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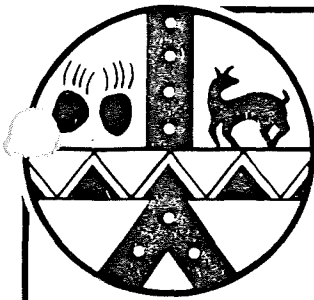
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# Briefing Book

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ARROOSTOOK BAND OF MICMACS

## AROOSTOOK BAND OF MICMACS BRIEFING BOOK

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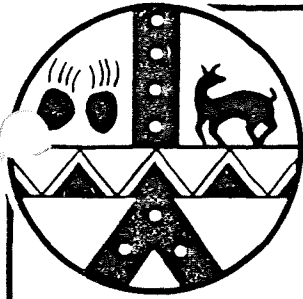
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The seal of the Aroostook Band of Micmacs on the cover was designed by Micmac artist, David Sanipass, in 1982. The design incorporates traditional symbols and colors used by the Micmac people, and specifically symbolizes various aspects of the creation of the Aroostook Micmac Council.

David's father, Donald Sanipass, took the color photographs which appear at Tab #7 in the briefing book. The black and white photographs at Tab #11 were taken by Christopher Ayres.



TAB #1

**SUMMARY OF LEGISLATIVE CLAIM  
OF AROOSTOOK BAND OF MICMACS BASED ON THEIR EXCLUSION FROM  
THE MAINE INDIAN CLAIMS SETTLEMENT ACT**

**THE AROOSTOOK BAND OF MICMACS**

The Aroostook Band of Micmacs today consists of almost 400 tribal members. Lacking reservation lands or federal recognition as a tribe, its members live in poverty, scattered around Aroostook County, Maine. Micmacs have continuously occupied and jointly used the lands which fall within the watershed of the St. John River, which borders Aroostook County, for at least four centuries. The Micmacs were allies with the three other tribes of Maine -- the Penobscot, Passamaquoddy and Maliseet -- for two hundred years as the Wabanaki Confederacy and allied with the Americans during the Revolutionary War.

**BASIS FOR THE CLAIM**

The Maine Indian Claims Settlement Act of 1980 (MICSA) was a settlement of tribal claims to lands in Maine, which began with two lawsuits filed by the Penobscot Indian Nation and Passamaquoddy Tribe in 1972 against the State of Maine. In it, Congress extinguished all aboriginal title held by any Indian tribe or individual to all lands in the State of Maine. In return, the Penobscot and Passamaquoddy Tribes each received \$41.3 million. The Houlton Band of Maliseet Indians, who asserted a claim in 1979, received \$900,000 and federal recognition as a tribe.

The Aroostook Band of Micmacs received nothing in the settlement. As a direct result of MICSA, the Band lost various services and privileges; its title to aboriginal lands in Maine was also extinguished by Congress.

The Micmacs had state recognition as a tribe by 1973. However, their only formal political advocate was the Association of Aroostook Indians, an organization formed in 1969 to represent the interests of both Micmac and Maliseet Indians in Aroostook County. The organization was headquartered in Houlton, where the Indian population is predominantly Maliseet and, over time, they came to control the organization. Thus, when very limited research funds became available in 1978, the Association understandably chose to expend those funds on research of the Maliseet history and claims.

The Aroostook Band of Micmacs had no resources to hire a ethnohistorian until late in 1981. By that time, they had already lost their right to go into court to enforce their land rights. They had also lost almost all benefits of their status as a State recognized tribe, for the State closed its Department of Indian Affairs and related programs in January of 1981. This loss was also a direct result of the settlement, from which the

Aroostook Band received no benefits.

The documentary ethnohistorical evidence gathered in the last five years shows that, along with other members of the Wabanaki Confederacy, the Micmac Nation jointly owned and occupied lands in Maine which were never transferred or sold. Therefore, the Aroostook Band of Micmacs, as the modern "successor in interest" of the Micmac Nation, could still assert aboriginal title to those lands, but for the action of Congress in MICSA.

A legislative reference of the Band's claims is the only appropriate way in which the Band can obtain a remedy for the loss of its aboriginal lands and related rights, and for those other claims based on the Band's exclusion from MICSA in 1980. It is the only way in which the Band's claims based on its exclusion from the benefits of MICSA can be reviewed by the standard of "fair and honorable dealings."

#### **THE PROPOSED LEGISLATION**

The Maine Indian Claims Settlement Act is unique among the Indian land claims settlements enacted by the Congress. Alone among the five other settlements, it extinguished all tribal claims to all land in the State of Maine and did so without compensating one of the four tribes then known to exist in the State. It also excluded the fourth tribe, the Aroostook Band of Micmacs, from the other benefits of MICSA.

Action by Congress is now necessary to correct the overbroad scope of that settlement in 1980. The Aroostook Band of Micmacs therefore is seeking a legislative reference of its claims to the U.S. Claims Court, pursuant to 28 U.S.C. §1492 and §2509. Following a hearing and the recommendation by the Court, legislation resolving these claims would be introduced in both the U.S. House of Representatives and Senate.

#### **RELIEF SOUGHT**

The Claims Court is expected to recommend an amount of money damages in compensation for the loss of the Aroostook Band's aboriginal lands, as well as the loss of other benefits as a result of the Band's exclusion from MICSA in 1980.

However, the Band is prepared to negotiate a settlement of all its claims in return for federal recognition of its status as a tribe, and sufficient funds to purchase a small land base in Aroostook County.

TAB #2



A BILL

FOR THE RELIEF OF THE AROOSTOOK BAND OF MICMACS AND ALL ENROLLED  
MEMBERS OF THE BAND

Be it enacted by the Senate and House of Representa-  
tives of the United States of American in Congress assembled,  
That notwithstanding the provisions of any statute of  
limitations, that the Secretary of the Treasury is authorized and  
directed to pay, out of any money in the Treasury not otherwise  
appropriated, to the Aroostook Band of Micmacs and all enrolled  
members of the band the sum of \$\_\_\_\_\_ for the benefit of  
and distribution to the Aroostook Band of Micmacs and all  
enrolled members of the band. The payment of said sum shall be  
in full settlement of all claims of the band arising from the  
taking by the United States of lands owned or occupied by the  
Micmac Nation without payment for such lands of compensation  
agreed to by the tribe and claims based upon fair and honorable  
dealings which are not recognized by any existing rule of law or  
equity, including but not limited to the exclusion of the  
Aroostook Band of Micmacs from the benefits of the Maine Indian  
Claims Settlement Act, section 1721 et.seq., of title 25 of the  
United States Code.

**A RESOLUTION**

**To refer the Bill, S.\_\_\_\_\_ to the Chief Judge of the United States Claims Court**

**RESOLVED, that S.\_\_\_\_\_** entitled "A Bill for the Relief of the Aroostook Band of Micmacs, and all enrolled members of the Band respectively" now pending in the Senate, together with all of the accompanying papers, is hereby referred to the Chief Judge of the United States Claims Court and the Chief Judge of the United States Claims Court shall proceed with the same in accordance with the provisions of Sections 1492 and 2509 of title 28 of the United States Code.

**A RESOLUTION**

**To refer the Bill, H.R.\_\_\_\_\_ to the Chief Judge of the United States Claims Court**

**RESOLVED, that H.R.\_\_\_\_\_** entitled "A Bill for the Relief of the Aroostook Band of Micmacs, and all enrolled members of the Band respectively" now pending in the House of Representatives, together with all of the accompanying papers, is hereby referred to the Chief Judge of the United States Claims Court and the Chief Judge of the United States Claims Court shall proceed with the same in accordance with the provisions of Sections 1492 and 2509 of title 28 of the United States Code.



## SOME BASIC QUESTIONS AND ANSWERS ABOUT THE AROOSTOOK BAND OF MICMACS

### 1. What is the Aroostook Band of Micmacs?

The Aroostook Band is part of the Micmac Nation; the Nation today encompasses 29 individual bands, located throughout the Canadian Maritime Provinces and Maine. Micmacs are one of the eastern Algonquian-speaking tribes, as are the three other tribes of Maine: the Penobscot, Passamaquoddy and Maliseet. Historically, these four tribes formed the Wabanaki Confederacy, which allied with the United States in its Revolutionary War.

The modern Aroostook Band consists of approximately 400 tribal members, all of whom have specific ties to Aroostook County, the northernmost county in Maine. The Micmac community is bound together by language and culture, but their lives also are marked by severe poverty and discrimination. [See Tab Nos. 6, 8, 9, and 11 for more information]

### 2. Is the Aroostook Band of Micmacs recognized as an Indian tribe in the United States?

"Recognition" implies an acknowledgement of tribal status which brings with it certain privileges and duties. The Aroostook Band is "recognized" by the State of Maine and therefore is entitled to distribute hunting and fishing licenses and ash permits to its members. The Aroostook Band is not yet "recognized" by the United States Government, and it therefore does not have those privileges and duties to which federally recognized tribes are entitled.

While most federal statutes applying to Indians only recognize individuals who are members of recognized tribes, some statutes do recognize individuals who can show that at least two of their grandparents were Indian. (the "half blood" requirement). Many of the Aroostook Band's members can meet this test and they have therefore petitioned for formal recognition under the Indian Reorganization Act. [See Tab Nos. 4, 5 and 15 for more information]

### 3. Does the Aroostook Band of Micmacs get any federal or state benefits as an Indian tribe?

Yes, in a limited way. The Aroostook Band of Micmacs and its members are not eligible for the programs and services of the Bureau of Indian Affairs and Indian Health Service because the Band is not recognized by the federal government. The Band receives limited development funding from the Administration for Native Americans because that agency defines eligible tribes in a different way. The Band and its members used to receive services from the State of Maine but those services were dropped in 1981, as a direct result of the passage of the Maine Indian Claims Settlement Act. [See Tab Nos. 4-6 for more information].

4. How does the Maine Indian Claims Settlement Act of 1980 (MICSA) affect the Aroostook Band of Micmacs?

In MICSA, Congress extinguished all aboriginal title of Indian tribes to lands in Maine. In return, Congress paid the Penobscot Nation, Passamaquoddy Tribe and Houlton Band of Maliseet Indians the collective sum of \$81.5 million.

The aboriginal title of the Aroostook Band of Micmacs was also extinguished by MICSA, but the Band received no compensation. Because Congress has the power to do that, the Band cannot now go to court to enforce its right of ownership. Other language in MICSA complicates the Band's right to get federal recognition from the Executive Branch. Finally, the passage of MICSA led to an end of state services and programs for tribes in Maine, which the Aroostook Band had been receiving. [See Tabs 4 and 6 for more information]

5. Why wasn't the Band included in the Maine Indian Claims Settlement Act of 1980?

At the time of the Act's passage, the Band was organized in the Association of Aroostook Indians, founded in 1969. That Association spent its limited resources towards the documentation of a claim for the Houlton Band of Maliseet Indians. There was not sufficient time or funds to document a similar claim for the Aroostook Band of Micmacs. [See Tab No. 4 for more information]

6. What is the basis for the Band's claims today?

The Band's claims are based on documentary ethnohistorical evidence gathered since 1981. That evidence shows that, along with other members of the Wabanaki Confederacy, the Micmac Nation jointly owned and occupied lands in eastern and northern Maine which were never transferred or sold. The Aroostook Band of Micmacs, as its modern "successor in interest," could still assert aboriginal title to these lands, but for the action of Congress in MICSA. [See Tab Nos. 4, 5 and 9 for more information]

7. Why hasn't the Band filed a lawsuit?

Although MICSA makes it impossible for the Band to enforce its land rights in court, it could have filed a lawsuit claiming that MICSA itself was unconstitutional. The Band chose not to do that for two reasons. First, the Band did not want to create a situation in which MICSA could be overturned and its benefits lost to the other tribes and landowners in the State of Maine. Second, because of various court decisions, such a lawsuit would be difficult to win, although it could have been dragged out in the courts for years if the Band had sufficient resources to assign to such a cause. [See Tab No. 4 for more information]

8. How is the Band seeking redress?

In two ways. First, the Band is preparing a petition which it will submit to the Bureau of Indian Affairs, in which it asks for federal acknowledgement of its status as a tribe. This administrative procedure may take several years, because the Bureau has many petitions to review. The Band is also applying to BIA for recognition of its eligible members as "half blood Indians."

However, acknowledgement of the Band's tribal status would not resolve the Band's land claims. Moreover, its ability to obtain tribal recognition may be hampered by language in MICSA. In order to address both problems directly, the Band is asking Congress to make a "legislative reference" of its claims to the Claims Court. This special procedure will allow the Band to prove its claims in court, but with the involvement of the Congress. [See Tab No. 4 for more information]

9. What is a "legislative reference?"

It is a combination of Congressional and court review of issues which would be too unwieldy for Congress to sort out on its own. It begins with the introduction of a bill stating the Band's claims, which is followed by the introduction of a resolution "referring" those claims to the U.S. Claims Court. If either the House or Senate passes the resolution, the claims are then heard in the Claims Court. After the final decision and recommendation from the Court, the matter goes back to Congress for action. Any resulting legislation is handled like all other measures before Congress, and must be passed by both Houses and signed by the President. [See Tabs Nos. 2 and 4 for more information]

10. Why should Congress make a legislative reference of the Band's claims now?

For two reasons. First, basic fairness requires that the Band now be allowed to prove the merits of its claims in light of the new evidence gathered since 1981. Second, the Aroostook Band of Micmacs is the only tribe in the country whose aboriginal title to lands was extinguished by Congress in this way without any compensation. [See Tab 4 for more information]

11. What effect will the legislative reference have on the Maine Indian Claims Settlement Act and on the tribes and landowners in Maine who were party to it?

NONE; neither the legislative reference nor a favorable court ruling based on the Aroostook Band's claims can change the application of MICSA to the Penobscot Nation, Passamaquoddy Tribe or Houlton Band of Maliseet Indians or to landowners in the affected areas of the State. [See Tab 6 for more information]

12. Won't this be a dangerous precedent?

No; this is a unique case and based on the specific language of the Maine Indian Claims Settlement Act. It cannot act as a precedent for any other tribe, since no other tribe is in the same position as the Aroostook Band of Micmacs.

13. Will it cost the State of Maine any money?

No; the state cannot be required to pay any of the damages identified by the Claims Court. And, because there are no state programs or services for Indian tribes, recognition of the Aroostook Band's tribal status will not require additional appropriations within the State. In fact, it may bring federal dollars to Aroostook County, in the form of small business loans and other programs for which the Aroostook Band would be eligible after recognition.

14. Will it cost the federal government any money?

Yes; it will cost the federal government whatever amount the Claims Court recommends in damages in compensation for the Band's claims, assuming that the Congress subsequently agrees to that amount. If the tribe is federally recognized, it will then become eligible for the various programs and services of the Bureau of Indian Affairs and Indian Health Services. (Of course, it would also be eligible for those benefits if the Band obtains federal recognition independently of this procedure.)

15. What relief is the Aroostook Band seeking?

The Band initially is seeking only to have its "day in court" to establish the merits of its claims. Assuming that the Claims Court finds the Band's claims to have merit and recommends payment of money damages, Congress will then set those damages in the final legislation "settling" the Band's claims.

While the Aroostook Band is prepared to go forward and prove its claim, it is also prepared to negotiate a settlement along the lines of that received by the Houlton Band of Maliseet Indians in MICSA. [See Tab No. 4 for more information]





**JUSTIFICATION FOR THE  
LEGISLATIVE REFERENCE OF CLAIMS OF  
THE AROOSTOOK BAND OF MICMACS**

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**JUSTIFICATION FOR THE LEGISLATIVE REFERENCE OF CLAIMS OF THE  
AROOSTOOK BAND OF MICMACS**

**I. INTRODUCTION**

In 1980, Congress passed a comprehensive bill intended to resolve all the pending claims for land by Indian tribes in the State of Maine. As a result of the Maine Indian Claims Settlement Act of 1980 (hereinafter, MICSA), the Penobscot Nation and the Passamaquoddy Tribe, which had been federally recognized in 1976, each received \$13.5 million held in trust by the Secretary of the Interior, and \$26.8 million deposited in a Land Acquisition Fund. The Houlton Band of Maliseet Indians received \$900,000, deposited in a Land Acquisition Fund and recognition as an Indian tribe by the Federal Government.

The Aroostook Band of Micmacs received nothing from MICSA. In fact, the Act deprived them of many essential rights and privileges the Band and its members had previously enjoyed. The Band lost its legal right to assert any claim based on its ownership of aboriginal lands within the State of Maine. Because of other language in MICSA, the Band cannot organize under the Indian Reorganization Act or utilize the various federal services and programs which are specifically tied to a tribal land base. Finally, because of MICSA, the Band lost almost all of the benefits and services it had received as a state-recognized tribe. (The State of Maine dropped those programs less than five

months after MICSA had been signed.)

These effects of MICSA alone present a gross inequity. They are compounded by the fact that the Aroostook Band of Micmacs did not participate at all in the negotiations which led to MICSA and did not receive any compensation -- monetary or otherwise -- in exchange for those substantial losses.

Several factors help to explain why the Band was excluded in 1980. MICSA is unique in its sweeping language regarding extinguishment of aboriginal title -- perhaps, because of the tremendous pressure on all sides to resolve the land claims dispute as quickly as possible. Certainly, there is no indication that Congress or the Executive Branch considered the evidence available today and still determined the potential claims of the Aroostook Band of Micmacs to be without merit. Nonetheless, the parties were aware that the Micmacs had state recognition as a tribe, and no attempt was made to independently verify their assumed lack of historical presence in the State.

Other reasons for the exclusion are more clearly tied to the history of the Band in Maine. The Micmac Nation as a whole is a migratory and impoverished tribal group, whose members have freely moved across the U.S./Canadian border since time immemorial. The Aroostook Band's political organization until 1982, the Association of Aroostook Indians, became increasingly

controlled by its Maliseet members and understandably chose to expend very limited resources on the development of a Maliseet claim in the late 1970's.<sup>1</sup> There simply was no money and no personnel to do the necessary research on the Micmacs' tribal presence in the State, before the settlement was concluded in the late summer of 1980.

Recovery from that setback was slow at first. However, significant ethnohistorical documentary research on the presence of Micmacs in Maine been gathered since 1981. Today, the Band has compelling evidence of its claims which was simply not available to the Congress in 1980.

The current legislation would simply provide the needed "day in court" for the Aroostook Band to prove those claims. There is no other remedy for the Band, since no legal or administrative proceeding can address their exclusion from MICSA.

One specific claim which would be addressed by the Court is whether the Micmac Nation had aboriginal title to lands in Maine for which the Aroostook Band of Micmacs should be compensated, a result of the extinguishment provisions of MICSA. The legislative reference of this claims is also justified by the

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<sup>1</sup> The Maliseet claim was only asserted in the final months of 1979, and was sufficient to win the support of the other tribes -- without that support, the Houlton Band of Maliseets might be struggling today for recognition, as the Aroostook Band of Micmacs is now doing.

other inequities of MICSA, which do not meet the necessary standard of fair and honorable dealings by the United States with this tribal group.<sup>2</sup>

The nature of the relief sought through the Congressional reference of the Band's claims would be in the form of money damages for the loss of its aboriginal lands in Maine, a small fraction of the acreage claimed by the respective tribes before MICSA.

Alternatively, the Band is prepared to negotiate a settlement of its claims. Such a settlement would realistically include some combination of federal recognition as a tribe and funds sufficient to permit the acquisition of a small land base in Aroostook County. The settlement received by the Houlton Band of Maliseet Indians in MICSA would be an appropriate point of reference.

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<sup>2</sup> Such inequities include the loss of state services and the right to acquire federal trust lands upon which many federal services are predicated. Both are directly attributable to MICSA and/or the Maine Implementing Act, its state corollary.

## II. THE MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980: HOW IT IMPACTS ON THE AROOSTOOK BAND OF MICMACS

MICSA was a result of two lawsuits filed in 1972, alleging that roughly two-thirds of the lands in the State of Maine were still owned by the Penobscot Indian Nation and Passamaquoddy Tribe.<sup>3</sup> Both lawsuits were premised on the violation of the Intercourse Act<sup>4</sup>, included claims of trespass upon and conversion

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<sup>3</sup> There was initially some question over whether a tribe which was not federally recognized as such could assert a claim under the Non-Intercourse Act. This question was finally resolved in the landmark case of Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F.Supp. 649, (D. Me, 1975) aff'd, 528 F.2d 370 (1st Cir., 1975) in which federal recognition was not held to be a pre-requisite to such a claim.

According to a 1977 litigation report prepared by the Department of the Interior, a prima facie case for recovery of Indian land taken in violation of the Nonintercourse Act is established by showing:

- (1) The claimant is a "tribe of Indians" within the meaning of the Act;
  - (2) the land claimed is covered by the Act as tribal land;
  - (3) the United States has never consented to its alienation;
- and
- (4) the trust relationship between the United States and the tribe, which was established by the coverage of the Act, has never been terminated.

Hearings before the Select Committee on Indian Affairs, U.S.Senate, 96th Cong., 2d sess. on S.2829, "To Provide for the Settlement of the Maine Indian Land Claims" (July 1 and 2, 1980) [hereinafter "MICSA Senate Hearings"], Letter of January 19, 1977, pp.243-244.

<sup>4</sup> The earliest version of the federal statutory restraint against alienation of tribal lands was enacted by Congress in 1790 as part of the first in a series of Indian Trade and Intercourse Acts. This policy is now codified at 25 U.S.C. §177. Clinton & Hotopp, "Judicial Enforcement of the Federal Restraints on Alienation of Indian Land: The Origins of the Eastern Land Claims," Maine Law Review, Vol.31: 17-90 (1979).

At the time these lawsuits were filed, there was no settled  
(continued...)



of tribal lands and asked for damages in the amount of \$150 million.<sup>5</sup>

Although both the Penobscots and Passamaquoddies had occupied state reservations for almost 200 years, the federal tribal status of the Penobscot and Passamaquoddy tribes was not acknowledged by the Bureau of Indian Affairs until 1976.<sup>6</sup>

A claim on behalf of the Houlton Band of Maliseet Indians was not asserted until late in 1979, and no lawsuit was ever filed in court on the Band's behalf.<sup>7</sup> However, the Penobscot and

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<sup>4</sup>(...continued)  
authority for the proposition that the Nonintercourse Act applied to the eastern tribes. It was important to be able to assert a Nonintercourse Act claim because it was the only way to assert a current possessory interest in the lands in question, and thus to justify a request for \$150 million in damages. The Supreme Court did not decided this question until 1985, holding that the Nonintercourse Act did apply to the eastern tribes, in the landmark case, County of Oneida v. Oneida Indian Nation, 470 U.S. -- (1985).

<sup>5</sup> Complaint in United States v. Maine, CA Docket No. 1966 N.D. (US District Ct., ME,) and filed June 29, 1972.

<sup>6</sup> Following the U.S. District Court's decision in Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F.Supp. 649, (D. Me, 1975) aff'd, 528 F.2d 370 (1st Cir., 1975)

<sup>7</sup> The Passamaquoddies and Penobscots received federal recognition in 1976; the Houlton Band of Maliseet Indians did not receive it until the passage of MICSA.

With respect to the application of MICSA to the Houlton Band, it was noted that,

The bill would also recognize the Houlton Band of Maliseet Indians as an Indian tribe . . .

The Houlton Band is not presently a Federally recognized tribe. Various Canadian Maliseet

(continued...)

Passamaquoddy tribes agreed to the inclusion of the Houlton Band in the settlement and the State and Federal Governments accepted their addition to the final legislation.

The final settlement required the passage of legislation in the State of Maine, as well as Congress. The Maine Implementing Act was passed by the Maine State Legislature in June of 1980. This Act reflected basic changes in the applicability of State law to the tribes and was contingent on passage of federal legislation.

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<sup>7</sup>(...continued)

groups have been recognized in that country.

The Houlton Band asserts a Nonintercourse Act claim arising out of aboriginal possession of portions of northern Maine and a 1794 treaty. While the Nonintercourse Act applies to both recognized and nonrecognized tribes, an Indian group must nonetheless establish that it constitutes a tribe in order to establish a claim under that Act. The Department has established the Federal Acknowledgment Project (FAP) to determine which nonrecognized groups constitute tribes. The Houlton Band has not submitted an acknowledgment petition to FAP.

Congress, of course, clearly has the power to recognize an Indian group as a tribe. We recommend that such power be exercised only in exceptional cases, lest too frequent bypasses of the FAP procedure lessen its integrity. We believe that the opportunity to settle all Indian land claims in Maine under the proposed settlement is such an exception. We, therefore, support the recognition of the Houlton Band in S. 2829 as part of this comprehensive settlement.

Statement of Cecil D. Andrus, Secretary of the Department of the Interior, MICA Senate Hearings, supra., at 136.

The Congress passed MICSA in the early fall of 1980 and it was signed by President Carter on October 10, 1980. [A complete copy of both Acts is contained at Tab No. 13 of the Briefing Book].

MICSA itself contains nine specific Congressional findings, including a finding that,

The Indians, Indian nations, and tribes and bands of Indians other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.<sup>8</sup>

It provided that ,

Any transfer of land or natural resources located anywhere within the United States from, by or on behalf of [the three tribes named in the Act] or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by or on behalf of any Indian, Indian nation or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States. . .<sup>9</sup> [emphasis added]

Further, that

To the extent that any transfer of land or natural resources described [above] may involve land or natural resources to which the [three named tribes] or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, [this legislation] shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.<sup>10</sup> [emphasis added]

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8 25 U.S.C. §1721(a)(2) .

9 25 U.S.C. §1723(a)(1)

10 25 U.S.C. §1723(b)

Further, that,

. . .all claims against the United States, any State or subdivision thereof, or any other person or entity by [the three named tribes] or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof. . . .based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished. . .<sup>11</sup> [emphasis added]

Finally, that

. . .the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.<sup>12</sup> [emphasis added]

The Micmac Nation and Aroostook Band of Micmacs are nowhere mentioned in MICSA, but they are effectively bound by its language and thereby precluded from legal and administrative actions which would have otherwise been open to them.

### III. THE INTENT OF CONGRESS WAS TO FAIRLY SETTLE ALL INDIAN CLAIMS TO LAND IN MAINE

#### A. The legislative history of the Act shows that "fairness" was the chief goal of MICSA

Despite the negative impact of the above sections of MICSA on the Aroostook Band, the settlement was clearly intended to be a fair settlement of tribal claims and grievances. The

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<sup>11</sup> 25 U.S.C. §1723(c)

<sup>12</sup> 25 U.S.C. §1724(e).

declaration of Congressional policy in MICSA states that it "represents a good faith effort on the part of Congress to provide . . . [the 3 tribes] with a fair and equitable settlement of their land claims."<sup>13</sup>

Many parties involved in the land claims supported that principle as the basic premise of the settlement. As the Secretary of the Interior described it, there was a national interest in settling the Maine Indian land claims, because of "the Fairness doctrine -- the Indian tribes and nations that have suffered over the years because of this."<sup>14</sup>

There was no indication that the parties were aware of the historical background of the Micmac Nation and simply dismissed it. Fairness would have required a careful review of the kind of comprehensive documentary evidence that is available today, but that evidence was not presented and was not considered in 1980.

**B. All other Indian land claims settlements by Congress are structured to achieve the goal of "fair and honorable" dealings with the tribes**

There have been five Indian land claims settlements passed through Congressional action. The first was the Alaska Native Claims Settlement Act of 1971; it was followed by the Rhode

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<sup>13</sup> 25 U.S.C. §1721(a)(7)

<sup>14</sup> Testimony of Secretary Andrus, MICSA Senate Hearings, supra., at p.40. Of course, that same national interest exists today, with respect to the situation of the Aroostook Band of Micmacs.

Island Indian Land Claims Settlement in 1978; MICSA in 1980, the Florida Indian Land Claims Settlement of 1982; and finally by the Mashantucket Pequot Land Claims Settlement in 1983.<sup>15</sup>

None of the other settlements contain such sweeping language regarding the extinguishment of aboriginal title by all Indian tribes or tribal members within the State without benefiting all such tribes by its terms.<sup>16</sup> With the exception of the Alaska Native Claims Settlement, each is limited by its terms to the title held by the affected and named tribe, or to title held by any tribe to a specific township. None of the other settlements extinguishes all aboriginal title of any tribe to an entire state

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<sup>15</sup> The Alaska Settlement is codified at 43 U.S.C. §1601 et.seq.; the Rhode Island Settlement at 25 U.S.C. §1701 et.seq., the Florida Settlement at 25 U.S.C. §1741 et.seq., and the Mashantucket Pequot Settlement at 25 U.S.C. § 1751 et.seq.

The extinguishment language of the MICSA is similar to the proposed language of the Ancient Indian Land Claims Settlement Act ("AILCSA") of 1982. The AILCSA of 1982, H.R. 5494 and S.2084, addressed Indians' claims to land or natural resources in New York and South Carolina. It sought to retroactively validate, ratify and approve transfers of land or natural resources from Indian tribes or on behalf of Indian tribes which transfers may otherwise have been legally deficient. The Act further sought to extinguish all claims arising from such transfers. It was not passed.

<sup>16</sup> Only the Alaska Native Claims Settlement Act of 1971 contains broad language extinguishing all aboriginal title to lands in Alaska, but that Act defines "Natives" eligible to receive the benefits of the settlement very broadly, to include any citizen of the United States who is a person of one-fourth degree of more Alaska Indian, and in the absence of such proof, any person who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member. Certainly, no tribal groups known to exist in Alaska were expressly or implicitly excluded by the Settlement, as was the case with MICSA.

without compensation to the tribes so affected.

By carefully limiting the terms of the settlements to the tribes expressly involved in the settlements, Congressional action before or after MICSA has never produced the same harsh effect now confronting the Aroostook Band. Only MICSA extinguishes the aboriginal title of a recognized tribe which was neither named in the settlement Act nor party to the settlement negotiations.

**C. Congress departed from its normal practices in drafting MICSA in such a way as to adversely affect the Aroostook Band of Micmacs**

In other important respects, Congressional action in MICSA was a marked departure from its previous or subsequent policies regarding the settlement of Indian land claims.

First, since the nation's inception, Congress has generally observed a policy of respecting tribal title, including unrecognized title created by aboriginal possession or executive orders not ratified by Congress. That it failed to do this with respect to the aboriginal title and claims of the Aroostook Band of Micmacs is highly unusual.

This long-standing national policy of respecting and protecting tribal lands has supplemented restraints on alienation and served to temper the actual exercise of Congressional

authority with respect to tribal land.<sup>17</sup>

Thus, while Congress apparently<sup>18</sup> has the power to extinguish aboriginal title without compensation, in practice, Congress has usually compensated the tribes for the extinguishment of aboriginal title.<sup>19</sup>

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<sup>17</sup> Felix Cohen, Handbook of Federal Indian Law 517 (1982 Edition).

<sup>18</sup> According to Professor Archibald Cox, who appeared on behalf of the tribes in the MICSA negotiations,

An exercise of Congressional power over Indian affairs which would simply confiscate the interests of the Indians would violate the guarantees of fundamental fairness embodied in the Due Process Clause. . . .

Furthermore, even if the distinction [between recognized and unrecognized title] retains some validity in dealing with technical claims and just compensation, there is no basis for resorting to it where the action is so arbitrary and capricious as to deny due process of law, as would clearly be the case in a total extinguishment of possessory rights in issue here without compensation.

Getches, Wilkinson & Rosenfelt, "Federal Indian Law: Cases and Materials" 248-252 (West Publishing Co. 1979). [emphasis added]

<sup>19</sup> "To wholly extinguish the Eastern claims to possessory interest in land without compensation would. . . frustrate the very purposes for which Section 177 was originally enacted -- to prevent the fraudulent or unfair dispossession of the Indians without an assurance of fair compensation and just treatment." Clinton and Hotopp, "The Origins of the Eastern Indian Land Claims," supra, at 79.

In another article written shortly after the landmark Tee-Hit-Ton decision [348 U.S. 272 (1955)], the author stressed that this emphasis on the use of physical power,

seems to ignore the actual course of federal Indian policy, proceeding as it almost invariably did by purchase for substantial sums,

(continued...)



The language in MICSA in which retroactive validation of land transfers is authorized on a state-wide basis, is also unusual and suspect.<sup>20</sup>

The undifferentiated lumping of all claims in one comprehensive statute may, in a court's view, bespeak arbitrariness and lack of concern for the underlying equities of the transactions.<sup>21</sup>

The Solicitor of the Interior was aware of this potential in MICSA:

However, those arguments do not change our analysis regarding retroactive ratification in this case because this settlement is being consummated with the full agreement and consent of the affected tribes, and their relinquishments and releases pursuant to the proposed §5(e) would leave no doubt that all past tribal claims in Maine have been extinguished.<sup>22</sup>

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<sup>19</sup>(...continued)

and not by expropriation. The existence of this policy of purchase, although it does not compel the conclusion that property rights were recognized in the Indian, was literally taken to mean just this.

Note, 69 Harvard Law Review 150 (1955).

<sup>20</sup> Retroactive ratification has been traditionally limited to curing technical defects, which is obviously not the purpose for this action in the context of Indian land claims legislation. Moreover, ratification by its very nature assumes a principal-agent relationship which did not exist between the states and federal government in the context of the MICSA negotiations. Also, retroactive ratification of Indian land transfers violates due process in that it overthrows settled tribal property rights by revoking the long-standing protective policy embodied in the Non-Intercourse Act. AILCSA Senate Hearings 162-163 (Statement of Don B. Miller, Native American Rights Fund, et al.) .

<sup>21</sup> AILCSA Senate Hearings, 1097-98 (Richard Ehlke, Legislative attorney, Library of Congress).

<sup>22</sup> [emphasis added] "Proposed Settlement of Maine Indian Land Claims": hearings on S.2829 before the Senate Select  
(continued...)

Of course, the Aroostook Band of Micmacs was not a party to the Settlement.

**IV. MICSA DOES NOT REPRESENT A DECISION BY CONGRESS TO REJECT THE LAND CLAIMS NOW RAISED BY THE AROOSTOOK BAND OF MICMACS**

**A. Basis of the assumption that the Aroostook Band of Micmacs did not have a land claim in Maine.**

The MICSA was premised on certain assumptions and designed to meet certain ends. That is, it assumed that,

the Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings." 25 U.S.C. §1721(a)(2).<sup>23</sup> [emphasis added]

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<sup>22</sup>(...continued)

Committee on Indian Affairs, 96th Congress, 2nd Sess. 91 (1980) (Statement of Clyde Mortz, Solicitor, Dep't of Interior) (hereinafter "MICSA Senate Hearings").

<sup>23</sup> Actual evidence of abandonment is critical in the context of tribal land claims, because it is recognized as one method of extinguishment of occupancy rights by a tribe, acting voluntarily. Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 590-91 (1823); Williams v. City of Chicago, 242 U.S. 434, 437-38 (1917); United States v. Cook, 86 U.S. (19 Wall.) 591, 593 (1873). Thus, if a tribe abandons its lands, it loses the right of occupancy and possession can rightfully and immediately be taken by the sovereign. "Indian Land Claims Under the Nonintercourse Act" 44 Albany Law Review 110, 115 (1979)

A tribe can also abandon its tribal status, a finding which is equally damaging to a tribal land claims. Mashpee Tribe v. Town of Mashpee, 447 F.Supp. 940 (D. Mass., 1978); Mashpee Tribe v. New Seabury Corp., 592 F.2d 575 (1st Cir., 1979)

The evidence presented at the time of the MICSA negotiations was premised on the idea that the territory in Maine was divided into various hunting territories which were exclusively used by the three tribes who ultimately received compensation from the United States.<sup>24</sup>

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24 For instance, the Legislative Report prepared on behalf of the Passamaquoddy tribe cites a deposition given by Passamaquoddy Governor Francis Joseph Neptune in 1797 in which he purportedly testified that the "Schoodic River [the present St. Croix] from its mouth to different carrying places into the Machias River, Penobscot River and St. Johns River belongs exclusively to the Passamaquoddy Tribe." Ganong, "A Monograph of the Evolution of the Boundaries of the Province of New Brunswick," Royal Society of Canada Transactions, 2d ser., VI (1900-01), 243. However, this deposition was taken three years after the Passamaquoddies had appropriated lands in this area which were ostensibly ceded to them "and other tribes connected with them", to wit, the Micmacs and Maliseets, by the Commonwealth of Massachusetts. Moreover, the Legislative Report cites Col. Allan in support of this exclusive use theory, when in fact Col. Allan wrote in 1793 of the presence of several tribes, including the Micmacs, in the area in question:

A correspondence and intercourse have been open'd a long time, thro' the several tribes. . . Thus connected there appears no distinction in the right of the several hunting grounds, for all by some tie or other have an equal claim, are fully domesticated as if natives of the district. The same priviledges [sic] are observed in council, in peace or war, whether in local or general assemblies. . . A Chief from Merrimichi spoke for the whole, they were all as one, no distinction made between the different tribes.

Allan 1793 in Kidder, Eastern Maine and Nova Scotia (Albany: 1859) 305-318. [emphasis added]

Similarly, the Legislative Report submitted on behalf of the Passamaquoddy tribe to the White House negotiator, William Gunter, does not mention the presence of Micmacs at an important general assembly in 1784, despite clear language in Col. Allan's report. Similar omissions are contained in later "summaries" of the important meetings and agreements between the tribes and the United States government and/or the Commonwealth of Massachusetts during the period from 1783-1795, as discussed supra.

(continued...)

There was only a limited mention of the State's Micmac Indians in the testimony presented by Central Maine Indian Association<sup>25</sup> before the Senate Subcommittee hearings, in the context of their pending loss of state services.<sup>26</sup> The Association of Aroostook Indians did not appear in the Senate proceedings.<sup>27</sup> There was no consideration of even the

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24 (...continued)

Even specific references to particular tribes in one location by the various "authorities" of the period cannot be taken at face value. The English, in particular, did not distinguish between ethnic or linguistic groups in writing about the tribes present in Maine during this period. Rather, they tended to view Indians in terms of "local tribes" relevant to a particular location.. Thus, Calf describes a "Machias tribe" which, in reality, consisted of Micmacs, Maliseets, Penobscots, Passamaquoddies and Abenakis. Bax.Mss., VII, 204.

25 CMIA was founded as a nonprofit corporation in 1976, to represent the interests of Maine's off-reservation Indians outside of Aroostook County. Much of its membership was then and is still comprised of Micmac and Maliseet Indians.

26 Statement of Central Maine Indian Association dated July 1, 1980, Senate MICA hearings, supra., at 776-780, 789-790.

27 A statement from Terry Polchies, as a witness for the Houlton Band of Maliseets, appears in the record of the Senate Committee hearings. [He was the Executive Director of the Association of Aroostook Indians at this time, but that fact was not mentioned in his testimony.] He did include an article from Indian Truth, dated April 1980 in the record, however. That article discusses the hiring of anthropologist Jim Wherry to research the Maliseet claim, and notes "Maliseet and Micmac people have lived together for generations, but the Micmac presence in northern Maine is more difficult to document, and not a part of the current study." Senate Committee Hearings, supra., pp.439-442; 473-474.

(continued...)

possibility of a Micmac land claim, despite the existence of limited but important signals of the Micmacs' claims in the six years preceding MICSA.

For instance, the existence and significance of the Wabanaki Confederacy in Maine had already been addressed by a U.S. District Court in 1974, in the context of border crossing rights under the Jay Treaty.<sup>28</sup>

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<sup>27</sup>(...continued)

As one limited example of the lack of accurate information concerning the Micmac people in Maine provided at the time of the settlements, the statement of Robert Cleaves of the Public Affairs Center at Wesleyan University is a good example. Mr. Cleaves discusses the history of the Association of Aroostook Indians in admirable detail, but nowhere mentions its Micmac membership. Indeed, he states that it was organized by the Houlton Band in 1970, ignoring the fact that a Micmac and Maliseet were co-founders of the Association while students at Ricker College in 1969. Senate Committee Hearings, supra., pp.427-432.

<sup>28</sup> In Akins v. Saxbe, 380 F.Supp. 1210, 1211-1212 (D Me., 1974), the Court noted:

there is no dispute as to the historical background of the present litigation. From approximately 1675 until 1850, the Micmac, Maliseet, Penobscot and Passamaquoddy Indian Tribes constituted the Wabanaki Confederacy. The territory claimed by the member tribes of the Confederacy and in which they traveled and traded freely encompassed the region from what is today the western boundary of the State of Maine to Nova Scotia, Canada. During the Revolutionary War, these four tribes fought with the American colonies against Great Britain. The Treaty of Paris, which ended the Revolutionary War in 1783, established the International Boundary between the newly formed United States and the remaining British possessions in Canada, which ran through the middle of the territory occupied by the four tribes of the Wabanaki Confederacy.

Moreover, the Federal Government was advised by Maine's Attorney General in 1978 that the 1794 treaty between Massachusetts and the Passamaquoddy Tribe also included the Maliseet and Micmac tribes.<sup>29</sup>

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<sup>29</sup> Although there is no discussion of the Micmac tribe in any testimony taken before the Senate Select Committee, State Attorney General Brennan put the government on notice of a potential Micmac claim in a 1978 letter to the White House:

The Joint Memorandum makes no provision for claims of or Federal support for other Indians of Maine, i.e. the Micmac and Maliseets. It is entirely possible, however, that either or both of these tribes may assert against the State the same kinds of claims asserted by the Penobscot and Passamaquoddy. Indeed it has curiously been ignored that the 1794 agreement that forms the basis of the Passamaquoddy claim was executed by Massachusetts, not only with the Passamaquoddy, but other Eastern tribes which appears to include the Micmac and Maliseet. What precedential value will the proposals in the Joint Memorandum have on these other latent claims? Will the Federal government take the same posture towards settlement in those cases as it does in this? [emphasis added]

For instance, the appointment of the negotiating committee is described as a "Resolve on the Address and Application of Several Tribes of Indians." [emphasis added] Acts and Resolves of Massachusetts 1792-1793, Chapter 185, March 28, 1793, 316. The Committee in fact met with representatives of the Micmac, Maliseet and Passamaquoddy tribes in 1794. They reported that the chiefs of the St. John and Passamaquoddy spoke alternately: "no distinction was observed nor would they allow any settlement wherein they were not equally concerned as well as those residing in the Micmac country." Remarks of Deputy Attorney General John Patterson at an Indian Claims Seminar on October 29, 1977, at the University of Maine at Portland-Gorham.

The language of the treaty and the identity of the signers makes clear that they are acting on behalf of "the other tribes connected with them", to wit, the Micmacs. Acts and Resolves of Massachusetts 1794-1795, Chapter 52, February 10, 1795 255-259. "It is important to point out that the grant of land by Massachusetts was . . . viewed . . . as a fulfillment of promises  
(continued...)

Since 1980, research conducted by Dr. Harald Prins<sup>30</sup> has increasingly shown that much of the land in the St. John and St. Croix River watersheds was jointly used by members of the Wabanaki Confederacy, including the Micmac tribe. Therefore, title to those aboriginal lands was held jointly by all members of the Confederacy. All the modern "successors in interest," -- including the Aroostook Band of Micmacs -- should have received compensation for their loss.

#### **B. Similarities to the three other tribes in Maine**

There are marked similarities between the Aroostook Band of Micmacs and the three tribes which were included in the settlement.<sup>31</sup>

All of Maine's tribes were late in receiving federal

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<sup>29</sup>(...continued)  
made by John Allan to the Eastern tribes during the Revolution on behalf of the United States Government and the State of Massachusetts." Remarks of John Patterson, ibid. Notwithstanding that fact, over time, the treaty became viewed as one exclusively pertaining to the Passamaquoddy Tribe.

<sup>30</sup> A report from Dr. Harald Prins which discusses evidence of joint use in the 18th century is reprinted at Tab No. 9 of this briefing book; an overview of his research and other important evidence is contained at Tab No. 5 of the briefing book.

<sup>31</sup> These similarities and differences between the four tribes both before and after MICSA are further illustrated in the chart located at Tab No. 12 of the briefing book. They are also apparent in the four articles published under the general title "Promises to Keep" in the Maine Times, reprinted at Tab No. 14 of the briefing book.

recognition of their status as a tribe. As noted earlier, the Penobscot Indian Nation and Passamaquoddy Tribe occupied "state reservations" in Maine for almost two centuries. While they received various benefits from the State of Maine by virtue of their tribal status from that point forward, they did not receive federal benefits as recognized Indian tribes until 1976.

Neither the Micmacs nor the Maliseets occupied state reservations and for almost two centuries, the State ignored both tribes. Following the organization of the Association of Aroostook Indians and its advocacy on their behalf, both tribes were considered eligible for most benefits from the State by 1973.<sup>32</sup> However, the Federal Government recognized neither the Micmacs nor the Maliseets as a federal tribe.<sup>33</sup>

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<sup>32</sup> The State actively resisted attempts to further broaden the scope of its limited Indian programs. For instance, the Legislature in 1977 was asked to allow any Indian residing in Maine, whether Penobscot, Passamaquoddy, Micmac, Cherokee, Black Feet, or any of the other "twenty Indian tribes represented in Maine" to be eligible for the North American Indian scholarship program. In rejecting this proposal, legislators spoke of the intent of the bill as being to provide as many Indian scholarships as possible to Maine Indians." It was noted that other states have scholarships for their Indians, and these Maine scholarships were for the members of the "four tribes that are listed in Maine," a group which included the Micmacs. Legis. Rec. 591-592 (1977) [emphasis added].

<sup>33</sup> Prior to the MICSA, efforts and recommendations for federal recognition of the Maine tribes had been made on behalf of all four Maine tribes. For example, in a letter by the Maine Congressional Delegation (Senators Muskie and Hathaway, Congressmen Kyros and Cohen) to President Nixon, June 5, 1973, the delegation "respectfully urge that you act to bring about a resumption of Federal services by appropriate agencies of the Executive Branch to the Indians of Maine." The letter

(continued...)



However, this duality of treatment by State and Federal officials changed after the Houlton Band asserted its claim in 1979. While State officials did publicly question the presence and tribal existence of the Houlton Band of Maliseet Indians,<sup>34</sup> they did not object to their inclusion and the exclusion of the Aroostook Band of Micmacs in MICSA.<sup>35</sup> Similarly, the Federal Government supported the inclusion of the Houlton Band in MICSA, despite the fact that the Band had not complied with the federal recognition procedures.<sup>36</sup> There was no public discussion --

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33 (...continued)  
specifically referred to the four tribes -- Passamaquoddy, Penobscot, Micmac and Maliseet -- residing in Maine. This letter appears in the appendix to the 1974 report of the Maine Advisory Committee to the U.S. Commission on Civil Rights on the status of Maine's Indians.

34 "Recently this Indian group [the Houlton Band of Maliseets] has asserted a claim to areas in northern Maine similar to that of the Passamaquoddies and Penobscots. The basis of their claim is, in my judgment, not meritorious. The Maliseets do not now exist as a tribe of Indians, nor have they existed as a tribe for many years. Accordingly, they cannot even meet the threshold test of the Trade and Intercourse Act." Testimony of State Attorney-General Richard S. Cohen, MICSA Senate Hearings, supra, at p. 163.

35 ibid., at p. 168.

36 "The Houlton Band asserts a Nonintercourse Act claim arising out of aboriginal possession of portions of northern Maine and a 1794 treaty. . . an Indian group must . . . establish that it constitutes a tribe in order to establish a claim under that Act. The Department has established the Federal Acknowledgement Project (FAP). . . [but] The Houlton Band has not submitted an acknowledgement petition to FAP.

Congress clearly has the power to recognize an Indian group as a tribe. We recommend that such power be exercised only in extraordinary cases. . . [and]. . . the opportunity to settle all  
(continued...)

and certainly, no justification -- for the unequal treatment of the Maliseets and Micmacs in the Settlement.

**V. THE EFFECT OF MICSA ON THE AROOSTOOK BAND OF MICMACS WAS UNJUST AND UNFAIR, NOW REQUIRING ACTION BY THE CONGRESS**

**A. MICSA led to the loss of the Aroostook Band's claims based on ownership of aboriginal lands in Maine**

As previously noted, Congress has the power to extinguish all aboriginal title<sup>37</sup> to lands within its jurisdiction, without compensation to the affected tribes. The language of MICSA almost certainly accomplished this end, with respect to the aboriginal lands held by the Micmac Nation and its successor in

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<sup>36</sup>(...continued)  
Indian land claims in Maine under the proposed settlement is such an exception." Statement of Secretary Andrus, Senate MICSA Hearings, supra., at p. 136.

<sup>37</sup> The U.S. Supreme Court has described aboriginal title as:

Mere possession not specifically recognized as ownership by Congress . . . This is not a property right but amounts to a right of occupancy which the sovereign grants and protects against intrusion by third parties. . .

It is distinguished from recognized title where the tribe can show a "definite intention by congressional action or authority to accord legal rights, not merely permissive occupancy." Tee-Hit-Ton Indians v. U.S., 348 U.S. 272, 279 (1955)

The general law on the power to extinguish aboriginal title is quite clear; only Congress has the power to so act:

Whether held by aboriginal or recognized title, tribes cannot be deprived of their lands absent direct and explicit Congressional action.

United States v. Santa Fe Pacific RR Co., 314 U.S. 339, 347-348 (1941).

interest, the Aroostook Band of Micmacs.<sup>38</sup>

That Congress has that power does not remove its obligation to exercise it in a constitutionally acceptable manner.<sup>39</sup>

However, the U.S. Supreme Court has said that,

the taking by the United States of unrecognized Indian title is not compensable under the 5th Amendment. . because Indian occupation of land without government recognition of ownership creates no rights against taking or extinction by the United States protected by the Fifth Amendment or any other principle of law.<sup>40</sup>

In MICSA, Congress also extinguished the right of the Aroostook Band of Micmacs to assert claims against a third

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38        There is some question whether the language of §1723 of the Act actually accomplishes that purpose: "To the extent that any transfer of land or natural resources. . .may involve land or natural resources to which . . .any other Indian, Indian nation or tribe or band of Indians had aboriginal title, [this section]shall be regarded as an extinguishment of said aboriginal title. . ." §1723(b).

As is clear, the language of the extinguishment section is quite clearly tied to the transfer of land or natural resources. Arguably, where no such transfer of land or natural resources has ever taken place, the necessary prerequisite to extinguishment of title has not occurred. Further, unless one accepts the idea that the Aroostook Band of Micmacs transferred its lands in 1794 in return for the treaty rights also given to the Passamaquoddies by the Commonwealth of Massachusetts, it is questionable that such a transfer of Micmac lands did occur. However, for the purposes of this discussion, the Aroostook Band assumes that the extinguishment of its aboriginal land rights has been effective.

39        In Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73 (1977), reh. den. 431 U.S. 960 (1977), the Supreme Court signalled a greater willingness to review Congressional action in this area, stating that "the power of Congress over Indian affairs may be of a plenary nature, but it is not absolute." Id. at 84, quoting U.S. v. Alcea Band of Tillamooks, 329 U.S. 40 (1946)

40        Tee-Hit-Ton, supra. This holding effectively forecloses a Fifth Amendment claim in the courts by the Aroostook Band.

parties as a result of their aboriginal land rights.<sup>41</sup> Here, too, however, their rights of legal redress have been foreclosed. The U.S Court of Claims [now, the Claims Court] has held that Congress also can extinguish the right to sue the United States or other persons for claims based on that aboriginal title, including trespass actions, without compensation.<sup>42</sup>

Thus, the Aroostook Band of Micmacs has no effective means of redressing its loss of aboriginal lands without Congressional action.

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<sup>41</sup> 25 U.S.C. §1724(c)

<sup>42</sup> Generally, a cause of action for damages is a vested property right protected by the due process clause of the Fifth Amendment. Gibbs v. Zimmerman, 290 U.S. 326 (1933); Coombs v. Getz, 285 U.S. 434, 442 (1932). MICSA incorporates language extinguishing trespass and other damage claims of all Indians in the State, including the Micmacs, based on aboriginal title, and does so without compensation to the Micmacs for the taking of this property. This should therefore entitle the Micmacs to sue in court for trespass based on their Fifth Amendment rights.

However, a series of cases issued in the context of litigation over the Alaska Native Claims Settlement Act (43 U.S.C. §1601 et. seq.), casts serious doubt on the likelihood of a successful outcome of such a suit. The initially positive decision in Edwardson v. Morton, 369 F. Supp. 1359 (D.D.C. 1973) was subsequently eroded by the Court's decision in United States v. Atlantic Richfield Co., 435 F. Supp. 1009 (D. Alaska, 1977), and finally overturned by the Court's decision in Inupiat Community of the Arctic Slope v. United States, 680 F.2d 122 (Court of Claims 1982), cert. denied 459 U.S. 969 (1982), which decided that such takings did not present a Constitutional problem: "The Inupiat's right to sue for trespass was merely one aspect of the protection Congress provided for their aboriginal title. The extent and measure of the protection lay within the discretion of Congress to determine." Id. at 129.

**B. MICSA precludes the acquisition of tribal lands, which is necessary to establish eligibility for most services provided by BIA and to organization of a half-blood community under the Indian Reorganization Act.**

Specific language in Section 1724(e) of MICSA forbids the acquisition of new Indian trust lands in Maine by the Federal Government on behalf of any tribe or band of Indians in Maine.<sup>43</sup> This unusual provision precludes the Secretary of the Interior from the usual exercise of discretion in deciding whether to acquire such trust lands on behalf of a petitioning Band, such as the Aroostook Band of Micmacs.

This prohibition has a severe impact on the Aroostook Band in two ways.

First, it precludes the Band --even after obtaining recognition through the federal acknowledgement process, for instance -- from utilizing those programs and services of the Bureau of Indian Affairs and other agencies which are expressly tied to the existence of reservation lands. Almost all programs administered by the Bureau of Indian Affairs include the proviso that they are to be used on or by members "on or near the

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<sup>43</sup> 25 U.S.C. §1724(e): "Except for the provisions of this subchapter, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine." [emphasis added]

reservation." 44

Congress expressly amended MICSA in 1983 to make it clear that the Houlton Band of Maliseet Indians would be eligible for those programs despite its lack of reservation lands at that time.<sup>45</sup> This same problem now confronts the Aroostook Band and, if it is not resolved through the legislative reference process, special legislation inevitably will be necessary on this single issue. Without such legislation, even if the Band obtained federal recognition through the usual administrative process, its new tribal status would have little real meaning to members of the Aroostook Band.<sup>46</sup>

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<sup>44</sup> See, for example, 25 CFR Part 20 (Human Services: "applicant must reside on reservation or near reservation"); Part 26 (Employment Assistance for Adult Indians: "applicants must be adult Indians residing on or near Indian reservations"); Part 27 (Vocational Training for Adult Indians: "applicants must be adult Indians residing on or near Indian reservations"); Part 40 (Administration of Educational Loans, Grants and Other Assistance for Higher Education: ". . .to aid students. . .who reside within the exterior boundaries of Indian reservations or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs."

<sup>45</sup> 25 U.S.C. §1725(i) reads in part, "Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Houlton Band of Maliseet Indians in or near the town of Houlton, Maine, shall be eligible for such programs and services without regard to the existence of a reservation or of the residence of such member on or near a reservation." (As amended Pub.L 97-428 § 3, Jan.8, 1983, 96 Stat. 2268)

<sup>46</sup> A similar situation faced the Texas Band of Kickapoo Indians which were recognized by Congress through special legislation in 1983. 25 U.S.C. §1300b-11 et.seq. (Pub.L 97-429, § 2, January 8, 1983, 96 Stat. 2269) The Congressional findings  
(continued...)

Second, this prohibition on the acquisition of trust lands complicates the Band's ability to organize under the Indian Organization Act as a half-blood community, an option for which it has long been considered an ideal candidate because of the large number of its members with a high degree of Micmac blood.

Not since 1981 has a tribal group successfully utilized the obscure provisions of the Indian Reorganization Act of 1934 [also known as the Wheeler-Howard Act] to obtain recognition of their tribal status.<sup>47</sup> However, according to past policy of the Bureau of Indian Affairs, the Act can be used in that fashion.<sup>48</sup>

According to Bureau interpretation of this statute,

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<sup>46</sup>(...continued)  
expressly state that "because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized tribes. . ." Congress then specifically provides that members of the Band living in one county of Texas will be eligible for those services, despite the lack of a tribal reservation.

Obviously, a similar county-wide provision would be appropriate in the case of the Aroostook Band of Micmacs, who, like the Kickapoo, are a migratory tribe whose members do not live in a small cluster area, but are located throughout Aroostook County.

<sup>47</sup> The Jamul Band of California is believed to be the last tribe able to organize as a community of half-bloods under the IRA. See, Letter of March 14, 1983 from Hazel Elbert, Deputy Director in the Office of Indian Affairs in the Department of the Interior, reprinted at Tab No. 15 of the briefing book.

<sup>48</sup> See the memorandum from Ass't Solicitor Felix Cohen to the Commissioner of Indian Affairs, dated April 8, 1935 and reprinted at Tab No. 15 of the briefing book.

individual "Indians" [a term which includes all persons of one half or more Indian blood<sup>49</sup>] can organize under §§476 and 477 "if the Secretary of the Interior sees fit to establish for those eligible Indians a reservation."<sup>50</sup> [emphasis added]

The Aroostook Band of Micmacs has in fact petitioned the Secretary of the Interior for recognition of its half-blood members, as a preliminary step towards organization under the Indian Reorganization Act.<sup>51</sup> However, Bureau policy as expressed in previous letters and opinions makes it highly unlikely that the Bureau will sanction organization and the calling of elections under the Indian Reorganization Act without a tribal land base of some sort.<sup>52</sup> MICSA expressly forbids the acquisition of such lands and is therefore likely to prevent organization of the Aroostook Band in this manner.

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<sup>49</sup> 25 U.S.C. §479.

<sup>50</sup> Memorandum from Felix Cohen, Assistant Solicitor, to the Commissioner of Indian Affairs, dated April 8, 1935, and reprinted at Tab No. 15 of the briefing book.

<sup>51</sup> This material is contained at Tab No. 15 of the briefing book.

<sup>52</sup> See the letter of Hazel E. Elbert, Deputy Director of the Office of Indian Services to Sarah LeClaire of Pine Tree Legal Assistance, dated March 14, 1983, in which Ms. Elbert states that "The Timba-Sha [Shoshone] were unable to organize as a community under the Indian Reorganization Act because no trust land base was available to them." Also, "In November, 1980, the Secretary of the Interior declined to take land in trust for seven [half-blood] Lumbee Indians. . .[and] since this group has no trust land base, it has not been able to organize under the IRA." The letter is reprinted at Tab No. 15 of the briefing book.



**C. MICSA has complicated and potentially precluded federal recognition of the Aroostook Band of Micmacs by the accepted administrative means.**

In November of 1985, the Aroostook Band of Micmacs filed a Letter of Intent to petition the federal government for recognition as an Indian tribe.<sup>53</sup>

While federal recognition will make the Band and its members eligible for many of the federal programs and services which are administered by the Bureau of Indian Affairs, it will not compensate for the many serious repercussions of the Band's exclusion from the Act discussed in this report. In fact, MICSA may even complicate the tribe's ability to obtain federal recognition because of the possibility that the Bureau of Indian Affairs might read that Act as forbidding the federal tribal relationship, under 25 CFR §83.7(g).<sup>54</sup>

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<sup>53</sup> By Resolution of November 23, 1985, filed with the Bureau of Indian Affairs and assigned Petition No. 103. The Band had achieved state recognition as an Indian tribe by 1973, but with the closing of many state programs and benefits, that recognition is virtually meaningless.

