No. 21-838

In The Supreme Court of the United States

PENOBSCOT NATION,

Petitioner,

v.

AARON M. FREY, Attorney General for the State of Maine, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Maine Indian Claims Settlement Acts stripped the State of Maine of its long-standing, exclusive jurisdiction over the waters of the Main Stem of the Penobscot River and failed to fully resolve the land claims and remove the cloud on the hundreds, if not thousands, of titles to land along the Main Stem of the Penobscot River.

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STATUTES AND REGULATIONS INVOLVED

Pertinent statutory provisions are reproduced at Resp. App. 1a-80a.

STATEMENT OF THE CASE

A. Factual and Legal Background

1. The Main Stem of the Penobscot River is a non-tidal, navigable river that stretches sixty miles from Indian Island, the Penobscot Nation's tribal seat, north to the confluence of the River's East and West Branches. Pet. App. 4a-5a. Although the Nation's reservation is located on the islands in the Main Stem of the Penobscot River, "[t]he waters of the Penobscot" River "are of common right, a public highway, for the use of all the citizens." *French v. Camp*, 18 Me. 433, 434 (Me. 1841).

Since its separation from Massachusetts and statehood in 1820, the State of Maine has exercised pervasive and exclusive sovereign control over the Main Stem. "The record reflects a long history of Penobscot Nation members and other residents looking to the State government to regulate the many activities occurring in the Penobscot River, including the Main Stem." Pet. App. 229a. The Maine Legislature authorized and regulated the construction of log booms, piers, canals, and dams in the Main Stem; authorized log drives, which sometimes interfered with fishing, navigation, and other uses of the river; and regulated navigation on the Main Stem. Pet. App. 27a-28a, 230a,

232a-233a; J.A.1422-25. Maine, and Massachusetts before it, have continually regulated fishing on the Main Stem since 1789. Pet. App. 27a-28a; J.A.1435-37, J.A.1439-41. And, acting as proprietor, both Maine and Massachusetts conveyed to private parties' riverfront parcels along the Main Stem together with adjacent submerged lands, all in publicly recorded deeds. Pet. App. 27a-28a; J.A.1464-74.

None of these actions were seriously questioned or challenged until the 1970s.[1] During the 1970s, the Penobscot Nation and the Passamaquoddy Tribe pursued claims to nearly two-thirds of the landmass of the State of Maine that the tribes claimed was transferred in violation of the Indian Trade and Intercourse Act of 1790 (TIA), ch. 33, 1 Stat. 137 (1790). *See generally Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 388 F. Supp. 649 (D. Me. 1975), *aff'd*, 528 F.2d 370 (1st Cir. 1975); *Bottomly v. Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979). As the case progressed, all parties faced significant risk.[2]

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[1] "Prior to 1975 the Federal Government did not acknowledge any responsibility for the[ ] [Nation. The Departments of] Interior and Justice took the position that the[ ] [Nation was] not entitled to federal recognition but were 'State Indians.' " S. REP. NO. 96-957, at 55 (1980) (Senate Report); *see also Hearings before the Senate Select Committee on Indian Affairs: Hearings on S. 2829 to Provide for the Settlement of the Maine Indian Land Claims*, 96th Cong. 799-1137 (1980) (detailing how Petitioner disregarded the eastern tribes) ("*Senate Hearing*").

[2] *Compare Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667-68 (1979) (suggesting the term "Indian country" in the TIA did not apply to existing States), *with Maine v. Dana*, 404 A.2d 551

In 1980, after "years of strife" and many months of intense negotiation, the State of Maine, the Penobscot Nation, and the Passamaquoddy Tribe, reached a comprehensive settlement "designed to transform the legal status of [these tribes] and to create a unique relationship between state and tribal authority." *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 787 (1st Cir. 1996). That settlement was embodied in two negotiated legislative enactments: the Maine Implementing Act (MIA), Me. Rev. Stat. Ann. tit. 30, §§ 6201-14 (2011 & Supp. 2021), and the Maine Indian Claims Settlement Act (MICSA), 25 U.S.C. §§ 1721-35 (former codification), which ratified MIA (collectively, "Settlement Acts" or "Acts").

2. The Settlement Acts accomplished three primary goals. First, the Acts resolved all current and potential land claims by the Nation and all other tribes in the State of Maine. Second, the Acts, in recognition of the loss of the Nation's aboriginal territory, provided a process and funds for the Nation to acquire up to 150,000 acres of additional land. Third, the Acts set forth the jurisdictional relationship between the Nation and Maine going forward. *See* MICSA § 1721(b) (stating purposes of MICSA).

a. Three features of the Settlement Acts operate to resolve and extinguish all actual or theoretical tribal claims to lands and natural resources in Maine. First, the Settlement Acts carefully defined the lands that

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passim (Me. 1979) (questioning whether the State had criminal jurisdiction on either reservation).

would comprise the Penobscot Indian Reservation (Reservation) and the Nation's territory. The Nation's existing island Reservation was defined, in pertinent part, as "the islands in the Penobscot River . . . consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818." MIA § 6203(8); *see also id.* §§ 6203(9) & 6205(2) (defining Penobscot Indian Territory); MICSA §§ 1722(i)-(j) (adopting MIA's definitions of Penobscot Indian Reservation and Penobscot Indian Territory). Second, the Acts ratified all prior tribal "transfers" of land or natural resources and declared them to be in accordance with federal and state law. MICSA § 1723(a)(1); MIA § 6213. And third, the Acts extinguished the Nation's aboriginal title to, and all claims regarding, land or natural resources so transferred (effective as of the date of the transfer). MICSA §§ 1723(b)-(c).

The sum of these provisions accomplished two of the stated goals of the Settlement Acts: "to remove the cloud on the titles to land in the State of Maine resulting from Indian claims" and "to clarify the status of lands and natural resources in the State of Maine." MICSA §§ 1721(b)(1)-(2). In this way, MIA and MICSA "effectively and completely extinguish[ed] the Maine Indian land claims and all related tribal claims" in Maine. Senate Report at 22.

b. The Settlement Acts established a process by which the Secretary of Interior could acquire up to 150,000 additional acres of land and natural resources for the benefit of the Nation. MICSA § 1724(d). The

land eligible to be taken into trust by the Secretary are the areas described in MIA as Penobscot Indian Territory. *Id.*; MIA § 6205(2) (defining Penobscot Indian Territory as the Reservation and up to 150,000 acres taken into trust from designated parcels). The Secretary could expend the principal and any accruing income from the Nation's share of the land acquisition fund, which was initially seeded with $26,800,000. MICSA § 1724(d). MICSA also established a $13,500,000 settlement fund, also held in trust by the Secretary for the benefit of the Nation, which pays income quarterly. MICSA §§ 1724(a)-(b).

c. The Settlement Acts also "define[] the relationship between the State of Maine and the . . . Nation." MICSA § 1721(b)(3). This relationship is nationally unique. As part of the parties' efforts "to achieve a just and fair resolution of their disagreement over jurisdiction on the present . . . Penobscot Indian reservation[]," the Nation "agreed to adopt the laws of the State as their own to the extent provided in" MIA.[3] MIA § 6202.

