implement collective decisions could greatly assist the Tribes in their diplomatic relations with the State.

## **B. Good Intentions Insufficient to Surmount Core Unresolved Issues**

Tribal-state relations, on a steady positive trajectory starting in the spring of 2006, abruptly deteriorated in April 2008 primarily due to the actions of the Legislature's Judiciary Committee. The Judiciary Committee's failure to support eight unanimously endorsed Tribal-State Work Group recommendations left the Wabanaki embittered. In addition, the Judiciary Committee proposed that the Houlton Band of Maliseet Indians should waive its right to approve certain changes to MIA. All three Tribes rejected the Judiciary Committee crafted legislation.

The Wabanaki-State relationship was further strained by the defeat of a bill to allow the Penobscot Nation to change the legal status of some land holdings in Argyle from federal trust to reservation land. The legislative move compelled the Penobscot Nation to suspend work on a much needed \$10 million housing project. Wabanaki leaders also objected to a cut to MITSC's budget that occurred without any consultation with the Wabanaki or MITSC itself. After extensive negative publicity of the legislative action, Governor Baldacci restored the deleted funds through two emergency financial orders. By the end of the legislative session, several Wabanaki leaders vowed to never set foot again in the Maine Legislature.

After the political meltdown in tribal-state relations that included the Penobscot Nation announcing it would have no more dealings with the State of Maine, new legislative leaders were elected. Elizabeth Mitchell succeeded Beth Edmonds as Senate President, and Hannah Pingree took over the Speaker position from Glenn Cummings. President Mitchell exercised her committee appointment power to name Senator Lawrence Bliss as the Senate co-chair of the Judiciary Committee, replacing Senator Barry Hobbins. Speaker Pingree selected Representative Charles Priest, who filled the seat vacated by Representative Deborah Simpson who was elected to the State Senate.

In a December 2008 meeting with MITSC, President Mitchell emphasized the importance she placed on respect for leaders of all branches of State Government and the Wabanaki. She assured MITSC that Wabanaki leaders would be treated with the respect that their positions warranted.

Senator Bliss and Representative Priest quickly implemented changes in Judiciary Committee procedures. When Wabanaki leaders enter the Judiciary Committee meeting room, their presence is now always noted. Whenever the Wabanaki leaders appear as a group, as they did in support of LD 797, An Act To Fully Implement the Legislative Intent in Prohibiting Offensive Place Names, they receive special seating acknowledging their status as chiefs. During the Judiciary Committee's consideration of LD 1377, An Act To Amend the 1980 Maine Implementing Act To Authorize the Establishment of a Tribal Court for the Houlton Band of Maliseet Indians and Related Matters, both co-chairs always ensured Chief Commander when she was present had an opportunity to speak.

In addition to the Committee procedure changes, Senator Bliss and Representative Priest traveled to the Maliseet, Penobscot, and both Passamaquoddy communities to listen to Wabanaki concerns. MITSC accompanied the Judiciary Committee co-chairs on these visits. Every Wabanaki Government visited expressed its appreciation that Senator Bliss and Representative

Priest took the time to travel to their communities. Traditionally, State officials have expected that the Wabanaki should come to them in Augusta for meetings.

Despite all of these positive developments concerning leadership and staffing changes, little progress was made to address the core differences causing tension in tribal-state relations. A small bright spot was the extraordinary effort made by the Judiciary Committee following the deadline for reporting out all bills to recommend passage of LD 1377, a priority for the Houlton Band of Maliseet Indians. While the bill could have been held over until the second session of the 124<sup>th</sup> Legislature, a subcommittee of the larger Judiciary Committee worked on it throughout late May and early June to create legislation acceptable to the State and Maliseets. LD 1377 encompasses one of the eight Tribal-State Work Group recommendations, changing the heading for Title 30 from “Municipalities and Counties” to “federally recognized Indian tribes”, and partially a second, jurisdictional and legal parity for the Houlton Band of Maliseet Indians. Yet this worthy legislative achievement does nothing for the Passamaquoddy Tribe or Penobscot Nation. Though the more respectful tone from key leaders in State Government engenders praise from the Wabanaki, it does not alter the fundamental view of key Wabanaki Leaders that their relationship with the State more resembles a parental one than a healthy relationship between equals.

### **C. Wabanaki Disunity and State of Maine Executive, Legislative Leadership Confusion**

The Wabanaki have a long history of formal inter-tribal political cooperation going back to the formation of the Wabanaki Confederacy in the 17<sup>th</sup> century. During their protracted legal and political struggle with the State of Maine and US concerning their land claims, the Passamaquoddy Tribe, Penobscot Nation, and, in the final stages, Houlton Band of Maliseet Indians worked closely together in pursuit of their separate yet related land claims. In recent times, particular Wabanaki Tribes have aided other Wabanaki Governments when they faced public or private political opponents.

When MITSC Chairman Paul Bisulca and Executive Director John Dieffenbacher-Krall assumed their respective positions, Wabanaki leaders identified addressing problems associated with the Maine Implementing Act as their top priority for improved tribal-state relations. MITSC observed a strong collective resolve among the Wabanaki chiefs and tribal council members to amend MIA to better implement the intent of the agreement signed in 1980. MITSC worked for approximately half a year to create a Framework Document for the 2006 Assembly of Governors and Chiefs that identified Maliseet, Passamaquoddy, and Penobscot concerns with MIA. The Framework Document helped to coalesce the Wabanaki’s concerns with MIA and the Settlement Act that resulted in the creation of the Tribal-State Work Group (TSWG) process that enjoyed the full support and participation of the Wabanaki leaders.

Throughout the Tribal-State Work Group process, the Wabanaki closely coordinated their efforts, especially the Passamaquoddy Tribe and Penobscot Nation. Numerous meetings were held by the Tribes between the TSWG meetings to discuss what was happening in the process and how to respond. When the Wabanaki chiefs identified concerns with how the TSWG process was unfolding, all five of them met with Governor Baldacci on March 24, 2008 seeking more active involvement from him in the process. The Wabanaki maintained this strong solidarity during the

entire process despite the fact that the four Tribes have three different agreements and legal statuses with the State of Maine.

To better understand Wabanaki leadership concerns and priorities, MITSC initiated Wabanaki Leaders' meetings in 2006 to learn directly from the chiefs what they collectively sought in the area of tribal-state relations. MITSC has helped to schedule and organize these meetings. They have allowed Wabanaki leaders to express their views and enabled MITSC to synthesize Wabanaki positions and share them with State decision makers and others. At past Wabanaki Leaders' meetings, the chiefs decided to create the Wabanaki Education Task Force, for a time to pursue creation of a Wabanaki Tribal College, and to partner with Bates, Bowdoin, and Colby Colleges to form the Wabanaki/Bates, Bowdoin, and Colby Collaborative.

Since April 2008, Wabanaki unity has dissipated. While the Maliseets, Passamaquoddies, and Penobscots all denounced the actions of the Judiciary Committee related to the TSWG, their governments pursued different courses of action in the political aftermath. Penobscot Nation Chief Kirk Francis announced April 16, 2008 his Tribe was severing relations with the State of Maine. Perhaps the most important aspect of the Penobscots' decision in terms of tribal-state relations involves the Tribe withdrawing its participation from MITSC.

Chief Francis told the *Bangor Daily News*, "What are you really losing by continuing to jeopardize your way of life, your culture, the protection of your rivers and lands ... that's what I have to weigh," Francis said. "The tribe, our culture and my responsibility to people have to come first. Without that, there's no more Wabanaki tribes. There's no more Penobscot Nation." (BDN 4/17/08)

Chief Francis later told *Indian Country Today* how the Penobscot Nation views the historical pattern of its relationship with the State of Maine.

The problem is at the highest level of state government. Certainly the government-to-government relationship isn't respected. We've never really been treated as equals. We're always talking to some staff person or trying to get our message to the governor through other people. But beyond that, when you're in a situation where somebody is telling you what you can or can't do, it's more like a parental relationship. We're in a place right now where we don't have a lot of choice but to try to stay out of that. (ICT 5/2/08)

Though expressing support for the Penobscot Nation's right to pursue the political course of action best serving its people, neither the Houlton Band of Maliseet Indians nor the Passamaquoddy Tribes have joined the Penobscots in withdrawing from MITSC. The Penobscot withdrawal from MITSC has complicated the Commission's ability to hold meetings with a legal quorum. Until the State approves its two new additional MITSC representatives as a result of LD 1377, MITSC will need perfect attendance to hold meetings with the minimum quorum of nine representatives.

The Penobscot Nation withdrawal from MITSC has compounded the difficulty of achieving Wabanaki consensus on what they seek from the State of Maine. After failing to attend a number of meetings, MITSC decided to place the Penobscot representatives to the Commission in an administrative inactive status. The Penobscot non-participation in MITSC removes a valuable forum in which the State and Wabanaki signatories to the Settlement Act can exchange information and views.

In addition, the Penobscot Nation withdrawal from MITSC has negatively affected the periodic Wabanaki Leaders meetings. While the Wabanaki continue to express solidarity, the different political courses of action taken by the Tribes eliminate many potential joint actions and positions. At the last Wabanaki Leaders meeting held July 28, 2009, the chiefs had little to say about what they wanted to pursue to advance tribal-state relations.

The inherent imbalance in the tribal-state relationship due to the State of Maine's far larger population, budget, and control of the judicial process that handles Wabanaki-Maine legal disputes is accentuated with the absence of unified Wabanaki political demands for change. While a substantial amount of evidence exists to support Wabanaki claims that the State demonstrates minimal interest in tribal concerns, the absence of unified Wabanaki demands for action leaves even earnest, genuinely interested state officials uncertain of what the Wabanaki specifically want to improve tribal-state relations. Other political interests quickly fill the political void left by the non-existent Wabanaki political agenda.

One exception to this general characterization applies to the Houlton Band of Maliseet Indians. The Maliseet Tribal Government approached the last session of the Maine Legislature with a specific legislative agenda that included seeking some changes to MIA and gaining the same right to conduct high-stakes bingo as the Passamaquoddy Tribe and Penobscot Nation. The Maliseets succeeded in passing their entire legislative agenda. Though the State Legislature can present formidable challenges to Wabanaki legislative interests, the Maliseet success from this past session belies the assertion by some people that nothing can be achieved by the Wabanaki working with the State.

Maine, which possesses the advantage of functioning as one government as compared to the Wabanaki challenge of coordinating five political systems, has experienced leadership confusion and lack of coordination in 2009 thereby hindering tribal-state relations. During the period of 2006-2008, MITSC primarily dealt with Governor Baldacci and his designated staff when engaging with Maine on tribal-state matters. MITSC's interaction with the Executive Branch of State Government in 2006 was aided by the general availability of Daryl Fort who appeared to possess the confidence of Governor Baldacci and could speak authoritatively for where the Governor stood on issues. MITSC's work with the Administration was also aided by State Commissioners Karin Tilberg and later Paul Jacques who assisted with communication and soliciting Baldacci Administration input on tribal-state matters.

As MITSC worked closely with the Administration, the Commission also shared information with legislative leaders, primarily the Senate President and Speaker and their staffs. Senate President Beth Edmonds expressed a strong interest in tribal-state issues. Rick McCarthy,



President Edmond's Chief of Staff, reflected President Edmonds' interest in tribal-state relations. Speaker Glenn Cummings designated a number of his staff to address tribal-state relations, primarily Ken Hardy, the Speaker's Legal Counsel, and Ken Brown, Special Assistant to the Speaker.

President Edmonds and Speaker Cummings took an active interest in tribal-state relations during the 123<sup>rd</sup> Legislature that supported Governor Baldacci's traditional Executive Branch leadership. Their willingness to allow the Executive Branch to lead on tribal-state relations resulted in a unified State of Maine position on key tribal-state issues such as the Tribal-State Work Group and increasing MITSC's budget. The exception to this general State of Maine unity on tribal-state policy questions for the period 2007-2008 was the chairs of the Judiciary Committee, Senator Barry Hobbins and Representative Deborah Simpson.

Following the 2008 General Election, Maine legislators elected new leaders. Senate Democrats chose Elizabeth Mitchell as Senate President. House Democrats accepted Hannah Pingree as Speaker as she faced no opponents. MITSC looked forward to working with these new leaders.

Many tribal-state observers reacted positively when President Mitchell named Senator Lawrence Bliss Senate Chair of the Judiciary Committee and Speaker Pingree appointed Representative Charles Priest House Chair of the Judiciary Committee. These committee appointments represented a fresh start for the Judiciary Committee, the legislative body generally assigned bills dealing with tribal-state relations. Senator Bliss and Representative Priest have instituted a number of changes to repair the damaged relationship between the Judiciary Committee and the Wabanaki.

MITSC urged the new legislative leaders in December 2008 to resume direct meetings with Wabanaki leadership, something MITSC had continually recommended since the rupture in tribal-state relations in April 2008. They readily agreed. A tribal-state meeting was hosted by the University of Maine at Augusta on January 14, 2009.

MITSC counseled State leaders on the need to present concrete policy changes to the Wabanaki that they were prepared to enact in 2009. After listening to numerous Wabanaki elected and community leaders, MITSC knew that the Wabanaki possessed extreme skepticism concerning State intentions. To begin rebuilding tribal-state relations and to restore Wabanaki confidence, MITSC argued that the State needed to pass something of importance to the Wabanaki as early as possible in the legislative session. State leaders rejected MITSC advice opting instead to use the January 14 meeting as a get-to-know each other session with a follow-up session dedicated to more substantive policy discussions.

Disappointingly, the follow-up session that the leaders proclaimed should take place within four weeks of the January 14 meeting never occurred. A lack of clarity concerning who in State Government should take the lead on scheduling the meeting, the Governor's or Senate President's office, contributed to it never occurring. Failure to hold the promised second meeting represents to the Wabanaki a broken promise that further eroded the relationship. MITSC has received no request to assist in scheduling a tribal-state meeting.

Another political casualty of the April 2008 breakdown in tribal-state relations is the suspension of the Annual Assembly of Governors and Chiefs recommended by the *At Loggerheads* report, findings issued by a special task force of the 117<sup>th</sup> Legislature. Even if hasty efforts were made to hold such a meeting it likely would yield little positive benefit without a significant change in approach on the part of the State. The State has received little public criticism for not offering an agenda for improving tribal-state relations. However, leaders should not conclude that the lack of public criticism represents Wabanaki satisfaction with the condition of tribal-state relations.

As Maine struggles with the multiple impacts of the worst economic recession since the Great Depression, the absence of Wabanaki-Maine political and economic cooperation squanders opportunities to assist some of the most depressed parts of the State and to generate jobs and revenue the Wabanaki and Maine desperately need. The Penobscot Nation suspended pursuit of a \$10 million housing project just when the local construction industry fell sharply due to the Legislature's refusal to approve changing the legal status of some Penobscot lands in Argyle from federal trust to reservation status. Other Penobscot initiatives, including a \$150 million energy project, appear as though they will also never get underway because of Penobscot-State disputes over regulatory jurisdiction.

Despite the serious setbacks to tribal-state relations that took place in the spring of 2008 progress can occur. One element necessary to achieving success in 2010 involves the Wabanaki and State identifying what they want from each other. The State should well understand the general Wabanaki grievance that the implementation of MIA has departed from the intent and what the parties expected when they signed the agreement in 1980. Yet for better tribal-state relations to occur more specific policy changes must be identified. Following the breakdown of tribal-state relations in April 2008, Governor Baldacci offered to introduce the TSWG recommendations for the 1<sup>st</sup> session of the 124<sup>th</sup> Legislature. Though Wabanaki leaders privately expressed some interest to MITSC in Governor Baldacci taking such action, none of them raised it with him on January 14, 2009. The only action that took place on the TSWG recommendations in 2009 involved the provisions in LD 1377. If the remaining TSWG recommendations no longer represent a viable common ground, then the leaders need to identify new policy objectives. MITSC stands ready to facilitate the communication to find common ground.

Another element needed to improve tribal-state relations in 2010 involves leaders ensuring staff follow-up and support occurs. Since Daryl Fort left the Baldacci Administration in early 2007, responsibility for tribal-state relations has fallen to the Governor's Legal Counsel. Whoever has held the job has found himself overwhelmed with simultaneous priorities for his time. In addition, certain staff have been uncooperative with MITSC, weakening MITSC's ability to work with the State. When tribal-state leaders agree to take specific action, progress should not be stopped because staff are not able to do what needs to be done. Leaders must decide how to staff their tribal-state initiatives and who has ultimate staff responsibility. They must also be prepared to hold staff accountable.