<sup>54</sup> 25 CFR §83.7(g) requires that "the petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship." The Bureau of Indian Affairs found that the Tchinook tribe in Oregon had been terminated by the general language of the Western Oregon Termination Act, although the tribe was not specifically named in that legislation. "Final Determination that the Tchinouk Indians of Oregon do not Exist as an Indian Tribe," 51 Federal Register 2437-2438 (January 16, 1986)

In the instant case, the specific findings and general import of  
(continued...)

The federal acknowledgement process is lengthy and requires extensive research into the various specific criteria of the acknowledgement petition. The petition being prepared by the Aroostook Band of Micmacs has been completed in a first draft form, but requires substantial additional research in light of recent Bureau decisions on the acknowledgement petitions of other tribes. Finally, there is a significant time lag between the time that a completed petition is filed and the point at which the Bureau issues its findings.<sup>55</sup>

As a result, the Aroostook Band may expend significant sums of money on research and preparation of its Acknowledgement Petition and then not learn for years that the Bureau of Indian Affairs has found that MICSA precludes a federal relationship with the Aroostook Band of Micmacs, under 25 CFR §83.7(g).

**D. MICSA directly led to the state's decision to end programs and services for Indian tribes within Maine, which the Aroostook Band had previously received**

MICSA directly led to an end of State programs and services

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<sup>54</sup>(...continued)

MICSA could arguably be construed as a Congressional decision to not recognize any tribes in Maine other than the three named in the Act.

<sup>55</sup> For instance, the petition of the St. Francis/Sokoki Band of Abenakis of Vermont was received by the Bureau in April of 1980. The letter of "obvious deficiencies" was sent by the Bureau on June 14, 1983. The Band's response to the "O.D." letter was completed by the end of December, 1986, but Bureau staff do not anticipate active consideration of the petition until some time in 1988. In this one case, therefore, some eight years will have elapsed between initial filing of the petition and its final consideration by the Bureau.

which had been originally instituted because of the special needs of the state's Indian population and which remained pressing for the Micmacs.<sup>56</sup> MICSA resulted in losses in three areas of critical importance to the Aroostook Band. First, the State repealed its policy of reimbursement of general assistance paid by towns to off-reservation Indians. Second, the State Department of Indian Affairs and its programs and services were closed. Finally, the North American Indian scholarship program was defunded and eventually repealed.

The State's rationale for these changes was the new availability of Federal programs, administered by the Bureau of Indian Affairs and Indian Health Services, to its Indian population. This rationale obviously did not apply to the members of the Aroostook Band of Micmacs. Although the impact on the Aroostook Band from the State's decision to end these programs was disproportionately harsh, the Band cannot seek a remedy in the courts for those losses.<sup>57</sup> Five years later, there

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<sup>56</sup> A comprehensive discussion of the origins of those policies and their effect on members of the Aroostook Band of Micmacs is contained at Tab No. 6 of the Briefing Book.

<sup>57</sup> In Maine, there is no constitutional right to the types of welfare programs which were administered by or through the State Department of Indian Affairs. For instance, the general assistance provisions "originate[s] solely in statutory enactment and has none of the elements of a contract, express or implied." Auburn v. Farmington, 133 Me.213, 215 (1934). "Maine's statutory scheme of the general assistance program precludes plaintiffs from holding a property interest in general assistance benefits on the basis of their prior receipt of those benefits." Gregory v. Town of Pittsfield, 479 A.2d 1304, 1307 (Me., 1984),

(continued...)

has been no change in the State's unwillingness to replace these programs for the Micmacs.

## VI. NATURE OF RELIEF SOUGHT

### A. First, their "day in court".

The Maine Indian Claims Settlement Act of 1980 dramatically impacted on the Aroostook Band of Micmacs. As the preceding discussion establishes, the Band lost both their aboriginal lands and the right to contest that loss or to assert any claims based on their land ownership in the courts. Based on previous practice at the Department of the Interior, the Aroostook Band has also lost its right to seek organization under the Indian Reorganization Act, and may even be precluded from federal recognition under the established acknowledgement procedures of the Bureau of Indian Affairs.

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57 (...continued)  
cert.denied, 105 SCT 1380; "The Constitution does not empower this Court to second guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." Dandridge v. Williams, 397 U.S. 471, 487 (1970) quoted by the Maine Supreme Court in Beaulieu v. City of Lewiston, 440 A.2d 334 (Me., 1982).

The Aroostook Band might have had a contractual claim, if the state's decision to end these programs had been expressly tied to the relinquishment of certain claims on the part of the tribes or federal government. While various officials privately agreed that the state programs were ended because federal programs were to take their place, this fact is nowhere expressed in either the Maine Implementing Act nor the MICSA.

For the reasons enumerated above, no adequate legal or administrative forum for relief is now available to the Band. It is therefore necessary to make a Congressional reference of the Band's equitable claims for relief based upon the unjustified actions of the government. see Wong v. United States, 220 Ct.Cl. 750 (1979). The Aroostook Band of Micmacs is appealing to Congress to provide it with the only adequate opportunity to both prove their claims and quantify their damages. If the Band is successful in convincing the judges to whom reference is made under 28 U.S.C. §§1492 and 2509, they will ask that Congress pass appropriate legislation to remedy the wrong suffered by the Aroostook Band of Micmacs.

**B. Ultimately, appropriate compensation for its losses or a settlement along the lines of that provided to the Houlton Band of Maliseet Indians in MICSA**

The Aroostook Band is not seeking to disrupt the positive effects of MICSA on the State of Maine and its residents, including the three tribes. It has deliberately chosen a procedure which will serve that goal and yet provide a fair resolution of its own pressing claims.

If this matter proceeds to the Claims Court, the Court can only recommend an amount of money damages to the Congress in resolving the Band's land claims and other claims based on its exclusion from MICSA in 1980.

However, the Aroostook Band of Micmacs is also prepared to negotiate a settlement of its claims along the lines of that received by the Houlton Band of Maliseet Indians in MICSA. The Houlton Band of Maliseet Indians received federal recognition of their status as a tribe, eligible for the full range of benefits offered by the Federal Government. The Band also received \$900,000 deposited in a land acquisition fund, a sum which has since grown to \$1.9 million.

Because of the similarities in historical treatment of the two Bands, as well as the strong new evidence of the Aroostook Band's claims, there are compelling reasons to support comparable treatment of the Aroostook Band in settling its claims today.



OVERVIEW OF EVIDENCE OF THE AROOSTOOK BAND OF MICMACS' TRIBAL  
EXISTENCE AND ABORIGINAL LAND OWNERSHIP IN MAINE

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## OVERVIEW OF EVIDENCE OF THE AROOSTOOK BAND OF MICMACS' TRIBAL EXISTENCE AND ABORIGINAL LAND OWNERSHIP IN MAINE

### **I. INTRODUCTION**

This report summarizes the most important evidence concerning the historic tribal presence and use of lands in Maine by the Aroostook Band of Micmacs. The Band's current land claims are premised on the joint use of land in eastern and northern Maine by the historic Micmac Nation and other members of the Wabanaki Confederacy, an alliance of the Penobscot, Passamaquoddy, Maliseet and Micmac tribes which formed in the late 1600's and continued to be active through most of the 19th century. Dr. Harald Prins has contributed much of the research on joint use of tribal territory in Maine.<sup>1</sup> His report at Tab #9 is a summary of that evidence from the 18th century.

The following evidence is both supplementary to Dr. Prins' report and a summary of his most important findings.

### **II. TRIBAL EXISTENCE**

The Aroostook Band of Micmacs is part of the Micmac Tribe, whose aboriginal range once encompassed the area from the eastern

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<sup>1</sup> The concept of joint (as opposed to exclusive) use of tribal territory in this region has gathered increasing support in the academic community. Dr. Prins, an ethnohistorian, has co-authored recent articles on the subject with Dr. Bruce Bourque, the Maine State Archeologist. A new publication, Les Micmacs et La Mer, edited by Charles Martijn, (Montreal, 1986) contains a report by Charles Martijn on joint use of tribal territories by the Micmacs and Maliseets.

shores of the Canadian Maritime provinces to southern Maine and even the coast of Massachusetts.<sup>2</sup>

The Aroostook Band of Micmacs is now centered in Aroostook County, Maine. The other bands belonging to this tribe are located and formally recognized in Canada; the Aroostook Band represents that portion of the tribe which continuously maintained a presence in Maine, albeit a moving and shifting presence until the 20th century.<sup>3</sup>

Because of its geographic location, the Micmac Indian Nation was early drawn into contact with non-Indians and the record

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<sup>2</sup> Explorers such as Capt. John Smith [1614] and Captain Gosnold [1602] and settlers such as Governor William Bradford of Plymouth Colony, all wrote of the Micmacs encountered in or described by the natives of southern Maine and Massachusetts.

<sup>3</sup> The tribal existence of the Micmacs was specifically addressed by the Court in Akins v. Saxbe, 380 F.Supp. 1210 (DMe., 1974):

there is no dispute as to the historical background of the present litigation. From approximately 1675 until 1850, the Micmac, Maliseet, Penobscot and Passamaquoddy Indian Tribes constituted the Wabanaki Confederacy. The territory claimed by the member tribes of the Confederacy and in which they traveled and traded freely encompassed the region from what is today the western boundary of the State of Maine to Nova Scotia, Canada. During the Revolutionary War, these four tribes fought with the American colonies against Great Britain. The Treaty of Paris, which ended the Revolutionary War in 1783, established the International Boundary between the newly formed United States and the remaining British possessions in Canada, which ran through the middle of the territory occupied by the four tribes of the Wabanaki Confederacy.

evidence of the tribal existence of the Micmacs in Maine is extensive.

The tribe was included or expressly made signatory to treaties with the Colony of Massachusetts in 1678 <sup>4</sup>, 1693 <sup>5</sup>, 1699 <sup>6</sup>, 1713 <sup>7</sup>, 1717 <sup>8</sup>, 1725 <sup>9</sup>, 1726 <sup>10</sup>, 1727 <sup>11</sup>, 1749 <sup>12</sup>, and

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<sup>4</sup> This treaty between the Colony of Massachusetts and "the Eastern Indians" recognized Wabanaki sovereignty in Maine. In turn, the Wabanaki Indians, including the Micmacs, agreed to let the settlers keep their settlements and homes for the price of a certain amount of corn from each English family. (The Baxter Manuscripts: The Documentary History of the State of Maine, [hereinafter Bax.Mss.] (24 vols.; Portland : Maine Historical Society, 1869-1916) VI, 201.

<sup>5</sup> Truce Between Indian and English, July 21, 1693 Bax. Mss., XXIII, 4-5; The Submission and Agreement of the Eastern Indians, August 11, 1693, Baxter MSS, X, 9-11.

<sup>6</sup> Indian Treaty, January 7, 1698/99, ibid., XXIII, 19-21.

<sup>7</sup> Treaty of Eastern Indians, July 11-- , 1713, ibid., 37-50.

<sup>8</sup> Indian Treaties in Maine Historical Society, Collections, 1st Ser. (Portland: The Society, 1853), III, 373-74.

<sup>9</sup> The Submission and Agreement of the Delegates of the Eastern Indians, Dec. 15, 1725, in Peter Cummings and Neil Mickenberg, eds. Native Rights in Canada, 2d ed. (Toronto: General Publishing Company, 1972), 300.

<sup>10</sup> Conference with the Eastern Indians, Maine Historical Society Collections, 1st. ser., III, 392-93.

<sup>11</sup> Conference with the Eastern Indians at the Further Ratification of the Peace, held at Falmouth in Casco-Bay, in July, 1727, ibid., 407-47. A subsequent ratification of this treaty by Micmac and Maliseet Indians took place at Meductic. Bax.Mss., X, 404.

<sup>12</sup> Treaty with the Eastern Indians at Falmouth, Oct. 16, 1749, Maine Historical Society, Collections, 1st ser., IV, 145-67. This treaty was preceded by negotiations with the tribes on the St. John in August of 1749, which were subsequently ratified  
(continued...)

1752 <sup>13</sup>.

The Commonwealth of Massachusetts on behalf of the United Colonies formed a specific treaty with the Micmac and Maliseet Tribes in July of 1776 at Watertown, Massachusetts. <sup>14</sup>

In this treaty, a number of Micmac bands agreed to support the American revolutionary forces against the British.

John Allan dealt with the Micmacs as a tribal people, first

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<sup>12</sup>(...continued)  
at Chibucto Harbor by other bands of the Micmac and Maliseet Tribes on September 4, 1749. Murdoch, Vol. II: 154; Akins 1895: 15-16.

<sup>13</sup> Treaty with the Eastern Indians at St. Georges Fort, 1752, Maine Historical Society, Collections, 1st ser., IV, 168-84 and Nathaniel Boulton, ed. New Hampshire Provincial Papers . . ., (7 vols.; Concord: George E. Jenks, 1867-73), V, 131-33. In the fall of 1752, a Micmac headman of a single band at Shubenacadie negotiated for a separate peace with the English at Halifax, N.S. Akins: 33. This treaty has subsequently been upheld by the Supreme Court of Canada in the landmark decision, Simon v. the Queen, 2 R.C.S. 389 (1985). In that case, the Court found the treaty to create an enforceable obligation between the Indians and the Crown, and upheld the rights of the plaintiff to hunt without being subject to the restrictions of the provincial Land and Forests Act. A similar treaty was negotiated by a Micmac calling himself the Governor of the "La Have" band in Halifax in 1753. Frye 1809: 115, in Hoffman: 523.

<sup>14</sup> Acts and Resolves of Massachusetts 1775-1776, July 13, 1776, Vol. 19, 525-526. In October of the previous year, two heads of the "St. John's Tribe" had traveled to Boston to meet with the General Court of the Massachusetts Legislature and to offer their support in return for supplies to be furnished their tribes. These chiefs were said to represent the St. John's and the "Miccamac Tribe" of Indians. Acts and Resolves of Massachusetts 1775-1776, Chapter 256, 257, and 258, passed October 16, 1775, 104-105. The Chiefs were given presents and transportation back to the truck house at Penobscot.

as a trader and then in his capacity as Agent to the Indian Tribes of the Eastern Department, a post to which he was appointed by the Continental Congress in 1777.<sup>15</sup>

In July of 1777, Col. Allan negotiated and signed a treaty with the Passamaquoddies and Maliseets at Aukpaque on the St. John River [near the present site of Frederickton, N.B.]. The treaty was subsequently adopted by both the Penobscots and Micmacs. Although the Indians were led to believe that it was a legal document, it was apparently never ratified by Congress and only a description of it remains.<sup>16</sup>

During the course of the war, General George Washington

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<sup>15</sup> See Allan's Commissions and Instructions from the Continental Congress and the Government of Massachusetts, Papers of the Continental Congress [PCC] (January 15, 1777), Roll 8, Vol. 7, 65-68; (check for Micmac cites); Bax.Mss., XVIV, 166-167, 169; Allen 1794 in NEHG Register, Vol.12, 254; Frederic Kidder, Military Operations in Eastern Maine and Nova Scotia during the Revolution Chiefly Compiled from the Journals and Letters of Colonel John Allan, with Notes and a Memoir of Col. John Allan, (Albany: 1867), 162, 181, 186-187, 189-197, 235, 305-307. Machias Truck House Accounts 1776-1780 in Massachusetts Archives, Vol. 147.

<sup>16</sup> Kidder, Military Operations, note 1 at 105-106, 121, 234-235, 311-312. The treaty involved another agreement to assist the colonists in the Revolutionary War as well as for the inclusion of tribal lands within the United States. see, also Tureen and O'Toole, "State Power and the Passamaquoddy Tribe: A Gross National Hypocrisy" Maine Law Review Vol.23, No. 1 (1971) 8.

wrote to the Micmac Nation, reminding them of their promise of support.<sup>17</sup> At some point, representatives of the Nation were also given a silver medal signifying the strong bonds of friendship between the United States and the Micmac tribe.<sup>18</sup>

In 1784, after the war ended, Micmac and Maliseet chiefs gathered with Col. Allan to complain that promises made to them during the War had not been fulfilled, particularly as to lands for improvements and residences. He took their complaints to Washington, from where he wrote that Congress was "determined to see Justice done in your claims as far as is consistent with their power and authority." <sup>19</sup>

The Micmacs and Passamaquoddies wrote the General Court of Massachusetts in 1791 again complaining of the loss of their

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<sup>17</sup> The letter was written on December 24, 1776; on the same date, similar letters were sent to the Maliseets and the Passamaquoddies. Acts And Resolves of Massachusetts 1776-1777, Chapter 885, February 20, 1777, 813.

<sup>18</sup> Col. Allan had been given the medals to use as a "Token of Friendship & for a Distinguished Badge for their former conduct. . . on behalf of the Commander in Chief to Defend their rights & Liberty, from the attempts & Insults of a Cruel and Bloodthirsty Enemy." Kidder: 247-248. Only two medals are known to exist today--one in the possession of the British Museum and the other owned by a Micmac woman in whose family the medal has passed down from generation to generation. Indian News, Vol. 15, March 1972; Micmac News, Vol. 12, August 15, 1983.

<sup>19</sup> Allan 1784 in Kidder: 297-298

aboriginal lands to white settlers. In response, a negotiating committee was appointed which ultimately recommended that lands be set aside for the use of the "Passamaquoddy Tribe and The Other Tribes Connected with Them." This treaty was signed in 1794.<sup>20</sup>

As part of the Statehood Act of 1820, Maine assumed all duties and obligations of the Commonwealth of Massachusetts towards the Indians in the State.<sup>21</sup> (Those duties and

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<sup>20</sup> The appointment of the negotiating committee is described as a "Resolve on the Address and Application of Several Tribes of Indians." [emphasis added] Acts and Resolves of Massachusetts 1792-1793, Chapter 185, March 28, 1793, 316. The Committee in fact met with representatives of the Micmac, Maliseet and Passamaquoddy tribes in 1794. They reported that the chiefs of the St. John and Passamaquoddy spoke alternately: "no distinction was observed nor would they allow any settlement wherein they were not equally concerned as well as those residing in the Micmac country." Remarks of Deputy Attorney General John Patterson at an Indian Claims Seminar on October 29, 1977, at the University of Maine at Portland-Gorham.

The language of the treaty and the identity of the signers makes clear that they are acting on behalf of "the other tribes connected with them", to wit, the Micmacs. Acts and Resolves of Massachusetts 1794-1795, Chapter 52, February 10, 1795 255-259. "It is important to point out that the grant of land by Massachusetts was . . . viewed . . . as a fulfillment of promises made by John Allan to the Eastern tribes during the Revolution on behalf of the United States Government and the State of Massachusetts." Remarks of John Patterson, ibid. Notwithstanding that fact, over time, the treaty became viewed as one exclusively pertaining to the Passamaquoddy Tribe.

<sup>21</sup> "An Act relating to the separation of the District of Maine from Massachusetts proper, and forming the same into a separate and independent State."

obligations were subsequently reaffirmed by the Commonwealth of Massachusetts in an 1976 Executive Order).<sup>22</sup>

Maine did not deal with either the Micmac or Maliseet Indians as a tribe until the early 1970's, although numerous laws before that date implicitly recognized their existence in the State.<sup>23</sup>

Following the organization of the Association of Aroostook Indians in 1969, effective advocacy on behalf of the Micmac people led to the expansion of state programs and benefits. The Maine Legislature authorized the issuance of free hunting and

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<sup>22</sup> Governor Dukakis, Executive Order No. 126 regarding "Massachusetts Native Americans" which notes "whereas, the state has never ceased to recognize its indigenous tribes, living within or near the boundaries of current or former territories and reservations; nor has it ceased to recognize those Tribes with which it has Treaties. . . .The Boston Indian Council shall be designated as the state's liaison with resident members of the Passamaquoddy, Penobscot, Maliseet, MicMac Tribes, with whom the state has entered into Treaties and other Agreements." [emphasis added]

<sup>23</sup> For instance, a general assistance law was passed in 1925 for the benefit of Indians other than those belonging to the Penobscot and Passamaquoddy tribes living in Maine. Laws of Maine 1925, Chapter 181, 108 [formerly codified at 22 MRSA §4713]. Under this law, which provided for 100% state reimbursement of local general assistance expenditures to eligible Indians, the overseers of the poor in each town were required to record the identity of the Indian's tribe and the length of time that person had been in Maine; unfortunately, these records have since been destroyed.



fishing licenses and made available the North American Indian Scholarship program to members of the Micmac and Maliseet Tribes resident in the State and affiliated with either the Association of Aroostook Indians or Central Maine Indian Association. The State Department of Indian Affairs also opened an office in Houlton to better serve Micmac and Maliseet tribal members.<sup>24</sup>

By 1973, the Micmac Tribe had State recognition as a tribe.<sup>25</sup> As noted earlier, in 1976, the Commonwealth of Massachusetts affirmed its relationship with the Micmac Indians,

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<sup>24</sup> See, 12 MRSA § 7076(9) which authorizes the issuance of free hunting and fishing licenses to any Indian, 10 years or older, of the Passamaquoddy, Penobscot, Maliseet or Micmac tribes. The exclusion created for the Micmac and Maliseet tribal members came in 1973, with L.D. 605, it having been defeated in earlier years.

The act providing for scholarships for North American Indians residing in Maine was originally passed in 1971 as H.P. 260 (L.D. 342). The Bill as adopted defined North American Indians as persons with at least one parent or grandparent who was included on the census of the Passamaquoddy or Penobscot tribes or who held a band number with either the Malicite [sic] or Micmac tribe. This legislation was subsequently amended to recognize enrollment with the Association of Aroostook Indians as sufficient proof of tribal status.

However, the Maine legislature resisted efforts to broaden the availability of these benefits to members of other tribes residing in Maine.

<sup>25</sup> Letter of Senator Edmund Muskie to the Secretary of the Interior, April 27, 1973, Muskie Archives at Bates College. In this letter, Senator Muskie notes that "The Micmacs and the Maliseet are designated as Indian tribes, and are recognized as such by the State. Any discussion of Maine Indians or decision with regard to Maine Indians therefore must include these two tribes."

"with whom the state has entered into treaties and other Agreements."<sup>26</sup>

The federal government has had relatively few dealings with the Micmac tribe since the Eastern Indian Department was discontinued in 1784. Both the Association of Aroostook Indians and the Aroostook Micmac Council have been provided funds to serve members of the Micmac tribe in Maine from a variety of agencies other than the Department of Interior from special Indian allocations and/or funds administered from special Indian desks.<sup>27</sup> The Administration for Native Americans specifically changed an early definition of "American Indian" to recognize the eligible tribal status of the Micmacs.<sup>28</sup>

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<sup>26</sup> Executive Order No. 126, Massachusetts Native Americans, July 8, 1976.

<sup>27</sup> Over its twelve year history, the Association of Aroostook Indians received grants from the following organizations: the Economic Development Administration of the Department of Commerce, the Office of Native American Programs of the Department of Health, Education and Welfare (Now the Administration for Native Americans in the Department of Health and Human Services), the Office of Economic Opportunity, the Community Services Administration, the National Institute on Alcohol Abuse and Alcoholism, and the Law Enforcement Assistance Administration of the Department of Justice.

The Aroostook Micmac Council has received grants from the Administration for Native Americans since 1984.

<sup>28</sup> The introduction to the final regulations (which were also used as the basis for the American Indian Policy Review Commission and proposed Community Services Administration

(continued...)

In terms of governmental structure, the history of the Micmac band in Maine can be divided into several phases. During the first phase, the band was governed by a number of sagamores who usually served as leaders for life. Traditionally, the basic social unit among the Micmac Indians was a residential kin-group consisting of a chief, his family, various of his married sons and their families, some of his married daughters and their families (whose husbands found it advantageous to reside in his village) and other relatives in the matrilineal and patrilineal line who desired his protection and benefit.<sup>29</sup>

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<sup>28</sup>(...continued)  
definitions) clarified the change: "Several letters requested changes in the definition of "American Indian or Indian." The major objection to the definition in the proposed Regulations was that it required United States citizenship. This citizenship requirement in effect excluded certain groups such as the Micmacs and Maliseets who have had longstanding special relationships with either the United States government or who have had special historical ties with the land which now constitutes the United States." As a result, the citizenship requirement was dropped. However, as noted at Tab 5 of the briefing book, a majority of members of the Aroostook Band are U.S. citizens. Federal Register, 1/19/77 pg.3785.

<sup>29</sup> Bernard Hoffman, The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries, (1955) 514-515, 590; Biard 1616 in Thwaites, Vol. III, 87-95, 101, 165; Lescarbot 1618, Vol. III, 265; Levett in 1628, in Baxter: 117; LeClerq 1691: 234-238; De La Varenne 1756: 80-81:

Yet it is true, that they have chiefs to whom they give the title of Sagamo; but all of them almost, at some time or other, assume to themselves this quality, which is never granted by universal consent, but to the personal considera-  
(continued...)

Despite contact between the sagamores of various Micmac bands, when the bands met in general assemblies as tribal confederates or ricamanen, each of the kin-groups maintained their political independence and refused to subordinate themselves to the political authority of other councils or authority figures.<sup>30</sup>

In the mid-17th century, the Micmac tribe formed a loose alliance with other eastern Algonquian-speaking tribes in the area, and this alliance became the Wabanaki Confederacy.<sup>31</sup> Originally formed as a military alliance in order to deal with the encroachment on tribal lands by other tribes and white settlers,<sup>32</sup> the Confederacy gradually evolved into a strong

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<sup>29</sup>(...continued)

tion of distinguished merit in councils, or in arms. . .

<sup>30</sup> Biard 1616, in Thwaites, Vol. III, 89-95.

<sup>31</sup> See the discussion of the Wabanaki Confederacy in Akins v. Saxbe, supra..

<sup>32</sup> There are numerous examples of this type of military alliance involving the Micmacs. For instance, in 1703, Micmacs offered military support to the Abenakis of Penobscot and Kennebec.[Bax. Mss., IX, 152]; in 1711, they were part of another attack against the English.[ibid., 308-309]; again, in 1716, they joined attacks. [H.S.M. XXIII: 82]; in 1724, they attacked a garrison on the lower Kennebec River. [Sewall 1859: 247 and P.D. VIII: 936-937]; they attacked the English at Annapolis with other Wabanaki allies in the same year. [Rasle, 385]; Annapolis was attacked in 1744 by the Wabanaki Confederacy. [P.D. VIII: 1107];  
(continued...)

political alliance in which delegates of the various member tribes would meet to decide responses to actions which affected their entire tribal populations. Most of the treaties to which the Micmacs were expressly or impliedly signatories were made with the Wabanaki Confederacy tribes acting in unison. War was occasionally declared against the Confederacy itself.<sup>33</sup>

General George Washington requested support from the Wabanaki Confederacy at the time the Revolutionary War was declared. In 1831, the Governor of Maine referred to the Confederacy and noted that the Micmacs belonged to it.<sup>34</sup>

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<sup>32</sup>(...continued)  
they were supported by other Wabanaki tribes when the English declared war against the Micmacs in 1749. [Murdoch II: 166 and Bax.Mss., XXIII: 371]; they ally together in 1750. [Paris Documents IX: 209]; and again in 1754. [Bax.Mss., XII: 279 and XXIV: 22-23]; and 1767. [Bax.Mss., XXIV: 149-150 and 150-152].

<sup>33</sup> In 1689, the English of New England colonies declare war against "the Kennebec and Eastern Indians, with the Confederates." which includes the Micmacs and the English Council of War in New Plymouth orders the "repelling and destruction of the common enemy." Document in Sullivan: 410. In 1722, the English declared war again against the Abenakis "with their Confederates." Penhallow: 94-95. In 1755, the Wabanaki Confederacy of tribes is declared "to be enemies" and the English give orders to "captivate and kill the enemy Indians." Mass. Hist. Soc. 1922: 142.

<sup>34</sup> According to a manuscript left by the Governor of Maine: "to the Confederacy of the Abenakis also belonged the Micmacs or Souriquois." Lincoln 1831: 311

Thus, while each band had its own sagamores [counsellor/captains] and sachem [chief/governor], from approximately 1675 until 1850, matters of common concern were decided collectively by members of the Wabanaki Confederacy.<sup>35</sup>

A tribal group of Micmacs, characterized by their distinctive language, basket-making and other traditional activities, has been present in the State of Maine since time immemorial. The Aroostook Band was initially formed as a seasonal community in the late 19th century and then developed a year-round status in the early 20th century. As with the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs was initially characterized by a loose system of leadership along kin-ship lines. Various elders of the Micmac community would be consulted on issues of personal or kin-group significance for advice, but there was little perceived need for organized decision-making on a wider scale.

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<sup>35</sup> Williamson 1839: 92-93 (speaking of three of the tribal members: the Penobscot, Passamaquoddy and "St. John's " tribes); and Nicolar 1893: 138-139 (who notes that the Micmacs and St. Francis Abnakis were also a part of this Confederacy policy.) In fact, meetings of the Wabanaki confederacy took place in 1727 (Bax.Mss., X, 385-387 and 407-408), 1777 (Bax.Mss., XV: 436), 1778 ( Bax.Mss., XVII: 64-110), 1780 (Bax.Mss., XVIII: 282-283) and on a roughly annual basis in the 19th century until about 1862. (Gesner 1847: 115-116; Walker 13, 33).

A formal structure was created in 1969 with the formation of the Association of Aroostook Indians and an annually elected Board of Directors. In large part, the organization was created to focus political action on behalf of the entire Micmac and Maliseet community in northern Maine were concerned. The Association functioned initially to serve the needs of both tribal groups, but eventually became dominated by a core group of Maliseet families.

Following the emergence of a formal tribal entity in the form of the Houlton Band of Maliseets, the Association of Aroostook Indians faltered.<sup>36</sup> It was replaced by the Aroostook Micmac Council whose annually elected Board of Directors are all Micmacs resident in Aroostook County.

### **III ABORIGINAL TERRITORY**

#### **A. Nature of Use**

The Micmac Nation, like the Penobscot, Passamaquoddy and Maliseet Indian Nations, was primarily composed of migratory food-gatherers. Its members hunted inland areas during the fall

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<sup>36</sup> The Association effectively ceased to function in 1982, although the non-profit corporation was not dissolved until 1985.

and winter and spent the summer by the seashore.

Following initial European contact in the 16th and early 17th centuries, the Micmac tribe first used its coastal territories as a means of controlling trade relations between the more distant tribes and the Europeans. Its tribal catchment area<sup>37</sup> included the coasts of Maine and the Maritime provinces, as well as the watersheds of inland riverways in both Maine and the provinces.

Its monopoly position as a middleman soon ended. However, while Micmac involvement in trade activities lessened over the

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<sup>37</sup> Fernand Braudel advanced the idea of catchment areas for trade in volume two of his three volume treatise, Civilization and Capitalization: 15th to 18th Centuries (New York: Harper & Row, 1982) (translation by Sian Reynolds). Writing of the practices of merchants in Europe, he theorized of a typology of trade catchment areas, by which one could detect periods of broad and expansive trade, characterized by a broad circle, and those which focused along a particular axis and were therefore characterized by a narrow catchment area. The catchment area of a town could be characterized by a series of interlocking circles symbolizing areas within which the town receives supplies, sells goods, obtains credit, etc. ibid., Vol. II, 184-188.

Similarly, a tribe or band's catchment area would encompass not only the areas within which the tribal members hunted and fished for sustenance, but also a broader catchment area within which the tribe sought furs for trade, and the area within which these wares were actively marketed. All are legitimate uses of aboriginal lands, although some types of activities (trapping for fur trade, sales to European settlers and merchants) might occur on jointly used and occupied lands.



years, it never entirely ceased. In the 19th century, the tribe began actively marketing its crafts throughout the State and this tradition is now carried on by the basket bank administered by the Aroostook Micmac Council, as well as by various individual Micmacs.<sup>38</sup> Use of aboriginal lands within which trade activities were conducted has therefore been consistent over the

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<sup>38</sup> The basket making tradition dates from the 1600's. This craft was probably introduced by the Swedes in the Delaware Valley in the 17th century, and slowly spread to the northeast where virtually all Indians took up the craft (Brasser 1975:8-9). About 1790, superintendents of Indian Affairs in Nova Scotia were persuading the Micmacs to produce "baskets, axe-handles, shingles and staves" commercially, in order to render support for themselves and to provide useful commodities for settlers (Whitehead:57). Micmacs (still living in bark wigwams, as most did until the mid-19th century --Wallis and Wallis 1955:226 ff), began producing splint baskets for the colonial market. In the early 19th century, they were making splint baskets, as well as quillwork and decorated bark containers for export to England, Scotland, and the British West Indians.

Increasingly, Maritime and New England farmers needed strong functional baskets for their products. The sturdy splint baskets made by Indians were excellent for this type of use. Soon the Micmacs were producing all kinds of baskets for commercial use: berry-, egg-, apple-, and potato-baskets, as well as laundry-, pack- and sewing-baskets, plus fishing creels. From house to house, Micmacs offered splint baskets for sale. An 1842 report states "Women and children beg and sell boxes and baskets to survive" (quoted in Whitehead:59). Gradually, basket-weaving, which had been exclusively women's labor in the past, was taken up by males too.

Late in the nineteenth century, many Micmac Indians joined other Indian basket vendors, who frequented summer resorts and emerging tourist centers in northeast America. Micmacs developed particular styles, catering to the tourist market which demanded "fancy" baskets with twilled weave, sweetgrass-curly- and dye-decorations (Whitehead; Brasser).

years.

Of course, the usual hunting and fishing activities were also conducted throughout this territory.<sup>39</sup> Contrary to more southern woodland tribes, the migratory Micmacs did not practice agriculture, a use of land which would have required them to remain sedentary.

B. Evidence of territorial location and extent

The aboriginal territory of the Micmac Nation clearly included all the area in the maritime provinces of Canada and the watersheds of the St. John, St. Croix and Dennys River, which partially falls within the 1843 boundaries set for the State of Maine.<sup>40</sup>

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<sup>39</sup> Hoffman, 'Ancient Tribes Revisited, 19-20. "Among the nonagricultural Micmac the comparable territorial and ecological units covered much larger areas [compared to the Virginia Indians] ranging from 2000 to 22,000 square miles with an average of 8000 square miles. The numbers of these units exploited the resources of the tidewater part of the year, and those of the interior at other times of the year, and these units were semi-sedentary while on the coast and nomadic while in the interior. Compared to the Virginia Indians the Micmac had generally richer resources of freshwater, maritime, and land fauna, but these resources were highly seasonal and sometimes quite unavailable because of weather conditions."

<sup>40</sup> See, the report of Dr. Harald Prins at Tab #9 of the briefing book. Of course, the precise boundary of the State of Maine and its predecessor, the District of Maine, fluctuated widely in the years after the Treaty of Paris of 1783. Just as  
(continued...)

This use was not exclusively restricted to the Micmac Nation, however. While the Micmacs enjoyed exclusive use of much of the Maritime Provinces, much of the St. John River watershed - including lands in modern Maine -- was jointly used by the tribes which belonged to the Wabanaki Confederacy.<sup>41</sup>

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40 (...continued)

the two centuries preceding that treaty had been marked by constant conflict between France and England over the precise boundaries of their territories in this region, so were the years between 1783 and 1843 marked by dispute between Great Britain and the United States. The final lines accepted by the parties were drawn without regard to the aboriginal lands of the tribes, although limited testimony from selected tribal members was taken. Ganong, "A Monograph of the Evolution of the Boundaries of the Province of New Brunswick" Royal Society of Canada Transactions, 2d. ser., VI (1900-01), 243.

41 Again, see Dr. Prins' report. Although he has provided much of the research in this area, evidence cited by all parties during the MICSA negotiations contained important clues as to joint use of tribal lands in the St. John River watershed. However, the prevailing characterization of tribal territories in Maine at that time was one of exclusive use of land by each of the three tribes asserting a land claim to a portion of the State.

Joint use of lands does not defeat an aboriginal land claim. There is an exception to the general requirement of "exclusive use and occupancy" of aboriginal lands, where it can be shown that the relationship between the occupying groups is "extremely close." Cf., Strong v. U.S., 518 F.2d 556, 561-562 (Ct.Cl., 1975), cert.den., 423 U.S. 1015 (1975). It is not necessary to show the complete merger of two tribes into one entity as a prerequisite for joint occupancy. U.S. v. Pueblo of San Ildefonso, 513 F.2d 1383, 1395 (Ct.Cl. 1975). Instead, the courts will accept evidence of a "close and intimate alliance, politically and socially, so that from thence forward that have been dealt with and referred to a single nation both in their relationship with other Indian tribes and in treaty negotiations and other matters with the U.S." Strong., supra at 561-562. Of (continued...)

Although the historians agree that the Micmacs were a highly migratory people, seldom staying in one spot for very long, the evidence does show repeated contacts with Micmacs along the St. John river, around the mouth of the St. Croix, and along the Maine coast throughout the 17th and 18th centuries. To some extent, this early coastal presence was lessened by European settlements which increasingly spread on Wabanaki lands.

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<sup>41</sup>(...continued)

course, in the instant case, the members of the Wabanaki Confederacy did form a "close and intimate alliance" from the late 17th through the 19th centuries which was recognized as such by federal and state authorities during that period.

After that period, the Micmac and Maliseet Indians of Aroostook County jointly used lands in that area. Identified by farmers and other White residents under the general heading of "Indian," their tribal identities were obscured during this period and they were popularly perceived as all belonging to the same tribal group. Typical is a statement by a local potato farmer in the region, who employed Indian workers for more than half a century:

Oh, we used to have lots of Indians. We'd start with about 50, but of course we'd lose some by the end of the season . . . [On my family's farm we had Indians] since I was a teenager any way. That would be back to the 1930's, and we had lots right up until the late 50's . . . We had housing for them. It wasn't much, but they never minded. . . The Indians weren't really kept track of. They were just laborers . . . Sorry, I can't help you more, with names and stuff. (Pease, Interviews

1986).

Another potato grower, also having worked with Aroostook Micmacs for several decades, admitted that as far as ethnicity of the region's Native American groups is concerned, he "hadn't put much thought into that sort of thing." (Prins & McBride, Interviews 1982).

Gradually, the Micmac tribe withdrew to inland locations along the St. John and St. Croix rivers, as well as the rivers and coast of the Maritime provinces. Finally, in the late 19th and early 20th centuries, the developing potato industry in northern Maine, as well as lumbering and related activities, concentrated the remaining members of the Micmac tribe in Maine in the northern half of the State and specifically in Aroostook County.<sup>42</sup>

#### IV      LOSS OF ABORIGINAL TERRITORY

As of the end of the Revolutionary War, the Wabanaki Confederacy had not ceded and continued to use and occupy their original aboriginal territories, but the tribes were becoming increasingly concerned about non-Indian poachers. John Allan commented on this in 1781.<sup>43</sup>

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<sup>42</sup> Again, see the report of Dr. Harald Prins at Tab #9 for evidence of 18th century movement. Later ethnohistorical reports by Dr. Prins will evidence their presence in the centuries preceding and following this period. The maps and accompanying chronology at Tab #10 of the briefing book provide a general overview of tribal territory from the 16th century onward.

<sup>43</sup> March 2, 1782, J Allan to Samuel Adam, Samuel Adams papers, New York Public Library, and see March 8, 1782, Col. Allan to the Governor Baxter, ed., Bax.Mss., XIX 437.

The problem emerged more fully in 1783. In May, Allan reported that non-Indians had "greatly impaired" beaver hunting and he observed that the situation was "still growing worse." <sup>44</sup> Later in the year, he explained to the Governor of Massachusetts, John Hancock, that the Indians were in "great distress" and reported that he had petitioned the United States Congress for the promised confirmation of their ownership of their hunting grounds.<sup>45</sup> In forwarding the petition to Congress, Allan informed its presiding officer, Thomas Mifflin, that "during the whole Warr I have not seen them under such anxiety. . ." <sup>46</sup>

Mifflin did not reply and Allan wrote again on February 4, 1784. This time he was more explicit. The tribes depended, Allan said that something may be done to secure for them, their hunting Ground & prevent those Hunters (subjects of the States) from molesting and Destroying the hunting privileges which has been too much the Case for Some Years past." While requesting instructions on the issue, Allan added that the allies

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<sup>44</sup> May 24, 1783, Memorandum for the Committee appointed by the honorable Congress of the United States respecting the Eastern Indian Department, PCC, roll 153, Vol. 149 II, 561-562.

<sup>45</sup> Allan to Governor Hancock, December 15, 1783, Samuel Adams Papers, New York Public Library.

<sup>46</sup> December 25, 1783, Allan to Thomas Mifflin, President of Congress.

did "not appear Extravagant in their Demands." They were, in fact, willing to compromise. They were willing to relinquish, Allan said, "any Claim to land" reserving for themselves "only some particular places which their forefathers Occupied many Years ago, with the hunting streams." 47

The "principle characters of the Maliseets, Passamaquoddy, and Micmac Tribes" assembled at Passamaquoddy Bay later in 1784.<sup>48</sup> The Micmac chiefs, in conjunction with their colleagues, argued that the "promises made in time of War" had not been fulfilled, particularly as to land, for improvements and residence. 49

Allan took their petition to the United States Congress,. From Washington, he wrote back that both Congress and the State of Massachusetts wished "nothing but your Welfare, that you may

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<sup>47</sup> February 9, 1784, Allan to Thomas Mifflin, President of Congress, PCC Roll 71: 58, 67-68.

<sup>48</sup> It is worth noting that the Legislative Report submitted on behalf of the Passamaquoddy tribe to the White House negotiator, William Gunter, does not mention the presence of Micmacs at this general assembly in 1784, despite clear language in Col. Allan's report. Similar omissions are contained in later "summaries" of the important meetings and agreements between the tribes and the United States government and/or the Commonwealth of Massachusetts during the period from 1783-1795, as discussed supra.

<sup>49</sup> Campbell, Allan and Stillman: 1, 2

enjoy all your rights and Privileges in as full and ample a manner as any of your Brother Citizens of the United States. . . ." Allan also reassured the tribes that both governments "are determined to see Justice done in Your Claims, as far as is consistent with their Power and Authority." The Indian agent counseled patience, asking the tribes to continue to "pursue your Suits on the Several Streams as usual." This conference occurred just before Allan was dismissed from Federal Office.<sup>50</sup>

The United States Government neither fulfilled its wartime promises nor accepted the Wabanaki Confederacy's offer to cede a portion of its lands. As a result of this inattention and the resulting white encroachment on aboriginal lands for hunting purposes and otherwise, the tribes belonging to the Confederacy suffered extreme hardship in the post-war period. By 1792, the Maliseet, Micmac and Passamaquoddy tribes were nearly destitute and in desperation they turned again to Col. Allan.

He received a message "from the several Villages on the St. Johns" stating the tribes' demands for a priest and for a grant of land. He recommended a petition to the Massachusetts General Court for land. This petition was subsequently signed by four

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<sup>50</sup> Allan February 23, 1784 in Kidder: 297-298. The Eastern Indian Department was abolished in March, 1784. ibid., 314.



Micmac chiefs, together with delegates of the Maliseet and Passamaquoddy tribes.<sup>51</sup>

As a direct result of the tribes' petition, the

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<sup>51</sup> The petition was entitled "The Address and Supplication of the several villages of Indians, situated on the streams between Penobscot & St. Johns, with such of the Micmac Tribe adjacent." The petition read, in part:

In the War between this Country and the King of England, we were all (a very few excepted) disposed to take a part, as become the Natives of America, in opposing the attempts of that King's people. . .

We are conscious of doing our parts, to the utmost of our power and to convince you of our good will & friendship; in the time of War, resigned the claim of those lands, which our forefathers so long occupied only on condition of enjoying our Religion unmolested - - And exclusive rights to the Beaver Hunt --suitable residence for our families, and such other benefits in proportion to which our brethren were entitled to.

Since Peace, we have been wandering from place to place Those spots of ground, which were wont to be our abode, are taken up on the American as British side, and when our Families attempt to encamp thereon are threaten'd with every insult, so that our women & children are in continual fear -- It is to you therefore, we look as our Chiefs. Tho many of us hunt on the English ground, where we formerly resided, and in some cases Oblidged still to encamp, yet a place is wanting where we can assemble unmolested at stated times, according to ancient custom. . . It is in this Country we wish to make our home -- We ask you to fulfill those promises made in War, particular that we may have secured, for the use of the several tribes a tract of land on Shudack River, and a place of residence on the Sea Shore. . . .

Collections of the Massachusetts State Archives.

Commonwealth of Massachusetts appointed a negotiating team to meet with the tribes.<sup>52</sup>

The result of the negotiations was a treaty concluded on September 29, 1794, in which the "Passamaquoddy Tribes and Others Connected with them" relinquished all of their claims to land within Massachusetts, and in return, the Commonwealth assigned and set off one hundred acres of islands in the Schoodic River [St.Croix]; a 23,000 acre township; Pine Island [containing 100 acres] 1 Lues Island [containing 10 acres]; 100 acres at Nemcas Point, adjacent to the Township; the privilege of fishing and passing without molestation over the various carrying places on both branches of the Schoodic River; ten acres at Pleasant Point on Passamaquoddy Bay; and the right of sitting down on fifty acres at the carrying-place on West Passamaquoddy on the Bay of Fundy. <sup>53</sup>

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<sup>52</sup> "Resolve on the Address and Application of Several Tribes of Indians," Act of March 28, 1793, Massachusetts Acts and Resolves 1792, c. 185, Act of June 26, 1794, Massachusetts Acts and Resolves 1794, c. 92.

<sup>53</sup> "Resolve on the Report of Alexander Campbell and others, a Committee in Behalf of this Commonwealth, to Negotiate and Settle Any Misunderstanding or Differences with the Passamaquady [sic] Indians and Those of the Other Tribes Connected with Them" Act of February 10, 1795, Massachusetts Acts and Resolves 1794, c. 52; see also, Treaty with the Passamaquoddy Indians, September 29, 1794, Mary Francis Farnham, ed., The Farnham Papers: Documentary History of the State of Maine, (continued...)

No compensation was paid and no services were provided or promised. The federal government played no part in the transaction. Massachusetts subsequently deeded the Passamaquoddies an additional ninety acres at Pleasant Point in 1801 <sup>54</sup>

It was not until 1980 that the some members of the Wabanaki Confederacy received compensation for the loss of their aboriginal lands in the years immediately following the Revolutionary War. With the Maine Indian Claims Settlement Act, Congress authorized a total payment of \$80.6 million to the Passamaquoddy and the Penobscot tribes; the Houlton Band of Maliseets received \$900,000 deposited in a land acquisition

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<sup>53</sup>(...continued)

(Portland: Lefavor-Tower Company, 1902) Vol. VIII, p. 98.

Then Attorney General Brennan in a 1978 Letter to the White House noted that the 1794 treaty did apply to the Micmacs: "...It has been curiously ignored that the 1794 agreement that forms the basis of the Passamaquoddy claim was executed by Massachusetts, not only with the Passamaquoddy, but other eastern tribes, which appear to include the Micmac and Maliseet. What precedential value will the proposal in the Joint Memorandum have on these latent claims? Will the federal government take the same posture towards settlement in those cases as it does in this?"

<sup>54</sup> Commonwealth of Massachusetts to Passamaquoddy Tribe of Indians, February 21, 1801, Vol. 58, page 145, Washington County Registry of Deeds, Machias, Maine.

fund.<sup>55</sup>

To this day, the Aroostook Band of Micmacs has received no compensation or services from the federal Government in recognition of its tribal status and aboriginal claims.

## CONCLUSION

This summary of evidence, read together with the report of Dr. Harald Prins at Tab #9 and the maps and chronology at Tab #10, provides compelling grounds to support the aboriginal land claims of the Aroostook Band of Micmacs in Maine.

The basis of their claims is the joint use of tribal territories in certain portions of eastern and northern Maine by the historic Micmac Nation and other members of the Wabanaki Confederacy. There is clear legal precedent for the argument that "joint and amicable use" does not defeat a claim of aboriginal title to the lands in question, where a "close and intimate relationship" between the joint users can be demonstrated.

The Wabanaki Confederacy of Penobscot, Passamaquoddy,

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<sup>55</sup> The fund accumulated interest over the years between 1980 and the time at which Congress actually took steps to authorize its expenditure, in the fall of 1986. The MICSA fund for the Houlton Band now totals in excess of \$1.8 or \$1.9 million.

Maliseet and Micmac Indians in Maine presents a clear example of this type of close relationship, and that relationship is confirmed by countless first-hand accounts and the actions of federal and state authorities. The "close and intimate relationship" between the Micmacs and Maliseets in Aroostook County during the 19th and 20th centuries is also important and well-documented.

The Aroostook Band of Micmacs expects to establish its claims based on joint use and occupancy to the lands in question using this documentation and those experts now prepared to testify on the Band's behalf.

TAB #6

# DESCRIPTION OF THE MODERN TRIBAL COMMUNITY

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## DESCRIPTION OF THE MODERN TRIBAL COMMUNITY

### I. INTRODUCTION

The modern Aroostook Band of Micmacs lacks a land base and its membership accordingly is dispersed throughout Aroostook County. Despite the severe poverty of this Indian community, its members are held together by their common traditions, language and kinship. However, without federal recognition of their status as a tribe, the community lacks any real means of preserving its heritage; every year, the pressures of economic hardship and discrimination strain the bonds between members of the Aroostook Band.

The following report<sup>1</sup> covers the social aspects of this

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<sup>1</sup> Much of the information in the following discussion is based on four articles which appeared under the general title "Promises to Keep", each covering one of the four tribes in Maine, in Nos. 13-16 of Vol. 19 of the Maine Times during January of 1987 [reprinted in their entirety at Tab #14 of the briefing book] and on various surveys taken of the Indian community in Aroostook County in the years between 1970 and 1983. The following surveys are particularly important:

-1971 "Off-Reservation Indian Survey Me P-74," sponsored and published by the Maine Department of Indian Affairs and conducted by Allen J. Sockabasin and John G. Stone. [hereinafter, the 1971 survey].

-1979 "A Brief Outline of the Social and Economic Conditions of the Micmacs and Maliseets in Maine", sponsored by the Association of Aroostook Indians and conducted by Smith and Wherry. [hereinafter, the 1979 Survey]. This report is quoted extensively in Hearings on S.2829 Before the Senate Select Committee on Indian Affairs, 96th Cong., 2d Sess. [hereinafter, the Senate Committee Hearings], Vol. 2, pp. 428-429 (1980)

(continued...)



community's structure: its common ties of language, tradition and blood. It then places this tribal group's economic situation in the context of the broader Aroostook County and State of Maine economy, in order to emphasize the severe problems now facing the Aroostook Band. The political structure of the community is briefly summarized. Finally, the basket making tradition of the community's members is addressed, as a symbol of the way in which the modern Band seeks to hold onto its past and simultaneously

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<sup>1</sup>(...continued)

-1980 "Northeast Indian Cultural Awareness Training" published by the University of Maine at Orono and coordinated by Gail Dana. Although not quoted in this section, the survey contains useful information about Native American values and family relationships among the four tribes of Maine, as well as the Micmac population in the Boston area.

-1980 "U.S.Census of the Population, American Indian Areas and Alaska Native Villages: 1980 Supplementary Report;" U.S.Dept. of Commerce, Bureau of the Census (Washington: G.P.O., 1984) [hereinafter, the 1980 U.S.Census]

-1981 "Indian High School Drop Out Survey" sponsored by the Association of Aroostook Indians and conducted by employees of A.A.I.[hereinafter, the 1981 survey]

-1982 "Aroostook Indian Occupation Survey" sponsored by the Association of Aroostook Indians and conducted by Dr. Harald Prins and others. [hereinafter, the 1982 survey]

-1983 "Social and Economic Profile of the Aroostook Micmac Band" sponsored by the Aroostook Micmac Council and conducted by Dr. Harald Prins and others.[hereinafter, the 1983 survey]. A report of the specific results of this survey and the raw data on which it is based is available for review at the offices of Pine Tree Legal Assistance in Augusta, ME.

-1984 Poverty in Maine, 4 Volumes, Maine State Planning Office, (Augusta, ME). This comprehensive statistical report uses figures from the U.S. Census and other reports to present a detailed analysis of the various aspects of poverty.

provide economic self-sufficiency to its members today.

## II. SOCIAL CONDITIONS

There are roughly 800 Micmacs living in the State of Maine today, of which some 400 are currently enrolled members of the Aroostook Band of Micmacs.<sup>2</sup> These members are now living in or have clear ties to Aroostook County, located in the northeast corner of the State. The Aroostook Band is a typical open community and its members maintain ties of kin and friendship with tribespeople belonging to the Canadian bands of the Micmac tribe.

The majority of adult members (58%) of the Aroostook Band live within a 20 mile radius of Presque Isle, where the Aroostook Micmac Council is headquartered. A second and smaller group is clustered around the town of Houlton and a third, around Madawaska in northern Aroostook County.<sup>3</sup>

Many of these Micmacs continue to communicate with each other in their native language. According to an unpublished 1983

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<sup>2</sup> B.McBride, "Promises to Keep", Maine Times Vol.19, No. 16 (January 23, 1987)

<sup>3</sup> Of 233 adult members listed as members of the Aroostook Band on November 23, 1986, 135 lived in or around Presque Isle; 20% (46 members) in and around Houlton; and 9% (22 members) in and around Madawaska.

survey<sup>4</sup>, more than half (54%) still speak Micmac, although the majority of those who are fluent (49%) are usually the elders in the community.

The majority of Micmacs have few chances to speak their native tongue. As such, the number of Micmac speakers in the Aroostook Indian community withers away with each passing generation. Today, English is the dominant language among the Aroostook Micmacs, although about 15% also speak French. It is estimated that more than 80% of the Aroostook Micmacs are minimally bilingual.

The Aroostook Band of Micmacs is largely composed of members with a high degree of Micmac blood, an unusual circumstance for an unrecognized tribal group where the pressures of assimilation are great. Over two thirds (67%) of the adults are considered to be at least "half-blood" Micmacs; that is, at least two of their grandparents are Micmac.<sup>5</sup>

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<sup>4</sup> the 1983 survey discussed in note 1, supra. The total number of Micmac households represented in the census was 128, the Indian heads of which were interviewed during the summer of 1983.

<sup>5</sup> See also the materials contained at Tab #15 of the briefing book. This evidence of Micmac ancestry is based on 19th century federal census records in which specific members of the modern Micmac family were identified as "Indian" by the authorities. Until 1900 in the United States, the official census did not list specific tribal affiliation but merely identified the individual as "Indian." In Canada, the census has never listed tribal affiliation as such, although the most recent census (1986) listed individuals as either "Canadian Indian, Inuit or Metis." In the instant case, the assumption has been  
(continued...)

Of the adult members, over 50% (119 individuals) are citizens of the United States and 60 are citizens of Canada; the citizenship status of the remaining 54 is currently not known. A clear majority of the United States citizens (60.5%) are at least half-blood Micmacs.<sup>6</sup>

The vast majority of Aroostook Micmacs born in recent years were born in northern Maine. According to the 1983 survey, about one third of the adult women and one quarter of the adult men were born in this region. Of those others who were "born away", most have lived a substantial period of their lives in Northern Maine, many for more than twenty years.

In the 1983 survey, it became evident that Indian women form the heart of the tribal community in Northern Maine. Of 119 households surveyed in which at least one of the parents is Micmac, women counted for almost three quarters of these families. These women constitute the more stable core of the Aroostook Band, since many adult males must move from job to job in search of seasonal work or "piecework" throughout the

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<sup>5</sup>(...continued)  
made that all individuals listed as "Indian" in the 19th century census materials are full-blooded Indians. This assumption comports with generally accepted practices in this area.

<sup>6</sup> Of the 157 adult Micmacs who are currently known have at least two full-blooded Micmac grandparents, 72 are U.S. citizens and 57 are Canadian citizens. The citizenship status of the remaining 28 is not known at present.

northeast.

### III. ECONOMIC CONDITIONS AND STATE POLICIES OF ASSISTANCE

#### A. Overview

The 1980 census of population in the United States indicated a total Indian population in Maine of 4,087, of which 2,822 (almost 70 percent) live off-reservation.<sup>7</sup>

The federal census does not delineate the off-reservation Indian populations by tribal affiliation. As a result, the figure of 800 for total Micmac population in the State is only a rough estimate, based on the member populations of the two off-reservation tribal organizations, the Aroostook Micmac Council and the Central Maine Indian Association.<sup>8</sup>

As a review of the chart on the following page will

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<sup>7</sup> The 1980 U.S. Census, supra. at 14. A comparison with the 1970 federal census and a state-sponsored census in 1971 shows that both the reservation and off-reservation populations roughly doubled during the decade. The 1970 federal census showed a total Indian population in the State of 2,195; the total off-reservation population in 1971 was 1454 (out of a total of 2,254). The 1971 survey, supra., at 59.

<sup>8</sup> The 1971 survey showed that Micmacs comprised the largest off-reservation population in the State at that time, 500 members throughout the State. The current estimate of 800 is probably conservative, given the growth in other tribal populations over the past 15 years.

indicate, the Aroostook Band of Micmacs represents a pocket of poverty<sup>9</sup> within a economically depressed county, in a state whose family income ranked 48th in the country in 1979.<sup>10</sup>

chart comparison of poverty statistics<sup>11</sup>

<u>Characteristics</u>	<u>Maine</u>	<u>Aroostook</u>	<u>Aroostook Band of M.</u>
population	1,125,030	91,331	c.400
avg.family income	\$18,659	\$17,022	\$3,759
% of households below the poverty line	13.8%	17.3%	60-80%
unemployment	18%	18.3%	75%
individuals lacking any health insurance (incl. Medicaid)	13-15%	N.A.	41%
% of occupied housing lacking indoor plumbing	4.9%	4.5%	17%
% of population only finishing Grades K - 8	9.7%	N.A.	91%

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<sup>9</sup> The Governor's Task Force on Human Rights noted in 1968 that "Poverty is a fact of Indian life in Maine. . .[T]o a striking extent, the history and problems of Indians in Maine parallel the history and problems of Negroes in the South." Report of the Governor's Task Force on Human Rights, pp.2,8 (1968).

<sup>10</sup> Poverty in Maine, supra., Vol. 2, p. 200.

<sup>11</sup> Wherever possible, statistics from the same years are cited. The statistics are discussed in more detail in the following sections of this report and discrepancies between survey years are noted.

For a period, the State of Maine sought to address these discrepancies by the provision of certain benefits and assistance to its Native American population. Starting in 1925, the State provided 100% reimbursement of general assistance benefits paid by local towns to off-reservation Indians, an policy which undoubtedly provided an incentive to make such benefits available to that population.<sup>12</sup>

The Association of Aroostook Indians was able to mobilize further and more specific attention on these problems after its formation in 1969. A study of off-reservation Indians conducted in 1971 by the State Department of Indian Affairs<sup>13</sup>, concluded that "It is evident that off-reservation Indians in Maine are in desperate need of guidance and assistance." [emphasis added].

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<sup>12</sup> Each municipality in Maine is required by law to operate a program of General Assistance "for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families." 22 M.R.S.A. §4301(5).

From 1925 until 1981, state law provided that whenever a municipality granted General Assistance to an off-reservation Indian, the State reimbursed the municipality for the expenditure. 22 M.R.S.A. §4713. There is no discussion of this legislation in the Legislative Record at the time the law was enacted, a fact which suggests the lack of controversy over encouraging the provision of general assistance to this segment of the population at the time.

