

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheets. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Penobscot Nation

(b) County of Residence of First Listed Plaintiff Penobscot

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kaighn Smith, Drummond Woodsum, 84 Marginal Way, Suite 600,
Portland, ME 04101-2480 (207) 772-1941

DEFENDANTS

William J. Schneider, in his official capacity as Attorney
General, Chandler Woodcock, in his official capacity as
Commissioner for Dept of Inland Fisheries and Wildlife for
State of Maine and Joel T. Wilkinson, in his official capacity
as Colonel for the Maine Warden Service

County of Residence of First Listed Defendant Kennebec

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE
LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box
for Plaintiff and One Box
for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUS
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpay & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Exclude Veterans) <input type="checkbox"/> 153 Recovery of Overpay of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liab. <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury – Med. Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (139ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Action <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matter <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American w/ Disabilities-Employ. <input type="checkbox"/> 446 American w/ Disabilities-Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 25 U.S.C. §§ 1721 et seq

Brief description of cause: Threatened violation of federal law by state officials on Indian land

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

August 20, 2012

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT#

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44 Reverse (Rev. 11/04)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

PENOBSCOT NATION

Plaintiff,

v.

WILLIAM J. SCHNEIDER,
Attorney General for the State of Maine;

CHANDLER WOODCOCK,
Commissioner for the Maine Department
of Inland Fisheries and Wildlife;

and

JOEL T. WILKINSON,
Colonel for the Maine Warden Service

Defendants

Civil No. _____

COMPLAINT
INJUNCTIVE RELIEF REQUESTED

NOW COMES the Penobscot Nation (the “Nation”) and hereby claims as follows:

PARTIES

1. The Plaintiff, the Penobscot Nation, is a federally recognized Indian tribe, which has occupied the waters, islands, and lands within and surrounding the Penobscot River within the present day State of Maine from time immemorial.

2. The principal residence of the members of the Penobscot Nation and the seat of its government are located at Indian Island within the Penobscot River, near Old Town, Penobscot County, Maine.

3. Defendant William J. Schneider serves as the Attorney General for the State of Maine.

4. Defendant Chandler Woodcock serves as the Commissioner of the Maine Department of Inland Fisheries and Wildlife.

5. Defendant Joel T. Wilkinson serves as the Colonel of the Maine Warden Service.

6. As set forth herein, the Defendants threaten to violate federal law protections and rights afforded to the Penobscot Nation, its members, and its law enforcement officials within the Penobscot River. This action seeks declaratory and injunctive relief against the Defendants to prevent them from violating these federal law rights and protections.

JURISDICTION

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362. The matter in controversy arises under the Constitution and laws of the United States, it is brought by a federally recognized Indian tribe, and it involves the threatened violation of federal law by state officials.

VENUE

8. Venue is proper in this district because this action arises within this district and the parties reside or work in this district.

BACKGROUND

Congress's Constitutional Plenary Authority over Indian Affairs, and its Settlement of the Penobscot Nation's Historic Land Claims Against the State of Maine

9. Pursuant to the Maine Indian Claims Settlement Act of 1980, 25 U.S.C. §§1721, *et. seq.* (the "Settlement Act"), Congress ended the historic land claims litigation brought by the United States, as trustee for the Penobscot Nation, against the State of Maine in the matters of *United States v. Maine*, Civil Nos. 1966-ND and 1969-ND (D. Me.). In so doing, Congress reaffirmed the Nation's status as an Indian tribal government with a government-to-government relationship with the United States, and ratified the provisions of Maine's Act to Implement the Indian Land Claims Settlement, 30 M.R.S.A. §§ 6201 *et. seq.* (the "Maine Implementing Act").

10. In enacting the Settlement Act to ratify the Maine Implementing Act and thereby compromising and settling *United States v. Maine*, Congress acted as fiduciary on behalf of the Penobscot Nation because the United States represented the interests of the Nation as its trustee and its attorney-in-fact in *United States v. Maine*.

11. Pursuant to Article I, section 8, of the United States Constitution, the Maine Implementing Act could have no force of law absent ratification by Congress.

Congress's Confirmation of the Retained Right of the Penobscot Nation's Members to Take Fish for Individual Sustenance From the Penobscot River Free from State Law, and the Exclusive Sovereign Authority of the Nation to Regulate that Activity

12. Members of the Penobscot Nation have engaged in fishing for their individual sustenance in the waters of the Penobscot River surrounding Indian Island and other islands in the river northward thereof from time immemorial.

13. Upon enacting the Settlement Act, Congress expressly confirmed that the Penobscot Nation and its members retain a sovereign right to take fish from the Penobscot River by ratifying 30 M.R.S.A. § 6207(4), entitled "Sustenance Fishing within the Indian reservations" which provides, in pertinent part, that notwithstanding any law of the State, members of the Penobscot Nation "may take fish, within the boundaries of their . . . Indian reservation[], for their individual sustenance."

