

NOTES

Penobscot Nation v. Mills: First Circuit Dodges the Indian Canon of Construction to Diminish the Water Rights of the Penobscot Nation

I.	OVERVIEW	107
II.	BACKGROUND	108
	A. <i>The Indian Canon of Construction</i>	108
	B. <i>Alaska Pacific Fisheries v. United States and Interpreting Water Rights</i>	109
	C. <i>Historical Context: The Penobscot Nation and The Maine Indian Claims Settlement Act</i>	110
	1. The Settlement Acts	110
	2. <i>Maine v. Johnson</i> , Delineation of Water Rights, and Sovereignty	111
III.	COURT’S DECISION.....	113
	A. <i>Alaska Fisheries Analysis</i>	114
	B. <i>Sustenance Fishing Rights</i>	115
	C. <i>Dissent</i>	115
IV.	ANALYSIS	116
V.	CONCLUSION	118

I. OVERVIEW

The Penobscot Nation (Nation) is a federally recognized tribe in Maine with a reservation along a sixty-mile stretch of the Penobscot River.¹ The reservation consists of a collection of islands within the main stem (Main Stem) of the Penobscot River.² On August 8, 2012, at the request of the Maine Warden Service and the Maine Department of Inland Fisheries and Wildlife, Maine’s former Attorney General William Schneider issued a legal opinion to determine the agencies’ regulatory jurisdictions on the main stem of the river.³ In the opinion, the Attorney General stated that “the . . . Nation may lawfully regulate hunting on, and restrict access to, the islands within the River . . . that comprise its

1. *Penobscot Nation v. Mills*, 861 F.3d 324, 327 (1st Cir. 2017).

2. *Id.*

3. *Id.* at 327-28.

Reservation’ . . . and that ‘the State of Maine has exclusive regulatory jurisdiction over activities taking place on the River.’”⁴ In response to the legal opinion, the Nation filed suit in federal court against the State of Maine, seeking a declaratory judgment that the opinion misinterprets the federal law that defines the Penobscot Indian Reservation’s boundaries.⁵

The district court ruled that the Penobscot Indian Reservation, under the Maine Implementing Act (MIA) and the Maine Indian Claims Settlement Act (MICSA), consisted solely of the islands in the Main Stem, not the adjacent waters, and that the sustenance fishing rights in MIA allowed the Nation to take fish in the Main Stem for sustenance.⁶ The Penobscot Nation appealed the district court’s ruling to the United States Court of Appeals for the First Circuit, which *held* that the definition of Penobscot Indian Reservation in MIA and MICSA includes only the islands in the Main Stem, excluding adjacent water, and vacated the sustenance fishing ruling due to the Nation’s lack of standing. *Penobscot Nation v. Mills*, 861 F.3d 324, 329 (1st Cir. 2017).

II. BACKGROUND

A. *The Indian Canon of Construction*

The Indian canon of construction is a doctrine of interpretation that informs courts’ review of federal laws governing the rights of Indian tribes.⁷ Originally applied to Indian treaties, the canon has evolved to incorporate congressional statutes and executive orders.⁸ A foundational principle in the Indian canon of construction is the concept that “statutory construction [does] not have [its] usual force in cases involving Indian law.”⁹ First articulated in the Supreme Court of the United States’ decision in *Worcester v. Georgia*, Justice McLean’s concurring opinion stated that “[t]he language used in treaties with the Indians should never be construed to their prejudice.”¹⁰ When confronted with construing ambiguous statutes, the Court has held that in government dealings with Indians, “construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the

4. *Id.* at 328; ME. REV. STAT. ANN. tit. 30 (30 M.R.S.A.), §§ 6203(8), 6207(4) (2010); 25 U.S.C. § 1722(i) (2012).

5. *Penobscot Nation*, 861 F.3d at 328.

6. *Penobscot Nation v. Mills*, 151 F. Supp. 3d 181, 222-23 (D. Me. 2015), *aff’d in part, rev’d in part*, 861 F.3d 324 (1st Cir. 2017); Maine Indian Claims Settlement Act, 25 U.S.C. § 1722 (2012).

7. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 2.02 (Nell Jessup Newton ed., 2012).