<sup>13</sup> In 1965, Maine became the first state in the country to create a separate Department of Indian Affairs. At the outset, the Department served only reservation Indians, accounting for approximately half of the Indian population in Maine. Micmacs are mainly off-reservation Indians, and therefore received little or no direct benefit from the newly-created Department.

The study recommended that an office for off-reservation Indians be created within the Department.<sup>14</sup>

This office was established in Houlton in 1973.<sup>15</sup> Over the next seven years, it provided assistance with transportation, emergency food, fuel, medical problems, and housing to Micmacs and Maliseets living in Aroostook County. Office personnel also offered much needed advice to the Indians in Aroostook County regarding available services and rights, including tax questions, licensing requirements and government assistance

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<sup>14</sup> Among the findings were:

1. At least 1,551 Indians live off-reservation;
2. The highest level of off-reservation Indian population was in Aroostook County (32%);
3. 45% of the housing of off-reservation Indians was rated "poor"; in Aroostook County 51% was rated "poor";
4. A family member was employed in only 50% of the families;
5. The formal education level was 7.76 years (among the reasons cited for such a low educational level were discrimination, lack of guidance, poor living situations, and the necessity to leave school in order to work);
6. 65% of off-reservation Indians had no medical insurance.

Department of Indian Affairs, "Off-Reservation Survey" 41, 47-51 (Aug. 3, 1971).

<sup>15</sup> As noted by Governor Curtis in a statement to the Maine Advisory Committee to the United States Commission on Civil Rights, Feb. 8, 1973, ". . . I think the appalling social conditions which are faced by many Indians living away from the reservations should be a matter of principle concern for the next few years. We have asked the 106th Legislature to create and fund a special office for off-reservation Indians."



applications.<sup>16</sup>

Perhaps most importantly, the office in Houlton was seen by the Micmacs as a "point to which concerns can be brought and a way of making their feelings known" to the State Government and Legislature.<sup>17</sup>

Passage of the Maine Indian Claims Settlement Act in 1980 changed all this. The State Department of Indian Affairs and its offices and programs closed down in January of 1981; the 100% reimbursement of general assistance was also revoked.

These programs and assistance were not ended because conditions among the off-reservation populations in the State had improved to the point where such programs were unnecessary. As the following information makes clear, severe poverty and related problems in employment opportunities, health care, housing and education continue to haunt the Micmac community in Aroostook County.

#### **B. Income**

Poverty in rural Maine is a serious and widespread problem

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<sup>16</sup> According to an Inter-Departmental Memorandum dated January 21, 1980, from the Commissioner of the Department of Indian Affairs to the Governor's Counsel, the Department spent approximately \$75,880 in 1980 on non-reservation Indians, predominantly in Aroostook County and north of Bangor. A dollar figure for the value of the services received would have been much higher.

<sup>17</sup> Interdepartment Memorandum, id.,

throughout the State and among all segments of the population. Conditions in Aroostook County are particularly severe, as year-round employment is hard to find and because the harsh climate and population dispersal make it difficult to target aid to the persons most in need. A 1984 report noted that 15 to 19.9% of the general population in Aroostook County lived below the poverty line.<sup>18</sup> At the same time, three to four times as many Micmacs were living below the poverty level.<sup>19</sup>

The 1982 survey found that the average Indian family income was \$3,758.82, of which 21.05% was derived from payments pursuant to State of Maine assistance programs, social security and other agencies. Some 44.14% of the Indian families had incomes of less than \$3,000. Less than two percent had incomes over \$10,000.

In the same year, the median household income in Aroostook County as whole was \$17,022 and the statewide median income was

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<sup>18</sup> Maine State Planning Office, Poverty In Maine, Vol III, (1984).

<sup>19</sup> The 1983 survey found 60% of Micmac households in Aroostook County were subsisting on less than \$5000 a year, at a time when the federal poverty standard for a family of four was \$10,178 and the poverty cut-off for one individual was \$5061. U.S. Bureau of Census Statistical Abstract of the United States: 1986 (106th Edition) Washington DC, at 430.

Unfortunately, the average size of the Micmac households surveyed is not known. However, the Northeast Indian Cultural Awareness Training survey, supra., noted that 47% of off-reservation Indian household contains 4 or less persons and 16% contained more than 7 persons in the year surveyed, probably 1979, although that date is not provided in the 1980 report.

\$18,659.<sup>20</sup>

In 1982, more than half of Aroostook's Native American families were receiving some kind of welfare assistance.<sup>21</sup> Notwithstanding that fact, fewer than 6% of the Micmac population received assistance through the town offices where they lived, despite the general assistance program which exists in each town.<sup>22</sup>

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<sup>20</sup> Poverty in Maine, supra., Vol. 2, p. 76.

<sup>21</sup> By way of rough comparison, some 33% of Aroostook County households were receiving some kind of income assistance in 1983. [Based on the total number of households in Aroostook County in 1980 of 18,749 and the number of households receiving some kind of income assistance in March of 1983 of 9613] Poverty in Maine, supra., Vol. 2, at 28, 357

<sup>22</sup> According to the 1982 survey. The problem with discrimination among the town offices throughout Aroostook County has been a significant one, even before the state stopped providing 100% reimbursement of general assistance payments to Indian applicants. In a 1979 bill, ultimately withdrawn, regarding State reimbursement to towns which provide General Assistance to members of a tribe found destitute beyond their tribal reservation, the Statement of Fact was "that there exists a need to provide direct services to destitute Indians off the reservation by the Department of Indian Affairs who have been turned down by the town of residency for reasons of discrimination, harassment and denial of needed services." L.D. 501 (109th Legislature, 1979) (emphasis added).

It is perhaps difficult to believe that this hostility would express itself openly. But, consider that the following remarks were made on the Floor of the Maine House of Representatives [during the course of debate regarding the provision of free hunting and fishing licenses to Micmacs and Maliseets]:

I think it is an insult to the people who have worked hard all their life tilling the soil and are unable now to work that we don't give them a free license and we give these people a free  
(continued...)

### C. Employment

Lack of year-round employment is a critical problem affecting the economic status of the Aroostook Band's population.<sup>23</sup> Surveys conducted over the past four years indicate that the unemployment figure among the Aroostook Band is 75%<sup>24</sup>, although some 40% of that number are employed on a seasonal basis, chiefly in either the potato fields or the blueberry

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22(...continued)

license that in my opinion have never worked . . .  
all you have to do is be in good cahoots with  
this council [the Association of Aroostook Indians],  
maybe sleep with an Indian woman a couple of nights,  
and you can be on this registry . . . They are  
continually on the move: they go wherever the biggest  
handouts are. [emphasis added] Legis. Rec. 1080 (1971)

In fact, both the Aroostook Micmac Council office and Pine Tree Legal Assistance have received complaints of discrimination and harassment of Micmac applicants by town officials since repeal of the law concerning reimbursement of general assistance.

23 Undoubtedly, discrimination plays some part in this problem as well. In an interview conducted before the Land Claims Act was settled, the State's CETA representative in Houlton doubted that economic and social conditions would improve in Houlton for the Indians, "It's hard with all that inbreeding. I think the Indian is mentally, and even physically, inferior. What can you do?" Senate Committee Hearings, supra., at 431.

24 B.McBride, "Promises to Keep" Maine Times Vol.19, No.16, supra. Compare this figure with those for other tribes in Maine, where unemployment has dramatically decreased in the years since the Maine Indian Claims Settlement Act of 1980. Thus, for the Passamaquoddies at Pleasant Point, the unemployment figure dropped from 63% to 39%; at Indian Township, it dropped from 80% to 50%. Among the Penobscots, the drop is even more radical: from 50% to 15%. ("Promises to Keep" Maine Times Vol.19, Nos. 13 and 14, supra.).

barrens.<sup>25</sup> By way of comparison, the unemployment rate for the county as whole in 1979 was "only" 18.3%, and for the state, 18%.<sup>26</sup>

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<sup>25</sup> Traditionally, agriculture has provided the major source of cash income for Aroostook County's Indian laborers. The 1982 survey, supra., found that only 9% surveyed had never worked the potato harvest. However, in 1982, only 58% of the Aroostook Indian population continued to gain employment in potato fields during fall picking.

Much of the work is physically demanding, particularly the back-breaking effort of picking potatoes up from the fields and loading them into barrels. The piece rate for this work has not increased in roughly 15 years; with most farmers, it remains 50 cents for a barrel weighing roughly 220 pounds . (depending on field conditions and the harvest, an experienced and strong worker can average 70 barrels in a day).

The decline in the potato industry has also affected the Micmac cottage industry of basket-making, an active part of many Micmacs' lives since the 19th century. While more than half of those interviewed for the 1983 survey said their parents made splint baskets, only one third said they themselves used to make baskets, and less than ten percent continued to make baskets in 1982. The high costs of production (the brown ash is increasingly difficult to find) and the low demand for the product are factors in that decline.

The blueberry harvest has similarly declined. This harvest provides Micmacs with only a fraction of their cash income for the year. (an experienced raker can fill an average of 50-60 boxes a day, at \$2.50 a box, during the short season) However, many view it as their only vacation and a chance to reunite with family and friends who also travel to coastal Washington County in Maine to participate in the harvest in late July and August of each year. The 1982 survey found that 34% surveyed used to rake blueberries but no longer went to the barrens. Only 32% still participate annually. [The 1986 film documentary "Blueberrying on the Barrens: A Micmac Tradition" produced by Linda Lauve Ende of WCBB Channel 10 in Maine highlights this activity and warns of its passing because of the increasing use of mechanical harvesters.]

<sup>26</sup> Poverty in Maine, supra., Vol. 2, at 255. The underemployment figure for Aroostook County in 1979 was 52.5%,  
(continued...)

#### D. Health

The average life expectancy of Aroostook County Micmacs and Maliseets who survive infancy is 45 years.<sup>27</sup>

Among the Aroostook Band in 1983, some 42 percent suffered from some type of health problem and 45 percent had medical bills which they were struggling to pay. Only 59% of the members had any medical insurance at all -- including Medicaid --which served as the insurance for a full two-thirds of the members who had any insurance at all.<sup>28</sup>

Alcoholism among the Micmac population remains a significant

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<sup>26</sup>(...continued)  
however, a reflection of the large part that seasonal labor plays in everyone's economic well-being.

<sup>27</sup> This figure is quoted in the Senate Committee Hearings, supra., at 428. Its source is probably the 1979 survey, supra.

This figure is particularly horrific when it is compared with the Micmac average life expectancy of 37 years, plus or minus three years, before European contact. It should be noted that Europeans did not achieve an average life expectancy of 37 years until the 19th century. L.F.S. Upton, Micmacs and Colonists (Vancouver: Univ. of British Columbia Press) 1979 at 4. In 1983, the average life expectancy of white American men was 71 years. National Center for Health Statistics (DHHS), quoted in the World Almanac for 1983.

<sup>28</sup> Again, according to the 1983 survey. At the same time, roughly 13 to 15% of the Maine population as a whole lacked health insurance of any kind. Health Insurance Coverage in Maine: An Analysis of the Problem, its Effects and Potential Solutions, A Preliminary Report to the Maine Legislature (University of Southern Maine, March, 1986) p.6.

problem.<sup>29</sup> As a result, although there has been no formal study on fetal alcohol syndrome in Aroostook County, it is a part of life among the Micmacs.<sup>30</sup> According to one young Micmac woman living in Houlton in 1981:

In my immediate family, the statistics are bad. I have two brothers and three sisters who are victims of my mother's alcoholism. One sister is severely mentally retarded and the remaining two sisters and two brothers have speech problems. In my family there is supposed to be 15 children but there were four miscarriages.<sup>31</sup>

### **E. Housing**

Housing is also a critical problem which has traditionally faced off-reservation Indians. In Aroostook County, more than half of the Indian families surveyed in 1971 lived in "poor" housing, usually consisting of "rundown old houses, old camps or decrepit apartment buildings."<sup>32</sup>

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<sup>29</sup> Estimated at one time to affect 60% of the Native American families in Aroostook County. Senate Committee Hearings, supra., at 428. The source again is probably the 1979 survey, supra.

<sup>30</sup> Of course, there is a well-known negative correlation between income and children's health, quite apart from fetal alcohol syndrome. For instance, the death rate among children in low income families is three times that of children in non-low income families. Poverty in Maine, supra., Vol. 2, p. 314.

<sup>31</sup> This unidentified Micmac woman is quoted in a 1982 grant application of the Association of Aroostook Indians.

<sup>32</sup> This characterization was described as follows: "the exterior of the house consists of rough boards or logs. They are sometimes covered with roll asphalt paper or novelty siding. The interior has a crude rough finish with no ceiling tiles, and no cabinets or closet space. The floors are usually soft wood with no covering. Heating is by stoves or even fireplaces. There is either a single cold water faucet or pump by the kitchen sink or  
(continued...)

These conditions improved somewhat while the Association of Aroostook Indians was active and administering programs funded by various federal and state agencies.<sup>33</sup> The number of occupied Micmac homes without running water had dropped from over fifty percent to less than twenty percent by 1983.<sup>34</sup>

However, despite some improvements, living conditions are still seriously deficient. Although there are no available statistics on the average number of persons per room among the Micmac community, the existence of extended families living in the same apartment or house makes this an inevitable problem.

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32(...continued)  
no running water at all. Lighting the facility is either done by gas lamps or a single electric light." The 1971 survey at pp.36-37.

33 Over its twelve year history, the Association of Aroostook Indians received grants from the following organizations: the Economic Development Administration of the Department of Commerce, the Office of Native American Programs of the Department of Health, Education and Welfare (Now the Administration for Native Americans in the Department of Health and Human Services), the Office of Economic Opportunity, the Community Services Administration, the National Institute on Alcohol Abuse and Alcoholism, and the Law Enforcement Assistance Administration of the Department of Justice.

In addition to those formal programs, the Association creatively sought additional benefits for its members, through such activities as the acquisition of government surplus trailers from Acadia National Park in Maine, which replaced shacks previously occupied by entire families. Senate Committee Hearings, supra., at 428.

34 According to the 1983 survey, 17% of households surveyed lacked indoor plumbing. At the same time, the state wide percentages dropped from 12.3% to 4.9% and, in Aroostook County, from 14.7% to 4.5%. Poverty in Maine, supra., Vol. 2, at 335, 336.



Most of the Micmacs are tenants, rather than home owners, because of their financial difficulties. Almost 70 percent of the households surveyed in 1983 said their homes needed winterization, and winters in Aroostook County are long and hard. The homes shown in the photographs at Tab #7 of the briefing book are typical of those actually owned by Micmacs in the community.

#### **F. Education**

Another critical area of concern is the lack of formal education received by most members of the Aroostook Band. The education level of off-reservation Indians averaged six years of schooling in 1971.<sup>35</sup> In fact, according to the 1979 Survey, 91% of the 449 Aroostook Indians over the age of 18 had not progressed beyond the eighth grade.<sup>36</sup>

In a partial response to this problem, the North American Indian Scholarship Program was established by the Maine Legislature in 1972 to assist North American Indians, including Micmacs, residing in Maine to obtain a secondary and post-secondary education.<sup>37</sup> From 1976-77 through 1980-1981,

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<sup>35</sup> The 1971 Survey, supra., at 60. This figure was derived by reference to the household head if he was of Indian descent or his spouse, if he was non-Indian; also, by reference to the woman if she was the household head and was of Indian descent.

<sup>36</sup> This statistic is also quoted in the Senate Committee Hearings, supra., at 428.

<sup>37</sup> Pursuant to 20-A M.R.S.A. §12401, included in the definition of "North American Indian residing in Maine" were  
(continued...)

appropriations for the scholarships averaged \$57,000.

However, 1980-81 was the final year in which Maine Indian Scholarship Grants were awarded. The rationale ostensibly was the new availability of federal educational programs for Indians. However, since only members of recognized tribes are eligible for scholarship assistance from the Federal Bureau of Indian Affairs, Micmacs have never been eligible for such assistance.<sup>38</sup>

The North American Indian Scholarship program continued on the books for another two years, until it was quietly repealed as part of a general house-cleaning of educational programs.<sup>39</sup>

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<sup>37</sup>(...continued)

those persons who are members of the Micmac tribe and (1) individually prove one-quarter Indian blood; and (2) have resided in the State during five consecutive years immediately preceding their application for a scholarship.

<sup>38</sup> This fact was specifically recognized by the Maine Legislature in the amended Legislation effective July 1, 1983, wherein it states that,

If funds are available from the Federal Bureau of Indian Affairs, a grant may not be given to any Penobscot or Passamaquoddy student or to any institution when the student is enrolled in a four-year post-secondary degree-granting program. This limitation shall not apply to Micmacs or Maliseet Indians who are not eligible for Federal Bureau of Indian Affairs scholarship.[emphasis added]

20-A M.R.S.A. §12406.

<sup>39</sup> "An Act to Update and Improve the Educational Laws of Maine", L.D. 1135, c.318 §7 (1985). The statement of facts in (continued...)

As a result of these policy changes and other factors, educational attainment continues to elude the Micmacs of Aroostook County. In 1983, the Aroostook Band's membership indicated that 22 percent had not completed primary school, and only slightly over half of the Micmac women said they had finished junior high school. While 41 percent of the women were able to graduate from high school, only two of the men surveyed indicated that they had graduated from high school. <sup>40</sup>

According to the 1981 survey, in Houlton High School alone over 480% more Indians than white students dropped out of school between grades 7-12 during the preceding five years.<sup>41</sup> Although the special tutoring that was being offered to Indian students at the time, those students were reluctant to step forward and thus identify themselves as Indian because of the pervasive attitudes

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<sup>39</sup>(...continued)  
support of its repeal noted that the North American Indian Scholarship program was "no longer funded or operative." The Aroostook Micmac Council was not even aware of its repeal, a fact directly attributable to the loss of its liaison with the State, another casualty of MICSA.

<sup>40</sup> By way of comparison, in 1980, 61.7% of Aroostook County's population then over the age of 25 had graduated from high school. Poverty in Maine, supra., Vol. 2, p. 126.

<sup>41</sup> The drop out rate generally for Aroostook County in 1980 was 3.2 and, in 1983, 2.5. At the same time, the drop out rate among Micmacs and Maliseets was 15.36. Poverty in Maine, supra., Vol. 2, p. 145.

of discrimination that exist in the County.<sup>42</sup>

#### IV. POLITICAL STRUCTURES

The Micmac community has been traditionally characterized by a diffuse political structure. For most of their history in Maine, decisions have been made by the elder within the kin group and not by a more removed political leader. The system works because the community has traditionally functioned as a cohesive whole; more formal political institutions were not necessary.<sup>43</sup>

However, starting in the late 1960's, the Aroostook Micmacs began to perceive a need for a more formal organization which could represent them and act as an advocate for their people. In 1970, the Association of Aroostook Indians was co-founded by a Micmac Indian, Tom Battiste, and a Maliseet, Terry Polchies. For several years, the organization was able to serve both tribal groups but it eventually became dominated by its Maliseet

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<sup>42</sup> The survey in question was conducted by A.A.I. in December of 1981 and entitled the Indian High School Drop Out Survey. According to the white Indian academic tutor at Houlton High, "Indian students hesitate to step forward, say they are Indians and seek assistance from me. Coming to me singles them out as Indians. In school, Indian students prefer to blend into the general high school population." Association of Aroostook Indians grant application 1982.

<sup>43</sup> The Bureau of Indian Affairs has recognized the validity of such forms of political leadership, e.g. the recent Final Determination for Federal Acknowledgement of the Wampanoag Tribal Council of Gay Head, Inc., 52 Federal Register 4193 (February 10, 1987)

membership, in large part because the Association was headquartered in Houlton, where the majority of Maliseets live.

Following MICSA -- and the emergence of the Houlton Band of Maliseets -- the Association of Aroostook Indians was not able to retain its role as an active spokesperson for both tribal groups. re-establish itself as a viable organization. After a series of meetings among the Micmac membership in 1981 and early in 1982, the Aroostook Micmac Council was formed as a nonprofit corporation to work towards federal recognition and economic self-sufficiency for its membership. Headquartered in Presque Isle near the highest concentration of Micmacs, the organization has received annual socioeconomic development grants from the Administration for Native Americans since 1983.

Late in 1986, the membership voted to separate the political aspects of their tribal group's structure from the business focus of the Aroostook Micmac Council's Board of Directors. As a result, a five person tribal council was appointed to serve on an interim basis until the annual elections in June of 1987 when those five positions will be filled by election.

#### **V. THE TRADITION OF BASKET MAKING IN THE AROOSTOOK BAND OF MICMACS**

Perhaps more than any other thing, the modern Micmac community in Aroostook County is preserving its traditions

through its basketry.<sup>44</sup> Micmac women have made baskets for hundreds of years, but only in the last two centuries have they made them for sale. In the past, Micmacs crafted bark-containers, often decorated, and wove bag-like baskets out of rushes, roots, grasses and other materials. Splint basketry, however, is relatively new.

Before the 1920's, Maine farmers imported most of their potato baskets from Nova Scotia, where many Micmacs were involved in this cottage industry. By the second quarter of the 20th century, many Micmacs were "stoop laborers", harvesting potatoes each fall for Aroostook's booming starch industry. They were also supplying farmers directly with the splint baskets used for picking the potatoes. These Aroostook Micmacs made baskets just before the harvest (late August-early September), and also during the slack work-periods from winter until spring.

In present-day Aroostook County, few Micmacs are self-employed basketmakers. The demand for splint potato baskets has become very small for two reasons: the vast majority of Aroostook's potato farms have disappeared over the last two to three decades and those that remain now use primarily mechanized harvesters instead of hand pickers. This decline in basketmaking is reflected in the following percentages, drawn from a recent

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<sup>44</sup> A special section on basketry in this community is located at Tab #11 of the briefing book.

survey in Aroostook County<sup>45</sup>:

More than 66% of Aroostook's Micmacs mentioned  
that their parents had made splint baskets.

48% stated that they, themselves used to make baskets.

Only one out of every eight Micmacs (12 1/2%) now  
makes baskets.

Just 10% now produce baskets for sale.

The basket bank cooperative run by the Aroostook Micmac Council is an attempt to counter these trends by encouraging the production of baskets on a year-round basis. The basket bank purchases baskets from the makers directly and then sells them to customers or to retail outlets such as L.L. Bean's in Freeport, Maine. The basket bank maintains a storefront operation in Presque Isle and also sells through mail order. Its retail customers are located throughout the United States; the basket bank even has received orders from customers in France and Poland.

Baskets made by the members of the Aroostook Band of Micmacs have been sought for the permanent collections of the Peabody Museum in Massachusetts, the Perry Museum at Bowdoin and the Abbe Museum in Bar Harbor, Maine. A 1985 color documentary film entitled "Our Lives in Our Hands," which has been widely shown in this country, is based on the lives of several basket makers

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<sup>45</sup> The 1983 survey, supra.

in the Aroostook Band.<sup>46</sup>

## VI. CONCLUSION

To some extent, the life of David Sanipass, a young member of the Board of Directors of the Aroostook Micmac Council, is symbolic of both the problems and the successes of this community.

David is a full-blooded Micmac, born in Presque Isle in 1958. His parents are master basket makers; David not only makes baskets, but is especially skilled in crafting fine steel and bone-handled crooked knives and other tools, for which he has customers around the country. He has taught himself the arts of blacksmithing, casting, masonry, and wood-carving. His drawings

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<sup>46</sup> The film was produced by Harald Prins and Karen Carter with grants from the Maine Humanities Council, Vera List Foundation, and Maine Arts Commission. The film premiered at the Native American Film and Video Festival at the American Museum of Natural History in New York City in December, 1985. Its Maine premiere was at Wieden Hall Auditorium, University of Maine at Presque Isle in January of 1986.

In 1986, the film was shown at the Festival of American Folklife in Washington, DC; the Society for Visual Anthropology Film Festival in Santa Fe, NM; Native Arts Symposium in Orono, ME; the film sessions of the annual meetings of the American Anthropological Association in Philadelphia, PA; Bowdoin College, ME; Principia College, IL; on WCBB Channel 10 in Maine on April 6, 1986 and at numerous other locations around the State of Maine.

The film is scheduled to be shown in 1987 at the UCLA Film and Folklore Festival, the National Museum of Man in Ottawa, Canada; and the Barbara Meyerhof Film Festival at the University of Southern California, as well as other festivals and locations throughout New England.



in pen and ink and other mediums decorate the walls of the tribal headquarters in Presque Isle, as well as the cover of this briefing book. As his father has served as the archivist of the Aroostook Band through his photography<sup>47</sup>, David now preserves its history through video-taping the Band's events, another self-taught activity. He has a general contractor's license, manages his apartment complex in Presque Isle, teaches karate, and has guided sportsmen through Aroostook County.

And yet, he scarcely went a week in high school in Presque Isle without being involved in a fight and was constantly ridiculed by other students because of his Micmac heritage. "It took me a long time to become proud of being an Indian," he now admits,<sup>48</sup> although his achievements using the traditional skills of his people are great and he now is comfortable with the role of "faith keeper" among the younger generation of the Aroostook Band.

His achievements are particularly remarkable when placed in the context of the harsh poverty and social pressures which were such a significant part of his life until recent years. He is clearly a survivor; the future, for many of his generation, is less certain and more bleak.

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<sup>47</sup> All of the photographs in the section of color photography were taken by Donald Sanipass, either for this project or for his own collection.

<sup>48</sup> "Promises to Keep" (January 23, 1986), supra.

TAB #7

















**RELATIONSHIP BETWEEN THE AROOSTOOK BAND OF MICMACS  
AND THE MICMAC NATION IN CANADA**

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# RELATIONSHIP BETWEEN THE AROOSTOOK BAND OF MICMACS AND THE MICMAC NATION IN CANADA

## I. INTRODUCTION

There is an historic and strong connection between individual members of the Aroostook Band of Micmacs and the Canadian Micmac Bands. The same is not true of their band organizations; each band functions autonomously. There is no universally accepted entity which governs or directs the Micmac Nation as a whole.

The following discussion is divided into three sections, in order to address various aspects of the Aroostook Band's status as part of a cross-border Indian Nation. First, the specific connections between the Aroostook Band and the other Canadian bands of Micmac Indians are discussed, both in terms of the relations between individual Micmacs and in terms of the broader political relations between the Aroostook Band and the other Canadian bands of Micmac Indians.

Second, the impact of cross-border presence on the issue of federal recognition as a tribe, and in the context of land claims litigation is discussed. Obviously, both of these issues are relevant to the legislative reference of the Aroostook Band's claims against the United States.

Finally, there is a brief summary of other federal and state

laws which address the issues created by cross-border presence, indicating that this situation is one which has been accepted and, in some cases, specially acknowledged by various federal and state laws.

## II. RELATIONSHIP BETWEEN THE AROOSTOOK BAND AND THE OTHER CANADIAN BANDS OF MICMACS

The Aroostook Band of Micmacs is one of 29 bands<sup>1</sup> which comprise the Micmac Nation. The Aroostook Band of Micmacs is now centered in Aroostook County, Maine, although the Micmac Nation has had a presence in the State of Maine since time immemorial. The other modern bands are located in five provinces in Canada.<sup>2</sup> Only two lack a land base.<sup>3</sup>

The current membership of the Aroostook Band is between 350 and 400 members. The Canadian bands average 360 members.<sup>4</sup>

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<sup>1</sup> In 1984, the Canadian government recognized two new bands, the Miawpukek [Conne River] Band in Newfoundland and the Horton band in Nova Scotia, which are included in the total.

There appears to be some confusion over the status of one of the 29 bands, at Gaspé, Quebec. According to the Department of Indian Affairs and Northern Development, it is an official band, but other publications of the Department do not list it.

<sup>2</sup> New Brunswick, Nova Scotia, Quebec, Prince Edward Island and Newfoundland.

<sup>3</sup> The Aroostook Band in Maine and the Conne River Band in Newfoundland.

<sup>4</sup> Based on 1972 statistics which predate the creation of the Conne River and Horton Bands. More than 30% of enrolled band (continued...)

In 1983, more than three-quarters of the surveyed members of the Aroostook Band had relatives living on Canadian reserves.<sup>5</sup> Slightly over one quarter of the Band's members are Canadian citizens by birth<sup>6</sup>, although all think of themselves as "North American citizens" by virtue of their Jay Treaty rights.<sup>7</sup>

In 1983, less than half of the adult members surveyed had "Indian Status" in Canada,<sup>8</sup> despite the fact that virtually all

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<sup>4</sup>(...continued)  
members were absent from the reserves at any given time. (Bock 1974:120)

<sup>5</sup> The tribal lands owned by the bands in Canada are referred to as "reserves;" they would be "reservations" in the United States. The information is based on the 1983 unpublished survey discussed in note 1, Tab 5, of the briefing book.

<sup>6</sup> Based on information provided to the Aroostook Micmac Council as of November 23, 1986.

<sup>7</sup> Discussed in detail in Section IV, infra.

<sup>8</sup> Before the passage of Bill C-31 in 1985, the Indian Act in Canada (R.S., c.I-6) generally defined "status Indians" in two ways:

-first, an Indian was any person who was a member of a "Band" recognized for the purposes of the Act (whether or not the band had reserve lands)

-second, an Indian was any person not denied recognition as "status" Indians by virtue of marriage, occupation, enfranchisement and other provisions of the Act.

On June 28, 1985, Parliament passed Bill C-31 "An Act to Amend the Indian Act," [effective April 17, 1985] which ended many of the discriminatory provisions of the Indian Act; changed the meaning of "status" to allow for limited reinstatement of Indians who were denied or lost status and/or band membership in the past; and allows bands to define their own membership rules.

Under the new Indian Act, status cannot be given or taken away for any reason, but band membership can be taken away under a band's membership code. The new Indian Act also prevents some  
(continued...)

the members' genealogical histories include ancestors listed as "Indian" on 19th century Canadian census reports.<sup>9</sup>

To the extent that Aroostook Band members currently have band status in Canada, it is a reflection of both a previous band affiliation of their parents and a recognition of the economic hardships which currently are presented to them as members of the Aroostook Band. With the passage of the Maine Indian Claims Settlement Act of 1980 (MICSA), Aroostook Band members lost the few services available to them as members of a recognized Band in Maine; as the discussion at Tab 5 of the briefing book indicates, the band faces severe economic hardship and discrimination in the administration of the welfare programs for which they are eligible with other members of the public in Maine. Membership in the Canadian bands for some preserves the option of certain limited benefits in terms of medical assistance and other social welfare

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<sup>8</sup>(...continued)  
people who are reinstated to band membership from receiving band monies and, depending on the action taken by the band, may deny reinstated band members some programs and services. "Bill C-31 & the New Indian Act" Guidebook # 1: Applying for Status (Ottawa: Native Council of Canada, 1985).

It is not yet clear what impact these changes will have on those members of the Aroostook Band who hold band cards or who are eligible for band membership in Canada. It is also important to remember that eligibility and even membership in a Canadian band does not make a given individual eligible for the various benefits of that status under Canadian law, as most such benefits are clearly tied to residence on the band's reserves, under the Indian Act itself.

<sup>9</sup> Based on the evidence contained in those charts on file with the Aroostook Micmac Council and available for review at the offices of Pine Tree Legal Assistance, Augusta, Maine.

programs, although these benefits are generally restricted to residency in Canada and specifically on the band's reserve.<sup>10</sup>

The Aroostook Band is a recognized tribal entity by such Canadian organizations as the Unions of Nova Scotia<sup>11</sup> and New Brunswick Indians.<sup>12</sup> As such, it has served as the sponsor of meetings of general interest to the Micmac community in northern Maine,<sup>13</sup> and as a limited resource for Canadian Micmacs temporarily in the area for the potato harvest or for other reasons.

As an ethnic group, the Micmac Nation is divided in bands

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<sup>10</sup> "The Canadian Indian: A Brief Outline" (Ottawa: Dept. of Indian Affairs and Northern Development, 1973) According to that report, there is no specific federal legislation whereby the Federal Government is authorized to establish or maintain a social services program on behalf of Indian residents of Canada. The authority for providing that program is an allotment included in the funds appropriated every year by Parliament for the administration of Indian Affairs. Appropriation for welfare purposes provides for financial assistance and services to: indigent, registered Indians living on the reserves; indigent, registered Indians living off reserves who are not considered to be eligible for assistance from any source in the non-Indian community in which they may be living at time of need; and specific categories of non-Indians living on the reserves. For a comprehensive discussion of the origins of the Canadian welfare policies towards the Micmacs, see L.F.S. Upton, Micmacs and Colonists, supra..

<sup>11</sup> an organization which is exclusively comprised of Micmac bands.

<sup>12</sup> an organization which includes both Micmac and Maliseet members.

<sup>13</sup> Such as training sessions on the impact of Bill C-31, discussed supra..

that enjoy limited political autonomy. There is no uniformly accepted political leadership over the entire Micmac tribe.<sup>14</sup>

Historically, a traditional entity called the Grand Council of the Micmac Nation constituted one of the Micmac political institutions.<sup>15</sup> The Grand Council, made up of a hereditary life chief and his appointed captains, is located on Cape Breton Island, Nova Scotia, and does receive recognition as a significant political force among the Nova Scotia and particularly the Cape Breton Micmac bands. The Grand Council also is given limited recognition status by the United Nations, but it is not recognized by the Canadian or United States Governments, and it does not speak for all the bands in Canada.

Under Canadian law, the bands are allowed to exercise

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<sup>14</sup> The Bands in Canada are organized in a number of different bodies: the Unions of New Brunswick and Nova Scotia Indians, the Native Association of Newfoundland/Labrador, the Federation of Indians of Quebec, and the Assembly of First Nations (formerly, the National Indian Brotherhood). These entities serve as liaisons with the Canadian government, but have not been delegated any specific authority by the bands.

In fact, the Canadian government does not recognize such an entity as the Micmac tribe; a Department employee in the Office of Statistics recently insisted on describing the 28 bands recognized in Canada as falling under the general rubric of "Micmac-speaking bands."

<sup>15</sup> The Grand Council is mentioned in one paragraph by Wallis in his report entitled "Historical Background of the Micmac Indians of Canada", published by the Dept. of Northern Affairs and National Resources c. 1959, at p.57. It is not mentioned at all by Upton in his text, Micmacs and Colonists, supra.

certain limited powers over their individual members.<sup>16</sup> The chief and councilors of the bands are elected and serve primarily as mediators between the people and the Department of Indian Affairs. However, diverging local interests and the lack of a strong political structure, combined with traditional patterns of egalitarianism and avoidance of interpersonal conflicts, make it problematical for unity to be achieved, decisions to be made, support to be solicited, or opposition to be heard.<sup>17</sup>

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<sup>16</sup> The British North America Act of 1867 was drafted to insure a strong federal government with provincial government control over only local matters. The federal parliament has, by section 91(24) exclusive legislative jurisdiction over Indians and lands reserved for the Indians. The first Indian Act was passed one year following Confederation, and with infrequent revisions, the present Indian Act (contained at R.S., c.I-6, amended by c.10(2nd Supp.) 1974-75-76, c.48, and by Bill C-31, passed in 1985) creates local Indian governments with limited delegated authority.

The powers given to band councils are limited in one of two ways. The band must either obtain ministerial approval for actions it has taken, or it must request that the minister act on its behalf by making a regulation or order affecting the band in question. The powers of band councils are further restricted in that they cover only matters of a local or social nature. These powers closely parallel the powers granted to provincial legislatures under Section 92. However, power over education is not given to the bands but is exercised by the minister. Michael Asch, Home and Native Land (Toronto: Methuen Publications) 1984, Appendix D. This appendix also contains a useful chart comparing provincial powers with band council powers and ministerial powers for the band.

<sup>17</sup> Philip K. Bock, "The Micmac Indians of Restigouche: History and Contemporary Description" (National Museum of Canada, Bulletin 213, 1966) at 65.

### III. SUMMARY OF TREATMENT BY THE UNITED STATES OF OTHER CROSS-BORDER TRIBES

#### A. Introduction

The Aroostook Band of Micmacs is not unique either in terms of having aboriginal lands which span the international boundary or because it is one of several bands of an historic tribe, of which several are now resident and recognized in Canada.<sup>18</sup>

In fact, more than thirty tribes on the northern border of the United States are affected by issues specific to their cross-border status, including members of the Wabanaki and Iroquois Confederacies, the Ojibwa, Ottawa, Lakota Sioux, Salish, Colville, several tribes of western Washington state, and the Haida, Tlingit and Tsimshian of Alaska and Canada.<sup>19</sup>

Historically, a number of migrating tribes and bands were either forcibly relocated across the border or voluntarily withdrew or relocated across the border from their original

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<sup>18</sup> For instance, in the 19th century, the Passamaquoddy Tribe of Maine was recognized by the Canadian Government, which served those Indians through its Indian Agent located in Charlotte County, New Brunswick. (Wherry 1981: 10-17)

<sup>19</sup> Similar problems are faced by the southern tribes such as the Yaquis and Kickapoo. O'Brien, "The Medicine Line: A Border Dividing Tribal Sovereignty, Economies and Families," Fordham Law Review, Vol. 53, [1984] pp. 315-316. This article generally discusses the impact of the international boundary line on tribes with cross-border presence and specifically discusses the problems faced by the Micmac in the context of tribal recognition and their exclusion from the Maine Indian Claims Settlement Act at pp 324-325.



aboriginal territories. These groups include the Hurons [Wyandots] in Quebec and Oklahoma, the Delaware and Munsee in Oklahoma, Ontario and Wisconsin, the Nanticoke in Delaware and Ontario--all of whose migrations started in the 18th century or earlier. Others, including the Sioux, crossed the border as refugees, fleeing from a war zone.

As a matter of policy, the courts have indicated that rights of these migrating groups are not affected by the identity of their original place of origin.<sup>20</sup>

Still others have historically maintained separate and distinct tribal bodies on both sides of the border, such as the St.Regis Tribe.<sup>21</sup>

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<sup>20</sup> For instance, in a case involving the removal of a fishing trap in waters within the Metlakatla reservation, while the Court notes that these Indians "recently emigrated from British Columbia to Alaska," the fact that they "were foreign-born" was made immaterial by the action of Congress in 1891 in establishing a reservation for them. Alaska Pacific Fisheries v. United States, 39 S.Ct. 40, 248 U.S. 78 (1918).

Similarly, while the Nooksack tribe was considered Canadian until 1973, after that date, it was recognized by the United States. A trial court therefore erred in not notifying the tribe of pending proceedings under the Indian Child Welfare Act. In re Junious M., 193 Cal. Rptr.40, 42-43 (Cal.App. 1 Dist. 1983).

<sup>21</sup> During the War of 1812, the British apparently prevented the Mohawks and their other Seven Nations allies at St. Regis from maintaining a single government in the reservation lands which are located in adjacent areas of New York, Ontario and Quebec. Hence, St. Regis now has three governments: one is the traditional Long House through which the Mohawks function as  
(continued...)

## B. Federal Recognition as a tribe

The existence of tribes with cross-border presence has been relevant in the context of federal recognition policies, since some of these cross-border tribes are recognized in Canada, but not in the United States.<sup>22</sup>

The regulations promulgated by the Department of the Interior in connection with the federal acknowledgement procedures do not specifically address this situation, although petitioning groups are required to identify how many of their

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<sup>21</sup>(...continued)

the Eastern Door of the Six Nations Confederacy; the second is the New York side Tribal Council, which apparently is descended from the Seven Nations Treaty; and the third, on the Canadian side, is organized under the Indian Act.

The case of Fischer v. Tebo, 9 A.D.2d 470 (1959), involved a member of the St.Regis tribe who was registered in Canada, but born in the United States and a U.S.Citizen. He bought land on the American Reservation, without permission, and started to build on it. The chiefs of the American branch requested the District Attorney to remove him as an intruder. The Court upheld the action of the American chiefs as within their authority.

In so ruling, the Court noted that the Canadian branch of the St. Regis tribe is a separate and complete entity, located in the province of Quebec, opposite the American branch. Aside from the name there is no community of rights or privileges. A member of one branch is not a member of the other, although originally part of the same tribe. While the court notes that Tebo is theoretically entitled to live on a reservation of the tribe, since the two branches are separate and distinct and since the action of the American chiefs is within their authority, he cannot now be heard to complain of the results of his earlier election of membership with the Canadian branch.

<sup>22</sup> The discussion at pp. 324-325 of "The Medicine Line," supra., is a brief summary of some of the affected tribes.

members hold membership in other "North American" tribes.<sup>23</sup>

To date, there have been no Petitions processed to completion in which the issue of cross border presence was raised, and no formal Bureau policy statements on this issue are known to exist.<sup>24</sup> However, it is an issue in at least two pending petitions which have been preliminarily reviewed by the Acknowledgement staff at the Bureau of Indian Affairs.

In the Letter of Obvious Deficiencies concerning the Abenaki Petition, the Bureau requested a discussion of the "historical relationship from 1800 onward between the Abenakis of Odanak and Becancour [in Canada] and those of the aboriginal Missisquoi area. . .including social contacts, migration in either

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<sup>23</sup> 25 C.F.R. Part 83 et.seq., and in particular, §83.7(f), the requirement that "the membership . . .is composed principally of person who are not members of any other North American Indian tribe."

<sup>24</sup> However, the memorandum of 12-6-79 from the Assistant Secretary-Indian Affairs to the Solicitor, concerning the Houlton Band of Maliseets' claim to tribal existence does address this subject in a limited way. He notes that there are "strong social, cultural and family ties" between the Houlton Band and the Maliseet Nation in Canada. However, "it does not appear that a substantial number of the members are Canadian citizens or enrolled with Canadian bands.. Such membership by a substantial portion of the band would rule out recognition under the regulations." It is believed that roughly the same percentage of members in the 1980 Houlton Band of Maliseet Indians and 1987 Aroostook Band of Micmacs are Canadian citizens and/or enrolled members with a Canadian band. After 1980, new members of the Houlton Band were required to hold U.S. citizenship; a similar prospective requirement could undoubtedly be imposed with respect to the Aroostook Band of Micmacs.

direction, and shared territory and social activities." 25

(The Western Abenakis of Vermont are not recognized in the United States, although other bands of that tribe are recognized in Canada, and their aboriginal lands occupy both sides of the U.S.-Canadian boundary.) 26

Similar points were raised in the Letter of Obvious Deficiencies sent to the Little Shell Tribe of Chippewa Indians of Montana on April 18, 1985. 27 The tribe's response to that request for additional information is not yet completed.

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25 Letter sent to Mr. Leonard J. Medor from John W. Fritz, Deputy Assistant Secretary -- Indian Affairs, dated June 14, 1983. The Abenakis have recently completed their response to this letter. Preliminary findings by the Acknowledgment staff on this petition are not expected until 1988; it will be the first decision by the Bureau of Indian Affairs which addresses the issue of cross-border presence in the context of an acknowledgment petition. (PTLA telephone conversation of 1-13-87 with Bruce Thompson of the Acknowledgement staff).

26 In 1976, the Abenaki Bands of Odanak and Becancour issued formal resolutions calling on the United States government to officially recognize the tribal status and land claims of the Abenakis in Vermont, as they were recognized by the Abenaki bands in Canada. The Abenakis of Vermont have filed a petition for federal acknowledgement which has been preliminarily reviewed by the Acknowledgement staff at the Bureau of Indian Affairs. The staff "Letter of Obvious Deficiencies" cites the need to further discuss and clarify the relationship between the Vermont and Canadian bands. The Band's response to that letter has not been completed at the present time.

27 "While the petition acknowledges Metis influence, please describe in more detail when and how these cultural features were incorporated into the current culture of the Little Shell Chippewa of Montana. What are the relationship of the Canadian and/or American Metis, and the American and/or Canadian Chippewa to the Little Shell people?" Id.

C. U.S. Treaties and land claims litigation involving cross-border tribes

Historically, the United States made treaties with Indian tribes regardless of the border, because such treaties necessarily reflected aboriginal political organization:

Indians are not subject to, or amenable to any power, they have always been viewed as a distinct Body, governed by their own customs and manners, nor will they ever tamely submit to any authority different from their own, while they remain in the present uncivilized state. Their mode of life leads them thro' the Territory of different nations, their residence uncertain and changeable, that it cannot be known where they really belong except that they were born in such a district and may be called by the name of a tribe. <sup>28</sup>

Indeed, the international boundary imposed in the 18th and early 19th centuries was not intended to disrupt tribal territories:

At the time the boundary line. . .was fixed and located. . .the line. . .was clearly not intended to and just as clearly did not affect Indians. It made no division of their country.<sup>29</sup>

However, federal and state governments in the United States have slowly interposed the international border as a divisive factor in Indian political organization. They have done so for administrative, ideological and geopolitical reasons.<sup>30</sup>

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<sup>28</sup> Allan Letter to Samuel Adams, quoted in Frederick Kidder, *Military Operations in Eastern Maine and Nova Scotia During the Revolution*, (Albany: 1867), 318.

<sup>29</sup> United States ex.rel. Diabo v. McCandless, 18 F.2d 282, 283 (E.D. Pa. 1927), aff'd, 25 F.2d 71 (3d Cir., 1928).

<sup>30</sup> See for example the letter from Governor Hubbard of Maine which was sent to the Passamaquoddies in 1852:

(continued...)

This has been very apparent in the context of aboriginal land claims litigation, which frequently have involved entities on both sides of the international boundary line.<sup>31</sup> Eventually, this led to a determination by one tribunal that such claims could not be maintained by the tribal entity as a whole, but only on behalf of the tribal members on one side of the border:

So far as an Indian tribe exists as a legal unit, it is by virtue of the domestic law of the sovereign nation within whose territory the tribe occupies the land, and so far only as that law recognizes it.<sup>32</sup>

In the instant case, the aboriginal land claims of the Micmac Nation to lands in Maine are being asserted by only one band of the historic tribe, the Aroostook Band of Micmacs.<sup>33</sup>

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<sup>30</sup>(...continued)

We are told that some of you wish to call upon your red brethren of the tribe of St. Francis in Canada to settle your difficulties. We think you had better not. . . . They are controlled by the British government and their interests are different from yours and from ours.

Governor John Hubbard of Maine, January 1852 to "Our Brethren, the Passamaquoddy Tribe of Indians," in the Maine State Library collections.

<sup>31</sup> A good general discussion of these types of claims is contained in Chapter 7 of a text by Richard C. Daniel, A History of Native Claims Processes in Canada: 1867 to 1979, (Ottawa: Dept. of Indian and Northern Affairs, 1980) at 85-88.

<sup>32</sup> 20 American Journal of International Law 574 (1926)

<sup>33</sup> There is precedent for this type of action. For instance, in Turtle Mountain Band of Chippewa Ind. v. United States, 490 F.2d 935 (1974), the Commission found that a "Chippewa entity" held title prior to 1905 to the large area involved. The court subsequently recognized a number of different tribal groups as "successors in interest" to the  
(continued...)

Although there have been instances where cross border tribes have successfully asserted claims against the United States, as discussed above, as a general policy, participation in judgment awards have been restricted to tribal groups resident in the United States, and in particular, to those members who are U.S.citizens.<sup>34</sup>

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<sup>33</sup>(...continued)  
Chippewa entity. The evidence produced at trial must have showed seasonal migrations across the border for,

a great many of them were British subjects residing for most of the year in Canada. . . .The demographic pattern in this area did not respect international boundaries and full and mixed blood Chippewas could be found in large numbers of either side of the border. Considering all the evidence, we cannot say that the Commission lacked substantial support for holding . . . that American Chippewa full and mixed bloods, rather than Canadian mixed bloods, exercised sufficient dominion over the award area.

Ibid., at 944.

<sup>34</sup> For instance, in a case involving the right of Canadian Sioux Indians to participate in the Mississippi Sioux Judgment Fund, the Department of the Interior took the position that, as a matter of policy, noncitizens of the United States should not participate in the distribution of the judgment. The Opinion of the Solicitor in that case notes that Congress has both allowed and disallowed participation by noncitizen Indians in claims awards; "Therefore, we respectfully submit that the question of whether these Canadian Indians should participate in the distribution of the award is now solely within the power of Congress to determine." Opinion of the Solicitor, (May 6, 1971). It should be noted that the language adopted by Congress in settling that case specifically restricted participation in the distribution to U.S. citizens. 25 U.S.C. §1300d-5.

Although MICSAs benefits were not specifically restricted to U.S.citizens, the settlement did impose a U.S. citizenship requirement on members of the Houlton Band who were neither enrolled in the band on October 10, 1980 nor the direct lineal descendants of such members. 25 U.S.C. § 1726(b).

#### IV. OTHER FEDERAL AND STATE LAWS WHICH ADDRESS THE UNIQUE CIRCUMSTANCES POSED BY CROSS BORDER TRIBES

##### A. In general

There are a number of other contexts, outside the specific areas of federal recognition and land claims litigation, in which an Indian's status as a member of a cross-border tribe is either an assert or irrelevant.

As discussed below, that status guarantees tribal members special border-crossing privileges under the Jay Treaty and related statutes. The cross-border status of a tribe does not prevent the tribe from receiving federal funding under programs administered by the Administration for Native Americans. Moreover, the citizenship of tribal members is not an issue in the provision of Indian Health Services benefits, or most Bureau of Indian Affairs programs, if the tribe itself is recognized as an eligible recipient by those agencies.

##### B. The Jay Treaty

The Jay Treaty of 1794 confirmed the right of tribes whose aboriginal lands spanned the international boundary to freely pass and repass the border and to carry on trade and commerce on both sides of the border.<sup>35</sup>

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<sup>35</sup> The Jay Treaty derives its name from the role played by Justice John Jay in the negotiations between the United States and Great Britain which resulted in the Treaty of Amity and Commerce of 1794. The relevant language is contained in Article III of the treaty, 8 Stat. 116, which provided in relevant part:  
(continued...)



Later, there was some debate as to whether or not portions of the Jay Treaty were abrogated by the War of 1812. Congress ended that debate by enacting Section 289 of the Immigration and Nationality Act of 1952, now codified at 8 USC §1359:

Nothing in this subchapter [dealing with immigration] shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such rights shall extend only to persons who possess at

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35(...continued)

It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, freely, to carry on trade and commerce with each other.

In 1796, the United States and Great Britain further agreed to the Explanatory Article of May 4, 1796, 8 Stat. 130, which provided in part:

That no stipulations in any treaty subsequently concluded by either of the contracting parties with any other State or Nation, or with any Indian tribe can be understood to derogate in any manner from the rights of free intercourse and commerce secured by the aforesaid third Article. . . .  
. . .but that all the said persons shall remain at full liberty freely to pass and repass, by land or inland navigation, into the respective territories and countries of the contracting parties, on either side of the said boundary line, and freely to carry on trade and commerce with each other according to the stipulations of the third article of the treaty of amity, commerce and navigation.[Jay Treaty].

least 50 percent of blood in the American Indian race.<sup>36</sup>

(These rights have not been affected by the recent passage of the "Immigration Reform and Control Act of 1986", signed into law by President Reagan on November 7, 1986).<sup>37</sup>

Today, unlike other people living in Canada, members of such cross border tribes have the right to enter the United States without completing alien registration forms; they cannot be deported and do not need to obtain a "green card" in order to work here.<sup>38</sup>

Canada did not sign the Jay Treaty and has never passed legislation enacting the Treaty's provisions; as a result, the Canadian Government has taken the position that its provisions do not apply in Canada. In practice, it is applied at the discretion of the border official involved.<sup>39</sup>

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<sup>36</sup> Since Canada does not keep blood quantum records, the law as written is impossible to apply. In reality, the Immigration Department recognizes a band card issued by the reserve's band council or the Department of Indian Affairs and Northern Development, an affidavit from a tribal official or identification from a recognized Indian provincial or territorial organization. O'Brien, "The Medicine Line", supra., at note 83.

<sup>37</sup> The new Act deals largely with a new process whereby illegal immigrants may gain citizenship and makes no reference to Canadian Indians living in the United States, nor does it amend that section of the 1952 Act which acknowledges those rights.

<sup>38</sup> O'Brien, "The Medicine Line" supra., at 329.

<sup>39</sup> O'Brien, "The Medicine Line", supra.

### **C. Administration for Native Americans service population**

The Administration for Native Americans specifically changed an early definition of "American Indian" to recognize the eligible tribal status of the Micmacs.

The introduction to the final regulations (which were also used as the basis for the American Indian Policy Review Commission and proposed Community Services Administration definitions) noted that,

Several letters requested changes in the definition of "American Indian or Indian." The major objection to the definition in the proposed Regulations was that it required United States citizenship. This citizenship requirement in effect excluded certain groups such as the Micmacs and Maliseets who have had longstanding special relationships with either the United States government or who have had special historical ties with the land which now constitutes the United States.

As a result, the citizenship requirement was dropped<sup>40</sup> and both the Association of Aroostook Indians and its successor, the Aroostook Micmac Council, have been able to obtain funding from the Administration, despite their cross-border status.<sup>41</sup>

### **D. Indian Health Services eligibility**

The Indian Health Services similarly does not require U.S. citizenship of its eligible service population, although it more stringently restricts that definition in terms of eligible

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<sup>40</sup> Federal Register, 1/19/77 pg.3785.

<sup>41</sup> Again, as earlier noted, the majority of members of the Aroostook Band of Micmacs are U.S. citizens.

tribal groups. 42

## V. CONCLUSION

As the preceding discussion makes clear, the connections between the Aroostook Band of Micmacs and the other bands of the Micmac Nation in Canada should have no negative impact on consideration of the legislative reference.

While many adult members of the Aroostook Band have ties to the reserves in Canada, most of those connections are social and based on kin group alliances. The few who do have "Indian

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42 According to a 1984 letter prepared by the Indian Health Service and cleared by the Office of the General Counsel, Canadian Indians are not eligible for IHS services unless they are descended from an Indian tribe or community with which the U.S. has established a government-to-government relationship. While U.S. citizenship is not required, the exception contemplates those tribes which are indigenous to the United States and recognized by the Federal Government, but whose traditional lands were split by the Canadian-U.S. border (e.g. the St.Regis Mohawks) or the Mexican-U.S. border (e.g. Papago) or had at some time in the past left the U.S. for either Mexico (e.g. the Kickapoo of Nacimiento) or Canada (e.g., the Delaware Band of the Six Nations Reserve).

Tribal members not eligible for IHS services would include those people of Indian blood who trace their ancestry to (1) non-U.S. tribes which have no connection to a U.S. tribe (e.g. Aztec); (2) non-U.S. tribes that moved to the U.S. (e.g. the Paqua Yaqui from Mexico and the Metlakatla Indian Community from Canada before their respective recognition by Congress); and (3) Indian groups within the U.S. which never established any government-to-government relationship with the U.S. government (e.g. Lumbee). Letter of Dr. Robert Graham, Assistant Surgeon General, to Tom Weist, Tribal Grantsperson of the Chippewa Cree Tribe of the Rocky Boy's Reservation, dated June 6, 1984.

status" in Canada received it automatically by virtue of their parents' "Indian status" there.

Moreover, there are many tribes with a historic cross-border presence along both the Canadian and Mexican borders of this country. The tribal acknowledgement procedures of the Bureau of Indian Affairs do not specifically address this situation, and the Bureau has not yet decided the petition of a tribal group with cross-border ties. While cross-border presence has been raised as an issue in the context of tribal land claims, it has not yet precluded a band located in the United States from asserting a claim to lands in the United States.

Finally, the very fact that Indian tribes were not considered in the drafting of the United States boundaries has given rise to special treatment under federal law for their member populations, guaranteeing their right of free passage from one country to another. The programs and benefits offered by the Bureau of Indian Affairs and other Federal and State programs specifically accommodate those situations and, at most, require U.S.citizenship of beneficiaries in certain limited contexts.



**EVIDENCE OF THE PRESENCE OF THE MICMAC NATION IN MAINE  
DURING THE 18TH CENTURY: A BRIEF SUMMARY  
By Dr. Harald E.L Prins<sup>1</sup>**

**I. Introduction**

The following is excerpted from a longer discussion of Micmac presence in the State of Maine from the 16th century to the modern period. It is intended to counter traditional concepts of the Micmac Nation as historically located within the boundaries of modern Canada, and represents a small fraction of my total research in this area.

**II. The early 18th century**

Baron de Lahontan, like other independent French observers in the region, noted during this period that,

The three principal Savage Nations that live upon the Coasts of Acadia, are the Abenakis, the Mikemak, and the Canibas. There are some other errattick Nations, who go and come from Acadia, to New England, and to by the names of Mahingans [Mahicans], Soccokis [Connecticut River Indians], and Openangos [Penacook, or Merrimack River Indians]. The first three (having fixed Habitations) are intirely in the interests of the French.<sup>2</sup>

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<sup>1</sup> Dr. Prins holds a Doctoraal in Anthropology from University of Nijmegen and a M.A. in Anthropology from the New School for Social Research in New York. Dr Prins has studied the Aroostook Band of Micmacs since 1981 and is currently a visiting professor in Anthropology at Bowdoin College.

<sup>2</sup> (Lahontan 1703:327-328) The reference to "fixed habitations" in this quotation should not be understood to imply that the tribes had established any permanent settlements at this time. The original phrase in old French cannot be precisely translated into modern English. In fact, both Lahontan and other observers of this period commented on the migratory and non-fixed nature of these Indian peoples.

His description counts among the first to describe the region of Acadia as including these three tribes.<sup>3</sup>

The Sieur de Diereville, a French medical doctor who lived in Acadia during the years 1699 to 1700 confirms earlier reports about Micmac tribespeople inhabiting the St. John River drainage:

The savages in the neighborhood of Port Royal [on the west-coast of Nova Scotia, called Annapolis] are called Miquemaques [Micmacs]; they are also found along the St. John River. . . The Maricites [Maliseets] likewise dwell there. . . (Diereville 1708: 184-185).

Despite the French and English peace treaty of 1698, in 1703, Micmac Indians landed in the Penobscot Bay area, at Mount Desert Island, and from there launched raids against the English settlers at Casco and Wells in Southern Maine (Rasle, in Beauharnais and Vaudreuil, 1703, in NYCD, Vol. IX:756).<sup>4</sup> Colonel Dudley of the New England forces commented that the Indians,

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<sup>3</sup> It should be noted that the term "Acadia" refers to the lands east of the Penobscot River--an area which includes much of modern day Maine. (JR., Vol. XXXXV; 59); Lahontan, New Voyages to North America, 327-328.

<sup>4</sup> The French missionaries in the Indian villages of Androscoggin, Sandy, Kennebec, and Penobscot Rivers, urged the Abenakis to seek refuge from the English in the border lands of New England. They "told the Indians that they must look for some other country, for that it was impossible for them to live there" (Church 1851:283). Indeed, as Thomas Hutchinson later wrote, the French "drew off, about this time, a great number of the Abenakis families from Penobscot, Norridgewock, Saco, Pigwacket, &c., and settle them at Becancour and St. Francois. . . ." (Hutchinson, Vol. II:106).



together with French officers and soldiers and two priests, "came across the Bay of Fundee and have debauched all the Eastern Coast from St. Croix to the Province of Maine (Kennebec River), and with the greatest profidity and secrecy scatter's themselves to the length of 100 miles," attacking English fortifications and settlements (Baxter Mss., Vol. IX:152).

After these raids, the Queen Anne's War raged in the American colonies, lasting until 1713. In this war, the Micmacs were allied with the Penobscots and Abenakis, again under the French command.<sup>5</sup> The English took over the Gulf of Maine territories from the French in 1707, although the Indians were able to keep the English from their lands.<sup>6</sup>

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<sup>5</sup> In 1705, "the Chief of the Indians of Pentagoet (Penobscot) arrived at Port Royal with a Boston bark [barque] that he had taken. He had two bark canoes and twelve men to effect this capture." These warriors from Penobscot Bay were given brandy and ammunition, at a feast hosted by the French commander, "at which the Canibas and the Micmacs met and fraternized. The Micmacs promised to join them in war, and the Canibas gave the Micmacs the prisoner. . . ." (Murdoch, Vol. I:280).