14. Congress knew that the Penobscot Nation understood and intended that the Settlement Act preserved the right of its members to take fish from the Penobscot River for their individual sustenance free from any state authority, and Congress, upon compromising and settling *United States v. Maine* on behalf of the Penobscot Nation, intended that sustenance fishing right to be preserved and exercised within the Penobscot River, meaning "within the boundaries" of the Nation's reservation.

15. Pursuant to the Settlement Act, Congress granted to the State of Maine certain jurisdiction over the Penobscot Nation and its members "in the manner provided in the Maine Implementing Act," 25 U.S.C. § 1725(b)(1).

16. Congress did not grant Maine jurisdiction over the right to sustenance fishing described in paragraphs 12-15, other than ratifying provisions of the Maine Implementing Act giving authority to the Commissioner of Inland Fisheries and Wildlife (the “Commissioner”) to commence an administrative proceeding for the purpose of addressing (and, if necessary, imposing) remedial measures in the event that the exercise of said sustenance fishing right causes, or is likely to cause, “a significant depletion of fish . . . [i]n . . . waters outside the boundaries of . . . waters subject to regulation by . . . the Penobscot Nation.” 30 M.R.S.A. § 6207(4), § 6207(6), *ratified by* 25 U.S.C. § 1725(b)(1).

17. The Nation has exercised exclusive jurisdiction over sustenance fishing by its members in the waters of the Penobscot River surrounding Indian Island and other islands in the river northward thereof from time immemorial and currently does so pursuant to laws duly promulgated and enacted by the Nation.

18. The Nation’s jurisdiction over sustenance fishing by its members in the Penobscot River is an exercise of its inherent sovereign authority, as a matter of federal law, and it remains intact; it has never been surrendered by treaty or by an act of Congress.

The Defendants' Threat to Violate the Right of the Nation's Members to Take Fish from the Penobscot River for Their Sustenance Without Interference by State Authorities and to Violate the Nation's Exclusive Jurisdiction over Sustenance Fishing by Its Members Within the River

19. By letter dated February 16, 1988, then Attorney General for the State of Maine, James T. Tierney, issued an opinion to William J. Vail, then Commissioner of Inland Fisheries and Wildlife for the State of Maine, stating that salmon fishing by members of the Penobscot Nation for their individual sustenance “*in the Penobscot River within the boundaries of the Penobscot Reservation . . . would clearly fall within the purview of*” the right of the Nation’s members to engage in sustenance fishing, free from state authority by the terms of 30 M.R.S.A. § 6207(4), the provision quoted in paragraph 13, above, and ratified by Congress in the Settlement Act. (Emphasis added.) A true copy of this letter is attached hereto as Exhibit A (the “1988 Maine Attorney General Opinion”).

20. The 1988 Maine Attorney General Opinion further stated that the prohibition against fishing for salmon with gill nets -- then provided by 12 M.R.S.A. § 7608 and now codified at 12 M.R.S.A. § 12656 -- could not be enforced against members of the Penobscot Nation for engaging in such sustenance fishing. *See* Exhibit A.

21. By letter dated August 8, 2012, Defendant William J. Schneider issued an opinion to Defendants Chandler Woodcock and Joel T. Wilkinson, stating that the Penobscot River “is not part of the Penobscot Nation’s Reservation” and that “the State of Maine has exclusive regulatory jurisdiction over activities taking place on the River.” A

true copy of this letter is attached hereto as Exhibit B.

22. Defendant Schneider has repudiated the 1988 Maine Attorney General Opinion, which, consistent with federal law, recognized that members of the Penobscot Nation enjoyed the right to take fish for their sustenance within the waters of the Penobscot River free from state authority.

23. By repudiating the prior views of the Maine Attorney General with respect to the right of members of the Nation to exercise their sustenance fishing rights within the Penobscot River, Defendant Schneider has given, and continues to give, authority to Defendants Woodcock and Wilkinson (and all of their agents) to enforce state law against members of the Penobscot Nation in their exercise of sustenance fishing rights within the Penobscot River and thereby threatens to violate the federal law right of the Nation's members to be free from state authority over such activity.

24. By repudiating the prior views of the Maine Attorney General and thereby threatening to violate the federal law right of the Nation's members' sustenance fishing rights as described in paragraph 23, Defendant Schneider has also given, and continues to give, authority to Defendants Woodcock and Wilkinson (and all of their agents) to violate the Penobscot Nation's federal law right to exercise exclusive jurisdiction over the taking of fish for sustenance by its members, subject only to the contingent authority of the Commissioner described in paragraph 16.

