

HEADLINE NEWS: Wabanaki Sovereignty in the 21st Century

With the signing of the Maine Indian Claims Settlement Act in 1980, and later agreements, Maine distinguished itself from the rest of the Nation by establishing a unique relationship with the four federally recognized tribes of the Wabanaki.

The expression of these Acts creates a political arena much different than that of other states—federal statutes do not apply to American Indian communities in Maine, unless explicitly noted within that federal legislation.

Maine has a direct relationship with the Wabanaki tribes, which in addition to federal recognition of their sovereignty, were granted municipal powers, and most concerns must be negotiated at the state level.

The exhibit explores the ways in which the Micmac, Maliseet, Passamaquoddy, and Penobscot tribes are asserting their sovereignty in the areas of:

- Recognition of Native veterans
- Controversies regarding gaming
- The retention of Native languages
- The exercise of hunting and fishing rights
- The fight against the invasive ash borer beetle
- Environmental management of traditional territory
- Concepts surrounding identity and positive and negative stereotypes



Figure 1 Kani Malsom, Passamaquoddy, pictured here dancing at the 2008 Native American Festival in Bar Harbor Photo by Anna Travers

- International border issues that has divided families and traditional lands.

Headline News seeks to engage the visitor and raise awareness of contemporary challenges to Maine's Native peoples. Visitors will have the opportunity to reflect on Native perspectives while exploring these topics through a variety of media. On display will be an assortment of new and old artifacts including: objects made of ash, birch bark, cedar, porcupine quills, and sweet grass, natural history specimens and faunal remains, hunting and trapping equipment, books and CDs illustrating the four languages, traditional games, maps, photographs, a full-sized birch bark canoe, and much more.



L-R: Bead work from the Identity section, toys from the Stereotypes section and an otter with Birch bark canoe from the Hunting and Fishing Rights section.

While the information presented is focused on the Wabanaki in Maine, the exhibit offers comparative information on federal Indian policy to highlight differences between the state and federal Indian policies.

This ground breaking exhibit is curated by Raney Bench, Curator of Education for the Abbe Museum in conjunction with consultation from members of the Micmac, Maliseet, Passamaquoddy, and Penobscot tribes, and assistance from project team members Julia Clark and Jason Brown.

Headline News: Wabanaki Sovereignty in the 21st Century introduces eight topics commonly covered in the media through first person voice of Wabanaki political and cultural leaders. Each topic is intimately connected to tribal sovereignty in Maine and continually evolving, allowing the exhibit to serve as a starting point for dialog and discussion in Maine communities and beyond.

The content of the show reflects the complex nature of these topics, and the diverse opinions of Wabanaki people. The entire text of the show can be downloaded here by topic area. For

any questions or comments about the exhibit, please contact Starr Kelly, Curator of Education at educator@abbemuseum.org.

Headline News Introduction

Wabanaki Sovereignty in the 21st Century



Figure 2 Kani Malsom, Passamaquoddy, dancing at the 2008 Native American Festival in Bar Harbor, Maine. Photo by Anna Travers.

Sovereignty is the right of a nation to exercise its own government and authority over the people living within its borders. Since the first Europeans came to the Americas, the sovereignty of American Indians has been recognized through treaties. A treaty is a legally binding document signed between two nations recognizing specific international relations, alliances, or agreements.

Nationally

With the creation of the United States federal government, the process of negotiating treaties was formalized. Leaders from both the United States and Indian nations signed agreements, which then needed to be ratified by Congress. For the tribes living in what is now Maine, treaties over land use and ownership were originally signed with European nations or the Commonwealth of Massachusetts.

New England courts show contempt for tribal governments: Settlements of early 80's continue to haunt tribes

By Jim Adams - *Indian Country Today* - March 24, 2004 Indian law is different in New England than anywhere else," said Douglas Luckerman, attorney for the Aroostook Band of Micmacs.

Maine

When Maine became a state in 1820 it inherited, and was compensated for, the agreements made between Massachusetts and the four tribes of the Wabanaki. Despite protections guaranteed through these treaties, the Maliseet, Micmac, Passamaquoddy, and Penobscot had much of their land taken away from them. The tribes battled to keep their sovereignty, independence, and hunting and fishing rights in the state. This continued until the tribes successfully petitioned the United States for federal recognition in the 1970s.