<sup>6</sup> The French commander of Port Royal, before his surrender, wrote to France that, the Micmac Indians were all naked, and that the Canibas and Malecites would be in the same condition, but for a trade they carried on through the Mahingans [Mahicans] with the English [at Albany], who gave an ecu for every pound of their beaver, and they obtained the European goods at cheap prices. Thus the enemies of France supplied the necessities of their most faithful allies, while the French allowed them to suffer the want of the necessities of life.

(Subercase 1707, in Murdoch, Vol. I:289). Note: these Canibas were the warriors from the Penobscot and Kennebec River, who were joined with the Micmacs and Maliseets, and stood under command of (continued...)

In 1708, the French missionaries<sup>7</sup> took a census of the Indian population in Acadia, in particular the region between the Kennebec River and Cape Breton, which was inhabited by the Abenakis, Maliseets and Micmacs.<sup>8</sup> As with earlier surveys, this census by the Jesuit missionary La Chasse did not identify warriors by tribal affiliation but only by place name, a problem which complicates the question of band location at this time.

However, according to an anonymous French report on the Indian Nations in New France published in 1710, the Micmac Indians could field about five hundred or six hundred warriors in total. The report also clearly shows that the Indian villages east of the Penobscot have an ethnically mixed population and are

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<sup>6</sup>(...continued)  
Baron de St. Castin.

<sup>7</sup> Following the English takeover of the Gulf of Maine territories in 1707, the French missionary on the Penobscot, Gaulin, became missionary to the Micmacs in 1708, like his predecessor Thury, who had also preached among the Abenakis and Micmacs (Murdoch, Vol. I:304).

<sup>8</sup> Without counting the Micmacs in the region of the Gulf of St. Lawrence, who were known as Gaspesians, there were 102 Micmacs living at Port Royal, 97 at Cape Sable, 127 at La Have, 59 at Minas, 161 at Mouscoudabouet, 196 at Cape Breton, and 100 at Chiguenictou. The number of warriors on the St. John, which presumably includes Micmacs as well as Maliseets and other tribal peoples, was 52 men, whereas the number of Abenakis and other warriors on the Penobscot numbered 126. On the Kennebec, there remained a small fighting force of 25 warriors, since the large majority had taken temporary refuge in mission villages on the banks of the St. Lawrence River and in the eastern regions. (La Chasse, 1708, Unpublished Census, Newberry Library).

not homogenous in terms of tribal membership. Thus, the Passamaquoddy Bay Village counts a number of Micmacs among its Abenaki and Maliseet inhabitants, while the village of Meductic includes Maliseets as well as Abenaki.<sup>9</sup>

In 1710, the French were pushed from their Bay of Fundy possessions, and the English occupied the region along the coasts of the Gulf of Maine and southern Nova Scotia, leaving the Indians and the French peasants, known as Acadians, "utterly at the mercy of the conqueror" (Paris Documents, Vol. VII:854).<sup>10</sup> The English succeeded in taking a number of Micmacs prisoner.

Two years later, in 1712, peace negotiations between the French and English, as well as between the English and Indians took place. As part of these negotiations, a prisoner exchange

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<sup>9</sup> (Rochemonteix 1710:100, 196, 204, 212). In addition to pressures of ongoing violence because of warfare, the fact of native bride-service may have played a role in this tribal amalgamation, since the Micmacs and Abenakis performed bride service for their in-laws, with whom the young husband lived during a period of about one or two years (Ibid. :205). In exogamous marriage rules, where young men choose their wives from other villages, this practice automatically lead to the type of "tribal amalgamation" mentioned above.

<sup>10</sup> The warriors "from Penobscot, Canada, and Minas", mainly Abenakis, Maliseets, and Micmacs "came above two hundred miles and had crossed a large bay in birch canoes . . . they came from Penobscot," in order to try to force the English from their captured stronghold at Port Royal (Coll. of Nova Scotia Hist. Society, Vol. IV). To no avail, the Indians battled the English, who succeeded in maintaining their military garrison at Port Royal.

involving Micmac Indians was agreed to between Governor Dudley of Massachusetts and the Abenakis at Kennebec River.<sup>11</sup>

In June 1713, a large gathering of Abenakis and their Micmac allies, as well as Maliseets, assembled at Casco Bay near the mouth of the Kennebec River, where they negotiated a peace treaty with the New England Governor and his men. The Jesuit missionary Rasle of Norridgewock reported that "there were of this (Norridgewock) village 98; of Penobscot 200; of the River St. John 40; of the Micmaks 20" (Rasle 1713, in Baxter 1894:59).

The Queen Anne's War, having lasted about 10 years, was concluded with the Treaty of Utrecht, in which France ceded Acadia to the English.<sup>12</sup> A new definition of this region

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<sup>11</sup> Governor Dudley stated that he was willing to exchange "sixteen principal Indians of Cape Sables," who were kept in Boston prison, for English captives "in any of their hands, either with them, or any Indians at Penobscot, Passamaquoddy or elsewhere within their reach. . . ." (Dudley 1712, in Baxter, Vol. IX:317-319). Later that year, nine of these Micmac prisoners were released from Boston prison, and "sent home to Cape Sables," while the remaining Micmac captives were kept in prison until the summer of 1713. They were then taken to Annapolis (Port Royal) and "set at liberty" (Baxter XXIII:39).

<sup>12</sup> What is modern New Brunswick was always considered part of Acadia by the French until 1713. To the English, its identity was less clear; it was considered part of:

- Acadie from 1604-1629
- New England from 1620-1621
- Nova Scotia from 1621-1632
- Acadie from 1632 to 1654
- Nova Scotia from 1654 to 1667
- Acadia from 1667 to 1691
- Massachusetts from 1691 to 1696
- Nova Scotia from 1696 to 1697

(continued...)

developed; Acadia, "in its integrity and with its limits, is the Peninsula terminated by a tongue of land called Beaubassin that forms the head of the Bay of Fundy and of Bay Verte, across which the Indians make a portage with their canoes" (PD, Vol. VII:895).

For those Micmacs inhabiting the Nova Scotia peninsula, the new definition of (French) Acadia still included part of their tribal lands, but a portion was also now under political sovereignty of the British Crown. As they were not party to the Treaty which thus divided their lands, the Micmacs waged a running sea-war against the English merchants and fishermen on their coasts, capturing at least forty vessels in the years between 1713 and 1722 (Barsh:4)<sup>13</sup>.

During this period, records show that Micmacs were also

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<sup>12</sup>(...continued)

Acadia from 1697 to 1713

Nova Scotia from 1713 to 1784

Mew Brunswick from 1784 to present

William S. Ganong, A Monograph of the Evolution of the Boundaries of the Province of New Brunswick, Transactions of the Royal Society of Canada, Section 2 (1901) at 196.

<sup>13</sup> For instance, in the summer of 1715, they captured six English fishing boats from New Hampshire and the New Englanders complained that these Micmacs "put the fishery in a great jeopardy" (N.H.S.P., Vol. II, Part I:673-674; Beck:50-57).

The next year, Micmacs were in the central Maine coastal area, near Pemaquid Fort, where the English reported that "there were seen twelve canoe loads of Indians at Pemaquid, some belonging to Penobscot and some to Cape Sables" (Baxter, vol. XXIII:82).

In the summer of 1720, a "party of Eastern Indians" attacked an English fishing station at Canso, in northern Nova Scotia (Murdoch. Vol. I:374-375).

living in mission villages in Meductic on the St. John River and Norridgewock on the Kennebec River in Maine.<sup>14</sup>

Faced with Micmacs migrating from place to place in the ongoing search for subsistence, the British authorities tried to assert political control over their seasonal movements. In an attempt to gain effective control over their new colony, the Governor of Nova Scotia decreed that hunting parties crossing the Bay of Fundy from the Nova Scotia peninsula to the west coast of modern-day New Brunswick and eastern Maine would need a special permission:

Chiefs of parties or gangs were to give the Governor security to carry away no passengers or effects, nor more provisions than would serve them for the trip, nor to outstay the time limited in their pass" (Phillips 1720, in Murdoch, Vol. I: 378)

The Wabanaki Indians as a whole continued to protest the presence of English settlers on their aboriginal lands in Maine. Hundreds of Abenakis and their allies, including the Micmacs and Maliseets, joined for a conference with the English on the lower Kennebec River, in 1721 (PD, Vol. VII:904). This led to the

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<sup>14</sup> A French Memoir from the Government noted that in 1716, Micmacs, Abenakis, and Maliseets were living in the Mission Villages of Meductic and Norridgewock, which were run by the Jesuits Loyard and Rasle. Since Abenakis were reported to be located in the Norridgewock mission on the Kennebec, Meductic on the St. John River was inhabited by Maliseets, Micmacs, as well as some Abenakis:

Les Abenakis, Miquemaque, amaricite et autres qui sont dans les missions des Peres Rasle et Loyard Jesuites, restent du coste de la mar parce qu'ils y vivent mieux et a meilleur marche. . . (Vaudreuil, 1716, in Roy 1947-1948:332).

drafting of the famous letter to Governor Samuel Shute of Massachusetts in 1721:

Thou seest from the peace treaty of which I am sending the copy that thou must live peacefully with me. Is it living peacefully with me to take my land away from me against my will? My land which I received from God alone, my land of which no king nor foreign power has been allowed, or is allowed to dispose against my will, which thou hast been doing none the less for several years, by establishing and fortifying thyself here against my wishes, as thou didst in my Ammirkangan [Androscoggin], Kenibekki [Kennebec] and Matsih-an-ssis [?] Rivers and more recently in my Anmkangan River where I was very surprised to see a fort which I was told was going built by thy command.

Consider, great captain that I have often told thee to withdraw from my land and that I am telling thee so again for the last time. My land is not thine either by right or conquest, or by grant or by purchase. (Eastern Indians' Letter to the Governor, 1721)

The Micmacs, or Mikemaks, signed the Eastern Indians' letter to the English with a mark of a running deer. (See Exhibit A to this Report) This letter is also one of the earliest bits of evidence that a formal confederacy was being formed among the Wabanaki Indian Nations, an alliance which was to continue into the 19th century.<sup>15</sup>

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<sup>15</sup> Some years later, in 1744, Charlevoix, a missionary and historian in Canada, noted that the Maliseets, "living near the Penobscot," were joined with the Micmacs, "the native inhabitants of Acadia and all the eastern coast of Canada," as well as with the Canibas of the Kennebec River area. This Jesuit historian observed that a "close union [had been] formed between these three nations," and because of a "striking correspondence between their dialects," the French "quite commonly" included "them all under the general name of Abenagui Nations. . . ." (Charlevoix, Vol. II:200-201).

In the fall of 1722 "four or five hundred, Canada and Cape Sable [Micmac] Indians" attacked the English garrison at Arrowsick Island on the lower Kennebec River. After some clashes, these Micmac warriors and their allies backed off and went upriver to Richmond on the Kennebec where "they held a dispute with the garrison, and afterwards drew off" (Penhallow:95-96).

Raids and attacks in modern-day Maine continued throughout the next several years. These included attacks at Arrowsick Island on the Kennebec, where the English maintained a garrison, and throughout the British territory in the northeast. As stated, the attacks generally involved Indians from the several tribes, including Micmacs, Penobscots and Maliseets.<sup>16</sup>

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<sup>16</sup> The French Governor in Canada reported that "the Malecites, or Indians of the River St. John, pillaged . . . several English vessels, to revenge the losses of those of Nanrantsouak. The Mikemaks likewise took and plundered several English people" (Vaudreuil and Begon 1722, in P.D., Vol. VII:912). Vaudreuil and Begon wrote that the Abenakis did not cease harassing the English . . . Those of the Village on the River St. John joined the Miamis (i.e. Micmacs), whom they induced to resume the arms they had a year ago laid down." (Ibid. 1724, in P.D., Vol VII:936-937).

From Meductic, the Indian mission village on the St. John River, the Jesuit Loyard wrote to Leauverjat on the Penobscot River, his colleague, "that his people (the Maliseets) with the Mickemacks have been in two parties to make an attempt upon the English at Port Royal; one of those parties attackt the Fort itself, where they did kill six men & burnt two houses after they had plundered them" (Rasle 1723, in: Coll. & Proceedings of Maine Hist. Soc., 2nd Series, Vol. I:384).

The following summer, in 1724, "a party of Indians, consisting of thirty Malecites and twenty six Micmacs attacked Annapolis (Port Royal), and killed two of the garrison. . . ." (Murdoch, Vol. I:409).



These actions continued through 1725, when the Penobscots tried to establish a peace treaty with the English of Massachusetts Colony. The Penobscots claimed that "the Eastern Tribes so far as Cape Sables have join'd with us in this affairs. And all these Tribes have let it to us to act for them in a Treaty of Peace" (HSM, Vol. X:188). The French in Canada, however, tried to keep the Micmacs, Abenakis, and Maliseets as hostile forces against the English:

By uniting with the Abenakis and the Micmaks, we should be in a position to recover Port Royal, and to render ourselves masters of Canceau, and of all we have lost in the east by the Treaty of Utrecht" (Vaudreuil 1725, in PD, Vol. VII:949).

The French Governor noted that:

It is most important that the Micmacks prosecute the war, because, by joining the Abenakis of the River St. John, they would derange considerably the English fisheries" (Vaudreuil 1725, in Ibid. :956).

Nevertheless, in 1727, a large inter-tribal meeting took place at St. Francis, where the "Indians of ye several tribes from Cape Sables to ye Mountain Indians, & ye French" assembled to discuss "whether thier should be a treaty with ye English or not" (Gyles 1727, in Baxter, Vol. X:408). Later, the chiefs at Penobscot decided to "send Messangers to Caneback [Kennebec], St. Johns, Cap Seples [Micmacs], to Invite two of each tribe to be at their Great Annual Meeting at Panobcut [Penobscot]. . . ." (Gyles 1727, in Baxter, Vol. X:385-387). Consequently, "sum Indians from Cape Saples"[Micmacs] joined with Maliseets at Meductic, and approved of "the agreement yt the English & the Penobscut tribe

had made, &c." (Ibid. :404).

During this period, Micmac traders remained active also along the banks of the St. John River. The Jesuits reported in 1730, that "Mikmak runners ["coureurs de bois", fur-trappers or traders]. . . , not knowing which way to turn, spoil most of the missions, or beg their bread along the banks of the (St. Lawrence) River and in Quebec" (JR, Vol. 68:107).

This new war, lasting from 1745 until 1749, forced many Micmac families to seek refuge from the region where English troops could reach them. For these Indians, as well as those from many other tribes who normally frequented the lands in southern and coastal Maine, this meant relocation in the neighborhood of Quebec and the St. Lawrence River area.<sup>17</sup>

The French military command tried to organize these warriors to fight against the English:

The Abenakis Indians, including those [Micmacs and Maliseets] of Acadia, and those who are domiciliated, numbering about 300, having been fitted out, departed yesterday (from Quebec) in 8 Biscayennes (sloops). . . for Bay Verte, with orders to, lie in a safe place there. . .

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<sup>17</sup> For example, "the Micmacs of Ile Royale [Cape Breton] to the number of 80 warriors," spent that winter "in the neighbourhood of Quebec," like many other Micmacs, Maliseets, and Abenakis from the Acadian territories. In the spring of 1746, the French in Canada reported that these refugees were encamped near Quebec City: "Abenakis and Micmacs of Acadia who are scattered throughout the different parts of the Government of Quebec and in the villages of Becancourt and St. Francis."

and wait for Canadian reinforcements (PD., Vol. IX, in NYCD Vol. X:42, 45, 44, 51).<sup>18</sup>

Meanwhile, a number of Micmacs remained living in Acadia and dependent on trade goods, were forced to deal with the English. However, some of these trade goods were poisoned and a number of Micmacs died.<sup>19</sup>

In the Queen Anne wars against the Indians, a bounty of 40 pounds had been offered for Wabanaki scalps. Now, the English authorities issued bounties of 100 pounds for the scalp of any Indian male above 12 years old, whereas half would be paid for the scalps of women and children (Shirley 1745, in Baxter, Vol. XXIII:296). This made it easier to raise troops to fight the Indians and encouraged wide-ranging pursuit of Indians in the southern and coastal sections of Maine.

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<sup>18</sup> They raided English camps at Prince Edward Island, where they captured a number of English soldiers, whom they sold to the French in Quebec (Pote: 93, note 2).

<sup>19</sup> Father Maillard reported that in 1746, "some stuffs that the savages had bought of the English, who then traded in the bay (of Fundy) at Beaubassin, there being at that time a great scarcity of goods over all the country, were found to be poisoned, so that more than two hundred savages of both sexes perished thereby" (Maillard:66-67). Governor Shirley of Massachusetts reported about this epidemic among the Micmacs, that "two thirds of the Cape Sable Indians" had been killed "& that they are still dying. The Cape Sable Indians were before computed to have about six hundred fighting men" (Shirley 1746, in Baxter, Vol. XI:345).

As a result, Micmacs and Maliseet families remained in their refuge territories near Quebec, where they stayed with the Abenakis of that region. The French provided them with some subsistence goods<sup>20</sup>, but this increasingly became a burden and the Indians were encouraged to leave.<sup>21</sup> Only occasional raids by the Micmacs and other Indians would be mounted from Quebec against points in Maine.<sup>22</sup>

In 1749, new peace negotiations between the French and English in control of Maine occurred. The Governor in Quebec,

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<sup>20</sup> In October 1747, the French reported: "Subsistence and clothing are continued to be provided for the Indians of the different villages of Acadia who are settled, since the fall, at Point a la Caille to the number of 200 men, women, and children; some of them go hunting; we have persuaded them to do so. . . The same course has been pursued towards the Indians of the different tribes who winter at the River des Etchemins, (near the Chaudiere River), 3 leagues from Quebec, numbering 400 men, women, and children, some of whom also go hunting" (NYCD, Vol. X:146-147). That year, "a party of the Indians belonging to the River St. John, who had wintered at St. Martin, near Quebec, applied to the number of 100, for permission (from the French) to return to their villages; they have been clothed and supplied with provisions to carry them home; also with some ammunition; 250 of that Nation still remain here, they will be dependent on the King's bounty during the next winter" (Ibid. :126).

<sup>21</sup> The remaining Micmacs and Maliseets, living along the banks of the St. Lawrence River, became a burden to the French, who reported: "We have removed the Micmac and Malecites villages that were at St. Michel, 3 leagues from Quebec, to the River du Sud, 5 leagues further off. They will be less importunate, and less burdensome to us and the farmers. We would have wished to send them all home but have not been able to persuade them to go" (Ibid. :128).

<sup>22</sup> For example, in the summer of 1748, a war-party of "14 Micmacs have been fitted out at Quebec for a war excursion toward Fort St. George," on the coast of Central Maine, which was the target of attacks by Abenaki warriors as well (Ibid. :166, 172).

Sieur de la Galissioniere, wrote to Colonel Paul Mascarene of Nova Scotia that "the Abenakis on the St. John's" planned to resettle in "their villages," but on the condition that the English would not be "requiring any kind of submission from 'em."

The Governor of Massachusetts, William Shirley, responded that the territories on the St. John River "has ever been deem'd by the English, to be situated within the heart of Nova Scotia,<sup>23</sup> and consequently that tribe of Indians, together with the French inhabitants upon the same river to be resident within his Majesty's territories" (Shirley 1749, in NYCD, Vol. VI:482).

In August, the English sent Captain How to the St. John River, in order to negotiate with the Indians and establish a treaty, which was signed in September by Micmacs, Maliseets, and others in Halifax, where Chief Neptune Abbadouallette of Passamaquoddy, chief Francois de Salle of Aukpaque, Chief Noellobig of Meductic, and Chief Jean Pedousaghtigh of the "Chinecto tribe" (Murdoch, Vol. II:154; Akins 1895:15-16). This became known as the Treaty of Halifax, signed in 1749.

Once again, the tribes of the Wabanaki confederacy united

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<sup>23</sup> It is important to remember that the French described this same land as Acadia and that modern-day Nova Scotia is only a small section of 18th century Nova Scotia. See also note 12, supra.

with the Micmacs to defend them against the English.<sup>24</sup> In 1750, the fighting spread along the coast of Maine, where "the Penobscot Indians are in arms, to the number of one hundred and fifty, and sixty Canada Indians came to join them designing a blow" against the English encroaching on Wabanaki territories (Smith's Journal 175, 1750; North:32-33). Border disputes in Maine between the French and English also continued to provide an impetus to this struggle.<sup>25</sup>

Finally, in 1751, at Fort St. George on the central Maine coast, the Eastern Indians, including the Micmacs, concluded a peace treaty with the English, who believed that "it's impossible to distinguish the Indians of one tribe from another. . . ." The Penobscots notified the English that the Micmacs, and allied tribes, wanted peace (Baxter, Vol. XXIII:416-427).

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<sup>24</sup> The Micmacs sent "deputies to Canada, to request the assistance from the Canibas and the Hurons" (Ibid. :166). Reportedly, Abenakis from the Penobscot River, as well as Maliseets, joined the Micmacs in their struggle against the English, when they attacked vessels in the Bay of Fundy. According to Governor Phips, there were "Penobscot Indians who joined with the Micmaks & St. Johns Indians when they surprised the English at Minas in December (1749) & Killed divers of his Majestys English subjects there. . . ." (Baxter, Vol. XXIII:371).

<sup>25</sup> The French Governor in Quebec, stirring the Indians up, in order to defend the French colony of Canada and Cape Breton, noted in a Memoir that "the boundary line of New England should remain fixed at the River Kinibequi, or at such other (river), at least twenty leagues from the River St. John," which, according to the French, "runs through (Acadia, and) is the sole available route during six months of the year, between Louisbourg (on Cape Breton) and Quebec" (NYCD, Vol. X:217, 232).

In 1751, Maillard, the French missionary to the Micmacs at Cape Breton wrote "an Account of the Customs and Manners of the Micmakis and Maricheets, Savage Nations," which the English later published in London, 1757.<sup>26</sup> The "Micmakis" counted before the war against the English "about six hundred fighting men . . . and were distributed in several villages on Cape Breton Island, island of St. John [P.E.I.], on both coasts of Acadia and on that of Canada [territory which would include parts of modern-day Maine]." (Ib.:ii).

Referring to the Micmac Indian villages, de la Varenne observed their migratory character and called them aptly, "the village, or rather ambulatory tribe" (Ibid. :95). Commenting on the rapidly diminishing numbers of Indians in the region, he noted:

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<sup>26</sup> Maillard spoke "the Micmaki language as fluently, and as elegantly, as the best of their women, who most excell in this point."

His text is important because it noted the withdrawal inland by the tribes in response to encroachment on their lands by the Europeans: he writes that a number of Micmac families "have chosen to withdraw further into the western recesses of the continent, at a distance impenetrable to our (European) approach" (Maillard:49-50).

It is also significant as an early comparison of the customs and life-style of the Micmac and Maliseet Indians. Maillard stated that the Maliseets, "though different in language, have the same customs and manners (as the Micmacs), and are of the same way of thinking and acting" (Ib. :33).

According to the publishers of this manuscript, the Maliseets "used, till lately, to be in a constant state of hostility with the Micmakis. But however, these nations may be at peace or variance with one another, in one point they agree, which is a thorough enmity to the English. . . ." (Ib. :iv).

As they live chiefly upon their hunting, the woods that are destroyed to cultivate the country, must in course contract the district of their chase, and cause a famine amongst them, that must be fatal to them, or compel them to retire to other countries" (Ibid. :82-83).

Because of their food collecting mode of subsistence, the Micmac families,

rarely have any fixed hut, or village, that may be called a permanent residence. If there are any parts they most frequently inhabit, it is only those which abound most in game, or near some fishing place.<sup>27</sup>

Varenne mentions fifteen of these areas, frequented by Micmacs, Maliseets, and Canibas, which "were formerly fore them, before the English had driven them away," located from the Kennebec River to the Bay des Chaleurs (Ibid. :84).

Eastern Maine, in particular the region between the Penobscot and the St. John River, was still in the hands of the French and Indians. The English commander Governor Pownall of Massachusetts described it as "a Den for Savages & a lurking

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<sup>27</sup> This remained true in later years. According to Captain Samuel Holland, who was writing in 1767 about the Micmac population on Cape Breton,

"There are but four or five Indian Families of the Mickmach Tribe who reside constantly on this Island. . . in the Winter they move all round the Lake for the Conveniency of Hunting. The whole Tribe have corssed over from the Continent these last two Summers, two parties of which," numbered in total one hundred and eighty people, "& the Summer before there were upwards of three hundred Families" (Holland 1935:67-68).



place for some Renegadoe French." (Baxter, Vol. XIII:296).

In 1759, Fort Pownall was constructed at the mouth of the Penobscot River, to prevent "frequent incursions and hostilities not only of the Indians, but of others from Canada" (Baxter, Vol. XI:491). Meanwhile, Quebec surrendered to the English<sup>28</sup>, who then instructed Captain Rogers to deal with the Abenaki villages in the area, which resulted in the destruction of St. Francis (NYCD, Vol. X:1042). In December 1759, the French and their Indian allies realized that further resistance was fruitless, and surrendered to the English commander at Fort Cumberland. (Murdoch, Vol. II:390, 396). In the early months of 1760, various Indian chiefs and their bands came to the English strongholds, where they made peace and signed treaties. In February 1760,

"two Indian chiefs of the Passamaquoddy and St. John River tribes, came to Halifax. . . and by their interpreter, settled with the Governor terms of peace. . . "

together with an Indian named Claude Renie, "who said he was chief of the tribe of Cheboudie [Micmac] Indians," joined by Roger Morris, "one of the Mic-Mac Indians." On March 10, peace

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<sup>28</sup> Boishebert, the French commander formerly stationed at the St. John River, had come from the Miramichi River in aid of the French in Quebec. In General Wolfe's orders, note was taken of the Micmacs who joined the fighting in the Quebec area:

". . . some firing was heard; it is conjectured (English troops) are gone in pursuit of Monsieur Bois Hibert, and his Mic-Macks, with other rabble from Nova Scotia, who are said to be sculking in this neighbourhood" (Knox, Vol. I:404-405).

treaties were signed by

"three Mic-Mac Chiefs, viz. Paul Laurent, Chief of the Tribe of La Have, Michael Augustine, Chief of the Tribe of Richibucto, and . . . Claude Renie, Chief Cheboudie and Musquodoboit Indians" (Akins: 64-65; Murdoch, Vol. II:385).

The English Commander of Fort Cumberland, Colonel Frye received a "list of fourteen chiefs" from the French missionary, Father Manach and stated that he "was surprised of such a number of Indian Chiefs in this part of America."<sup>29</sup> Commenting on their ethnicity, being chiefs of widely scattered Indian bands throughout the region, he noted that

"they were all of one Nation, and known by the name of Mickmacks; that they were very numerous, amounting to near 3000 souls" (Annual Register 1760, p. 98, in Murdoch, Vol. II:396).

For their part, the British promised the Indians that they "should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded

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<sup>29</sup> Manach informed the English, that fifteen districts were known to exist among the Micmacs, each of which was inhabited by a community of mobile families, known to the English as "tribes" (Hoffman 1955:519). The Micmac chiefs who came in in order to submit themselves to the Government of the British Crown, "declared that many others were sedigned to come in, and subject themselves in like manner" (Niles 1760, in Coll. of Mass. Hist. Soc., 4th Series, Vol. ? :553). Indeed, the following year, in October 1761, Jannesvil Peitougawash, "chief of the Indians of the tribe of Pictock and Malagomish" signed the treaty, followed in the summer of 1762 by Joseph Argunault, "chief of the Mongwash Indians, with a number of followers," who signed the last peace treaty (Akins:65).

to or purchased by us [England]. . ." (Proclamation of 1763)<sup>30</sup>  
The English proceeded to establish a series of trading posts  
throughout their territory, under the supervision of a  
Commissioner of Indian Affairs, with which the Micmacs were  
required to deal.<sup>31</sup> Meanwhile, the Indians inhabiting the  
Penobscot River valley also concluded treaties with the  
English.<sup>32</sup>

With thousands of Acadians in exile, and large numbers of  
Micmacs dead or in refuge, the English quickly repopulated their

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<sup>30</sup> Sister Mary Celeste Leger, The Catholic Indian Missions in Maine (1611-1820) Washington: Catholic Univ. of America, 1929), pp.114-115; Also Derck G. Smith, ed., Canadian Indians and the Law: Selected Documents 1663-1972 (Toronto, Canada: McClellan and Stewart Ltd, 1975), p.2.

<sup>31</sup> English merchants and fur traders were notified that there were special regulations in effect with regard to the Indian trade in the region, and trading posts were erected throughout the region, which came under the responsibility of a Commissioner of Indian Affairs (Ibid. :65-66). The Micmacs were forced to promise that they would not

"Traffic, Barter, or Exchange a Commodity in any manner, but with such a Person or the Managers of such Truckhouses as shall be appointed or established by His Majesty's Governor" (Brebner 1937:71).

<sup>32</sup> Their leaders, together with the families in their band, numbering approximately seventy people, complained that they were reduced to poverty, and wanted the trade to be established in truck-houses, where they were able to "exchange their beaver skins for trade articles, essential to their survival" (Baxter, Vol. XXIV:88, 89, 102).

lands<sup>33</sup> The lands east of the Penobscot and south of the St. John River were a territory which was "debatable ground," to which neither Nova Scotia nor Massachusetts laid claim. The first English settlement there began in 1763, when Machias was established as a small lumber town (Kidder:35). The lumber business boomed and hundreds of new colonists migrated to these Indian lands, causing the region's tribes to complain that "Strangers that we do not know," and English soldiers spoil their hunting (Baxter, Vol. XXIV:118).

Following the official Treaty of Paris in 1763, the British Government planned "for the future management of Indian Affairs" in the colonies by dividing their territory in North American into a Northern and a Southern District, within which some 55 tribes were to be supervised. Specifically named tribes in the Northern District included Micmacs, Abenakis, St. John's, Penobscots, Norridgewalks, and Arseguntecokes (or St. Francis Abenakis).

By this time, the Whites in Maine alone already outnumbered the Indians on a ratio of about twenty to one (Williamson 1876:215). The Indians became restless, protesting that "they

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<sup>33</sup> In the territories between the Penobscot River and Cape Breton, there occurred a population influx of thousands of Scottish and German colonists, later joined by Scotch-Irish from Northern Ireland and regions in England itself. A decade later, there were in the Province of Nova Scotia alone about twenty thousand Whites established (Allison 1891:4569).

will not suffer any English to go up their rivers" (Bernard 1764, in Baxter, Vol. XIII:343-344; Gazette 1765, in Albert:19).<sup>34</sup>

According to Oso, an old Indian woman at Fort Pownall: "All the Indians. . . talkt about the Englishmens hunting and settling upon their Rivers" (Baxter, Vol. XXIV:150-152). Micmacs, joined with Maliseets, and Abenakis from the various communities in the area, banded together on the Penobscot River in 1767 to discuss the possibilities of action against the English encroaching on Indian territories.<sup>35</sup> According to an informant:

There are a great number of Indians of different tribes now assembled on Penobscot River; that they are determined to maintain their right to 12 Rivers which they claim. . . All I know of certainty is, That there are a considerable number of Indians of different nations such as Cape Sables [Micmacs], St. Johns, Norridgewalks, Aresegunticooks with some other Indians (Baxter, Vol. XXIV:149-150).

However, nothing immediately came of this gathering of the few

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<sup>34</sup> The same concerns also motivated the Micmacs on Cape Breton Island, insofar as they had not left for new homelands elsewhere, such as Newfoundland, St. Pierre, or other regions, to complain in 1767, "of the Impositions of Traders, who they say, intoxicate intoxicate them with Rum, & by that Means get their Goods for Half Value." (Holland 1935:67-68).

<sup>35</sup> Tribal chiefs named Pierre Thomas and Ambroise St. Aubin "complained of Acadians on the River St. John, who hunted on their grounds, &c.," and requested that the English would remove them. This was not done, but their request for lands which could be farmed was granted, "and the Council of Nova Scotia decided that they should have the Island of Ekoupahag (Aukpaque)." The Indians also received farming equipment for which they had asked (Murdoch, Vol. II:477). The next year, in 1769, Reverent Wood sailed from Halifax to the St. John River, and arrived at Aukpaque, "the farthest settlement upon the River," where he "began prayers with (the Indians) in Micmack" (Raymond:203).

tribes still resident in Maine and active members of the Wabanaki Confederacy.

## II. The American Revolution

Immediately following his appointment as Commander-in-Chief of the Continental troops, Washington wrote to the Micmacs, Maliseets, and other tribes, asking them to send warriors and join in the struggle against the British overlords. The warriors were promised wages from the United Colonies (Baxter, Vol. XXIV:180-181).

In response to Washington's invitation, two Indian chiefs of the Maliseet tribe came to Boston, in the fall of 1775. They were said to "Represent the St. Johns & the Miccamac tribes of Indians," and received presents in recognition of their pledge of loyalty (Acts & Resolves of Prov. of Mass. Bay, Vol. 19:104-105). Half a year later, delegates from the Micmac and Maliseet tribes arrived in Watertown, near Boston, in Massachusetts. They were received by Governor Bowdoin of Massachusetts and a conference was organized between the Council of the United Colonies of America and these Micmacs and Maliseets.

The Micmac and Maliseet delegates agreed to join the American revolutionary forces, and promised that they "shall have nothing to do with Old England," concluding the conference with signing a Friendship Treaty, now generally referred to as the

Treaty of Watertown.<sup>36</sup> The President of the Council of the Nited Colonies read them the new Declaration of Independence, and proclaimed that the tribes had become "One people with the United Colonies":

"The United States now form a long and strong chain, and it is made longer and stronger by our brethren of the St. John and Micmac Tribes joining with us; and may the Almighty God never suffer this Chain to be broken" (Baxter, Vol. XXIV:188-194).

Immediately following the conference with the Micmacs and Maliseets in Massachusetts, Governor Bowdoin wrote to Washington, on July 30, 1776:

"At ye time your Excy's letter was received requesting the aid of this government in procuring a body of ye Eastern Indians for the Service of the United States, it happened very fortunately that a number of them were here as delegates from ye St. John's and Mickmac Tribes in Nova Scotia [the region east of Passamaquoddy Bay]. They came on a visit to you in consequence of yr letter to them, which they produced. . . it was strongly urged upon them to join with us in the war: And accordingly they have engaged to do it, and have signed a Treaty for that purpose" (Bowdoin 1776, in Baxter, Vol. ?:363).

When the Micmac and Maliseet delegates returned, an Indian

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<sup>36</sup> In the Acts and Resolves of Massachusetts, the Treaty of Watertown with the Micmacs and Maliseets was ratified on July 13, 1776:

"Resolved That there be Employed in the Continental Service Five hundred Indians out of ye Two tribes (the St. John's and the Mickmack Indians). . . which together with 250 of such of the English as may enlist shall form one Regiment. . . " (Acts & Resolves of the Province of Mass. Bay, Vol. 19: 525-526).

trader in Nova Scotia, named John Allan, chose to join the revolutionary cause and "despatched couriers to the different Villages thro' the Mickmack country." In his Narrative, written several years later, Allan recounted that before he left the region for Massachusetts, he "met a large body [of Micmacs]; among them were deputies from St. John and other parts adjacent." These Micmacs and Maliseets declared,

that if from situation and distance they could not assist, they would not injure or molest the Americans. A [Micmac] chief from Merrimachi spoke for the whoke, - they were all as one, - no distinction made between the different tribes" (Allen 1794, in NEHG Register, Vol. 12:254).

In October 1776, Micmac and Maliseet warriors from the coast of Maine, under command of Ambroise St. Aubin, joined an American expedition against the English stronghold at Fort Cumberland (Eddy 1777, in Kidder:67-72, 78). According to a British Journal,

on the 25th of October a Number of boats from the westward [coast of Maine] with about Two hund[re]d Men, includ[ing] near Fifty Indians, Surrounded and took that Detachment of one Regiment [at Fort Cumberland] and carried them to Machias. The remainder of this body of the Enemy dividing themselves into three divisions, two of which went to stop the Communication from Cumberland to Halifax, the other up the river Cocan [Cocagne] and Merimiche [Memramcook] to collect Indians and others (Morgan 1976:30).

George Washington wrote a letter to the Micmacs on December 24, 1776, which was sent by means of some Passamaquoddies "to the Micmack Tribes," for which they were rewarded fifteen pounds (Acts & Resolves of Prov. of Mass. Bay, Vol. 19:812).



Meanwhile, Allan offered his services to the Continental Congress. In January of 1777, the U.S. Continental Congress, then in Baltimore, appointed Allan as their Agent to the Indian tribes of the Eastern Department, which included the present Maritime provinces and Maine east of the Penobscot River. (Kidder: 13, 15). As "Chief Commander of the Eastern Indians," Colonel Allan was directly responsible for dealing with the warriors of the Wabanaki Confederacy. (Acts and Resolves of the Prov. of Mass. Bay, Vol. 20:113, 116).

Having requested trade goods and supplies in Boston, the new Agent had "particular Instructions from the Congress respecting Trade with the Indians" in the Eastern Department. Planning to meet with the "Micmacs, St. Johns & Passamaquoddys jointly," Allan sailed with a number of troops to Machias, and met with the native warriors at Passamaquoddy Bay, where he "was Saluted By all the Indians, who ranged themselves in a Single file," after which they had a meeting (Allan 1777, in Kidder:181, 186).

From Passamaquoddy Bay, Allan went on to the St. John River as Commander of the American military expedition with instructions to establish two strongholds in that region. At Aukpaque on the St. John River, Allan wrote about the bitter complaints from Micmacs and Maliseets (Kidder:189-197):

Many of them sence the Treaty [of Watertown] &  
Promises made them have Quitted Hunting, Their  
familys I find in Great Distress, with Many  
Complaints. . . that they had not the Treatment

they Expected. This Expectation was found'd on the French Custom, which was when they went to War their Famelys were Supplyd and Whatever was lost in War or drunkenness was made up to them. . . (Allan 1777, in Baxter, Vol. XIV:433).

When Allan and his troops were at Aukpaque, British war ships sailed up the St. John River, forcing Allan to retreat into the woodlands of the Upper St. John, with

a body of 128 canoes, containing near five hundred [Indian] men, women, and children [who] left their little plantations well improved, and a good prospect; with a great part of their clothing.

Via the rivers of present day Eastern Maine, they journeyed from the St. John River to Machias, the easternmost American stronghold (Allan 1794:255). Massachusetts had established a truck-house there, which supplied the Indians with their trade-goods in exchange for their services or furs. According to Allan, writing in September 1777,

35 [Indian] familys are Encamped about 12 miles off: the men keep continually on duty for the Defence of this place. . . (Allan 1777, in Kidder:235)

On January 5, 1778, Colonel Allan had "a General conference with the Chiefs, Sachems, and Young men of the Merescheet [Maliseet], Passamaquoddy, and Penobscot, and some of the Mickmack Indians. . . " They elected their war-leaders, who were "commissioned, with the pay of lieutenants, and authority to maintain the U.S. stronghold at Passamaquoddy. "After the Confederence there was an entertainment, and an Indian dance" (Allan 1779, in Kidder:162).

In April 1778, the Massachusetts Congress resolved that

it is highly improper for this State to keep a truck-house at Machias, as the Indians there are wholly under direction of the Continental Agent: Therefore resolved that the truck house at Machias ought in future to be carryd on at the Charge of the United States, under the direction of Colo[nel] John Allan, Continental Agent for the Eastern Indians.

Acts & Resolves of the Prov. of Mass. Bay, Vol. 20: 366. From that time onwards, Colonel Allan paid the Indian warriors of the Micmac, Maliseet, and other tribes, from an account called "Indian Contingencies," which was funded by the United States. (Machias Truck-House Accounts, Mass. Archives, Vol. 147, unpublished).

Although the precise number of Micmac Indian families residing in eastern Maine during the last quarter of the 18th century is not documented, the trading post accounts of the Machias "truck house" and lists of warriors in the service of the United States do mention the names of numerous Indians, specifically identified as Micmac.<sup>37</sup>

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<sup>37</sup> Among the names identified as Micmac and mentioned in Colonel Allan's accounts at Machias are Pierre Sock, Matter [Mathew?], Nicholas, Jean or John Batist [a "pockbroken Micmack"], Franus, Charles Newcoot, John Luadang, Battiste Pierre, Joseph Bernard, Sabates Sockhenes, Loui, Atienne, Newery and Mary Cornwallis.

Like other Wabanaki tribespeople, these Micmacs received goods such as wampum, beads, cloth, axes, hatchets, bayonets, knives, [gun]powder, shot, balls and flint, as well as camp kettles, mirrors, combs, soap, and pipes. In addition, the "Indian trade" supplies included blankets, shirts and caps. The Indians acquired these goods in exchange for military service under Colonel Allan or for furs, feathers and seal oil. (Machias Truck Accounts 1776-1780 in Massachusetts Archives, Vol. 147).

(continued...)

Francklin, the British Commissioner, referred to this correspondence, when he stated that he would "counterplot the letters that the Mickmacks passed through St. Johns with for their tribe from Machias" (Francklin 1779, in Coll. of New Brunswick Hist. Soc., Vol. I, No. 3:324).

In order to attend this Grand Conference at Passamaquoddy, Micmacs who were not part of the community at Machias started to assemble on the St. John River with the Maliseets. (Allan 1780, in Baxter, Vol. XVIII:282-283). But when the number of Micmac and Maliseet warriors assembled there was "about 300 fighting men, besides 600 women and children," the British sent

several deputies from the Ottawas, Hurons, Algonkins, Abenakis, and other Nations from Canada [who] required the Indians from this province to withdraw from the Americans, and to remain quiet. . . Upon this declaration, the Indians almost universally withdrew from Machias and its neighbourhood.<sup>38</sup>

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<sup>37</sup>(...continued)

At Machias, the Micmacs could also purchase bread, biscuits, rice, molasses, sugar, chocolate, corn, raisins, beef, pork and butter, as well as tobancco. Bottles of wine, rum, and cider were sold at this trading-post as well.

In a July 1780 list made by Allan's Lieutenant Frederick Delesdernier, titled "Return of Indians and their familys that are and have been in the Service of the United States by Order of Colo[nel] Allan, Superintend[an]t and Command[e]r in Chief of Indians," ten Micmac warriors are listed by name: Antoine Uny, Joseph Caiepn, Joseph Shepsawoit, Jean Battiret, Joseph Bernard, Sr., Joseph Bernard, Jr., Maetten, Francis, Nichola, and Ettine. (Kidder 1867: 285).

<sup>38</sup> Francklin 1780, in Murdoch, Vol. II:610-611. According to a Hessian recruit in British service, the Micmacs:

have retired deep into the woods, and seldom come  
(continued...)

Adding to the difficulties, the British fleet occupied the Penobscot River as well, which remained in their hands until the end of the American Revolution, thus effectively isolating the American stronghold at Machias.

### III. THE YEARS IMMEDIATELY FOLLOWING THE AMERICAN REVOLUTION

As of the end of the Revolutionary War, the Wabanaki Confederacy had not ceded and continued to use and occupy their original aboriginal territories, but the tribes were becoming increasingly concerned about non-Indian poachers. John Allan commented on this in 1781.<sup>39</sup>

The problem emerged more fully in 1783. In May, Allan reported that non-Indians had "greatly impaired" beaver hunting

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<sup>38</sup>(...continued)  
to the coast to fish in the neighbourhood of the town [of Halifax], but carry on their occupations where they are not interfered with by Europeans.

These,

original inhabitants of the country have retired into these miserable regions, for the English have thought right to take away from them the best places for fishing and hunting, and to appropriate these to their own use. (Seume 1782:8-9).

<sup>39</sup> March 2, 1782, J Allan to Samuel Adam, Samuel Adams papers, New York Public Library, and see March 8, 1782, Col. Allan to the Governor Baxter, ed., Bax.Mss., XIX 437.

and he observed that the situation was "still growing worse." <sup>40</sup>  
Later in the year, he explained to the Governor of Massachusetts,  
John Hancock, that the Indians were in "great distress" and  
reported that he had petitioned the United States Congress for  
the promised confirmation of their ownership of their hunting  
grounds.<sup>41</sup> In forwarding the petition to Congress, Allan  
informed its presiding officer, Thomas Mifflin, that "during the  
whole Warr I have not seen them under such anxiety. . ." <sup>42</sup>

Mifflin did not reply and Allan wrote again on February 4,  
1784. This time he was more explicit. The tribes depended,  
Allan said that something may be done to secure for them, their  
hunting Ground & prevent those Hunters (subjects of the  
States) from molesting and Destroying the hunting priviledges  
which has been too much the Case for Some Years past." While  
requesting instructions on the issue, Allan added that the allies  
did "not appear Extravagant in their Demands." They were, in  
fact, willing to compromise. They were willing to relinquish,  
Allan said, "any Claim to land" reserving for themselves "only  
some particular places which their forefathers Occupied many

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<sup>40</sup> May 24, 1783, Memorandum for the Committee appointed by  
the honorable Congress of the United States respecting the  
Eastern Indian Department, PCC, roll 153, Vol. 149 II, 561-562.

<sup>41</sup> Allan to Governor Hancock, December 15, 1783, Samuel  
Adams Papers, New York Public Library.

<sup>42</sup> December 25, 1783, Allan to Thomas Mifflin, President  
of Congress.

Years ago, with the hunting streams." 43

The "principle characters of the Maliseets, Passamaquoddy, and Micmac Tribes" assembled at Passamaquoddy Bay later in 1784.<sup>44</sup> The Micmac chiefs, in conjunction with their colleagues, argued that the "promises made in time of War" had not been fulfilled, particularly as to land, for improvements and residence. <sup>45</sup>

Allan took their petition to the United States Congress,. From Washington, he wrote back that both Congress and the State of Massachusetts wished "nothing but your Welfare, that you may enjoy all your rights and Privileges in as full and ample a manner as any of your Brother Citizens of the United States. . . ." Allan also reassured the tribes that both governments "are determined to see Justice done in Your Claims, as far as is consistent with their Power and Authority." The Indian agent counseled patience, asking the tribes to continue to "pursue your

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<sup>43</sup> February 9, 1784, Allan to Thomas Mifflin, President of Congress, PCC Roll 71: 58, 67-68.

<sup>44</sup> It is worth noting that the Legislative Report submitted on behalf of the Passamaquoddy tribe to the White House negotiator, William Gunter, does not mention the presence of Micmacs at this general assembly in 1784, despite clear language in Col. Allan's report. Similar omissions are contained in later "summaries" of the important meetings and agreements between the tribes and the United States government and/or the Commonwealth of Massachusetts during the period from 1783-1795, as discussed supra.

<sup>45</sup> Campbell, Allan and Stillman: 1, 2

Suits on the Several Streams as usual." This conference occurred just before Allan was dismissed from Federal Office.<sup>46</sup>

Colonel Allan wrote:

The Indians notwithstanding the treatment and neglect, continued sometime in the vicinity of Passamaquoddy expecting when the confusion and hurry arising from the war were subsided, notice would be taken of them. . . (Kidder 1867: 314).

However, nothing was done, despite the various treaties and promises by Massachusetts and the U.S., and consequently Colonel Allan complained in a letter to Samuel Adams:

It does not appear that any notice has been taken of them Eastward of Penobscot. (Ibid.).

By 1792, the Maliseet, Micmac and Passamaquoddy tribes were nearly destitute and in desperation they turned again to Col. Allan.

He received a message "from the several Villages on the St. Johns" stating the tribes' demands for a priest and for a grant of land. He recommended a petition to the Massachusetts General Court for land. This petition was subsequently signed by four Micmac chiefs, together with delegates of the Maliseet and Passamaquoddy tribes.<sup>47</sup>

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<sup>46</sup> Allan February 23, 1784 in Kidder: 297-298. The Eastern Indian Department was abolished in March, 1784. ibid., 314.

<sup>47</sup> The petition was entitled "The Address and Supplication of the several villages of Indians, situated on the streams  
(continued...)



As a direct result of the tribes' petition, the Commonwealth of Massachusetts appointed a negotiating team to meet with the tribes.<sup>48</sup>

The tribal delegates withdrew to the St. John River where

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<sup>47</sup>(...continued)  
between Penobscot & St. Johns, with such of the Micmac Tribe adjacent." The petition read, in part:

In the War between this Country and the King of England, we were all (a very few excepted) disposed to take a part, as become the Natives of America, in opposing the attempts of that King's people. . .

We are conscious of doing our parts, to the utmost of our power and to convince your of our good will & friendship; in the time of War, resigned the claim of those lands, which our forefathers so long occupied only on condition of enjoying our Religion unmolested - - And exclusive rights to the Beaver Hunt --suitable residence for our families, and such other benefits in proportion to which our brethren were entitled to.

Since Peace, we have been wandering from place to place Those spots of ground, which were wont to be our abode, are taken up on the American as British side, and when our Familys attempt to encamp thereon are threaten'd with every insult, so that our women & children are in continual fear -- It is to you therefore, we look as our Chiefs. Tho many of us hunt on the English ground, where we formerly resided, and in some cases Oblidged still to encamp, yet a place is wanting where we can assemble unmolested at stated times, according to ancient custom. . . It is in this Country we wish to make our home -- We ask you to fulfill those promises made in War, particular that we may have secured, for the use of the several tribes a tract of land on Shudack River, and a place of residence on the Sea Shore. . . .

Collections of the Massachusetts State Archives.

<sup>48</sup> "Resolve on the Address and Application of Several Tribes of Indians," Act of March 28, 1793, Massachusetts Acts and Resolves 1792, c. 185, Act of June 26, 1794, Massachusetts Acts and Resolves 1794, c. 92.

they discussed the negotiations with Allan and his fellow Commissioners at Passamaquoddy Bay and accomplished the proceedings "with strings of Wampum". (Report of the Commissioners). Two months after the Meeting at Passamaquoddy Bay, the delegates returned on November 24. The Wabanaki representatives delivered three speeches. One of the old Chiefs, named Jack Querrien, spoke on behalf of

the Indians of the Maliseet and Micmac tribes, residing on the St. John River and other parts adjacent. (Allan Ms., in Wherry n.d.).

That same year, Colonel Allan reported on the Indian Affairs in Maine, and wrote:

"The river St. John's is extensive both to its source, as the many Lakes and streams, which discharge into it. The numbers of Indians settled on the several parts from all quarters are Indefinite" (Allan 1793, in Kidder:306).

"On the (Schoodic) Lakes you will find numbers of Indians from Canada, St. John, Penobscut, & the Mickmack Country, pursuing their several employments agreeable to the seasons. Some constant residents, & many of them for years not seen on the sea coast, being perpetually on the move. You may pass one day and see only some scattering wigwams, and the next observe Villages" (Ibid. :305-306).

Having discussed the tribal amalgamation of Micmacs, Maliseets, and Abenakis inhabiting the borderlands of Eastern Maine in the 1790's, Allan noted "the great advantages in fishing, fowling, conveniences, pleasant situation," of Passamaquoddy Bay. Because of

the easy access to the sea, from all parts by the Rivers which disemboque into the Bay, great numbers (of Indians) resort (to Passamaquoddy)

from all quarters. . . (Ibid. :306).

He goes on to specifically address joint use of the region by members of the Wabanaki Confederacy:

A correspondence and intercourse have been opened a long time, through the several Tribes. . . and I can assert from authority that an Indian can hardly be found past 30 years of age but is acquainted and known within this circle. The very easy conveyance by the Lakes, rivers and streams so interspersed in this Country, they can easy take their women, children and baggage, wherever their interest, curiosity or caprice may lead them, and their natural propensity for roving is such that you will see families in the course of a year go through the greatest part of this extent. This, of course, brings on a nearer connection by intermarriages which is now become universal, particular as far as Merrimichi and St. Francis, so much that I well know that numbers which I had in the war are now residents of Canada and other distant parts, and many from thence are now living at St. Johns, Penobscot, Passamaquoddy. Thus connected there appears no distinction in the right of several hunting grounds, for all by some tie or other have an equal claim, are fully domesticated as if natives of the district" (Allan 1783, in Kidder:308-309).

The result of the negotiations was a treaty concluded on September 29, 1794, in which the "Passamaquoddy Tribes and Others Connected with them" relinquished all of their claims to land within Massachusetts, and in return, the Commonwealth assigned and set off one hundred acres of islands in the Schoodic River [St.Croix]; a 23,000 acre township; Pine Island [containing 100 acres]1 Lues Island [containing 10 acres]; 100 acres at Nemcas Point, adjacent to the Township; the privilege of fishing and passing without molestation over the various carrying places on both branches of the Schoodic River; ten acres at Pleasant

Point on Passamaquoddy Bay; and the right of sitting down on fifty acres at the carrying-place on West Passamaquoddy on the Bay of Fundy.<sup>49</sup>

#### IV. CONCLUSION

The preceding discussion is a brief summary of important evidence of both Micmac presence and of joint use of lands in Maine by members of the Wabanaki Confederacy during the 18th century. Space constraints limit a more comprehensive discussion in this briefing book.

As noted, the Confederacy was a tightly knit union of the member tribes, originally formed as a military alliance against tribes from other regions and, later, against the English. The Confederacy was active throughout the 18th century; its alliance with the Americans during the Revolutionary War eventually led to the Treaty of 1794, among other agreements. Moreover, as the

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<sup>49</sup> "Resolve on the Report of Alexander Campbell and others, a Committee in Behalf of this Commonwealth, to Negotiate and Settle Any Misunderstanding or Differences with the Passamaquady [sic] Indians and Those of the Other Tribes Connected with Them" Act of February 10, 1795, Massachusetts Acts and Resolves 1794, c. 52; see also, Treaty with the Passamaquoddy Indians, September 29, 1794, Mary Francis Farnham, ed., The Farnham Papers: Documentary History of the State of Maine, (Portland: Lefavor-Tower Company, 1902) Vol. VIII, p. 98.

Then Attorney General Brennan in a 1978 Letter to the White House noted that the 1794 treaty did apply to the Micmacs: "...It has been curiously ignored that the 1794 agreement that forms the basis of the Passamaquoddy claim was executed by Massachusetts, not only with the Passamaquoddy, but other eastern tribes, which appear to include the Micmac and Maliseet. What precedential value will the proposal in the Joint Memorandum have on these latent claims? Will the federal government take the same posture towards settlement in those cases as it does in this?" (cite?)

above discussion indicates, that Treaty was intended to include both the Maliseets and Micmacs by its terms, a fact which has been obscured over time.

Evidence of Micmac presence in Maine and joint use of lands by members of the Wabanaki Confederacy for the periods preceding and following this discussion is also available and will be the subject of future reports.

The "Eastern Indians' Letter to the Governour"  
(copied from the Collections of the Maine Historical Society)

Grand Capitaine des Anglois,

**TU** vois par le traité de paix dont je t'envoye la copie, que tu dois vivre pacifiquement avec moy. Est ce vivre en paix avec moy de me prendre ma terre malgré moy? Ma terre que j'ay reçu de Dieu seul, ma terre de laquelle aucun roy ny aucune puissance étrangère n'a pû, ny ne peut disposer malgré moy, ce que tu fais neanmoins depuis plusieurs années, en t'y etablissant et en t'y fortifiant contre mon gré, comme tu as fait dans ma Riviere d'Anmirkangan, de Kenibekki, dans celle de Matsihsan, assis, et ailleurs, et tout récemment dans ma Riviere d'Anmakangan, où j'ay esté surpris de voir un fort qu'on m'a dit se batir par tes ordres.

Songe grand Capitaine que je t'ay souvant dit de te retirer de dessus ma terre, et que je te le redis maintenant pour la dernière fois. Ma terre n'est à toy ny par droit de conquête, ni par donaison, ny par achapt. Elle n'est point à toy par droit de conquête.

Quand m'en as tu chassé? Et ne t'en ai-je pas chassé toutes les fois que nous avons eu guerre ensemble, ce qui prouve qu'elle est à moy par plusieurs titres.

Elle n'est point à toy par donaison. Le roy de France dis tu, te l'a donnée. Mais a-t-il pu te la donner? Suis je son sujet? Les sauvages te l'ont donnée. Quelques sauvages, que tu as surpris en les faisant boire, ont ils pu te la donner au prejudice de toute leur nation, que, bien loin de ratifier cette donaison, ce qui seroit necessaire pour te donner quelque droit, la declare vaine et illusoire?

EASTERN INDIANS' LETTER.

Quelques uns t'en avoient presté quelques endroits, mais scache que toute la nation revoque ces prestes, à cause de l'abus que tu en as faits. Quand t'ont ils permis de faire des forts et de t'avancer autant que tu fais dans leur Riviere ?

Elle n'est point à toy à raison d'achapt. Et tu me dis une chose que mes grand pères et mes pères ne m'ont jamais dit. Qu'ils eussent vendu ma terre quand quelques uns en auroient vendu certains endroits, ce qui n'est pas, puisque tu ne puis pas dire que tu aye suffisamment payé la moindre des isles dont tu veux t'emparer, j'ay droit de rentrer dans un bien qu'on n'a pu aliener à mon prejudice, et que j'ay tant de fois reconquis.

J'attends donc ta reponse dans 3 dimanches, si sous ce terme tu ne m'ecris pas que tu te retires de dessus ma terre, je ne te diray plus de te retirer, et je croiray que tu veux t'en rendre maitre malgré moy.

Au reste, ce n'est pas icy la parole de 4 ou 5 sauvages que par tes presens, tes mensonges, et tes ruses tu peux faire facilement tomber dans tes sentimens, c'est la parole de toute la nation Abnaquise répandue dans ce continent et en Canada, et de tous les autres sauvages chrétiens leurs alliés qui se sont exprez assemblez pour te parler ainsi sur ma terre, et qui, après t'avoir attendu plus de 50 jours, et mes gens, que je suis surpris que tu ne me renvoye point contre ta parole, te somment tous ensemble de te retirer de dessus la terre des Abnaquis que tu veux usurper injustement, et qui a pour bornes la Riviere de Kenibegé, Riviere qui la separe de la terre des Iroquois. J'aurois droit de te redemander tout l'espace qui est depuis cette Riviere jusqu'a moy, puisque tu n'en possédes rien que par surprise, mais je veux bien te laisser dans cette espace à condition qu'absolument il ne logera plus d'Anglois a une lieue prez de ma Riviere de Pegakki, ny depuis cette borne le long des bords de la mer qui repondent à toute l'étendue de ma terre, ny dans le bas de mes Rivières, ny dans aucune des isles qui repondent à ma terre, qui sont au large et où mon canot peut aller.

Si quelques particuliers sauvages, adonéz a la boisson,

EASTERN INDIANS' LETTER.

te disent de te loger où tu logeois autrefois, scache que toute la nation desavoue cette permission, et que J'yray brûler ces maisons apres les avoir pillées.

J'attends ta reponse dans mon village de Nanrantseak, <sup>par mes Gens qui sont en Boston</sup> en François comme je t'ecris. Si tu m'écris en Anglois je croiray que tu n'as pas voulu estre entendre et que tu veux retenir ma terre et mes gens malgré moy, que je te dis encore de me rendre, parceque la terre est a moy, et que pour ~~mes~~ 4 hommes j'ay donné la rençon dont nous sommes convenus pour m'aquiter de ma parole, quoyque je ne te doive rien. C'est la parole de toute la nation Abnaquise repandue dans ce continent et en Canada, et de tous les sauvages Catoliques, Hurons, Iroquois, Misemaks, et autres alliez des Abnaquis, dont les anciens et les Deputez ont paru et parlé au lieu nommé Menaskek au sieur.