#### **D. Sustaining Decision Maker and Public Interest in Wabanaki-State Relations**

Wabanaki-State relations have historically received little attention from Maine except in crisis situations potentially affecting State interests. Most Mainers paid little attention to the filing of lawsuits by the Passamaquoddy Tribe and Penobscot Nation in 1972 seeking lands formerly belonging to them. Yet when municipalities could not issue bonds due to uncertainties regarding title to land years later then a public outcry erupted and State Government responded. Many important public policy issues could be similarly characterized.

The human tendency to address the crisis of the moment detracts from improving tribal-state relations. In crisis situations, the political stakes for governments become much greater. The public, media, and political opposition pressure to act can forestall necessary listening, consultation, and reflection necessary to find the best solutions. Leaders who do not regularly interact with each other suddenly thrust into a political crisis are more apt to misunderstand their counterpart's actions than those decision makers who regularly communicate and meet. Political constituent demands may compel leaders to make the politically expedient decision instead of the most just one. Many factors can contribute to a desire to address the issue as fast as possible and hide it from public attention.

State leaders need to recognize that MICSA and MIA comprise far more than the settlement of a land claim. The agreements represent a new beginning for Wabanaki-Maine relations as sovereign equals instead of wards of the state that characterized much of the period from 1820-1980. Healthy relationships, whether political or personal ones, require regular communication and interaction. The longer the period of no formal interaction between the Wabanaki and Maine lasts the harder the parties will find building the trust to resolve outstanding issues. When relationships suffer damage, parties to the relationship can not reasonably expect to fix the relationship instantly. Usually mending a relationship takes time and sustained effort.

MITSC has fully accepted its responsibility to address its shortcomings. In the past, MITSC had focused too much on recommendations and too little on ensuring their implementation. As a result of this reflection, MITSC has become far more operational to ensure agreements reached by representatives of the signatories are achieved. In addition, MITSC now spends far more time organizing political and public support for signatory decisions.

While MITSC accepts its fundamental role advocating for better tribal-state relations, the sole responsibility for the state of the Wabanaki-Maine relationship rests with the signatories themselves. To achieve meaningful improvement in that relationship, the signatories must be committed to consistent, honest, and ongoing dialogue and engagement. The Wabanaki and Maine need to move away from engaging each other through the press in periods of crisis and disagreement and replace this pattern with cooperation and trust.

Mainers and Wabanaki citizens must help. Governments rightfully respond to their constituents. Too often, especially on the part of the State, few voices are heard by decision makers on the importance of tribal-state relations. A few groups such as the Episcopal Committee on Indian Relations and Friends Committee on Maine Public Policy exist as exceptions. Yet too many

Mainers know little about the Wabanaki and lack the information to judge the merit of their political demands.

Without more public demands on its government to improve tribal-state relations, MITSC will continue to find an extremely difficult political dynamic of one party, the State, generally satisfied and another party, the Tribes, extremely aggrieved. Some State decision makers will act from a sense of fairness and justice alone. Others need the motivation of their constituents.

## **V. Assessment of MITSC Activities for Fiscal Year 2009 (July 1, 2008 to June 30, 2009)**

The following section constitutes MITSC's assessment of its effectiveness addressing 12 issues or initiatives.

### **A. Support of LD 1377, An Act To Amend the 1980 Maine Implementing Act To Authorize the Establishment of a Tribal Court for the Houlton Band of Maliseet Indians and Related Matters**

LD 1377 comprises a portion of the Tribal-State Work Group (TSWG) recommendation to "Amend the law [MIA] to achieve jurisdictional parity for all Tribes." Before the Maliseets, Passamaquoddies, and Penobscots had finished reviewing LD 2221 which all three Tribes ultimately rejected, the Southern Aroostook Ministerial Association (SAMA) wrote a letter (Appendix I) in May 2008 to Chief Brenda Commander and the Towns of Houlton, Littleton, and Monticello. SAMA wrote the letter in the event ongoing negotiations concerning LD 2221 might occur between the parties. The principal reason that the Judiciary Committee changed the TSWG recommendations concerning jurisdictional parity for the Maliseets originated with concerns raised by the Aroostook County towns with Maliseet land within their borders. Houlton and Littleton objected to the Legislature granting authority to the Maliseets that might diminish local municipal jurisdiction over the Tribe without adequate safeguards.

The SAMA letter appeals to the parties to "be mindful of the numerous examples of past negotiations that have benefited the municipalities and the Houlton Band." The letter continues:

The relationship for respectful negotiations is government-to-government as the Houlton Band of Maliseets' sovereignty has never been, nor could it be extinguished. Their culture, based on hunting and fishing, should be comprehended and respected.

How the municipalities of Houlton, Littleton and Monticello and the Houlton Band of Maliseets conduct their dialogue effects[sic] all who live in this region. Our children go to school together, we brush shoulders in stores, and work together in groups trying to solve mutual problems in our area. Both the Houlton Band and the municipalities have different origins and legitimate concerns. Acknowledging the deleterious effects of actions based on hubris (sadly, often not recognized by the perpetrators until decades or centuries later), we look forward to a new day of awareness.

Approximately two months later Chief Commander received a letter from Houlton Town Manager Doug Hazlett dated July 15, 2008. The letter (see Appendix II) states in part:

The Houlton town council recognizes the desire of the Houlton Band of Maliseet Indian's to achieve greater governmental autonomy, and supports this goal.

The Town of Houlton will consent to the release of jurisdiction over the 177 acres of Band land located on Foxcroft Road in Houlton upon which the Band's housing development and other community facilities are located. This "Houlton Band Territorial Land" will be separate and distinct from the Town of Houlton.

The Houlton Town Council letter to Chief Commander created a new political opportunity to attempt passing changes to MIA to provide jurisdictional parity for the Maliseets with the Passamaquoddy Tribe and Penobscot Nation. Chief Commander and the Maliseet Tribal Council began considering whether they wanted to pursue passage of a bill after the negative experience with the Maine Legislature the previous spring. At the MITSC meeting held March 16, 2009, the Maliseets had not yet decided what new jurisdictional powers to pursue. MITSC voted to support adding seats to the Commission for the Maliseets and two more seats for the State.

The Maliseets finally decided to pursue enactment of legislation containing only those additional powers that they viewed as necessary at the particular time in their government's development. LD 1377 contains four major elements: creation of a Maliseet Tribal Court, authorization allowing the Maliseets to offer funds or other things of value as a substitute for payments in lieu of taxes, eligibility for State funding comparable to the Passamaquoddies and Penobscots, and expansion of MITSC creating two seats for the Maliseets and increasing State Commissioner positions from four to six to maintain equal State and Wabanaki representation. MITSC Chairman Paul Bisulca only offered testimony at the April 14, 2009 public hearing on LD 1377 concerning the expansion of MITSC. However, MITSC actively monitored the entire legislative process involving LD 1377 and attended all of the Judiciary Committee work sessions held for the bill.

Though the withdrawal of Houlton's opposition to the Maliseet jurisdictional parity legislation greatly enhanced its prospect for passage, other obstacles remained. One issue involved what to call the land in Houlton and Littleton where the Maliseets would possess jurisdiction. Ultimately, the Judiciary Committee decided on Houlton Band Jurisdiction Land. Other issues involved the precise powers of the new Maliseet Tribal Court and how they might differ from the authority exercised by the Passamaquoddy and Penobscot Tribal Courts.

Perhaps the biggest obstacle to LD 1377's passage became time. The Judiciary Committee faced a May 8, 2009 deadline for reporting all bills out yet as of a May 5 work session considerable work remained to arrive at a point in the process in which the Committee could vote on the bill. At the May 5 work session, the Judiciary Committee decided to vote to hold the bill over until the second session of the 124<sup>th</sup> Legislature. It also decided to form a subcommittee to continue work on the bill. If an agreement appeared imminent, the Committee Chairs committed to

convening the full Committee to consider the work of the subcommittee in order to vote on its bill draft.

A subcommittee comprised of Representative Richard Cleary, the bill's sponsor, House Chair Charlie Priest, Penobscot Tribal Representative Wayne Mitchell, and Senator David Hastings deliberated to resolve outstanding issues regarding the bill. They eventually completed their work enabling the Judiciary Committee to vote on the bill June 8 with an ought to pass as amended report. The bill passed the Maine House and Senate under the hammer meaning no recorded vote occurred with all legislators present consenting to the bill's passage. Governor Baldacci signed LD 1377 into law June 12, 2009. All provisions of LD 1377 required the approval of the Maliseets and certain sections needed the consent of the Passamaquoddies and Penobscots to take effect. The Maliseet Tribal Council endorsed the bill on June 23, 2009, the Penobscot Nation gave its approval at a General Meeting held August 11, 2009, and the Passamaquoddy Joint Tribal Council supported the legislation August 17, 2009.

**B. Strengthen Maine's Offensive Place Names Law, LD 797, An Act To Fully Implement the Legislative Intent in Prohibiting Offensive Place Names**

Maine enacted Public Law 1999, Chapter 613 (LD 2418, An Act Concerning Offensive Names) in 2000. The law adds the words "squaw" or "squa" to the list of prohibited geographic place names joining the previously banned word "nigger." Municipalities, or in the case of unorganized territories, county commissioners, had six months from the effective date of the law to change any offensive place names within their jurisdiction.

In September 2006, MITSC learned through a Bangor Daily News article that the Piscataquis County Commissioners had written a letter to Governor Baldacci the previous month requesting permission to opt out of the Offensive Place Names Law based on the non-compliance of other local and county governments. The article caused MITSC to examine statewide compliance with the law. The Commission discovered three instances of non-compliance. A communication from the State Geologist, Robert Marvinney, prompted the Town of Standish to change Squaw Island in Sebago Lake to Miller's Isle. Washington County Commissioners quickly replaced Squaw Island in Big Lake with the Passamaquoddy word Epahsakom after MITSC filed a complaint with the Maine Human Rights Commission, the entity charged with enforcing the Offensive Place Names Law. Stockton Springs was the sole hold-out clinging to the offensive names "Squawpoint Road", "Squaw Head", and "Squawpoint".

MITSC initiated a media and organizing campaign to persuade the Stockton Springs Selectpeople to abandon the offensive place names. Two of the three Selectpeople initially opted to exploit a loophole in the Offensive Place Names Law by changing each use of "squaw" to "squa." Stockton Springs Selectpeople could do this because the 2000 amendment to the Offensive Place Names Law prohibits any use of the word "squaw" either alone or in combination but permits the use of the spelling "squa" when used in combination with other letters or a word. After MITSC met with the Stockton Springs Selectpeople on October 16, 2007, the Selectpeople voted to change Squapoint to Defence Point, Squahead to Defence Head, and Squapoint Road to Defence Point Road.

During MITSC's campaign to persuade Stockton Spring to change its offensive place names, a local homeowners association, The Squawpoint Association, actively resisted abandoning the offensive place names. They attempted a number of actions, including having the Selectpeople reconsider their vote, threatening litigation, and urging the US Board of Geographic Names to reject the place name changes. The US Board of Geographic Names functions as the official register of geographic place names in the country. All of these attempts to reverse the Selectpeople's name change decision failed.

Unwilling to accept the Selectpeople's decision, The Squawpoint Association pursued a new attempt in the fall of 2008 to undo the Selectpeople's decision. The group utilized a provision of the Stockton Springs Town Charter to begin an initiative campaign to amend the Stockton Springs addressing ordinance. The petition sought a change in the addressing ordinance allowing local homeowners to name roads near their property as long as any replacement name did not conflict with Maine State Law.

Upon learning about what The Squawpoint Association was attempting, MITSC decided to have legislation introduced to close the "squa" loophole in the Offensive Place Names Law. MITSC initially approached Passamaquoddy Tribal Representative Donald Soctomah, the sponsor of the 2000 amendment to the Offensive Place Names Law, to sponsor the MITSC bill. He declined. MITSC then asked Penobscot Tribal Representative Wayne Mitchell who agreed to serve as the primary sponsor.

MITSC worked during the winter and early spring of 2009 to assemble a coalition of groups and faith organizations to support LD 797. Besides the Episcopal Committee on Indian Relations, Friends Committee on Maine Public Policy, Roman Catholic Diocese of Portland, Maine Council of Churches, and Maine Women's Lobby which supported the 2000 amendment, MITSC also persuaded Interfaith Maine, Maine People's Alliance, and the Center for the Prevention of Hate Violence to support the bill. Nearly every supportive group sent a representative to the April 14, 2009 public hearing to testify in favor of LD 797. MITSC voted at its March 16, 2009 meeting to support LD 797, and Paul Bisulca testified in support of the bill on April 14.

After the impressive display of broad public support for LD 797 with the aforementioned groups and Wabanaki Chiefs Commander, Francis, Phillips-Doyle and Governor Nicholas, the Judiciary Committee discussed how to best eliminate the "squa" loophole. It eventually decided to adopt the language "'Offensive name" means a name of a place that includes the designation "squa" or any derivation of "squa" as a separate word or as a separate syllable in a word.'" Both the Maine House and Senate consented to the change in the Offensive Place Names Law. Governor Baldacci signed LD 797 into law June 8, 2009.

At the Stockton Springs Town Meeting held June 20, 2009, citizens voted 39 to 32 against the ordinance change advanced by The Squawpoint Association. The effort to remove offensive place names in Maine received national attention with the Wall Street Journal covering the issue June 18, 2009. Chief Kirk Francis tells the Wall Street Journal, "We believe that word is

equivalent to the n-word." He goes on to say, "There's a real insensitivity in this state to native issues."

In the fall of 2009, The Squawpoint Association approached Stockton Springs town officials about renaming Defence Point Road to Rocky Point Road. The Stockton Springs Selectpeople said they would agree to the change in exchange for The Squawpoint Association removing a sign that read "Formerly Squapoint Road" the group had erected near the official Defence Point Road sign. The Squawpoint Association agreed to the Selectpeople's request. As of the publication of this report, The Squawpoint Association appears to have ended its campaign to reclaim local offensive place names or adopt the word "squall."

### **C. Block State Funding for a Private Business Using an Offensive Place Name**

Maine's Offensive Place Names Law (Title 1, Chapter 27) prohibits any place from using an offensive name, currently the words nigger, squaw or sqa. The law also forbids placement of signs containing offensive place names on certain roads. However, the law does not apply to previously named private organizations or businesses, such as The Squawpoint Association or Big Squaw Mountain Ski Resort, before the effective date of the law.

James Confalone, owner of Big Squaw Mountain Ski Resort, has rejected requests to drop the offensive word squaw used in his business' name. In early 2008, a representative for Mr. Confalone approached MITSC inquiring whether the Commission would consent to a meeting with Mr. Confalone. MITSC expected Mr. Confalone might want to explore with the Commission dropping the offensive word in his establishment's name. When MITSC met with Mr. Confalone on March 18, 2008, Paul Bisulca and John Dieffenbacher-Krall were stunned to learn that Mr. Confalone hoped to persuade MITSC to begin a campaign with the Wabanaki to view the word squaw positively instead of as a demeaning word for an Indian person of female gender. MITSC instantly rejected Mr. Confalone's suggestion and no further communications took place between MITSC and Mr. Confalone in 2008.

On January 22, 2009, the Bangor Daily News published an article titled, "County officials work on Squaw resort grant." The article states that "Piscataquis County commissioners plan to seek a \$200,000 Community Development Block Grant to help the owner of Big Squaw Mountain Resort make improvements to the double chairlift that services the upper part of the mountain." Later the article reports, "A letter of intent to seek a grant was filed earlier this month by the Piscataquis County Economic Development Council on behalf of the Piscataquis County commissioners and James Confalone, the ski resort's owner." MITSC reacted to the article with the opinion that State funds should not be awarded to a private business using an offensive place name. MITSC decided to block Mr. Confalone from obtaining the grant.

MITSC and Penobscot Tribal Representative Wayne Mitchell began an effort to block State funding for the Big Squaw Mountain Ski Resort by obtaining the letter of intent filed by the Piscataquis County Economic Development Council. The Commission learned that a final application was due at the Office of Community Development by March 6, 2009. As MITSC obtained any information related to the letter of intent and grant application, the Commission



also began talking to State of Maine officials about the grant application on behalf of Big Squaw Mountain Resort.

Mr. Confalone learned of MITSC's efforts to block him from receiving a 2009 Community Development Block Grant. He told Paul Bisulca that he had decided to withdraw his application. The Bangor Daily News quotes Mr. Confalone in a March 10, 2009 story, "I decided, as nicely as they tried to make it for me, I couldn't possibly go along with it. It was a little too complicated." Mr. Confalone tells the Wall Street Journal in a June 18, 2009 article that, "He wants to convince Indians the word [squaw] isn't offensive, but a victim of "identity theft.""