Upon receiving federal recognition as sovereign nations, the tribes were able to sue the state of Maine for lands that had been illegally taken, which they claimed equaled 2/3rds of the state. In 1980 the Maine Indian Claims Settlement Act was signed, and the Maliseet, Passamaquoddy, and Penobscot tribes received a cash settlement enabling them to purchase lands back from the state. The Micmac settled their land claim in 1991. In addition, the Settlement Act created a unique relationship between the state and the tribes. Maine gained more control over Indian affairs than any other state in the country. The result is that for some purposes the Wabanaki are limited as a municipality, “subject to all the duties, obligations, liabilities, and limitations of a municipality;” but when dealing with internal tribal matters, the tribes are considered sovereign nations. The nation-to-nation relationship between the tribes and the federal government is complex.

At the Abbe's 2010 Annual Meeting, Penobscot Chief, Kirk E. Francis, Sr., was the guest speaker. His remarks about sovereignty can be found in Appendix A and Appendix B include more on sovereignty

Wabanaki Territory



[Learn more >](#)

In Their Own Words

"There is no greater a sovereign act than to assert your sovereignty in the face of oppression. We don't need permission to be sovereign. There is a misunderstanding that the government will issue sovereignty to the tribes, but our sovereignty is inherent and we retain it."

-James Eric Francis, Sr., Penobscot

Tribal Historian, Penobscot Indian Nation

[A Foundation of Federal Indian Law >](#)

"One thing that often is misunderstood is why we get federal services. When the United States government was established, a commitment was made to always provide the tribes with certain services. It could have been interpreted at the time as rent, but this was the promise given by the founding leaders of the United States and our acknowledgment of that promise was passed down through Native generations."

-Richard Phillips-Doyle, Passamaquoddy

Sakom/Chief, Passamaquoddy Tribe



"The Maliseet don't have recognized sovereignty, not by the State of Maine, anyway. We were one of the first tribes contacted by Europeans and even though we had signed treaties with the U.S., our rights have been eroded over time at an alarming rate. So much so, that present day people think that we no longer exist."

-Brian Reynolds, Maliseet

Tribal Administrator, Houlton Band of Maliseet Indians

"We're different from the 1980 tribes because we didn't sign the Settlement Act, so we're not under control of the state. The U.S. Congress signed the Micmac Implementing Act. We don't want anything from Maine. We didn't sign any agreement with the state to give them control over the tribe."

-Victoria Higgins, Micmac

Chief, Aroostook Band of Micmacs

Appendix A

Penobscot Chief, Kirk E. Francis, Sr.'s Speech

ABBE MUSEUM ANNUAL MEETING May 19, 2010 Sovereignty Perspective in the 21st century Who gets to decide?

Any discussion of sovereignty can get complicated very quickly. Rather than trying to engage in a legalistic discussion of sovereignty, my discussion today focuses on the foundations of that concept which is self-governance, the right of any independent group or society to govern itself free from outside interference and how we as native tribes continue to struggle for our proper sovereign status to be recognized and respected.

The 1980 Maine Indian Claims Settlement Act created a unique legal relationship between the State of Maine, the Penobscot Nation and the Passamaquoddy Tribe. This modern day treaty was intended to enhance the sovereignty of the Maine tribes and promote self-governance, but it has failed miserably. The United States senate report for the Settlement Act indicates, "From this day forward the tribes of Maine will be forever free of state interference when it comes to matters internal to the tribes". Support for tribal sovereignty is also found in the U.S. Constitution, federal statutes, executive orders and numerous court cases. Of course, the reality for the Penobscot Nation since we entered into this treaty has been less than full respect for our sovereignty. While our native nations are making great progress, we are still very much under attack by outside corporate and government interests in our internal affairs. So while the focus of my discussion is self governance, it will also include examples of presettlement issues and how the settlement act affects our sovereignty today in the 21st century.

Tribal sovereignty is rooted in the recognition that Indian tribes are distinct political entities with governments long pre-dating the United States and as such possess an inherent right to govern themselves. Tribal sovereignty is very much about self-governance and who gets to make the decisions about governance, how we choose our leaders and the form of our government? Who gets to decide the form of land ownership or how our lands within tribal territory are developed and utilized? Who decides the rules around hunting and fishing? Who decides when and where roads are built and the speed limits for those roads? Who enforces contracts and resolves disputes? Who creates the environmental laws regulating the tribal lands and waters? Who decides what crimes apply to the citizens of our communities? Who decides all the myriad issues related to governance? Of course our answer is "we do"!

At one time there was no question about sovereignty and governance over this continent and the lands of what is now called Maine. It obviously rested with the native tribes as this areas first people being here since time immemorial. The Wabanaki came together as distinct societies and communities and the power to govern emanated from ourselves as free people and from our creator.

