

The Maine Indian Tribal-State Commission

Report to the Joint Committee on the
Judiciary:

February 14, 2013



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

MITSC was established by the Maine Implementing Act of 1980

MITSC has the following responsibilities:

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

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

Make recommendations about the addition of new lands to Tribal territory

Review petitions for designation as an extended reservation.

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



The Commission:

Passamaquoddy Representatives:

Denise Altvater and Matthew Dana

Penobscot Representatives:

John Banks and Bonnie Newsom

Maliseet Representatives:

Linda Raymond and Brian Reynolds

Micmac Observer:

Richard Silliboy

State Representatives:

H. Roy Partridge
Harold Clossey
Vacancy

John Boland
Gail Dana-Sacco
Vacancy

Ex Officio:

State Representatives Madonna Soctomah, Wayne Mitchell, Henry Bear

Executive Director: John Dieffenbacher-Krall

Chair: Jamie Bissonette Lewey



A Living Document

“The negotiators themselves designed MIA to be a dynamic living agreement”
The Report of the Tribal State Work Group, January 2008

Amendments to the MIA:

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

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

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





We are in a A Time of

Humanitarian Crisis

Areas of Conflict

Internal Tribal Matters

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

Application of New Federal Indian Law

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

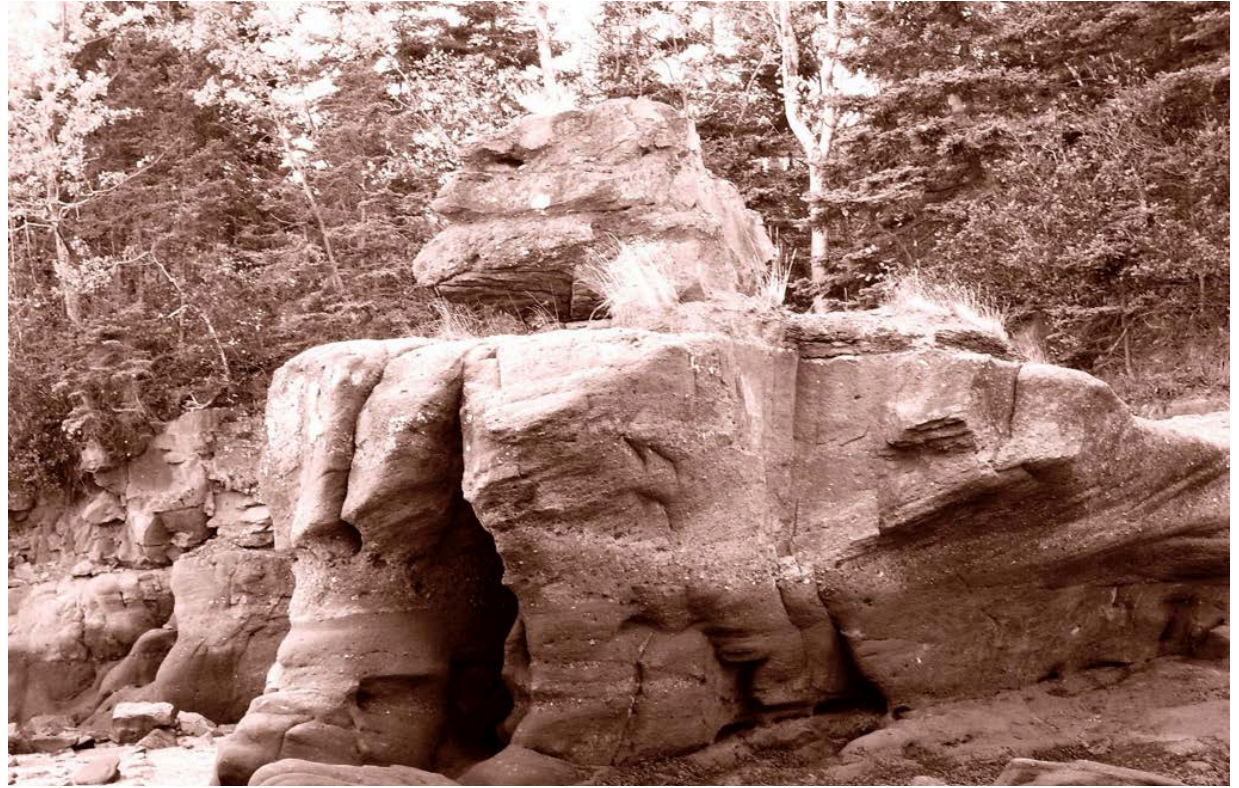


The UN Declaration on the Rights of Indigenous Peoples.