**D. Expand Legal Gaming Parity for the Houlton Band of Maliseet Indians, LD 526, An Act To Clarify the Beano and Bingo Laws As They Apply to Federally Recognized Tribes**

The Maine Legislature enacted a bill in 1987 to permit federally recognized tribes within their reservations to conduct high-stakes beano or bingo. In 1991, the Legislature amended the law replacing the word reservation with Indian Territory. The Houlton Band of Maliseet Indians neither possesses a reservation nor Indian Territory under MIA, thus excluding them from conducting high-stakes beano or bingo under Maine law.

Chief Brenda Commander approached MITSC in the fall of 2008 seeking the Commission's assistance with legislation to allow the Maliseets to conduct the same high-stakes bingo games Maine law permits the Passamaquoddy Tribe and Penobscot Nation to operate. Chief Commander also relayed to MITSC that she had received conflicting advice whether legislation was needed to authorize Maliseet high-stakes bingo. Some people had advised her that because the Maliseets meet the definition of a federally recognized tribe under 17 MRSA § 314-A(1) the Tribe could operate high-stakes bingo under existing State law. However, the statute later says such gaming activities can only occur within Indian Territory. Only the Passamaquoddy Tribe and Penobscot Nation have lands classified as Indian Territory.

Before drafting legislation for the Maliseets, MITSC requested an Attorney General opinion on this matter. Attorney General Steve Rowe responded in a December 23, 2008 letter that:

We believe that if a court were to consider the question as to whether the Houlton Band of Maliseet Indians could conduct high-stakes beano/bingo games, it would conclude that, while the Band is a federally recognized tribe eligible to receive a license from the Chief of the Maine State Police in accordance with 17 M.R.S.A. § 314-A(1), the Band may not conduct such high-stakes beano/bingo games at the present time because, as a licensed organization, it does not have Indian Territory within which to conduct such games.

MITSC drafted a bill (LD 526, An Act To Clarify the Beano and Bingo Laws as They Apply to Federally Recognized Indian Tribes) on behalf of the Maliseets sponsored by Representative Richard Cleary taking into account Attorney General Rowe's opinion. The Commission also contacted the Passamaquoddy and Penobscot chiefs to ascertain their positions on the bill. All

three Tribal Governments supported the legislation. MITSC expected minimal opposition to the bill.

MITSC voted to support LD 526 at its March 16, 2009 meeting. As initially drafted, LD 526 proposed addressing the Maliseet absence of Indian Territory by deleting the term Indian Territory in 17 MRSA § 314-A(5) and substituting reservation or trust lands. MITSC believed this approach would retain the Passamaquoddy and Penobscot right to conduct high-stakes beano/bingo operations in the same places as permitted under the 1991 amendment to the statute while allowing the Maliseets to operate the same games on their trust land holdings. Unfortunately, MITSC did not take into account the unique status of Passamaquoddy trust land in Albany Township.

Passamaquoddy trust land lying in Albany Township comprises the sole parcel of such Passamaquoddy land not included in the MIA definition of Indian Territory. The anomaly exists due to the Federal Government's acceptance of the parcel as trust land after a Maine statutory deadline making it eligible for Indian Territory. LD 526 as originally drafted caused attorney Jeffrey Rosenblatt, a land owner in Albany Township long opposed to the siting of a Passamaquoddy high-stakes bingo operation there, to object to the legislation. An article appeared in the Bethel Citizen detailing Rosenblatt's objection to how LD 526 was drafted. Rosenblatt proposed new language retaining the original Indian Territory designation for the Passamaquoddy and Penobscot Tribes and permitting Maliseet high-stakes bingo on specific Band lands. Upon the adoption of this new statutory approach, Rosenblatt withdrew his objection. MITSC Chairman Paul Bisulca testified in support of LD 526 at the April 27, 2009 public hearing (see Appendix III).

The Legal and Veteran Affairs Committee reported out LD 526 on May 28, 2009. Both the Maine House and Senate approved the bill in early June. Governor Baldacci signed LD 526 into law on June 10, 2009.

#### **E. Recognize Native American Veterans, LD 30, An Act To Establish Native American Veterans Day**

Governor John Baldacci issued a proclamation on June 6, 2007 proclaiming the day Native American Veterans History Day. Dr. Harald E.L. Prins, University Distinguished Professor of Anthropology, Kansas State University, and Dr. Paul Herbert of the US Army's First Infantry Division History Museum, believe Governor Baldacci with this act became the first governor to recognize the contributions of Native American Veterans. At the ceremony held in the Governor's Cabinet Room in which he announced the proclamation, Governor Baldacci told everyone assembled he would welcome legislation creating a permanent day to recognize Native American veterans.

MITSC explored with the Governor's chief legal counsel the possibility of introducing such a bill for the second session of the 123<sup>rd</sup> Legislature. The Maine Constitution specifies certain restrictions on the introduction of legislation during the second year of the biennial legislative

session. People examining the issue concluded the bill would not meet the definition of emergency legislation, and the Governor did not wish to introduce the bill for the second session.

Passamaquoddy Tribal Representative Donald Soctomah sponsored LD 30, An Act To Establish Native American Veterans Day, for consideration during the First Session of the 124<sup>th</sup> Legislature. LD 30 designates “June 21st as Native American Veterans Day in remembrance of the courage and dedicated service of Native American members of the United States Armed Forces, and the Governor shall urge the people of the State to observe this day in suitable places and with appropriate ceremony and activity.” Only one person testified against the bill at the public hearing held February 18, 2009. The Legislature approved LD 30 as an emergency measure. Governor Baldacci signed the bill into law April 22, 2009.

Both the Maliseets and Penobscots organized events to commemorate the initial Native American Veterans Day. On June 22, 2009, Maliseets gathered at their reservation for a ceremony that included Chief Brenda Commander reading the names of each Maliseet veteran who has served in various wars. The Penobscot Nation held a veterans recognition dinner at the Community Building the Friday before Native American Veterans Day. In addition, the Penobscots conducted a private dawn ceremony on June 21 to mark the day.

#### **F. Establish Equitable Budget Setting Process for MITSC Involving All Signatories to MIA**

When MIA was adopted in 1980 the State of Maine accepted sole responsibility for funding MITSC. Section 29 of LD 2037, An Act To Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory, reads, “The expenses of the Maine Indian Tribal-State Commission shall be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. In no event shall those expenses exceed \$3,000 per year.” This provision was eventually deleted.

MITSC Commissioners quickly recognized \$3,000 was an insufficient sum of money to support MITSC operations. At a MITSC meeting held in 1984, Penobscot Nation Chief Tim Love and Passamaquoddy Governor John Stevens offered to approach their respective Tribal Councils to split the costs for MITSC operations with the State of Maine to boost MITSC’s overall funding. Though this offer was extended in 1984, the State of Maine continued to acknowledge its responsibility for funding MITSC. The minutes for the July 13, 1988 MITSC meeting state, “Discussion of complexities involved in **State fiscal responsibility for MITSC’s budget**” (underlining and bold print added for emphasis.) Sometime after 1988 the universally acknowledged State obligation to meet MITSC financial needs morphed into a shared responsibility between the State and the Wabanaki signatories.

At the January 22, 1991 MITSC meeting, Commissioners decided “To send a letter from Chairman Cianchette to Governor McKernan stressing the cooperative funding of the MITSC and the importance of discussion with the Tribes about any changes in the MITSC’s budget.” Although the Tribes apparently agreed sometime between 1988 and 1991 to share the funding

responsibility for MITSC, the signatories also acknowledged “the importance of discussion with the Tribes about any changes in the MITSC’s budget.”

During the Maine Legislature’s consideration of the biennial budget in the winter/spring of 2007, MITSC encountered a Judiciary Committee that believed it possessed principal authority for determining MITSC’s budget. The Judiciary Committee opposed Governor Baldacci’s proposal, backed by legislative and Wabanaki leadership, to increase MITSC’s budget by \$38,000 annually for FYs 2008 and 2009. Ultimately, the Appropriations Committee rejected the Judiciary Committee’s recommendation to slash MITSC’s budget. But of even far more importance to the Wabanaki-State relationship was the disregard for Wabanaki Tribal Governments’ opinions and input on decisions related to the MITSC budget.

This damaging precedent of non-consultation by the Judiciary Committee carried forward to the Legislature’s consideration of a supplemental budget proposal in March 2008. Without any consultation with the Wabanaki signatories to MIA or notice to MITSC, the Judiciary Committee voted to cut MITSC’s budget by \$38,000 in FY 2009. The Judiciary Committee’s action prompted letters by Chiefs Brenda Commander and Kirk Francis (see Appendices IV and V) objecting to the unilateral action by one part of State Government. A public outcry and newspaper editorial condemnation ensued that resulted in Governor Baldacci restoring the money cut through two gubernatorial orders in late June 2008.

With two MIA signatories, the Houlton Band of Maliseet Indians and Penobscot Nation, opposed to the evolution of the MITSC budget setting process into something solely determined by the State, MITSC felt compelled to change the process. When MITSC was requested to participate in the State budget process for determining the biennial budget for FYs 2010 and 2011, it refused as a means to force the State to deal with the Wabanaki on the issue. In an August 13, 2008 letter (see Appendix VI) to Ms. Catherine Bonner, Budget Analyst, Bureau of the Budget, MITSC Executive Director John Dieffenbacher-Krall wrote:

I received your email communication dated August 11, 2008 concerning the State of Maine’s financial support for the Maine Indian Tribal-State Commission (MITSC). I can’t comply with your request to sign the Budget Guideline Report as to what level of funding the MITSC will receive in FYs 2010 and 2011 as that decision must be made by all of the parties to the Maine Implementing Act (30 MRSA 6201 et. seq.), the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Indian Nation, and the State of Maine.

State officials involved with Maine’s budget process were dismayed with this stand taken by MITSC. Disappointingly, the MITSC action did not cause the State to convene a meeting with the Wabanaki signatories to discuss the Commission’s budget as MITSC suggested. MITSC did appear at the joint public hearing held by the Appropriations and Judiciary Committee on February 10, 2009. The Commission offered no position on the budget amount proposed by Governor Baldacci, \$78,000 annually for FYs 2010 and 2011. MITSC used its testimony (see Appendix VII) to appeal to the State once again to respect the equality of all signatories to MIA.

Unfortunately, for an extremely long period of time, the State of Maine has been driving the MITSC budget setting process through this process you are using today. In past years, once the Maine Legislature has approved and the Governor has signed the budget bill, the Tribes have been left to determine what they were willing to contribute to supplement what Maine agreed to give instead of all the signatories to the agreement jointly determining what MITSC will do, ascertaining what that will cost, and fairly apportioning that agreed upon sum among the parties. MITSC is advocating for that mutual, consensual budget setting process.

MITSC concluded its February 10, 2009 testimony with the following paragraph.

The time is now to create the mutually acceptable budget setting process that the Maliseets and Penobscots have demanded. Until a new mutually acceptable budget setting process is created, not only will MITSC lack the funding to execute its responsibilities but tribal-state relations will continue to suffer unneeded political strain due to this unresolved issue.

MITSC acknowledges Governor Baldacci's positive initiative to increase the Commission's budget during a period when most entities receiving State funding are experiencing budget cuts. Yet the modest State increase of \$5,723 over the amount provided for FYs 2008 and 2009 fails to replace the \$30,000 lost by the Wabanaki refusal to contribute anything toward MITSC operations until an equitable budget setting process becomes established. As a result, MITSC has been compelled to reduce the hours of the Executive Director from 35 to 30 per week while also limiting its meetings to save money.

**G. Spur Effective Implementation of LD 291, An Act To Require Teaching of Maine Native American History and Culture in Maine's Schools**

The idea for Public Law 2001, Chapter 403 originated at an Assembly of Governors and Chiefs in 1998. Penobscot Tribal Representative Donna Loring sponsored LD 291, An Act to Require Teaching of Maine Native American History and Culture in Maine's Schools. The law requires Maine schools to teach Maine Native American Studies. Specific elements include:

- Maine tribal governments and political systems and their relationship with local, state, national, and international governments;
- Maine Native American cultural systems and the experience of Maine tribal people throughout history;
- Maine Native American territories; and
- Maine Native American economic systems.

The Maine Legislature tasked MITSC with staffing a Wabanaki Studies Commission to implement the law. In October 2003, the Wabanaki Studies Commission issued its findings, *Final Report of the Wabanaki Studies Commission*. The Wabanaki Studies Commission

recommended specific roles for the MITSC, Department of Education (DOE), University of Maine System, and Wabanaki to ensure the law's success.

MITSC neglected its LD 291 oversight role during the period 2004-2005. As MITSC began investigating the implementation status of LD 291 in 2006, it found a decidedly uneven introduction of Maine Native American Studies, what people responsible for the program now call Wabanaki Studies, across Maine classrooms. The single largest obstacle MITSC found to the introduction of Wabanaki Studies was the scarcity of free, quality curriculum materials. In addition, MITSC observed a need for more teacher training and professional development in the area of Wabanaki Studies. Finally, entities identified in the *Final Report of the Wabanaki Studies Commission*, including MITSC, had to be encouraged to renew their commitment and responsibility to Wabanaki Studies.

MITSC convened meetings with the Department of Education, University of Maine System, individuals with expertise related to Wabanaki Studies, and Wabanaki Leaders to strengthen Wabanaki Studies implementation. This effort received a boost when the DOE filled a vacant Social Studies Specialist position with Jana Boody. Since her arrival at the DOE, MITSC efforts to enhance Wabanaki Studies implementation have accelerated.

On July 10, 2008, MITSC met with Jana Boody and Chief Brenda Commander to discuss a plan to meet Wabanaki Studies implementation needs. The group decided to assemble Wabanaki and non-Wabanaki educators and cultural experts to create a curriculum to include specific learning objectives for students at each grade level. The initial two-day meeting of the educators' group convened December 4-5, 2008. Wabanaki representatives included Butch Phillips, Donald Soctomah, Nichole Francis, and Glenda Wysote-Labilois. The group reconvened March 18-19, 2009 to finalize the suggested learning outcomes by grade span. This work concluded with a May 22, 2009 meeting to review appropriate teaching materials for each learning outcome.

This initiative produced a DOE website exclusively devoted to Wabanaki Studies (see <http://www.maine.gov/education/lres/ss/wabanaki/index.shtml>.) Educators will find suggested learning outcomes by Maine Learning Result Content Standard. Along with each learning outcome, the DOE has provided extensive teaching resources, many of them accessible at the click of a mouse. MITSC will participate in a meeting to be scheduled by the DOE in the spring of 2010 to receive educator feedback on the website and to update the recommended teaching materials.

Another DOE achievement to support the teaching of Wabanaki Studies involves the creation of a video, *Sovereignty Redefined* ([http://media.learn.maine.edu/mdoe/MDOE\\_Sovereignty.mov](http://media.learn.maine.edu/mdoe/MDOE_Sovereignty.mov).) The video features Professor Jill E. Tompkins, Penobscot Tribal Member and Director of the American Indian Law Clinic at the University of Colorado Law School. MITSC assisted the DOE with Wabanaki review of the video. Anyone wishing to view *Sovereignty Redefined* can watch it at the DOE Wabanaki Studies website or contact the Department of Education to obtain a DVD copy of the film.

## **H. Support Wabanaki/Bates, Bowdoin, & Colby Colleges Collaborative**

Academic year 2008/2009 marked the second year of programming for the Wabanaki/Bates, Bowdoin, and Colby Collaborative. The Wabanaki/BBC Collaborative exists to deepen the relationship between the Wabanaki Tribes and the three colleges. A principal focus of the Collaborative is to expand Wabanaki student educational opportunities. To accomplish this goal, the three Colleges have formed Early College Awareness, Summer Aspirations, and Campus Climate committees.

The Early College Awareness initiative involves the engagement of Wabanaki 4<sup>th</sup> to 8<sup>th</sup> grade students in a specially designed program to boost the aspirations of Wabanaki students to attend college. BBC educators have loosely based the program on the Kids to College curriculum program developed by The Education Resources Institute located in Boston, MA. However, each college creates its own unique program to reflect the particular institution. Each year Bates, Bowdoin, and Colby Colleges recruit students through a selective process who volunteer to visit with Wabanaki students either at their schools, in the case of Passamaquoddy and Penobscot children, or at the Maliseet and Micmac communities.

