

Maine Indian Tribal-State Commission Biannual Report for 2020 & 2021



A Summary of the Activities of the Maine Indian Tribal-State Commission in 2020 and 2021

Prepared by

Paul Thibeault, Managing Director

Rachel Bell, Projects Coordinator

mitsc.org

January 3, 2022

Commission Members:

Robert Checkoway, Interim Chair

Joseph Barnes

John Cashwell

Zeke Crofton-MacDonald

James Cote

Kevin Hancock

Sam St. John

Sarah Medina

Robert (Bert) Polchies

Darren Ranco

Richard Rosen

Sandra Yarmal

Introduction

Purpose and Organization of this Report:

This report summarizes the work of the Maine Indian Tribal-State Commission (MITSC) from January 1, 2020, through December 31, 2021. Pursuant to the MITSC bylaws, this report will be shared with the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine. In addition, the Commission will provide the Aroostook Band of Micmacs with a copy of the report.

The Maine Indian Tribal-State Commission (MITSC) was created in 1980 as part of the Maine Indian Claims Settlement, an agreement reached between the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, Penobscot Nation, State of Maine, and the United States.

MITSC's principal responsibilities are to continually review the effectiveness of the Settlement and the social, economic, and legal relationship between the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, Penobscot Nation, and the State. In its broadest sense, MITSC is tasked with supporting effective Tribal-State relations, and in service of that mission, MITSC emphasizes education, outreach, and networking.

Years 2020 and 2021, Summary of Notable Developments:

- Due to the Covid 19 pandemic, 2020 and 2021 were highly unusual years. MITSC shifted from its normal mode of operations and adopted new practices, such as holding commission meetings by Zoom with a public audio stream and testifying remotely on legislation. MITSC has not met in person since January 2020, and no annual retreats were held in 2020 and 2021.
- 2020 was the 40-year anniversary of the 1980 Settlement. As we enter 2022, the Maine Legislature is considering legislative proposals that could fundamentally alter the Tribal-State jurisdictional structure created by the 1980 Settlement. New statutory duties for MITSC may emerge from that process.
- In the ongoing litigation regarding the Penobscot River, the commission members unanimously supported the filing of two amicus briefs in support of the positions taken by the Penobscot Nation and the United States.

- MITSC completed an independent *Report on the Removal of Article X, Section 5 from the Printed Maine Constitution*.
- MITSC continued to prepare another report, *A Study Regarding the Impact of Fishery Management Policies on Non-Indian Lands on the Quality and Quantity of Traditional Tribal Fish Stocks and Sustenance Practices*.
- MITSC was awarded a \$10,000 grant from the Broad Reach Fund to expand its capacity as an education and resource entity.
- MITSC received additional state funding for FY 2022 and FY 2023.

Overview of MITSC

MITSC Members and Staff:

MITSC is an independent inter-governmental entity with thirteen members, when at full strength. Six members are appointed by the State, two by the Houlton Band of Maliseet Indians, two by the Passamaquoddy Tribe, and two by the Penobscot Indian Nation. The thirteenth member, who is the Chairperson, is selected by the other twelve members.

Current Commissioners are:

- Robert Checkoway, State member and **Interim Chair**
- Joseph Barnes, Passamaquoddy Tribe
- Zeke Crofton-MacDonald, Houlton Band of Maliseet Indians
- Sam St. John, Houlton Band of Maliseet Indians
- Robert (Bert) Polchies, Penobscot Nation
- Darren Ranco, Penobscot Nation
- Sandra Yarmal, Passamaquoddy Tribe
- John Cashwell, State member
- James Cote, State member
- Kevin Hancock, State member
- Sarah Medina, State member
- Richard Rosen, State member

MITSC has two full time staff members, Managing Director, Paul Thibeault, and Projects Coordinator, Rachel Bell. MITSC also employs part-time contractors for research projects, accounting, and IT services.

Internal Developments within the Commission:

2020: In the summer of 2020, long-standing chair, Jamie Bissonnette-Lewey, concluded her service to MITSC. After a limited search, the commission selected Paul Downing as the new chairperson in October 2020.