For Indian people, when we discuss sovereignty, we are talking about cultural survival and who we are as a people. We have to take responsibility for ourselves and our resources, and our right

to do so must be recognized. Because when we allow others to take that power from us, we lose the ability to protect our communities, to protect our people and ultimately our unique culture and before you know it we are not Penobscot anymore. That is the situation the Wabanaki tribes experienced through the State of Maine claiming control and governance of the tribes, their territory and resources. Our history under state domination has not been a positive one. We have not flourished or been able to adequately provide for our people. In fact, the tribes struggled just to survive during this period of state control.

Our native communities have historically been some of the poorest in the state with high unemployment, high substance abuse rates, high infant mortality, low life expectancy (which is still unacceptably low even today with an average age of death of 57 at Penobscot). It is interesting to look back at the old state statutes contained in Title 22 that regulated every aspect of our lives from our form of government down to dogs roaming at large on the reservations. This paternalistic approach is also evidenced by the attitude of the legal system towards the Wabanaki. In a case decided by the Maine Supreme Judicial Court in 1842, *Murch v. Tomer*, 21 Me. 535, the court asserted in reference to the tribes:

“Imbecility on their part, and the dictates of humanity on ours, have necessarily prescribed to them their subjection to our paternal control; in disregard of some, at least, of abstract principles of the rights of man”.

It is only within the last 30 years that the tribes have started the process of taking charge of our own destinies and began to emerge from the difficulty of living under state control and termination era policies such as boarding schools, urban relocation, and allotment to name a few, we have done this through self-governance and self-determination. We understood the Settlement Act to recognize our right to govern ourselves free from state intrusion. Unfortunately, old habits die hard with some, and the state continues to try to assert control over us.

In 2006, we embarked on a mission through the Tribal-State Work Group, created pursuant to an executive order of the governor and comprised of state and tribal leaders, to identify the problems with the Settlement Act and focus on potential solutions to address them. From the tribes' perspective this effort reinforced that this document has strayed from its original intent and has been used to try to turn us into state political subdivisions, essentially perpetuating the tribes as wards of the state. After a two year process, a report was generated that outlined concerns with the Settlement Act and contained several recommendations for positive change. Although the tribes felt these recommendations fell woefully short of fully addressing the issues involving tribal sovereignty, we viewed them as a step in the right direction and we cooperated in this state process in good faith.

These proceedings included testimony by State negotiators of the Settlement Act that stated that the document is not set in stone and that they always knew that it would one day have to be revisited and changes likely would be necessary. This idea seems fairly self-evident, otherwise why would Congress have specifically provided in the Act for the right of the parties to make changes? The recommendations of the work group went to the State legislative committee of jurisdiction, the judiciary committee. However, in the end not one of the recommended changes were adopted by the committee; our sense is that the state through its representatives is simply not prepared to recognize

us as sovereigns. This triggered my tribe to take a strong stance against this continued institutional oppression. Penobscot announced very publicly that we were severing all ties with State government, and that we would no longer participate in its proceedings because to do so we felt legitimizes their process over our affairs and allows the continued marginalization of our people and very much minimizes our governmental status.

The Maine Indian Tribal State Commission (MITSC) which was created by the Settlement Act to continually review the effectiveness of the Act and the social, economic and legal relationship between the state and the tribes and basically to help resolve issues between the parties has been largely ineffective due primarily to the State government's unwillingness to give due consideration to its decisions. The State government seemingly prefers going to court (state courts) rather than engaging in a true government-to-government resolution process, a role MITSC was envisioned to facilitate.

The example that first comes to mind is the issue involving waste water regulation by the State of Maine, pursuant to the National Pollutant Discharge Elimination System program of the federal Clean Water Act (often referred to as "NPDES"). The background of this case is that Maine applied to EPA to obtain control over the issuance of all wastewater discharge permits in the state. Since such a delegation by EPA to the state would have significant impacts on tribal water resources, the tribes became involved in that process opposing this delegation at least as it applied to our reservation waters. Our opposition being grounded primarily in that the federal government owes to us a trust responsibility to protect our lands and resources while the state has no such obligation and has acted in total disregard of our concerns many times. Seemingly, because of concerns about this tribal role, the paper companies, through their attorneys and pursuant to Maine's Freedom of Access Act law, served requests upon the Penobscot Nation and Passamaquoddy Tribe requesting access to tribal documents related to communications between the tribes and federal and state representatives about this NPDES delegation matter. When the tribes refused based on their view that such law did not apply to them because it was an intrusion upon tribal government in violation of the terms of the Settlement Act, the companies sued the tribes. Keeping in mind that it was intended that we would forever free of these intrusions, the tribes felt confident our rights would be upheld.