MICSA provides that the Nation and its "members, and the land and natural resources held owned by, or held in trust for the benefit of the" Nation or its members are "subject to the jurisdiction of the State of

[3] "Such adoption does not violate the principles of separate sovereignty. Though identical in form and subject to redefinition by the State of its laws, the laws are those of the tribes." Senate Report at 29-30.

Maine to the extent and in the manner provided in" MIA. MICSA § 1725(b)(1). MIA, in turn, provides:

> 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.

MIA § 6204; *accord Maine v. Johnson*, 498 F.3d 37, 43 (1st Cir. 2007) (affirming Maine's exclusive environmental regulatory authority in the Penobscot River).

The Acts also recognize and safeguard the sovereignty of the Nation. In large part, MIA vests control over Penobscot Indian Territory with the Nation and precludes Maine from interfering with the Nation's internal tribal matters, such as tribal membership, organization, and elections. MIA §§ 6206(1), 6207(1); *see also* 1979 Me. Pub. Law, ch. 732, § 16 (repealing state statutes regarding Nation's internal governance). MIA and MICSA recognize the Nation's sovereign authority to establish tribal courts and exercise jurisdiction over Indian child custody proceedings. MIA § 6209-B; MICSA § 1727. All land or natural resources within Penobscot Indian Territory are subject to a restraint on alienation. MICSA § 1724(g)(2).

The Nation also has authority to enact ordinances governing hunting and trapping within its territory,

but not to adopt fishing regulations on any river or stream. MIA § 6207(1). The authority to enact fishing ordinances on rivers and streams within the Nation's Territory and water bodies with shared tribal-state boundaries lies with the Maine Indian Tribal State Commission (Commission). *Id.* § 6207(3). Nevertheless, MIA also provides that "[n]otwithstanding any rule or regulation promulgated by the [C]ommission 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." MIA § 6207(4).

B. Procedural History

1. In the wake of the First Circuit's decision in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007), the Nation took a series of actions premised on its assertion that the Main Stem was its exclusive domain. The Nation's wardens confronted non-tribal members at public boat launches and demanded payment of $40 for "access permits" to be on the Main Stem for any reason. J.A.1427-28, J.A.1460-61. A Nation official wrote to state agency commissioners demanding that regulators obtain permits from the Nation before monitoring water quality on the Penobscot River. J.A.1432. In 2011, the Nation directed its wardens to cease cooperative patrols with Maine wardens and announced that the Nation had exclusive jurisdiction over the Main Stem. J.A.1427-28, J.A.1430-32. These increasing tensions climaxed in July of 2012, when Maine game

wardens who were patrolling the Main Stem conducted a boat safety check of three Nation members; the Nation's game wardens challenged the Maine wardens' jurisdiction to do so. J.A.1429-32.

In response, Joel Wilkinson, then-Colonel of the Maine Warden Service, and Chandler Woodcock, the then-Commissioner of the Maine Department of Inland Fisheries and Wildlife, requested an opinion from the Maine Attorney General regarding the Nation and the State's respective jurisdictions. Pet. App. 129a, 193a. In 2012, Maine Attorney General William Schneider issued an opinion (Schneider Opinion) explaining that the Reservation consists of the islands but not the waters of the Main Stem, and that jurisdiction over fishing, hunting, and other recreational activities occurring on the river lies with the State. Pet. App. 7a; D. Ct. Doc. 8-2. The Schneider Opinion does not address tribal sustenance fishing rights.

2. Twelve days after issuance of the Schneider Opinion, Petitioner filed suit against Maine's Attorney General, the Maine Commissioner of Inland Fisheries and Wildlife, and the Colonel of the Maine Warden Service. Pet. App. 8a. The Nation sought a declaration that it has exclusive regulatory authority over the Main Stem and that Maine had infringed on Penobscot tribal members' right to take fish for their individual sustenance free from interference by the State. Pet. App. 8a. State Respondents answered and counterclaimed, seeking a declaratory judgment that the waters of the Main Stem are not within the Reservation. Pet. App. 8a.

Several municipalities and private parties that use the Penobscot River for discharges and other purposes intervened in support of State Respondents. Pet. App. 8a. Over State Respondents' objection, the United States was permitted to intervene and join the State of Maine as a defendant. Pet. App. 8a, 130a.

All parties moved for summary judgment or judgment on the pleadings. Pet. App. 8a. In the district court, the parties' positions on the scope of the Reservation were as follows:

- Petitioner contended it had "retained aboriginal title to the waters and river bed of the Main Stem" and the "boundaries of the . . . Reservation are actually the river banks found on either side of the Main Stem." Pet. App. 260a. Petitioner also contended that the public's right to use the Main Stem was based on language in its 1818 agreement with Massachusetts. Pet. App. 260a-261a.
- The United States contended that the Reservation included the waters of the Main Stem, or in the alternative, included at least waters and bed of the Main Stem to the thread of the Penobscot River. Pet. App. 131a, 261a-262a.
- State Respondents and State Intervenors contended that the Reservation was limited to the islands and did not include the bed, water, or banks of the Main Stem. Pet. App. 130a, 262a-263a.

The district court granted summary judgment in favor of State Defendants and judgment on the pleadings in favor of State Intervenors because "the plain language of the Settlement Acts is not ambiguous. The Settlement Acts clearly define the Penobscot Indian Reservation to include the delineated islands of the Main Stem, but do not suggest that any of the waters of the Main Stem fall within the" Reservation. Pet. App. 266a. The district court also granted summary judgment in favor of the Nation and Petitioner, declaring that "the sustenance fishing rights provided in [] § 6207(4) allow[] the Penobscot Nation to take fish for individual sustenance in the entirety of the Main Stem section of the Penobscot River."[4] Pet. App. 277a.

3. All parties appealed. Pet. App. 9a. A panel of the First Circuit affirmed in part and vacated in part the district court's decision. The panel affirmed the district court's conclusion that the Reservation did not include the bed, waters, or banks of the Main Stem based on the Acts' plain language. Pet. App. 132a-147a. With respect to the Nation's sustenance fishing claim, the panel concluded the claim was not justiciable because Maine had never interfered with any Penobscot tribal member fishing for sustenance in the Main Stem. Pet. App. 147a-151a.