2021: In early 2021, Sarah Medina was appointed to the commission by the State to replace the late Michael Pearson, and Joseph Barnes was selected to replace Matt Dana as representative from the Passamaquoddy Tribe at Indian Township.

In 2021, MITSC received additional funding from the State which allowed MITSC to hire a second staff member, Rachel Bell, as Projects Coordinator. Rachel began work in September. After more than thirty years of service to MITSC, John Banks retired. Darren Ranco joined the commission as the new member from the Penobscot Nation.

At a special meeting in October, the commission selected State member Bob Checkoway to serve as Interim Chairperson, and an active search began for a new permanent chair. MITSC conducted an extensive search for a new Chairperson in November and December. The Administrative Committee interviewed three highly qualified applicants. The commission will make a final decision in the new year. At this writing, Bob Checkoway continues in the role of Interim Chairperson.

MITSC Meetings and Committees:

From January through December 2020, MITSC held seven meetings, with all but one conducted remotely by Zoom. In 2021, MITSC held a total of nine meetings, two of which were Special Meetings with a limited agenda, all remote by Zoom, with a public audio stream.

MITSC restructured and revitalized its committees, which now include Administrative, Natural Resources, and Legislative/Policy Committees. It was decided that the committees will meet between commission meetings and make recommendations to the full group.

MITSC Funding:

During fiscal years 2020 and 2021, MITSC received \$111,614 annual funding from the State and \$7,500 annual funding collectively from the Tribes. For fiscal years 2022 and 2023, the State increased their MITSC funding by \$55,200 per year. Additionally, the Broad Reach Fund awarded MITSC a \$10,000 grant. MITSC is currently pursuing other grant opportunities and exploring future funding options.

Legislative and Policy Activity

2020: MITSC submitted an amicus brief to the First Circuit Court of Appeals in support of the Penobscot Nation and United States seeking reversal in the ongoing Penobscot River Litigation. All members of MITSC unanimously approved the amicus brief.

At the request of the Judiciary Committee, MITSC studied and made recommendations regarding best practices for Tribal-State consultation and dispute resolution.

In formal and informal educational sessions, and in testimony at the Maine Legislature, MITSC commissioners and staff continued MITSC's ongoing effort to promote practical application of the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Tribal-State relations.

2021: MITSC submitted testimony on LD 1060, *An Act to Increase the State Revenue from Casino Net Income, Reallocate the State Distribution and Provide Tax Uniformity.*

MITSC testified in opposition to LD 71, *An Act to Provide State Recognition for the Kineo Band of Maliseet Indians*.

MITSC testified in favor of LD 159, *An Act to Extend Time Limits for Placing Land in Trust Status under the Maine Indian Claims Settlement*.

MITSC began collaborating with other entities in Maine to protect tribal children, families, and tribes against the threatened erosion of the rights and protections provided by the Indian Child Welfare Act and related Maine child welfare laws.

As for the major jurisdictional reform bill LD 1626, *An Act Implementing the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act*, MITSC monitored and discussed developments and presentations by Tribal and State officials. At the Commission meeting in June, a motion to endorse the Task Force Recommendations as well as LD 1626, was called to a vote. A quorum of nine was present with representatives of all the governments in attendance, as required by the MITSC bylaws. The motion passed by a vote of seven to none. Two Members abstained and four Members were absent.

MITSC has continued to review LD 1626 and plans to formulate and present its recommendations in early 2022 with regards to the proposed jurisdictional changes and new statutory duties for MITSC. MITSC staff drafted and presented to the commissioners a summary and analysis of the proposed changes that are specific to the role of MITSC.

On December 3, 2021, the Penobscot Nation and US Solicitor General filed petitions for a writ of *certiorari* seeking review by the U.S. Supreme Court of the *en banc* decision by the First Circuit Court of Appeals in *Penobscot Nation v. Frey*. On December 21, 2021, the MITSC

commissioners voted, again unanimously, to file another amicus brief in support of the positions taken by the Penobscot Nation and the United States.

MITSC as a Research, Education, and Resource Entity

2021: MITSC completed and published the *Report on the Removal of Article X, Section 5 from the Printed Maine Constitution*, which can be found on the MITSC website, under Key Reports.

MITSC began exploring potential issues arising from the *Report on the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations*.