Congress's Confirmation of the Exclusive Authority of Penobscot Nation Law Enforcement Officers to Enforce Civil Laws Regulating Hunting, Trapping and Other Taking of Wildlife Within the Penobscot River

25. The Penobscot Nation has exercised jurisdiction over the use of the water, bed, and banks of the Penobscot River surrounding Indian Island and other islands in the river northward thereof by its members and non-members from time immemorial, and it currently does so pursuant to ordinances duly promulgated and enacted as the law of the Nation. These ordinances incorporate the civil regulatory laws of the State of Maine, including provisions of Title 12 of the Maine Revised Statutes Annotated, as the law of the Penobscot Nation, by reference.

26. The Nation's jurisdiction over the use of the water, bed, and banks of the Penobscot River surrounding Indian Island and islands northward thereof by members and non-members constitutes an exercise of its inherent sovereign authority as a matter of federal law, which the Nation retains intact absent an express divestiture by Congress.

27. Congress has not divested the Penobscot Nation of its inherent authority to enforce its laws governing the use of the water, bed, and banks of the Penobscot River by members and non-members.

28. Upon enacting the Settlement Act and ratifying the terms of the Maine Implementing Act, in particular, 30 M.R.S.A. § 6207(1)(A) and 30 M.R.S.A. § 6210(1), Congress expressly confirmed the Nation's "exclusive authority within [its] . . . Indian territor[y] to promulgate and enact ordinances regulating hunting, trapping or other taking

of wildlife” and further expressly confirmed that “[l]aw enforcement officers appointed by the . . . Penobscot Nation shall have exclusive authority to enforce, within their . . . Indian territor[y], ordinances adopted under . . . section 6207, subsection 1.”

29. Upon enacting the Settlement Act, Congress defined “Penobscot Indian Reservation” and “Penobscot Indian Territory” in accordance with the definitions of the Maine Implementing Act. By the terms of the Maine Implementing Act, “Penobscot Indian Territory” includes the “Penobscot Indian Reservation,” and “Penobscot Indian Reservation” is defined, in pertinent part, as “the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting of solely of Indian 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.”

30. Upon ratifying said definition of the Penobscot Indian Reservation, Congress intended the definition to encompass ownership rights within and attending the Penobscot River surrounding Indian Island and islands in the river northward thereof, and Congress knew, upon compromising and settling *United States v. Maine* on behalf of the Penobscot Nation, that the Nation never intended to relinquish its ownership rights within the Penobscot River.

31. By virtue of Congress’s ratification of 30 M.R.S.A. § 6207(1) and 30

M.R.S.A. § 6210(1) and its intent that the Nation's reservation encompass ownership rights within and attending the Penobscot River surrounding Indian Island and islands in the river northward thereof, Congress confirmed the exclusive authority of Penobscot Nation law enforcement officials to enforce the Nation's ordinances regulating hunting, trapping or other taking of wildlife within the Penobscot River surrounding Indian Island and other islands in the river northward thereof.

The Defendants' Threat to Violate the Exclusive Authority of the Penobscot Nation's Law Enforcement Officers to Enforce Civil Laws Regulating Hunting, Trapping and Other Taking of Wildlife Within the Penobscot River

32. By stating in his August 8, 2012 letter to Defendants Chandler Woodcock and Joel T. Wilkinson that the Penobscot River "is not part of the Penobscot Nation's Reservation" and that "the State of Maine has exclusive regulatory jurisdiction over activities taking place on the River," Defendant Schneider has given, and continues to give, authority to Defendants Woodcock and Wilkinson (and all of their agents) to enforce state laws regulating hunting, trapping or other taking of wildlife to the exclusion of the enforcement authority of Penobscot Nation law enforcement officials within the Penobscot River.

33. Defendants Schneider, Woodcock and Wilkinson threaten to violate the exclusive authority of Penobscot Nation law enforcement officers to enforce the Nation's laws regulating hunting, trapping or other taking of wildlife within the Penobscot River as ratified and made law by Congress in the Settlement Act.

34. The Nation brings this action on behalf of itself, its members, and its law enforcement officers.

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF TO PROTECT THE RIGHT OF PENOBSCOT NATION MEMBERS TO TAKE FISH FOR SUSTENANCE FREE FROM STATE LAW AND THE RIGHT OF THE NATION TO EXERCISE EXCLUSIVE REGULATORY AUTHORITY OVER SUSTENANCE FISHING BY ITS MEMBERS

35. The Nation repeats and realleges paragraphs 1-34 as if fully set forth herein.

36. An actual controversy exists between the Penobscot Nation and the Defendants regarding the federal law right of the Nation's members to take fish from the Penobscot River for their individual sustenance, free from state law.

37. An actual controversy exists between the Penobscot Nation and the Defendants regarding the federal law right of the Nation to exercise exclusive regulatory authority over sustenance fishing in the Penobscot River.