Summer Aspirations brings Wabanaki high school students to each of the college campuses for exposure to a college environment with the goal of reducing the culture shock many Wabanaki students face when they matriculate to college. During the three-day program, Wabanaki students attend admissions and financial aid workshops, experience a college lecture, and spend time with undergraduate students. Bates, Bowdoin, and Colby underwrite all the costs related to the Summer Aspiration program with the exception of Wabanaki travel to the campuses.

In order to boost the retention of Wabanaki students once they gain admission, all three colleges work to enhance each respective institution's campus climate. Campus Climate committee work includes increasing Wabanaki and Native American lectures and events on each campus, promoting the hiring and retention of Indigenous faculty, expanding course offerings about the Wabanaki and Native American Studies, supporting Native American student organizations on campus, and examining other aspects of the college environment to maximize each institution's openness to Native American students. The colleges regularly share information about each other's Native American events to reach more people and to reinforce their collaborative partnership.

MITSC's role in the WBBC Collaborative has included creation and nurturing of the partnership, assisting with communication and problem solving, offering advice, and publicity. The Commission participated in an evaluation and planning meeting held October 23, 2008 at Indian Island. (See Appendix VIII WBBC Annual Report September 2008.) MITSC also attended the orientation session for the BBC Early College Awareness volunteers held at Indian Island February 28, 2009. The training provided the BBC students with an overview of each Wabanaki Tribe, the protocol for visiting an Indian community, and a safe forum to ask questions.

MITSC's largest contribution to the WBBC Collaborative in 2008/2009 involved publicity the Commission generated for the Colby College Early College Awareness visits during the week of

March 23, 2009. MITSC persuaded the Bangor Daily News, Maine Public Radio, The Penobscot Times, and The Quoddy Tides to do stories about the Colby visits to various Wabanaki schools and/or communities. In September 2009, the WBBC Collaborative was featured in the special Education Issue Magazine published by Indian Country Today. MITSC worked with Indian Country Today reporter on the story, “Wabanaki Bates-Bowdoin-Colby Collaborative.”

**I. Support Work Between the Sipayik Criminal Justice Commission and the Department of Corrections to Address Barriers Experienced by Wabanaki Inmates Attempting to Practice Their Religion**

MITSC Commissioner Donald Soctomah originally asked the Commission to examine issues related to the treatment of Wabanaki people who had contact with the criminal justice system. Since the Commission began working to support the Sipayik Criminal Justice Commission in the winter of 2006, MITSC has focused on strengthening Wabanaki inmates’ ability to practice their religion. Besides holding several meetings with Department of Corrections (DOC) Associate Commissioner Denise Lord and maintaining regular contact with the Sipayik Criminal Justice Commission, MITSC stressed to DOC leadership the importance of direct face-to-face contact between the highest level Corrections officials and Wabanaki leadership to resolve Wabanaki-State criminal justice issues. MITSC persuaded Department of Corrections (DOC) Associate Commissioner Denise Lord to meet with Wabanaki Leaders at Indian Island on October 23, 2007. Her meeting was followed by DOC Commissioner Martin Magnusson meeting with Wabanaki Leaders at Indian Township on January 24, 2008.

The earnest efforts made by the DOC leadership to improve communication with the Sipayik Criminal Justice Commission and to take concrete action to effect meaningful change has produced considerable progress. A solid working relationship has developed between the Sipayik Criminal Justice Commission, headed by Denise Altvater, and the DOC leadership. DOC carefully considered Sipayik Criminal Justice Commission comments on revisions to rules affecting the religious observances of inmates (see POLICY TITLE: RELIGIOUS SERVICES, GENERAL GUIDELINES POLICY NUMBER: 24.3 CHAPTER 24: ADMINISTRATION OF PROGRAMS AND SERVICES and associated Attachments A, B, C, and D) finally adopted February 15, 2009. Sweat lodge ceremonies and other activities to support the observance of Wabanaki religious practices now occur regularly at all adult correctional facilities (see Appendix IX *Report Sweat Lodge Ceremony at Maine State Prison September 27, 2008* and Appendix X Paul Bisulca 10/28/08 letter to Commission Martin Magnusson). MITSC views the effective working relationship forged between the Sipayik Criminal Justice Commission and DOC as something to be emulated by other State agencies responsible for issues affecting Wabanaki interests.

**J. Assert MITSC Fishery Management Responsibilities in the St. Croix Watershed**

MITSC possesses fishery management responsibilities on all waters meeting the criteria delineated in 30 MRSA §6207(3). At least five waterbodies within the St. Croix Watershed are subject to MITSC jurisdiction: Lower Chain Lake in T5 ND BPP, Middle Chain Lake and Upper Chain Lake in T4 ND, Selmore (Kilman) Pond in T4 ND, and Sysladobsis Lake (Lower) in T5



ND BPP. In addition, the Passamaquoddy Tribe at Motahkmikuk claims a number of waters in and around Indian Township as reservation waters.

The Commission began focusing on the St. Croix watershed in 2007 after the publication of the Maine Rivers reports (*St. Croix River Alewife – Smallmouth Bass Interaction Study* and *Genetic Analyses of Freshwater and Anadromous Alewife (*Alosa pseudoharengus*) Populations from the St. Croix River, Maine/New Brunswick*) examining the potential impacts of sea-run alewife restoration in the St. Croix River. Several dams on the main stem and tributaries of the St. Croix River have blocked access of alewives and other sea-run species to historical spawning habitat. In the 1980s, several fishway improvements on the St. Croix River restored a portion of sea-run alewife habitat allowing the population to increase to an estimated 2,590,750 fish in 1988 before the closure of the Vanceboro fishway in 1988 and Woodland and Grand Falls fishways in 1995 reduced the alewife population to under 10,000 fish in 2009. Three MIA signatories, the Houlton Band of Maliseet Indians, Penobscot Nation, and State of Maine, have expressed support for legislation reopening the Woodland and Grand Falls fishways.

In reaction to the Maine Rivers reports released in December 2006, MITSC began raising the question of the Passamaquoddy Tribe's position on the issue as early as the March 14, 2007 Commission meeting. Passamaquoddy representatives stated at the March 14 meeting that they had not yet read the Maine Rivers reports funded in part by an EPA grant awarded to the Passamaquoddy Tribe. MITSC Chairman Paul Bisulca repeatedly asked the Passamaquoddy Tribe throughout 2007 for their position on the question. Each time the Passamaquoddy Tribe responded they had not yet adopted a position. The January 24, 2008 MITSC meeting was held at Motahkmikuk in part to learn the Passamaquoddy position on the question of sea-run alewife restoration. Again, the Passamaquoddy Tribe informed the Commission that they had not adopted a position on the sea-run alewife restoration question.

MITSC held a conference call meeting February 5, 2008 to consider whether the Commission would take a position on LD 1957, An Act To Restore Diadromous Fish in the St. Croix River. The legislation proposed restoring sea-run alewife fish passage at the Woodland and Grand Falls fishways. Motahkmikuk Commissioner Donald Soctomah stated during the meeting that the Passamaquoddy Tribe had no official position on LD 1957 with Chief Phillips-Doyle supportive of the bill and Governor William Nicholas opposed to the legislation. MITSC voted to support LD 1957 with the Passamaquoddy Commissioners abstaining from the vote.

MITSC Chairman Paul Bisulca testified in support of LD 1957 at the public hearing held March 3, 2008. The Houlton Band of Maliseet Indians and State of Maine also spoke in support of the bill. Governor William Nicholas testified in opposition to the bill. The Legislature ultimately decided to reopen the Woodland fishway but retain the blockage of the Grand Falls fishway. The Marine Resources Committee also asked the Department of Marine Resources (DMR), Department of Inland Fisheries and Wildlife (IF&W), and Passamaquoddy Tribe to enter into a memorandum of agreement "that recognizes your joint management responsibilities within the St. Croix River as it pertains to the co-existence of diadromous species and resident species within the watershed."

Patrick Keliher, Director, Bureau of Sea-Run Fisheries and Habitat, DMR, made attempts to contact Governor Nicholas to discuss a memorandum of agreement as outlined by the co-chairs of the Marine Resources Committee. Governor Nicholas never responded. MITSC also emphasized with Patrick Keliher the need for DMR to respect MITSC's management responsibilities in the St. Croix watershed and to consult with the Commission on any issues that might affect the interests of any signatory to MIA.

In the meantime, MITSC continued to seek a Passamaquoddy position on reopening the Grand Falls fishway and the larger question of overall sea-run alewife restoration in the St. Croix River. On February 17, 2009, the Sipayik Tribal Council adopted a motion (see Appendix XI) to "make it known that the Passamaquoddy Tribe at Pleasant Point are in favor and support the alewives run up the St. Croix River which is also known as the Passamaquoddy River." Attempts to have the Passamaquoddy Joint Tribal Council consider the question of sea-run alewife passage in the St. Croix River have proved unsuccessful. Though Governor Nicholas has stated his personal opposition to sea-run alewife passage, the Motahkmikuk Tribal Council has not considered the issue since the completion of the Maine Rivers studies in 2006.

After the effort to have DMR, IF&W, and the Passamaquoddy Tribe enter into a memorandum of agreement pertaining to sea-run alewife management issues in the St. Croix River failed, a coalition of groups and the Fort Folly First Nation, a Mi'kmaq First Nation located near the village of Dorchester, New Brunswick, Canada, wrote to the International Joint Commission (IJC) on March 18, 2009 asking it to "condition its authorization for dams on the St. Croix River on allowing alewife passage." The IJC St. Croix River Watershed Board dedicated most of its June 17, 2009 meeting to the question of sea-run alewife passage in the St. Croix River. MITSC Chairman Paul Bisulca and Executive Director John Dieffenbacher-Krall represented the Commission at the meeting held in McAdam, New Brunswick, Canada. MITSC utilized the public input portion of the meeting to inform the IJC about MITSC and the interests of its signatories in the sea-run alewife restoration issue.

On June 29, 2009, MITSC Chairman Paul Bisulca received an email from Barbara Blumeris, Secretary, International St. Croix River Watershed Board, requesting MITSC to "provide a summary of the Tribal positions on the alewife passage issue." With the positions of the Maliseets, Passamaquoddy Tribe at Sipayik, and Penobscot Nation known, MITSC endeavored to contact Passamaquoddy Governor William Nicholas. Paul Bisulca emailed Governor Nicholas on July 2 and July 15, 2009 requesting Motahkmikuk's position on this issue with no response. Chairman Bisulca wrote to Colonel Philip T. Feir on July 24, 2009 relaying the respective Tribal positions on sea-run alewife restoration in the St. Croix River (see Appendix XII).

MITSC followed the July 24, 2009 letter to Colonel Feir with another dated August 26, 2009 (see Appendix XIII). The letter requests that the IJC "consult with MITSC on all decisions affecting sea-run alewife passage on the St. Croix River and within the watershed." Since that letter, MITSC received an invitation to an International St. Croix River Watershed Board consultation meeting with St. Croix fisheries agencies held October 15, 2009. MITSC perceives the IJC as fully accepting the Commission's fishery management responsibilities, a level of acceptance it

has not received from Maine and the Motahkmikuk Governments.

#### **K. Eliminate Dated and Offensive Language from the 2009 Senate and House Registers**

Jay Adams, Executive Director of Old Fort Western at the time, raised with MITSC on December 4, 2008 that language contained in the “History of Maine” section of the *2007 Senate and House Registers* pertaining to the Wabanaki included in some instances inaccurate and outdated passages. Overall, the material about the Wabanaki reflected a sense of history written from a victor’s perspective. Mr. Adams raised these concerns during a meeting convened by the Maine Department of Education to discuss effective teaching of Wabanaki Studies. He also offered to rewrite the section to reduce the victor’s point of view and to make it a more accurate, neutral reading. Upon hearing Jay Adam’s concerns, MITSC pledged to investigate the issue further.

MITSC learned that the “History of Maine” section which appeared in the *Senate and House Registers* was excerpted from the *Maine Almanac* written by Maine journalist Jim Brunelle that was initially published in 1979. Jim Brunelle had been updating the section for the Legislature for a number of years. When MITSC contacted Mr. Brunelle in late December 2008 he expressed receptivity to considering changes to the material about the Wabanaki.

After receiving Jay Adams’ History of Maine section edits, MITSC approached Wabanaki individuals with history expertise along with several Wabanaki chiefs to elicit their thoughts on the original section and Jay Adams’ proposed revisions. The Wabanaki individuals who commented universally agreed there were problems with the material related to the Wabanaki. They also said that they did not believe the few weeks available to do a revision to the section to meet the *2009 Senate and House Registers* publication deadline was adequate time to correct all the problems.

MITSC decided to offer some initial changes to the History of Maine section based on the Jay Adams’ rewrite and additional edits from MITSC with the goal of convening a group of Wabanaki and non-Wabanaki scholars to review the entire section and make appropriate changes in time for publication of the *2011 Senate and House Registers*. Darren Ranco, Coordinator of Native American Research at the University of Maine, agreed to convene a panel of experts to review and revise the History of Maine section. Before any substantial work got underway to review the History of Maine section, MITSC was informed by Millicent MacFarland, Clerk of the House, and Joy O’Brien, Secretary of the Senate, that they, as editors of the Senate and House Registers, had decided to drop the section to save money and avoid controversy concerning any changes. The *2009 Senate and House Registers* omits the History of Maine section.

#### **L. Promote Resolution of Wabanaki-State Dispute over EPA Delegation of Legal Authority to the State of Maine over Waters Within Indian Territory**

Chief Brenda Commander requested MITSC become involved in the fall of 2008 with an ongoing dispute between the Wabanaki and State of Maine concerning the delegation of Clean Water Act permitting authority from the Federal Government to the State of Maine. This dispute

initially arose in the mid-1990s when some permittees subject to Clean Water Act regulation first advanced the idea of the State seeking sole permitting authority. At the time, permittees had to obtain licenses from both the Federal and State Governments. Permittees complained about the cost and time associated with obtaining dual permits.

The Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation all objected to the delegation of permitting authority from the Federal Government to the State. They feared the closer relationship between the State and certain permittees could potentially compromise environmental protection and the Tribes' interests in waters adjoining and within their lands. Litigation ensued that resulted in the First Circuit Court of Appeals decision State of Maine v. Johnson. The First Circuit upheld an EPA decision granting the State permitting authority over 19 wastewater dischargers emitting into waters that eventually flow through the Passamaquoddy and Penobscot Reservations. In the case of sewage treatment plants operated by the Penobscot Nation and Passamaquoddy Tribe at Motahkmikuk, the court remanded the decision to EPA for review in consideration of its opinion. To date, the EPA has yet to make a decision regarding permitting authority for tribally owned facilities discharging to tribal waters.

On July 1, 2008, Andrew Fisk, Bureau Director, Land and Water Quality, Maine DEP, wrote to Stephen Perkins, EPA Region 1 (see Appendix XIV) requesting "that U.S.E.P.A. amend its January 2001 delegation decision to make it consistent with the Maine v. Johnson decision. We expect this amendment will include acknowledgement of both D.E.P.'s jurisdiction over all dischargers within the State, and that Maine's water quality standards apply uniformly throughout the State."

Paul Bisulca wrote to Governor John Baldacci November 21, 2008 (see Appendix XV) asking him "to delay the State of Maine's effort to gain exclusive authority for all aspects of permitting and water quality standards in Tribal waters as proposed in Andrew Fisk's July 1, 2008 letter to Mr. Stephen Perkins, EPA, until the Maine Indian Tribal-State Commission (MITSC) has had an opportunity to review and offer recommendations on this matter." Chairman Bisulca continues:

The Passamaquoddy Tribe and Penobscot Indian Nation possess sustenance fishing rights guaranteed under 30 MRSA §6207(4). The State of Maine's potential receipt of sole permitting and water quality standard authority without implementation of standards that represent due consideration of those fishing rights could unreasonably diminish or nullify the Passamaquoddy Tribe's and Penobscot Nation's ability to exercise that which they bargained for in 1980. Though I am aware of the Maine v. Johnson decision, I strongly disagree with Mr. Fisk's contention in his July 1 letter to Mr. Perkins that the First Circuit opinion brings "final resolution to the delegation issues." The Tribes have not given up their sustenance fishing rights and Maine has an obligation to honor and uphold those rights.

Following up on its letter, MITSC met with DEP Commissioner David Littell on January 8, 2009 to begin discussing the licensing delegation issue. Six days later MITSC attended a larger meeting held in Governor Baldacci's Cabinet Room that included Commissioner Littell, other

DEP staff, former DEP Commissioner Martha Kirkpatrick, Pat Ende, and Jerry Reid and Paul Stern representing the Maine Attorney General. A number of ideas were discussed to resolve the Wabanaki-State standoff on licensing delegation. Nothing has happened since that January 14, 2009 meeting.