8. *Id.*

9. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985).

10. *Worcester v. Georgia*, 31 U.S. 515, 582 (1832) (McLean, J., concurring).

United States, are to be resolved in favor of . . . [Indians].”¹¹ However, for a court to utilize the Indian canon of construction, ambiguities must be present in order to choose a favorable interpretation.¹² The Supreme Court limited the canon’s application to situations where statutory ambiguities exist, holding that the canon “does not permit reliance on ambiguities that do not exist; nor does [the canon] permit disregard of the clearly expressed intent of Congress.”¹³

B. Alaska Pacific Fisheries v. United States and Interpreting Water Rights

The Supreme Court first applied the Indian canon of construction to the water rights of Indian tribes in *Alaska Pacific Fisheries v. United States*.¹⁴ *Alaska Fisheries* concerned the legal rights of the Metlakahtla Indians who had emigrated and settled on the Annette Islands in southeastern Alaska.¹⁵ The United States encouraged the emigration of the tribe, and Congress ultimately created a reservation defined as follows:

That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska, on north side of Dixon’s entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians . . . to be held and used by [the tribe], under such rules and regulations, and subject to such restrictions, as may [be] prescribed from time to time by the Secretary of the Interior.¹⁶

In determining the tribe’s legal rights to the waters surrounding the islands in a dispute with non-Indian fisheries, the Court turned to the construction of MICSA.¹⁷ The question of construction was resolved by interpreting the congressional intent regarding the meaning of “the body of lands known as the Annette Islands.”¹⁸ The Court approached the issue of congressional intent by probing “the circumstances in which the reservation was created—the power of Congress in the premises, the location and character of the islands, the situation and needs of the

11. Choate v. Trapp, 224 U.S. 665, 675 (1912).

12. South Carolina v. Catawba Indian Tribe, Inc., 476 U.S. 498, 506 (1986).

13. *Id.*

14. Alaska Pac. Fisheries v. United States, 248 U.S. 78, 89 (1918) (citing *Choate*, 224 U.S. at 675).

15. *Id.* at 86-87.

16. *Id.*

17. *Id.* at 89.

18. *Id.*

Indians and the object to be attained.”¹⁹ Because the fishing sustenance provided by the waters was an essential feature of the reservation and Congress intended the tribe to flourish, the Court held that the collection of islands and the adjacent bodies of water constituted one body of land.²⁰ This decision reiterated “the general rule that statutes passed for the benefit of dependent Indian tribes or communities are to be liberally constructed, doubtful expressions being resolved in favor of the Indians.”²¹

The Court also continued to use the reasoning of *Alaska Fisheries* to interpret the construction of treaties. In *Choctaw Nation v. Oklahoma*, the Supreme Court ruled that the lands underlying navigable waters of the Arkansas River were intended to be part of the Choctaw and Cherokee Nations.²² Under the treaties between the Nations and the United States, they were granted the territory:

[B]eginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to the red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning.²³

The ambiguity of the water rights construed in the treaty compelled the Court to ask whether the United States intended to convey the river bed to the Indian Nations.²⁴ In determining the United States’ intention, the Court considered the practical implications of denying the Indian Nations’ ownership of the river bed and the promise of complete sovereignty.²⁵

C. *Historical Context: The Penobscot Nation and the Maine Indian Claims Settlement Act*

1. The Settlement Acts

When Maine gained statehood in 1820, it assumed the treaties of Massachusetts that transferred most of the Penobscot’s aboriginal titled lands to the state.²⁶ It was not until the 1970s that Maine’s and Massachusetts’ violation of the Indian Nonintercourse Act, which prohibited the purchase of Indian lands without congressional approval,

19. *Id.*

20. *Id.* at 89.

21. *Id.* (citing *Choate v. Trapp*, 224 U.S. 665, 675 (1912)).

22. *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 635 (1970).

23. *Id.* at 629.

24. *Id.* at 633.

25. *Id.* at 635 (citing *Atl. & P.R. Co. v. Mingus*, 165 U.S. 413, 435-36 (1897)).