Even though the expressed application of this law is to governments, and the Settlement Act clearly designates tribal government as an internal tribal matter not subject to regulation by the state, a Maine superior court judge determined this state law does indeed apply to us and threatened tribal leaders with jail if they chose to uphold their oath and tribal law and protect tribal documents. On appeal, the Maine Supreme Judicial Court likewise concluded that this law applies in part to the Maine tribes and that we must turn documents over to the paper companies. Interestingly, MITSC had twice previously determined that FOIA did not apply to the tribes; reasoning tribes are responsible to their citizens in this manner but to no one else. By the way, the documents requested could have been obtained through the EPA. Further, the tribe has its own Freedom of Information Ordinance that provides members with access to tribal governmental documents as well as limited access for non-members.

Of note, the federal case involving the NPDES delegation to the state was also lost. The Federal courts determined it was appropriate for EPA to delegate full authority to the state for all

discharges even those from the reservations. The courts concluding that the state has regulatory authority over all waters even those within Indian Territory. With the strokes of their pens, the federal courts took away the ability of the Maine tribes to have a meaningful voice in how the water resources of this state are managed. For some that may not be a big deal but for us it is tragic.

We are a riverine people and have relied on the river and its resources for thousands of years, think about that, thousands of years. We care deeply about the river, its health and vitality. Our very reservation includes the islands and the river itself, and our way of life is tied to its resources. With the state in control of how the river is managed, it has become degraded and polluted, including the fish that live within it. Fish that our people had relied on for food now became contaminated. What has been the cultural cost of that situation to our tribe? I doubt anyone can truly quantify that. The paper companies were not concerned about documents when they filed those requests with the tribes. They knew we would resist such an intrusion. They wanted to get that issue into the courts where they could make the arguments to establish that the Settlement Act diminished our rights as a tribal government. I believe it was part and parcel of a legal strategy to eliminate the tribes' voice for the river. Why? Because they feared if tribal rights to influence how the river is managed were recognized, it would create additional financial responsibilities on their companies because the tribes would press to insure the river is protected. For them it is all about money, for us it is about so much more.

The Penobscot Nation has not harvested a fish for subsistence since 1985 due to the lack of numbers and the condition of our sacred river making the fish unfit to eat; this is not acceptable and should not be allowed to happen. On one hand the State agrees we have treaty fishing rights (sometimes) and on the other they are saying it is alright to use our river as a waste dump for big industry without a thought as to the cultural and physical health of Penobscot people. Again this goes back to a paternalistic mindset of "we will decide what is best for you even if that means losing your way of life". "Trust us we know what is best for you". It is demonstrated to us time and again that when others decide things for us it does not result in the best interest of the Penobscot Nation, and how could it? Other people's decision making processes do not take into account any of the things of cultural importance to the tribes but are formulated around their own agenda, their own worldview.

Makes you wonder why the state wants that control when they have been such poor stewards in the past and state leaders must have more important concerns than how the tribes desire to manage their own internal affairs. For tribal people, we have reached the point where we feel we can not compromise any further if we are to survive as a distinct culture with a unique contribution to this country. We have already been deprived of the ability to live our culture within our traditional homeland which at one time numbered in the millions of acres. By the time of the Settlement Act, we were reduced to around 75 miles of Islands and the surrounding river which makes up our reservation. Through the provisions of the Settlement Act we have been able to recover around 100 thousand acres of our aboriginal Penobscot territory. Even then the State tells us that our ability to govern that territory is limited by state interests. It doesn't make sense to us that after having lost so much of our territory and culture why the state continues to resist any recognition of tribal authority and to contest so fiercely every inch in the tribes struggle for self-determination. The message to the tribes is that the mindset of many is still that of forced assimilation and termination, and of course for us that

effort has to be met with equally fierce resistance for the survival of our people and to preserve a future for the yet unborn to exercise their inherent right to exist as a Penobscot.

With the tribes exercising increased self-determination for more than three decades, we are finally starting to thrive again, for example: improved housing. We have constructed numerous new houses on the reservation. We also have built two new apartment buildings to provide housing to single people and small families. We have units specifically dedicated for housing our elders as well as offering them lunch 5 days a week. The Penobscot Nation has also constructed an assisted living center to allow some of our elders to continue to live within the tribal community. We also have our own health care system, providing medical, dental, nutrition, diabetes prevention, laboratory and counseling services, as well as a pharmacy. We have also taken steps in improving our economic condition, as a government we employ over 150 people and our economic development efforts are starting to create real opportunity for our citizens and increased revenue for our Nation. We expect our business development to grow significantly over the next five years which will provide hundreds of jobs and economic selfsufficiency for our tribe.