Le 28 Jul. 1721.

Scaché encor grand capitaine, que toute la nation Abnaquise proteste de nullité sur tous les actes que tu as passé jusqu'icy avec les sauvages, et parce qu'ils n'ont point esté avouez ny reçus de toute la nation, et parce qu'ils n'ont esté que l'effet de tes supercheries, comme dans celuy de peskadé, sur le quel tu te fondes si fort, où tu fis si faussemment entendre aux sauvages que tu estois seul maitre de la terre, que le roy de France t'avoit donné leur pays; comme si un roy pouvoit donner ce qui n'est pas à luy.

Vu l'effet de la boisson que tu donnes en abondance aux sauvages, apres quoy ils te promettent tout ce que tu veux.

Vu l'effet de la violence que tu as exercée en leur endroit en plusieurs rencontres, et tout nouvellement l'hiver dernier, ou apres en avoir appelé six pour te parler au sujet des bestiaux qu'on t'avoit tuez, et qu'on avoit droite de te tuer pour t'obliger par la à te retirer d'une terre qui n'est point à toy, tu les fis entrer dans une maison

\* Thus interlined in the original; and the word *mes* was first written *mais* and then corrected.



# EASTERN INDIANS' LETTER.

et ensuite entourer de près de deux cent Anglois armez de pistolets et d'épée et en les obligeant de demeurer 4 pour ces bestiaux tuez. Tu as conduit ces 4 hommes prisonniers à Boston. Tu avois promis de rendre ces 4 homes en te donnant 200 castors. Les castors sont donnez, et maintenant tu retiens ces homes. Par quel droit ?

Signature de la nation Abnaquise et des sauvages ses allies.

Ceux de Narantsuk



Ceux de Pentugset



Ceux de Narakamigz



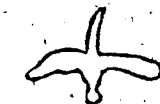
Ceux d'Anmissékanti



Ceux de Muanbissek



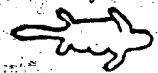
Ceux de Pegsakki



Ceux de Medokteck



Ceux de Ksupahag



Ceux de Pesmokanti



Ceux d'Arsikantegz



Ceux d'eansinak



Leurs allies



Les Iroquois du *sante*



Les Iroquois de la Montagne



Les Algonquins



Les Hurons



Les Mikemaks



Les Montagnez du cote du nord



Les Papinachois, et autres nation voisines

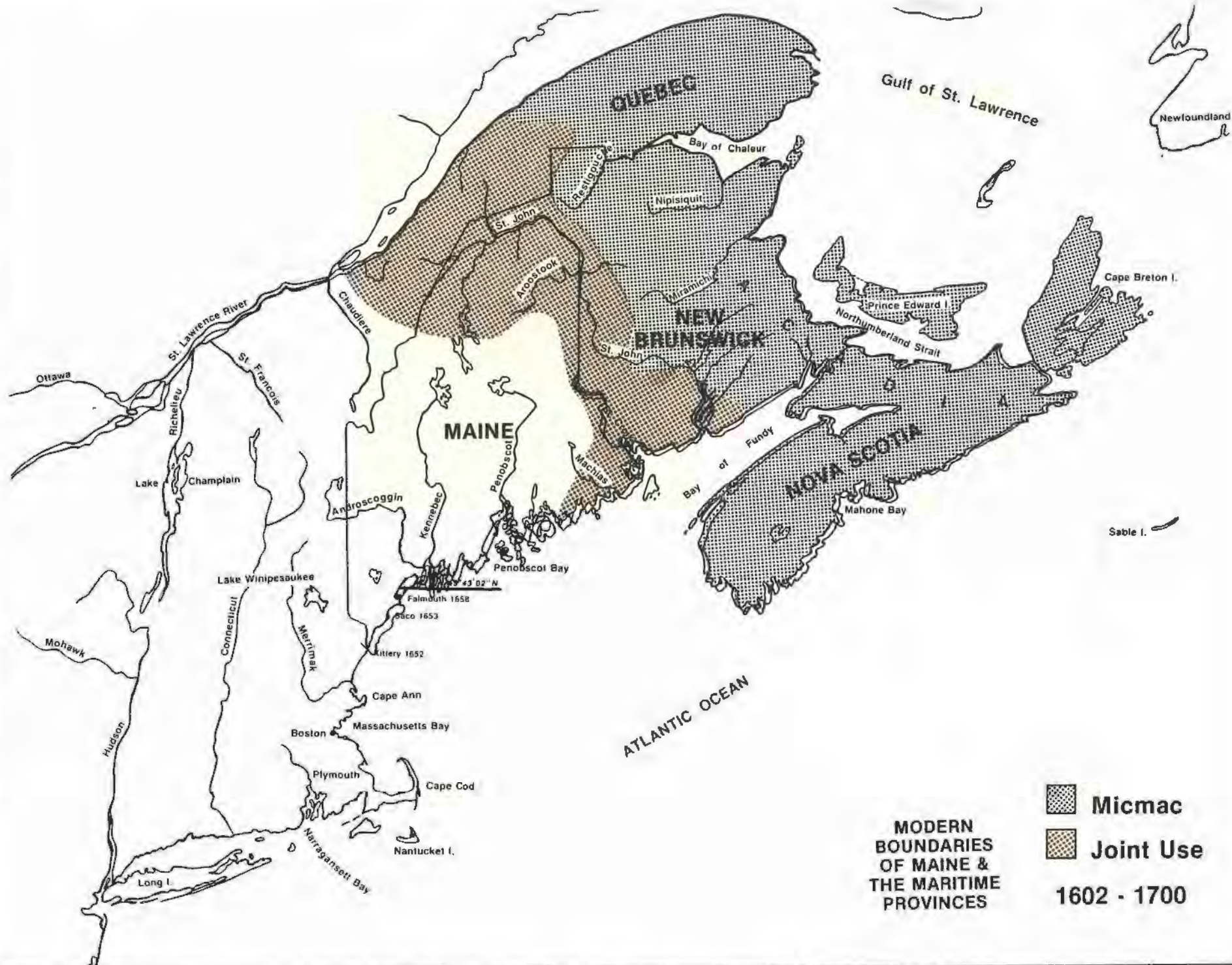


The Washington Medal Presented to  
The Micmac Nation c. 1776 as a  
Symbol of the Friendship of the  
United States of America

EXHIBIT B



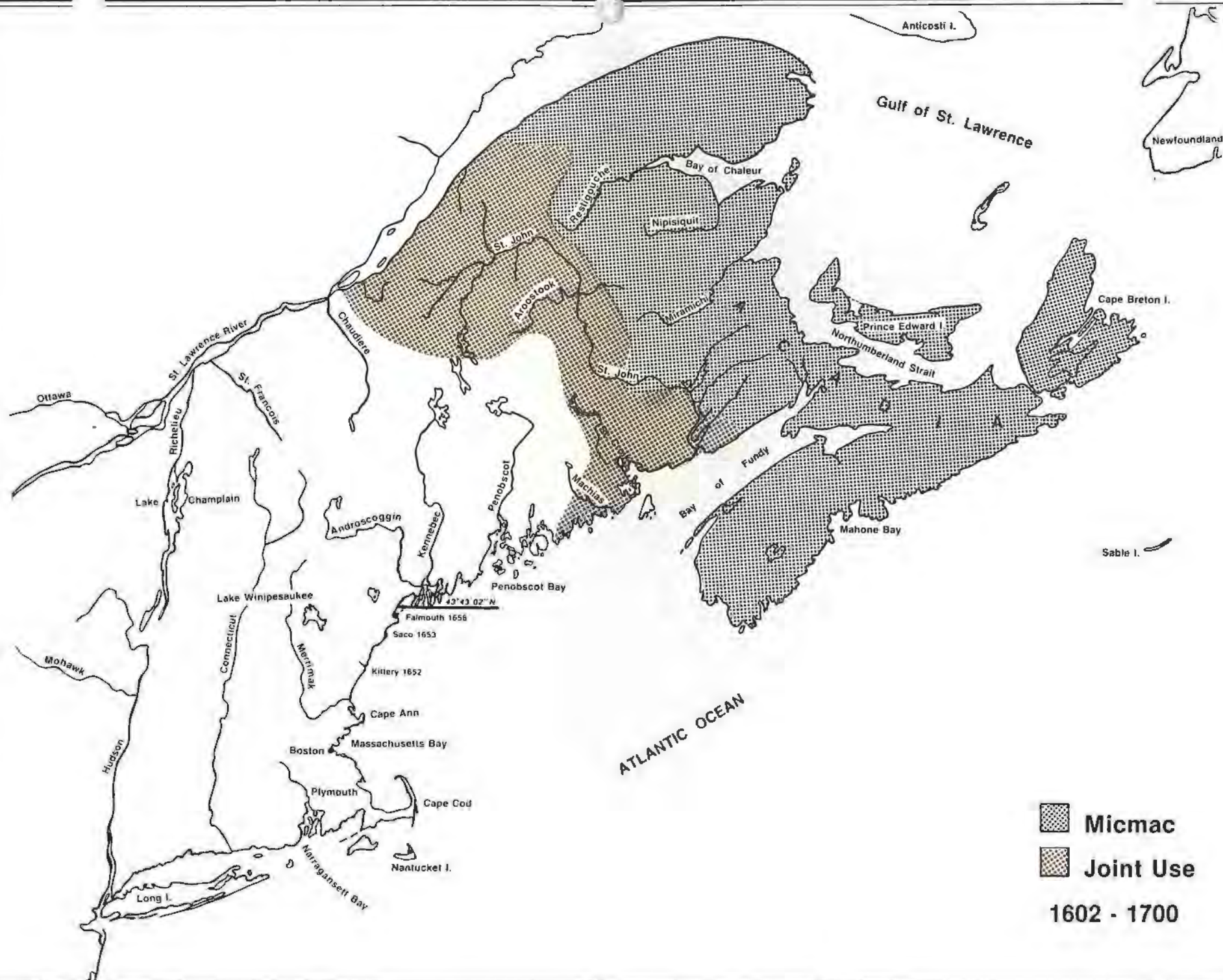
These photographs were taken of the Medal now in the Collections of the British Museum. The only other Medal is now owned by a Micmac woman living in Canada; however, the two medals are virtually identical.



MODERN  
BOUNDARIES  
OF MAINE &  
THE MARITIME  
PROVINCES

 Micmac  
 Joint Use  
1602 - 1700







## A CHRONOLOGY OF EVENTS SIGNIFICANT TO MICMAC PRESENCE IN MAINE

### MAP ONE (1602- 1700)

- 1602 Micmac mariners in European shallops are reported at Cape Neddick [on the southern coast of Maine]. At this time, there are numerous reports of Micmac traders dealing with French and Basque fishermen and merchants. For a short period, they control the fur trade in the Gulf of Maine until the French and English establish colonies there.
- 1603- Champlain is the first European to describe the  
1604 Micmacs as the Souriquois Indians. He notes that they enjoy trade relations with the Indians in southern Maine.
- 1604- The Micmacs, including those in the St.Croix area,  
1607 are at conflict with Indians dwelling near the Saco River, known as the Armouchiquois.
- 1607 The Popham expedition to the lower Kennebec River encounters Micmacs in a shallop who tell them that "Messamot" is the chief commander of the area. The English call these people "Tarratines."
- 1609 Henry Hudson encounters Micmacs, again in a shallop, in Penobscot Bay.
- 1613 Biard establishes a mission post on Mt. Dessert Island. He reports on the wandering nature of the Micmacs with whom he comes in contact there. His description of their migratory lifestyle is confirmed by other contemporaries.
- 1614 Capt. John Smith identifies the Tarrantines as the the Indians whom the French call the Souriquois; that is, the Micmacs. He describes them as living east of Penobscot Bay. He names Isle au Haut [off the coast of Maine] Sorico because of the Micmac presence there.
- 1623 After establishing an English trading post in Casco Bay, Levett instructs Indians living in the area to kill "all the Tarrantens they should see." This hostility between the English and Micmacs probably results from Micmac involvement on behalf of the French, against whom the English are fighting.
- 1654 The French are defeated in Europe and their influence in America is lessened.

- 1660 As a result of Iroquois expansionism, a gradual migration of the tribes eastward begins.
- 1676 English raiders capture a group of Micmacs at Machias and sell them as slaves in the Azores, inciting new conflict in the area.
- 1677 A French mission village at the Riviere du Loup [near Madawaska] is established for the Micmacs and Maliseets.
- 1678 A treaty between the English and the eastern Indians is signed at Casco Bay.
- 1685- Bishop Saint-Vallier notes the presence of Micmacs  
1695 along the St. John River. They are also present on the St. John River during Capt. Giles' period of captivity there.
- 1688- King William's War between the English, on the one  
1699 hand, and, on the other, the French and the evolving Wabanaki Confederacy, which includes the Penobscot, Passamaquoddy, Maliseet and Micmac tribes.
- At its conclusion, the French and English sign treaties which, among other things, imply that the Kennebec River is the border of French-held Acadia.
- 1691- The French commander Villebon writes of assembling  
1699 Micmacs, Maliseets, Passamaquoddies, Penobscots and Abenakis in raids against the English in Maine and southern New Hampshire.
- A mission village at Norridgewock on the Kennebec River is established by the French.
- 1692 Cadillac is among the first writers to describe the tribe as Micmac. The terms Souriquois, Tarrantine, Gaspesians, Miscouiensis, Cape Sable Indians, etc. had been previously used to describe both individual bands and the entire tribe by different authors.

1749      The "Great Council Fire" of the tribes, commemorating a peace treaty between the Wabanaki Confederacy and the Iroquois Nation is established.

A treaty with Governor Cornwallis is signed in Halifax, Nova Scotia in August. This treaty is subsequently ratified at Chibucto Harbor [on the St. John] and at Falmouth, the latter treaty involving Lt.Gov. Phipps.

However, later in the fall, renewed conflicts between the Micmacs and English break out and continue throughout the next few years.

1752      A treaty with Governor \_\_\_\_\_ and the Eastern Indians is signed at Fort St.George [near Pemaquid].

1754-      The French and Indian Wars, sporadically interrupted  
1759      by peace negotiations.

1760      Peace treaties between the English and the Micmacs, as well as the other tribes occur at Fort Cumberland. The British promise the tribes that they can keep all the lands held by the tribes at the end of the wars.

1763      Treaty of Paris between England and France cedes jurisdiction over all of Canada to the English.

1767      A gathering of the Wabanaki Confederacy takes place on the Penobscot River to discuss the problem of English encroachment on Indian lands, but no definite action results.

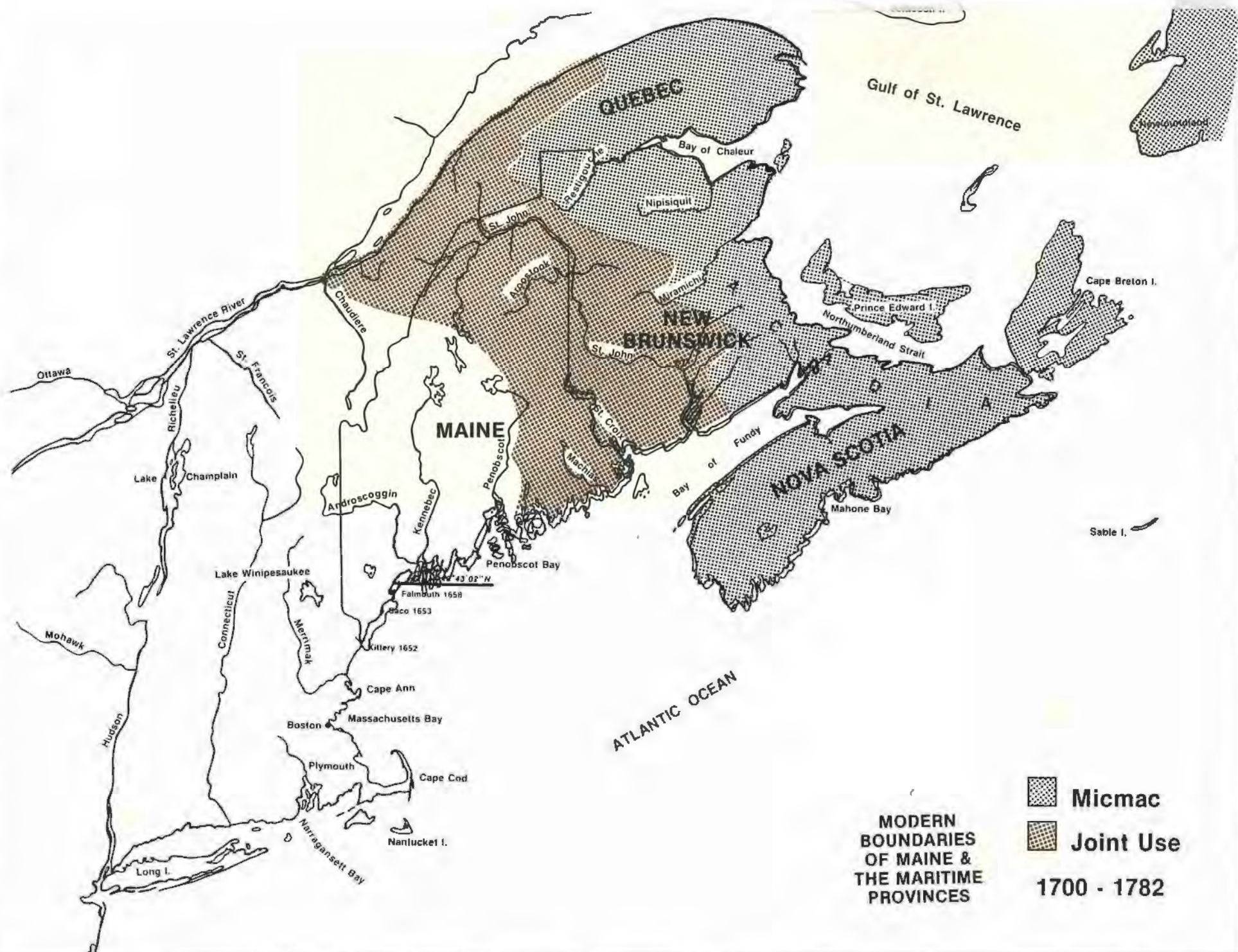
1775      The Massachusetts Provincial Congress writes to the Eastern Indians, warning of new dangers to them posed by the British Government.

In response, two chiefs of the St. Johns tribes, one representing the "Miccamac" tribe, travel to Massachusetts and receive presents in recognition of their pledge of loyalty.

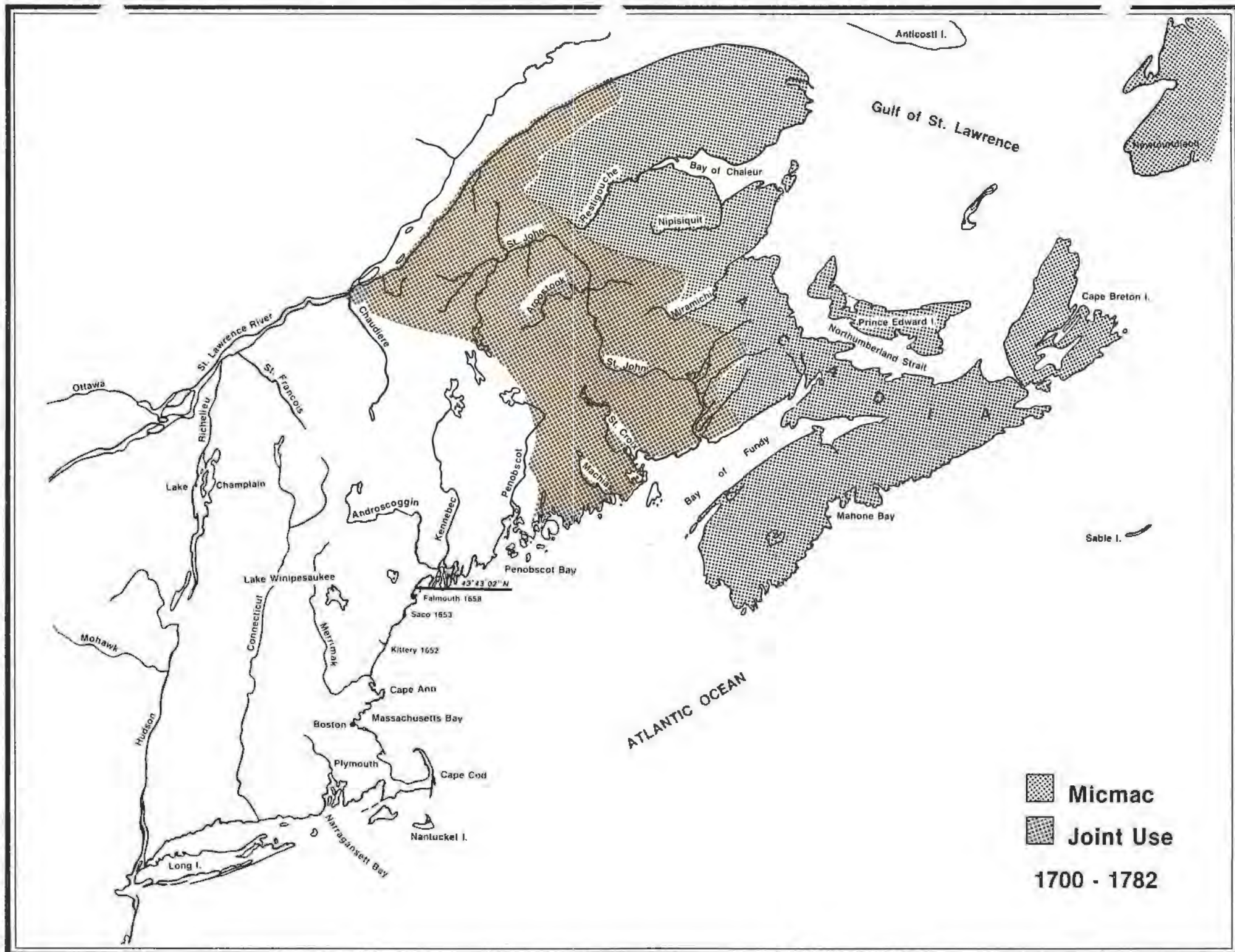
1776      Treaty of Watertown is signed in Massachusetts between the Council of United Colonies and the Micmac and Maliseet Indians, in which the tribes promise to join the American revolutionary forces.

1777      Col. John Allan is appointed Agent to the Indian tribes belonging to the Wabanaki Confederacy by the U.S. Continental Congress. A record of Indians in the service under Col. Allen at Machias includes many Micmacs.





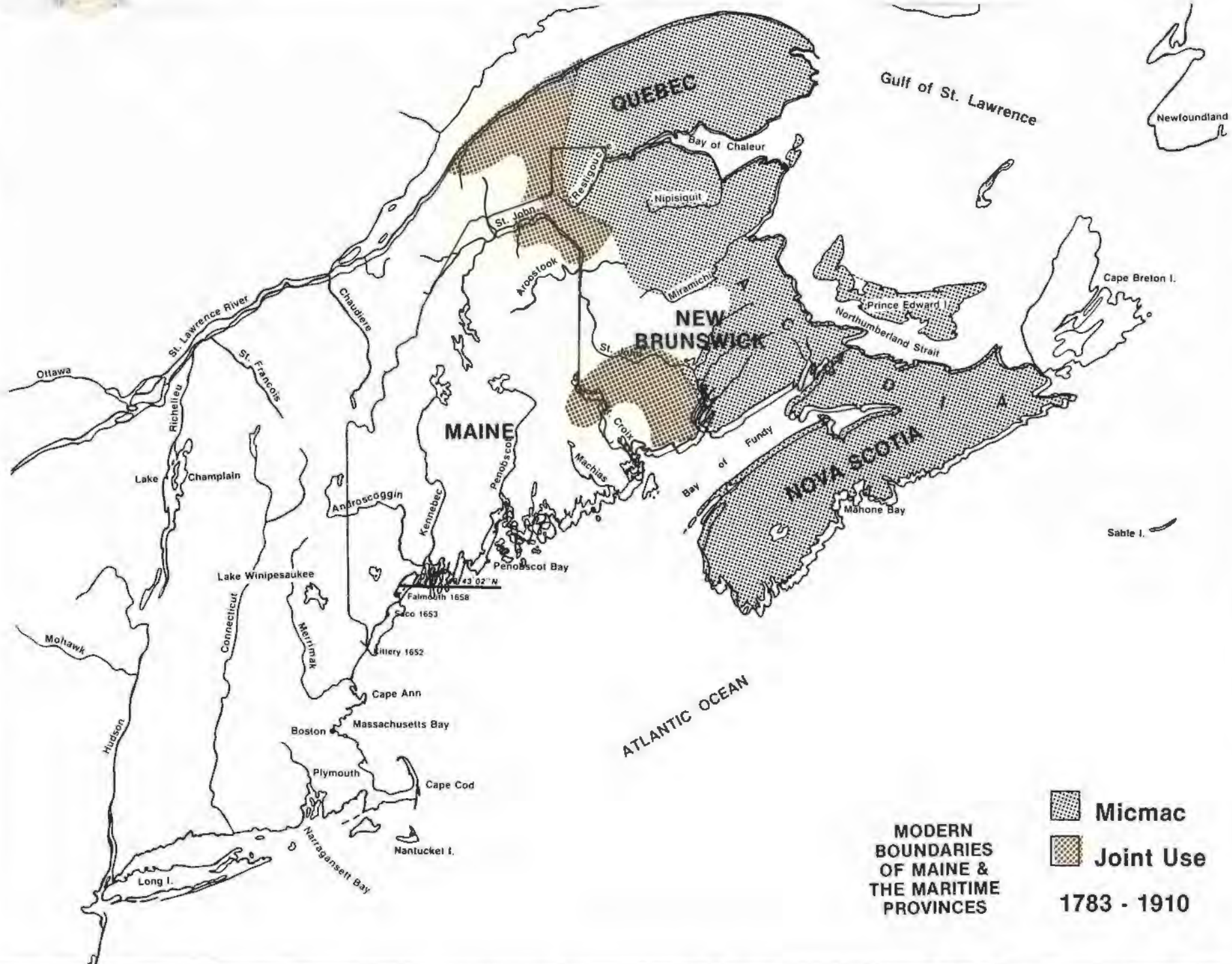


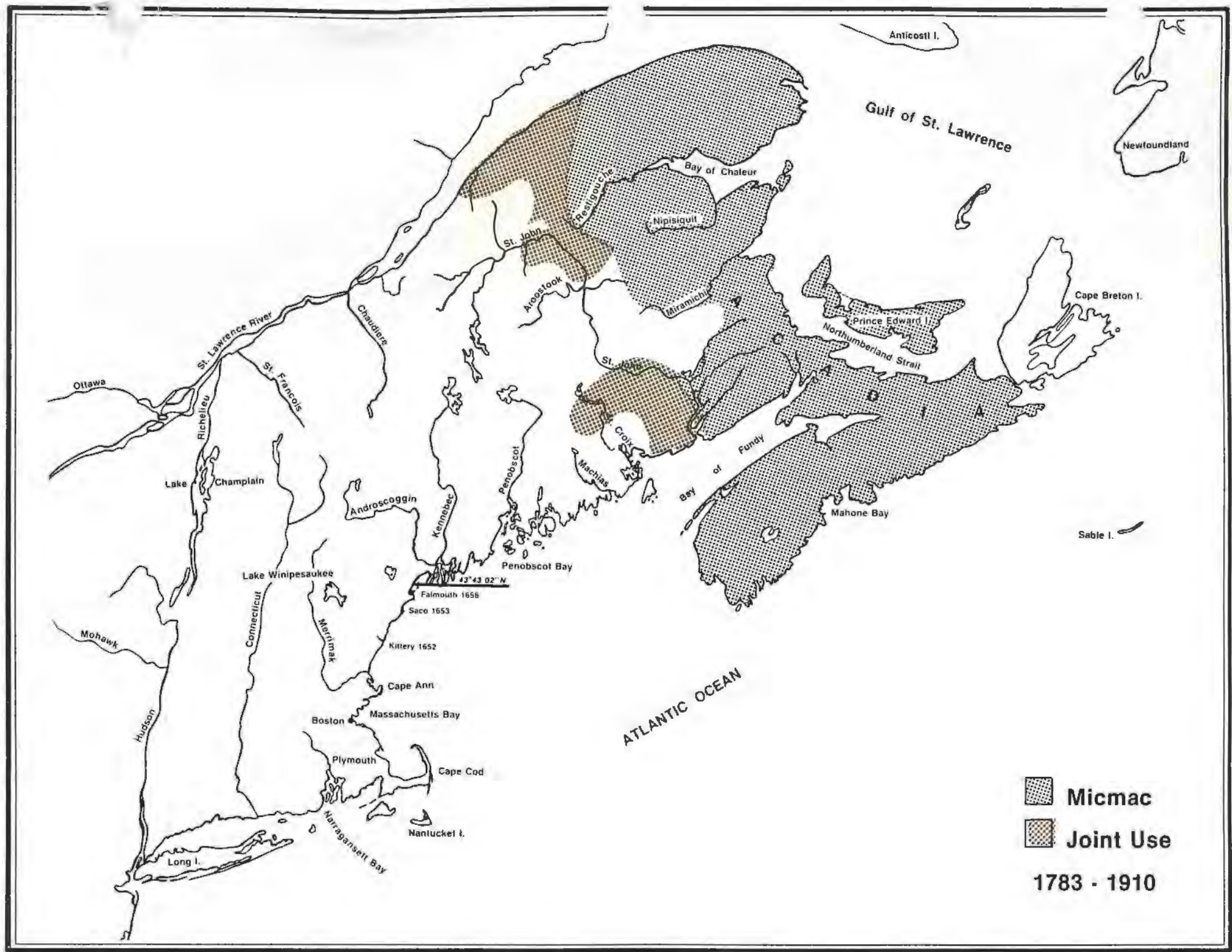


## MAP TWO (1700-1783)

- 1700 Diereville confirms that Micmacs dwell along the St. John River, and that they have a village there, together with Maliseets and Kennebec Abnakis.
- 1703 Baron LaHontan describes the three principal tribes living in Acadia [Maine east of the Kennebec River and the maritime provinces] as the Abenakis, the "Mikemak" and the Canibas.
- 1703-1713 Queen Anne's War between the English, on the one hand, and the French and Wabanaki Confederacy, on the other. This conflict takes place in Acadia, e.g., the area north and east of the Kennebec River in Maine.
- 1713 Treaty of Utrecht in Europe, which cedes "Acadia" to the English. In Portsmouth, the "Eastern Indians" sign a treaty with Gov. Dudley which explicitly saves "unto the sd Indians their own Grounds."
- The English quickly establish settlements in Acadia along the coast, an area of importance to Wabanaki Indians because of fishing rights. This prompts renewed conflicts between the two.
- 1717 Ratification of the earlier 1713 treaty at Georgetown on Arrowsick Island, again between the Indians belonging to the eastern parts of Acadia and the English.
- 1721 After a conference of the Wabanaki Confederacy, the tribes direct a letter to Gov. Shute of Massachusetts, asking the English to withdraw from their lands. The Micmacs sign this letter with the same running deer emblem used by the Aroostook Micmac Council today.
- 1722-1727 Dummer's War involves continued raids and conflicts in Maine between the English and the Wabanaki Confederacy. The priest and several Indians, including Micmacs, resident at the mission village in Norridgewock are killed during this period.
- 1727 A treaty between Governor Dummer and the Eastern Indians is signed at Falmouth, again reserving Indian lands to the respective tribes.
- 1744-1749 King George's War is prompted by increased pressures created by English settlements in Acadia. The declared war by Massachusetts is limited to the Micmac and Maliseets, although other tribes joined them. As a result, many Micmacs relocated inland.





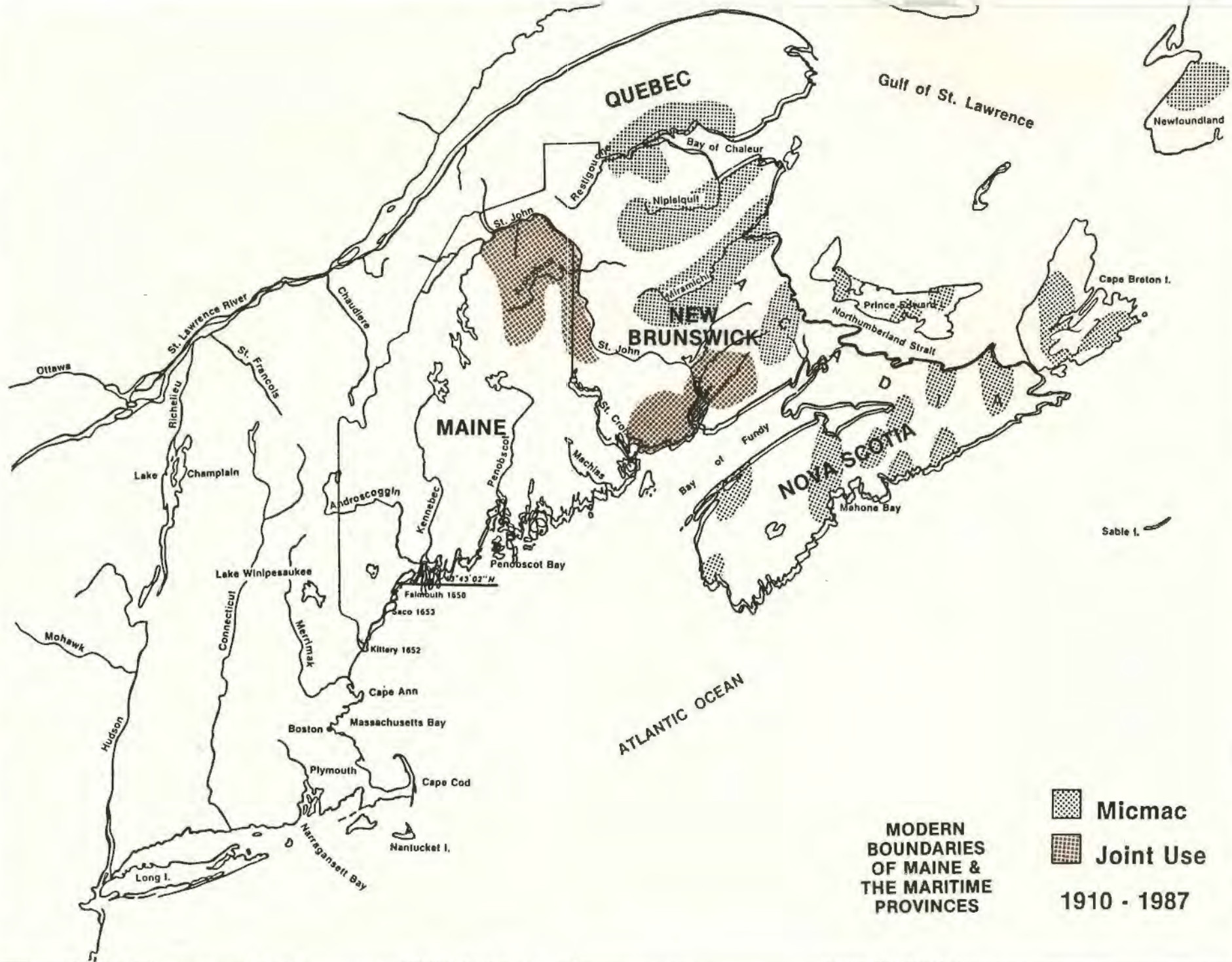


**MAP THREE (1783-1910)**

- 1783 Treaty of Paris between the United States of America and the British.  
New settlements of colonists immediately develop throughout Indian territory.
- 1784 Members of the Wabanaki Confederacy meet with Col. Allan to complain of violations of their land rights. They give him a belt of wampum to present to Congress.
- 1790 The Congress passes the first Trade and Non-Intercourse Act, which extends protection of lands to all tribes in the United States by prohibiting State or private purchases without Federal approval.
- 1791 The Passamaquoddy and Micmac Tribes send a letter to the Massachusetts General Court complaining of violations of their land rights and requesting that land be set aside for their use.
- 1793 Massachusetts establishes a Negotiating Committee was instructed to negotiate and settle differences with the Passamaquoddies and "those of other tribes connected with them." The Agreement reached provides for the assignment of certain lands to the "Passamaquoddy Indians and Others connected with them." However, the Micmacs are not named or specifically recognized in this Agreement.
- The Jay Treaty provides for free passage across the border of all North American Indians and guarantees the right "to be perfectly free and unmolested in their trade and hunting grounds and to pass and repass freely undisturbed to trade with whom they please."
- 1794 A treaty between Massachusetts and the Passamaquoddy Tribe and Others Connected with Them provides for the assignment of land as agreed by the negotiating committee "in consideration of the said Indians relinquishing all their Right Title Interest Claim or demand of any land lying and being within the said Commonwealth of Massachusetts."
- 1799 A treaty between Massachusetts and the Penobscots which provides for the assignment of land.
- 1818 A treaty between the Commonwealth of Massachusetts and the Penobscot Indians provides for the assignment of certain land to that tribe.
- 1819-1820 Micmac reserves are established in New Brunswick and Nova Scotia



- 1820        The District of Maine is established as a State
- The Act relating to the separation of Maine from Massachusetts also provides that Maine will assume all the duties and obligations of Massachusetts towards the Indians in Maine, whether they arise from treaty or otherwise.
- 1825        U.S. Federal Dept. of War lists 300 St.John's Indians in Maine, a figure which may include Micmacs.
- 1842        Webster-Ashburton Treaty sets international border in Maine
- 1847        There are reports of annual meetings of the Wabanaki Confederacy at Pleasant Point on the St.Croix. These meetings include the Micmacs, as well as Penobscots and Maliseets.
- 1852        Maine passes a law making it illegal for Indians "belonging to the British provinces" to kill moose or deer within the State of Maine.
- Prior to passage of this law, Gov. Hubbard of Maine had warned the Penobscots and Passamaquoddies to break ties with the other members of the Wabanaki Confederacy over this issue. Maine began to use its reputation as a "sportsmen's paradise" to attract wealthy outsiders; to the extent that Indians decreased the animal populations by their activities, this was bound to conflict with State aims. This issue remained active throughout the rest of this century.
- 1853        The State law is "clarified" to permit members of the Penobscot and Passamaquoddy tribes to hunt deer and moose.
- 1861        Members of the Wabanaki Confederacy join in raising the last Life Chief of the Penobscots on Indian Island on the Penobscot River.
- 1872        Micmacs break away from the Great Council Fire.
- 1875        A railroad to Aroostook County is opened.( the railroads are used increasingly by Micmacs as a means of getting about)
- 1878        Maine passes an "Act Concerning Tramps" which prohibits travel from town to town, begging for food or shelter or from sleeping in barns or other buildings without the owner's consent.
- 1880        Micmac burial plots discovered at Blue Hill.







#### MAP FOUR (1910-1987)

- 1924        The Citizenship Act of 1924 confers citizenship on all American Indians. However, states move individually to confer voting rights to their Indian citizens and Maine was the last state, in 1967, to do this.
- 1925        Maine passes a new law in which towns are to be reimbursed by the State for "relief of Indians not members of Penobscot or Passamaquoddy tribes" under the town general assistance programs.
- 1937        Tuition scholarships for Indians in Maine become available at the University of Maine
- 1942        The Proctor Report, requested by the Maine Legislature, reports on the "Maine Indians" by focusing on the reservation populations. While noting the presence of other tribes living among the Penobscots and Passamaquoddies, the Report does not further comment on the presence of Micmac or Maliseet Indians in Maine.
- 1952        A Report to the Legislative Research Committee regarding Indian Affairs in Maine by the Commissioner of the Department of Health and Welfare does not mention the Micmacs or Maliseets.
- 1965        State of Maine creates a Department of Indian Affairs, the first such state agency in the country.
- The Report supporting this legislation states that only two tribes existed in Maine after the American Revolutionary War, the Penobscots and Passamaquoddies.
- 1967        The Maine Legislature votes to allow Indians residing on tribal reservations in the State the right to vote in all county, state and national elections.
- Diocesan Human Services creates a Division of Indian Services. This Division subsequently funds scholarships, public health nursing and community developmental assistance for the reservation Indians.
- 1969        The Association of Aroostook Indians (A.A.I.) is formed.
- Headquartered in Houlton, this non-profit corporation is intended to work for the benefit of Micmac and Maliseet Indians, as well as members of other tribes, living in Aroostook County.
- In a speech to the USM law school, Gov. Curtis notes that the status of Indians of Aroostook County calls for legal research and action.

- 1970        The U.S. Census lists some 436 American Indians living in Aroostook County.
- 1971        A survey of the off-reservation Indian population in Maine, funded by HUD, indicates some 500 Micmac Indians living in the State, the largest off-reservation tribal group. This survey lists some 465 off-reservation Indians living in Aroostook County.
- A document entitled "Maine Indians A Brief Summary" is prepared by the State Dept. of Indian Affairs. It does not mention Micmacs in either a historical or contemporary context in its report.
- The State Representative from Houlton introduces legislation to make available free hunting and fishing licenses to members of the Micmac and Maliseet tribe. The legislation does not pass at this time.
- 1972        Lawsuits are filed by the Penobscot and Passamaquoddy Indian Nations against the State of Maine for the loss of aboriginal lands without compensation, and against the United States for failing to protect their interests.
- An Indian Scholarship Committee is established to assist North American Indians living in Maine in obtaining secondary and post-secondary educations. These grants are initially available only to Penobscots and Passamaquoddies.
- 1973        The Advisory Committee to the US Commission on Civil Rights holds hearings in Maine on the status of Maine's Indians, finding a "desperate need [for] guidance and assistance" by Maine's "off-reservation tribes."
- As a result of those hearings, a special off-reservation office of the Dept. of Indian Affairs is created in Houlton.
- The State Legislature amends existing law to give free hunting and fishing licenses to members of the Micmac and Maliseet tribes, in recognition of their special ties to the State.
- In the same year, the State Legislature also amends the North American Indian Scholarship Bill to make its benefits available to members of Maine's four tribes: Micmac, Maliseet, Penobscot and Passamaquoddy.
- Senator Muskie writes to the federal Bureau of Indian Affairs asking why they do not provide services to the Micmac and Maliseet Indians since they "are designated as Indian tribes and regarded as such by the State."

- 1973        The Bureau of Indian Affairs responds to Senator Muskie's letter by noting that the United States does not recognize any of Maine's Indians as eligible for their services.
- 1974        The Regional Director of the U.S. Civil Rights Commission writes the Congressional Liason Officer for various Congressional proposals which would benefit the Micmacs and Maliseets, noting they are "travel groups living in their aboriginal territory."
- A Federal Court recognizes that the Micmac tribe has always maintained a presence in the State of Maine and that it is entitled to the special benefits and protections afforded to its members as North American citizens.
- A Report of Governor Curtis on conditions in the migrant blueberry camps for the Maine Human Rights Commission notes that the Micmacs have comes and gone across the international boundary for centuries.
- 1975        A population census done by A.A.I. with the State Planning Office includes 1158 Indians in Aroostook County.
- 1976        Governor Dukakis of Massachusetts issues an Executive Order stating that the Commonwealth has "never ceased to recognize its indigenous tribes , living within or near the boundaries of current or former territories and reservations" and establishing the Boston Indian Council as its liason with resident members of Penobscot, Passamaquoddy, Maliseet and Micmac tribes "with whom the state has entered into treaties and other agreements."
- 1976        In a memorandum to the Solicitor of the Dept. of Interior, Attorney General Joseph Brennan notes that the Micmac Indians jointly used the territory in eastern Maine with other members of the Wabanaki Confederacy.
- Congress creates an American Indian Policy Review Commission to study the status of Indians throughout the United States.
- A general Census of the Indian population in Maine indicates some 564 Micmacs living in Aroostook County. Most of the Micmacs live in the northern half of the County, a fact which leads A.A.I to open a second office in Caribou. However, this office is closed the following year, because of tension between the Micmac and Maliseet members of A.A.I..

- 1976      The American Indian Policy Review Commission issues its final report, recognizing that a 1794 treaty is applicable to the Micmac and Maliseet Indians served by A.A.I. . The Report also recognizes that the Micmacs were part of the Wabanaki Confederacy, but suggests that they have no territorial claims in the United States.
- A meeting of the tribal groups belonging to the Wabanaki Confederacy takes place at Old Town.
- 1978      A.A.I. gets a federal grant for research to show that the Micmacs and Maliseets meet the "indigenouness" showing of the newly adopted federal acknowledgement regulations.
- A.A.I.'s alcoholism funding is transferred to the Indian Health Services program.
- By mid-summer, A.A.I. is beginning to focus on the possible assertion of a Maliseet claim to lands in Maine. In a letter to the Senate Select Com't on Indian Affairs, this possibility is expressly raised by AAI's president, a Maliseet.
- 1979      As the forces towards settlement of the Penobscot and Passamaquoddy lawsuits gather force, the President of A.A.I writes to Gov. Brennan to urge him not to discontinue the services provided by the Dept. of Indian Affairs to the Micmac and Maliseet people.
- Dept. of Indian Affairs Commissioner Rhynard writes that the Governors of the three reservations do not intend to seek continued operation of the Department. Off-reservation services or Indians "were not discussed at the meeting at all."
- 1979      The research funded the previous year has been focused on Maliseet history and claims. This research leads the Maliseet members of A.A.I. to focus on the possibility of obtaining recognition as a tribe and also being included in the on-going land claims negotiations.
- The leadership of A.A.I and the newly emerging Houlton Band of Maliseets have become synonymous. An attorney is hired by A.A.I. to assert a land claim upon behalf of the Houlton Band. One of the negotiating points is to be the ability to serve Micmacs who meet a blood quantum and residency requirement.
- Letters asserting the land claim are sent to Maine's Congressional delegation and other interested parties in late August.

- 1979 A report setting forth the basis for the land claim is filed with the Department of Interior in November
- 1980 January 7: A.A.I President Polchies again urges that the State Department of Indian Affairs be kept open and he invites Gov. Brennan to meet the Indians of Aroostook County.
- March 15: the Penobscot and Passamaquoddy tribes vote to accept the terms of a settlement which would give the Houlton Band of Maliseets federal recognition and 5000 acres of land.
- April: The Houlton Band of Maliseets votes to formally separate itself from the A.A.I, and to elect its own tribal chairman and council.
- June: the Maine Legislature passes the Maine Implementing Act which is premised of passage of the federal legislation settling the lawsuits.
- October 10: President Carter signs the Maine Indian Claims Settlement Act. While the Houlton Band of Maliseets received federal recognition as a tribe, as well as funds with which to purchase land, the Micmac Indians are not mentioned at all in this document, or the accompanying reports.
- 1981 The federal benefits now available to the Houlton Band of Maliseets are limited to its membership; Micmacs living within its service population area are not able to use these benefits.
- 1981 The Maine Department of Indian Affairs closes its doors, and with it, the off-reservation office in Houlton. Related state programs are de-funded.
- 1981 The statute which provided for 100% reimbursement of general assistance benefits paid by towns to Indian applicants is repealed.
- 1982 A Micmac Issues Meeting takes place at Old Town, pulling many groups and individuals together in an effort to focus on Micmac federal recognition. A second meeting is held in Boston, hosted by the Boston Indian Council.
- The Association of Aroostook Indians closes its doors.
- In June, the Aroostook Micmac Council (A.M.C.) is incorporated as a non-profit corporation to work towards the achievement of federal recognition for its members. Shortly thereafter, a general assembly of Micmacs elect their first Board of Directors.

- 1982        Members of the A.M.C. attend the meeting of the Wabanaki Confederacy tribes at Old Town. The Conference adopts a resolution endorsing federal recognition of the Micmac tribe.
- The Department of Transportation agrees to notify members of the A.M.C of openings.
- Maine's Bureau of Public Lands agrees to issue special permits to members of the Aroostook Band of Micmacs to cut brown ash on public lands for their traditional basketry.
- 1983        A population survey of members of the Aroostook Band of Micmacs is conducted. The survey is the first to focus on demographics of the Micmac population in Aroostook County.
- Meetings with the Governor's staff on the issue of federal recognition take place in Augusta.
- 1985        The State Legislature quietly repeals the North American Indian Scholarship Program, which has not been "funded or operational" since 1981.
- A Letter of Intent to file a federal acknowledgement petition on behalf of the Aroostook Band of Micmacs is sent to the Bureau of Indian Affairs.
- The color documentary film "Our Lives in Our Hands" premieres at the American Indian Film Festival in New York. The film focuses on the Micmac basket-makers of Aroostook County.
- 1986        At a special general membership meeting in November, the Aroostook Band votes to organize into a formal tribe and to seek the introduction of a legislative reference of their claims against the United States in Congress.

TAB #11













18

A Sanipass cabin  
near Mapleton, Maine,  
in Aroostook County



# Micmac basketmakers

Way up in Maine's Aroostook County, nimble fingers  
keep a traditional craft alive



Mary Sanipass (l.) works on a potato basket; farmer Arden Bull provides conversation

Text by  
Bunny McBride  
Photos by  
R. Todd Hoffman - staff

#### Aroostook County, Maine

**M**AINE'S Indians gained national attention in 1980 through the Maine Indian Claims Settlement, which awarded \$81.5 million to some 4,000 members of the Penobscot, Passamaquoddy, and Maliseet tribes.

But most people, including those who live in Maine, do not know about a fourth native American group: the Micmac. Some 1,000 Micmacs live here, more than half of them in the northernmost county of Aroostook.

They are part of a larger family of Micmacs, some 2,000 of whom reside in Boston and some 8,000 more in Canada's Maritime Provinces.

Like most Micmacs in Aroostook, Donald and Mary Sanipass have spent their lives working at a host of seasonal jobs. "I'm a laborer," says Mary, whose long, graceful hands belie that career. "I wasn't educated to do anything but make baskets, work in the woods, and pick potatoes." For more than a century, work for Micmacs in this region has centered on the potato industry. "Don and I have done just about every kind of job you can think of having to do with potatoes - cutting seed, weaving [harvest] baskets, picking, sacking, driving a harvester. . . ."

For at least 15 winters the Sanipasses worked together cutting pulp in Maine's lush woods. "I cut and Mary hauled out using old Pat, the wood horse," says Mr. Sanipass. And for as long as they can remember, they have headed south each August along with other family members to rake blueberries in the tawny barrens of Cherryfield, Maine.

Home for these off-reservation Indians is an old logging camp which they have turned into a cozy, if modest, dwelling. Here, surrounded by the woods, some five miles from a small hinterland town named Mapleton, they spend their days making traditional splint baskets out of brown ash. Alongside their home are two tiny "camps" that house their brothers, Wolf Sanipass and Harold Lafford. Harold has been a basketmaker most of his life, and learned the trade watching his par-

ents. "When you ain't got nothing to do, you got to do something," he says, his voice heavy with the accent of the Micmac language. "So I do this. I'm my own boss. Got nobody to tell me nothing. Nobody hollering at me. And nobody paying me - unless I make a basket."

These highly skilled craftspeople now construct their hardy baskets for shop owners more often than for farms. Maine's potato industry has declined drastically in the last decade, and most of the remaining crop is brought in by mechanical harvesters rather than by hand pickers using potato baskets. Donald, who regularly puts in 14-hour workdays gathering and preparing the wood needed for his craft, says, "It's no picnic being a basketmaker. It is not what you'd call a good risk thing. But we get by - we keep the Wolf Man off the door."

These three basketmakers sell their wares to individuals as well as to a wholesale operation known as the Basket Bank - a business established by the Aroostook Micmac Council and developed by their daughter, Marline Sanipass Morey.

The entire Sanipass family has been

live in the Micmac Council, headquarters in Presque Isle, some 15 miles from Mapleton. Since the exclusion of Micmacs from the Maine Indian Claims Settlement, the council's primary focus has been on winning "federal recognition" of the Aroostook Band of Micmacs. Federal recognition would secure for Micmacs the native rights and protections belonging to all recognized Indians in this country.

Sometimes the bigger world comes to their doorstep. Last year the Maine Humanities Council funded a documentary film about Micmac Indian basketmakers in Aroostook County. Entitled "Our Lives in Our Hands," the film features Donald, Mary, Harold, and other family members. It has been shown from the Museum of Natural History in New York to the Smithsonian in Washington. Sometimes, Donald and his children have been on hand to answer questions - demonstrating that they've the gift of gab as well as the gift of hand. Asked how long it takes to make a basket, Donald's son David recently told a film viewer, "Twenty years - at least that's how long it took me to learn to make a good one."

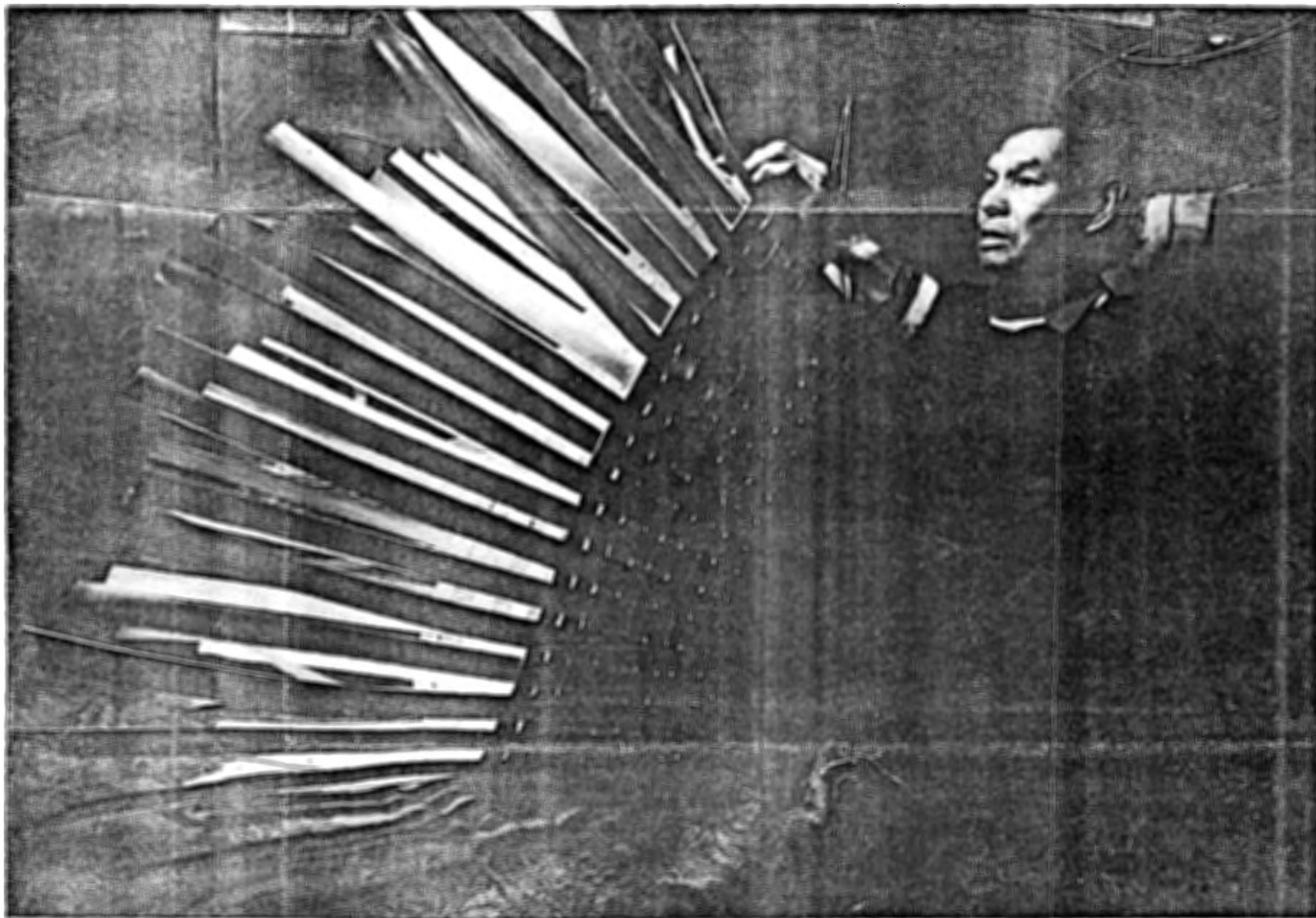


**'It's no picnic being a basketmaker. It is not what you'd call a good risk thing. But we get by - we keep the Wolf Man off the door.'**

*- Donald Sanipass*

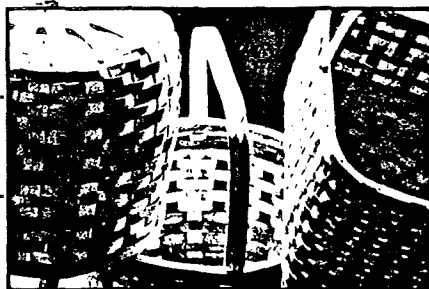
**Mr. Lafford looks for tall, straight brown ash trees near Presque Isle, Maine**





Harold Lafford weaves a laundry basket from strips of brown ash

# MAKING BASKETS



It takes 20 years  
to learn how,  
and your hands start to wear out.



*Donald Sanipass, basket maker and longtime spokesman for the Aroostook Band of Micmacs, sits on his shave horse, using a drawknife to square off a stick of brown ash for a basket handle.*

**M**OST MICMACS in Aroostook County spend at least part of their time as artisans or migrant laborers. To be with these people is to learn that they are more likely to define themselves by what they can do with their hands rather than by a particular location or a batch of possessions.

Since the 16th-century arrival of Europeans on the shores of Micmac Country, Micmac hands have made countless adjustments to the new social order that eclipsed their traditional way of life. These hands have skinned pelts for European traders, borne arms for French colonists and American Revolutionaries, signed doomed friendship treaties with a fledgling U.S. government, felled trees for the new nation's booming lumber industry, harvested potatoes for starch production in Aroostook County, raked blueberries in Washington County. Since the early 1800s, the hands responded to a demand among rural settlers for strong, functional baskets for harvest, storage and household purposes. Splint basketry became one more link in a long chain of economic adjustments.

When watching Micmac Indians in Aroostook County construct wood splint baskets, it is their hands, as much as the baskets, that you notice. The strong, long, round-tipped fingers of the women. The square, rough-hewn hands of the men. One basketmaker, pausing to examine his hands as if they were tools, commented, "When you make baskets your fingertips ache, and the splints fight back, making tiny burning cuts. Your hands start to wear out."

Yet, the weaving of the basket is the easy part. Finding and transporting the right brown ash tree, preparing the wood and carving the hoops and handles is what makes the splint basketry process long and tedious. All steps included, the average plain basket takes over four hours to produce. Donald Sanipass, who regularly puts in 14-hour work days gathering and preparing the wood needed for this craft, says, "It's no picnic being a basketmaker. It's not what you'd call a good risk thing. But we get by — we keep the wolf man off the door."