26. *Penobscot Nation v. Mills*, 861 F.3d 324, 341-46 (1st Cir. 2017).

came to light.²⁷ In an effort “to remove the cloud on the titles to land in the State of Maine resulting from Indian claims,” the Settlement Acts of 1980 retroactively ratified the transfers of land between the states and the Penobscot Nation.²⁸ The Settlement Acts consist of a pair of federal and state acts that include MICA passed by Congress and MIA passed by the state of Maine.²⁹ The state Act serves to implement the federal Act.³⁰ The federal-state structure of the Settlement Acts presents unique problems for traditional canons of construction because it relies on the state’s interpretations of congressional intent. For example, MICA leaves the definition of the Penobscot Reservation to “[mean] those lands as defined in the Maine Implementing Act,” which assigns the definition of the boundaries of the reservation to Maine.³¹ The complementary MIA provision defines the Penobscot Indian Reservation as “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.”³²

MIA also provides a provision for the regulation of fish and wildlife resources.³³ Under MIA section 6207(1)(B), the Penobscot Nation is given exclusive authority to enact ordinances regulating the “[t]aking 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.”³⁴ Additionally, the Penobscot Nation “may take fish, within the boundaries of their [reservation], for their individual sustenance.”³⁵

2. *Maine v. Johnson*, Delineation of Water Rights, and Sovereignty

The First Circuit discussed the sovereign rights of the Penobscot Nation and their authority to regulate the waters of the Penobscot River in *Maine v. Johnson*.³⁶ In examining a dispute between two Penobscot River Indian tribes, Maine, and the Environmental Protection Agency

27. 25 U.S.C. § 177 (2012); see generally *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975).

28. *Penobscot Nation*, 861 F.3d at 332-33.

29. *Id.* at 327.

30. The Settlement Acts are archived online with the Maine Indian Tribal-State Commission. *Section: Statutes*, MITSC, <http://www.mitsc.org/library.php?do=section&name=Statutes> (last visited Oct. 9, 2017).

31. 25 U.S.C. § 1722(i).

32. ME. REV. STAT. tit. 30, § 6203(8) (2010).

33. *Id.* § 6207.

34. *Id.*

35. *Id.* § 6207(4).

36. *Maine v. Johnson*, 498 F.3d 37, 40 (1st Cir. 2007).

(EPA) over regulatory authority of the discharge of pollutants into navigable waters, the court explored the role of the tribes' sovereignty granted by the Settlement Acts to determine whether the EPA could supersede Maine's regulatory authority over two Indian pollution source points on Indian reservations.³⁷ Concerned with the adequacy of Maine's regulations to protect the tribes' interest in sustenance fishing in the river, the EPA refused to approve Maine's authority to regulate the Indian facilities on the reservations.³⁸

The tribes argued that their inherent sovereignty remained intact under the Settlement Acts and would protect them from the state's regulatory authority over the discharges from facilities within Indian reservations into the river.³⁹ However, MIA explicitly states the relationship of Indian tribes to Maine as follows:

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.⁴⁰

Aside from the exception provided in MIA that retains Indian sovereignty for "internal tribal matters," the Indian tribes are subject to the laws of Maine.⁴¹ The court dismissed the tribes' argument that the Indian facilities' discharge was an internal tribal matter under MIA and found that the activity was within Maine's jurisdiction.⁴² The tribes proposed another argument for excluding Maine's jurisdiction by using the language of MICSA to argue that land held in trust for the tribes grants them a share of regulatory authority.⁴³ The court held that even if the tribes' lands were held in trust, Maine's law would apply, and that the tribes' lands in question were most likely reservations created by the Settlement Acts.⁴⁴ Furthermore, the court provided a statutory interpretation of MIA's definition of the reservation boundaries that looked to "the earlier agreements between the tribes and Massachusetts and Maine."⁴⁵ While not explicitly outlining the reservation boundaries,

37. *Id.* at 45.

38. *Id.* at 40.

39. *Id.* at 42.

40. ME. REV. STAT. tit. 30, § 6204.

41. *Id.* § 6206(1).

42. *Johnson*, 498 F.3d at 46.

43. *Id.* (citing 25 U.S.C. § 1724(h) (2012)).

44. *Id.* at 47.