We once again are encouraging our citizens to embrace their culture through language revitalization and many cultural programs. The tribe is getting back to recognizing the voice of our women, children and elders who have played a vital role in our history and are so important to the prosperity of our community today. We are focusing on our educational systems, trying to create more opportunities for our people to attend some of Maine's best institutions to which we have had limited access in the past. We have expanded our internal social programs to focus on cultural healing and emphasizing the elimination of dependency in any area. We have our own judicial system: featuring a tribal court where our citizens are dealt with in a tribal environment as well as our own public safety, warden service and fire protection departments.

Our largest department is the natural resources department that focuses on the many aspects of our environment, from water and air quality, to managing all our resources in a sustainable and responsible way. All of these activities are tribal self-governance and self-determination. We are providing for ourselves and our community. Because despite other people's perceptions or misperceptions of who we are and whatever stereotypical images they may hold of tribal people, our communities do not want handouts and many of our people do not ask for assistance at all. The Wabanaki tribes are comprised of people possessing great character, integrity and responsibility and only wanting what's best for their families and communities.

Our people care about this state, it is our homeland and we are connected to it no matter what any document or deed may say. We want it to prosper and we must be an equal player in accomplishing that goal, however, it should and must be on terms that reflect our unique culture and perspective. Without this opportunity, it is my firm belief that our state will never truly reach its full potential, economically, socially or spiritually, and we will continue to live in an era of conflict, disharmony and mistrust. It is time that we all put such things behind us.

So sovereignty in the 21st century may mean a lot of different things to different people, but for Penobscot I can define it in two ways. First, sovereignty means what it always did to our people and that is the right to exist freely and exercise our own decision making processes in order to live our

culture and shape our own future. And secondly, the continued struggle to obtain recognition and acknowledgment of that right. So, as I said in my opening statement, any discussion of sovereignty can get complicated very quickly, but to Native people it is quite simple and it comes down to one basic question, who gets to decide the things that affect our lives? Although it seems like the answer to that question should be crystal clear to everyone, until it is, I am afraid our vision of walking to a better tomorrow for all people even though on different paths can never truly be realized. Such a result would truly be a shame because we miss out on the opportunity for a better future, a future of mutual respect, tolerance and increased prosperity for all. It has been my pleasure to talk with you today as the proud leader of a proud Nation. If you remember nothing else of my presentation today, I hope you take away that sovereignty comes down to that one basic question of who gets to decide and you appreciate the tribe's belief that we should have that right for ourselves.

Thank you and I'd be happy to answer any questions.

Appendix B

Settlement Act

Speaking a different language: Tribes and the state are deadlocked on the meaning of sovereignty

Maine Times - May 10, 2001 What, then, does the state think "sovereignty" means? "It's difficult to talk in terms of tribal sovereignty from our point of view," says Maine Assistant Attorney General William Stokes. "We don't necessarily disagree with the fact that [the tribes] are sovereign, but we might not be talking about the same thing as they are."



Figure 3 Courtesy of Reuben "Butch" Phillips.

"It's important to distinguish sovereignty- there is the federal definition, but superseding that is our sovereignty, and that is original or inherent sovereignty. You can't separate that, just like you can't separate our DNA from who we are. So long as we have our DNA this will be so. My grandma said, 'We aren't them, and we don't want to be them and that's ok.' The state and federal government can't define our sovereignty. All tribal people need to hold this dear to our hearts and not relinquish that."

-Barry Dana, Penobscot

Passamaquoddies from Indian Township confront loggers from Georgia Pacific in 1968, forcing them to stop harvesting on land claimed by the tribe. As a result of negotiations with the tribe, Georgia Pacific agrees to hire three all-Indian crews to carry out harvesting in the area. Bangor Daily News file photo by Beal.



In 1980 President Jimmy Carter signed into law the Maine Indian Claims Settlement Act (the Settlement Act). This unique agreement was reached between the state, the federal government, and Maliseet, Penobscot and Passamaquoddy tribes over the tribes' claims that 2/3rds of the state of Maine was illegally taken. The Settlement Act broke new ground and was the largest cash settlement awarded at that time to an American Indian tribe.



Lucy Nicolar, Penobscot, is the first to vote on Indian Island in 1955, after Native Americans were given the right to vote in federal elections in 1954. Native people were not given the right to vote in Maine state elections until 1967. Nicolar was a strong advocate of voting rights for the Wabanaki. Bangor Daily News file photo by Danny Maher.

The Penobscot and Passamaquoddy tribes each received \$26.8 million for the purpose of buying back more than 300,000 acres of land from the state and paper companies. The Houlton Band of Maliseet Indians received \$900,000 to acquire land. The settlement also included an additional \$13.5 million for the Passamaquoddy and Penobscot to be held in a federal trust account, from which the tribes may draw interest for use without restriction. One million dollars was

earmarked to fund projects that benefit tribal elders. The Maliseet did not receive a trust fund.