On the United States' and Petitioner's motions, the First Circuit granted en banc review, vacating the

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[4] The district court declined to reach the merits of State Respondents' other claims. Pet. App. 258a-260a.

panel decision. Pet. App. 5a. The en banc court again affirmed in part and vacated in part the district court's decision.[5] *Id.* The en banc First Circuit, like the panel, determined that the plain language of the Settlement Acts controlled. Pet. App. 9a-26a. The en banc court considered the text, structure, and purposes of the Settlement Acts and concluded that the definition of Reservation in section 6203(8) excluded the waters and bed of the Main Stem. Pet. App. 27a-30a, 40a-47a. In the event that the plain language did not control, the en banc court examined the Acts' extensive legislative history and found no evidence to support an intent by Congress or the drafters to alter Maine's long-standing control over the Main Stem or to "undo" historical land transfers of submerged lands. Pet. App. 26a-36a. The en banc First Circuit, like the panel, concluded that there was no case or controversy with respect to the Penobscot tribal members' sustenance fishing rights in section 6207(4). Pet. App. 47a-51a. Nevertheless, in dicta, the en banc court wrote that it "agree[d] with the Nation and the United States that 'Indian reservations' as used in § 6207(4) it itself ambiguous and that § 6207(4) grants the Nation sustenance fishing rights in the Main Stem." Pet. App. 45a.

4. Petitioner (along with the United States) now seeks certiorari. Petitioner does not challenge the First Circuit's holding with respect to the justiciability of its claim regarding its members' sustenance fishing rights

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[5] Judge Torruella participated in oral argument but did not participate in the issuance of the en banc opinion. Pet. App. 2a n.*.

under section 6207(4) of MIA. And Petitioner no longer contends that any portion of the banks of the Penobscot River are included in the Reservation.[6] Petitioner now maintains that its Reservation includes the submerged lands and waters of the Main Stem, and that the en banc First Circuit erred in holding otherwise.

REASONS FOR DENYING THE PETITION

I. The First Circuit Correctly Applied this Court's Precedents.

The Settlement Acts cannot and should not be understood to include the Main Stem of the Penobscot River in the Reservation. This Court's precedents make clear that statutory construction begins with the text of the statute at issue and then its place in the overall statutory framework. If the language is plain, and that meaning is coherent, then the inquiry ends, and this Court "appl[ies] the statute according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, 387 (1997). The First Circuit did just that: it considered "the language [of section 6203(8)] itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997); *see also Yellen v. Confederated Tribes of Chehalis Reservation*, 141 S. Ct. 2434, 2441

[6] In a separate petition for certiorari, the United States asserts only that the waters of the Main Stem are included in the Reservation. *United States v. Frey*, cert. petition filed, No. 21-840 (Dec. 3, 2021) ("U.S. Petition").

(2021) (starting analysis with the statute's "plain meaning"). Finding no ambiguity, the court of appeals applied the statute according to its plain terms.

Petitioner claims that the First Circuit was compelled to apply the Indian canons when construing MIA and MICSA. Pet. 23-29. While the Indian canons are interpretive tools, they do not "permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986). The text of the provisions at issue, MIA and MICSA as a whole, and their legislative history resolve this case without any need to apply the various Indian canons.

Petitioner eschews these standards. Rather than engage with the text of MIA and MICSA, Petitioner claims the meaning of section 6203(8) is controlled by cases interpreting different language in statutes that, unlike the Settlement Acts, were not designed to resolve litigation. Pet. 18-20. Those cases do not "establish a special rule of construction," Pet. App. 16a, and their reasoning does not apply here. Although artfully constructed, Petitioner's arguments require the Court to ignore the Acts' text and stretch their meaning beyond what that text or the history of the Acts can bear in order to achieve a result Petitioner could not have achieved in 1980.

A. The Settlement Acts Unambiguously Define the Reservation as Including only Certain Islands.

1. As the First Circuit recognized, statutory construction "begin[s] with the text itself." Pet. App. 10a. MIA carefully defines the Reservation as follows:

> "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 that 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 Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land must be included within the Penobscot Indian Reservation.

MIA § 6203(8).

Beginning with "islands," the First Circuit gave that word its ordinary meaning as a piece of land completely surrounded by water. Pet. App. 12a. Surveying a variety of contemporaneous sources, *see Carcieri*, 555 U.S. at 387, the First Circuit properly concluded that the ordinary meaning of island is "a piece of land"—not "land *and* water" because "[t]he surrounding water is not itself part of an island." Pet. App. 12a-13a. The

court then analyzed the phrase "in the Penobscot River" with respect to the islands; that phrase located the islands on the face of the earth and "reinforced" that "islands" did not include the surrounding water. Pet. App. 13a-14a. Turning to "solely," the court correctly recognized it as a powerful word of limitation that means "alone," Pet. App. 14a (quoting *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018)), and "leaves no leeway" for anything not stated, *id.* (quoting *Helvering v. Sw. Consol. Corp.*, 315 U.S. 194, 198 (1942)). The First Circuit also extensively analyzed the reference to "agreements" and the date June 29, 1818, in section 6203(8) and concluded that both the reference to prior agreements and the date identified limit which islands are included in the Reservation. Pet. App. 20a-26a. In sum, the language of section 6203(8) in MIA is clear and unambiguous. The Reservation is limited to certain islands and does not include the waters or bed of the Main Stem.

2. Petitioner fails to engage with the words used in the text of the statute to define the Reservation. Instead, Petitioner claims that *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918), and *Hynes v. Grimes Packing Co.*, 337 U.S. 86 (1949), provide a "default legislative rule—if not controlling law" that "an 'island'-based reservation may in fact include surrounding waters and submerged lands."[7] Pet. 19. This method of

[7] A default "rule" that merely advises that a reservation "*may* in fact include surrounding waters and submerged lands," Pet. 19 (emphasis added), provides limited guidance, the

analysis is incorrect, and Petitioner's claim that either *Alaska Pacific Fisheries* or *Hynes* controls the meaning of section 6203(8), Pet. 18-20, does not withstand scrutiny.

Alaska Pacific Fisheries examined language establishing the Metlakahtlan reservation, which is described in statute as "the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska." Act of March 3, 1891, ch. 561, § 15, 26 Stat. 1095, 1101 (1891). This Court concluded that this language was a colloquial description of a region generally, and not just certain islands in the region. *Alaska Pac. Fisheries*, 248 U.S. at 89. "[T]he phrase[ ] in issue" in *Alaska Pacific Fisheries* "did not have [a] precise geographic/political meaning[ ] which would have been commonly understood, without further inquiry, to exclude the waters" because "[t]here is no plain meaning to 'the body of lands' of an island group." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 547 n.14 (1987). Because the language was ambiguous, this Court looked to legislative history and the Indian canons to conclude that the Metlakahtlan reservation encompassed the three thousand feet of water surrounding the islands and not just the islands. *Alaska Pac. Fisheries*, 248 U.S. at 88-89.