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

Preamble of the Indigenous
People's Earth Charter.

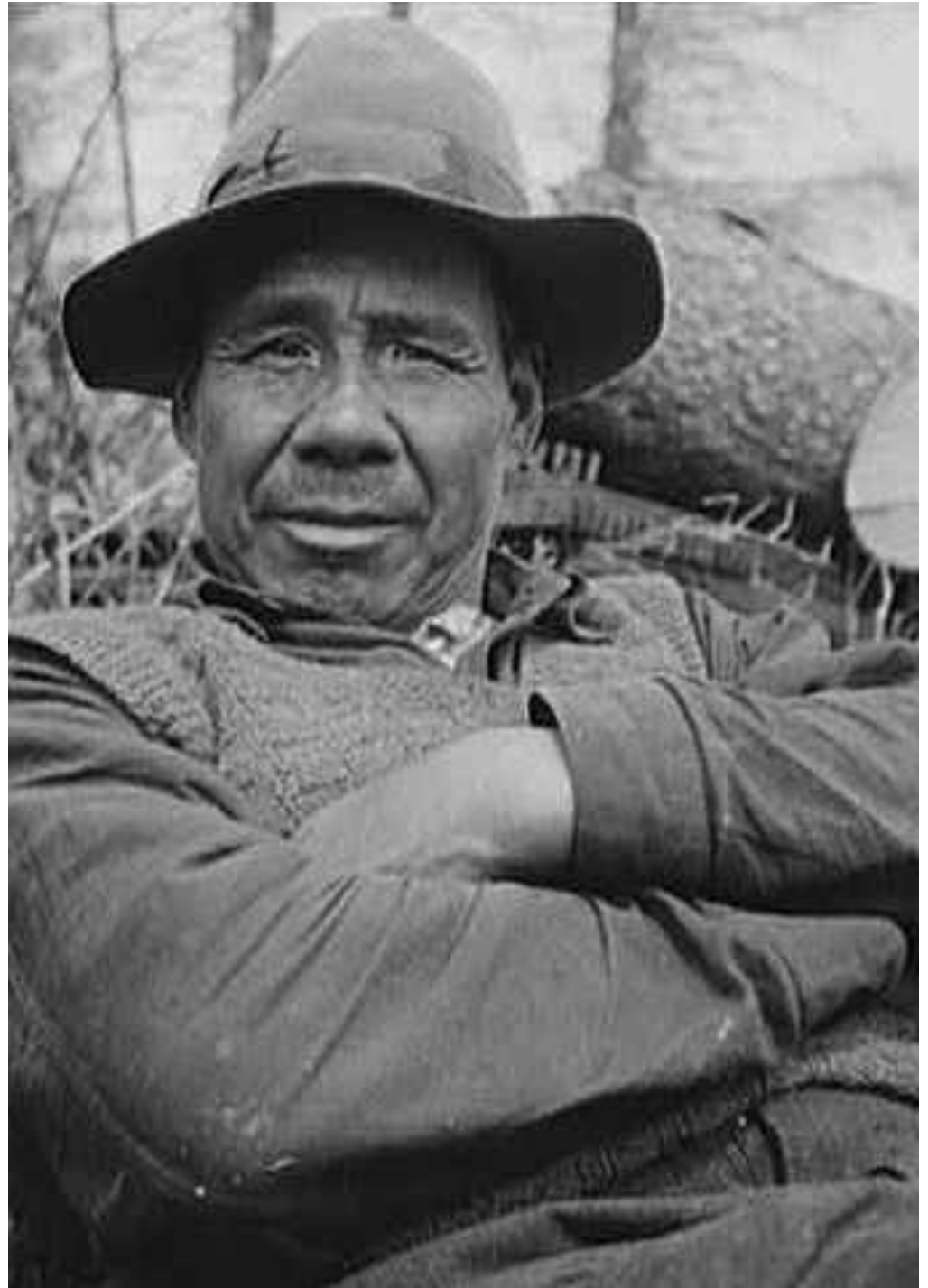




April 18, 2008 the State of Maine, under the leadership of Tribal Representatives Donna Loring and Donald Soctomah, passes a resolution in support of the UNDRIP.

What does it do?

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



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

No Tribe enters into an agreement to remain impoverished.

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





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



Compromised rights:

Section 1735(b) of the MICSA
and Section 6204 of the MIA.

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

The role of the Courts:

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

Penobscot Nation v. Stilphen

Houlton Band of Maliseet Indians v. Ryan

Aroostook Band of Micmacs v. Ryan

State of Maine v. Johnson.





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



Common Misrepresentations

Of The Maine Indian Claims Settlement Agreements and subsequent Acts



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

"Not One Inch, Not One Dollar!"

Passamaquoddy v. Morton

And subsequent litigation

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

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

They understood the Settlement Act to comport with these principles.

MAINE RSA:

Monetary and Land Terms

81.5 million dollars was set aside in trust with the federal government to resolve the Maine Indian Land Claims brought by the Passamaquoddy and Penobscot.

\$54.5 million was set aside for land acquisition. Out of the total \$54.5 million, the Passamaquoddy and Penobscot gave \$900,000 to the Maliseet. The Purchase options for nearly 300,000 acres were negotiated with the paper companies who were paid directly from the trust.

\$27 million was allocated to a Maine Indian Claims Settlement Fund divided evenly between the Passamaquoddy and Penobscot. The Maliseet received no settlement fund. **Distribution of any of the principal of the \$27 million is prohibited.**

The Passamaquoddy and the Penobscot were required to expend \$1,000,000 of income from their portion of the settlement fund for the benefit of their citizens over the age of sixty.

Once a year, the interest is disbursed among Tribal members. This averages between 200 and 300 dollars per person annually depending on the interest rate at the time.



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

Not Only Is This Untrue, But This Would Be Disastrous For The State Of Maine

Tangible Evidence that the Trust Relationship is Intact

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