It came as a surprise to me to find that splint basketry is a grueling economic endeavor and a statement of independence for most Micmacs, not a romantic pastime or a craft of convenience. Their comments about their craft imply that it symbolizes



TAB #12

CHART COMPARISON OF MAINE'S FOUR TRIBES: THEIR CLAIMS AND HISTORY


HISTORICAL DATA	AROOSTOOK BAND OF MICMACS	HOULTON BAND OF MALISEETS	PENOBSCOT INDIAN NATION	PASSAMAQUODDY TRIBE
<u>Historical Names</u>	Abenaki, Wabanaki Migmagi, Mickmakis, Matewes- weskitchinuk, Ul'Noo, Souriquois, Tarrantines, Gaspesians, Acadians, St. John's Tribe, Machias Tribe, Aroostook Indians	Abenaki, Wabanaki Malisitchik, Mariziz, Amale- cites, Marescheet, Koosweskit- chinju, Walastakwiyk, Etchemins, Marichete, St. John's Tribe, Machias Tribe, Aroostook Indians	Abenaki, Wabanaki, Pentagoet, Panawamke, Eastern Abenaki, Machias Tribe Tarratine	Etchemins, Wabanaki, St. Croix River Tribe, Openango, Machias Tribe
<u>Historical Presence in Maine</u>	Yes, since time immemorial	Yes, since time immemorial	Yes, since time immemorial	Yes, since time immemorial
<u>First Sightings by European Explorers</u>	In late 16th and early 17th centuries	In late 16th and early 17th centuries	In late 16th and early 17th centuries	In late 16th and early 17th centuries
<u>Part of the Algonquin Language Group</u>	Yes	Yes	Yes	Yes
<u>Member of Wabanaki Confederacy</u>	Yes	Yes	Yes	Yes
<u>Aboriginal Lands in Maine, Jointly or Exclusively Used By Tribe</u>	Yes	Yes	Yes	Yes
<u>Important Treaties</u>	Treaty of Watertown - 1776; Treaty of Aukpaque - 1777; Treaty of 1794	Treaty of Watertown - 1776; Treaty of Aukpaque - 1777; Treaty of 1794	Treaty of Aukpaque - 1777; Treaty of 1796; Treaty of 1818	Treaty of Aukpaque - 1777; Treaty of 1794
<u>Aided the Americans in the Revolutionary War</u>	Yes	Yes	Yes	Yes

CHART COMPARISON OF MAINE'S FOUR TRIBES: THEIR CLAIMS AND HISTORY

<u>HISTORICAL DATA</u>	<u>AROOSTOOK BAND OF MICMACS</u>	<u>HOULTON BAND OF MALISEETS</u>	<u>PENOBSCOT INDIAN NATION</u>	<u>PASSAMAQUODDY TRIBE</u>
<u>Received Reservation Lands For Tribal Use In Maine As A Result Of Treaty Obligations</u>	No	No	Yes	Yes
<u>MODERN COMMUNITY</u>				
<u>Recognized in Canada</u>	Yes	Yes	No	Yes, (early to mid 19th century)
<u>Number of Bands in Canada</u>	29	7	None	1 (early to mid 19th century)
<u>Reservations [reserves] in Canada</u>	Yes	Yes	No	Some land (early to mid 19th century)
<u>Location in Canada</u>	Newfoundland, Quebec, New Brunswick, Nova Scotia and Prince Edward Island	New Brunswick	No	New Brunswick
<u>Tribal Presence In Maine</u>	Centered around Presque Isle in Aroostook County	Centered around Houlton in Aroostook County	Centered around Old Town, Maine in Penobscot County	Centered around Perry and Pleasant Point, Maine in Washington County
<u>Number Of Members In Tribal Group</u>	400	458	1800	2200
<u>Political Organization In Maine</u>	AAI (1969-82); AMC (1982-86)	AAI (1969-82); Houlton Band (1980-86)	Tribal Council of the Penobscot Indian Nation	Joint Tribal Council of the Passamaquoddy Tribe
<u>State Recognition</u>	Yes (1973)	Yes (1973)	Yes (1820)	Yes (1820)
<u>Federal Recognition</u>	No	Yes (1980)	Yes (1976)	Yes (1976)
<u>Inclusion In MICSA Of 1980</u>	No	Yes	Yes	Yes



## Library References

Internal Revenue  1158.

## SUBCHAPTER II—MAINE INDIAN CLAIMS SETTLEMENT

## § 1721. Congressional findings and declaration of policy

## (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this subchapter by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this subchapter by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this subchapter by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of land owners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This subchapter represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of

Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this subchapter—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation, and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

(Pub.L. 96-420, § 2, Oct. 10, 1980, 94 Stat. 1785.)

#### Historical Note

**References in Text.** The Trade and Inter-course Act of 1790 (1 Stat. 137), referred to in subsec. (a)(1), is Act July 22, 1790, c. 33, 1 Stat. 137, which is not classified to the Code.

**Short Title.** Section 1 of Pub.L. 96-420 provided: "That this Act [which enacted this

subchapter] may be cited as the 'Maine Indian Claims Settlement Act of 1980'."

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

#### Library References

United States Ⓒ105.

C.J.S. United States §§ 143, 155.

### § 1722. Definitions

For purposes of this subchapter, the term—

(a) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in

interest. The Houlton Band of Maliseet Indians is represented, as of October 10, 1980, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 1724(c) of this title;

(d) "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof;

(e) "Maine Implementing Act" means section 1, section 30, and section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter 732 of the public laws of 1979;

(f) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(g) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of October 10, 1980, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations;

(i) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(j) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of October 10, 1980, by the Penobscot Nation Governor and Council;

(l) "Secretary" means the Secretary of the Interior;

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 1724(a) of this title; and

(n) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance

that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

(Pub.L. 96-420, § 3, Oct. 10, 1980, 94 Stat. 1786.)

#### Historical Note

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

### § 1723. Approval of prior transfers and extinguishment of Indian title and claims of Indians within State of Maine

(a) Ratification by Congress; personal claims unaffected; United States barred from asserting claims on ground of noncompliance of transfers with State laws or occurring prior to December 1, 1873

(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided however*, That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before October 10, 1980, and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State.



## (b) Aboriginal title extinguished as of date of transfer

To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) of this section shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

## (c) Claims extinguished as of date of transfer

By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

## (d) Effective date; authorization of appropriations; publication in Federal Register

The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of section 1724 of this title. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

(Pub.L. 96-420, § 4, Oct. 10, 1980, 94 Stat. 1787.)

## Historical Note

**References in Text.** The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), referred to in subsec. (a)(1), is not classified to the Code.

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

## Library References

Indians  10.

C.J.S. Indians §§ 19, 23 et seq.

## § 1724. Maine Indian Claims Settlement and Land Acquisition Funds in the United States Treasury

## (a) Establishment of Maine Indian Claims Settlement Fund; amount

There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which \$27,000,000 shall be deposited following the appropriation of sums authorized by section 1733 of this title.

(b) Apportionment of settlement fund; administration; investments; limitation on distributions; quarterly investment income payments; expenditures for aged members; cessation of trust responsibility following Federal payments

(1) One-half of the principal of the settlement fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the settlement fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the settlement fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: *Provided*, That the Secretary may not agree to terms which provide for investment of the settlement fund in a manner not in accordance with section 162a of this title, unless the respective tribe or nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: *Provided, further*, That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the settlement fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the settlement fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation: *Provided, however*, That nothing herein shall prevent the Secretary from investing the principal of said fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in section 1725(d)(2) of this title and without liability to or on the part of the United States, any income received from the investment of that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from \$1,000,000 of their portion of the settlement fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the tribe or nation, the United States shall have no further trust responsibility to the tribe or nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

(c) Establishment of Maine Indian Claims Land Acquisition Fund; amount

There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which \$54,500,000 shall be deposited following the appropriation of sums authorized by section 1733 of this title.

- (d) Apportionment of land acquisition fund; expenditures for acquisition of land or natural resources; trust acreage; fee holdings; interests in corpus of trust for Houlton Band following termination of Band's interest in trust; agreement for acquisitions for benefit of Houlton Band: scope, report to Congress

The principal of the land acquisition fund shall be apportioned as follows:

- (1) \$900,000 to be held in trust for the Houlton Band of Maliseet Indians;
- (2) \$26,800,000 to be held in trust for the Passamaquoddy Tribe; and
- (3) \$26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected tribe, nation or band, the principal and any income accruing to the respective portions of the land acquisition fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective tribe or nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such tribe or nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective tribe or nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the band: *Provided*, That no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition: *Provided further*, That the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

- (4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by paragraph (3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this subchapter and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this subchapter and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the band, except that the band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act;

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the band.<sup>1</sup>

(D) provisions on the location of these lands.

Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of Maine. Within one year of October 10, 1980, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the status of these negotiations.

(e) Acquisitions contingent upon agreement as to identity of land or natural resources to be sold, purchase price and other terms of sale; condemnation proceedings by Secretary; other acquisition authority barred for benefit of Indians in State of Maine

Notwithstanding the provisions of sections 257 and 258a of Title 40, the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United

States and condemn interests adverse to the ostensible owner. Except for the provisions of this subchapter, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) Expenditures for Tribe, Nation, or Band contingent upon documentary relinquishment of claims

The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective tribe, nation, or band have executed appropriate documents relinquishing all claims to the extent provided by sections 1723, 1730, and 1731 of this title and by section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g) Transfer limitations of section 177 of this title inapplicable to Indians in State of Maine; restraints on alienation as provided in section; transfers invalid ab initio except for: State and Federal condemnations, assignments, leases, sales, rights-of-way, and exchanges

(1) The provisions of section 177 of this title shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2) of this section, such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective tribe, nation, or band, be—

- (A) leased in accordance with sections 415 to 415d of this title;
- (B) leased in accordance with sections 396a to 396g of this title;
- (C) sold in accordance with section 407 of this title;
- (D) subjected to rights-of-way in accordance with sections 323 to 328 of this title;

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the affected tribe, nation, or band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the tribe, nation, or band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

**(h) Agreement on terms for management and administration of land or natural resources**

Land or natural resources acquired by the secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary in accordance with section 450f of this title, or other existing law.

**(i) Condemnation of trust or restricted land or natural resources within reservations: substitute land or monetary proceeds as medium of compensation; condemnation of trust land without Reservations: use of compensation for reinvestment in trust or fee held acreage, certification of acquisitions; State condemnation proceedings: United States as necessary party, exhaustion of State administrative remedies, judicial review in Federal courts, removal of action**

(1) Trust or restricted land or natural resources within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the Maine Implementing Act and upon notification to the Secretary of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the land acquisition fund established by subsection (c) of this section and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective tribe or nation shall designate, with the approval of the United States, and within thirty days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in

trust shall be held in fee by the respective tribe or nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

**(j) Federal condemnation under other laws; deposit and reinvestment of compensatory proceeds**

When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this subchapter, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

(Pub.L. 96-420, § 5, Oct. 10, 1980, 94 Stat. 1788.)

<sup>1</sup>So in original. Probably should be semicolon.

**Historical Note**

**References in Text.** Sections 415 to 415d of this title, referred to in subsec. (g)(3)(A), in the original read "the Act of August 9, 1955 (69 Stat. 539), as amended", which enacted sections 415 to 415d of this title and amended section 396 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

**West's Federal Forms**

Actions by United States or officers thereof, see §§ 1069 to 1072.

Enforcement and review of decisions and orders of administrative agencies, see § 851 et seq.  
Jurisdiction and venue in the district courts, matters pertaining to, see § 1000 et seq.

**Library References**

United States Ⓔ113.

C.J.S. United States §§ 155, 156, 160 et seq.

**§ 1725. State laws applicable**

**(a) Civil and criminal jurisdiction of the State and the courts of the State; laws of the State**

Except as provided in section 1727(e) and section 1724(d)(4) of this title, all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and

the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

**(b) Jurisdiction of State of Maine and utilization of local share of funds pursuant to the Maine Implementing Act; Federal laws or regulations governing services or benefits unaffected unless expressly so provided; report to Congress of comparative Federal and State funding for Maine and other States**

(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and State funding in other States.

**(c) Federal criminal jurisdiction inapplicable in State of Maine under certain sections of Title 18; effective date: publication in Federal Register**

The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, and 1165 of Title 18. This provision shall not be effective until sixty days after the publication of notice in the Federal Register as required by section 1723(d) of this title.

**(d) Capacity to sue and be sued in State of Maine and Federal courts; section 1362 of Title 28 applicable to civil actions; immunity from suits provided in Maine Implementing Act; assignment of quarterly income payments from settlement fund to judgment creditors for satisfaction of judgments**

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of Title 28 shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided, however,* That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and em-



ployees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of section 3727 of Title 31, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after October 10, 1980, against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the settlement fund established pursuant to section 1724(a) of this title and out of such future quarterly payments as may be necessary until the judgment is satisfied.

**(e) Federal consent for amendment of Maine Implementing Act; nature and scope of amendments; agreement respecting State jurisdiction over Houlton Band Lands**

(1) 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.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians 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 or its members.

**(f) Indian jurisdiction separate and distinct from State civil and criminal jurisdiction**

The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

**(g) Full faith and credit**

The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

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

Except as otherwise<sup>1</sup> 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.

(i) **Eligibility for Federal financial benefits; Federal tax considerations: similar treatment and reservation lands**

As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation.

(Pub.L. 96-420, § 6, Oct. 10, 1980, 94 Stat. 1793.)

<sup>1</sup>So in original. Probably should be "otherwise".

**Historical Note**


**Codification.** "Section 3727 of Title 31" was substituted in subsec. (d)(2), for "section 3477 of the Revised Statutes, as amended" on the authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, section 1 of which enacted Title 31, Money and Finance.

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

**West's Federal Forms**

Jurisdiction and venue in district courts, matters pertaining to, see § 1000 et seq.

**Library References**

Indians  27(2), 32, 38(2).

C.J.S. Indians §§ 8, 11, 16 et seq., 67 et seq., 79.

**§ 1726. Tribal organization**

(a) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the tribe, nation, or band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this subchapter and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) For purposes of benefits under this subchapter and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of October 10, 1980, are enrolled members on the band's existing membership roll, and direct lineal descendants if such members. Membership in the band shall be subject to such further qualifications as may be provided by the band in its organic governing document or amendments thereto subject to the approval of the Secretary.

(Pub.L. 96-420, § 7, Oct. 10, 1980, 94 Stat. 1795.)

#### Historical Note

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

#### Library References

Indians  32.

C.J.S. Indians §§ 11, 67 et seq.

### § 1727. Implementation of Indian Child Welfare Act

#### (a) Petition for assumption of exclusive jurisdiction; approval by Secretary

The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069) [25 U.S.C.A. § 1901 et seq.]. Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by sections 108(a)-(c) of said Act [25 U.S.C.A. § 1918(a)-(c)].

#### (b) Consideration and determination of petition by Secretary

Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with sections 108(b) and (c) of the Act [25 U.S.C.A. § 1918(b) and (c)].

#### (c) Actions or proceedings within existing jurisdiction unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

#### (d) Reservations within section 1903(10) of this title

For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within section 4(10) of the Act [25 U.S.C.A. § 1903(10)].

- (e) Indian tribe within section 1903(8) of this title; State jurisdiction over child welfare unaffected

For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within section 4(8) of the Act [25 U.S.C.A. § 1903(8)], provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in section 1725(e)(2) of this title.

(f) Assumption determinative of exclusive jurisdiction

Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that tribe or nation.

(Pub.L. 96-420, § 8, Oct. 10, 1980, 94 Stat. 1795.)

Historical Note

**References in Text.** The Indian Child Welfare Act of 1978 (92 Stat. 3069), referred to in subsec. (a), is Pub.L. 95-608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (section 1901 et seq.) of this title. For complete classification of this Act to the Code see Short

Title note set out under section 1901 of this title and Tables volume.

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

Library References

Indians ☞ 27(2).

C.J.S. Indians §§ 8, 16 et seq.

**§ 1728. Federal financial aid programs unaffected by payments under subchapter**

- (a) Eligibility of State of Maine for participation without regard to payments to designated Tribe, Nation, or Band under subchapter

No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians pursuant to the terms of this subchapter shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

- (b) Eligibility of designated Tribe, Nation, or Band for benefits without regard to payments from State of Maine except in considering actual financial situation in determining need of applicant

The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant.

the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

(c) Availability of settlement or land acquisition funds not income or resources or otherwise used to affect federally assisted housing programs or Federal financial assistance or other Federal benefits

The availability of funds or distribution of funds pursuant to section 1724 of this title may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be eligible or entitled.

(Pub.L. 96-420, § 9, Oct. 10, 1980, 94 Stat. 1795.)

#### Historical Note

Legislative History. For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

### § 1729. Deferral of capital gains

For the purpose of subtitle A of Title 26, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of Title 26.

(Pub.L. 96-420, § 10, Oct. 10, 1980, 94 Stat. 1796.)

#### Historical Note

Legislative history. For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

#### Library References

Internal Revenue 3188.

### § 1730. Transfer of tribal trust funds held by the State of Maine

All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of October 10, 1980, shall be transferred to the Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the settlement fund allocated to that tribe or nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising

ing from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

(Pub.L. 96-420, § 11, Oct. 10, 1980, 94 Stat. 1796.)

#### Historical Note

**Codification.** "October 10, 1980," was substituted for "the effective date of this Act".

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

### § 1731. Other claims discharged by this subchapter

Except as expressly provided herein, this subchapter shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions now pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

(Pub.L. 96-420, § 12, Oct. 10, 1980, 94 Stat. 1796.)

#### Historical Note

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

### § 1732. Limitation of actions

Except as provided in this subchapter, no provision of this subchapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this subchapter.

(Pub.L. 96-420, § 13, Oct. 10, 1980, 94 Stat. 1797.)

#### Historical Note

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

#### Library References

United States Code 125(6).

C.J.S. United States § 181.

**§ 1733. Authorization of appropriations**

There is hereby authorized to be appropriated \$81,500,000 for the fiscal year beginning October 1, 1980, for transfer to the funds established by section 1724 of this title.

(Pub.L. 96-420, § 14, Oct. 10, 1980, 94 Stat. 1797.)

**Historical Note**

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

**§ 1734. Inseparability of provisions**

In the event that any provision of section 1723 of this title is held invalid, it is the intent of Congress that the entire subchapter be invalidated. In the event that any other section or provision of this subchapter is held invalid, it is the intent of Congress that the remaining sections of this subchapter shall continue in full force and effect.

(Pub.L. 96-420, § 15, Oct. 10, 1980, 94 Stat. 1797.)

**Historical Note**

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

**§ 1735. Construction****(a) Law governing; special legislation**

In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this subchapter should emerge, the provisions of this subchapter shall govern.

**(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.

(Pub.L. 96-420, § 16, Oct. 10, 1980, 94 Stat. 1797.)

**Historical Note**

**Legislative History.** For legislative history and purpose of Pub.L. 96-420, see 1980 U.S. Code Cong. and Adm. News, p. 3786.

## 30 § 6201

## MUNICIPALITIES AND COUNTIES

claims. Robert N. Clinton and Margaret Tobey Hotopp, 31 Maine L.Rev. 17 (1979).

Survey of eastern Indian land claims. Tim Vollmann, 31 Maine L.Rev. 5 (1979).

### § 6201. Short title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."

1979, c. 732, § 1.

**Inseparability and Effective Date.** Sections 30 and 31 of 1979, c. 732 provided:

"Sec. 30. **Inseparability.** In the event that any portion of Title 30, section 6204, is held invalid, it is the intent of the Legislature that the entire Act is invalidated. In the event that either Title 30, section 6209, subsections 3 or 4, is held invalid, it is the intent of the Legislature that all of Title 30, section 6209 is invalidated. In the event that any other section or provision of this Act, including Title 30, section 6209, is held invalid, it is the intent of the Legislature that the remaining sections of the Act shall continue in full force and effect.

"Sec. 31. **Effective date.** This Act shall be effective only upon the enactment of legislation

by the United States extinguishing aboriginal land claims and derivative claims of Indians in Maine and discharging all claims in pending litigation brought by the United States against the State on behalf of the Passamaquoddy Tribe and the Penobscot Nation, providing funds for the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians for such extinguishment, and ratifying and approving this Act without modifications, provided, however, that in no event shall this Act become effective until 90 days after adjournment of the Legislature, as required by the Constitution of Maine, Article IV, Part 3, Section 16."

For federal Maine Indian Claims Settlement Act of 1980, see 25 U.S.C.A. § 1721 et seq.

### § 6202. Legislative findings and declaration of policy

The Legislature finds and declares the following.

The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are asserting claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof.

Substantial economic and social hardship could be created for large numbers of landowners, citizens and communities in the State, and therefore to the State as a whole, if these claims are not resolved promptly.

The claims also have produced disagreement between the Indian claimants and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely.

The Indian claimants and the State, acting through the Attorney General, have reached certain agreements which represent a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would be pursued through the courts for many years to the ultimate detriment of the State and all its citizens, including the Indians.

The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of the Maliseet Indians and its lands will be wholly subject to the laws of the State.

It is the purpose of this Act to implement in part the foregoing agreement.

1979, c. 732, § 1.



**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

§ 6203. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. **Commission.** "Commission" means the Maine Indian Tribal-State Commission created by section 6212.

2. **Houlton Band of Maliseet Indians.** "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

*Text of subsection 2-A added effective upon enactment of legislation by United States*

2-A. **Houlton Band Trust Land.** "Houlton Band Trust Land" means land or natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians, in compliance with the terms of this Act and the Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, with moneys from the original \$900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724, or with proceeds from a taking of Houlton Band Trust Land for public uses pursuant to the laws of this State or the United States.

3. **Land or other natural resources.** "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.

4. **Laws of the State.** "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.

5. **Passamaquoddy Indian Reservation.** "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 100 acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book 3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel

Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33.

6. **Passamaquoddy Indian territory.** "Passamaquoddy Indian territory" means that territory defined by section 6205, subsection 1.

7. **Passamaquoddy Tribe.** "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.

8. **Penobscot Indian Reservation.** "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in said river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Niatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land shall be included within the Penobscot Indian Reservation.

9. **Penobscot Indian territory.** "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.

10. **Penobscot Nation.** "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservation Tribal Council.

11. **Secretary.** "Secretary" means the Secretary of the Interior of the United States.

12. **Settlement Fund.** "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinguishing aboriginal land claims in Maine.

13. **Transfer.** "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.

1979, c. 732, § 1; 1981, c. 675, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**1981 Amendment.** Subsection 2-A: Added by c. 675.

**Effective date.** Section 8 of 1981, c. 675, provided:

"This Act shall be effective only upon enactment of legislation by the United States:

"1. Ratifying and approving this Act without modification;

"2. Amending United States Public Law 96-420, Section 6(e), United States Code, Title 25, Section 1725(e) to provide the consent of the United States for amendments to the Maine Implementing Act, with respect to the Houlton Band of Maliseet Indians, provided that such amendment of the Maine Implementing Act is

made with the agreement of the Houlton Band of Maliseet Indians; and

"3. Amending United States Public Law 96-420, Section 5(d), United States Code, Title 25, Section 1724(d), in order to provide the consent of the United States to the transfer of funds from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians to the Houlton Band Tax Fund described in this Act and also to provide for a reversionary interest of the Penobscot Nation and the Passamaquoddy Tribe in the funds so transferred in the event the Houlton Band of Maliseet Indians should terminate its interest in the Houlton Band Trust Fund.

"In no event shall this Act become effective until 90 days after the adjournment of the Legislature, as required by the Constitution of Maine, Article IV, Part 3, section 16."

## § 6204. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

For *inseparability*, see *Rice v. Rehner*, 1983, 103 S.Ct. 3291, 463 U.S. 713, 77 L.Ed.2d 961.

**United States Supreme Court**

Liquor regulation by state off-sale license for federally licensed Indian trader on Indian reser-

## § 6205. Indian territory

1. **Passamaquoddy Indian territory.** Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1986, are not held in common with any other person or entity and are certified by the secretary by January 1, 1986, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle.

2. **Penobscot Indian territory.** Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Penobscot Indian territory:"

A. The Penobscot Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1986, are not held in common with any other person or entity and are certified by the secretary by January 1, 1986, as held for the Penobscot Nation:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any

portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle, and any land acquired in Williamsburg T.6, R.8, N.W.P.; prior to January 1, 1983.

**3. Takings under the laws of the State.**

A. Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.

In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B.

B. If land within either the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys received are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired

pursuant to this paragraph shall be included within either Indian Territory until the Secretary of Interior has certified, in writing, to the Secretary of State the location and boundaries of the land acquired.

4. **Taking under the laws of the United States.** In the event of a taking of land within the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.

5. **Limitations.** No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.

1979, c. 732, § 1; 1983, c. 493, § 1; 1983, c. 494, § 1; 1983, c. 660, § 1; 1983, c. 676, § 1; 1985, c. 69, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**1983 Amendments.** Subsection 1, B: Chapter 493, in first paragraph, substituted "January 1, 1985" for "January 1, 1983" twice.

Chapter 660, in first paragraph, substituted "January 1, 1986" for "January 1, 1985" twice.

Subsection 2, B: Chapter 494, in first paragraph, substituted "January 1, 1985" for "January 1, 1983" twice.

Chapter 676, in first paragraph, substituted "January 1, 1986" for "January 1, 1985" twice; and in 2nd paragraph, added ", and any land acquired in Williamsburg T. 6, R. 8, N.W.P.; prior to January 1, 1983".

**Effective dates.** Section 2 of 1983, c. 493, provided:

This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House; provided that in no event may this Act become effective until 90 days after adjournment of the Legislature."

A resolution of the Joint Tribal Council of the Passamaquoddy Tribe, adopted on Aug. 8, 1983,

constituting written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the Passamaquoddy Tribe has agreed to the provisions of Laws 1983, c. 493, was received in the office of the Secretary of State on Aug. 22, 1983.

Section 2 of 1983, c. 494, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the governor and council of the Penobscot Nation that the nation has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House; provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature."

Certification by the officer of the Penobscot Indian Nation designated under the provisions of title 3, § 602, that the Penobscot Indian Nation gave its approval to Laws 1983, c. 494 on Aug. 16, 1983 was received in the office of the Secretary of State on Aug. 18, 1983.

Section 2 of 1983, c. 660, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act pursuant to the United

States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House; provided that in no event may this Act become effective until 90 days after adjournment of the Legislature."

Section 2 of 1983, c. 676, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the governor and council of the Penobscot Nation that the nation has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives, provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature."

Certification by the Governor and council of the Penobscot Nation that the nation agreed to the provisions of Laws 1983, c. 676 was received in the office of the Secretary of State on June 21, 1984.

1985 Amendment. Subsection 2, B: Chapter 69, in first paragraph, substituted "January 1, 1987" for "January 1, 1986" twice.

Effective date. Section 2 of 1985, c. 69, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Governor and council of the Penobscot Nation that the nation has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State and the Secretary of the Senate and the Clerk of the House of Representatives, provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature."

Certification by the Governor and council of the Penobscot Nation that the nation agreed to the provisions of Laws 1985, c. 69 was not received in the office of the Secretary of State within 60 days of the adjournment of the Legislature.

#### Cross References

Officials with game warden powers, see title 12, § 7055.

### § 6205-A. Acquisition of Houlton Band Trust Land

*Text of section added effective upon enactment of legislation by United States*

1. **Approval.** The State of Maine approves the acquisition, by the secretary, of Houlton Band Trust Land within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Houlton Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.

B. No land or natural resources may be acquired by the secretary for the Houlton Band of Maliseet Indians until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 6208-A, together with a letter stating that he holds not less than \$100,000 in a trust account for the payment of Houlton Band of Maliseet Indians' obligations, and a copy of the claim filing procedures he has adopted.

C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village or plantation.

2. **Takings for public uses.** Houlton Band Trust Land may be taken for public uses in accordance with the laws of the State of Maine to the same extent as privately-owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States' court of competent jurisdiction.

3. **Restraints on alienation.** Any transfer of Houlton Band Trust Land shall be void ab initio and without any validity in law or equity, except:

A. Takings for public uses pursuant to the laws of this State;

B. Takings for public uses pursuant to the laws of the United States;

C. Transfers of individual use assignments from one member of the Houlton Band of Maliseet Indians to another band member;

D. Transfers authorized by United States Public Law 96-420, Section 5(g)(3), United States Code, Title 25, Section 1724(g)(3); and

E. Transfers made pursuant to a special act of Congress.

If the fee to the Houlton Band Trust Fund Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Houlton Band Trust Land.

1981, c. 675, § 2.

<p><b>Effective date.</b> For effective date provisions of 1981, c. 675, see note following § 6203 of this title.</p>	<p><b>Library References</b> States ⇐85. C.J.S. States § 145.</p>
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**§ 6206. Powers and duties of the Indian tribes within their respective Indian territories**

**1. General powers.** 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. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

**2. Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

**3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**United States Supreme Court**

Oil and gas severance tax imposed on non-Indians, powers of Indian tribes, see *Merrion v. Jicarilla Apache Tribe*, 1982, 102 S.Ct. 894, 455 U.S. 130, 71 L.Ed.2d 21.

Powers of Indian tribes on reservation lands, Indian and non-Indian fee lands, see *Montana v. United States*, 1981, 101 S.Ct. 1245, 450 U.S. 544, 67 L.Ed.2d 493.

#### Notes of Decisions

##### 1. In general

An Indian tribe has inherent power to try tribal members for crimes committed against fellow members on the reservation, but not to try nonmembers for the same acts. *Penobscot Nation v. Stilphen* (1983) Me., 461 A.2d 478, appeal dismissed 104 S.Ct. 323.

Word "laws" in provision of Maine Indian Claims Settlement Act (25 U.S.C.A. § 1721 et seq.) making laws and regulations of the United States which were generally applicable to Indians inapplicable to the Penobscot Nation insofar

as any such laws preempt state regulation includes case law. *Id.*

Powers and authority of an Indian tribe or nation may be either expanded or limited by act of Congress. *Id.*

Interests of a state must be part of the calculus where an Indian tribe's "inherent" rights are under consideration. *Id.*

An Indian tribe's inherent powers cannot be judged in a vacuum, but must be weighed against the interest of the state in applying its laws and regulations to the tribe. *Id.*

Operation of beano games in violation of § 312 of title 17 is not an "internal tribal matter" within meaning of Maine Indian Claims Settlement Act (25 U.S.C.A. § 1721 et seq.) and Maine's Act to implement the Maine Indian Claims Settlement Act notwithstanding that proceeds are used to finance tribal services and programs. *Id.*

#### § 6206-A. Powers of the Houlton Band of Maliseet Indians

*Text of section added effective upon enactment of legislation by United States*

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

1981, c. 675, § 3.

**Effective date.** For effective date provisions of 1981, c. 675, see note following § 6203 of this title.

#### Library References

Indians ⇐2.  
C.J.S. Indians § 9 et seq.

#### § 6207. Regulation of fish and wildlife resources

**1. Adoption of ordinances by tribe.** Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

A. Hunting, trapping or other taking of wildlife; and

B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

**2. Registration stations.** The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot



Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.

**3. Adoption of regulations by the commission.** Subject to the limitations of subsection 6, the commission shall have 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  $\frac{1}{2}$  mile or more.

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.

**4. Sustenance fishing within the Indian reservations.** Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

**5. Posting.** Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

**6. Supervision by Commissioner of Inland Fisheries and Wildlife.** The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the

boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

**7. Transportation of game.** Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State.

**8. Fish and wildlife on non-Indian lands.** The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner 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.

**9. Fish.** As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

#### United States Supreme Court

Tribal regulation of hunting and fishing on reservation lands, preemption of concurrent state authority, see *New Mexico v. Mescalero Apache Tribe*, 1983, 103 S.Ct. 2378, 462 U.S. 324, 76 L.Ed.2d 611.

#### Notes of Decisions

##### 1. In general

Tribal sovereignty permits regulation of hunting and fishing by Indians on land owned by or held in trust for the tribe, but not the regulation of hunting and fishing on land owned by others, even if the land lies within the reservation. *Penobscot Nation v. Stilphen* (1983) Me., 461 A.2d 478, appeal dismissed 104 S.Ct. 323.

#### § 6208. Taxation

**1. Settlement Fund income.** The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.

*Text of subsection 2 pending enactment of legislation by United States*

2. **Property taxes.** The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.

*Text of subsection 2 effective upon enactment of legislation by United States*

2. **Property taxes.** The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resources. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall not be deemed to own or use any property for governmental purposes.

*Text of subsection 3 pending enactment of legislation by United States*

3. **Other taxes.** The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.

*Text of subsection 3 effective upon enactment of legislation by United States*

3. **Other taxes.** The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such. The Houlton Band of Maliseet Indians shall not be deemed to be a governmental entity or to have the powers of a municipality.

1979, c. 732, § 1; 1981, c. 675, §§ 4 to 6.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**1981 Amendment.** Subsection 2: Chapter 675 inserted 2nd sentence and added 4th sentence.

Subsection 3: Chapter 675 added 3rd sentence.

**Effective date.** For effective date provisions of 1981, c. 675, see note following § 6203 of this title.

#### § 6208-A. Houlton Band Tax Fund

*Text of section added effective upon enactment of legislation by United States*

1. **Fund.** The satisfaction of obligations, described in section 6208, owed to a governmental entity by the Houlton Band of Maliseet Indians shall be assured by a trust fund to be known as the Houlton Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than \$100,000. The principal shall be formed with moneys transferred from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724. Any interest earned by the Houlton Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of \$25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.

2. **Claims.** The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Houlton Band of Maliseet Indians is liable pursuant to section 6208, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State of Maine. No payment of a valid claim may be satisfied with moneys from the fund unless the secretary finds, as a result of his own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Maine Commissioner of Finance and Administration and the Houlton Band of Maliseet Indians.

3. **Distributions.** If the unencumbered principal available for the payment of claims exceeds the sum of \$100,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Houlton Band of Maliseet Indians. The secretary shall give 30 days' written notice to the Commissioner of Finance and Administration of a proposed transfer of excess principal to the Houlton Band of Maliseet Indians. Any distribution of excess principal to the Houlton Band of Maliseet Indians shall be exempt from taxation.

4. **Other remedies.** The existence of the Houlton Band Tax Fund as a source for the payment of Houlton Band of Maliseet Indians' obligations shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.

1981, c. 675, § 7.

**Effective date.** For effective date provisions of 1981, c. 675, see note following § 6203 of this title.

**Library References**  
States  $\S$  127.  
C.J.S. States  $\S$  228.

#### § 6209. Jurisdiction over criminal offenses, juvenile crimes, civil disputes and domestic relations

1. **Exclusive jurisdiction in tribes over certain matters.** Except as provided in subsections 3 and 4, the Passamaquoddy Tribe and the Penobscot Nation shall have the right to exercise exclusive jurisdiction separate and distinct from the State over:

A. Criminal offenses against a person or property for which the maximum potential term of imprisonment does not exceed 6 months and the maximum potential fine does

not exceed \$500 and which are committed on the Indian reservation of the respective tribe or nation by a member of either tribe or nation against another member of either tribe or nation or against the property of another member of either tribe or nation;

B. Juvenile crimes against a person or property involving conduct which, if committed by an adult, would fall, under paragraph A, within the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation, and juvenile crimes as defined in Title 15, section 3103, subsection 1, paragraphs B to D committed by a juvenile member of either tribe or nation on the Indian reservation of the respective tribe or nation;

C. Civil actions between members of either tribe or nation arising on the Indian reservation of the respective tribe or nation and which are cognizable as small claims under the laws of the State and civil actions against a member of either tribe or nation under Title 22, section 2383 involving conduct on the Indian reservation of the respective tribe or nation by a member of either tribe or nation;

D. Indian child custody proceedings to the extent authorized by applicable federal law; and

E. Other domestic relations matters including marriage, divorce and support between members of either tribe or nation both of whom reside on the Indian reservation of the respective tribe or nation.

The decision to exercise or terminate the exercise of the jurisdiction authorized by this subsection shall be made by the tribal governing body. Should either tribe or nation choose not to exercise, or choose to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State shall have exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes shall apply within the Passamaquoddy and Penobscot Indian reservations and the State shall have exclusive jurisdiction over those offenses and crimes.

2. **Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the respective tribe or nation shall be deemed to be enforcing tribal law, provided, however, the definitions of the criminal offenses and the juvenile crimes, and the punishments applicable thereto, over which the respective tribe or nation has exclusive jurisdiction under this section, shall be governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purpose of this section shall be governed by any and all federal statutes, including but without limitation the provisions of the United States Code, Title 25, sections 1301-03 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

3. **Lesser included offenses in state courts.** In any criminal proceeding in the courts of the State wherein a criminal offense under the exclusive jurisdiction of either tribe or nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of such lesser included offense. A lesser included offense shall be as defined under the laws of the State.

4. **Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under this section shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which either tribe or nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum shall not constitute collateral estoppel in a crime or juvenile proceeding conducted in a state court. The determination of an issue of

fact in a criminal or juvenile proceeding conducted in a state court shall not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.

**5. Future Indian communities.** Any 25 or more adult members of either the Passamaquoddy Tribe or the Penobscot Nation residing within their respective Indian territory and in reasonable proximity to each other may petition the commission for designation as an "extended reservation." If the commission determines, after investigation, that the petitioning tribal members constitute an "extended reservation", the commission shall establish the boundaries of this "extended reservation" and shall recommend to the Legislature that, subject to the approval of the governing body of the tribe or nation involved, it amend this Act to extend the jurisdiction of the respective tribe or nation to the "extended reservation." The boundaries of any "extended reservation" shall not exceed those reasonably necessary to encompass the petitioning tribal members. 1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

#### § 6210. Law enforcement on Indian reservations and within Indian territory

**1. Exclusive authority of tribal law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209, subsection 1.

**2. Joint authority of tribal and state law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation shall have the authority within their respective Indian territories and state and county law enforcement officers shall have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce, all laws of the State other than those over which the respective tribe or nation has exclusive jurisdiction under section 6209, subsection 1.

**3. Agreements for cooperation and mutual aid.** Nothing herein shall prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.

**4. Powers and training requirements.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall possess the same powers and shall be subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

1979, c. 732, § 1; 1983, c. 498, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**1983 Amendment.** Subsection 4: Chapter 498 substituted "other corresponding law enforcement" for "municipal police".

**Effective date.** Section 2 of 1983, c. 498, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the governor and council of the Penobscot Nation and the Joint Tribal Council of the

Passamaquoddy Tribe that the nation and tribe have agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House; provided that in no event may this Act become effective until 90 days after adjournment of the Legislature."

Certification by the officer of the Penobscot Indian Nation designated under the provisions of title 3, § 602, that the Penobscot Indian Nation gave its approval to Laws 1983, c. 498 on Aug. 16, 1983 was received in the office of the Secretary of State on Aug. 18, 1983.

A resolution of the Joint Tribal Council of the Passamaquoddy Tribe, adopted on Aug. 8, 1983, constituting written certification by the Joint Tribal Council of the Passamaquoddy Tribe that

the Passamaquoddy Tribe has agreed to the provisions of Laws 1983, c. 498, was received in the office of the Secretary of State on Aug. 22, 1983.

#### § 6211. Eligibility of Indian tribes and state funding

1. **Eligibility generally.** The Passamaquoddy Tribe and Penobscot Nation shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available to the respective tribe or nation, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax within either Indian territory, the formula applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State, provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.

2. **Limitation on eligibility.** In computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds under subsection 1, any moneys received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, shall be deducted in computing any payment to be made to the respective tribe or nation by the State.

3. **Eligibility for discretionary funds.** The Passamaquoddy Tribe and the Penobscot Nation shall be eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.

4. **Eligibility of individuals for state funds.** Residents of either Indian territory shall be eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State, provided, however, that in computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

#### Notes of Decisions

##### 1. In general

When an Indian tribe receives federal funds for a purpose substantially similar to that for which it receives state funds, the federal funds will be treated as the municipal share of the municipal/state cost sharing formula with any excess federal funds being credited to the state's

## Note 1

share; thus, assuming that tribes utilize federal funds as local welfare and that such funds cannot be used to benefit nontribal members, the state would have no obligation under general

assistance laws to reimburse tribes for any federal welfare funds distributed to tribal members. Op.Atty.Gen., Oct. 30, 1981.

## § 6212. Maine Indian Tribal-State Commission

1. **Commission created.** The Maine Indian Tribal-State Commission is established. The commission shall consist of 9 members, 4 to be appointed by the Governor of the State subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 each to be appointed by the Passamaquoddy Tribe and the Penobscot Nation and a chairman to be selected in accordance with subsection 2. The members of the commission, other than the chairman shall each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of any member, the appointing authority may fill the vacancy for the unexpired term.

2. **Chairman.** The commission, by a majority vote of its 8 members, shall select a person who is a resident of the State to act as chairman. In the event that 8 members of the commission by majority vote are unable to select a chairman within 120 days of the first meeting of the commission, the Governor shall, after consulting with the governors of the Penobscot Nation and the Passamaquoddy Tribe, appoint an interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chairman, the commission may select, by a majority vote of its 8 remaining members, a new chairman. In the event that the commission is unable to select a chairman within 120 days of the death, resignation or disability, the Governor shall, after consulting with the governors of the Penobscot Nation and the Passamaquoddy Tribe, appoint an interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section, whichever is shorter. The chairman shall be a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

3. **Responsibilities.** In addition to the responsibilities set forth elsewhere in this Act, the commission 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 and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it deems appropriate.

Seven members shall constitute a quorum of the commission and no decision or action of the commission shall be valid unless 5 members vote in favor of such action or decision.

4. **Personnel, fees, expenses of commissioners.** The commission shall have authority to employ such personnel as it deems necessary and desirable in order to effectively discharge its duties and responsibilities. Such employees shall not be subject to state personnel laws or rules.

The commission members shall be paid \$75 per day for their services and shall be reimbursed for reasonable expenses including travel.

5. **Interagency cooperation.** In order to facilitate the work of the commission, all other agencies of the State are directed to cooperate with the commission and shall make available to it without charge information and data relevant to the responsibilities of the commission.

1979, c. 732, § 1; 1983, c. 492, § 1; 1983, c. 812, §§ 186, 187; 1985, c. 295, §§ 46, 47, eff. June 10, 1985.

**Expenses of Maine Indian Tribal-State Commission.** Section 29 of 1979, c. 732 provided:

The expenses of the Maine Indian Tribal-State Commission shall be paid out of the administrative account of the Department of Inland Fisher-

ies and Wildlife. In no event shall those expenses exceed \$3,000 per year.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c.



732, see the italicized note preceding § 6201 of this title.

**1983 Amendments.** Subsection 1: Chapter 812, in first sentence, substituted "The" for "There is hereby established a" and added "is established pursuant to Title 5, section 12004, subsection 4".

Subsection 2: Chapter 492 repealed and replaced this subsection, which prior thereto read:

"The commission, by a majority vote of its 8 members, shall select a person to act as chairman from the Retired Judges of the Superior or Supreme Judicial Court, the Retired Judges of the United States District Court for the District of Maine, or from those Retired Judges of the United States Court of Appeals for the First Circuit or the United States Supreme Court who are residents of the State. In the event that 8 members of the commission by majority vote are unable to select a chairman within 120 days of the first meeting of the commission, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. In the event of the death, resignation or disability of the chairman, the commission may select, by a majority vote of its 8 remaining members, a chairman from such retired judges. In the event that the commission is unable to select a chairman within 120 days of such death, resignation or disability, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. The chairman shall be a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years."

Subsection 4: Chapter 812, in 2nd paragraph, substituted "according to the provisions of Title 5, chapter 379" for "\$75 per day for their services and shall be reimbursed for reasonable expenses including travel".

**Effective date.** Section 2 of 1983, c. 492, provided:

"This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Joint Tribal Council of the Passama-

quoddy Tribe and the governor and council of the Penobscot Nation that the respective tribe and nation have agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House; provided that in no event may this Act become effective until 90 days after adjournment of the Legislature."

A resolution of the Joint Tribal Council of the Passamaquoddy Tribe, adopted on Aug. 8, 1983, constituting written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the Passamaquoddy Tribe has agreed to the provisions of Laws 1983, c. 492, was received in the office of the Secretary of State on Aug. 22, 1983.

Certification by the officer of the Penobscot Indian Nation designated under the provisions of title 3, § 602, that the Penobscot Indian Nation gave its approval to Laws 1983, c. 492 on Aug. 16, 1983 was received in the office of the Secretary of State on Aug. 18, 1983.

**Savings clause.** For savings clause provision of 1983, c. 812, § 302, see note under title 5, § 12004.

**1985 Amendment.** Subsection 1: Chapter 295, in first sentence, deleted "pursuant to Title 5, section 12004, subsection 4" from end.

Subsection 4: Chapter 295, in 2nd paragraph, substituted "\$75 per day for their services and shall be reimbursed for reasonable expenses including travel" for "according to the provisions of Title 5, chapter 379".

#### Cross References

Prohibited acts in violation of commission rules, see title 12, § 7655.

#### Notes of Decisions

##### 1. In general

Member of Legislature could not be appointed to Indian Tribal-State Commission created by this section, since Const. Art. 3, §§ 1 and 2 provide that no member of one branch of government may exercise powers of another. Op. Atty. Gen., Feb. 2, 1981.

### § 6213. Approval of prior transfers

**1. Approval of tribal transfers.** Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to the effective date of this Act, shall be deemed to have been made in accordance with the laws of the State.

**2. Approval of certain individual transfers.** Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual

Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.

**§ 6214. Tribal school committees**

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.

1979, c. 732, § 1.

**Inseparability and Effective Date.** For inseparability and effective date provisions of 1979, c. 732, see the italicized note preceding § 6201 of this title.



## PART ONE

# LIFE AFTER THE LAND CLAIM

Considered an Indian success story, the Penobscots still don't feel the benefits of the settlement in their daily lives.

SIX YEARS AGO, Maine's Indians won \$81.5 million from the federal government in a celebrated land claim and got rich. Or so the story goes.

Indeed, a trip across the old one-lane bridge from Old Town to Indian Island, home of the Penobscot Nation, shows a different world from 10 years ago, when legal steps taken on the land claim brought federal recognition to the tribe. Coming off the bridge, the road winds through the "old" Indian Island—a tight cluster of houses and trailers, some with tarpaper remnants, many with recent improvements, by Chief Poolaw's Teepee tourist stop, St. Ann's Catholic church and a cemetery of white wooden crosses.

Past Madas Sapiel's tiny house on Oak Hill with the big "Wounded Knee" sign—a badge of the old woman's Indian activism and reminder of Penobscot connections to a world beyond its own—the road turns left and continues to a clearing. There sits a new complex that would be the envy of any Indian reservation: a stunning school, an ice arena, government buildings, and a tape cassette manufacturing plant that has cut unemployment on the island from 50 to 15 percent, an unheard-of level for an Indian reservation. Just past this impressive array of buildings the road continues through a modern subdivision and attractive elderly housing.

In a material world, the signs of success are everywhere on Indian Island. However, not so long ago the Penobscots' world was not a material world as whites know it, so adjusting to the cataclysmic changes the land claim has brought about has been painful. By and large, Indian Island residents are

satisfied with the settlement. But if they expected to get rich, they have been disappointed: the tribe operates at a deficit, and individuals receive no more than \$600 a year in per capita payments from a trust fund. They have learned that it takes a long time for economic development to transform people's lives and erase longstanding social problems.

The Penobscots are keenly aware of the price they paid for the settlement, on three fronts. One is a perceived loss of sovereignty. Under the settlement, the Indians agreed that serious crimes would be tried in state courts, and basic regulatory laws would apply on the reservation. Confusion over the tribe's new status as a quasi-municipality has caused problems with state government and law enforcement.

Second, many people feel a loss of control over their lives, as tribal leaders and lawyers increasingly make decisions about highly complex financial investments without their involvement. Third, cultural values have been threatened. The settlement, say tribal officials and critics alike, brought out greed and competition—behavior antithetical to traditional Indian values of unity and cooperation.

People took care of each other more before all the money, they say. "Now, if my brother gives me a ride to town, I have to pay him \$5," was one comment. Whether the new emphasis on money springs from the land claim or from 1980s white culture catching up with Indian Island is hard to say, but no one feels good about the new materialism.

Opposition to the settlement was centered on



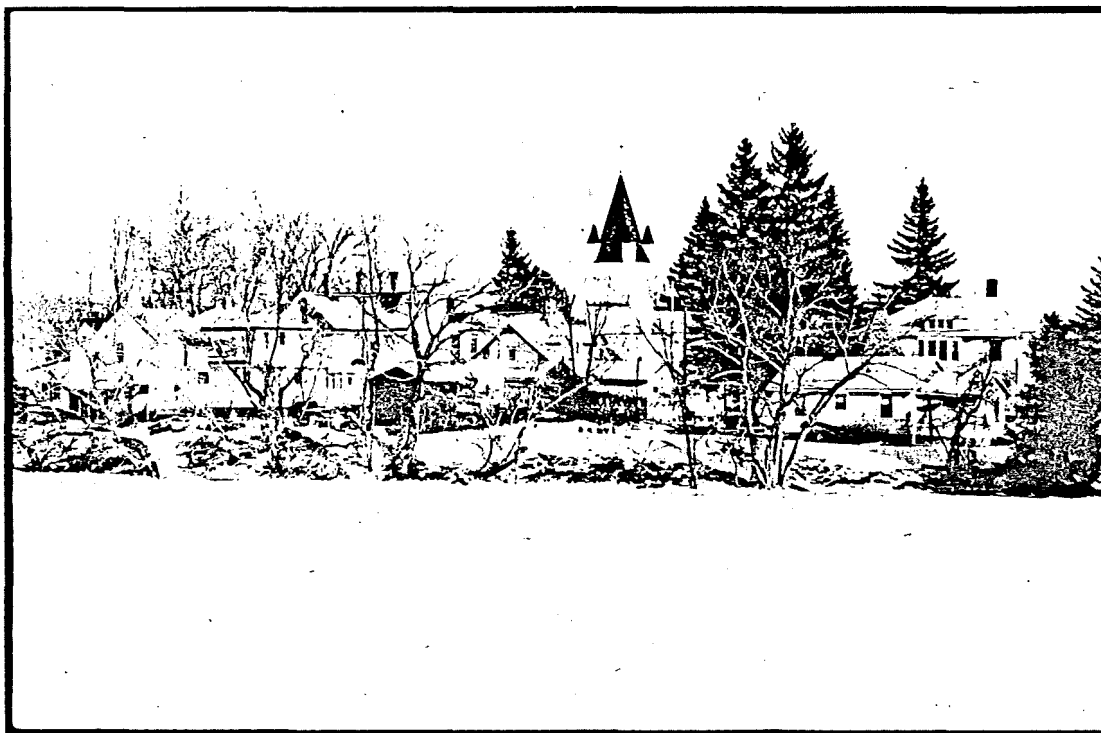
*Indian Island, home of the Penobscot Nation.*

Indian Island, where one-quarter of the people voted against it. It fed into existing divisions between families and continues bitterly among a small minority of highly vocal critics, 20 of whom refuse to accept their per capita payments. It also exists among the majority of Penobscots who live off the reservation. They lack access to services on-reservation tribal members receive, and lost their voice in state government once the settlement closed down the state Department of Indian Affairs.

Bankers and federal officials with whom they do business regard the Penobscots as a success story. So do other Indians across the nation. So Penobscot tribal officials are impatient with critics. People may not feel the benefits of the settlement in their everyday lives yet, they say, but they will come.

"It's hard to show people the human development," says Penobscot Governor James Sappier.

Maine Times interviews with more than 25 tribal members bore out that truth and turned up a lack of consensus on what people mean by "self-determination" and "traditional culture." Tribal officials see progress toward economic self-



*Crafts and souvenirs were once important to the Indian Island economy.*

sufficiency, yet at the moment the Penobscot economy is almost entirely dependent on the federal government. And the tribe relies heavily on the advice of attorney Tom Tureen and Tribal Assets Management, the investment banking firm of Tureen and Daniel Zilkha.

As far as "traditional culture" goes, its loss is mourned by many on Indian Island. But the 1980 settlement came at a time when the Penobscots had already lost much of their culture through intermarriage and state-run schools that, up to the 1960s, discouraged cultural expression and punished pupils who spoke Penobscot. According to tribal member Vicky Akina, a second-grade teacher at the Indian Island School, most children lack a historical identity as Indians or strong values from home to counter the rising tide of materialism. Hopes for revitalizing the culture lie in the school, where another Penobscot teacher, Barry Dana, teaches native culture. The day *Maine Times* visited, Dana's class was building a grass hut and learning Penobscot words.

Out of 550 island residents, only a handful of elders still can speak Penobscot. The tribe's Department of Humanities has utilized them to write a dictionary (to be published next year), grammar book and other curriculum materials.

Penobscots traditionally were a migratory river people with a tribal consciousness but a family-centered work economy. Less isolated in recent times than the Passamaquoddies, who retained their language, the Penobscots have a strong identity as hard-working, cosmopolitan people who moved freely on and off the reservation. Work took men to mills throughout New England and women to the seashore selling handcrafted baskets.

Among local heroes are three Penobscots inducted this year into the Native American Hall of Honor in Arizona: Louis Sockalexis, baseball great for whom the Cleveland Indians are named; Molly Spotted Elk, dancer and Hollywood actress; and Joseph Attenu, Thoreau's astute guide in the Maine woods.

Two generations ago, unemployment and alcoholism were rare, and people helped each other, say the elders. Sharing and unity were the paramount values, land was not individually owned, and wealth was distributed informally. Despite being 95 percent Catholic, they retained some native spirituality and practiced herbal medicine. But Senabeh, the last tribal medicine man, died a few years ago. And the last house built communally went up one weekend in 1970.

In recent years, a negative attitude took hold in the community, sprung from white prejudice, lack of opportunity, and an ever-increasing dependency on the government, say the elders. Most young people wanted to leave Indian Island as soon as they could. Now, elders are divided about the effects of the land claim, some seeing in it a link to social decline, others seeing progress and hope.

Fifteen years ago, high school drop-out rates were soaring. Not more than five or six Penobscots had ever graduated from the University of Maine. Now, 70 percent graduate from high school, close to the Penobscot County average, and one-sixth of the tribe has a college education — an achievement unrelated to the land claim settlement, according to Ted Mitchell, director of the Office of Indian Programs at Orono. More Indians attend college now because of intensive outreach and support efforts, says Mitchell, an Indian Island resident.

The vast majority of Indian graduates still go off reservation for work, finding few job openings at home and a resistance to hiring them by Indian administrators lacking college degrees, say observers. That situation seems to be changing, since the majority of Penobscot tribal government department heads now have college degrees.

The land claim settlement dropped into the lap of one of the poorest communities in the nation. By every yardstick, Indians are the poorest Americans, prone to the complex of social ills that accompany poverty. But unlike Western Indians, Maine Indians had not been wards of the federal government, so the Penobscots had a stronger tradition of self-reliance. Compared to the Passamaquoddies, their cousins Downeast, they were also well-placed geographically, in the heart of Northern Maine's lumber, shoe and textile industries. Downturns in those industries, however, had caused widespread unemployment on Indian Island.

When the Penobscots got \$40 million of the \$81.5 million settlement six years ago, expectations for economic development ran high. Tribal leaders

(Continued on the next page)

## TOM TUREEN



"The objective was to create opportunities."

Ten years ago, the Maine Indians' land claim opened the door for restitution to tribes up and down the East Coast. With few exceptions, the Indians won, but the biggest winners by far were the Maine tribes. Behind most of these wins was one man's doggedness and legal acumen, qualities the tribes later used in new ways as they looked for investments.

His deepening involvement with the Maine tribes caused him to be praised as economic savior by fans of the 1980 settlement and condemned sarcastically as "great white father" by a minority of critics. As a change agent in a culture not his own, Thomas Tureen has altered the Indians' future in ways it will take years to fully comprehend.

Besides Maine's Indians, 10 other eastern tribes sued during the past 15 years, among them the Narragansetts of Rhode Island; Wampanoags of Mashpee, Cape Cod (known as Mashpees), and of Martha's Vineyard; the Pequots, Schaghticoke and Mohegans of Connecticut; and Oneidas, Cayugas and Mohawks of New York. Of those cases resolved so far, only the Mashpees and Cayugas lost.

The land claims of these eastern tribes were as different from the western tribes' as were their historical fates at the hands of whites. Western claims were based on the notion that the U.S. government had dealt with the Indians unfairly. Their recoveries under the Indian Claims Commission were taken in nature, doled out in per capita cash payments, and smaller by comparison with the Maine claim. Even the \$106-million Black Hills award to the Sioux (which they rejected in favor of holding out for their sacred land) can't compare, since it involved a much greater Indian population and did not award land rights.

Eastern claims followed the Maine claim's premise that the states took Indian lands in violation of the Indian Nonintercourse Act of 1790, which prohibited the sale of Indian lands without approval of Congress. Eastern states had long assumed that act didn't apply to tribes in the original 13 colonies. In Maine cases, Tureen proved that it did, and he masterminded the other claims that flowed from it.

The future of Indian tribes no longer lies in land claims, but rather in commercial expansion and growth, he now says. For instance, the Penobscot cassette manufacturing plant and the Guaranty Fund for backing emerging businesses, and the Passamaquoddy cement plant and blueberry business have turned Maine Indians into major financial players in the state and drawn them into a network of ideas and opportunities. But despite a widespread misconception that the 1980 settlement made the Indians rich, money was never what the case was about, says Tureen.

"The objective was to change their position and create opportunities. What's happening is, they've got a sense of the future now. People are getting a lot stronger; there are fewer losers than before," he says.

Following the settlement, Tureen continued as attorney for the Penobscots and Passamaquoddies and took on a new role as investment counselor through Tribal Assets Management, a Portland-based investment firm owned by Tureen and Daniel Zilkha. The firm is the national leader in Indian investments.

The Penobscots pay Tureen legal fees of \$110 an hour, a standard Portland rate. They also pay Tribal Assets Management a yearly \$120,000 retainer plus an incentive fee of five percent of what they earn — conventional investment banking fees, according to *Forbes* magazine. (Because of cash flow problems, the Penobscots are behind in their payments, says a tribal leader.) From the settlement itself, Tureen got no cut — the only time in history a tribal lawyer didn't, he says. At the time, he was on salary from the Native American Rights Fund.

"What they're getting is a better deal than we offer to other tribes, and we're very much in demand," says Tureen, explaining that investment brokers typically take a percentage when a deal closes, rather than when it becomes profitable. "I don't consider it charity. We view ourselves as having a long relationship with them. We prefer to get paid if the thing works."

Tureen is impatient with grumbling among a minority composed of Indian dissidents who characterized him as a white Indian chief controlling their destiny.

"I'm not running the show for the Penobscots. We've got a large organization which does a variety of things for the Penobscots. We're not involved day to day," he explains.

Due to reporting problems, some tribal members may feel left out of the process compared to earlier, simpler days on the reservation; but modern tribal government by council and committee is more suited to sophisticated investment decisions than the old government by general meeting, in Tureen's view. He thinks the Penobscots are actually less divided politically than they used to be when there were fewer outlets for the frustration of bright, energetic leaders stuck in a community without hope.

Dissenters who dwell on loss of sovereignty are mistaken, he says, since no laws took away the tribes' internal decision-making powers. Tureen sees sovereignty in economic terms. His investment goals are building a diversified economic base and creating opportunities for everybody on the reservation. "Survival [of the tribe] as an entity is our most important goal. That's the ultimate meaning of sovereignty," he says.

Seeing his clients' communities not so much divided by the settlement as moving forward with a healthy tolerance for dissent, Tureen says:

"I'm very proud of them. They've come through a tumultuous change in their lives extraordinarily well."

(PN)

## CHRISTOPHER MITCHELL

His loud criticism  
of the settlement  
hasn't gotten  
him fired.