Hynes is similar. The dispute centered on whether "public lands" allowed the Secretary of Interior to include tidelands within the Karluk Reservation. *Hynes*

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jurisprudential equivalence of "[i]t depends." *Missouri v. McNeely*, 569 U.S. 141, 175, (2013) (Roberts, C.J., concurring).

warned "one may not fully comprehend the statute's scope by extracting from it a single phrase, such as 'public lands' and getting the phrase's meaning from the dictionary *or even from dissimilar statutes*."[8] 337 U.S. at 115-16 (emphasis added). In any event, "the phrase 'public lands,' in and of itself," did not "ha[ve] a precise meaning," *Amoco Prod. Co.*, 480 U.S. at 548 n.15; "the meaning of the phrase[] had to be derived from [its] context in the statutes," *id.* at 547 n.14, and the legislative history. That context and history affirmed that the reservation included three thousand feet of tidelands adjacent to the reservation. *Hynes*, 337 U.S. at 102-17. If any "default rule" is to be derived from these two cases, it is that the unique circumstances surrounding the establishment of each reservation demand an individualized textual, structural, and historical analysis—the exact analysis engaged in by the First Circuit.

Moreover, the language analyzed in *Alaska Pacific Fisheries* and *Hynes* bears no resemblance to the language defining the Reservation. MIA's technical definition leaves no room for surrounding waters. MIA defines the Reservation to "mean[] the islands in the Penobscot River . . . consisting solely of Indian Island . . . and all islands in that river northward. . . ." MIA § 6203(8). That definition does not contain a colloquial description of a region, or vague words with no discernable geographic meaning. *Alaska Pacific Fisheries* and *Hynes*, which "interpreted different language in a

[8] Notably, Petitioner omits the underlined phrase when quoting *Hynes*. Pet. 19.

different statute that was not a settlement act to reach a different result[,] cannot be used to create ambiguity in this statute." Pet. App. 17a.

3. The definition of the Reservation does not incorporate the Nation's prior agreements with Massachusetts and Maine or constitute a wholesale ratification of those agreements. MICSA ratifies any "*transfer* of land or natural resources located anywhere in the United States from, by, or on behalf of the the . . . Penobscot Nation . . . or any of its members"—but it does *not* ratify those agreements in toto. MICSA § 1723(a)(1) (emphasis added). The Settlement Acts were intended to end disputes about the meaning and effect of the ancient treaties and put into place a modern statutory framework. Section 6203(8) cannot reasonably be read as perpetuating those disputes by impliedly incorporating by reference the very source of the original controversy. Whatever rights the Nation may have claimed under those agreements were subsumed within the Settlement Acts.[9] The Acts "constitute a general discharge and release of all obligations of the State of Maine . . . from any treaty, or agreement with, or on behalf of" the Nation. MICSA § 1731.

Contrary to Petitioner's argument, the First Circuit did consider and give meaning to the phrase "reserved to the Penobscot Nation by agreement with the

[9] The United States said as much to the trial court: "[the Tribes'] rights are now what are described in the Maine Implementing Act. They do not have rights independent of that." D. Ct. Doc. 156 at 40:23-25.

States of Massachusetts and Maine." MIA § 6203(8): Pet. 20-22. The First Circuit extensively analyzed the reference to "agreements" in section 6203(8), Pet. App. 20a-26a, and concluded that the reference to these agreements limits which islands are included in the Reservation.

Finally, Petitioner wrongly argues that the Reservation necessarily includes whatever land or natural resources that it reserved in its agreements with Maine and Massachusetts. The Nation settled its land claims without any provision to recover the four townships it reserved in the 1818 agreement with Massachusetts and later sold to Maine. The Nation also gave up all islands in the Penobscot River that had been transferred between 1818 and 1980. MIA § 6203(8). Thus, in 1980 the Nation gave up lands to which it previously had claimed aboriginal title on both sides of the Penobscot River *and* it gave up lands it had previously reserved, underscoring that the Reservation is defined by MIA and MICSA, not those prior agreements.

B. The Settlement Acts as a Whole Confirm that the Reservation is Limited to the Islands.

1. Considering "the language [of section 6203(8)] itself, the specific context in which that language is used, and the broader context of the statute as a whole," the decision below is correct. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The First Circuit correctly analyzed numerous other MIA and MICSA

provisions to confirm that the Reservation does not include the waters of the Penobscot River, in line with this Court's precedent. *See Carcieri*, 555 U.S. at 389-90 (examining statutory framework to confirm plain meaning of term controls).

Section 6207(1) is illustrative. That provision addresses the jurisdictional division of fishing regulation among the State, the Nation, and the Commission. MIA §§ 6207(1), (3). The Commission is made up of six State representatives, six tribal representatives, and a chair. *Id.* § 6212(1). MIA vests "exclusive authority" in the Commission to adopt fishing regulations in water bodies of shared boundary and all qualifying rivers. *Id.* § 6207(3). The Nation has authority to issue fishing regulations only on ponds within its Territory—not *any* river. *Id.* § 6207(1)(B). The fact that the Commission is vested with exclusive authority to regulate fishing in rivers in tribal territory supports that the Reservation does not include the Penobscot River. If it were otherwise, it would make little sense for an entity comprised in part of State representatives to be able to influence fishing regulations within what the Nation claims to be wholly its Reservation.

Reading the Main Stem into the definition of the Reservation is at odds with how the Acts use different language to address land, water, water rights, and submerged land. *See Rotkiske v. Klemm*, 140 S. Ct. 355, 361 (2019) ("Atextual judicial supplementation is particularly inappropriate when" the legislature "has shown that it knows how to adopt the omitted language"). The phrase "land or natural resources" is a

defined term that includes not only real property, but also, among other rights, hunting rights, fishing rights, and water and water rights. MICSA § 1722(b); MIA § 6203(3). The Acts use "land or natural resources" when the drafters intended to encompass both land and water or water rights. *See*, *e.g.*, MICSA § 1723 (ratifying prior transfers of land or natural resources and extinguishing aboriginal title and claims as to those transfers); MIA § 6204 (establishing Maine's general jurisdiction over land and other natural resources). Elsewhere, the Acts refer only to "waters" or "river." MIA §§ 6207(3), (5). MIA describes the Commission's jurisdiction as over "land and waters," or on a qualifying "river or stream." MIA §§ 6207(3), (5)-(6). And MIA also uses the phrase "submerged lands" when describing the Nation's jurisdiction to adopt fishing regulations on certain ponds. *Id.* § 6207(1)(B). "This Court generally presumes that when Congress includes particular language in one section of a statute but omits it in another, Congress intended a difference in meaning." *Me. Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020) (cleaned up). Had the parties to and drafters of the Settlement Acts intended the Reservation to include any waters, they would have said so.

Interpreting the Reservation to include the Main Stem would also render other language superfluous. Section 6205(3) of MIA, which deals with regulatory takings within the Reservations, states: "For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the

Penobscot Indian Reservation." MIA § 6205(3); *accord* MICSA § 1724(i) (confirming condemnation of Reservation for public purposes permitted as stated in MIA). As the First Circuit reasoned, this provision makes clear that "land along and adjacent to the Penobscot River is *not* contiguous to the Reservation," and, therefore, "the Reservation cannot possibly include the River itself." Pet. App. 40a. This language would be superfluous if the Reservation included the River.[10] *Me. Cmty. Health Options*, 140 S. Ct. at 1323 (preferring "interpretation of a congressional enactment which" does not render "another portion of that same law" superfluous).