## Appendix I

### SOUTHERN AROOSTOOK MINISTERIAL ASSOCIATION

P.O. Box 960

Houlton, ME 04730

May 2008

Douglas Hazlett, Manager Town of Houlton 21 Water St. Houlton, ME 04730	Chief Brenda Commander Houlton Band of Maliseets 88 Bell Road Littleton, ME 04730	Jennifer Gogan, Manager Town of Littleton 1536 US Hwy 1 Littleton, ME 04730	Ginger Pryor, Manager Town of Monticello P.O. Box 99 Monticello, ME
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Greetings:

It has been brought to our attention by the Executive Director of the Maine Indian Tribal - State Commission that there may be ongoing negotiations between the Federally Recognized Houlton Band of Maliseets and the Towns of Houlton, Littleton, and Monticello subsequent to the signing by the Governor on 4/24/08 of LD2221 ("An Act to Implement the Recommendations of the Tribal-State Work Group").

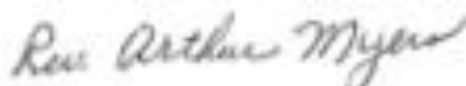
The Tribal - State Work Group, after two years of negotiations, had recommended jurisdictional parity with the Passamaquoddy Tribe and Penobscot Nation re Fish, Wildlife and Sustenance provisions and other matters in their original version of LD2221 submitted to the state legislature. (We note that Representatives Richard Cleary and Henry Jay were members of this work group.) However, because of reservations brought forward by the lawyer representing your towns, the final version of LD2221 does not grant parity for sustenance fishing and wildlife with the tribes mentioned above. Rather, the Houlton Band "may adopt ordinances governing firearms and crossbows only after prior notice to and discussion with the municipalities in which the Maliseet Indian Territory described in section 6205, sub-section 2-A, paragraphs A and B is located if those municipalities have conflicting ordinances." Furthermore, the Houlton Band by Feb. 1, 2010 must file a report to the Judiciary Committee regarding their assumption of authority re hunting, fishing and sustenance which includes observations from the municipalities, etc.

With regard to the above matters and all other negotiations and dialogue between the Houlton Band of Maliseets and the municipalities, it is our hope that all will be mindful of the numerous examples of past negotiations that have benefited the municipalities and the Houlton Band. To date over 4 million dollars has been brought to our area by the Houlton Band, and much more is in the offing if relations remain respectful and cordial. The ancestors of our Maliseet brothers and sisters occupied this land for thousands of years before Europeans arrived, governed themselves, and were good stewards of the land. The relationship for respectful negotiations is government-to-government as the Houlton Band of Maliseets' sovereignty has never been, nor could it be extinguished. Their culture, based on hunting and fishing, should be comprehended and respected.

How the municipalities of Houlton, Littleton and Monticello and the Houlton Band of Maliseets conduct their dialogue effects all who live in this region. Our children go to school together, we brush shoulders in stores, and work together in groups trying to help solve mutual problems in our area. Both the Houlton Band and the municipalities have different origins and legitimate concerns. Acknowledging the deleterious effects of actions based on hubris (sadly, often not recognized by the perpetrators until decades or centuries later), we look forward to a new day of awareness.

We hold in prayer the relations between all our brothers and sisters of aboriginal and European descent. Our hope is for mutual dignity, respect and trying to walk a mile in the other's shoes.

Sincerely,



Rev. Arthur Myers, First Baptist Church  
Chairperson  
Southern Aroostook Ministerial Association

Deacon Al Burleigh, St. Mary's Catholic Church  
Rev. Randall Burns, Military Street Baptist Church  
Revs. Leslie Nesin and Jessie Drysdale, Church of the Good Shepherd (Episcopal)  
Rev. Marc Fuller, United Church of Christ (Congregational)  
Rev. David Hutchinson, Unitarian Universalist  
Rev. Robert Johnston (retired), First Baptist Church  
Captain Irma Pearl, Salvation Army  
Rev. Marilyn Rohdin, Hodgdon United Methodist Church  
Marilyn Roper (Houlton-Woodstock Worship Group, Quaker)  
Rev. Naomi Sam-Kpakra, Houlton United Methodist Church

## Appendix II

July 15, 2008

Chief Brenda Commander  
The Houlton Band of Maliseet Indians  
88 Bell Road  
Littleton, Maine 04730

RE: Houlton Band of Maliseet Indians Property

Dear Chief Commander:

The Houlton town council recognizes the desire of the Houlton Band of Maliseet Indian's to achieve greater governmental autonomy, and supports this goal.

The Town of Houlton will consent to the release of jurisdiction over the 177 acres of Band land located on Foxcroft Road in Houlton upon which the Band's housing development and other community facilities are located. This "Houlton Band Territorial Land" will be separate and distinct from the Town of Houlton. The other Band properties in Houlton will continue as currently classified as trust land and non-trust land.

The Town of Houlton will claim no jurisdiction or authority over the Band's territorial land and will not levy taxes or request payment in lieu of taxes on this land. The town will provide no municipal services on this land, unless contractually agreed to by the Houlton Band of Maliseet Indians. Since the Band's territorial land, and residents, will have no governmental relationship to the Town of Houlton, the Band will be responsible for such things as:

- The ownership and maintenance of all roads located on territorial land.
- The development and implementation of building codes and ordinances.
- Code enforcement.
- The management of contractual relationships currently managed by the Town for residents of the territorial land such as cable TV, Pine Tree Waste, etc.
- SAD 29 cost allocations for residents of territorial land.
- The providing of all municipal services to residents of territorial land (i.e. vehicle registration, voter registration, elections, birth certificates, etc.).
- The assessing of land and property values on territorial land, and the reporting of those values to the state.
- The Houlton police department will have no jurisdiction over Houlton Band territorial land.
- General Assistance services for territorial residents

In exchange for our offer we ask that the following two points be honored:



Since the Houlton Band of Maliseet Indians own 74 parcels of land throughout the Town of Houlton, 6 of which are in non-contiguous locations, the application of territorial status to all non-contiguous parcels would be impractical, create significant jurisdictional issues, as well as potential public safety issues. We believe current and future territorial land must be contiguous. While not opposed to creation of additional contiguous land becoming territorial status, we do feel its creation and designation must include a role for Houlton's duly elected municipal officers. The creation of additional territorial land should require the concurrence of the Houlton's elected officials.

The ceding of a portion of Houlton's municipal jurisdiction, and the assumption of that responsibility by the Houlton Band of Maliseet Indians, is not without potential risk to both parties. As such, we ask that any legislative action recognize not only the rights of the Houlton Band, but also those of the Town of Houlton. The creation of a separate and distinct Houlton Band governmental entity should not carry with it any extraordinary ability to impose restrictions or sanctions upon the Town of Houlton beyond those empowered by the Federal government, the State of Maine, and/or those possessed by other local governmental bodies.

We respect the progress made by the Houlton Band of Maliseet Indians in establishing a vibrant and sound government, and support your desire to establish authority separate from the Town of Houlton. Developing the correct legislative/legal process for the execution of this separation will be essential in protecting the interests of both parties, ensuring a smooth transition, and guaranteeing public safety.

The Town of Houlton is dedicated to working towards this goal.

Sincerely,

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Paul Cleary  
Council Chair

---

Dr. Paul  
Romanelli  
Councilor

---

Susan Tortello,  
Councilor

---

Walter Goodrich,  
Councilor

---

Gerald Adams,  
Councilor

---

Nancy Ketch,  
Councilor

---

John Fitzpatrick,  
Councilor

CC: The Honorable John Baldacci, Governor  
The Honorable Richard Cleary, State Representative  
The Honorable Roger Sherman, State Senator  
Members of the Judiciary Committee  
Douglas Hazlett, Houlton Town Manager

## **Appendix III**

### **Testimony on LD 526**

#### **An Act To Clarify the Beano and Bingo Laws As They Apply to Federally Recognized Tribes Legal and Veterans Affairs Committee April 27, 2009**

Senator Sullivan, Representative Trinward, distinguished members of the Legal and Veterans Affairs Committee, I am Paul Bisulca, Chair of the Maine Indian Tribal-State Commission. On March 16<sup>th</sup> the Maine Indian Tribal-State Commission (MITSC) met and discussed LD 526 with those commissioners present voting unanimously in support of this Bill.

In 2006, the Maine Indian Tribal-State Commission (MITSC) initiated discussion between Governor Baldacci and the Wabanaki Chiefs regarding areas of concern in the 1980 Maine Implementing Act, which delineates certain jurisdictional relationships between Maine and the Penobscot, Passamaquoddy and Malecite tribes. A Tribal-State Work Group was created by Executive Order to review these areas of concern.

In 2007, the 123<sup>rd</sup> Legislature passed LD 1263, which continued the work of the Tribal-State Work Group and charged it to study issues associated with the Maine Implementing Act including differences in the interpretation and understanding of the Settlement Act. The Work Group was required to develop recommendations for how the 123<sup>rd</sup> Legislature might reconcile the issues in a manner that benefits both the Tribes and the State. Currently, the five tribal governments operate under three different settlement agreements with Maine. The 18-member Work Group unanimously agreed to eight recommendations, one of which was to amend the law to achieve jurisdictional parity for all the tribes.

In November 2008, the Maliseet Chief requested MITSC assistance with obtaining the same opportunity for the Maliseets, a federally recognized tribe, to operate high-stakes bingo games as the Penobscot and Passamaquoddy Tribes are permitted to do. Although the Maine State Police is authorized to issue licenses to operate high-stakes beano or high-stakes bingo games to federally recognized Indian tribes, and could do so now for the Maliseet Tribe, there is a restriction limiting the location of the high-stakes beano/bingo games to Indian Territory.

Indian Territory consists of the reservation, which is the tribal homeland defined by treaty, and trust lands of the licensed tribe. The Maliseet Tribe has no defined Indian Territory in Title 30 MRSA §6205 as do the Penobscot and Passamaquoddy Tribes, because the Maliseets have no reservation, which is part of the term “Indian Territory”. The Maliseets do have trust lands.

MITSC on December 3, 2008 asked the Attorney General for an opinion regarding the legality of the Maliseets conducting high stakes bingo on their trust land. His reply on December 23, 2008 expressed the view that, “We believe that if a court were to consider the question as to whether the Houlton Band of Maliseet Indians could conduct high-stakes beano/bingo games, it would conclude that, while the Band is a federally recognized Indian tribe eligible to receive a license

from the Chief of the Maine State Police in accordance with 17 M.R.S.A. §314-A(1), the Band may not conduct such high stakes beano/bingo games at the present time because, as a licensed organization, it does not have Indian Territory within which to conduct such games”.

The simple solution, as reflected in the bill, to accommodate the Maliseet request is to eliminate the term “Indian Territory” in Title 17 MRSA §314-A(5) and replace it with its component parts: reservation and trust lands. Not all tribes have reservations, but all tribes have trust lands.

I urge the committee to support LD 526.

## Appendix IV

Tribal Chief	<b>HOULTON BAND OF MALISEET INDIANS</b>	Administrative
Deputy Commander	88 Bell Road	Telephone:
John S. Jones	Littleton, ME 04738	(207) 532-46
Tim Beaver		In State:
Michelle Barrows		1-800-544-0
Linda Raymond		Out of State:
Glenis Trott		1-800-544-5
Brian Reynolds		Fax:
Johnna Jones		(207) 532-28

April 22, 2008

Governor John E. Baldacci  
1 State House Station  
Augusta, ME 04333

Dear Governor Baldacci,

I was shocked to learn that the State of Maine unilaterally voted to cut its financial support of the Maine Indian Tribal-State Commission (MITSC). Perhaps even more startling was the failure to consult with my Tribe and the other Wabanaki Tribes that belong to MITSC.

As you know, the Houlton Band of Maliseet Indian did not become a member of MITSC until September 10, 2007. During the short period of time of our membership, we have deeply appreciated the benefits of belonging to MITSC. Too often in the past my Tribe has been unaware of important political developments originating from Maine State Government. MITSC does a superb job of keeping us informed and alerted to proposed policies that could affect the Maliseet People.

By unilaterally cutting its contribution to MITSC, Maine State Government has effectively decided what level of services MITSC can provide and constrained its operations. This action harms the Houlton Band of Maliseet Indians. The State of Maine does not have the right to do this under the Maine Implementing Act. MITSC is comprised of four sovereign governments. No individual member government should dictate to the other three how MITSC will function.

I was under the impression that all five chief executive leaders of the four member sovereigns strongly supported the recent direction of MITSC and its future agenda. I fear this budget cut will severely jeopardize MITSC's effectiveness.

My people took a long of faith this past fall when we paid our voluntary contribution to MITSC of \$10,000. I believe that my Tribe's gesture has been poorly recognized by the State of Maine. Though I appreciate the budget challenges faced by the State of Maine, we are paying a far, far higher percentage of our annual budget toward supporting MITSC's operations as compared to the State of Maine. Even more troubling is the State of Maine's failure to fully

support MHSU operations as originally agreed to in the original Maine Indian Claims Settlement.

Despite some positive initiatives to improve tribal-state relations, the last few months have involved substantially more setbacks to this relationship than progress. The extremely modest Tribal-State Work Group (TSWG) bill reported out by the Judiciary Committee, LD 2221, included only two of the seven unanimously endorsed Work Group recommendations. The Wabanaki Tribes' highest collective priority, clearly exempting the Passamaquoddy Tribe and Penobscot Nation from the Freedom of Access Act (FOAA) laws, failed because the Judiciary Committee decided not to support inclusion of the exemption in the Maine Implementation Act (MIA). Including the exemption in MIA is critical because it would represent an affirmation of the Tribes' inherent sovereignty and strengthen the protection afforded to Tribal Government under MIA section 5256(1). Ironically, if any Tribe approves LD 2221, we will become subject to nuisance Freedom of Access Act requests similar to the one filed in the *Great Northern Paper v. Penobscot Nation* case due to our inclusion in section 5256(1) of MIA.

Governor Baldacci, I do appreciate you having sent Mike Mahoney to the Judiciary Committee work session on March 25 with a clear statement from you supporting inclusion of the FOAA exemption in LD 2221. Unfortunately, you and your staff seemed to be the only people in State Government willing to speak in support of this unanimous recommendation of the Tribal-State Work Group. I was troubled that not one legislative member of the TSWG testified before the Judiciary Committee in support of this recommendation.

The account of what certain State people did and did not do to support the TSWG recommendations points to a larger problem faced by the Tribes – who is the State of Maine? I appreciate that the State of Maine is far bigger than the Maliseet Nation with a population a thousand times larger than the Maliseets, and that it has Maine has three distinctive branches of government with an independent Attorney General with specific powers.

However, the Wabanaki have the recurring experience of reaching agreement with one part of Maine State Government to only have another block such agreements – at times Maine governmental officials expand the people at the bargaining table to include private economic interests that should never sit at the table as equals with Indian Nations. Though I understand and respect the division of powers within Maine State Government, I believe that actors in and outside Maine Government exploit this distribution of power at times to thwart Tribal initiative to the detriment of tribal-state relations. I see a lack of leadership and coordination between the distinctive branches of State Government in the area of tribal-state relations. Maine needs to speak with one official voice on tribal-state relations.

This is the second time in my administration and yours that the Houlton Band of Malisee Indians have entered into negotiations with the State of Maine in good faith while spending excessive amounts of time, energy and money for naught. The actions, or better yet inactions, of the Legislators of the State, especially those who sit on both the Judiciary Committee and the TSWG speak volumes to the true intention of the State in regards to Tribal-State relations. It has become painfully clear that the best interests of the Tribes and Tribal people are not a priority at even an afterthought of the State. Not in 1980, and certainly not now in 2008.

I urge you to review the Federal Maine Indian Land Claims Settlement Act of 1980, particularly section 1725(a) 2, which reads "Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the HIBMI are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band and its members."

Due to the recent ISMG failure and lack of an honest effort put forth by the State, I see no reason for the Houlton Band of Maliseet Indians and State of Maine to prolong it's strained relationship "as is". Without honesty and respect on both sides, there is no need for continued dialogue. I will continue to pray for you and the residents of the State of Maine.

However, I do want to have a positive relationship with the State of Maine. You are our neighbor. Unlike others who may visit up temporary residence here and leave, this land is our home.