Peter Dana Point's tribal governor, John Stevens, and Regina Nicholas participate in a sit-in on U.S. Route 1 to protest the cutoff of state benefits, particularly milk for children and medical help for the elderly, 1969. Bangor Daily News photo.



In exchange, the tribes dropped their claim to 12.5 million acres of land, and agreed to abide by most state laws and provide services similar to a municipality. The settlement also stipulated that any federal Indian policies enacted after 1980 which “would affect or preempt the laws or the application of the laws of the State of Maine...shall not apply within the State of Maine, unless (the) Federal law is specifically made applicable within the State of Maine.” Wabanaki leaders contend that this last stipulation was added in the 11th hour, without thorough discussion from the signatories.

Within the Settlement Act, an agreement between the state and the tribes called the Maine Implementing Act was enacted by the Maine legislature to create the Maine Indian Tribal-State Commission (MITSC) as a means for settling disputes that might arise from issues left unresolved by the settlement. The thirteen member Commission consists of six members appointed by the State, two by the Houlton Band of Maliseet Indians, two by the Pasamaquoddy Tribe, and two by the Penobscot Indian Nation. The thirteenth, who is the chairperson, is selected by the twelve appointees.

MITSC chair's departure 'a great loss'

Indian Country Today - January 21, 2010 MITSC was given a broad mandate to continually review the effectiveness of the Implementing Act and the "social, economic, and legal relationship" between the state and the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and Penobscot Indian Nation, and make recommendations.

But the state has blocked most recommendations MITSC has made and instead has used its power and the power of the state courts to diminish tribal sovereignty and self-determination.

The Penobscot have pulled their representatives from the commission, and the chair of the commission, Paul Bisulca, Penobscot, recently declined to serve another term because of the "state's unwillingness to honor agreements that were meant to affirm and enhance the Wabanaki nation's sovereignty."

Chiefs blast attorney general's 'distorted, revisionist account' of Settlement Act negotiations

Indian Country Today - July 27, 2009 While tribal-state relations improved in the Maine legislature this year, the Wabanaki chiefs took offense at what they called 'distorted, revisionist' comments Attorney General Janet Mills made to the judicial committee concerning the federal Maine Indian Claims Settlement Act of 1980 and its companion, the Maine Implementing Act, citing that 'every word was meticulously and carefully chosen' giving the false impression that the two acts are somehow perfect agreements that should not be changed.

John Paterson, the state's former deputy attorney general, and Tim Woodcock, the former staff director of the Senate Select Committee on Indian Affairs have said that the two Acts were meant to enhance and recognize tribal authority, not diminish it, and that the Implementing Act was supposed to be an organic document that would be revisited and amended as needed.

The Micmac Settlement Act

The Micmac were not part of the 1980 Settlement Act because "historical documentation of the Micmac presence in Maine was not available at that time." The Band petitioned for federal recognition, and won in 1991 "to settle all claims by the Aroostook Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes."

The purpose of the Act was to "grant the Aroostook Band of Micmacs federal recognition, provide members of the Band with services the federal government provides to all federally recognized tribes, place \$900,000 in a land acquisition fund, and ratify the Micmac Settlement Act, which defines the relationship between the state of Maine and the Aroostook Band of Micmacs." According to the Micmac, this last clause was never ratified and

the Band does not have a relationship with the state of Maine, however they maintain their federal recognition.

Appendix C

A Foundation of Indian Law



Figure 4 Treaty between the Passamaquoddy Tribe & The Commonwealth of Massachusetts, 1794. A copy of the treaty found by Louise Sockabasin in a shoebox in 1957 later became part of the basis of the Passamaquoddy's land claims. Image courtesy of the Maine State Archives.

Federal law states that Congress must ratify treaties and oversee federal Indian policy. However, it has been federal and state courts that have shaped the current status of federal-Indian relations and Indian law, in Maine and throughout the United States.

In the early 19th century, Chief Justice John Marshall decided a series of cases that defines Indian law today. In 1828 Marshall ruled that the United States government had acquired free title to Indian land based on the principles established by the Doctrine of Discovery, a precedent set by European Nations allowing the taking of lands unoccupied by Christian people. Marshall ruled that American Indians could sell their lands only to the U.S. government, not to states or to individuals.

The next ruling, responding to the Cherokee Nation's fight against removal from their native lands, declared that Indian Nations were "domestic-dependent nations" – or a nation within a nation. This left the tribes' relationship to individual states ambiguous.