2. Instead of examining or even mentioning these provisions, Petitioner myopically focuses on section 6207(4), as if it was the key to understanding of the Acts. Pet. 22-23. This Court has warned against construing vague or ancillary provisions as altering the fundamental terms of a statute. *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001); *see also King v. Burwell*, 576 U.S. 473, 496-97 (2015) (rejecting interpretation of sub-sub-sub section of Tax Code that

[10] The language immediately preceding the sentence deeming "land along and adjacent to the Penobscot River" contiguous to the Reservation in section 6205 also states that property acquired as a replacement for land taken by eminent domain must be both "contiguous to the affected Indian reservation[] *and as nearly adjacent to the parcel taken as practicable*." MIA § 6205(3)(A) (emphasis added). The most natural reading of the statute is that section 6205(3)(A) makes land across the River from the Reservation, i.e., nearby land, "contiguous" to the Reservation for purposes of the takings analysis when it otherwise would not be contiguous.

would threaten viability of Affordable Care Act). MIA provides that "'Penobscot Indian Reservation' *means* the islands in the Penobscot River. . . ." MIA § 6203(8) (emphasis added). "As a rule, a definition which declares what a term 'means' excludes any meaning that is not stated." *Burgess v. United States*, 553 U.S. 124, 130 (2008) (cleaned up).

Petitioner's argument amounts to "the doubtful proposition that Congress sought to accomplish in a surpassingly strange manner what it could have accomplished in a much more straightforward way." *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1813 (2019) (quotation marks omitted). Section 6207(4) is an ancillary provision. If Congress had intended any portion of the Main Stem to be included in the Reservation, it would have done so in section 6203(8), which is a fundamental term. But section 6207(4) should not and cannot dramatically alter the meaning of section 6203(8).

Petitioner also incorrectly argues that excluding the bed and waters of the Main Stem from the Reservation would leave its members with no place to exercise their sustenance fishing rights. Pet. 22. There is no present dispute over where Nation members may fish for their individual sustenance—an issue on which Petitioner does not seek certiorari. No decision from this Court will alter where the Nation's members engage in sustenance fishing. The record shows that Penobscot tribal members have fished for sustenance on and in the Penobscot River without State interference (both before and during this litigation), Pet. App. 49a, and

they will continue to do so. And Petitioner's argument presumes, absurdly, that its members cannot fish from the island shores unless the Reservation includes the waters of the Main Stem. In other words, references to the Reservation can and should mean the same thing throughout MIA, which still provides the Nation with meaningful sustenance fishing rights.

C. The Settlement Acts' Purpose and Legislative History Confirm that the Reservation does not Include the Penobscot River.

1. Petitioner claims that the First Circuit "d[id] violence" to this Court's precedents by failing to apply the various Indian canons of construction when interpreting the Acts. Pet. 23-29. But the Court's precedents are clear. The Court has routinely rejected application of the "rule of statutory construction that doubtful expressions must be resolved in favor of" tribes when "[t]here is no ambiguity" "which requires interpretation." *Amoco Prod. Co.*, 480 U.S. at 555; *Carcieri*, 555 U.S. at 387; *Catawba Indian Tribe*, 476 U.S. at 506-07. "There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms." *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2469 (2020).

Nevertheless, any ambiguity as to whether the Main Stem is included in the Reservation can be "clear[ed] up" by the Acts' legislative history and the surrounding circumstances. *Id.* "When construing"

even "arguably ambiguous provisions," the Court's "duty is to remain faithful to the central congressional purposes underlying the enactment of the" relevant statute. *Lindahl v. Office of Pers. Mgmt.*, 470 U.S. 768, 794 (1985) (quotation marks omitted). "In all cases, the face of the [statute], the surrounding circumstances, and the legislative history, are to be examined with an eye toward determining what congressional intent was." *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 587 (1977) (quotation marks omitted).

The Indian canons are an interpretive tool, but they are not "a license to disregard clear expressions of tribal and congressional intent." *DeCoteau v. Dist. Cnty. Court*, 420 U.S. 425, 447 (1975). If the statutory text, its legislative history, and the surrounding circumstances can demonstrate congressional intent and purpose, there is no need to apply these preferential canons. *See Catawba Indian Tribe*, 476 U.S. at 506-07; *Rice v. Rehner*, 463 U.S. 713, 732-33 (1983).

Petitioner's arguments about the origins of the Indian canons are therefore beside the point.[11] Pet. 24-26. Petitioner attempts to contrast the Second Circuit's decision in *Connecticut ex rel. Blumenthal v. United States Department of Interior*, 228 F.3d 82 (2d Cir.

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[11] In any event, the text and legislative history of MICSA make clear that any such generally applicable federal Indian law, including the Indian canons, does not apply to the Settlement Acts if it would affect or preempt Maine's jurisdiction. MICSA §§ 1725(h), 1735(b). "[S]hould questions arise in the future over the legal status of Indians and Indian lands in Maine, those questions can be answered in the context of the [Acts] rather than using general principles of Indian law." *Senate Hearing* at 149.

2000), with the decision below, but the reasoning in both decisions is entirely consistent. In *Blumenthal*, the court resolved the case based on the text of the Indian Reorganization Act and the Connecticut Indian Land Claims Settlement Act, but then confirmed that reading with the overall statutory structure and the legislative history. *Id.* at 88-92. The court's subsequent application and discussion of the Indian canon was unnecessary in light of its previous analysis. Regardless, both courts applied standard rules of statutory construction; they did not leapfrog to the Indian canons as Petitioner claims the Court must do. Here, the purpose, context, and legislative history of the Acts confirms the First Circuit's textual analysis.[12] Pet. App. 27a-36a.

2. In MICSA, Congress plainly stated its purposes and thus its intent:

It is the purpose of this subchapter—

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[12] But even if consideration of the Indian canons here was appropriate, it would be offset by the Court's case law regarding the equal footing doctrine. Navigable waters and the submerged lands underneath them "uniquely implicate sovereign interests," thus justifying a "strong presumption" of state control, regardless of when a state joined the Union. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 283-84 (1997). Because Maine gained title "within its borders to the beds of waters then navigable" upon statehood, it could and did "allocate and govern those lands according to state law." *PPL Mont., LLC v. Montana*, 565 U.S. 576, 591 (2012). The Court has consistently held that a state cannot be deprived of such control absent "clear and special words" that "expressly refer[ ] to the riverbed" in the operative instrument. *Montana v. United States*, 450 U.S. 544, 554 (1981) (citations omitted). No such "clear and special words" exist.

> **(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 [MIA], which defines the relationship between the State of Maine and the . . . Penobscot Nation, and
>
> **(4)** to confirm that all other Indians, Indian nations 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.

MICSA § 1721(b). Regardless of any alleged ambiguity in the Settlement Acts, they must be construed with these express purposes in mind.