To begin rebuilding tribal-state relations, I believe that the State of Maine needs to demonstrate through concrete actions that this relationship is important. An initial step to rebuild my Tribe's confidence would involve the State of Maine restoring the \$38,000 it cut from the MITSC budget. That action would denote the State of Maine's acceptance that all the parties to MITSC enjoy equal authority, a prerequisite for healthy tribal-state relations. Until the State of Maine pays a more equitable share for MITSC operations, the Houlton Band of Maliseet Indian will suspend voluntary contributions to fund MITSC operations.

The second confidence building measure that I recommend is a half-day to day long summit between the top elected leaders of the five Wabanaki Tribal Governments, Legislative Leadership, and Attorney General Rowe. Leaders need to share what they perceive led to this breakdown in tribal-state relations and jointly identify how we rebuild a productive relationship founded on respect and recognition of each other's sovereignty. I would be willing to host such a meeting, and I would be equally willing to attend such a gathering elsewhere in Maine.

None of us want strained tribal-state relations. I believe that we can move this relationship forward with a genuine commitment on each leader's part. I look forward to your response.

Respectfully yours,



Chief Brenda Commander  
Houlton Band of Maliseet Indians

Cc: Chief Kirk Francis, Penobscot Indian Nation  
Chief Victoria Hodges, Wabanaki Council of Attorneys

Governor William Nicholas, Pocomtunquoddy Tribe @ Mothiminkuk  
Chief Richard Phillips-Doyle, Pocomtunquoddy Tribe @ Sipayik  
High Commissioner Louise Arbour, UN Office of the High Commissioner, Committee  
on the Elimination of Racial Discrimination  
Assistant Secretary Carl Ammon, Bureau of Indian Affairs  
Chairman Gerald A. Reynolds, US Commission on Civil Rights  
Senator Herb Edmonds, Senate President  
Representative Glenn Cummings, Speaker of the House  
Senator Elizabeth Mitchell, Senate Majority Leader  
Representative Hannah Pingree, House Majority Leader  
Senator Peggy Rotundo, Chair, Appropriations and Financial Affairs Committee  
Representative Jeremy Fischer, Chair, Appropriations and Financial Affairs Committee  
Senator Barry Hobbs, Chair, Judiciary Committee  
Representative Deborah Simpson, Chair, Judiciary Committee  
Pocomtunquoddy Tribal Representative Donald Sockotah  
Pocomtunquoddy Tribal Representative Donna Loring  
Paul Bischo, Chairman, Maine Indian Tribal-State Commission  
HONM Tribal Council

## Appendix V

### Office of the Chief and Council

Kirk E. Francis  
*Chief*

Dennis R. Peterson Sr.  
*Vice-Chief*

Donna Loring  
*Representative*



Penobscot Nation  
12 Wabanaki Way  
Community Building  
Indian Island, Maine 04468  
(207) 827-7776

FAX (207) 827-6042

April 28, 2008

Governor John E. Baldacci  
1 State House Station  
Augusta, ME 04333

Dear Governor Baldacci:

No doubt you have read the Bangor Daily News article, "Tribe looks to sever ties with state after slots veto," published April 17. I want to elaborate on why I decided to advise my Tribe to withdraw from active work with the State of Maine at this time.

Please understand that this decision involves much more than your recent veto of LD 701. You and I are well acquainted with our respective positions on this issue. You indicated that you would veto the bill and you took that action. What bothers me is the representation by a high ranking member of your staff that your Administration would take a certain stance relative to the legislative process to only discover something different to have occurred. This characterizes too many tribal-state processes and must be addressed if we want to achieve better tribal-state relations.

I am extremely dismayed with the treatment that the Maine Indian Tribal-State Commission (MITSC) has recently received from the legislative and executive branches of State Government. I can't communicate the depth of my disgust that the Legislature would cut the MITSC budget by \$38,000 after the extensive work done last year to increase State financial support to a level more commensurate with MITSC's statutory responsibilities. While I know that you did not propose this cut, you made it effective when you signed LD 2173. This action repealed one of the more positive achievements of your Administration in the area of tribal-state relations when it boosted State financial support for MITSC in both FYs 2008 and 2009.

But the State's disrespect of MITSC extends beyond the action to unilaterally cut its budget. I attended the second day of the public hearing and many of the work sessions for LD 2221, An Act To Implement the Recommendations of the Tribal-State Work Group. I know how hard MITSC has worked to support the Tribal-State Work Group process, and I am disturbed with how MITSC representatives have been treated, especially by the Judiciary Committee.



MITSC is not accorded the deference and respect that such a high level tribal-state body warrants. Remember, when MITSC is disrespected, its member sovereigns are disrespected, something that my people and I doubt the other Wabanaki Tribes will abide. And that disrespect also tarnishes the State of Maine and its people.

I have been extremely pleased with the work of MITSC. MITSC has worked hard to elicit Penobscot Nation concerns and take action when requested. Nonetheless, we are not going to bear the financial burden in addition to the political harm that the State budget cut to MITSC has caused. The Penobscot Nation, like the Maliseet Band, will not contribute any additional money in support of MITSC until the State of Maine restores adequate funding for MITSC operations.

In the future, before any discussions can be considered we would like you and legislative leadership to design an appropriations process for MITSC that reflects the mutual agreement of all its member governments regarding the level of financial support each sovereign shall contribute and MITSC needs to be part of a process in dealing with Tribal-State relationships that allows them to be a decision maker on those issues otherwise I fear the same old situation of politics and constituent pressure will ignore the factual work that has been done which will do nothing but continue to breed mistrust and continue to move this relationship further back. Any change in the agreed upon support by each sovereign should only occur after formal government-to-government consultation and acceptance by all the parties. One sovereign should never dictate to the other sovereigns the level of funding MITSC will receive and thus unilaterally alter its work plan and organizational capacity to fulfill its statutory obligations.

You may react to this letter by thinking that I and my People are ungrateful for the positive things done by you and your Administration for the Penobscot People and the Wabanaki in general. I do appreciate the positive things you have done and readily acknowledge them. You deserve genuine credit for your willingness to enter into the Tribal-State Work Group process. You were the first Maine Governor since the signing of the Settlement Act to express a willingness to consider possible changes to the Maine Implementing Act. All Wabanaki People appreciated your appointment of Wayne Newell to the University of Maine System Board of Trustees. Penobscots were especially proud when you honored our distinguished elder Charles Shay when you proclaimed June 6, 2007 Native American Veterans History Day.

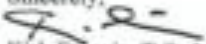
While your joint creation of the TSWG may be your greatest achievement in the area of tribal-state relations, the Penobscot Nation and Passamaquoddy Tribe gained nothing from it, yet we incurred considerable direct and indirect costs to participate in it. Meanwhile, you have consistently blocked every gaming initiative proposed by our Tribes that would provide actual dollars to support critical Tribal services. My People can't eat words, their illnesses at our health center can't be treated with rhetoric, and none of our creditors will accept Maine's good intentions in lieu of dollars. My People have had enough with the State of Maine.

I have a great political challenge, Governor Baldacci. My People are demanding where is the evidence that working with the State of Maine helps the Penobscot Nation. Yet we provide services, especially our water quality monitoring and environmental oversight of the Penobscot River, worth tens of thousands of dollars to the State of Maine.

To reengage with the State of Maine, I need to demonstrate to my people some concrete achievements and actions to prove tribal-state collaboration is worthwhile. The first action you could take is to restore the MITSC budget cut of \$38,000. Two, work with us and the other Wabanaki Tribes to pass meaningful reforms to the Maine Implementing Act that include addressing problems in Section 6206 concerning the internal tribal matters and powers like a municipality language and for our tribes to have regulatory control over our territories. Three, participate in an action agenda for better tribal-state relations that includes education of key members of the executive, legislative, and judicial branches of State Government and the Attorney General's Office about the Wabanaki and applicable Indian law. I never again want to hear a member of the legislative committee with jurisdiction over Indian matters ask what the term Wabanaki means, something that happened in the Judiciary Committee last month.

My term of office ends this September. If I am reelected, you and I will be dealing with one another for most of the remainder of your term in office. I believe both of our peoples would benefit from better tribal-state relations but it seems we are far apart on how to achieve that. One thing you can count on is that the Penobscot People will never leave this State. Hundreds of generations of our ancestors are buried here. We have a sacred trust to preserve this land for the children to come. Many Penobscots have lost their lives defending this State of Maine and United States. Please know our great love for this land and all its inhabitants. Surely we can build a better partnership between the State of Maine and the Penobscot People based on a common understanding that there is no more special place in the world than this place we call Maine

Sincerely,



Kirk Francis, Tribal Chief  
Penobscot Indian Nation

Cc: Chief Brenda Commander, Houlton Band of Maliseet Indians  
Chief Victoria Higgins, Aroostook Band of Micmacs  
Governor William Nicholas, Passamaquoddy Tribe @ Motahkmikuk  
Chief Richard Phillips-Doyle, Passamaquoddy Tribe @ Sipayik  
Assistant Secretary Carl Artman, Bureau of Indian Affairs  
Senate President Beth Edmonds  
House Speaker Glenn Cummings  
Senator Elizabeth Mitchell, Senate Majority Leader  
Representative Hannah Pingree, House Majority Leader  
Penobscot Tribal Representative Donna Loring  
Penobscot Nation Tribal Council

## Appendix VI

August 13, 2008

Ms. Catherine Bonner  
Budget Analyst  
Bureau of the Budget  
State House Station 58  
Augusta, ME 04333-0058

Dear Ms. Bonner:

I received your email communication dated August 11, 2008 concerning the State of Maine's financial support for the Maine Indian Tribal-State Commission (MITSC). I can't comply with your request to sign the Budget Guideline Report as to what level of funding the MITSC will receive in FYs 2010 and 2011 as that decision must be made by all of the parties to the Maine Implementing Act (30 MRSA 6201 et. seq.), the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Indian Nation, and the State of Maine.

The appropriate forum for such a discussion is the Annual Assembly of Governors and Chiefs. Paul Bisulca, Chair of MITSC, told Governor Baldacci, Senate President Edmonds, and House Speaker Cummings on May 21, 2008 that we would be unable to organize a 2008 Annual Assembly of Governors and Chiefs due to a \$38,000 cut in the State's contribution to the MITSC budget.

Since the May 21 meeting between State leaders and MITSC, Governor Baldacci signed two financial orders restoring \$38,000 to MITSC. We now have adequate resources to work with the respective sovereigns to schedule and hold an Annual Assembly of Governors and Chiefs. I anticipate that this Assembly will be held some time in the fall of 2008. Once Governor Baldacci, Legislative leaders, and the Wabanaki Chiefs have conferred regarding the appropriate level of funding to execute MITSC's work plans for FYs 2010 and 2011, I can provide you with the requested information.

Please feel free to contact me if you have any questions.

Sincerely yours,

John Dieffenbacher-Krall  
Executive Director

Cc: Chief Brenda Commander  
Chief Kirk Francis  
Chief Victoria Higgins  
Governor William Nicholas  
Chief Richard Phillips-Doyle  
Governor John Baldacci  
Senate President Beth Edmonds  
House Speaker Glenn Cummings  
Senator Elizabeth Mitchell, Senate Majority Leader  
Representative Hannah Pingree, House Majority Leader  
Senator Peggy Rotundo, Chair, Appropriations and Financial Affairs Committee  
Representative Jeremy Fischer, Chair, Appropriations and Financial Affairs Committee  
Senator Barry Hobbins, Chair, Judiciary Committee  
Representative Deborah Simpson, Chair, Judiciary Committee  
Passamaquoddy Tribal Representative Donald Soctomah  
Penobscot Tribal Representative Donna Loring  
Attorney General Steve Rowe  
MITSC Commissioners

## **Appendix VII**

### **Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FYs 2010 and 2011 contained in LD 353, 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, 2010 and June 30, 2011, and Recommendations for a Separate Budget Setting Process for Determining the MITSC Budget February 10, 2009**

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 neither for nor against the appropriation proposed for the MITSC budget for fiscal years 2010 and 2011. I intend to focus on the need for establishing a new budget setting process for MITSC.

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 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.

Until some court decisions issued shortly before the conclusion of the Settlement Act negotiations in 1980, the Wabanaki, the umbrella term used for the four federally recognized Tribes present in Maine today, experienced State of Maine control over nearly every aspect of their lives. The Tribes were considered wards of the State. One of the most important aspects of the Maine Indian Claims Settlement is it removed the State's historical dominant role in the relationship and recast it as one of equals. Unfortunately, vestiges of the old historical pattern of the relationship have carried forward into the MITSC budget setting process.

The Committees here assembled should understand that the State of Maine agreed to fund 100% of the cost for operating MITSC. Section 29 of LD 2037, the bill containing the Maine Implementing Act, reads, “The expenses of the Maine Indian Tribal-State Commission shall be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. In no event shall those expenses exceed \$3,000 per year.”

MITSC Commissioners quickly recognized that even in the early 1980s \$3,000 didn’t buy very much. At a June 7, 1984 MITSC meeting, the signatories agreed to establish a FY 85 budget of \$45,000. During the meeting in question, Penobscot Governor Tim Love and Passamaquoddy Governor John Stevens agreed to approach their respective Tribal Councils to contribute half the money, \$22,500. I suspect this voluntary offer resulted in the fiction that I heard during my first biennial budget process as MITSC Executive Director in 2006-2007 that the Tribes were required to pay half of MITSC's budget. Nothing in the Maine Implementing Act requires the Tribes to support MITSC operations. The statutory language obligating the State of Maine to pay was eventually deleted.

I want to focus on something in the previous paragraph of my remarks. “The signatories agreed to establish a FY 85 budget of \$45,000.” Unfortunately, for an extremely long period of time, the State of Maine has been driving the MITSC budget setting process through this process you are using today. In past years, once the Maine Legislature has approved and the Governor has signed the budget bill, the Tribes have been left to determine what they were willing to contribute to supplement what Maine agreed to give instead of all the signatories to the agreement jointly determining what MITSC will do, ascertaining what that will cost, and fairly apportioning that agreed upon sum among the parties. MITSC is advocating for that mutual, consensual budget setting process.

MITSC is not advocating for a new budget process solely based on what we believe is consistent with the Maine Implementing Act and what the parties bargained for in 1980. Two of the signatories, the Maliseets and Penobscots, have clearly stated they refuse to contribute another penny to MITSC until the issue of establishing a fair, consensual budget setting process for MITSC is resolved. Without Tribal financial support, even the increased funding proposed in Governor Baldacci’s budget is insufficient to sustain current MITSC operations.

On March 20, 2007, Chief Kirk Francis wrote to Governor Baldacci expressing his concerns about statements made by some members of the Judiciary Committee earlier that year during the course of reviewing the MITSC budget for FYs 2008-2009. In his letter, Chief Francis wrote, “Before we experience an unwanted setback in tribal-state relations, I propose we meet as soon as possible to clarify our joint understanding of MITSC’s role and discuss how to properly apportion support for MITSC operations.”

Thirteen months later Chief Brenda Commander wrote to Governor Baldacci deeply concerned about a \$38,000 cut in the MITSC budget that took effect with the supplemental budget bill approved March 31, 2008. She wrote, “MITSC is comprised of four sovereign governments. No individual member government should dictate to the other three how MITSC will function...Until the State of Maine pays a more equitable share for MITSC operations, the

Houlton Band of Maliseet Indians will suspend voluntary contributions to fund MITSC operations.”

Chief Francis in an April 28, 2008 letter to Governor Baldacci wrote, “The Penobscot Nation, like the Maliseet Band, will not contribute any additional money in support of MITSC until the State of Maine restores adequate funding for MITSC operations. In the future, before any discussions can be considered we would like you and legislative leadership to design an appropriations process for MITSC that reflects the mutual agreement of all its member governments regarding the level of financial support each sovereign shall contribute...One sovereign should never dictate to the other sovereigns the level of funding MITSC will receive and thus unilaterally alter its work plan and organizational capacity to fulfill its statutory obligations.”

The time is now to create the mutually acceptable budget setting process that the Maliseets and Penobscots have demanded. Until a new mutually acceptable budget setting process is created, not only will MITSC lack the funding to execute its responsibilities but tribal-state relations will continue to suffer unneeded political strain due to this unresolved issue.