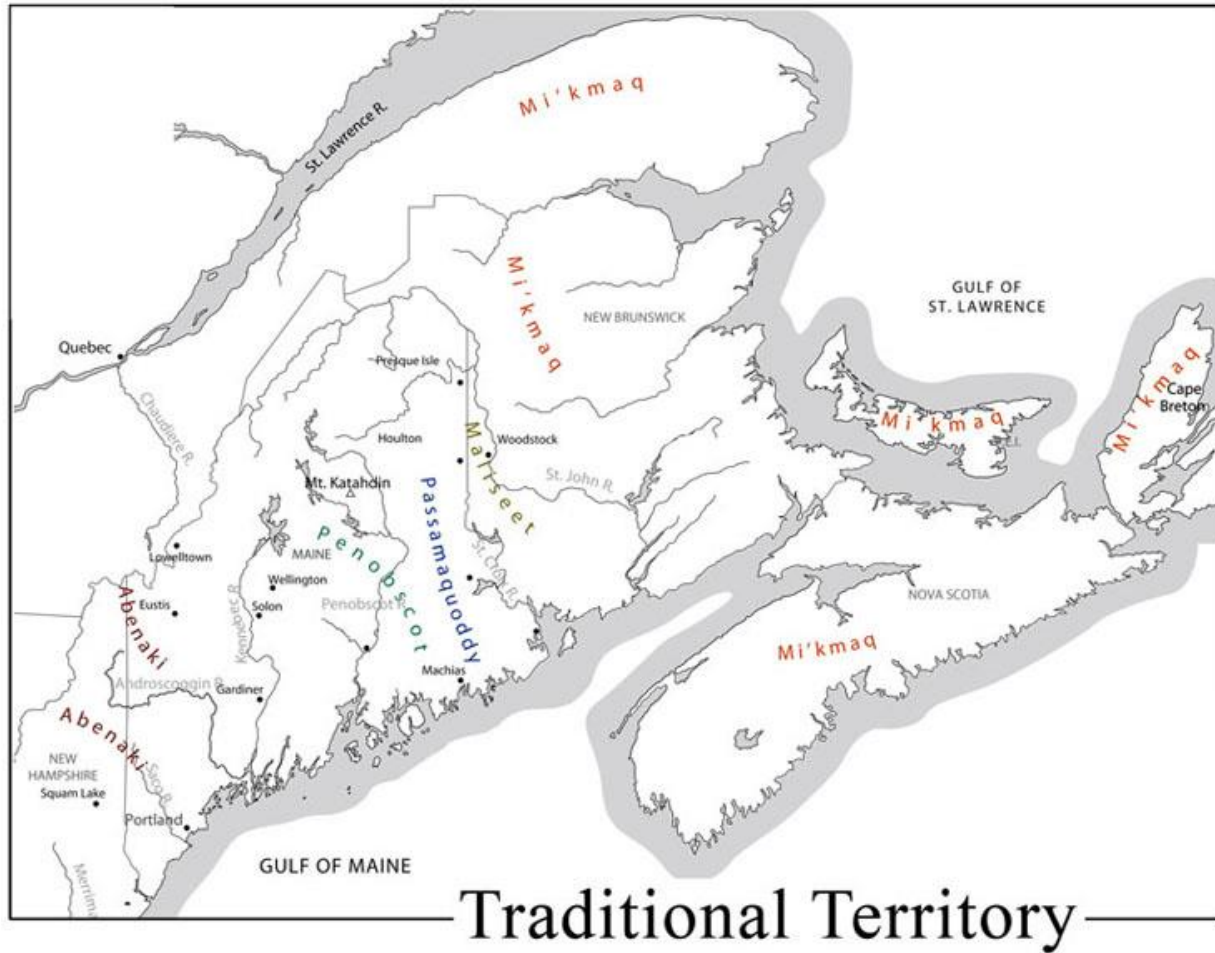
Marshall later clarified that Indian tribes "were like a ward to its guardian," but being wards did not reduce tribal sovereignty. Marshall said that Indians had a "protectorate relationship" with the United States, and did not give up their identity or sovereignty in this relationship. Most importantly, Marshall said, "protection did not imply destruction of the protected."



Figure 5 Treaty between the Passamaquoddy Tribe & The Commonwealth of Massachusetts, 1794.

Appendix D

Wabanaki Territory



The tribe has been purchasing large tracks of land in northern Maine. We're excited about the opportunity to save and protect the land in a wild state. The land is being preserved for camping, gathering the traditional foods and medicines we still use today. It's hard for us to separate ourselves from the land. The land, rivers and streams run in our veins.