45. *Id.*

the court implied that the surrounding waters of the island reservations were within the reservation.⁴⁶

The EPA argued that under the “general trust relationship between the federal government and the tribes,” the agency has authority to review permits issued by Maine, in order to protect the interests of tribes.⁴⁷ Maine contested the EPA’s trust obligation to the tribes and that the EPA could protect the sustenance fishing rights provided by the Settlement Acts.⁴⁸ Ultimately, the court did not consider the issue ripe and left the question of EPA’s trust obligation unresolved.⁴⁹

III. COURT’S DECISION

In the noted case, the United States Court of Appeals for the First Circuit upheld in part the lower district court’s ruling that the Penobscot Indian Reservation included the islands in the Main Stem, excluding the adjacent submerged lands and water, and vacated the district court’s ruling on the Nation’s claim to fishing sustenance rights under MIA section 6207(4).⁵⁰

In reviewing the construction of MIA section 6203(8), the court opted to bypass the Indian canon of construction in favor of “traditional rules of statutory construction to the Settlement Acts.”⁵¹ By concluding that the statutory language of the act was unambiguous, the court limited its interpretation to the plain meaning provided in the statutory text.⁵² The court’s analysis of the reservation’s definition focused on two phrases in MIA section 6203(8): what “the islands in the Penobscot River” means and how the word “solely” operates in relation to the islands’ boundaries.⁵³

To resolve the first issue, the court applied the ordinary use of “island” by consulting dictionary definitions and held that the “islands” do not include the surrounding waters or submerged lands.⁵⁴ The court supported its exclusion of the surrounding waters by determining the

46. *Id.*

47. *Id.* (citing State Program Requirements; Approval of Application by Maine To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine, 68 Fed. Reg. 65052-01 (Nov. 18, 2003) (“Therefore, EPA concludes that MICSA and the CWA combine to charge EPA with the responsibility to ensure that permits issued by Maine address the southern tribes’ uses of waters within the state, consistent with the requirements of the CWA.”)).

48. *Id.*

49. *Id.* at 47-48.

50. *Penobscot Nation v. Mills*, 861 F.3d 324, 327 (1st Cir. 2017).

51. *Id.* at 329.

52. *Id.* at 330 (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

53. *Id.* at 329-35.

54. *Id.* at 330.

phrase “consisting solely of Indian Island, . . . and all islands in that river northward thereof,” restricts the definition of the Nation’s islands.⁵⁵ The court supported this limitation by citing the Supreme Court’s interpretation of “solely” in *Helvering v. Southwest Consolidated Corp.*, which interpreted it as an unambiguously restrictive term.⁵⁶

The court continued its analysis of construing “island” by looking to the provision in MICSA that defers responsibility for defining the Penobscot reservation boundaries from the federal government to the state.⁵⁷ To support the limited definition employed in the state’s implementing act, the court highlighted the language used to confer that authority, applying the ordinary meaning of “lands” provided by 25 U.S.C. § 1722(i), where “‘Penobscot Indian Reservation’ means those lands as defined in [MIA].”⁵⁸

Next, the court addressed the Nation’s argument that the previous treaties between the Nation and the States of Massachusetts and Maine are referenced in MIA’s definition of the reservation.⁵⁹ The court distinguished the language of previous treaties as “specifying” language to identify the islands in the provision, which does not modify the meaning of the islands.⁶⁰ Finding that “[t]he treaties no longer have meaning independent of the Maine Settlement Acts,” the court restricted its interpretation of the reservation’s boundaries to the statutory text.⁶¹

A. *Alaska Fisheries Analysis*

In response to the Nation’s argument that the holding in *Alaska Fisheries* provides the relevant precedent for interpreting MIA section 6203(8) definition of “islands,” the court distinguished the present circumstances as “lack[ing] any comparable ambiguity.”⁶² As a corollary to the holding that the statutory language is unambiguous, the court held that it was unnecessary to apply the methodology of *Alaska Fisheries* to construe a favorable interpretation of the statute and to explore its legislative history.⁶³ Accordingly, the court concluded that the similarities between *Alaska Fisheries* and the present case were merely “superficial.”⁶⁴

55. *Id.* at 330-31.

56. *Id.* at 331 (quoting *Helvering v. Sw. Consol. Corp.*, 315 U.S. 194, 198 (1942)).