Factionalism has been called the bane of Indian reservation life. One positive view holds that it furthers the cultural value of tribal democracy, keeping any one leader from becoming too strong. Among the Penobscots, factionalism has always existed. But Chris Mitchell, an unflagging opponent of the land claim settlement, maintains it is much worse since federal recognition turned Indian Island into what he calls a welfare state. Yet his loud criticism of tribal leaders and "the system" both on Indian Island and in white newspapers has not gotten him fired from his job computerizing tribal records — one measure of the tribe's viability and openness.

Mitchell has amassed a wealth of data to show Indian Island's dependency on federal and state support (\$5 million in 1985, for example). That dependency has killed ambition and worsened the quality of life, he charges, citing increased suicide, substance abuse, family dysfunction and crime figures.

Mitchell sees one bright spot economically: Olamon Industries. The factory succeeds, in his opinion, because it is run by Shape Inc. rather than the tribe and because it produces a marketable product. Most of Indian Island is service-oriented.

Mitchell arrives at his views from a strong educational and professional background born of family emphasis on self-help. After college graduation, he worked for many years as a federal Inland Fisheries & Wildlife biologist and later a tribal land use planner, hired by his cousin, Governor Jim Sappier. Besides his computer job, he operates his own photography business (Prints Charming Photo), restores autos, and trains Siberian huskies as sled dogs. He remembers the 1940s, when

Penobscots were self-employed in crafts or worked on river drives, in shoe factories or as career soldiers.

"We're into a second generation of people who've never had to strive for anything," he says.

As an entrepreneur, Mitchell favors private employment. He would rather the land claim settlement had been passed out to individuals who could then have hired investment analysts to advise them. As for sentimental purchases of ancestral homelands, "I'd have bought mine in Tahiti," he says. Similarly, he views the concept of restitution as backward-looking and scoffs at discussions about Indian culture and traditionalism.

"We have no culture! There hasn't been since the turn of the century," he says, adding that nearly half the tribal membership are quarter-blood Penobscots, "and to me, a quarter-blood is three-quarters something else."

Mitchell, like other dissenters, blames the land claim for a loss of sovereignty. The special status as both a "nation within a nation" and a municipality has created a legal mess, he says. The job of his friend and fellow dissident George Tomer is to wade through the legal thicket and clarify tribal law. Prior to this system, say Tomer and Mitchell, tribal decisions were made at general meetings, but as the system grew larger with federal recognition, control passed to the council, which the settlement recognized as the authority. That change, they contend, distanced leaders from voters and weakened accountability to the point where people no longer feel they have a say over how settlement money gets spent. The danger then becomes, in Mitchell's words, "Small amounts of money corrupt a little bit; large amounts corrupt a lot." (PN)

(Continued from the previous page)

invested cautiously on several fronts, looking past immediate pay-off to long-term gain: \$12.5 million in a permanent trust fund, from which tribal members are paid quarterly dividends; \$1 million in a fund for the elderly; \$27 million in 150,000 acres of timberland. The focus on land was a point of pride, since the Penobscots had been cheated out of thousands of acres of ancestral land and were down

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to 6,000 acres — just a handful of islands in the Penobscot River. A fall in timber prices prompted the tribe to sell off some land and consider recreation development projects, particularly in Carrabassett Valley, where the Penobscots own much of the land around the Sugarloaf resort.

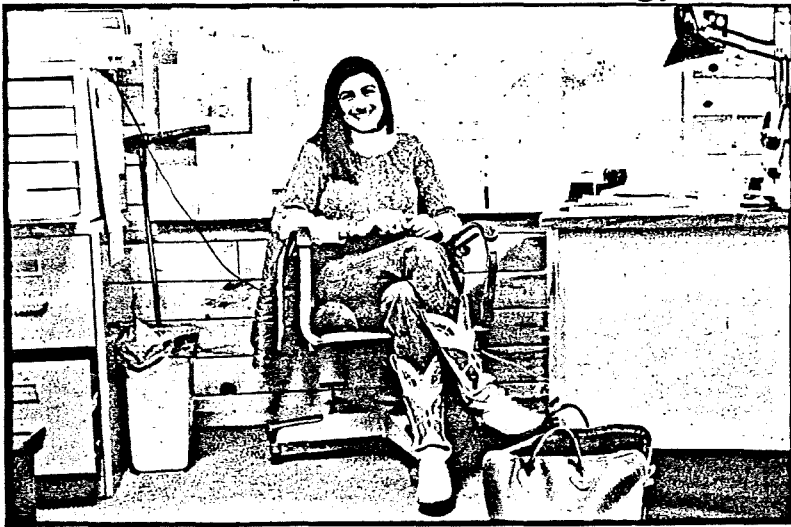
The settlement had a more direct local impact on the Penobscots than on the Passamaquoddies, who initially invested more off-reservation. Penobscot local projects include the \$1.5-million Sockalexis ice hockey arena (widely regarded as a white elephant economically, but a boon to public relations, since it draws teams from throughout Maine to the island); and Olamon Industries, a tape cassette manufacturing plant built as a joint

venture by the Penobscot Nation and Shape Inc. The \$2.5-million factory is making a profit after one year of operation and will undergo a \$6-million expansion this year. Employing Indians in a majority of its assembly jobs (although at salaries only slightly above minimum wage), the factory the kind of non-polluting, hi-tech enterprise no Indian reservations would give their eyes teeth for. As a local employer, it also provides jobs for white displaced shoe workers. The ice arena and Olamo were built with federal funds and loans backed by mortgages on Penobscot land holdings.

Two years ago, the tribe set up the \$3-million Penobscot Guaranty Fund to offer loan guarantees to prospective and expanding businesses. (So far,

## THERESA SECORD

A geologist, she opened the eyes  
of the Department of Energy.



If any other event put the Penobscot Nation on the map nationally as much as the land claim, it was their defeat of the Department of Energy proposal for a nuclear waste dump on tribal lands in the Bottle Lake area. The person who built the scientific case against that proposal was a 28-year-old Penobscot geologist named Theresa Secord.

That battle continues, says Secord, whose staff in the Department of Natural Resources continues to monitor seismic activity near Bottle Lake in anticipation of another energy department try.

"Our tribe was the first to come out with a legal protest. It earned us a lot of respect through the National Congress of American Indians. And the DOE got a real education on Indian tribes and how they differ from each other. We opened their eyes about our feeling about land," she says.

Secord, who grew up in South Portland, came to work for the tribe two years ago; taking time off between master's and doctoral degrees. As a bright, well-educated Indian woman in a nontraditional job, she is among the "new brains of the tribe" whom tribal leaders point to with pride.

An important piece of the Penobscots' economic future is in Secord's hands: mineral resources. While it is still too early to know where to mine, staff surveys of Indian lands show indications of copper, lead and zinc and preliminary indications of tin, tungsten and molybdenum, and possibly gold and silver. It takes five years to find a mining site, Secord says. She and her staff are two years into their search.

## Penobscot Nation at a glance

**Population:** 1,800 on and off Indian Island reservation.

**Share of the 1980 Land Claim Settlement:** \$40 million.

**Estimated worth, 1986:** \$50 million.

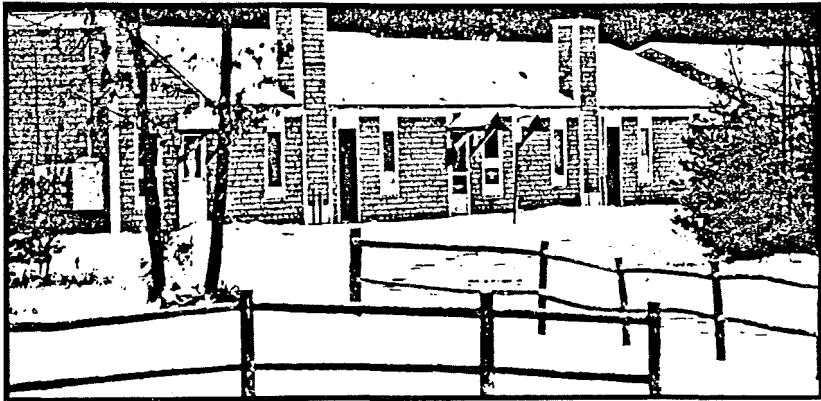
**Key investments:** Olamont Industries audio-cassette factory and ice arena on Indian Island. Pequot tribe bingo operation in Connecticut. Real estate. Penobscot Guaranty (loan guarantees for new and expanding businesses).

**Unemployment:** 15 percent.

**Land holdings:** 143,685 acres, not including 4,841-acre Penobscot Reservation.

no Indian-owned businesses have been considered sound enough to qualify — a sore point among critics.) The tribe is swamped with proposals, which it forwards to Tribal Assets Management in Portland for review before the tribal council votes on them.

The Penobscots have found a place of honor in the investment community and won new respect as a development force in Maine's economy. Still heavily dependent on federal support — at least \$3 million in federal funds went to the island last year — Indian Island enjoys a reputation as one of the top four or five best-managed Eastern Indian reservations, according to the Bureau of Indian Affairs. In a system notorious nationally for graft,



*New elderly housing, Indian Island.*

cronyism and mismanagement, the Penobscots have had less than their share, say several federal officials who deal with them.

Then why is the tribal government still in the hole financially? Down from \$4 million a few years ago, its deficit now runs around \$500,000. There are three answers: very little land claim money has gone into the operational budget of the tribe, since most of the money is held in trust; timberland and a few failed projects (blamed on lack of management skills) tied up cash early on; and court rulings halted the high-stakes bingo on Indian Island that was once a major source of revenue.

Former Penobscot Governor Timothy Love now oversees a bingo operation for the Pequot Indians in Connecticut in which the Penobscots invested \$750,000. "One year, and we'll be out of the hole,"

he predicts. Bingo is a major player in the Penobscot development picture, as it is for many Indian tribes trying to make up for the loss of federal funds in recent years, but only for the next few years, Love insists. He downplays the worry expressed by several Indian Island residents that Indian bingo attracts organized crime because it is unregulated.

"We run our own games — there's no way for them to get in," says Love. As for criticism that games of chance represent an unfavorable image of Indian economic development, Love says, "We have not reached the point where we can be that choosy. Sure we'd prefer to manufacture."

As governor for the six years following the

*(Continued on the next page)*

## NEIL PHILLIPS

### A national paddling champion, he thinks the Penobscots' rights were sold down the river.

Historically a river people, the Penobscots once paddled canoes home from work. Today, one still does — Neil Phillips, 48-year-old sheet metal worker, world traveler, and unforgiving critic of the land claim settlement. Like his ancestors, he is independent and proud (some say egotistical), so when the land claim brought federal benefits to Indian Island, he would have none of it. He rejects the per capita payment on principle and ridicules the notion of Olamont Industries as an economic savior.

"Big deal — \$4.50 an hour. I make \$16.50 an hour and call my own shots," he says. Phillips helps construct power plants throughout the state and negotiates his own pay because his work is in demand. His \$40,000 salary allows him to travel to other Indian reservations, where he lends support to Indian causes, and to Europe, Mexico and South America.

"I grew up in a poverty-stricken era and was taught by my parents if you want something, go out and get it on your own," he says. In that spirit, Phillips single-handedly, over six years, built a dream house for himself overlooking the Penobscot River on Orson Island, just north of Indian Island. He is the only permanent resident on Orson, his playground as a child. Today, he says, Indian Island kids ignore the woods and sit at home bored. Pleased that his nephew, Barry Dana, is reintroducing woods lore to pupils at the school, he hopes to share his own crafts and canoeing skills with them. A national paddling champion for the past 16 years, Phillips mourns the loss of this once-integral part of the Penobscot culture. Like other vital signs, canoeing and crafts succumbed to laziness, in his view.

"I built that house with a lot of spite — to show the people that this can be done," says Phillips. That finished, he is embarking on a three-year project to build a 35-foot trimaran.

"I'm not a traditional Indian. If I was, I would not be living in a \$150,000 house, or building my own boat, or working at sheet metal. But I am a traditional Indian in respecting the woods, the environment and people's rights," says Phillips, who thinks the Penobscots' rights were sold down



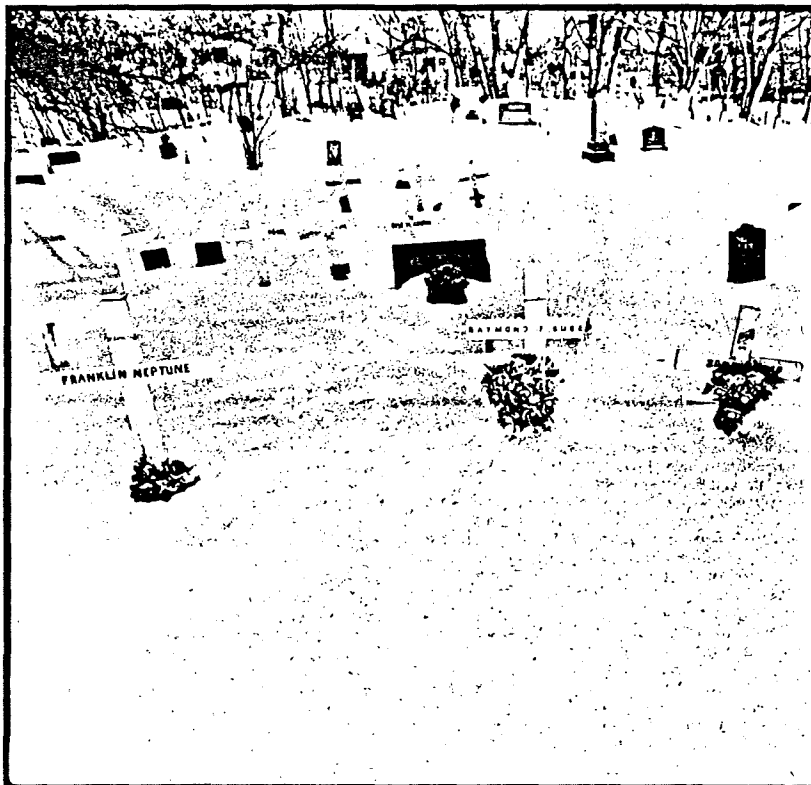
the river when they settled rather than taking the land claim to court.

"The settlement don't prove who's right and wrong," says Phillips, who holds the United States to a strict restitution standard. "And I figured we didn't have anything to start with, so we had nothing to lose by going to court." Phillips suspects, like other dissenters, that the money from the settlement has gone mostly into the hands of tribal officials, lobbyists, and tribal attorney Thomas Tureen. Yet wherever he goes, people think the Penobscots are rich, he says.

"I get that at work all the time. And I feel the resentment when I walk into a restaurant."

Phillips' strong views are characteristic of the minority of dissenters on Indian Island who continue to be a thorn in the side of tribal leaders. Once a council member himself, Phillips was nominated for governor in the last election, but didn't run. He has turned his back on politics, but not his people. Recalling that as a teenager it took him all of one summer working at a bowling alley to earn enough money for his first shotgun, he hopes to help teach Indian Island youth traditional Penobscot values of hard work and harmony with nature.

"At school, they want to build wood strip canoes, and I'm going to help them. I hope they'll come to me," he says.



Cemetery, Indian Island.

(Continued from the previous page)

settlement, Love guided economic development and traveled widely. Compared to other reservations in the country, Indian Island is "light years ahead," he says. "We're real lucky people." The 1980 settlement was the vehicle to move the tribe up the ladder to self-sufficiency; its immediate impact was to keep unemployment to a dull roar, but it has yet to resolve hard-core unemployment or change people's standard of living, he says. That, says Love, will take another five to 10 years.

"People who expected quick results now want to say I told you so," he says. "What the critics don't understand is, we've practiced tribalism for centuries, and tribalism is a form of socialism. Trying to teach people to be responsible and not overgive is a problem," he says.

Of the community divisions over the settlement, he says, "It breeds suspicion — that's one of the down sides. We haven't broken out of our negative thinking."

Turning around that thinking and translating successful investments into social gains stand out as major long-range tasks facing the Penobscots. Of chronic social ills like a rumored 60 to 80 percent alcoholism rate, poor health and serious family problems, Love says, "Indian Island is much better than it was six years ago." That assertion is hard to dispute statistically, since records from the days of state guardianship aren't readily available. On a gut level, health and human service officials say they see no social effects yet from the settlement other than increased self-esteem.

Tribal elders and critics of the settlement see a downhill slide in social behavior during their lifetime and blame the settlement for making young people lazy and vulnerable to alcoholism and drug abuse. But tribal officials look beyond immediate social ills and point to a new pride and a feeling of hope for the future. Remarkably candid about social problems (Love has publicly discussed his struggle to overcome alcoholism and cocaine addiction, for example), tribal leaders project an

## JAMES SAPPIER PENOBSCOT GOVERNOR

"We're able to stand up now."



**G**OVERNOR JAMES SAPPIER has a reputation for a mind like a steel trap and the work capacity of a stevedore. A serious man with a high moral profile and air of

dedication to his people, he commands respect among those who work with him daily.

To outsiders, he is gracious, but guarded — not surprising for the leader of one of the most

over-scrutinized communities in America. Hardly a day goes by when journalists or amateur anthropologists don't visit, asking the same questions about the celebrated land claim and reopening old wounds in the community. By way of response, Sappier is given to thought-provoking rhetorical questions such as, "What is the definition of well-off? Or economically stable?"

In considering the effect of modern economic values on Penobscot traditional culture, Sappier once asked an interviewer, "Do I lose my Indianness when I equip myself to fight for my tribe in the white man's world?"

Unlike the new generation of college-educated Penobscots returning to Indian Island to work for the tribe, Sappier, who sewed shoes for his father throughout his childhood, rose from the working class. After working in a paper mill, he was trained as a machinist in the aircraft industry and worked at Sikorsky in Connecticut, where he oversaw production control. In the early 1970s, he directed a job training and employment program on Indian Island and went on to head the land acquisition program following the land claim.

Sappier believes the future of the tribe rests on its cohesiveness and ability to define economic development on its own terms. In the face of tangible settlement benefits such as the new school and cassette factory, tribal courts, and improved child welfare, Sappier is impatient with criticism — particularly when the number of critics is small.

"We need criticism. Can we make it better? How? We'll take the criticism, but they haven't told us how to improve the efficiency," he says.

Years ago, Sappier himself had mixed feelings about the Penobscots land claim. "Sixty percent of me said let's negotiate it, and 40 percent said let's go to court." But had the tribe proceeded in court, it could have ended up terminated from federal recognition, or on the losing end of a U.S. Supreme Court decision, given the climate during the Reagan Administration, he believes.

As one who grew up in poverty, stitching shoes and working in factories, Sappier looks past the shortcomings of the settlement to a bright future for the Penobscots. "We're able to stand up now," he says.



## PRISCILLA ATTEAN

**A tough advocate, she has watched white attitudes change.**

An Indian Island elder, herself a former Penobscot representative to the Maine Legislature, sees Rep. Priscilla Attean as a potentially powerful community role model who is quickly overcoming her disadvantage as a "newcomer." Born on the island, Attean moved away because her father, a railroad engineer, had to leave the reservation. She returned in 1981 after raising her children in Connecticut, then dropped her University of Maine studies to serve as a non-voting member of the Legislature. She is starting her second term.

A dynamic, tough advocate for her people, Attean has watched white attitudes change toward Indians in and out of the State House as fears that they would grab whites' real estate and create a "nation within a nation" subsided and respect for Penobscot economic clout rose.

A clear measure of that new attitude, says Attean, was the Legislature's 1985 vote to reinstate bingo on Indian Island (later vetoed by Governor Joseph Brennan), and its approval of tribal land purchases in Old Town. This year, Attean is cautiously optimistic that a new bingo hall will pass.

Attean sees no loss of Penobscot culture from the settlement — "that was lost before, by the state, when we were punished for speaking the language in school" — and doesn't worry that "tradition" means different things to different Penobscots.

A few clear goals guide her thinking about investing tribal funds: "Is it good for the tribe? Does it provide jobs? Is it good for the environment? One of our longest-range goals is self-determination — to support our child welfare department and every other department and tell them we don't need their federal money." In the meantime, says Attean, "the system is a necessary evil."

As a female Penobscot leader, Attean is one of a shrinking minority. While female elders once had a strong voice in traditional tribal affairs, Attean and Lieutenant Governor Ann Pardilla (the first woman to hold that post) are currently the only elected female leaders. Their presence revives hope among many Indian Island residents of increased attention to social welfare issues, which women promoted in former times.

energetic response. Governor Sappier has impressed tribal members with his willingness to take on health and human services as top priorities, and his own "straight," hardworking personal habits make him an effective role model, they say.

Substance abuse and family dysfunction are the  
(Continued on the next page)

## EUNICE NELSON



**A critic of the settlement, she believes land is too sacred to barter.**

"An Indian and a white man go crab fishing. The white man's crabs keep crawling up out of the basket. The Indian's don't. The white man asks, 'Why are mine escaping, but not yours?' The Indian answers, 'Because when one of mine starts climbing up, the others pull him back.'"

Eunice Nelson tells this story to illustrate what she calls an Indian tendency to discourage personal ambition. Indians believed that every Indian in the community was responsible for keeping the community in balance and if you got competitive, it upset the balance, she says. The settlement, she believes, has made people competitive.

As the first Maine Indian woman ever to earn a Ph.D., she lives a life of the mind among, but socially apart from, her people on Indian Island.

"There is a lot of resentment if you are well-educated," she says. "Education is not a community value." With an undergraduate degree from the University of Maine and advanced degrees in anthropology and sociology from New York University, Nelson trained Peace Corps volunteers in South America and taught for many years before returning home to Indian Island 10 years ago. Like her father, a former Penobscot governor who graduated from Dartmouth College, and her sister, renowned dancer Molly Spotted Elk, she is a lifelong achiever. But after five years as director of Health and Social Services on the island, she gave up on tribal administration following a disagreement with the governor. "In small communities,

everything is done personally, not professionally," she comments. Since then, she has devoted her talents to teaching and writing.

In her administration job, she focused on the relationship between ill health and social behavior, finding the roots of alcoholism and other health problems in boredom and lack of hope. Well-acquainted with the fatalistic world view that exists in the Third World, as opposed to white America's problem-solving world view, Nelson advocates joining the two views. The result would be a realization that "there is a grand design, but within that we have a lot of leeway."

The old Penobscot belief system was holistic, as expressed by the language, which didn't reflect opposites as English does, she says. For example, "Kitchi Newesk," the Great Spirit, is not expressed as male or female, but rather as energy. Now, she finds, the old belief system has given way to materialism, the community is divided, and dissenters condemned for deviating from official policy. A critic of the land claim settlement out of the conviction that land is too sacred to barter, Nelson donates her per capita payments to the school for books on Indian culture. She regrets that her studies of culture and spiritualism are rarely shared with young people.

"In the old days, there'd have been a group of us elders telling stories, with a moral and so forth. Now — you know the saying — a prophet in his own town is not respected," she says.

*(Continued from the previous page)*

biggest concerns at Indian Island, say administrators who spoke on condition that their names not be used. Family violence is a "huge" problem, particularly incest and child abuse, said one source. Prevention efforts are being aimed at the extended family, which plays a strong role in Indian child-rearing.

Among off-reservation Indians, health and human services issues are a major reason for continuing bitterness about the land claim settlement, according to the Central Maine Indian Association in Bangor. The Penobscot Nation grew from 1,200 in the late 1970s to 1,800 today, but the majority of tribal members who live outside of Indian Island don't enjoy the health and housing benefits available on the island.

In the island community of just 550, there were six suicides and more than 10 repeated attempts within the past few years, according to more than one source. High rates of diabetes, obesity and heart problems (widespread among Native Americans everywhere) are a continuing concern to health officials and a financial drain.

Crime rates are high for the tiny community on the three-mile long island, says police chief Donna Loring, citing 18 felonies, 11 burglaries and 23

assaults during the past year and a half. She estimates that a majority of residents have guns. Of 10 offenses against family and children in that time, 90 percent were related to substance abuse. The family problems are not new since the land claim, she points out — just more reported.

While settlement critics attribute the rise in crime to "newcomers" (Penobscots who have returned to the island since federal recognition), Loring, a returnee herself who has worked in law enforcement in other states and served in a combat role in Vietnam, disagrees. "Crime is up because we've got more population," she says, simply.

Loring and her four full-time police officers, like health and human services workers, concentrate their efforts on prevention, but face an uphill battle in changing lifestyles long tied to feelings of worthlessness and low self-esteem. The police also work under the handicap of jurisdictional confusion, she says. Under the settlement, Indian Island retained jurisdiction over less serious, Class E crimes, but lost authority over more serious crimes. "It makes it difficult to enforce the law," says Loring.

Progress in the war against social problems is evident at Indian Island: enrollment in the substance abuse program has doubled in the last year,

and child protection has improved as a result of the 1978 Indian Child Welfare Act, which restored that responsibility to the Indians and ended the state's practice of placing Indian children in non-Indian families.

Building on these small steps, administrators hope to bring back a sense of personal responsibility and commitment to the community they say was disappearing from Indian Island. There is good news: while more than half the Penobscots still live below the federally defined poverty line, general assistance has dropped by half from a year ago — a direct result of employment at the Olamont plant. Most observers believe that increased employment and education, coupled with a frank attack on social problems, will get the tribe off federal assistance within 10 years and eventually bury the defeatism plaguing the last two generations of Penobscots.

A more open question is, can the Penobscots retain their culture? One tribal member answered that question this way: "When I adopt those qualities of 'I've got to have a Mercedes Benz' that white society seems to have, then I cease to be a Penobscot."

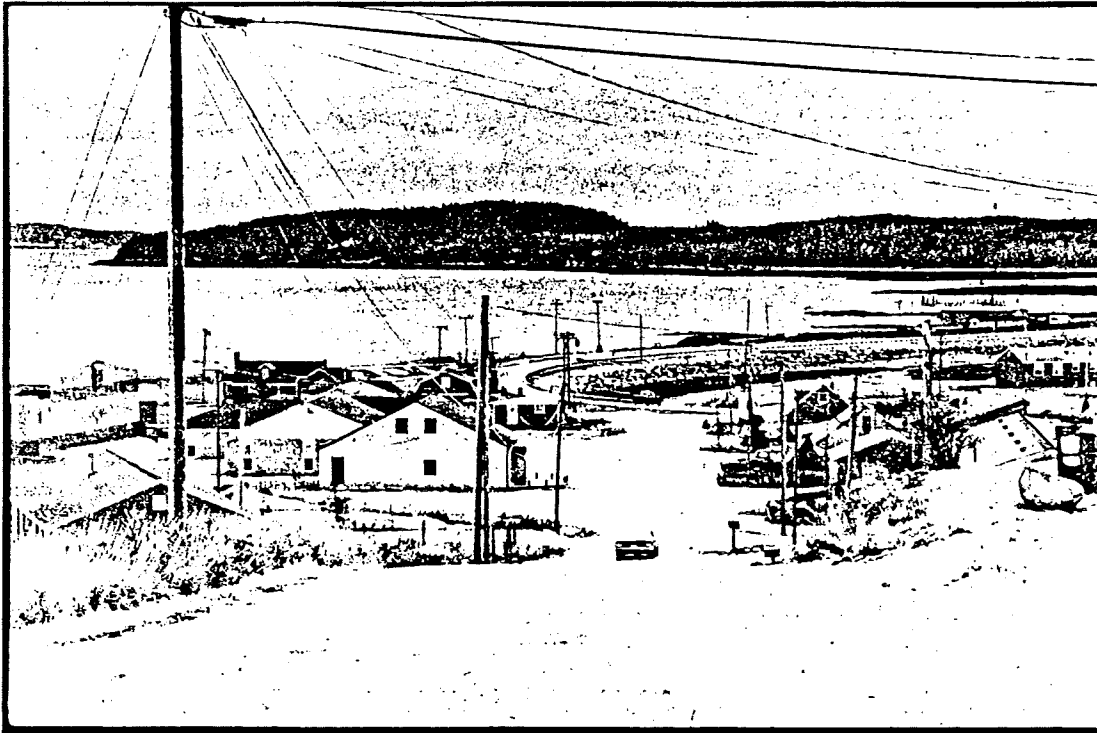
by Pat Nyhan

Photography by Christopher Ayres

*This is the first of four articles on Maine's Indians. Next week, the Passamaquoddy.*

## PART TWO

# PROMISES TO KEEP



The Passamaquoddy call their reservation at Pleasant Point near Eastport "Sipayik," meaning "on the edge." The outlook from Pleasant Point is both bleak and beautiful.

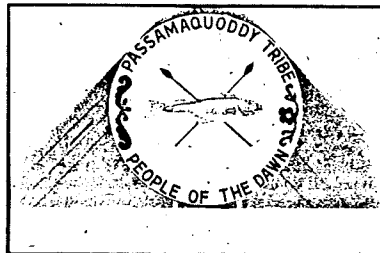
Passamaquoddy Indians once settled their differences with a "mock fight." Today the anger and frustration are real.

### 1. Sipayik

"MELVIN IS CHIEF"

Route 190 from Perry ("Halfway Between the Equator and the North Pole") to Eastport passes through the middle of the Passamaquoddy Indian reservation at Pleasant Point. The approximately 600 Passamaquoddy who live here call their community Sipayik, meaning roughly, "on the edge of the land." Clustered on the barren, treeless point that juts into the Western Passage of Passamaquoddy Bay, the reservation has the drab, uniform look of a military installation or a federal housing project. A ring of mobile homes, a wooden water tower atop Cherry Hill, a supermarket on the main road, school, church, and health center on the western shore, looping residential side streets with names like Hollywood Boulevard and Sunset Strip lined with little brick ranches and wooden garages, some quite prosperous looking, others showing signs of despair and disrepair. The Pleasant Point prospects are both bleak and beautiful, like those of Washington County generally.

The Pleasant Point community building is a large, grey, worn and weathered structure overlooking Cobscook Bay on the reservation's eastern shore. Spray-painted across the side of the tribal headquarters are the words "MELVIN IS CHIEF," a vandal's declaration of support for Melvin Francis winner of a bitterly disputed gubernatorial election



A Passamaquoddy tribal seal.

that, in the fall of 1986, threatened to tear the reservation apart. Just a decade after federal recognition in 1976 and only six years after the 1980 \$81.5-million land claims settlement, tribal members were at each other's throats. Tribal attorney Tom Tureen, the man who fought the Indian land claims issue with the tribes, insists the election dispute was "an aberration," the wrong time to take a picture of the Passamaquoddy. But in trying to discover the issues that separate the two main combatants in that election, a picture emerges of a people in crisis, a people in the midst of a painful transition from tribal traditions and structures centuries old to a new corporate identity they were never prepared to assume. The Passamaquoddy

survived for centuries in defeat, but, having finally achieved justice, their existence may now be threatened by victory.

The 1986 gubernatorial election turned into a three-month civil war with four major ballot box battles. In August, the tribal caucus met and decided both that tribal members who did not live in Washington County could not vote and that tribal members who did not live on the 99-acre reservation proper could not hold office. This meant that incumbent Governor Cliv Dore, the first college graduate to hold the office and an off-reservation Indian, could not seek re-election. Thus Ralph Dana, the reservation's most successful businessman (Dana Trucking) and former tribal governor (1982-84), was pitted against Melvin Francis, program director under Dore's administration. In the first major battle of the election war, the September 2 election, Dana appeared to emerge the victor polling 178 votes to Francis' 175. Francis naturally asked for a recount, but before the recount could occur, the Joint Tribal Council, the supreme Passamaquoddy governing body (consisting of the six tribal council members and the lieutenant governors from both the Pleasant Point reservation and the Passamaquoddy reservation at Indian Township near Princeton), met and appeared to ratify the September 2 election results. The motion made by newly elected Pleasant Point council member Madonna Soctomah, a Ralph Dana supporter, read "All the candidates elected by the people on September 2, 1986, at Indian Township

and Pleasant Point were elected and shall still be elected." This simply worded resolution provoked the divisive battles that followed. Did this resolution preclude a recount or not? Pleasant Point Governor Cliv Dore, arguing that to refuse Francis a recount would be a violation of due process, ordered a recount for September 9, the day after the Joint Tribal Council vote.

The recount, the second major battle of the election war, showed Dana and Francis in a 176-176 tie, the two extra votes being accounted for as absentee ballots that had not been properly registered and the discrepancy in the tally being explained as human error resulting from the fact that the September 2 results were counted at two o'clock in the morning. Governor Cliv Dore promptly called for a runoff election. Ralph Dana, charging the recount and the runoff were illegal and alleging ballot-tampering, refused to participate in the new election. Thus, in the September 17 runoff, Melvin Francis won 182-151. With the new administration slated to assume power on October 1, both Dana and Francis claimed to be governor.

Tensions mounted amidst threats and counter-threats. The reservation was divided down the middle. When Melvin Francis actually took over the governor's office on October 1, Ralph Dana had the four council members loyal to him swear him in as governor at a Calais restaurant. The war took on dimensions that might have been comic had they not been so bitterly earnest. Dana supporters allegedly attempted to have bank accounts signed over into Dana's name, removed the tribal seal from the governor's office, and changed the locks on the community building. Nails were strewn in the driveways of Dana supporters and there were reports of Indians carrying guns. When police chief Frederick "Moose" Moore refused orders to clear the halls of the community building, he was fired by the tribal council now dominated by Dana supporters. Melvin Francis attempted to replace the insubordinate council members with also-rans from the council election. Eventually, police officers from Indian Township had to be brought onto the Pleasant Point reservation to keep the uneasy peace.

During the most volatile period of the dispute, tribal attorney Tom Tureen calmly maintained that the Joint Tribal Council would resolve the controversy by clarifying the intent of its Sep-

tember 8 resolution, but on October 2, the Joint Council elected not to intervene, officials at Indian Township preferring not to get involved in Pleasant Point internal politics. When the Pleasant Point council perceived that Tureen was not siding with Dana, they fired him (an act of doubtful authority since Tureen was hired by the Joint Tribal Council, not the Pleasant Point council) and hired Eastport attorney John Foster. With tribal affairs at a crisis point, Ralph Dana's wife, Hazel, tearfully suggested a traditional solution to the stalemate — let the tribal elders (the 41 tribal members 60 years old or over) decide. Both Dana and Francis initially agreed to this remedy, but when the elders met on October 8 and decided that the only solution was yet another election, Ralph Dana refused to abide by the decision. He preferred to have the matter decided by the Tribal Court, primarily because he wanted a hearing on the possibility of ballot-tampering. In the meantime, Lt. Governor Harold Socobasin, a Dana supporter now declaring himself neutral, took over as acting governor.

On November 7, Passamaquoddy Tribal Court judge John Romei, a Machias attorney and a non-Indian, decided, as had the tribal elders, that a new election was the only way to solve the reservation's gubernatorial dilemma. Judge Romei found no evidence of ballot irregularities. Thus, on December 1, a fourth election was held at Pleasant Point. This time Melvin Francis emerged as the clear victor, 208 to 173.

#### "BECAUSE OF THE MONEY, BECAUSE OF THE POWER"

What issues, if any, separated Melvin Francis and Ralph Dana? Viewed remotely through the media, the gubernatorial dispute at Pleasant Point tended to look like little more than a popularity contest. No issues emerged, just accusations. A close-up view might initially reveal that factions were drawn somewhat along family lines in this clannish culture. Because the Passamaquoddy are a small and culturally isolated group, all conflicts tend to become extremely personal. In a certain sense, Melvin Francis, 41, defeating Ralph Dana, 62, can be seen as an aggressive new generation wrestling power from the old guard. But cultural identity, too, comes firmly into play in any Indian election. Some Francis supporters charge that

Ralph Dana, for example, is "an apple Indian," red on the outside, white on the inside. This allegation stems from the fact that Dana, like many ambitious Indians of his generation, left Maine and the reservation to make a living and support a family. Dana left Pleasant Point for the service during World War II and did not return permanently until 1971. In the meantime he lived in Malden, Massachusetts, and worked as a toolmaker for the Raytheon Corporation.

"In the service," says Dana, "I saw how the other half lives. I just got a very strong urge to be able to turn the water on."

"Ralph doesn't know too much about Indian cultural ways here," says Melvin Francis.

Dana counters that most of the people in key positions on the reservation are those who have left the reservation for a time to pursue either education or gain job skills. Francis himself lived in the Boston area for four years in the 1970s while he worked in an apprentice program to become a journeyman carpenter. But as evidence of Dana's greater assimilation into the dominant non-Indian culture, his detractors point to the fact that while Melvin Francis was always willing "to let the people decide," Dana would not consent to a decisive runoff election until a non-Indian judge ordered it.

Then, too, on the personal level, there was the issue of Ralph Dana's success, the resentment by those content to "get along" of those who want to "get ahead."

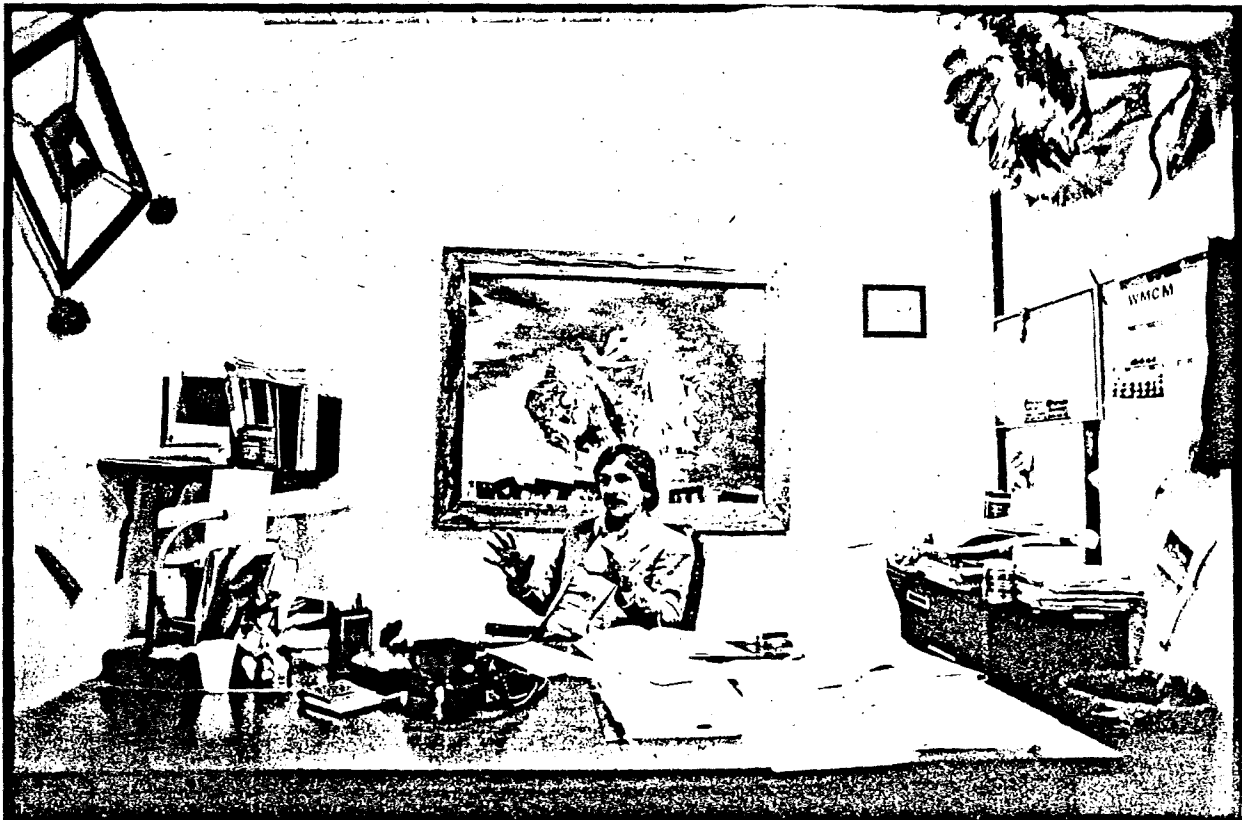
"The sad part," says Dana, "is that there was a lot of jealousy. The Indian community has to deal with that. One of the big drawbacks I have campaigning is that I own 25 percent of Dana Trucking. People see that as a degree of success for Ralph Dana, but they exaggerate the profits."

While jealousy of another's progress or success may be an unflattering, negative character trait in the larger non-Indian culture, in a strange way it may have positive cultural implications in a tribal culture that survived for centuries on a communal basis. Anthropologists have remarked on the prevalence of jealousy in some Indian cultures and suggested that the doctrine of "limited good" (more for you means less for me) may be behind this trait. Why should Ralph Dana, the argument might go, be governor if he already owns his own home, a trucking company, and has retirement income from Raytheon?

(Continued on the next page)



Ralph Dana, one of Pleasant Point's most successful businessmen, was the eventual loser in the bitterly contested gubernatorial election last fall. He says accountability was the major issue in the election.



*Pleasant Point planner Clayton Cleaves believes the absence of a written heritage among the Passamaquoddy seriously hampers their ability to function as a corporation.*

(Continued from the previous page)

In broader terms, however, the issues that divide Francis and Dana are similar to those that divide political opponents in any election.

"People are fighting," says Melvin Francis, "because of the money, because of the power we have."

Money and power — who and how best to control and use them. Cynics will suggest (as some have) that in the welfare economy of the Indian reservation, the tribal governor's salary (between \$32,000 and \$35,000) alone is enough to put two men at each other's throats. In a slightly wider context, there is also the issue of patronage. With unemployment running at about 30 percent at Pleasant Point and the tribe itself being the biggest employer, who gets to hand out the jobs has a much more immediate and dramatic impact on the local economy than the spoils system at work in a larger state or municipal context. So, yes, jobs are an issue. But the bigger issue, according to Ralph Dana, is accountability — financial accountability for the money and constitutional accountability for those in power. Both, he says, are currently lacking.

Tribal officials do have an enormous financial responsibility. The annual operating budgets of both the Pleasant Point reservation and the Indian Township reservation are currently in the neighborhood of \$1 million. Funding for these budgets comes largely from tribal investments and enterprises. Sale of timber from the 115,000 acres the Passamaquoddy have purchased with their land claims money comes to about \$120,000 a year. There are the earnings from the Dragon Cement Company in Thomaston (the Passamaquoddy's most publicized and substantial investment to date, purchased in 1983 for a reported \$8 million), the 6000-acre Northeastern Blueberry Company in Columbia Falls, a 1000-acre Humphries Farms dairy in Perry, two Rockland radio stations (WRKD-AM and WCMC-FM), the Wabanaki Mall shopping center in Perry, and the Sipayik Supersaver market. In addition, Pleasant Point is presently investing \$5 million to develop Passamaquoddy Housing Inc., a pre-fab housing manufacturing business, in partnership with Makroscan of Finland, and is awaiting a certificate of need from the state in order to build a 60-unit nursing home facility just down the road from the reservation on Carlow Island. All of this economic activity makes

it difficult for tribal leaders to know at any given time just what their tribe is worth.

"The budget really doesn't mean anything here," maintains Ralph Dana. "They can propose \$1 million and spend \$2 million easily. There is no elected Indian official who could tell you how much money the tribe has. They just don't know. They only know that in Portland in Tom Tureen's office. That's the accountability I'm striving for."

Tom Tureen reports the Passamaquoddy currently have a net worth of "around \$80 million."

In addition to the revenues generated by their own investments and enterprises, Passamaquoddy officials also administer federal funds on the reservations. To support services ranging from general assistance to law enforcement and forestry, the federal Bureau of Indian Affairs (BIA) sent \$985,600 to Pleasant Point and \$902,100 to Indian Township in fiscal 1986. The BIA also subsidized Indian education in Maine to the tune of \$1.5 million (roughly a third of this amount going to each of the two Passamaquoddy reserves and the Penobscot reservation at Indian Island in Old Town).

The BIA maintains no presence in Maine, but contracts with the tribe itself to administer the subsidized programs. To support health services, the federal Indian Health Service appropriated \$1,121,625 for Pleasant Point and \$878,940 for Indian Township. And through the Office of Indian Programs of the Department of Housing & Urban Development [HUD], Pleasant Point was eligible this year for \$25,344 in operating subsidies (Indian Township, \$155,751); \$99,000 for modernization and improvement of existing housing stock (Indian Township, \$61,000); in addition to which Pleasant Point was approved for an \$839,000 Urban Development Action Grant [UDAG]. With the exception of the \$25,000 operating grant to Pleasant Point, however, these HUD monies have been withheld because of what HUD sees as irregularities in the Passamaquoddy accounts.

The HUD problem at Pleasant Point stems from an eight-year-old dispute in which the reservation received funds to construct 40 new houses but completed only 30 before the money ran out. HUD officials maintain that a half-million dollars is missing or unaccounted for, Indian officials and attorney Tom Tureen maintain the construction program was underfunded to begin with and that cost overruns account for the disputed half-million dollars. HUD officials are apparently not convinced and have been frustrated in their attempts to audit the account because of missing records. An investigation into the housing program failed to turn up any evidence of wrongdoing or to result in any indictments. Passamaquoddy officials maintain that the investigation was all one-sided, looking into what the Indians might have done wrong, but failing to consider how HUD might be responsible for the financial problems.

"Until this half-million dollar issue is resolved," says Leon Jacobs, director of the HUD Office of Indian Programs in Chicago, "I don't know what kind of action we will be taking. There are serious questions about whether we will free up any other money to that tribe until the issue is resolved. They have succeeded in competing for a UDAG grant, but until this is resolved, our position is that no money should be placed with the tribe for new housing, community development block grants, or urban development action grants. Somebody has got to account for that half million dollars."

To provide space for new home construction and

## The Passamaquoddy by the numbers

**Population:** approx. 2,200 on and off-reservation.

**Share of 1980 Land Claim Settlement:** \$40-million.

**Estimated tribal worth:** \$80-million.

**Key Investments:** Dragon Cement, Northeastern Blueberry Company, WRKD-AM, and WCMC-FM in Rockland, Sipayik Supersaver, Wabanaki Mall, Makroscan prefabricated housing plant.

**Annual Federal Assistance, 1986:** \$6-million.

**Unemployment:** 32 percent at Pleasant Point, 60 percent at Indian Township.

**Land Holdings:** 115,000 acres.

Wayne Newell, director of the Health Center at Indian Township, fears that the conflict between the Passamaquoddy's tribal and corporate identities may hasten their assimilation into mainstream American culture.



planned commercial development, the Passamaquoddy this summer annexed 425 acres adjacent to the reservation from the town of Perry for \$350,000, but HUD funds are frozen unless and until there is a full accounting. Governor Melvin Francis says he will urge the tribe to finance the construction of new houses with its own money, a move Tom Tureen believes should satisfy HUD.

#### "WE DON'T HAVE A WRITTEN PATTERN FOR ANYTHING"

"All of the problems we've had in the past and all the problems we're going to have in the future arose and will arise simply because we don't have a good, clear, written policy," says Clayton Cleaves, the Pleasant Point planning director and the man who was in charge of the housing authority when the irregularities alleged by HUD occurred.

Cleaves suggests that native Americans are at a distinct cultural disadvantage when they are plunged into the legalistic mainstream of the American economy. Indians, he points out, are not people of the book. This, in part, he believes, accounts for the surprising fact that despite their

tremendous legal and financial obligations, the Passamaquoddy do not have a constitution.

"We learned the hard way," says Cleaves. "Native Americans are used to remembering. Our language is the same way. We're making attempts now to write our language, but our history is by memory, our arts and our crafts are by memory. We don't have a written pattern for anything. That's the habit of the Passamaquoddy."

In the wake of the divisive election dispute, it has become popular on the Passamaquoddy reservations to advocate the critical need for a constitution. A constitution was developed in 1983 with a \$100,000 BIA grant, but it was never enacted. Prior to the land claims settlement, the tribe was primarily governed by a body of laws incorporated into the *Maine Revised Statutes Annotated*, extracted and popularly known on the reservations as "the blue book." As a result of the land claims settlement and federal recognition, the state repealed its Indian laws, but the tribe never acted on the matter. Therefore, there is substantial confusion among tribal leaders as to whether and what laws apply. But tribal attorney Tom Tureen insists, "the notion that the tribe has no laws is not true."

It is true, however, that the tribe has no constitution.

"I lay a lot of the blame to Tom Tureen," says Ralph Dana, "for the simple reason that Tom has been like a messiah to some Indian people. He came down here and he won the land claims, but Tom has been carried away with his big league obligations and he has left the government naked on each reservation. He has forgotten about the little people here. In the absence of a constitution, the tribal government and Tom Tureen have freewheeled. The community is left without rules. There's no accountability."

"When Ralph says it's Tom Tureen's fault, I disagree," counters Melvin Francis. "It's not up to Tom Tureen to decide what laws go to reservation people. It's for the people to say."

Tom Tureen says, "I spent hundreds of hours working on the constitution with them. It went out to vote several times and was defeated. How is that my fault?"

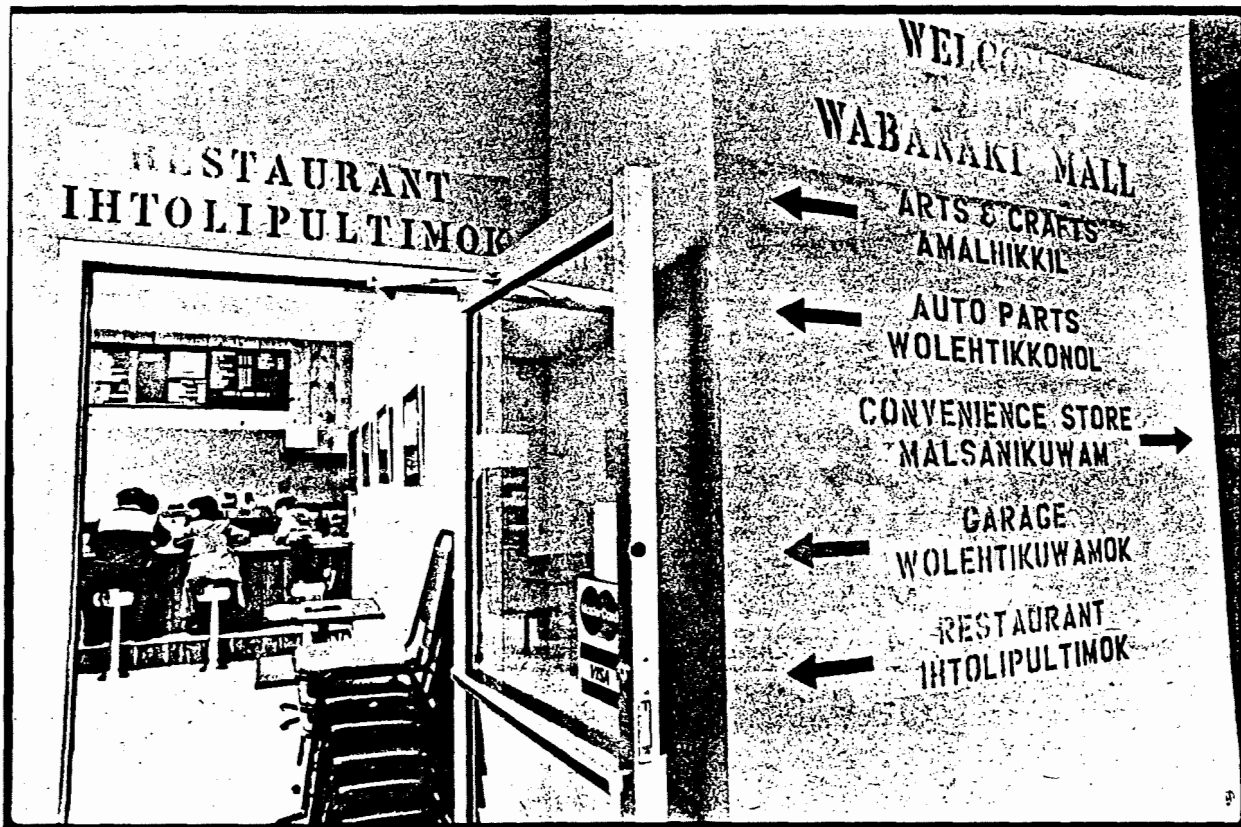
Each time the *Passamaquoddy Tribe Constitution* went out to vote it was passed by the voters at Pleasant Point but was defeated at Indian Township.

(Continued on the next page)



Pleasant Point Governor Melvin Francis is one of the new generation of Indian leaders which has assumed power since the 1980 land claims.





The Passamaquoddy language has been passed down orally for generations, but it has only been in recent years that attempts have been made to write it.

matic" and "controversial." His much publicized arson trial in 1979 (he was accused of trying to burn down the reservation school building, a charge he still maintains was trumped up by his political enemies) played a role in the Indian land claims negotiations when the Maine State Supreme Court overturned Sockabasin's lower court conviction, affirming Tom Tureen's argument that state courts did not have jurisdiction over crimes on the reservations and, more importantly, that the Non-Intercourse Act of 1790 did apply to Maine Indians. Since the trial, Sockabasin has lived off the reservation, but until last year he served both as a member of the Indian Township council and as the reservation's child welfare director. Sockabasin, who was elected president of the Central Maine Indian Association last month, has filed suit (along with Gail Dana, daughter of Ralph Dana) against the tribal government charging that the caucus ruling prohibiting off-reservation Indians from voting violates his rights as a tribal member. He has written a book, as yet unpublished, entitled *Life on the Reservation*, in order to document the serious social problems he believes prevent his people from making meaningful progress.

Some people believe Allen Sockabasin was responsible for defeating economic initiatives at Indian Township because of his crusade against alcoholism and sexual abuse, but Sockabasin maintains that he only opposed proposals that were make-work projects or would use Indians only as menial labor.

"I was opposed to anything that was being created for the sake of creation," explains Sockabasin. "I was opposed to everything that would be dominated by outside resources."

Sockabasin's major concern, however, is that no amount of money will solve what he sees as rampant social problems on the reservations. When he was laid off as child welfare director last summer, Sockabasin had a caseload of over 70 allegations of child sex abuse at Indian Township. He maintains that the last 55 deaths on the reservation are directly attributable to the 80 percent alcoholism rate among Indian adults, deaths from alcohol-related diseases, suicide, accidents, and people suffocating on their own vomit. His frustration, which is nothing if not deep and bitter, is aggravated by the fact that he sees Indian leaders suffering with the very problems they are in a position to correct.

"How is someone going to help the tribe, if they can't help themselves?" asks Sockabasin, himself a recovering alcoholic.

The position of child welfare investigator has been abolished at Indian Township, because, maintains John Stevens, "Allen tried to use it as a power base." Stevens does concede, however, that "All of the cases he had pending were legitimate cases."

In Sockabasin's view, his people perpetuate the problems of alcoholism and sexual abuse by minimizing them. He complains of children who are told, when they ask about the conviction of tribal members, that "gross sexual misconduct" means "getting caught naked."

"Our strength is strong family ties," says Wayne Newell, "but they are now breaking down. Lack of money is not the problem."

Wayne Newell, 44, is a Harvard graduate and the founding director of the health clinic at Indian Township. It is a measure of the respect he has earned among his people that when Robert Newell attempted to replace Wayne Newell (no immediate relation), the tribal council asked that he be retained. He is a patient man who takes the long view of the problems facing the Passamaquoddy. He says that the mere fact that the Passamaquoddy still exist as a recognizable people testifies to the fact that they have been able to stick together through hundreds of years of domination and oppression and were able to work together to win economic justice.

"We used to say that when the land claims was solved all these wonderful things would happen," says Newell. "Now we say when the companies start paying dividends we'll all be happy. Everyone's still talking about the money, the size of the prize, but 47 years of age is the average age people die around here as a result of substance abuse. We've been working on it for years, but all of these diseases are diseases of denial."

Wayne Newell sees the recent political fighting as symptomatic of a confusion between the Passamaquoddy's traditional cultural identity and their new corporate identity. In some very fundamental ways, he believes his people are not culturally conditioned to think and behave the way corporate America behaves. He talks, for instance, of the simple fact that secret ballot, majority rule, winner-take-all is not the traditional Passamaquoddy way.

"The old system is not remembered," says Newell. "It used to be that in order to get a vote out it had to be unanimous. People worked it out."

Newell points out that there is a temperamental difference between going into a competition knowing that all sides must be satisfied and entering into a majority rule situation. He sees among some of the tribal elders a vestigial characteristic of this mindset, the ability to appear angry when one is really not. It is the Indian tradition of the "mock fight." These days, however, the anger and fighting on the reservation are for real.

"The biggest problem," says Newell, "is finding a way we can all sit down as a group. What got us here was that we all worked together. We survived collectively for the last 300 years, but the enemy was always someone outside. Now the enemy is not necessarily ourselves, but sometimes we think it is. What I'm afraid is that all the business since the land claims will help accelerate what I fear most — that we will become so integrated that we are no longer a viable community."

#### EPILOGUE

The first building one comes across on the Indian Township reservation is a little red cabin that houses the offices of Keq Leyu and the Katahdin Area Health Education Center (KAHEC). Bo Yerxa, a seasoned community activist who spent seven years working as a health care planner at the Indian Township health clinic, now directs KAHEC, a federally financed medical outreach program administered through the University of New England. As an outsider, Yerxa tries to remain aloof from Passamaquoddy politics, but his insight is ultimately helpful in bringing the problems of the Passamaquoddy into a meaningful perspective.

"If you put the kind of resources that have accrued here rightfully under treaty obligations into some place like Beals Island or Wypitlock, you would get many of the very same problems that are here. I really sincerely believe that the problems here are gross manifestations and distortions of the worst elements of the dominant culture."

by Edgar Allen Beem

Photography by Christopher Ayres  
This is the second of four articles on Maine's Indians.

Next week: the Maliseets.

## PART THREE

# PROMISES TO KEEP

Federal recognition and \$900,000 have brought self-help programs, but the Maliseets still have trouble shaking the "loser" image.

**D**ECADES AGO, the Temple Cinema on Main Street in Houlton showed cowboy and Indian movies every Saturday. Gene Kilpatrick was only a boy at the time, yet he noticed something strange at these showings: "Week after week the Indian people were sitting in the audience cheering like hell for the cowboys." Years later (he became head of the sociology department at Ricker College) he asked a local Maliseet Indian named Maynard Polchies why that was. Polchies' answer? "We're just like you or anyone else — we get tired of cheering for losers."

Today, finally, the 458 members of the Houlton Band of Maliseets can cheer for themselves. In the last 15 years they have made enormous strides as a community. Their hard-won inclusion in the 1980 Maine Indian Claims Settlement awarded them \$900,000 in land acquisition funds. It also earned federal recognition (formal status as a tribe) for the Band, opening up the possibility of gaining economic development and services contracts from the Bureau of Indian Affairs (BIA). Over the past five years, the Band has become Houlton's third largest employer — just behind Staley's (a starch manufacturing company) and the town itself. Tribal chairman Clair Sabattis coordinates a \$1.5-million annual budget, one-third of which goes toward salaries of the Band's 30 employees. Says Sabattis, "I don't see that loser sense any more. We're gaining momentum every day in our ability to strive for sovereignty."

Sovereignty. That right to self-government is something Maliseets in this region lost centuries

ago. Traditionally, they were migratory woodland food-collectors, hunting, fishing and gathering in the St. John River Valley and neighboring regions in what are now eastern Maine and western New Brunswick. But, as with other native groups across the country, Maliseet culture radically transformed after contact with Europeans. The first recorded Maliseet-European encounter happened on the lower St. Lawrence River in 1603, when Samuel de Champlain made note of them at Tadoussac, a French fur trading post. In spite of major cultural changes born of the fur trade revolution, Maliseets long retained the migratory dimension of their culture.