## Appendix VIII

### WBBC Annual Report September 2008

#### Table of Contents

##### Group A

Early Awareness Initiative..... Page 2

##### Group B

Summer Aspirations Program..... Page 4

WBBC

##### Group C

Campus Climate..... Page 7





*Early College Awareness Initiative  
WBBC Annual Report  
September 2008  
Group A*

*College students from Bates, Bowdoin and Colby visited Wabanaki tribes during their respective spring breaks to tell elementary and middle school students about life as a college student.*

*Overview:*

*Dates:*

- Bates: February 17-19*
- Bowdoin: March 9-13*
- Colby: March 24-28*

*Tribes visited:*

- Bates: Micmac, Maliseet*
- Bowdoin: Penobscot, Passamaquoddy (2)*
- Colby: Maliseet, Penobscot, Passamaquoddy (2)*

*College student participants:*

- Bates: 4--one senior, two sophomores, one first-year—all female*
- Bowdoin: 6--three seniors, three juniors—four females, two males*
- Colby: 6--three seniors, two sophomores, one first-year—five females, one male*

*Students seen:*

- Bates: Elementary through high school, approximately 25 (occurred during break)*

- Bowdoin: Elementary through middle school, approximately 105
- Colby: Elementary through middle school, approximately 170

Content:

- Bates: Kids to College curriculum and Power Point presentation on college life
- Bowdoin: Kids to College curriculum
- Colby: Kids to College curriculum, movie of Colby College featuring student volunteers, and picture game about college life

### *Comments:*

1. Early identification of the key staff at each tribe who serve as liaisons to the school principals, teachers, students and parents would have enhanced the program significantly.
2. Having more participation from Wabanaki educators during the initial planning stages would have helped the program run more smoothly.
3. The Wabanaki cultural education offered to the Bates students seemed more extensive than the educational component planned for the Colby and Bowdoin visits.
4. Evidence of program's success was shown by comments like, "I wanna go to Colby."
5. This initial effort seemed like good exposure to college in an informal manner.
6. Some of the common themes on teacher evaluations were: preliminary information about program and goals needed well in advance, incorporating a follow-up activity would be useful, more content about work needed to gain admission to college needs to be added.

### *Future considerations:*

1. Collaborate with school personnel early at each of the various sites.
2. Provide outline to teachers ahead of time of the lesson plans that will be used.
3. Plan the visits taking Wabanaki school breaks and MEA testing into consideration. Although it seemed ideal to plan the visits during the Spring breaks, there should be flexibility if those dates are not conducive with the public school calendars.

4. Plan a meeting in September in the Bangor region (or other centrally located town) with the Wabanaki educators and college representatives to work out details of the program for the following semester.
5. Augment the pre-training workshop for the college students so that the information shared by each of the tribes is comparable.
6. Send colleges a contact sheet of the student participants ahead of time to be distributed to the schools and liaisons to facilitate further communication with students and teachers.
7. Plan to engage eight-grade students in more one-on-one conversations to encourage their participation.
8. Add a parent/guardian component to the program.

*Summer Aspirations Program  
WBBC Annual Report  
September 2008  
Group B*

*Overview:*

*Nine students and four chaperones visited Bates, Bowdoin, and Colby from June 30 – July 2. The students spent one night on each campus and participated in workshops designed to raise college aspirations, enhance their understanding of the selective admissions process and introduce students to residential colleges. The students were rising 9<sup>th</sup> through 12<sup>th</sup> graders and represented the Maliseet, Passamaquoddy and Micmac tribes.*

*Program Evaluation:*

*The students in general found the College Aspirations program to be helpful. Bowdoin focused on campus resources for students, Bates on the academic environment at selective residential colleges and Colby on the admissions and financial aid process. In particular, the students enjoyed the opportunity to stay overnight on our campuses, meet some of our students, sit in on a simulated class, participate in a mock application review session, and gain familiarity with campus resources and admissions terminology and procedures.*

*The chaperones and college personnel felt that this small pilot group was appropriate for the first year. However, if our ultimate goal is to recruit and enroll Native-American students, the program must be modified to better suit the needs of the students and the three colleges. We feel that the Summer Aspirations Program has value but in its*

current form, we do not expect to enroll a core group of students in the immediate future.

### *Challenges:*

1. By the time the students are rising 11<sup>th</sup> and 12<sup>th</sup> graders, any intervention we hope to make during the summer is too late (unless the students are already taking the most challenging courses available to them).
2. The rising 9<sup>th</sup> and 10<sup>th</sup> graders who participated in the 2008 Summer Aspirations Program found the program too long, too intense and they were a challenge for the chaperones to manage and keep engaged.

### *Future Considerations:*

1. We should look at this as a long-term process and begin working with students before they begin 9<sup>th</sup> grade. Perhaps the students we ultimately want to target are the 8<sup>th</sup> graders and parents Group A plans to engage with as part of their Early Awareness Program. Collaboration between Groups A and B in this instance would be an appropriate start.
2. In the interim, we should target current 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> graders and focus on building their skills and raising aspirations. We need to reach out to these students prior to a college campus visit next summer.
3. After we have built a strong cadre of students, the Summer Aspirations Program should target 11<sup>th</sup> graders exclusively for the campus visit. They would benefit most from various workshops that should focus on the college search and selection process.
4. In an effort to reach out, each college should plan to send admissions representatives to meet with students and education directors in the fall and/or spring semester, begin to build personal relationships with the students in Native communities in order to engender a stronger interest in our colleges and increase awareness about the college aspirations program.
5. It is recommended that one representative from each Native community participate in the design and implementation of the summer program. A representative at each tribe will enhance our ability to disseminate information in a timely manner, identify students we can work with and serve the needs of the tribes and the academic institutions. The tribal representatives can enable us to target appropriate students as early as January and give us

the opportunity to work with the students prior to their campus visit.

6. We project that it will take up to 4 years before we see a cadre of applications from seniors who are competitive for admission to the three schools.

### **Financing the Program:**

The total cost for each college for the 2008 summer program (including transportation, housing, meals, entertainment and gifts) were as follows:

Bowdoin	\$1283
Bates	\$1340
Colby	\$1460

If our focus is on the quality of the visit and if we are to target qualified and interested students, we would like to keep the numbers relatively small and bring no more than 10 – 15 students to campus during the summer. We anticipate that our summer budget will increase by \$800 to reflect the additional costs of housing, meals, transportation, entertainment and gifts for 6 additional students.

The estimated cost for 2009 is as follows:

Bowdoin	$\$1133 + \$800 = \$2083$
Bates	$\$1340 + \$800 = \$2140$
Colby	$\$1460 + \$800 = \$2260$

### **Important Notes:**



*These costs do not include the cost of transportation, lodging or meals should college admissions representatives travel to each reservation.*

*If we bring a larger group to campus and need to rent a bus, we can expect the transportation costs to rise.*

*Our budget for accommodation and meals is based on figures for this year. If those costs change or if we need to put the group in a hotel because housing is not available on any campus, the program costs will increase.*

*Campus Climate*  
*WBBC Annual Report*  
*September 2008*  
*Group C*

*Members: Czerny Brasuell, Tonya Taylor, Bill Hiss, Joe Hall, Jeff Anderson, Will Ambrose, Pam Ballinger, Jody Tyler (JT), Rena Lolar, Roy Partridge, and Alivia Moore*

*During a series of meetings from spring until fall of 2007 Group C, a subcommittee of the Wabanaki-Bates-Bowdoin-Colby Initiative, met to deliberate about how the three colleges could improve their campus social, academic, and administrative climate to best promote the educational success and unique cultures of current and future students admitted from the Maliseet, Micmac, Penobscot, and Passamaquoddy Indian nations of Maine. During meetings of the initiative committee as a whole, the group also reported to and gathered input from tribal and college representatives assigned to other groups. Group C included tribal representatives, administrators, student services staff, and faculty. Members brought to discussions a wealth of social, scientific, organizational, and personal knowledge either grounded directly in Native American issues or drawn indirectly from comparable backgrounds of other non-Euro-American groups and cultures.*

*The subcommittee concluded that the following three objectives be recommended to the three colleges and supported by stable funding in order to promote a campus climate conducive to Maine Indian student success and cultural vitality:*

*In-Residence Resources Person(s):*

*The group recommends that Maine Indian resource persons be recruited to offer in-residence academic programs or courses consistent with and*

adapted to college calendars and curricula. The group emphasizes that the Colby JanPlan and Bates Short Term are excellent forums for such in-residence opportunities. The ideal configuration would be a permanent in-resident instructor with rotating responsibilities among the three colleges. Alternatively, we propose that each college might have a visiting lectureship to be filled on an annual or bi-annual basis by faculty who can address Wabanaki and other key Native American issues. Following the model used elsewhere in Native American studies academic programs, resource persons lacking the traditional credentials for college level teaching could be partnered with faculty members for team teaching. Subject areas should be broad-based to include politics, law, history, culture, art, ecology, health, education, and contemporary issues.

### *Native American Student Support Specialist:*

The group strongly encourages establishing a position of student support advisor or counselor specifically assigned to Native American students. The position would maintain an ongoing direct support relationship with Native American students through roles of:

- *Counseling*
- *Crisis intervention*
- *Advising to admissions office*
- *Activity and event coordination*
- *Institutional advocacy*
- *Liaison to Maine Indian tribes and organizations*
- *Academic advising*

The group concluded that each college should support such a position.

### *Events Promotion and Coordination:*

Last, but not least, the group recommends that the three colleges formulate a concerted and consistently funded programming process for Native American events on the three college campuses. The success of existing college and university programs for promoting a climate of engagement with local Native American communities has proven to rest on a centralized and adequately funded organization, office, or academic program. Events to be supported will include:

- *Museum exhibits*
- *Academic conferences*
- *Speakers*
- *Colloquia*
- *Cultural demonstrations*

- Arts and crafts shows

### *Issues Raised by the Group:*

1. **UNIQUE SOCIAL AND CULTURAL CONTEXT:** The subcommittee emphasizes that the needs, concerns, and struggles of Native American students are unique and in many key respects incomparable to those of any other student group or category. Unique modes of recruiting, retaining, financially supporting, and teaching Native American students will be required at all three colleges.
2. **STRUCTURAL AND FUNDING CONTINUITY:** The subcommittee recognizes the need for continuity of Native American initiatives on the three campuses. While group members from all three colleges can point to major events and initiatives in the past, these have generally been contingent on shifting levels of funding and campus involvement. Thus, there is a strong need for a structural continuity in Native American academic climate.
3. **ASSESSMENT OF CAMPUS CLIMATE:** A remaining task for the subcommittee is to develop tools for the assessment of campus climate for our Native students to determine what issues need to be identified and measured for this assessment.

## **Appendix IX**

### **Report**

#### **Sweat Lodge Ceremony at Maine State Prison September 27, 2008**

##### **Background**

Throughout the 2006 and 2007 Legislative Sessions, the Sipayik Criminal Justice Commission worked with Tribal Representative Donald Soctomah and the Maine Indian Tribal State Commission to submit and move legislation that would assure that Native prisoners have full access to Traditional Ceremony while in prison. Originally, this legislation was specific to Wabanaki People in State of Maine. With the support of Tribal Leaders and MITSC many meetings were held with the DOC to draft policies that would insure religious freedom, not only for Native People, but for all people who are imprisoned in Maine.

Eventually a law was passed that guaranteed religious freedom and mandated the promulgation of policy to assure that all prisoners had access to their spiritual and cultural traditions and ceremonies.

One requirement of the Procedures that were agreed upon called for the creation of a Tribal Advisory Group representative of the 5 Wabanaki Communities in Maine to guide the DOC on Traditional Wabanaki Ceremonies. In May this group was assembled:

Arnie Neptune: Penobscot  
Newell Lewey: Maliseet  
Brian Altvater: Passamaquoddy Pleasant Point  
Stephanie Bailey: Passamaquoddy Indian Township  
Richard Silliboy: Mi'qmaq

Denise Altvater: Chair  
Jamie Bissonette: Staff  
Paul Thibeault: Advisor

##### **Preparation**

The Tribal Advisory Group met with the Department of Corrections two times in preparation for the Sweat Lodge Ceremonies throughout the prison system. It was agreed that the Lodge at Warren would be the first lodge and that the procedures developed there would become a template for the Ceremonies to be held at all other prisons.

The agreements reached included:

- Spiritual Leaders and Pipe Carriers could bring tobacco into the prison if it was necessary for Ceremony. The Spiritual Leader would be responsible for bringing any unused tobacco out side of the prison.
- All bundles would need to be inspected by prison security. The Spiritual Leader would open the bundle and handle any objects that prison personnel needed to inspect.
- The Lodges constructed would remain in place for the customary 4-year period of time.
- The prison would set aside a Ceremonial site that would be away from regular prison traffic. To the extent possible, the prisoners themselves would be responsible for the upkeep of the area.
- The Ceremonies are open to all prisoners who are actively following Native Traditional Practices.
- Two pre-requisites for participation in the Sweat Lodge Ceremony are regular participation in Native Religious Programming and participation in an orientation session offered before the Lodge was to take place.
- The prison would provide feast food that would be prepared according to tradition.
- To the extent possible, the prisoners would be responsible for the construction of the Lodge and the clean up afterwards.
- There would be no more than 12 men in a Lodge at a given time.
- To accommodate all of the Native prisoners it was agreed we would do two Sweat Lodge Ceremonies.
- It was agreed that the prisoners from Protective Custody would come in for one round after the second Lodge was completed.
- In the future there would be two Lodges for General Population and one for those in Protective Custody.
- The DOC would contract with David Gehue to pay for his travel expenses and honorarium to do the orientation for the Ceremonies and the first Sweat Lodge Ceremony. Brian Altvater would do the second. Newell Lewey would assist both.
- The *Practical Guidelines for Administration of Inmate Religious Beliefs and Practices: Native American (Section A) Dated 3/27/2002* were offered as a reference.
- The responsibilities for the materials used to construct the Lodge and hold the Ceremonies were divided as follows:

The prison's responsibilities:

1. Wood for fire
2. Kindling
3. Water for drinking
4. 32 Blankets to cover the Lodge
5. 4 Plastic Tarps to cover the Lodge
6. 3 Canvas Tarps to cover the Lodge
7. Feast Food
8. Iron Bar for digging holes
9. Shovel (Spade type) and Rake
10. Pitchfork for moving rocks
11. Saw to cut the poles

Tribal Advisory Group's responsibilities:

1. 16 poles for the Lodge
2. Rocks for the Ceremony

3. Medicines necessary for the Ceremony (Sweet Grass, Sage and Tobacco)
4. Splasher
5. Rattles and Bells
6. Hand drum
7. Cedar for the floor of the Lodge
8. Ropes to tie the poles
9. Pipe and smudge bowl
10. 2 5-Gallon containers of spring water for the Ceremony
11. Deer Antlers to move the rocks.
12. Birch Bark to start the fire
13. 8 mats to place on the wet ground inside the Lodge

## **Ceremony**

In July, Jamie Bissonette met with Deputy Warden O'Farrell and Captain Rackliffe to select a site for the Sweat Lodge. The Deputy Warden had preselected a site that was perfect for the Ceremony. This step by the Maine State Prison to choose a pleasing and respectful site set the tone for all the preparations leading up to the Ceremony.

Brian Altvater assembled all of the items necessary for the two Sweat Lodge Ceremonies. Brian Altvater and Jamie Bissonette arrived at the prison at 10:30 a.m. on September 26<sup>th</sup> to transfer all items from Brian's truck to a prison vehicle. Richard Silliboy joined at 11:00 a.m. The prison staff was ready and waiting when we arrived at the prison. CO's Meservey and Anderson accompanied Captain Rackliffe and Deputy Warden Leida Dardis. The atmosphere was friendly, cooperative and welcoming. Since a tropical storm was expected, it was decided that we would construct the Lodge immediately and do the orientation for the prisoners at 2:00 p.m.

Brian and Jamie met with Leida Dardis to choose 5 inmates to assist with building the lodge. They were:

Jeremy Stevens  
Chris Francis  
Daniel Mitchell  
Guy Larkin  
Richard Bender

All of these men worked diligently to build the Lodge and ready the site for the Sweat Lodge Ceremony. This was very hard work because the site was on top of ledge and there was between 6 and 8 inches of soil and stones before you reached the ledge itself. The Lodge constructed is a Wabanaki Medicine Lodge with 16 poles.

David Gehue arrived at the prison at 12:00 and worked with Brian Altvater to guide the men in the construction of the Lodge. At 2:00 p.m., David Gehue and Jamie Bissonette went in to begin the orientation of the prisoners. David Gehue did an excellent job teaching about the Sweat Lodge Ceremony and the life-style commitments that one had to make to live a Traditional Life.



The orientation and question and answer period lasted until 4:30 p.m. Brian Altvater joined part way through and added teachings from his perspective. This orientation was thorough and thoughtful. David and Brian did a wonderful job.