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

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

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

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



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

In Fact, The Municipality Language Was Meant To Be Comparative And Not To Diminish The Sovereignty Of The Tribes.

Beginning with the language of the MIA

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

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

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

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

But do not take MITSC's word on this.

“The idea was not to make the tribes municipalities like cities and towns but to use the idea of municipal powers as a way of identifying those sovereign powers which the tribe would have.”

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



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

This Is Not Only A Mis-representation, But It Is Directly Contrary To The Actual Language Of The MICSA.

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

Original Language of 1735 b of the MICSA

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

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

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

(1) Section 5 of the Act of August 15, 1876 (19 Stat. 200);

(2) Section 1 of the Act of March 3, 1901 (31 Stat. 1066), as amended;

(3) Section 2132 and Section 2133 of the Revised Statutes, as amended;

(4) Sections 405(k) and 710 of the Act of August 3, 1977 (91 Stat.

459, 523);

(5) Section 164(c) and (e) of the Clean Air Act, as amended by section 127(a) of the Act of August 7, 1977 (91 Stat. 735);

(6) Act of October 31, 1979 (93 Stat. 721);

(7) Section 8(d) of the Act of November 16, 1977 (91 Stat. 1397);

(8) Section 23 of the Federal Insecticide, Fungicide, and Rodenticide

Example of early DOI Revision of 1735 b

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

(b) General legislation

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

Final Language of the 1735 b

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

Analysis of 1735 b

Flexibility:

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

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

Tribal Law and Order Act
Indian Arts and Crafts Bill
IGRA

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

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

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

1735 b is mitigated by 1725 h

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



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

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