- Richard Dyer, Micmac

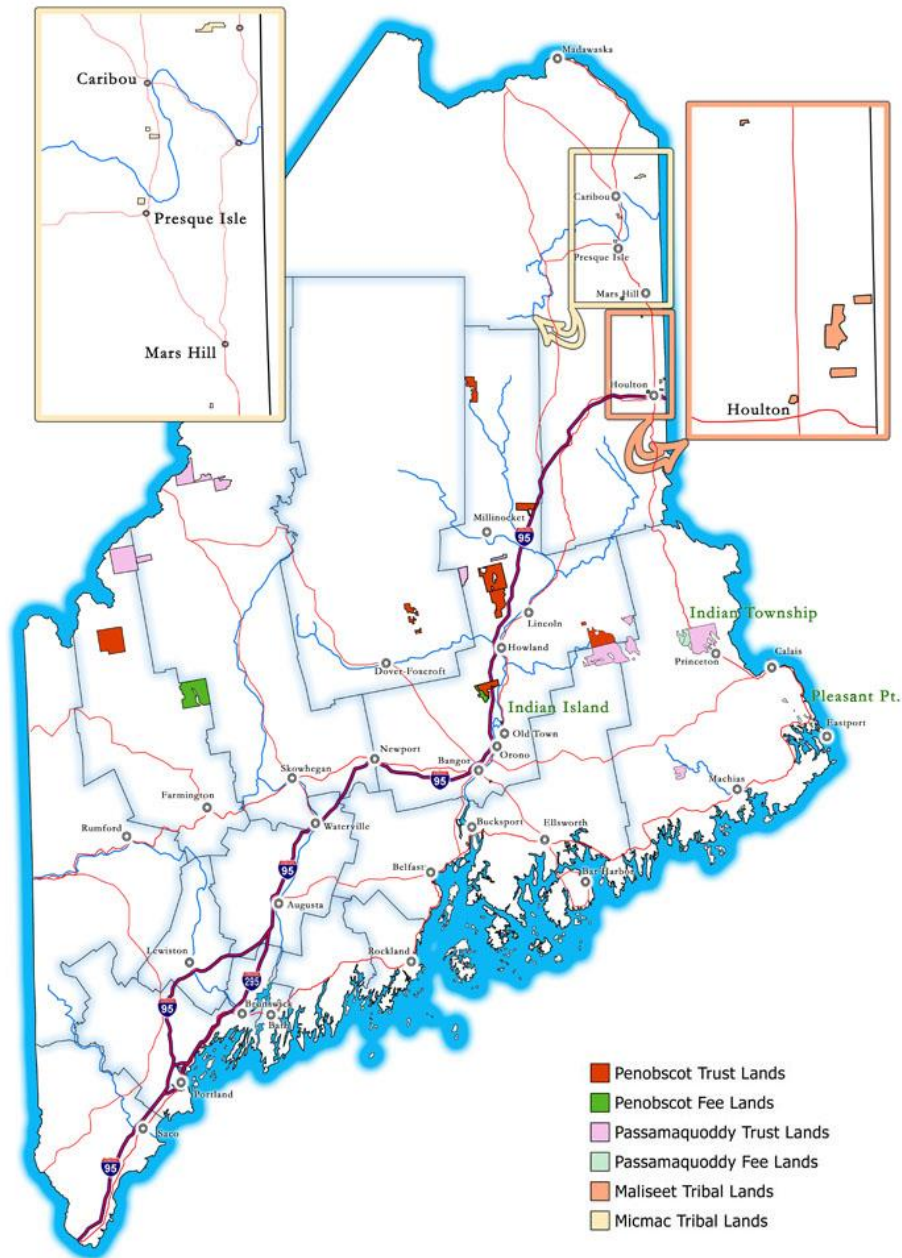
Aroostook Band of Micmacs

We own over 130,000 acres located in eastern, central and western Maine. This provides a variety of different types of resources. There are places the tribe has set aside for nature to rebuild, places for the animals and trees. We just set aside 3,000 acres in western Maine for migratory birds to use as a stopping place during their long trip from South America to Canada.

-Donald Soctomah, Passamaquoddy

Historic Preservation Officer, Tribal Representative to the State Legislature

Wabanaki Territory Today



Map designed by James Eric Francis Sr.

The State's opinion is that we don't have a land base large enough to manage our hunting and fishing rights on, or a mechanism to carry out the management. What I really think they

are saying is that they don't think we can manage our own lands, and that they really don't want to give up that authority anyway.

-Brian Reynolds, Maliseet

Tribal Administrator, Houlton Band of Maliseet Indians

We have a deep cultural connection to the natural world that translates into responsibility for professional stewardship that insures long term sustainability. The 1980 Settlement Act confirmed our exclusive authority to regulate the taking of wildlife from within Penobscot Indian Territory.

-John Banks, Penobscot

Director of Natural Resources, Penobscot Indian Nation