38. The Defendants threaten to violate the federal law right of the Nation's members to take fish from the Penobscot River for their individual sustenance, free from state law and to violate the federal law right of the Nation to exercise exclusive regulatory authority over that sustenance fishing activity.

39. The Nation and its members face irreparable harm if the Defendants violate the Nation's and the Nation's members' rights as described in paragraph 38.

40. The Nation is likely to succeed on the merits of its claims that, as a matter

of federal law, (a) its members enjoy the right to take fish from the Penobscot River for their individual sustenance, free from state law and (b) the Nation has exclusive regulatory authority over its members' exercise of that right, subject only to the contingent authority granted to the Commissioner as described in paragraph 16.

41. The public interest will be furthered by an injunction preventing Defendants from violating the sustenance fishing rights of the Nation's members within the Penobscot River and from interfering with the exclusive authority of the Nation to regulate sustenance fishing by its members in the river.

42. Any harm resulting from an injunction preventing the Defendants from violating the sustenance fishing rights of the Nation's members and from violating the exclusive authority of the Nation to regulate sustenance fishing by its members is minimal compared to the harm befalling the Nation without the injunction.

WHEREFORE, the Penobscot Nation requests that this Court issue a declaratory judgment against the Defendants that: (a) the Nation's members enjoy the right to take fish from the Penobscot River for their individual sustenance within waters surrounding Indian Island and other islands northward thereof, free from state law; and (b) the Nation has exclusive regulatory authority over its members' exercise of that right, subject only to the contingent authority of the Commissioner described in paragraph 16. The Nation further requests this Court to issue an injunction enjoining the Defendants and their agents, employees, representatives, or anyone else subject to their authority, or acting on

their behalf, from engaging in any action that would violate, or threaten to violate: (a) the right of the Nation's members to take fish from the Penobscot River for their individual sustenance within waters surrounding Indian Island and other islands northward thereof, free from state law; or (b) the Nation's exclusive regulatory jurisdiction over such sustenance fishing, subject only to the contingent authority of the Commissioner as described in paragraph 16. The Nation respectfully asks for such further relief, including costs, as this Court deems just and equitable.

COUNT II

DECLARATORY AND INJUNCTIVE RELIEF TO PROTECT THE RIGHT OF PENOBSCOT NATION LAW ENFORCEMENT OFFICERS TO EXERCISE EXCLUSIVE ENFORCEMENT AUTHORITY OVER HUNTING, TRAPPING, AND OTHER TAKING OF WILDLIFE

43. The Nation repeats and realleges paragraphs 1-34 as if fully set forth herein.

44. An actual controversy exists between the Penobscot Nation and the Defendants regarding the federal law right of the Nation's law enforcement officers to exercise exclusive authority over hunting, trapping, and other taking of wildlife within the Penobscot River.

45. The Defendants threaten to violate the federal law rights of the Nation's law enforcement officers to exercise exclusive authority over hunting, trapping, and other taking of wildlife within the Penobscot River.

46. The Nation and its law enforcement officers face irreparable harm if the Defendants violate the right of the Nation's law enforcement officers to exercise their exclusive enforcement authority over hunting, trapping, and other taking of wildlife

within the Penobscot River.

47. The Nation is likely to succeed on the merits of its claims that, as a matter of federal law, its law enforcement officers have exclusive authority to enforce the Nation's ordinances governing hunting, trapping and other taking of wildlife within the Penobscot River surrounding Indian Island and other islands northward thereof.

48. The public interest will be furthered by an injunction preventing Defendants from interfering with the exclusive authority of the Nation's law enforcement officers to enforce the Nation's laws regulating hunting, trapping and other taking of wildlife within the Penobscot River.

49. Any harm to the Defendants resulting from an injunction preventing the Defendants from interfering with the exclusive authority of the Nation's law enforcement officers to enforce the Nation's laws regulating hunting, trapping and other taking of wildlife within the Penobscot River surrounding Indian Island and other islands northward thereof is minimal compared to the harm befalling the Nation without the injunction.

WHEREFORE, the Penobscot Nation requests that this Court: (a) issue a declaratory judgment against the Defendants that the Nation's law enforcement officers have the right to exercise exclusive authority over hunting, trapping, and other taking of wildlife within the Penobscot River surrounding Indian Island and other islands northward thereof; and (2) issue an injunction enjoining the Defendants and their agents,

employees, representatives, or anyone else subject to their authority, or acting on their behalf, from engaging in any action that would violate, or threaten to violate said right of the Nation's law enforcement officers to exercise exclusive authority over hunting, trapping, and other taking of wildlife. The Nation respectfully asks for such further relief, including costs, as this Court deems just and equitable.

Dated: August 20, 2012

/s/ Kaighn Smith Jr.

Kaighn Smith Jr., Esq.

Adrianne E. Fouts, Esq.

Michael L. Buescher, Esq.

Attorneys for Plaintiff Penobscot Nation

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