



# Report: MITSC

*Maine Joint Standing Committee on Judiciary*

*February 10, 2011*



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

*MITSC has the following responsibilities:*

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

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

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

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

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





# The Commission:

Passamaquoddy Representatives

Matt Dana and Denise Altvater

Penobscot Representatives

John Banks and Bonnie Newsom

Maliseet Representatives

Linda Raymond and Brian Reynolds

State Representatives

Cushman Anthony

William Osborne

H. Roy Partridge

Diana Sculley

Paul Thibeault

[Vacancy]

John Dieffenbacher-Krall, Executive Director

Jamie Bissonette Lewey, Chair





# The Land Claims Settlement Agreement



### **Basic elements of the Maine Indian Claims Settlement Agreement:**

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

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

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





# A Living Document

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

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



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



# 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).





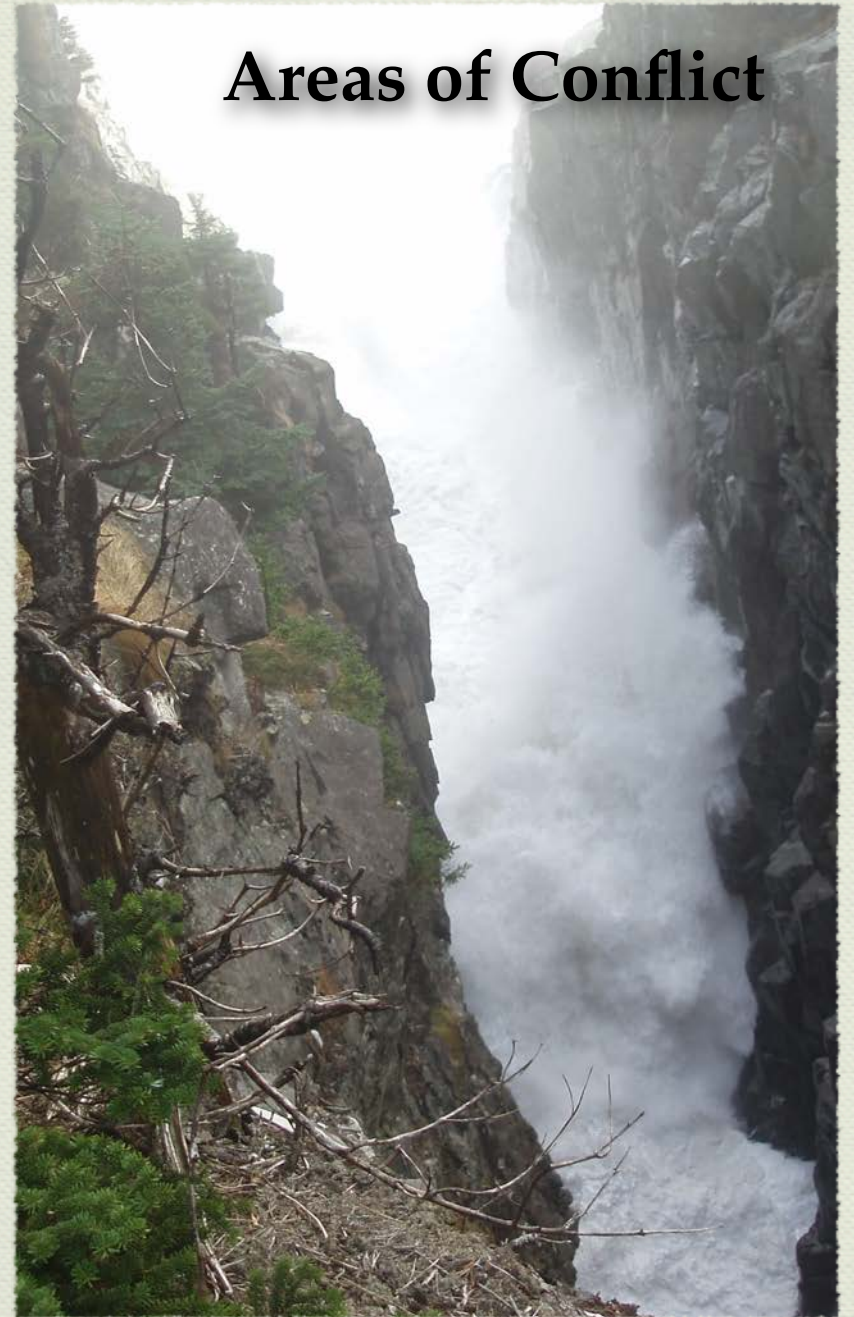
## **Internal Tribal Matters**

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

## **Application of New Federal Indian Law**

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

## **Areas of Conflict**







# Tribal State Work Group 2006-2008



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

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



# Charge of the TSWG

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





Seven Unanimous Recommendations  
Were Reached



***Change*** the heading for Title 30 from “Municipalities and Counties” to “Municipalities, Counties and Indian Tribes”

***Amend*** the law to achieve jurisdictional parity for all Tribes

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

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

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

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

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







# TSWG Findings



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

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

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

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

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

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



# The Wabanaki Tribes of Maine







# STAYING FOCUSED: the MITSC Work Plan



**Achieving** the recommendations of the Tribal State Work Group.

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

**Advancing** the Child Welfare Truth and Reconciliation Commission.

**Resolving** Wabanaki natural resource issues.