As Congress made clear in § 1721(b), MICSA was primarily intended to put to rest, once and for all, any doubts as to ownership of land in Maine and jurisdiction over land and natural resources in Maine. Considering that Congress's highest priority was to bring clarity to these issues, the argument that the Settlement Acts impliedly incorporated the Nation's understanding of its rights under prior agreements, carrying forward all of the inherent ambiguities and disputed interpretations associated with them, cannot prevail. *Azar*, 139 S. Ct. at 1813 (rejecting "a most unlikely reading" advanced by government in favor of obvious, plain meaning).

3. Key to the resolution of the land claims was the Acts' approval of prior transfers. Importantly, the term "transfer" includes far more than traditional land transactions. "Transfer" is broadly defined and

> 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.

MICSA § 1722(n); MIA § 6203(13). The striking breadth of this language was intentional: transfer "is intended to have a comprehensive meaning and to cover all conceivable events and circumstances under which title, possession, dominion or control of land or natural resources can pass from one person or group of persons to another person or group of persons." Senate Report at 21. The term "land or natural resources" is likewise comprehensively defined to include: "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." MICSA § 1722(b); MIA § 6203(3).

Therefore, the "transfer" provision does far more than merely confirm the validity of prior property

transactions. It extinguishes any rights or claims of any kind that Petitioner (or any other tribe) may have had prior to the effective date of the Acts that were "transferred" through "any act, event or circumstance that . . . resulted in a change in . . . control of or dominion over" "land or natural resources" including "water and water rights, and hunting and fishing rights." MICSA §§ 1722(b), (n) & 1723; MIA § 6213. As a result, all claims to land or natural resources over which Petitioner lost dominion, possession, or control, including those based on aboriginal title, have been extinguished. *Accord Senate Hearing* at 89-93 (Interior opinion on Acts' extinguishment of Maine Indian land claims). Through the express provisions of the Settlement Acts, any claim that Petitioner had to aboriginal title over any land or natural resources located in the State of Maine, including the Main Stem, was extinguished not just as to land or natural resources previously sold or transferred by agreement, but also as to all land or natural resources over which Maine, its predecessors, or successors had exercised dominion or control.

By claiming that it never ceded the bed and waters of the Penobscot River, and both are therefore included within the Reservation, Petitioner necessarily calls into question the titles of upland owners along the River whose deeds include title to the bed or banks of the River. The Settlement Acts resolved *all* pending or potential land claims and confirmed *all* prior transfers to confirm all property owners' valid title; they did not divest a class of property owners of title to land or

reserve a class of claims for future adjudication.[13] The Court should reject Petitioner's attempt to revive its extinguished land claims.

4. The legislative history of MICSA confirms that the Main Stem is not included in the Reservation. In materials provided to the House, a background document describes the Reservation as "a 4,000-acre reservation on a hundred islands in the Penobscot River north of Bangor." Pet App. 33a. The acreage of the entire Main Stem, both river and islands, is 13,760 acres.[14] *Id.*; *see also Idaho v. United States*, 533 U.S. 262, 267, 274 (2001) (previously published acreage calculations was evidence of whether submerged lands were included in reservation). Other historical documents in the Congressional hearing record describe the Reservation as: an "island reserve"; "a chain of islands lying in the river from Oldtown northward"; "the

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[13] Any determination that the Reservation includes the submerged lands within the Main Stem would necessarily involve the rights and interests of the riverside owners and municipalities—necessary and indispensable parties that have not been joined. *See* Fed. R. Civ. P. 19 (a)(1)(B)(i). Petitioner's theory implicates not only the interests of the hundreds of riparian owners along the mainland shores of the Main Stem, but also the municipalities bounded by the Main Stem because the boundary of all Main Stem towns extends to the thread of the Penobscot River. Generally, parties that also claim title, possession, or jurisdiction over land are indispensable to the action.

[14] In addition, the Senate was provided a map depicting lands affected by the settlement as it considered the legislation. The key on that map indicates that the Reservation is colored in red, and only the islands in the river are so colored. Pet. App. 212a, 266a. The legislative record contains no map indicating that the Main Stem would be part of the Reservation.

islands which they now own and occupy"; an "island reservation"; "the island across from" Old Town and "a chain of islands lying in the river from Old Town northward"; "consist[ing] of approximately 140 islands in the Penobscot River between Old Town and Mattawamkeag, totaling around 4500 acres"; "Indian Island Penobscot Reservation"; and "consist[ing] of 146 islands in the Penobscot River." *Senate Hearing* at 1021, 1078, 1082, 1121, 1145, 1149, 1156 & 1209.

Congress confirmed what it (and the parties) understood to be the Nation's existing reservation in 1980, which consisted solely of the islands in the Main Stem. The House and Senate Reports are entirely consistent with the statutory text and the descriptions above conclusion that the Reservation includes the islands but excludes the river. Senate Report at 18; H.R. REP. NO. 96-1383, at 18 (1980) (House Report). Both Reports explain the tribes "will retain as reservations those lands and natural resources which were reserved to them in their treaties with Massachusetts *and not subsequently transferred by them*." Senate Report at 18 (emphasis added); House Report at 18 (emphasis added). The legislative history also reflects that in 1980 the Nation and Maine understood that the "jurisdictional rights granted by [MIA] are coextensive and coterminous with land ownership," *Senate Hearing* at 346, and that the Nation would not own "the bed of any Great Pond or any waters of a Great Pond or river or stream, all of which are owned by the State in trust for all citizens," Pet. App. 197a.

5. Last, Petitioner claims that the First Circuit "trample[d]" this Court's precedents on the diminishment of tribal reservations because it concluded this "is not a traditional diminishment case." Pet. 28-29 (quoting Pet. App. 38a). The present case, however, is not a diminishment case at all.

"'[W]hen Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress.' A congressional determination to terminate" or diminish "must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." *Mattz v. Arnett*, 412 U.S. 481, 504-05 (1973) (quoting *United States v. Celestine*, 215 U.S. 278, 285 (1909)). Once established, "[d]iminishment" of that reservation "will not be lightly inferred"; Congress must "clearly evince an 'intent to change [a reservation's] boundaries' before diminishment will be found." *Solem v. Bartlett*, 465 U.S. 463, 470 (1984) (quoting *Rosebud Sioux Tribe*, 430 U.S. at 615). "The most probative evidence of congressional intent is the statutory language used to open the Indian lands." *Id.*

Thus, in diminishment cases, the Court compares at least two Congressional actions—one establishing the reservation and then one or more actions that are alleged to have diminished the reservation through, for example, settlement or sale of reservation lands. In *Nebraska v. Parker*, 577 U.S. 481, 484-91 (2016), cited by Petitioner, the Court compared an 1854 treaty establishing the Omaha Tribe's reservation to an 1882 act that opened the reservation to settlement. *Nebraska*

held the reservation was not diminished as a result of the 1882 act, based on its clear language and the lack of "a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation." *Id.* at 490 (quoting *Solem*, 465 U.S. at 471).