57. *Id.* at 332.

58. *Id.* (quoting 25 U.S.C. § 1722(i) (2012)).

59. *Id.* at 333.

60. *Id.*

61. *Id.* at 337.

62. *Id.* at 334.

63. *Id.* at 333-34.

64. *Id.*

B. Sustenance Fishing Rights

The court next addressed the Nation's claim that the Attorney General's opinion posed a threat to the sustenance fishing rights of the Nation and dismissed the issue for lack of standing.⁶⁵ The court held that the standing requirement for injury was unsatisfied by the Nation's claim.⁶⁶ Because Maine had not interfered with the Nation's sustenance fishing and had no impending policy that challenged the Nation's activity, the Nation could not support its claim that there was injury for standing.⁶⁷

C. Dissent

Judge Torruella's dissent raised three reasons why the construction of MIA was ambiguous and required more analysis of the circumstances surrounding the Penobscot Reservation: (1) the Supreme Court precedent in *Alaska Fisheries*; (2) the treaties between the Nation, Massachusetts, and Maine; and (3) the Settlement Acts' provision for the right of sustenance fishing under 30 M.R.S.A. section 6207(4).⁶⁸

In addition to finding the statutory language ambiguous, the dissent found the application of the Indian canon of construction necessary to properly define the reservation boundaries.⁶⁹ The dissent argued that despite the ambiguity of the statutory language, the Indian canon was applicable because "treaties 'must . . . be construed . . . in the sense in which they would naturally be understood by the Indians.'"⁷⁰

The dissent raised the ruling in *Maine v. Johnson* to show how the First Circuit had previously held that the reservations included some parts of the river, despite failing to define those exact boundaries.⁷¹ Consequently, the dissent found that the majority opinion contradicted the court's previous interpretation of the reservation's boundaries.⁷²

Lastly, the dissent argued that the sustenance fishing provision under MIA section 6207(4) must be considered in construing the reservation's boundaries.⁷³ Considering the historical importance of sustenance fishing, its careful negotiation in the Settlement Acts, and the absurd result created by the majority's decision that the sustenance fishing is

65. *Id.* at 336-38.

66. *Id.* at 336.

67. *Id.* at 337.

68. *Id.* at 338-39.

69. *Id.* at 340.

70. *Id.* (quoting *South Dakota v. Bourland*, 508 U.S. 679, 701 (1993)).

71. *Id.* at 351 (citing *Maine v. Johnson*, 498 F.3d 37, 47 (1st Cir. 2007)).

72. *Id.*

73. *Id.* at 351-52.

restricted to “uplands of their islands, on dry land where there are no fish and no places to fish,” the dissent criticized the majority for overlooking the body of related evidence in defining the reservation’s boundaries.⁷⁴

IV. ANALYSIS

The majority opinion and dissent provide radically divergent analytical frameworks to interpret the Nation’s boundaries under the Settlement Acts. The majority begins its analysis by committing itself to the traditional rules of statutory interpretation over the Indian canon of construction. By determining that the term “island” in MIA is unambiguous, the majority decides against subjecting the term to the voluminous information that suggests a more ambiguous meaning. This step in the majority’s reasoning suggests that the starting point for applying the Indian canon of construction begins with a limited analysis over the plain meaning of the text, without the need to consider conflicting language in the statute, prior jurisprudence, congressional intent, and relevant statutory history. This approach to construction, in the context of determining the boundaries of an Indian reservation, appears at odds with the complexity and character of the statutory scheme of the Settlement Acts as a compromise between the U.S. government and the Penobscot Nation. By limiting its statutory construction exclusively to the text, the majority failed to recognize the absurd result of its interpretation. There is an apparent inconsistency in the majority’s finding that no absurd results occur if the Nation’s boundaries exclude surrounding waters while other provisions in MIA outline specific sustenance fishing rights for the Penobscot Nation within its own territory. Without including any water in the reservation’s boundaries, the sustenance fishing provision is rendered nearly useless if applied to the upland waters of the islands.