All of the prisoners who assisted with the construction of the Lodge requested that they sweat in the second Ceremony with Brian Altvater. This left Jeremy Stevens free to keep the fire for the first Sweat Lodge Ceremony. Chris kept the fire for the second Lodge and stayed to help with the clean up after the Ceremony.

We began at 5:30 a.m. on Saturday morning. Brian Altvater, Richard Silliboy, Newell Lewey, Jamie Bissonette, and David Gehue were met by Captain Rackliffe, Deputy Warden Leida Dardis, Chaplain Walter Foster, and CO's DeGuisto and Littlefield. The fire was lit at 6:00 a.m. and the first group of prisoners were ready to enter the Lodge at 8:30 a.m. David Gehue kept this Lodge. 8 men participated. The second Lodge began at 11:00 a.m. Brian Altvater kept this lodge. 10 men participated. After the second Lodge, three men came over from Protective Custody to participate in one round. Brian Altvater kept this round. The men from PC made a special request for full participation in January and we will do our best to accommodate this request. We finished at the prison by 1:00 p.m. and left the prisoners to collect and burn the cedar and clean up the site.

After each Lodge the kitchen staff provided pears and apples along with juice, whole wheat bread, turkey and cheese to make sandwiches with. Jamie Bissonette prepared this feast food with assistance from Deputy Warden Leida Dardis. A Spirit Plate was assembled after each Lodge and after the PC prisoner's round. This was taken out of the prison and offered by Brian Altvater.

Because this was the first time we had held Ceremonies at the prison and we were trying to accommodate three groups of prisoners, there had to be changes in the schedule as we went along. These changes are often difficult in a maximum-security setting. Captain Rackliffe and Deputy Warden Leida Dardis worked very hard to make things work and demonstrated amazing flexibility.

## **Acknowledgements**

A special acknowledgement needs to be given to Brian Altvater who did all of the preparation for the Lodges. He gathered all the poles and all of the rocks, spending much of the previous week making sure that all of the connections were made so that Saturday could proceed in an organized manner.

Deputy Warden Leida Dardis and Captain Rackliffe created a comfortable and cooperative atmosphere so that the Ceremonies could take place in an organized and respectful way. Captain Rackliffe purchased a canvas gazebo to protect supporters from the wind and rain. All of the officers who were working security were very respectful with all bundles and medicines. This went a long way in making this historic occasion go very smoothly. The kitchen staff made sure that the food that was sent out for feast food, although simple, was of good quality and prepared carefully. The staff at the Maine State Prison has set a standard of cooperative work across

cultural barriers that could be emulated in other prisons and jails. We are deeply appreciative of their work.

David Gehue traveled from Shubenacadie NS to prepare the prisoners for the Sweat Lodge Ceremony. He set a tone of discipline and deliberate commitment. He also made it clear that with responsible behavior, forgiveness was possible. He explained that it was very serious to undertake this kind of commitment but that the benefits would be large. David Gehue stressed that from this day forward they would have a clean slate if they committed to leading their lives in a sacred and honorable manner. He also stressed that the best way to say that you are sorry is to never do it again.

Newell Lewey assisted both David Gehue and Brian Altvater doing 9 rounds in the three lodges. He also sang for each group.

Jamie Bissonette and Richard Silliboy provided necessary logistical support, prepared the feast food and worked with prison staff to make sure that the day went smoothly.

Ultimately, we need to give thanks to Denise Altvater for her dedicated leadership in this whole project. Through her commitment to respectful communication, she made hard conversations possible and good resolutions into solid commitments.

## Appendix X

October 28, 2008

Commissioner Martin A. Magnusson  
State of Maine  
Department of Corrections  
111 State House Station  
Augusta, ME 04333-0111

RE: Report Sweat Lodge Ceremony at Maine State Prison September 27, 2008  
By Jamie Bissonette

Dear Commissioner Magnusson:

Last week I received a report authored by Ms. Jamie Bissonette, Report Sweat Lodge Ceremony at Maine State Prison September 27, 2008. I commend the Department of Corrections for supporting this second sweat lodge ceremony to take place in a Maine prison. I am also pleased that preparations are under way for a third sweat lodge ceremony to take place this Friday at the Downeast Correctional Facility.

The Department of Corrections deserves credit in many respects for permitting the sweat lodge ceremony to take place at the Maine State Prison. Perhaps the most notable of the many achievements associated with the sweat lodge ceremony involves the uniformly positive attitude and spirit of cooperation demonstrated by all levels of the staff at the Maine State Prison. Effecting attitudinal change within an institution such as the Department of Corrections entails significant effort. Most importantly, such a significant shift can only occur when top leaders insist on such attitudinal change. I appreciate the positive leadership you, Associate Commissioner Denise Lord, and other administrators have exhibited to instill the appropriate atmosphere of respect for the religious practices of the Wabanaki. You and your staff deserve praise for this achievement.

As the Department of Corrections gains experience working with the Sipayik Criminal Justice Commission, I anticipate Wabanaki inmates wanting to observe their religious ceremonies will enjoy that right as fully as any other incarcerated person. Thank you for supporting this positive progress within the Department of Corrections.

I look forward to continuing to work with you and your staff to ensure the full exercise of Wabanaki inmates' religious rights within the Maine Correctional System.

Sincerely yours,

Paul Bisulca  
Chairman  
Maine Indian Tribal-State Commission

Cc: Chief Brenda Commander, Houlton Band of Maliseet Indians  
Chief Kirk Francis, Penobscot Indian Nation  
Chief Victoria Higgins, Aroostook Band of Micmacs  
Governor William Nicholas, Passamaquoddy Tribe @ Motahkmikuk  
Chief Richard Phillips-Doyle, Passamaquoddy Tribe @ Sipayik  
Governor John Baldacci  
Senate President Beth Edmonds  
Speaker Glenn Cummings  
Senate Majority Leader Elizabeth Mitchell  
House Majority Leader Hannah Pingree  
Senator Bill Diamond, Chair, Joint Standing Committee on Criminal Justice and Public Safety  
Representative Stan Gerzofsky, Chair, Joint Standing Committee on Criminal Justice and Public Safety  
Senator Barry Hobbins, Chair, Joint Standing Committee on Judiciary  
Representative Deborah Simpson, Chair, Joint Standing Committee on Judiciary  
Penobscot Tribal Representative Wayne Mitchell  
Passamaquoddy Tribal Representative Donald Soctomah  
Denise Altvater, Chair, Sipayik Criminal Justice Commission  
MITSC Commissioners

## Appendix XI



### *Pleasant Point Reservation*

P.O. Box 343 • Ferry, Maine 04967  
Tel. (207) 853-2600

**EXTRACT OF MINUTES OF A  
REGULAR PLEASANT POINT GOVERNOR AND COUNCIL MEETING  
HELD ON TUESDAY, FEBRUARY 17, 2009  
AT 5:00 P.M.**

**AGENDA #4 ALEWIVES/FMIII (24:41)**

EDWARD BASSETT JR MOTIONS THAT WE MAKE IT KNOWN THAT THE  
PASSAMAQUODDY AT PLEASANT POINT ARE IN FAVOR AND SUPPORT THE  
ALEWIVES RUN UP THE SAINT CROIX RIVER WHICH IS ALSO KNOWN AS  
PASSAMAQUODDY RIVER

SECONDED BY: DARREN PAUL

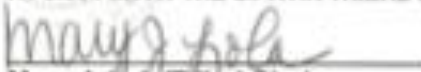
A question was asked how far up? The motion is for unrestricted passage.

VOTE: 5 IN FAVOR(FMIII/DP/RED/ERB/DA/CD) 1 OPPOSE(RED)

0 ABSTENTION 1 ABSENT(TL)

**MOTION CARRIES**

ATTEST A TRUE EXTRACT OF MINUTES OF A REGULAR PLEASANT POINT GOVERNOR AND  
COUNCIL MEETING HELD ON TUESDAY, FEBRUARY 17, 2009  
AT 5:00 P.M. AT THE SIPAYIK TRIBAL OFFICE BUILDING

  
Mary J. Lola/Tribal Clerk

  
Date

## Appendix XII

July 24, 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:

On June 29, 2009, Ms. Barbara Blumeris, Secretary, International St. Croix River Watershed Board, emailed me asking the Maine Indian Tribal-State Commission (MITSC) to delineate the positions of the Wabanaki Tribes concerning the restoration of unimpeded passage of sea-run alewives in the St. Croix River.

MITSC exists as a part of the Maine Implementing Act (MIA), the State of Maine's legal codification of its agreement with the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation to settle the three Tribes' 1970s land claims. MIA states that MITSC "shall 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." Though a signatory to MIA and the Maine Indian Claims Settlement Act (MICA), the Houlton Band of Maliseet Indians were not originally included in MITSC. They have participated in MITSC since September 2007, and legislation is pending to make them full members along with the Passamaquoddy Tribe and Penobscot Nation. I have limited my investigation of Wabanaki positions on the passage of sea-run alewives in the St. Croix River to the Tribes party to MIA. The Aroostook Band of Micmacs have separate State and Federal settlement agreements.

Ms. Blumeris' request falls within our responsibilities as MIA §6207, §§8 directs MITSC to "undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner [Department of Inland Fisheries and Wildlife] and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission [MITSC]." The Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation possess an interest in the policy decisions affecting sea-run alewives in the St. Croix River. These three Tribes have reservations or their equivalent along major rivers which currently support or could support sea-run fisheries. All the Wabanaki also possess a general interest in healthy Gulf of Maine fisheries in which a robust alewife population plays a key role.

The Houlton Band of Maliseet Indians and Penobscot Nation in 2008 both fully supported proposed Maine legislation, LD 1957, An Act To Restore Diadromous Fish in the St. Croix

River. I recently confirmed in conversations with Chiefs Commander and Francis that no change has taken place in the Maliseet and Penobscot positions. The Passamaquoddy Tribe at Sipayik (Pleasant Point) did not testify on LD 1957. Since LD 1957 was considered by the Maine Legislature, the Sipayik Tribal Council passed a resolution on February 17, 2009 stating in part “the Passamaquoddy Tribe at Pleasant Point are in favor and support the alewives run up the St. Croix River which is also known as the Passamaquoddy River.” I have attached the Sipayik Tribal Council resolution along with my letter.

Governor William Nicholas of the Passamaquoddy Tribe at Motahkmikuk (Indian Township) testified in opposition to LD 1957. The principal reason he offered for his opposition was the potential effect unimpeded sea-run alewife passage might have on Passamaquoddy fishing guides hired to guide sports angling for smallmouth bass. When asked by a member of the Marine Resources Committee how many Passamaquoddy guides might be affected, Governor Nicholas answered, “I don’t know.”

MITSC reviewed official Department of Inland Fisheries and Wildlife lists of all Maine Guides. Only a small number of Passamaquoddy Guides exist. We believe that any potential impact on that part of the Passamaquoddy economy based on bass fishing guiding, in the unlikely scenario that restoration of sea-run alewives might adversely affect sport fish populations in the St. Croix River, is negligible.

I emailed Governor Nicholas on July 2 and July 15 requesting Motahkmikuk’s position on this issue with no response. I am informed that the Motahkmikuk Tribal Council has never formally considered this issue since completion of the 2006 Maine Rivers study of alewives in the St. Croix River. Governor Nicholas’ testimony, as characterized by Motahkmikuk’s MITSC representative, represented his personal views.

I hope that you find this information helpful. If I can be of further assistance, please let me know.

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 XIII

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 XIV



JOHN ELIAS BALDACCIO  
COMMISSIONER

## STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

7/1/08

DAVID F. LITTELL  
COMMISSIONER

Mr. Stephen Perkins  
U.S. Environmental Protection Agency  
1 Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

cc: Ken  
Steve S.  
Roger  
Tom W  
George F  
Lois  
Lynne  
Paul D  
on Stephen

**Subject: MPDES Delegation Acknowledgment**

Dear Stephen:

I write this following Regional Administrator Varney's September 25, 2007, letter to Commissioner Littell regarding the Penobscot River and, in particular, his request that we "...discuss the changing nature of the working relationship involving DEP, the tribes and EPA" given the First Circuit Court of Appeal's decision in Maine v. Johnson, et al. 498 F.3d 37 (2007). Having met last winter with you and other EPA representatives in Portland regarding these issues but without an amendment being published yet, I hereby request that U.S.E.P.A. amend its January 2001 delegation decision to make it consistent with the Maine v. Johnson decision. We expect this amendment will include acknowledgement both of D.E.P.'s jurisdiction over all dischargers within the State, and that Maine's water quality standards apply uniformly throughout the State.

As you are aware, we are in the midst of relicensing all dischargers on the Penobscot River. Gaining final resolution to the delegation issues resolved by the Court last Fall is a crucial aspect to our ability to appropriately bring all of the dischargers in line with modern discharge requirements. Quick action at this point by the U.S.E.P.A. will greatly assist with our proper implementation of the Clean Water Act MPDES program.

As we have discussed with both you and George Prantz, the State is in very close communication with the Penobscot Indian Nation in regards to the pending licenses. The Tribe has been very involved in water quality monitoring, review of modeling data, and providing substantive comments throughout the process of developing a final modeling report. We have also had several discussions with the Tribe about provisions in state rule that would provide an opportunity to undertake a process evaluating the basis for site specific standards based on local fish consumption levels. We are committed to maintaining routine and open communication with all the Maine tribes following your implementation of the First Circuit decision.

Please give me a call at your convenience in order to further discuss next steps.

Sincerely,

Andrew Fisk  
Bureau Director, Land & Water Quality

CC: David Littell  
Robert Varney  
Jerry Reid  
Jim Dasch

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U STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002  
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PORTLAND, MAINE 04103  
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PRERQUE HILL  
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PRERQUE HILL, MAINE 04769-0094  
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## Appendix XV

November 21, 2008

Governor John E. Baldacci  
1 State House Station  
Augusta, Maine 04333

Dear Governor:

I write to urge you to delay the State of Maine's effort to gain exclusive authority for all aspects of permitting and water quality standards in Tribal waters as proposed in Andrew Fisk's July 1, 2008 letter to Mr. Stephen Perkins, EPA, until the Maine Indian Tribal-State Commission (MITSC) has had an opportunity to review and offer recommendations on this matter. MITSC desires a meeting with you and anyone from your staff you deem appropriate to discuss how to best meet the needs of the State and the Wabanaki in this matter.

The Passamaquoddy Tribe and Penobscot Indian Nation possess sustenance fishing rights guaranteed under 30 MRSA §6207(4). The State of Maine's potential receipt of sole permitting and water quality standard authority without implementation of standards that represent due consideration of those fishing rights could unreasonably diminish or nullify the Passamaquoddy Tribe's and Penobscot Nation's ability to exercise that which they bargained for in 1980. Though I am aware of the Maine v. Johnson decision, I strongly disagree with Mr. Fisk's contention in his July 1 letter to Mr. Perkins that the First Circuit opinion brings "final resolution to the delegation issues." The Tribes have not given up their sustenance fishing rights and Maine has an obligation to honor and uphold those rights.

I look forward to meeting with you at your earliest opportunity to discuss further this matter.

Respectfully yours,

Paul Bisulca  
Chair  
Maine Indian Tribal-State Commission

## **Appendix XVI**

### **Testimony on LD 796 An Act To Direct Fines Collected on Tribal Lands to The Passamaquoddy Tribe and the Penobscot Nation Judiciary Committee April 7, 2009**

Senator Bliss, Representative Priest, distinguished members of the Judiciary Committee, I am Paul Bisulca, Chair of the Maine Indian Tribal-State Commission.

On March 16<sup>th</sup> the Maine Indian Tribal-State Commission met, discussed LD 796 and the Maliseet, Passamaquoddy and State commissioners all voted in support of this Bill. Absent from this meeting were the Penobscot commissioners. Ordinarily, this Commission will not vote on a matter that affects one of the member governments without its representation. In this case, however, and because the issue of certain fine payments being returned to the tribes goes back to at least May of 1990, there has been ample discussion of this issue in the last two decades, and the tribal positions, I believe, are clear. Also, I have spoken to the Penobscot Chief about this Bill and he expressed no objection to my speaking in its support.

Regarding the Bill, the Commission discussion focused on fairness with no discussion of the technical or operational requirements for its implementation, since the practice of returning fine payments to the tribal governments has previously been done and is known to be possible.

Therefore, the Maine Indian Tribal-State Commission supports, within whatever constraints are deemed reasonable by State and Tribal Representatives, the return to tribal governments of those fine payments identified in the Bill as amended by Representative Soctomah.