Here, Petitioner collapses the diminishment analysis, simultaneously arguing that the statute in which Congress first established the Reservation is also the statute that cannot diminish the Reservation. Although not controlling here, *supra* 15-18, the present case is more akin to *Alaska Pacific Fisheries* and *Hynes*, where the Court interpreted language creating reservations. Neither case is a diminishment case, and the present case is not either.

II. Petitioner's Question Presented does not Merit the Court's Attention.

In addition to its error correction arguments addressed above, Petitioner proffers a series of reasons that it contends warrants this Court's review. Pet. 29-35. None—whether considered alone or taken together—are convincing.

Petitioner argues that the question presented to this Court is "one of exceptional importance to all affected—and to many other tribes subject to settlement acts on their own." Pet. 30. Petitioner leans heavily upon the en banc dissent's language decrying the First Circuit's decision as "dramatic," "tragic," and "devastating" to the Nation. *Id.* State Respondents agree that

this case presents an issue of significance to both Petitioner and the State of Maine. But this case's resolution will not generate knock-on consequences "to many other tribes subject to settlement acts on their own." *Id.* Regardless of the importance to the parties, the en banc decision still applies only to the four corners of this case and the Settlement Acts.

Focusing on the importance of this case to the Petitioner—or for that matter the State of Maine—misstates the inquiry. This Court does not grant "the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70 (1955) (quotation marks omitted). The First Circuit's meticulous en banc decision need not and should not be reconsidered merely because of its importance to Petitioner.

Petitioner also argues that "the en banc majority's interpretation threatens to constrict the reservations of other Maine tribes affected by the same Settlement Acts"—specifically the Passamaquoddy Reservation—"and of tribes outside Maine subject to other settlement acts." These assertions are contrary to the record. As an initial matter, the construction of "land" as cited by Petitioner, Pet. 35, is specific to the First Circuit's analysis of what constitutes "land" in and around the Main Stem of the Penobscot River. Moreover, as it relates to the Passamaquoddy Tribe, this language

constitutes dicta that would not bind the First Circuit or that Tribe in any future litigation regarding the scope of the Passamaquoddy Reservation.

Petitioner's single-paragraph argument that the First Circuit's decision could affect parties beyond the borders of Maine is unconvincing. Pet. 35. Citing *Blumenthal*, 228 F.3d 38, and *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994), Petitioner seems to imply that the decision below could affect other tribes because the Acts served as a "model" for the Connecticut Act, and the Acts, in turn, were modeled after the Rhode Island and Massachusetts Settlement Acts. But examining those cases more closely leads to the opposite conclusion, because courts have consistently distinguished other states' settlement acts from MIA and MICSA.

While *Blumenthal* indeed referred to the Acts as a "model" for the Connecticut Act, the Second Circuit concluded that the two statutes contained critical distinctions that required they be analyzed differently. 228 F.3d at 90 ("In marked contrast to the [Connecticut] Settlement Act, the Maine Settlement Act has a broad provision that prevents lands not specifically covered by that Act from being taken into trust by the Secretary"). Likewise, the First Circuit's decision in *Narragansett Indian Tribe* was predicated—at least in part—upon the uniqueness of the Acts. 19 F.3d at 702 (describing the Acts as containing "corresponding limits on [tribal] jurisdiction, conspicuously absent from the [Rhode Island] Settlement Act").

Nothing in the First Circuit's decision here would bind future courts from properly analyzing the language of individual settlement acts from other states on their unique terms. If there was any doubt about that fact, the United States rebuts Petitioner's argument through a concession in its own separate petition to this Court. *See* U.S. Petition at 32 ("There is no prospect of a division among the courts of appeals here because the Settlement Acts apply only to petitioner Penobscot Nation and other tribes located in Maine."); *see also id.* at 33 (describing the First Circuit's decision as "involving important statutes or treaties particular to one or a small subset of Indian tribes"). And the decision below is not "a sea change," Pet. 35, but just another example of ordinary rules of statutory construction being applied to settlement acts. *See*, *e.g.*, *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 532-34 (1998) (applying plain meaning analysis to Alaska Native Claims Settlement Act).

For these reasons, this case is not an appropriate matter to impose upon this Court's limited resources for review.

CONCLUSION

Petitioner's petition for writ of certiorari should be denied.

Respectfully submitted,

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SUB CHAPTER II - MAINE INDIAN
CLAIMS SETTLEMENT
25 U.S.C. §§ 1721-35 (former codification)

§ 1721. Congressional findings and declaration of policy

(a) Findings and declarations

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 landowners, 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) Purposes

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.

§ 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.

§ 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.

§ 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.

(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 3113 and 3114(a) to (d) 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.

§ 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 employees 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 other wise 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 special programs and services regardless of reservation status

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. 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.

§ 1726. Tribal organization

(a) Appropriate instrument in writing; filing of organic governing document

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) Membership

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 of 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.

§ 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.

§ 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.

§ 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.

§ 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 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.

§ 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).

§ 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.

§ 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.

§ 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.

§ 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.

CHAPTER 601
MAINE INDIAN CLAIMS SETTLEMENT

Me. Rev. Stat. Ann. tit. 30 §§ 6201-14

§6201. Short title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."

§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 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.

§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.

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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. The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of $350,000, provided that the consent of the Town of Perry would be voided unless the payment of the $350,000 is made within 120 days of the effective date of this section. Any commercial development of those lands must be by approval of

the voters of the Town of Perry with the exception of land development currently in the building stages.

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 that 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 Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land must be included within the Penobscot Indian Reservation.

The "Penobscot Indian Reservation" includes the following parcels of land that have been or may be acquired by the Penobscot Nation from Bangor Pacific

Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.

The "Penobscot Indian Reservation" also includes a certain parcel of land located in Argyle, Penobscot County consisting of approximately 714 acres known as the Argyle East Parcel and more particularly described as Parcel One in a deed from the Penobscot Indian Nation to the United States of America dated November 22, 2005 and recorded at the Penobscot County Registry of Deeds in Book 10267, Page 265.

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.

§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.

§6205. Indian territory

1. Passamaquoddy Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State are known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation

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 not held in common with any other person or entity and are certified by the secretary 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.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3

N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township), and any lands in Albany Township acquired by the Passamaquoddy Tribe;

C. Any land not exceeding 100 acres in the City of Calais acquired by the secretary for the benefit of the Passamaquoddy Tribe as long as the land is not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe, if:

(1) The acquisition of the land by the tribe is approved by the legislative body of that city; and

(2) A tribal-state compact under the federal Indian Gaming Regulatory Act is agreed to by the State and the Passamaquoddy Tribe or the State is ordered by a court to negotiate such a compact;

D. All land acquired by the secretary for the benefit of the Passamaquoddy Tribe in T. 19, M.D. to the extent that the land is not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe;

D-1. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville consisting of Parcels A, B and C conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated July 27, 1981, recorded in the Washington County Registry of Deeds in Book 1147, Page 251, to the extent that the land is not held in common with any other person or entity

and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe;

D-2. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated May 4, 1982, recorded in the Washington County Registry of Deeds in Book 1178, Page 35, to the extent that the land is not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe;

E. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Township 21 consisting of Gordon Island in Big Lake, conveyed by Domtar Maine Corporation to the Passamaquoddy Tribe by corporate quitclaim deed dated April 30, 2002, recorded in the Washington County Registry of Deeds in Book 2624, Page 301, to the extent that the land is not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe.