The dissent’s analysis approaches the term “island” as an arguably ambiguous term; however, it also asserts that question of ambiguity is not dispositive of whether the Indian canon of construction is necessary to determine the reservation boundaries.⁷⁵ The character of the Settlement Acts as a compromise between the Nation and the United States mandates the Indian canon of construction. A significant distinction between the majority and dissent is present in how they determine the relevance of the previous treaties and statutory history of the Settlement Acts. The majority’s proposition that the previous treaties between the

74. *Id.* at 338-39.

75. *Id.* at 340.

Nation and the States of Maine and Massachusetts are subsumed in the formation of the Settlement Acts leaves a large piece of statutory history missing from its analysis that the dissent finds necessary. The majority's evasion of the history of the Settlement Acts may be omitting crucial information necessary to understand the relevant statutory provisions of MIA that determine the reservation boundaries.

The ruling in the noted case has the potential to restrict the EPA in its future efforts to review the discharge permits issued by Maine in the Penobscot River. While the court left the issue of the EPA's authority to deny Maine's permits to protect the interests of the tribes unresolved in *Johnson*, the ruling in *Penobscot Nation* may significantly affect the EPA's trust obligation theory by reducing the reservation's lands to incorporate only the waters on the island, in exclusion of the surrounding waters where sustenance fishing is understood to take place. Without the adjacent waters of the islands included in the reservation, the Penobscot Nation's sustenance fishing rights do not extend into the adjacent waters of the islands or any water in the Penobscot River. Accordingly, in the event Maine issues a discharge permit that impacts the health of the river, the EPA may not be able to defend the sustenance fishing rights of the Nation. While the court evades the issue of sustenance fishing rights by finding a lack of standing, it does so without confronting the legal consequences of defining the reservation as the islands exclusively. By interpreting the statutory construction of M.R.S.A. section 6203(8) as an unambiguous description of the Penobscot Reservation's boundaries, the court forfeits a body of information that would help clarify the meaning of the reservation as intended by Congress and as the Nation understood it.

The structure of the Settlement Acts presents a unique problem for the Indian canon of construction. Historically, the canon has applied to treaties, executive orders, and statutes, but the federal-state structure of the Settlement Acts may make it difficult for courts to weigh congressional intent.⁷⁶ By deferring the definition of the Penobscot Reservation's boundaries to Maine, Congress has given broad power to the state to determine the fate of the Penobscot Nation.⁷⁷ To what degree was Maine supposed to define the reservations with congressional intent of the statute in mind? Regardless of the Indian canon of construction, the House and Senate Reports during the creation of MICSA outlines Congress's vision for the tribes as follows: "The settlement . . . provides

76. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, *supra* note 7, § 2.02.

77. 25 U.S.C. § 1722(i) (2012).

that the Passamaquoddy Tribe and the Penobscot Nation 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.”⁷⁸ Given that Congress considered the historical treaties in defining the reservations when drafting MICSA, dissonance between the state and federal statutes surfaces when Maine excludes an analysis of the historical context of the reservations when defining its boundaries.

Another question arises as to whether the reasoning provided in *Alaska Fisheries* should apply, considering the different statutes at work (a congressional statute in *Alaska Fisheries* and a pair of statutes in the Settlement Acts). Does the language of MIA, which the majority finds unambiguous, necessarily preclude an analysis of congressional intent? The majority’s decision would suggest that the Indian canon of construction is unavailable when there is unambiguous statutory language, regardless of whether conflicting congressional intent exists.

V. CONCLUSION

The holding in the noted case provides a unique example where the First Circuit chose not to apply the Indian canon of construction. By choosing to interpret the statutory language of the Settlement Acts as unambiguous, the court precludes a weightier analysis of the circumstances surrounding the definition and rights of the Penobscot Nation. The decision will have further implications for the EPA in future actions defending the interests of the tribes. While the court chose not to scrutinize the sustenance fishing rights of the tribes because of a lack of standing, the reservation’s boundaries as interpreted by the court imply that no such rights exist in the Penobscot River. The unanswered question of the tribe’s sustenance fishing rights may be the center of future litigation when the EPA attempts to carry out its federal trust responsibilities to the tribes. This case may prove to be a significant setback for the tribes’ protection by federal agencies considering the new boundaries of the reservation.

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78. H.R. REP. NO. 96-1353, at 18 (1980).

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