MITSC staff applied for and received a \$10,000 grant from the Broad Reach Fund to help create and implement the technological framework required to expand MITSC's capacity as an education and resource entity. MITSC has been exploring ways to obtain additional funding through grants and networking with existing non-profit entities. MITSC has been in discussion with Wabanaki Youth in Science, Wabanaki Public Health and Wellness, and the Cobscook Institute about potential collaborations.

MITSC staff submitted articles to the *Wabanaki Legal News* as part of an ongoing collaboration with Pine Tree Legal Assistance to provide information and education on Tribal-State issues.

Natural Resources and Environment

2020: Regarding the long-time and unresolved water quality problems at Sipayik, MITSC participated in stakeholder meetings and sought to play a supportive role in securing a long-term solution.

MITSC research contractors continued working on a new report, *A Study Regarding the Impact of Fishery Management Policies on Non-Indian Lands on the Quality and Quantity of Traditional Tribal Fish Stocks and Sustenance Practices* (hereinafter *The Fisheries Report*.)

2021: Progress on the MITSC *Fisheries Report* continued throughout the year. A preliminary draft has been prepared. Interviews with tribal members about their experiences, memories, and understandings of sustenance fishing continue to be conducted and included in the report, which should be finished in early 2022.

MITSC has been monitoring developments related to the two proposed Wolfden Mining projects, Pickett Mountain, near Baxter State Park, and Big Silver, a site in Pembroke, both of which could potentially impact tribal watersheds and fisheries. Staff at MITSC reached out to Tribal natural resources staff members to gain their perspectives and reported this information back to the commission. MITSC continues to stay abreast of these developments.

Draft Work Plan for 2022

MITSC has a draft Work Plan for 2022 which will be finalized in early 2022. The draft plan anticipates continuation of ongoing MITSC projects and priorities, as well as new or expanded efforts regarding issues such as:

- L.D. 1626- Proposed changes specific to the role of MITSC: MITSC will formulate and present its recommendations/testimony to the Tribes and the State.
- L.D. 1626- Regarding Jurisdictional Changes to the Settlement: MITSC will continue to monitor developments and formulate and present recommendations/testimony regarding the proposed jurisdictional changes.
- MITSC legal brief regarding PIN v. Frey in the Supreme Court: In early January 2022, MITSC filed an amicus brief in support of the petition for writ of certiorari submitted by the Penobscot Nation and the United States in the U.S. Supreme Court. MITSC will continue to monitor and report on developments in the case.

- Report on the Removal of Article X, Section 5 from the Printed Maine Constitution: Staff and/or contractors will perform additional research and update the Report.
- Indian Child Welfare Act: MITSC will continue to collaborate with other entities in Maine to protect tribal children, families, and tribes against threatened erosion of the rights and protections provided by the Indian Child Welfare Act and related Maine laws.
- Education on UNDRIP: In 2022, MITSC will design and conduct an expanded educational project regarding UNDRIP and will continue its ongoing efforts to promote the principles and practical applications of UNDRIP in Tribal-State relations.
- Wabanaki Studies/Fully Implementing LD 291: MITSC will play an active role in promoting full implementation of Wabanaki Studies in Maine schools in collaboration with other entities engaged in this effort. If necessary, MITSC will conduct or assist in a survey to determine to what extent and in what manner Wabanaki Studies are already included in Maine schools.
- Sipayik/Eastport Water Problems: MITSC will continue to pursue ways to play a supportive and collaborative role in securing a long-term solution.
- Tribal-State Consultation/Dispute Resolution: MITSC will continue to study and make recommendations regarding possible legislation and executive orders.
- MITSC Issues Arising from the Report of the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations: MITSC will collaborate with the Permanent Commission and other entities to address issues regarding the legal, social, and economic relationships between the State and Tribal populations.
- Repatriation: MITSC will continue to support entities working on repatriation.
- Wolfden Mining Projects: MITSC will continue to monitor developments.
- MITSC as an Education and Resource Entity/Additional Funding: MITSC will continue to improve and expand its function as a research/education/resource entity and explore ways to obtain additional funding.
- Administrative/Internal Issues: The Administrative Committee will review and make recommendations to MITSC on various pending administrative/internal issues.