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;

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 not held in common with any other person or entity and are certified by the secretary 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.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; any land acquired in Williamsburg T.6, R.8, N.W.P.; any 300 acres in Old Town mutually agreed upon by the City of Old Town and the Penobscot Nation Tribal Government; any lands in Lakeville acquired by the Penobscot Nation; and all the property acquired by the Penobscot Indian Nation from Herbert C. Haynes, Jr., Herbert C. Haynes, Inc. and Five Islands Land Corporation located in Township 1, Range 6 W.E.L.S.

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.

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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 has 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 must be made by each tribal governing body. If either tribe

or nation chooses not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State has 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 has exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation except as provided in the section or sections referenced in the following:

A. Section 6209-A.
B. Section 6209-B.

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§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 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.

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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.

§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.

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 resource. 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.

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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.

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§6209-A. Jurisdiction of the Passamaquoddy Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed $5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the

Penobscot Nation on the reservation of the Passamaquoddy Tribe;

C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot 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 the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has 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 apply within the

Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

1-A. Concurrent jurisdiction over certain criminal offenses. The Passamaquoddy Tribe has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person on the Passamaquoddy Indian Reservation or on lands taken into trust by the secretary for the benefit of the Passamaquoddy Tribe, now or in the future, for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed $2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not include an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, the Passamaquoddy Tribe may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States

Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

In exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Passamaquoddy Tribe has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules

or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

2-A. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Passamaquoddy Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Passamaquoddy Tribal Court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard, consistent with Title 25, section 1542-A.

At the conclusion of a criminal or juvenile proceeding within the Passamaquoddy Tribe's exclusive or concurrent jurisdiction, except for a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the Passamaquoddy Tribal Court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive

jurisdiction of the Passamaquoddy Tribe constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is 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 has exclusive jurisdiction under this section does 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 over which the Passamaquoddy Tribe has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the State has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal 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 does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.

5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their 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 Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

§6209-B. Jurisdiction of the Penobscot Nation Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not

exceed $5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot 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 the Passamaquoddy Tribe or the

Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has 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 apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

1-A. Concurrent jurisdiction over certain criminal offenses. The Penobscot Nation has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person on the Penobscot Indian Reservation or on lands taken into trust by the secretary for the benefit of the Penobscot Nation now or in the future, for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed $2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not include an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person

who is not a member of any federally recognized Indian tribe, nation, band or other group.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, the Penobscot Nation may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

In exercising the concurrent jurisdiction authorized by this subsection, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Penobscot Nation has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under

subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

2-A. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Penobscot Nation Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Penobscot Nation Tribal Court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard, consistent with Title 25, section 1542-A.

At the conclusion of a criminal or juvenile proceeding within the Penobscot Nation's exclusive or concurrent jurisdiction, except for a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the

influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the Penobscot Nation Tribal Court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is 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 Penobscot Nation has exclusive jurisdiction under this section does 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 over which the Penobscot Nation has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the State has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the

same conduct, over which the Penobscot Nation has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot 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 does not constitute collateral estoppel in a criminal 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 does 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 the Penobscot Nation residing within their 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 the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

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§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 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-A, subsection 1 and section 6209-B, subsection 1, respectively.

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers 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 Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

3. Agreements for cooperation and mutual aid. This section does not 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 possess the same powers and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

4-A. Reports to the State Bureau of Identification by Passamaquoddy Tribe. Passamaquoddy Tribe law enforcement agencies shall submit to the Department of Public Safety, State Bureau of Identification uniform crime reports and other information required by Title 25, section 1544.

5. Reports to the State Bureau of Identification by Penobscot Nation. Penobscot Nation law enforcement agencies shall submit to the Department of Public Safety, State Bureau of Identification uniform crime reports and other information required by Title 25, section 1544.

§6211. Eligibility of Indian tribes and state funding

1. Eligibility generally. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must

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 the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians may be raised through any source of revenue available to the respective tribe, nation or band, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of money employs a factor for the municipal real property tax rate, and in the absence of such tax within the Indian territory, the formula applicable to such Indian territory must 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 money employs a factor representing municipal valuation, the valuation applicable to such Indian territory must be determined by the State Tax Assessor in the manner generally provided by the laws of the State as long as property owned by or held in trust for a tribe, nation or band and used for governmental purposes is treated for purposes of valuation as like property owned by a municipality.

2. Limitation on eligibility. In computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds under subsection 1, other than funds in support of education, any money

received by the respective tribe, nation or band 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, must be deducted in computing any payment to be made to the respective tribe, nation or band by the State. Unless otherwise provided by federal law, in computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds for education under subsection 1, the state payment must be reduced by 15% of the amount of federal funds for school operations received by the respective tribe, nation or band within substantially the same period for which state funds are provided, and in excess of any local share ordinarily required by state law as a condition of state funding. A reduction in state funding for secondary education may not be made under this section except as a result of federal funds received within substantially the same period and allocated or allocable to secondary education.

2-A. Limitation on eligibility. [Repealed]

3. Eligibility for discretionary funds. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are 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 the Indian territories or Houlton Band Trust Land are 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 as long as in computing the extent to which any person is entitled to receive any such funds any money 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 is deducted in computing any payment to be made by the State.

§6212. Maine Indian Tribal-State Commission

1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of 13 members, 6 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term.

2. Chair. The commission, by a majority vote of its 12 members, shall select an individual who is a resident of the State to act as chair. In the event of the death, resignation, replacement or disability of the chair, the commission may select, by a majority vote of its 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation, replacement or disability, the Governor, after consulting with the chiefs of the Houlton Band of Maliseet Indians, the Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is 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 in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

Nine members constitute a quorum of the commission and a decision or action of the commission is not valid unless 7 members vote in favor of the action or decision.

4. Personnel, fees, expenses of commissioners. The commission may employ personnel as it considers necessary and desirable in order to effectively discharge its duties and responsibilities. These employees are not subject to state personnel laws or rules.

The commission members are entitled to receive $75 per day for their services and to reimbursement for reasonable expenses, including travel.

5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State shall cooperate with the commission and make available to it without charge information and data relevant to the responsibilities of the commission.

6. Funding. The commission may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter 149, upon receipt of a written request from the commission, the State Controller shall pay the commission's full state allotment for each fiscal year to meet the estimated annual disbursement requirements of the commission.

The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the following tribes shall

communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding:

A. The Houlton Band of Maliseet Indians;
B. The Passamaquoddy Tribe; and
C. The Penobscot Nation.

§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.

§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.