Maliseets, along with the Micmacs and Penobscots and Passamaquoddies, were members of the Wabanaki Confederacy, which fought against the British in the American Revolution. In 1777, representatives of the American government signed a treaty with these allied tribes, promising them "protection" and "every right and privilege according to the difference of situation in proportion with others . . . ." Nonetheless, after the U.S.-Canadian boundary was drawn, cutting through aboriginal Wabanaki territory, Maliseet Indian rights were guaranteed only on the Canadian side. There the government ultimately received seven small tracts of aboriginal land along the St. John and the Riviere du Loup for the use of regional Maliseet bands. In the United States, their native rights were ignored; no compensation was given for the loss of their homelands.

From that point onward, according to anthro-



*Aubry Tomah, land acquisition committee chairman, and his brother Jim, former band chairman and now director of the housing improvement program. In their spare time, the men make baskets together.*

pologist Harald Prins, "It was adjust or perish for the Maliseets. Towns were cropping up throughout their traditional range. Lumber companies were cutting the woods, sawmills polluting the rivers, dams blocking the fish runs, sport hunters killing the game, farmers clearing the fertile lands. Subject to non-Indian political powers, their home base confined to small reserves, Maliseet self-determination was no longer possible." In Canada, government-appointed Indian Agents pressed their Maliseet charges to become sedentary farmers.



Nevertheless, many Maliseet families clung to their migratory ways and managed to subsist, at least in part, on hunting, trapping and fishing activities as late as the end of the 19th century.

But by the 20th century, Maliseets had emerged in both Maine and Canada as seasonal farm-workers, river drivers, guides for hunters and fishermen, and stevedores on river boats. Summers were spent making wood products — barrels and ax handles, baskets for potato farmers and tourists. Migratory habits persisted — Maliseet families camped near white settlements during the warm season, going house to house trading their wares. Some set up camp close to train stations or ferry and steamer landings where they found a market for their fancier baskets. In winter, when survival was a struggle, many Maine-based Maliseets sought refuge on reservations across the border.

When the Civil Rights movement found its way to Aroostook, Maliseets still lived lives tied to the seasons. In the spring they cut seed potatoes for farmers or harvested and sold wild fiddleheads. During the summer, many made baskets and raked blueberries. Come fall, they worked the County's potato harvest. Winter was generally quiet except for Christmastime wreath-making and on-call potato house work.

For most, it was a life of poverty with occasional spurts of income. According to one study, per capita income was about \$900 a year. "We were dirt poor," a Maliseet man told me. "In the winter my brother and I couldn't go outside at the same time because we had only one pair of boots between us." Many of the poorest Maliseets lived in an area known as the "Flats," near the Houlton dump. Periodically their

homes (some of them mere shacks with dirt floors and no running water) were bulldozed by the town for non-payment of property taxes. Solutions, other than escape into alcohol, were rare.

In the late '60s, for the first time in history, a Maliseet and Micmac Indian graduated from Houlton High School. The two graduates, Maliseet Terry Polchies and Micmac Tom Battiste, worked with a Ricker College faculty member to explore possibilities for grants that would support a continuing education program for Aroostook's Indians. The "Ricker College Indian Project" led to the founding of the Association of Aroostook Indians (AAI), a "self-help" organization for off-reservation Indians in the County. By the time AAI was incorporated in 1970, there were 80 members. A few months later, the ranks had grown to 600 and by 1973, 1158 had joined. About half were Maliseets, half Micmacs.

With funding from private and federal sources, AAI aimed to improve employment and education opportunities, initiate community development programs, and tackle the substandard housing problems of its members. One 1979 AAI project winterized 35 homes, lent 20 woodstoves and supplied 66 Indian families with cordwood cut by tribal members. In addition to these priorities, AAI was committed to winning federal and state recognition for both Maliseets and Micmacs. In 1973, a measure of state recognition was won when Maine's Department of Indian Affairs opened an office in Houlton to service non-reservation Indians. In addition, Maliseets and Micmacs were deemed eligible for certain rights previously enjoyed only by the state's reservation tribes — rights

such as Indian education scholarships and free hunting and fishing licenses.

In the 1970s, Penobscots and Passamaquoddies made major strides in their land claims effort. Because the Maliseet case for land and federal recognition was, at that time, more clear-cut than that of the Micmacs (and no doubt because Maliseets far outnumbered Micmacs on the AAI board), AAI launched a full-force effort on behalf of the Maliseets in their region. Under the leadership of executive director Terry Polchies (a Maliseet), with funding from private and federal sources, the Association hired anthropologist James Wherry. It was his task to compile the genealogies and research and write the ethno-history of the Houlton Band of Maliseets in order to document their claim on land and federal recognition.

In the summer of 1979, Maliseet members of the AAI board formed a committee to negotiate their claim. Then, armed with Wherry's documents and the backup of Washington, D.C., attorney Reid Chambers, they requested a meeting with the Joint Passamaquoddy/Penobscot Negotiating Committee. In October they presented their claim. It was a convincing one — so convincing that within a month the Passamaquoddy/Penobscot Committee recommended that their tribes give the Houlton Band 5,000 acres from the lands they would receive in the proposed settlement.

On October 10, 1980, when President Carter signed the Maine Indian Claims Settlement Act, Polchies was in Washington for the ceremony. The act established the Houlton Band of Maliseets as a federally recognized tribe and provided that all

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*Houlton Band Chairman Clair Sabattis is a man as serious as his brush cut. He sees less and less of that "loser" feeling among Maliseets these days.*

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federal benefits and services and all federal Indian laws applied to the Band. In addition, a \$900,000 land acquisition trust fund to purchase 5,000 acres of land was established for the group. Maliseets were by far the most modest winners in the settlement, but nonetheless they were winners.

AAI stayed intact during a transition period, until the Houlton Band had incorporated and set up offices on Main Street — right across from the old Temple Cinema. (Micmacs also set up their own council.)

At last Houlton's Maliseets were federally recognized; but what did this mean? Technically, recognition signifies a trust relationship, a contract between the U.S. federal government and a Native American tribe. In a kind of patron-client relationship, the government guarantees protection of the tribe's native rights and land. And it accepts responsibility toward the well-being of the tribe by providing programs and services through the Bureau of Indian Affairs (BIA). But to the Maliseets, recognition is more than this. As band member Brenda Brooks describes it, "It is a kind of status, a realization that our group is up there with other recognized tribes. It means we'll always be here." To Band member Pious Perley, "It's a foot in the door for Indian people. It helps with education, health, better housing, the whole nine yards."

Another Maliseet says simply, "It means an awful lot of programs."

Indeed, thanks to this new status, the Houlton Band has been able to contract for services and development grants through the BIA. Ten contracts, including health, land acquisition, home improvement and vocational education programs, are currently administered by the Band. The man overseeing the operation is Clair Sabattis, the third tribal chairman since the settlement. His predecessors, Terry Polchies and Jim Tomah, each served two years.

Sabattis can be as serious and particular as his dark brushcut. He is a man who likes clear definitions and moves with the caution and savvy of a fox that has been shot and does not intend to be again. He is miserly about giving interviews and knows exactly what, when and with whom he wants to share. "I don't want to drop words that later become a stumbling block," he explains. "Indians cannot afford to make mistakes. There's a pressure on us to perform."

Like much of his staff, Sabattis is operating with no more than a high school education, yet since 1980, Band staff have managed to accomplish more than did generations of white Indian agents who formally managed the Maliseet reserves in New Brunswick. Says the chairman, "I may not have a college degree, but I've got 12 years of experience in

Indian affairs so I know how to find out what I need to know."

The most controversial program under Sabattis' management is General Assistance, a kind of emergency service lifeline. It is currently budgeted at about \$165,000. Says tribal clerk Sue Desiderio, "This is really tapped into, most often for food, winter fuel and child welfare assistance." The demand has been so great that strict limits have been placed upon application for service — no one may apply more than once a month. Sitting atop this fund has been a tenuous, no-win political situation for all three of the Band's chairmen. Band members are quick to say that over the years this fund "has been abused more than anything," and that, depending on who is in office, "only certain people are getting aid — connected people." One woman, a widow and mother of five, complains that she tried to get money to buy boots and coats for her kids so they could go to school. "I got nothing," she says. "But money went to a single man who went on a drunk, then got rolled by whites because he was showing all his cash." True or not, this kind of story eats away at a leader's popularity and demonstrates the skepticism members have about whether they are getting their fair share. As one woman put it, "The only way to have things run fairly is to have a stranger at the top — or a computer."

Similar challenges have surfaced with the Home Improvement Program. About five houses per year have been improved and two new houses have been built. One woman who preferred to remain anonymous glanced around at the patched linoleum and peeling potpourri of wallpaper in her very modest home and commented, "I've gained nothing — I'm still here in this house, aren't I?"

It is in such areas of limited supply and great need that the factionalism of Native American groups comes to the fore. Studies show that Native Americans are the poorest social group in the U.S. Struggling to get out from the bottom of the nation's economic pile can elicit backbiting and flagrant rivalism. Journalists writing on Native Americans, consequently, are bound to encounter skirmishes, jealousies, factionalism, and severely contrasting views on how the tribe should develop. In the case of the Houlton Band, it is clear that the overall direction of these people is, at last, forward.

Since 1982, the Band has operated a Vocational Training Program. Some 35 Band members have participated and 80 percent of those trained have gained employment. For instance, says Danya Boyce, who oversees the program, "We have six Certified Nurse's Aides; two cosmetologists, and five people who have earned their tractor-trailer licenses." Ma. Boyce also heads up the Higher Education Program. "There's less interest in this than vocational training, which seems more within reach to Maliseets," she says. "But we've got four who started college in 1982 and are going to wind up now. And we've got five sophomores and two freshmen. We want educated people who will come back and put their education into the Band. The ideal situation would be an all-Maliseet staff." (At

## Houlton Band of Maliseets

Population: 458.

Tribal Center: An off-reservation group. Population centered around Houlton. Band headquarters in Houlton.

Investments: None.

Share of 1980 Settlement: \$900,000, earmarked for land acquisition.

Unemployment: 65 percent.

Landholdings: None before 1980. Today, in process of purchasing land in Houlton area. Settlement allows the Band to purchase up to 5,000 acres of trust land.

this point, 25 of the 30 employees are Maliseets, one is Passamaquoddy, and the rest are non-Indian.) "The people I work with share this vision so we tend to bend over backwards when it comes to educating."

A major gain, worked on by all three tribal chairmen, is what Sabattis calls the "land acquisition bill" (formerly titled The Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986). Signed into law by President Reagan last October, it confirms the trust status of the land the Band purchases and it establishes a fund in the U.S. Treasury known as the Houlton Band Tax Fund. From this fund, taxes, fees and payments in lieu of property taxes owed by the Band to the state will be paid. According to attorney Reid Chambers, who worked with the Band to draw up the bill, the legislation "was necessary because the Band couldn't identify acres until there was



*Danya Boyce heads up the Houlton Band's education programs. Her goal: educated Maliseets who come back and put their education into the Band.*

first an agreement among the state, tribe and federal government about payment in lieu of taxes." Says Sabattis, "It took 12 drafts to come up with something that would satisfy all parties . . . \$200,000 will be taken out of the interest of our land acquisition trust fund to form the tax fund." This will make a relatively small dent in the purchasing power of the acquisition fund, for over the past six years that fund has grown from \$900,000 to \$1.9 million. "It's been in cd's [certificates of deposit],"

grins Sabattis, "and interest in '80-'81 was up to 21 percent."

"Now that legislation has passed, we can go out and buy land and have a place of our own," says the Band's real estate committee chairman, Aubrey Tomah. At the November general membership meeting, Band members voted to purchase land within the municipality of Houlton, no more than three miles out of town. The land acquisition trust

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fund was set aside for 5,000 acres, yet according to Sabattis, the Band is not limited to that acreage. "But above 5,000 acres," he says, "we must petition to have extra acreage in trust . . . if not in trust, it's taxable, subject to all liability of private holding."

Once the Band has land, it is eligible for Department of Housing and Urban Development [HUD] funding for housing development. In fact, the Band won a HUD grant last year — which means Tomah and his real estate committee will have to move quickly if they intend to make use of the \$250,000 grant before it expires next month. When told that all of this sounds like an Indian reservation in the making, Chairman Sabattis retorts, "I don't call it a reserve — that has a negative sound to me. I call it trust land . . . My concept is that the housing area not be congested, each house provided with two to three acres, a country look. I don't want to look out my window and see what they're doing in the next house." On this point everyone is in agreement. Mr. Tomah says, "Maliseets are nosey about each other, so the talk has been going that the houses need to be set a ways apart."

Danya Boyce has deep feelings about the meaning of gaining a land base in Aroostook: "Getting land is going to give us a home base, roots that everyone will recognize. It will be ours. We can build on it, plant on it, grow on it in all ways — spiritually and materially. And, of course we can live on it. . . I think we'll steer away from clustered housing . . ."

The Band is particularly proud of its award-winning bilingual program. Some 20 students, from five years of age up, are participating in Maliseet language classes. If language is the culture-carrier it is said to be, this may be a key element in the Band's efforts to retrieve their traditions. "Once the younger generation knows the language," says Chairman Sabattis, "they'll be interested in finding out about their history."

Health care has long been a crying need among these people. Just 10 years ago, studies showed that the life expectancy among Maliseets was 45. Since 1983, a Passamaquoddy woman named Carol Nickerson has directed the Band's \$450,000, nine-staff Health Program. Some 20 Maliseets stop

into the office for help each day. Says Nickerson, "First of all, we act as a referral network. Anything paid with IHS [Indian Health Service grant money] has to be a last resort. We have to look for other sources first. If there are none, we pay." When the office first opened, the greatest need among Maliseets was dental care. In fact, when asked what federal recognition meant, one Maliseet man responded, "Two things: having our own constitution and getting my teeth fixed." "We've taken care of those who came in with dental problems," says Nickerson. "We're now mostly dealing with maintenance . . . Our major ongoing health program is alcohol."

The Band has four certified alcohol counselors, all Indians. One is an engaging, upbeat man named Pious Perley, who's been at this work since 1973. "It's a very slow thing," he says, "but I never give up. I lost two sisters in alcoholism, before I got to be a counselor. Memory of that keeps me going." Signs of progress are modest but solid. "There is definitely more interest in alcohol rehabilitation among Band members," says Perley. "And there's much more awareness than ever . . . for instance, two or three people used to come to the Monday film and discussion sessions. Now we have 13 or more." What is unique about these Monday night meetings is the fact that they are open to the general public. One Band member who attends regularly says, "Members of the white community come because there's no AA [Alcoholics Anonymous] meeting in this area Monday nights. With them here the program becomes two-fold: it helps all of us alcoholics and it helps whites see some of us Indians trying to help ourselves . . . it's our own Indian-run program — without a white guy having to be there showing us how to run the video."

Recently the alcohol counselors opened up a new program, working with kids, some of them preschoolers. Nickerson says, "It's a unique program, combining recreational and educational activities. We sponsor a recreational activity and prior to it the counselors give health education, especially related to alcohol and drugs but also concerning general nutrition."

"It's going to take years to see if the kids who get the information assimilate it into their lives," says Perley. "But we've tried everything else, so why not this?"

When asked what's behind Indian alcoholism, Perley responds, "That's simple. You're on one side of the fence, I'm on the other. That's it. It's the feeling that we've been defeated people right from the beginning and never got out of defeat . . . With the ongoing prejudices toward the Indian population in Houlton, defeat remains pretty deep."

Despite all the gains among these people, they still wrestle with the miserable fruits of prejudice. When asked if their development had altered the townspeople's views of them, every one of the Maliseets interviewed said no. "I don't feel anything different," said one. "The only thing I've felt before or now is dissension from the non-Indian community," lamented another. "People here have always been a little funny about Indians," one woman told me. A staff member believes that if there has been any change at all, it's not deep: "I think it's what they call superficial," he said. Sociologist Gene Kilpatrick, who worked for the Band during its first three post-settlement years, concurs: "I don't think there's been any change. Of course the bank was more than happy to handle our accounts — but we were running a hell of a lot of money through there . . . I don't think there's what you'd call a moral change in view."

Some Maliseets believe that the change in view needs to come from within as well as without. "We worked awful hard to get the reputation of drunken no good Indians," comments one Maliseet who is a recovering alcoholic, "and we're gonna have to work just as hard to lose it." Pious Perley, the alcohol counselor who never gives up, believes that whether from within or without, racism, like alcoholism, "takes years of constant awareness to break through . . . I'm always hoping that somebody will get a change of attitude. When that happens, I'm grateful."

Until that breakthrough, there will always be people like Peter Joseph, a handsome, angular Maliseet who's seen a good share of hard times in his half-century. Despite the settlement and the forward strides of his people, he says, "I don't feel more secure. In the end, this may be no different from all the other bad deals between Indians and the U.S. government. Somehow I still don't feel safe."

by Bunny McBride

Photography by Christopher Ayres

This is the third of four articles on Maine's Indians. Next week: the Micmacs.

## PART FOUR

# PROMISES TO KEEP

Not being recognized has hurt,  
but a unique legal maneuver may help.



*Micmac staffer Richard Silliboy (left) picks up a few baskets from his brother Joe. The Band operates a non-profit basket distribution center.*

**A**BOUT 400 Maine Indians were left out of the 1980 Indian Claims Settlement. They are members of the Aroostook Band of Micmacs, an off-reservation Indian community in Northern Maine. Because they were not yet prepared at the time of the settlement to provide historical data documenting their aboriginal existence as a tribal group within Maine, they were fully excluded. The settlement represented a political and economic boost for Penobscots, Passamaquoddy and Maliseets. But for Maine's Micmacs, it was a step backwards.

Many Micmacs are personally affronted by their exclusion from the settlement and view it as a denial of their Indian heritage itself. "It took me a long time to become proud of being an Indian," says David Sanipass, who at 28 years of age is the youngest member of the Band's tribal council. "Then the government says, 'We don't recognize you as Indian.' That hits right where it hurts."

But there is more than an emotional stab here. The settlement shifted to federal shoulders all state responsibility for the three tribes it embraced. Maine's Department of Indian Affairs closed up shop and Micmacs lost most of their state rights and all benefits. Perhaps more significantly, the Settlement Act was written to be "the last word" on Indian claims in Maine, extinguishing all future claims by any native group in the state.

The Micmacs were placed in a difficult position for political bargaining. But since 1981, the Band has managed to garner the legal and academic support needed to seek redress. Washington, D.C., attorney Jerry Straus recently joined their effort. A man with nearly a quarter-century experience in Indian law, Straus believes "The Micmacs got cheated. Their exclusion from the settlement is the dirtiest deal I've ever witnessed." Micmacs agree — and they are now on the lawpath to do something about it.

Dutch anthropologist Harald Prins has been working since 1982 to fill the information gap concerning Micmacs in Maine. His findings counter the popular belief that Micmacs are "Canadian

Indians." Says Prins, "There is plenty of documentation to demonstrate that northern and eastern Maine, along with the Maritime Provinces, form the traditional subsistence range of the Micmacs. It's just that no one ever pulled the data together before." According to Prins, the first reported contact by Europeans with Micmac Indians occurred near Cape Breton in 1504. And as early as 1602, Europeans — often referred to as "the boat people" by contemporary Native Americans — sighted Micmac mariners on the coast of southern Maine at Cape Neddick.

The earliest records of European explorers describe Micmacs as "nomads, without agriculture." Says Prins, "The extensive river and lake systems of the northeast were liquid highways for these hunters, gatherers and fishers. They traveled by canoe and toted birchbark wigwams from woodlands to seacoast in pursuit of nature's seasonally shifting storehouses of game, fruit and fish."

When the Europeans arrived, Micmacs went through radical social and economic upheavals. By 1600 their numbers had plummeted by about 75 percent, largely because of alien viruses contracted through association with European fishermen and traders. Survivors became active participants in the burgeoning fur trade. During the American Revolution, Micmacs, along with Maine's three other tribes, were members of the Wabanaki Confederacy, which fought against the British. "Ironically," says Prins, "when U.S.-British [Canada] boundaries were drawn, slicing right through aboriginal territory, it was the British who recognized the native rights of Micmacs. The establishment of reserves and the guarantee of rights in Canada urged most Micmacs to maintain roots on that side of the border. That's where the myth that all Micmacs are 'Canadian Indians' got started."

In the centuries that followed, Micmacs on both sides of the border emerged as artisans and migrant laborers. They crafted porcupine quill boxes, baskets, moccasins, barrels, brooms and ax handles. They worked as lumberjacks, hunting guides, and

seasonal "stoop laborers." Since the beginning of this century, Micmacs have been key players in Aroostook County's booming potato industry. "All Micmacs know about potato work," says a Micmac grandmother named Mary Sanipass. Like her parents and grandparents, Mrs. Sanipass has "done just about every kind of job you can think of having to do with potatoes — cutting seed, weaving [harvest] baskets, picking, sacking and [more recently] driving a harvester . . . ." And, like generations of Aroostook Micmacs, she has formed part of the blueberry raking force in Washington County every summer "for as long as I can remember."

Today there are some 12,000 Micmacs, making them one of the largest Eastern Indian Nations in North America. Some 800 Micmacs reside in Maine, half of them belonging to the Aroostook Band of Micmacs. They are part of a larger family comprised of some 2,000 urban Micmacs based in the Boston area, and about 8,000 reservation Micmacs living on 28 band reserves in Canada's Maritime Provinces.

One must use terms such as "live" and "reside" cautiously when referring to Micmacs, for no matter where they are based, they are a people on the move. They are traditionally and contemporarily a migratory people — "the freedom people," as some of them put it.

Some present-day Aroostook Micmacs were born in Canada. But these people, like their ancestors, have crossed back and forth over the U.S.-Canada border in search of a satisfactory livelihood for as long as they have been old enough to work. (Thanks to the 1793 Jay Treaty between England and the U.S., North American border tribes have the legal right to cross and recross the border to live and work on both sides.) As Paul Phillips, president of the Aroostook Micmac Band, puts it, "To the North American Indian, there is no border."

The experience of Sarah Lund, a Micmac living in Frenchville, Maine, is typical: "All Micmacs move for survival," she says. "I was born on Eel River Bar Reservation [in New Brunswick, Canada] in 1927.

At 16, I started going across the border to make baskets and pick potatoes in Maine. Like my parents and grandparents, I went back and forth for years, following seasonal work, and sometimes just following the crazy winds of fate. . . ."

Most Aroostook Micmacs have no interest in reserve life. Says Aroostook Micmac basketmaker Donald Sanipass, "I never lived on a reserve and don't think I'd want to. There's no work there, and I'm so used to living outside, earning my own way of living."

But when times get rough, Micmacs in Aroostook have been known to retreat, as a last resort, to relatives on the reserve.

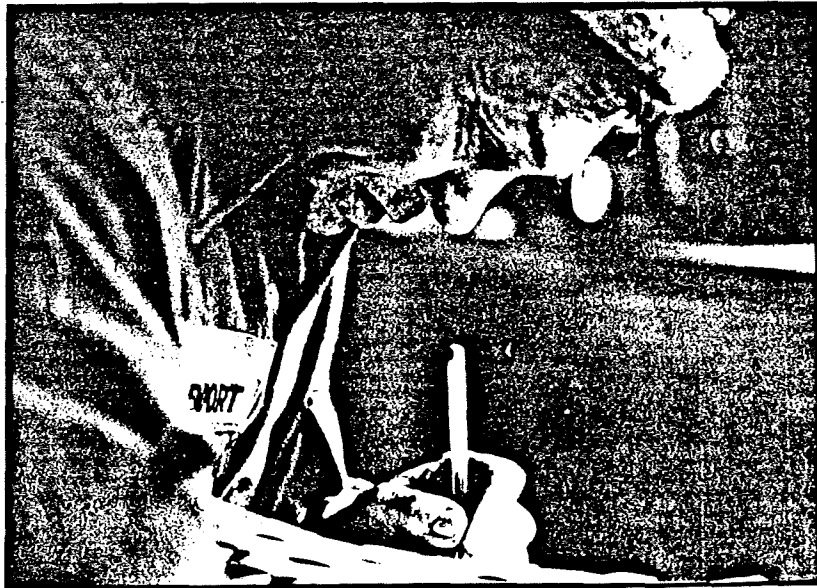
According to a 1983 survey, 60 percent of Aroostook's Micmac families survive on less than \$5,000 a year. A lack of marketable skills, mixed with the general economic limits of Aroostook County, can make it tough for these people to get by. "All I'm educated to do is make baskets or work in the woods or the potato houses," says one middle-aged Micmac man whose situation is common among his people. Band president Paul Phillips has similar problems. For 15 years he has worked "on and off" at a potato house near Houlton. "This is on-call work," he says. "We don't know one day to the next. Yesterday [the farmer] said he'd call. I waited and no call. It's a rough way to make a living — minimum wage, three to four days of work a week at best. But this time of year there's nothing else. We have to take it."

Despite the grim statistics, life is better for many Aroostook Micmacs than it was prior to the civil rights movement of the 1960s. Until then, Micmacs, like most Native Americans, remained a largely powerless and impoverished people, living on what Prins refers to as "the underside of society." But in 1969, Tom Battiste, the first Micmac to graduate from high school, got together with Terry Polchies, the first Maliseet graduate, and founded the Association of American Indians (AAI) in Houlton. One of many political/social Indian organizations springing up across the nation, it had three aims: to provide human services to Maliseets and Micmacs, to educate the Indian people plus the general public about the social conditions and cultures of native peoples, and to press for recognition of Maliseets and Micmacs by both the state and federal governments.

In 1973, members of AAI won a degree of recognition when the Advisory Committee to the U.S. Commission on Civil Rights held hearings on the status of Maine's Indians. Testimony demonstrated "the desperate need [for] guidance and assistance" by Maine's "off-reservation tribes," and led to the creation in Houlton of a special off-reservation office of Maine's Department of Indian Affairs (DIA). Native Americans organized under AAI became eligible for some of the special rights and services that Maine's reservation Indians already had — such as Indian scholarships, health care, and free hunting and fishing licenses.

Although both Micmacs and Maliseets benefited from AAI, the organization was increasingly dominated by Maliseets, most of whom lived in southern Aroostook, near DIA and AAI headquarters in Houlton. The Micmac population was scattered throughout the vast County of Aroostook (as big as Rhode Island and Connecticut combined), particularly in the northern regions around Presque Isle and Caribou. "It was a long drive to Houlton," comments one Micmac, "so there weren't enough of us participating in meetings and other coordinating activities of AAI. . . . On top of that, we just didn't have the fire back then." Micmac involvement lessened all the more when Tom Battiste, the Micmac who had co-founded AAI, graduated from Ricker College and left the county to go to graduate school at Harvard.

In that same decade, the Passamaquoddy and Penobscot Indians discovered historical documents that won them legal and political support in their long-term effort to regain aboriginal lands and obtain federal recognition of their status as Indian tribes. When the land claims came to a head, negotiations were fast and furious. AAI's staff, in particular an anthropologist named Jim Wherry, had gathered much of the data needed for a Maliseet federal recognition effort, but had not yet pulled in the data. Pine Tree Legal Assistance, which in 1979 won a grant to provide legal support for the Micmac and Maliseet recognition efforts, put its legal focus where the data was — on the



Micmac basket maker Harold Lafford is known for the precision of his work.

## Micmacs at a glance

**POPULATION:** 390 on certified membership list. (As an unrecognized band, the Aroostook Band of Micmacs (ABM) is currently formalizing its membership. Micmacs eligible for membership could be as many as 800.)

**TRIBAL CENTER:** An off-reservation group. Population dispersed throughout Aroostook. Band headquarters in Presque Isle.

**INVESTMENTS:** None.

**SHARE OF 1980 SETTLEMENT:** None.

**UNEMPLOYMENT:** 75 percent.

**LANDHOLDINGS:** None before 1980. None today.

Maliseets. According to Reid Chambers, the Washington, D.C., attorney hired by AAI under the Pine Tree grant, "Things were rolling very fast. . . . We weren't able to discover a basis for arguing that [the Micmac] be included." Maliseet Terry Polchies, president of AAI at the time, concurs: "Our first thought was for federal recognition of both tribes, but there wasn't time; the Maliseets ended up going in on the coattails of the Penobscots and Passamaquoddy."

Tilly West was the only Micmac on the AAI board at the time. This outspoken grandmother, who was on the road selling baskets by the time she was five years old, laments: "We assumed we'd be recognized with the Maliseets — or at least shortly thereafter. It was quite a shock when we got left out in the cold." Portland attorney Tom Tureen, who represented the Penobscot and Passamaquoddy

claims, believes lack of organization kept them from being included in the settlement: "This happened in part because the Micmacs had not made recognition a priority for themselves and had not established a formal government which could effectively deal with this type of issue."

Says Prins, "There was one positive result of Micmac exclusion from the settlement: it spurred the Aroostook Band of Micmacs into action." The Houlton Band of Maliseets, after gaining federal recognition through the settlement, broke away from the generic AAI in 1981 and incorporated as a specific tribal group. In 1982, the Micmacs followed suit and incorporated as the Aroostook Micmac Council (AMC). After nearly a year of operating with a small volunteer force, AMC won two grants from the Administration for Native Americans — one to establish a basket cooperative, and one to support its federal recognition effort. The Council then set up an office in Presque Isle.

Back in 1978, the Bureau of Indian Affairs (BIA) established formal procedures for tribes seeking federal recognition — for Micmacs are not the only Native Americans lacking formal status as Indians. Of some 700 tribal groups in the United States (including 197 Aleut, Eskimo or Indian groups in Alaska), more than 200 are not federally recognized and therefore have none of the native rights and protections belonging to the recognized Indians in this country. Tribes wishing to gain recognition are required to file a Federal Acknowledgement Petition (FAP) — an elaborate ethnohistorical document that demonstrates that they meet the official criteria for designation as a "tribe." Criteria include an ability to demonstrate existence as an American Indian group from historical times to the present, proof that members are descendants of a tribe historically inhabiting a certain area, and evidence that the tribal group has maintained political influence over its members on a continuous basis.

Since the acknowledgement process was established, the BIA has received 106 letters of intent to file petitions and 60 actual petitions. To date, only 24 have been processed, and half of these have been denied. The Aroostook Band of Micmacs submitted its letter of intent to file in November 1985 and received its review number: 104. Harold Prins and Pine Tree attorney Nan Heald have spent a year drafting the FAP for Aroostook's Micmacs. The document is in its final stages of completion.

At her client's request, Heald has worked to broaden their chances of success by investigating alternative and supplementary routes. During the summer, she contacted attorney Jerry Straus in Washington and asked him to study the possibility of having the 1980 settlement declared uncon-

(Continued on the next page)

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# Who Is An Indian?

**V**OLUMES HAVE BEEN PUBLISHED about this question. One of the clearest explanations appears in the Bureau of Indian Affairs (BIA) publication, *American Indians Today: Answers to Your Questions*. "There is no one federal or tribal definition that establishes a person's identity as an Indian," the handbook notes. "Government agencies use different criteria for determining who is an Indian. Similarly, tribal groups have varying criteria for determining tribal membership. For purposes of the Bureau of Census, anyone who declares himself to be an Indian is considered an Indian. To be designated as an Indian eligible for BIA services, an Indian must be a member of a tribe of Indians recognized by the federal government, and for some purposes be of one-quarter or more Indian ancestry. . . ."

In Maine, the significance of the "who" question was driven home in 1980 when its answer determined who would share in the \$81.5-million Indian Claims Settlement. This settlement came on the heels of the counter-cultural and civil rights movements of the '60s, which emphasized the romantic aspects of "being Indian" and brought thousands of Indians out of the closet. According to U.S. census records, the Indian population in this country rose from half a million to 1.4 million between 1950 and 1980, as thousands who had denied their heritage stepped forward to reclaim it.

With them came a slew of "wannabees" — non-Indians who "wanted to be" Indians because of romantic fantasies, or because there were new economic benefits to be had.

According to Glen Starbird, genealogist for the Penobscot Nation, being an Indian is not the result of wishful thinking. "We did get an awful rush of people who claimed Indian ancestry after the land claims, but those [applying for Penobscot Nation membership] have had to prove their ancestry with as strong a case as you'd have to go to court and prove you were an heir — with marriage and birth certificates and all sorts of documents. . . . All Penobscot members now have a five-generation pedigree chart."

Membership requirements of the four tribal groups in Maine vary.

**PASSAMAQUODDY:** An individual must have at least one-quarter documented Passamaquoddy blood (based on the 1900 U.S. Census), and be approved by the tribal council. Children born of a quarter-blood and a non-Passamaquoddy are not eligible for membership, and therefore cannot receive an annual per capita disbursement drawn from interest on the 1980 settlement trust fund. They are, however, eligible for certain BIA benefits, such as health and education services. There is no reservation residency requirement; about two-thirds of the members live off the reservations.

**PENOBSCOT:** Penobscot membership requirements take into account the active intermarrying among tribal groups in Maine, calling for at least one-quarter documented Indian blood, a portion of which must be Penobscot. Blood quantum is based on the 1880 Census. Approval by the tribal council is also needed. Children of a quarter-blood and a non-Indian are not eligible for membership or per capita disbursements, but can receive certain BIA benefits. There is no reservation residency requirement, and about two-thirds of the members live off the reservation.

**HOULTON BAND OF MALISEETS:** Membership criteria are not available to the general public, according to Band chairman, Clair Sabattis.

**AROOSTOOK BAND OF MICMACS:** This group bases membership eligibility on self- and community-identification: an individual must define him or herself as an Aroostook Micmac and be so defined by the Aroostook Micmac community. The claim must be backed up by written documentation of Micmac ancestry, although there is a residency requirement — an individual must live at least nine months of each year in the County. Approval by the tribal council is also needed. (Note: the Band is in the process of redefining its membership criteria.)

(B.McB.)

(Continued from the previous page)

tutional. The Micmacs ultimately tabled this suggestion because it had the potential of alienating and possibly hurting the three other tribes.

Straus suggested a unique alternative process known as a "legislative reference." This procedure begins with a Maine senator or representative introducing a bill in Congress stating that the Aroostook Band of Micmacs was treated unfairly in 1980 and declaring the claims that the Band now has against the United States. The presenter then introduces a second bill, asking Congress to "refer" the first bill to the Claims Court for a hearing. If a majority of senators or representatives agree, the bill then goes to the Claims Court, where a single judge hears extensive evidence on both sides, then issues a decision. Says Heald, "Congress usually adopts the final judicial decision."

According to Straus, this is the only way to get something more than recognition for the Micmacs and to "correct the mistake" made six years ago when they were left out of the settlement. "I don't think the Micmacs have inflated expectations," he says. "Their effort is not a threat to the people of Maine . . . they would be very happy with a small land base and federal recognition, bringing with it federal benefits to replace the state benefits they lost."

Heald says that the legislative reference will be in addition to, not instead of, the Federal Acknowledgement Petition: "FAP is still the most appropriate and direct way for a tribe to get federal recognition of its status as a tribe. But federal recognition is not a sufficient remedy for the Micmacs, for it doesn't address problems that resulted from Micmac exclusion from the settlement. A legislative reference is the appropriate vehicle to approach those problems."



*Paul Phillips, president of the Aroostook Micmac Council, believes federal recognition will bring some new problems, but that the good will outweigh the bad.*

When asked how long the process could take, Straus is noncommittal. "It could take five years or 50 years, but I believe it will happen. The first step is to get someone to agree to introduce the reference [in Congress, hopefully during the next session]." Back in 1982 the Micmacs received letters of support for their federal recognition effort from Representative Olympia Snowe, and Senators William Cohen and George Mitchell — but that was before the adoption of their new strategy, which demands more of these legislators than mere written endorsement. So Band members are now soliciting political support all over again. They are doing the same among Maine's other three tribes, who also wrote support statements back in 1982.

"This sort of thing doesn't happen overnight," notes Prins. "It's a build and rebuild effort, brick by brick." Some Micmacs appear ready for a long haul. Says Donald Sanipass, basketmaker and former Band President, "I've been at this thing for many

years now and if there's one thing I've learned it's that this effort takes patience." Band office staff member Richard Silliboy agrees. "It's going to be slow, but if we all work together we can make it," he says.

President Paul Phillips, an active participant in the effort for five years, is as worried about success as he is about failure. "Recognition could mean one big argument," he says, anticipating conflicts over the distribution of benefits that would come with federal status. "There's going to be trouble, but we'll just have to grow up to meet the demand. Housing, general assistance help with heat and groceries, and, of course, medical assistance — those are big needs, and any help is going to mean a lot to the people."

While only a handful of Band members have shown the tenacity of Sanipass, Silliboy and Phillips, 180 of them showed up at a Band meeting last November 23, called to endorse the new legislative reference process. Straus flew north for the occasion, and when it was his turn to speak, he stirred the crowd's enthusiasm: "There's a spirit in this room I've rarely encountered in my 23 years of work with Indians. People have told me how impossible it would be to have a meeting like this, but here you are. I'll tell you something I really believe. You're going to win this fight. You are going to succeed. But you have to make up your mind that you're not going to give up until you get justice. If you can do that, you're going to win."

by Bunny McBride

Photography by Christopher Ayres

(Editor's note: McBride has worked as an anthropologist for the Houlton Band.)

This is the last of four articles on Maine's Indians.





PINE TREE LEGAL ASSISTANCE, INC.

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Augusta, Maine 04330  
(207) 622-4731

February 23, 1987

The Honorable Donald Hodel  
Secretary of the Interior  
U.S. Department of the Interior  
Washington, D.C. 20245

Dear Mr. Secretary:

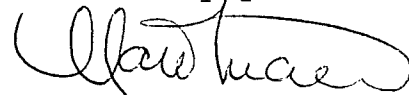
I represent the Aroostook Band of Micmacs, a tribal group of Indians located in Aroostook County, Maine.

At their request, I am enclosing two Petitions, which are self-explanatory. One Petition seeks recognition of their status as a community of Indians with a high degree of Indian blood (the "half-blood" standard of the Indian Reorganization Act). The other Petition seeks individual recognition for the named members of their Band who meet the "half-blood" requirement of the Indian Reorganization Act.

I have copies of each member's genealogical chart, and will provide those charts upon request. If any further information is necessary, please let me know.

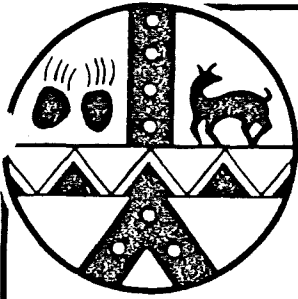
We look forward to hearing from you.

Sincerely yours,



Nan Heald  
Attorney at Law

cc: Paul Phillips, President  
Aroostook Band of Micmacs



## AROOSTOOK MICMAC COUNCIL

8 CHURCH STREET, P.O. BOX 930 PRESQUE ISLE, MAINE 04769  
(207) 764-1972

**PETITION OF THE AROOSTOOK BAND OF MICMACS  
TO THE SECRETARY OF THE INTERIOR  
FOR CONFIRMATION OF THEIR STATUS UNDER THE  
INDIAN REORGANIZATION ACT**

The Aroostook Band of Micmacs located in Aroostook County, Maine, submits this petition to the Secretary of the Interior seeking confirmation of their status as a Band comprised of individuals of one-half or more Indian blood.

The Indian Reorganization Act, 25 U.S.C. §461 et. seq., defines the term "Indian" for purposes of that Act to include, ". . .all other persons of one-half or more Indian blood." 25 U.S.C. §479. The following list contains the names of those members of the Aroostook Band of Micmacs who possess at least one-half degree Indian blood and, therefore, are "Indians" within the meaning of the Indian Reorganization Act.

Ancestry charts which identify those ancestors of these members who were listed as "Indian" on 19th and 20th century census records and thereby confirm the blood quantum of the current members are available upon request.

Early confirmation that the following persons are "Indian" within the meaning of the Indian Reorganization Act will be appreciated.

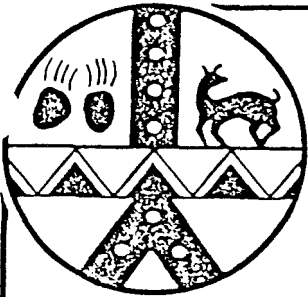
Respectfully submitted

*Paul Phillips*

Paul Phillips  
Tribal Chairman,  
Aroostook Band of Micmacs

DATED: 2/17/86





PETITION OF THE AROOSTOOK BAND OF MICMACS  
TO THE SECRETARY OF THE INTERIOR  
FOR CONFIRMATION OF THEIR STATUS UNDER THE  
INDIAN REORGANIZATION ACT

The members of the Aroostook Band of Micmacs named on the attached list submit this petition to the Secretary of the Interior seeking confirmation of their status as individuals of one-half or more Indian blood.

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Respectfully submitted

*Paul Phillips*

DATED: 2/17/86

Paul Phillips  
Tribal Chairman,  
Aroostook Band of Micmacs



**LIST OF ADULT MEMBERS OF THE AROOSTOOK BAND OF MICMACS WITH AT  
LEAST A 50% DEGREE OF MICMAC BLOOD \***

**(Persons with a five digit number after their name have been  
assigned a band number with the Aroostook Band of Micmacs)**

Mary (Bernard) Abraham #04923  
Roger Akerson #05059  
James Akerson #15562  
Jay Akerson #05463  
Mary Sarah (Francis) Archer #00148  
Terri (Cederman) Asselta #01665  
Marlene J (Cederman) Atkison #17063  
  
Lydia (Labrador) Bartlette #05720  
Pauline (Condo) Bennett #00747  
Louis Bernard #05662  
Rose Marie (Sock) Cook Beschler #16650  
Annie (Phillips) Bishop #00550  
Sue (Silliboy) Blanchard #06359  
Mary Gloria (Martin) Brissette #06253  
Patricia (Murphy) Brooker #03664  
Stanley R. Brooks #06430  
  
Mary Lou (Caplin) Caparotta #00837  
Anthony Caparotta #16764  
Patrick Caparotta #16865  
Dora (Condo) Cederman #09936  
Cheryl Ann Cederman #00961

Simon S. Clair #06747

Emily (Isaac) Condo #16211

Kathleen Dedam #17362

Mary Dedam #07260

Francis Dedam #01031

Wilfred Dedam # \_\_\_\_\_

Bella (Isaac Mann) Doody #01113

Dora (Phillips) Dow #01254

Donna (West) Dube #073\_\_

Teresitta (Estabrook) Duplessis #17268

Gail (Jewell) Engstrom #13357

Roberta (Labobe) Estabrook #01349

Alexander Bruce Francis #01448

Mary Julia Francis #01544

M.Martha (Sock) Francis #01727

Nelson N. Francis #01863

Paul Francis, Jr. #07764

Wallace Fraser, Jr. #07955

Eldon Gideon # \_\_\_\_\_

Frederick Getchell #05166

Caroline Getchell #05538

Linda Getchell # \_\_\_\_\_

Helen Getchell # \_\_\_\_\_

David Gould #08031

Elizabeth (Knockwood) Hanning #02112

Eldon Frank Hanning #02251

Abraham Harquail #02310

Lisa (Monahan) Henderson #20066

Bridget (Labillois) Hill #02424

David Hill #08348

Mary M (Caplan) Hill #02520

Annis (Joe) Jackson #18331

Gregory Jewell #18466

Marguerite (Gideon) Johnson #18639

Jim Labobe #18831

Benjamin Labobe, Jr. #27967

Beth Ann Labobe #08446

Benjamin Labobe, Jr. #08846

Cheryl Lafford #12268

Harold Lafford #02631

John Lafford #076\_\_

Betsy (Paul) Larke #08631

M.Emilia (Martin) Levesque #02715

Frances (Paul) Lizotte #09052

M.Sarah (Jacobs) Lund #02927

Roger MacDonald #09161

Mary Helen Marshall #09258

Theresa Martin #09351

Anita Sue McNeal #19865

Elizabeth A. McNeal #19759  
Jo-Ann McNeal #19966  
Marguerite (Basque) McNeal #03135  
Lena (Francis) Monahan #03548  
Marline (Sanipass) Morey #03654  
Joanne (Schillinger) Muir #09561  
Bridget Murphy #03760  
Catherine (Francis) Murphy #03857  
Pamela Murphy #09668  
Ruth Murphy #\_\_\_\_\_

Yvonne M. (Sock) Nadeau #04135

Charlene Ouellette #20356  
Debra Ann Ouellette #20358  
Betty Ouellette #\_\_\_\_\_  
John Ouellette #20561  
Lilly (Condo) Ouellette #09737  
Brenda Ouellette #20762  
Pamela Ouellette #078\_\_

Isabel Andrea Paul #04337  
Frederick Peter Paul #10139  
Edward Peter Paul #10145  
Joseph S. Peters #04527  
Ogla M. (Bernard) Peters #04641  
Sherman I. Peters #32481

Patricia Peters #04761  
John D. Peters #04459  
Virginia Peters #04861  
Mary (Jewell) Philbrook #10356  
Andrew Phillips #10645  
Betty J. Phillips #10457  
Elizabeth (Lafford) Phillips #10820  
Paul Noel Phillips #21839  
Steven Paul Phillips #21748  
William Phillips #21142  
Mary L. (Bartlette) Pictou #10957  
Sandra (Getchell) Pictou #111\_\_  
Susie (Isaac) Pictou #11231  
Virginia Pictou #21367  
H.Norman Pictou #\_\_\_\_  
Peggy S. (Caparotta) Pierce #11358  
Sheila (Monahan) Pineau #29067  
Joyce (Hill) Plumber #11455  
  
Mary M. (Francis) Sam #11846  
Steve Sock Sam #11745  
Stillman Sam #35167  
David L Sanipass #11958  
Donald Sanipass #12028  
Mary A. (Lafford) Sanipass #12135  
Roldena Sanipass #158\_\_  
Wilfred Sanipass #12432



Roger Schillinger #08163  
Ruby (Tenass) Schillinger #12733  
Eugene Schillinger #126\_\_  
Barbara A. Schillinger #23365  
Karla Schillinger # \_\_\_\_\_  
Michael Schillinger # \_\_\_\_\_  
Arthur A. Schillinger, Jr. #23662  
Mary (Joe) Shaw #12830  
Evelyn (Gideon) Shea #12931  
Donald Silliboy #22757  
John Silliboy #13032  
Joseph Silliboy, Sr. #13134  
Joseph Silliboy, Jr. #22656  
Michael Silliboy #34468  
Richard Silliboy #22847  
Ronnie Silliboy #23060  
Rosella Silliboy #22966  
Sally Silliboy #23162  
Randy Silliboy #24067  
Mary Ann Silliboy #22064  
Clarence Sock #23763  
Mary E. Sock #13564  
Newell Sock # \_\_\_\_\_  
Terry Sock #23564  
Marline (Copage) St. Peter #11652  
Barbara (Espling) St. Peter #11552  
Mary L. (Caparotta) Nadeau Stevens #04056

Gerald Vicaire #13946

Harry Ward #244260

Beatrice (Hill) Watson #14143

Matilda M. (Pictou) West #14235

Mary York #14464

Jeffrey Zernicke #24459

Kenneth Zernicke #24556

Elizabeth (Caplan) Zernicke #14533

Stella (Martin) Zumbrenen #09466

Mary Jane (Jerome) Zumbrunnen #14735



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services-FA

MAR 14 1983

MAR 21 1983

Ms. Sarah LeClair  
Pine Tree Legal Assistance, Inc.  
1 Second Street  
P.O. Box 1207  
Presque Isle, Maine 04769

Dear Ms. LeClair:

In response to your letter of January 24, we are enclosing a copy of the 1976 petition of the Timbi-Sha Shoshone for recognition as a half-blood community. Also enclosed is a copy of the letter informing the group of the decision on their petition. The list of names attached to the petition has been omitted because it contains restricted personal information. The Timbi-Sha were unable to organize as a community under the Indian Reorganization Act because no trust land base was available to them. Acknowledgment of the group as a tribe under the administrative procedure established in 25 CFR 83 (formerly Part 54) was effective January 3.

The Jamul Band of California organized as a community of half-blood Indians in 1981. In November 1980, the Secretary of the Interior declined to take land in trust for seven Lumbee Indians who were recognized in 1939 as Indians of one-half blood or more. Since this group has no trust land base, it has not been able to organize under the IRA. These are the only groups upon which action has been taken concerning half-blood status in recent years.

Three other groups were determined eligible to organize under the IRA at the same time as the Timbi-Sha. One of these, Orleans Karok, has since been determined to be part of a recognized tribe. The two others, Antelope Valley and Mono Lake, have taken no further action, although they have petitioned for Federal acknowledgment under 25 CFR 83.

Policy concerning determination of eligibility to organize as a half-blood community has been modified since the administrative process for acknowledgment of groups as tribes was established in 1978. All groups seeking acknowledgment of a relationship with the Federal Government must petition under the Acknowledgment regulations, 25 CFR 83. If a group does not meet the criteria for acknowledgment as a tribe, a determination will be made on the basis of this research as to whether it would be eligible to organize as a half-blood community as an alternative.

If you have further questions, please contact the Branch of Federal Acknowledgment.  
They can be reached by telephone on (202) 343-3568 (new phone number).

Sincerely,

A handwritten signature in cursive script, reading "Hazel E. Eelbert". The signature is written in dark ink and is positioned above the printed name.

Deputy Director, Office of Indian Services

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
Washington

April 8, 1935.

Memorandum for the  
Commissioner of Indian Affairs:

Your memorandum of February 18 raises the question, with regard to the Siouan Indians of North Carolina, whether this group can organize under the Wheeler-Howard Act to receive a constitution and charter.

Clearly, this group is not a "recognized Indian tribe now under Federal jurisdiction", within the language of section 19 of the Wheeler-Howard Act. Neither are the members of this group residents of an Indian reservation (as of June 1, 1934). These Indians, therefore, like many other Eastern groups, can participate in the benefits of the Wheeler-Howard Act only in so far as individual members may be of one-half or more Indian blood. Such members may not only participate in the educational benefits under section 11 of the Wheeler-Howard Act and in the Indian preference rights for Indian Service employment granted by section 12 of the Wheeler-Howard Act, but may also organize under sections 16 and 17 of the Wheeler-Howard Act if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation. Such a reservation might be established either through the outright purchase of land by the Secretary of the Interior, under section 5 of the Wheeler-Howard Act, or by the relinquishment to the United States of land purchased by the Indians themselves, under the same section of the Wheeler-Howard Act, or by a combination of these two methods of acquisition. A reservation having been established, those residing thereon will be entitled to adopt a constitution and bylaws and to receive a charter of incorporation. Under section 19 of the Wheeler-Howard Act the "Indians residing on one reservation" may be recognized as a "tribe" for the purposes of the Wheeler-Howard Act regardless of their previous status.

In order to attain these benefits some such plan as the following would, I think, be necessary: A group of landless Siouan Indians of one-half blood or more, recommended by the Siouan Council for their agricultural ability and industry, and approved by the Commissioner of Indian Affairs, would purchase a suitable tract of land

and surrender title to the United States to be held in trust for the group. The land would, of course, become tax-exempt. The money needed for such purchase might be contributed in part through the generosity of several members of the Siouan Tribe and in part by the Indians who are to benefit from the project. The Indians chosen for the project would then adopt a suitable constitution and bylaws and receive a charter. The group might be designated as the "Siouan Indian Community of Lumber River." It would participate, along with other Indian groups, in the benefits of the Tribal Credit Fund, established under section 10 of the Wheeler-Howard Act. In the case of these Indians the fund could be used to finance the purchase of seed and agricultural machinery and the improvement of the land. Furthermore, cooperative marketing, the establishment of a cooperative store, and possibly a cooperative dairy, might be financed by means of such credits. Such activities would make the project useful, as well as educational, to the entire Siouan Tribe.

Such a project, begun on a fairly small scale, would naturally tend to expand in membership and area if the cooperative endeavors undertaken should prove successful. Provision for the adoption of new members and the acquisition of further lands should be included in the constitution of the group.

In general, I think that some such plan as that above sketched, resting entirely on a voluntary basis and requiring no initial outlay by the United States, would prove suitable for many other non-reservation groups of Indians, and possibly for some reservation groups that are "reservation" in name only.

Felix S. Cohen [Signed]

Assistant Solicitor.

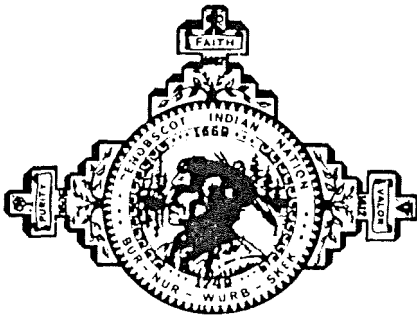
TAB #16

Office of the Governor and Council

James Sappier  
Governor

Ann Irene Pardilla  
Lt. Governor

Priscilla Attean  
Representative



Community Building  
Indian Island  
Old Town, Maine 04468  
(207) 827-7776

RESOLUTION  
NUMBER 2-24-87-3  
of the Governing Body,  
The Tribal Council of the  
Penobscot Nation

**WHEREAS**, the Micmac tribe was part of the historic Wabanaki Confederacy of tribes which functioned from the late 17th through the mid-19th centuries in Maine and to which the Penobscot, Passamaquoddy and Maliseet tribes also belonged; and

**WHEREAS**, The Aroostook Band of Micmacs and its members are the sole remaining Band of the Micmac tribe now resident in the United States; and

**WHEREAS**, we recognize the tribal status of the Aroostook Band of Micmacs, and recognize its membership as having a high degree of Indian blood quantum; and

**WHEREAS**, the Maine Indian Claims Settlement Act of 1980 did not recognize or acknowledge the Federal tribal status of the Aroostook Band of Micmacs and had the effect of unfairly ending State assistance to the Aroostook Band of Micmacs and its members; and

**WHEREAS**, the Aroostook Band of Micmacs is currently seeking a legislative reference of their claims against the United States as a result of their exclusion from the Maine Indian Claims Settlement Act of 1980. This legislative reference will not affect the application of the Act to the other Maine tribes and their members; and

**WHEREAS**, traditional principles of fairness and justice dictate that such action is warranted to allow the Aroostook Band of Micmacs to obtain a remedy for their exclusion and omission from the Maine Indian Land Claims Settlement Act;


**NOW, THEREFORE BE IT RESOLVED** that Penobscot Nation Governor & Council supports the legislative reference of the Aroostook Band of Micmacs' claims resulting from their exclusion from the Maine Indian Claims Settlement Act of 1980; and

**BE IT FURTHER RESOLVED** that this Resolution be effective immediately



CERTIFICATION

I, the undersigned as Governor of the Penobscot Nation, do hereby certify that the Penobscot Tribal Council is composed of twelve (12) members of whom ten (12) were present at a Regular Council meeting held on February 24, 1987, and that the foregoing resolution was duly adopted by the affirmative vote of unanimous Council members.

  
JAMES G. SAPPALER, GOVERNOR

  
LORRAINE DANA, TRIBAL CLERK, ATTEST

SEAL:

TAB #17



# CITY OF PRESQUE ISLE

MAINE 04769

Telephone 764-4485



## RESOLUTION IN SUPPORT OF AROOSTOOK BAND OF MICMACS

WHEREAS, The Aroostook Band of Micmacs have always maintained a presence in Aroostook County; and

WHEREAS, the Aroostook Band of Micmacs established its headquarters in Presque Isle, Maine in 1983 to promote federal recognition of the Band as a tribe and to promote the economic self-sufficiency of its members through the purchase and sale of the traditional ash splint baskets made by its members; and

WHEREAS, we recognize the efforts being made by the Aroostook Band of Micmacs towards both of those goals, through their participation in meetings of the Northern Maine Regional Planning Commission, membership in the Presque Isle Chamber of Commerce and other activities; and

WHEREAS, the Maine Indian Claims Settlement Act of 1980 recognized and included all of the tribal groups in Maine except for the Aroostook Band of Micmacs; and

WHEREAS, the Aroostook Band of Micmacs is currently seeking a legislative reference of their claims against the United States as a result of their exclusion from the Maine Indian Claims Settlement Act of 1980. This legislative reference will not affect any other aspects of the Settlement or overturn the Act itself; and

WHEREAS, traditional principles of fairness and justice dictate that such action is warranted to allow the Aroostook Band of Micmacs to obtain a remedy for their exclusion and omission from the Maine Indian Land Claims Settlement Act;

NOW, THEREFORE BE IT RESOLVED that the City of Presque Isle supports their efforts in seeking legislative reference of the Aroostook Band of Micmacs' claims resulting from their exclusion from the Maine Indian Claims Settlement Act of 1980; and

BE IT FURTHER RESOLVED, that this Resolution be effective immediately.

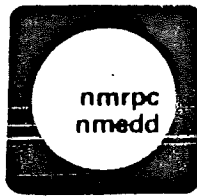
### CERTIFICATION

I, the undersigned, as Chairperson of the City Council do hereby certify that the foregoing Resolution was passed at a "regular meeting" of the Presque Isle City Council held on February 18, 1987 in the Council Chambers.

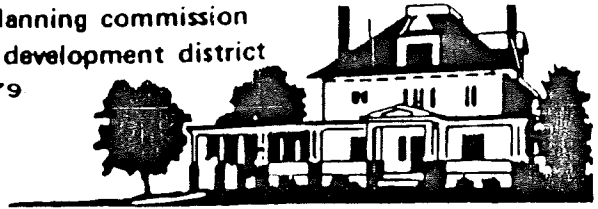
Daniel M. Long

ATTEST:

Daniel A. Clark  
Council Member - City Manager



northern maine regional planning commission  
northern maine economic development district  
2 main street, p o box 779  
caribou, maine 04736  
207-498-8736



TO: Members of Maine Congressional Delegation  
FROM: James A. Barresi  
DATE: January 27, 1987

Ladies and Gentlemen:

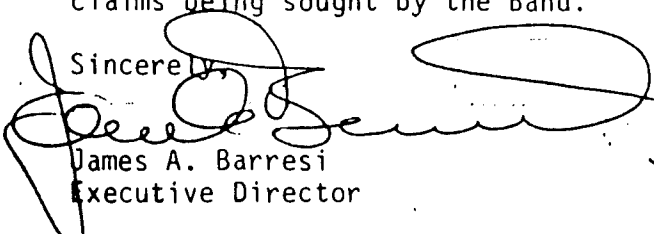
I have been asked to write you in support of the legislative proposal now being considered on behalf of the Aroostook Band of Micmacs.

As the Executive Director of the Northern Maine Regional Planning Commission, I have had numerous occasions to work with the Aroostook Micmac Council and its staff. Most recently, I have worked with Richard Silliboy, a Micmac Indian who works in the AMC Office and who also regularly attends the meetings of the Northern Maine Regional Planning Commission.

Based on those facts, I can assure you that the Aroostook Micmac Council is already working to promote economic opportunities for the members of the Aroostook Band of Micmacs and contributing to the general economic well-being of the region as a whole. Most importantly, they are doing this at a time when their own financial resources are very limited, in preparation for the time when their ability to become involved in the economic growth of Aroostook County will be substantial.

Although I have not yet reviewed the briefing book being prepared for the Band in connection with the legislative proposal, I have discussed specific aspects of that proposal with Mr. Silliboy. It is designed to remedy the problems created for the Aroostook Band by their omission from the 1980 Maine Indian Land Claims Settlement. It is my understanding that a legislative reference of their claims would not affect other aspects of the Settlement or overturn the Act itself.

I believe that the Aroostook Band of Micmacs should have been included in the Settlement. It is my understanding that federal recognition of the Aroostook Band of Micmacs as a tribe, coupled with the legislative proposal under consideration, will benefit both the Micmac community and the general business climate in the County because of the new opportunities for business growth and expansion which those actions will make possible for the Band. I therefore urge you to support the current legislative reference of their claims being sought by the Band.

Sincerely,  
  
James A. Barresi  
Executive Director

JAB/jd