

PENOBSCOT NATION
Department of Natural Resources

Response to Comments on Draft Water Quality Standards

On June 11, 2014, the Penobscot Nation Department of Natural Resources (“Department”) published a notice in the Bangor Daily News stating that draft Penobscot Water Quality Standards (“WQS”) were available for public review and comment prior to adoption of final WQS by the Penobscot Nation. A copy of the notice, together with a copy of the draft WQS, also was made available on the Department website, and copies of the notice and WQS were emailed directly to the U.S. Environmental Protection Agency, Region 1 (New England), Maine Department of Environmental Protection, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, Atlantic Salmon Federation, Maine Rivers, Penobscot River Restoration Trust, and Penobscot Nation tribal government officials and employees. The public was given until August 11, 2014 to provide written comments. The Department also held a public hearing on August 6, 2014, at the Penobscot Nation Community Center, Indian Island, Maine, to give the public the opportunity to present their comments orally as well as in writing.

The Department received written comments from two members of the public, the Natural Resources Council of Maine, the State of Maine, and a coalition of companies and municipalities with interests in the Penobscot River watershed (“Municipal and Industry Coalition”).¹ The Department also received oral comments from 18 individuals at the public hearing. The Department has reviewed all the comments it received from the above-described outreach and is responding to all significant comments, as set forth below:

Comments Received at Public Hearing

Approximately 50 people attended the public hearing. Of the 18 people who spoke at the hearing, half were Penobscot members and the other half were nearby residents and other interested individuals. All 18 commenters spoke in support of the WQS.

All the Penobscot commenters described the central role that the Penobscot River plays in the life of the tribe and of their obligation as tribal members to protect the river. The commenters noted the close contact that they have with the river, from living next to it, swimming in it, and eating fish from it. Several also noted their dependence on the river for their cultural and traditional practices and beliefs, which involve using the river itself, plants that grow in and around it, and animals that live and swim in it and frequent its shores. These commenters also described the spiritual quality that the river has in Penobscot culture.

¹ The Municipal and Industry Coalition consists of the City of Brewer, Town of Bucksport, Town of East Millinocket, Town of Howland, Town of Lincoln, Town of Mattawamkeag, Town of Millinocket, Town of Orono, Guilford-Sangerville Sanitary District, Lincoln Sanitary District, Veazie Sewer District, Covanta Maine, LLC, Great Northern Paper Company, LLC, Kruger Energy (USA) Inc., Lincoln Paper and Tissue, LLC, Red Shield Acquisition, LLC, True Textiles, Inc., and Verso Paper Corporation.

In light of their connection to the Penobscot River, Penobscot commenters emphasized that the health of the river is critical to the tribe's survival, in terms of preserving tribal culture, protecting the health of individual tribal members, and safeguarding the plants and wildlife that depend upon the river and its ecosystem. Several commenters stated that they viewed themselves as stewards of the river, and several viewed the WQS as being an expression of the tribe's sovereignty and right to protect its culture and very existence. A number of nonmember commenters agreed, stating that the Penobscot Nation has been the best steward of the river and sets an example for others to follow.

Both member and nonmember commenters expressed concerns with proposed development in and around the river and its watershed. Specific concerns mentioned were the east-west corridor, mountaintop mining, landfills, and an oil pipeline. The commenters saw the WQS as a way to protect the river and ensure its management as a resource now and for future generations.

All commenters expressed appreciation to the Penobscot Nation, and to the Penobscot Nation Department of Natural Resources in particular, for developing the WQS.

Response to Public Hearing Comments

The Department sincerely thanks the commenters for their support and encouragement.

Written Comments Received

Comment 1:

The Natural Resources Council of Maine commented in support of the Penobscot WQS and expressed particular support for criteria in the WQS that reflect increased fish consumption rates and also for the bacteria and chlorophyll a criteria in the WQS.

Response to Comment 1:

The Department appreciates the support of the Natural Resources Council of Maine and its recognition of the importance of water quality for the Penobscot River and the Penobscot Nation.

Comment 2:

Anne D. Burt, an environmental justice consultant, commented in support of the Penobscot WQS and the Nation's oversight of water quality in Penobscot Waters.

Response to Comment 2:

The Department is grateful for the support of its draft standards and its efforts to protect water quality in Penobscot Waters.

Comment 3:

Read Brugger, a member of the public, commented in support of the Penobscot WQS and the Penobscot Nation's stewardship over its water resources. He stated that the WQS would contribute to the health of the Penobscot River, ensure compliance with federal standards when state standards are less stringent than the federal, and provide for management of water resources in a manner benefiting all members of the community.

Response to Comment 3:

The Department appreciates the expression of support for the WQS. To clarify a point made in Mr. Brugger's comment, Penobscot Waters will be subject to standards that are at least as stringent as federal water quality criteria, as required by Clean Water Act ("CWA") § 510. Penobscot standards may be more stringent than federal standards pursuant to CWA § 510 and 40 C.F.R. § 131.4(a). Moreover, since Penobscot WQS may not be less stringent than the federal, they will not incorporate criteria in the Maine WQS that do not meet CWA requirements. See Response to Comment 5.

Comment 4:

The State of Maine commented that the Penobscot Nation does not have environmental regulatory authority over Penobscot Waters (as defined in the Penobscot WQS) due to the Maine Indian Land Claims Settlement Act, 25 U.S.C. § 1721 *et seq.*, and the Maine Implementing Act, 30 M.R.S.A. § 6201 *et seq.*, and therefore does not have the authority to enact the WQS.

Response to Comment 4:

The Penobscot Nation maintains that it has inherent sovereign authority to enact the WQS, as set forth in Section 101 of the WQS. See *Bottomly v. Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979) (until Congress acts, Indian tribes retain their inherent sovereign powers). The promulgation of water quality standards to protect the Nation's reservation sustenance fishery in the Penobscot River involves the exercise of just such authority. See *Wisconsin v. E.P.A.*, 266 F.3d 741, 748-49 (7th Cir. 2001) (discussing inherent sovereign authority of tribes to promulgate water quality standards); *Montana v. U.S. E.P.A.*, 137 F.3d 1135, 1141 (9th Cir. 1998) (same); *City of Albuquerque*, 97 F.3d at 418, 423 n.12 (same). Congress has not divested the Penobscot Nation of such authority.

Comment 5:

The State of Maine also commented that the Maine water quality standards are adequate and there is therefore no need for the Penobscot Nation to enact tribal standards.

Response to Comment 5:

The Maine WQS are in fact inadequate in several significant respects. For example, Maine's bacteria criteria for Class B and Class C waters, 38 M.R.S.A. § 465(3)(B) and (4)(B), respectively, are not as stringent as the current federal bacteria criteria and so violate CWA § 510

(see Response to Comment 3). Maine's criteria are based on 1986 EPA water quality criteria but EPA issued updated water quality criteria, including bacteria criteria, in 2012. The Penobscot standards for bacteria in waters designated primary human contact/cultural and ceremonial (Section 401(B)) and secondary human contact (Section 401(C)) are based on the 2012 EPA water quality criteria.

In addition, the human health criteria listed in the Penobscot WQS, Appendix IV, reflect a fish ingestion rate (286 grams per day), based on the Wabanaki Traditional Cultural Lifeways Exposure Scenario 2009, that is significantly higher than the rate used to calculate Maine's human health criteria (32.4 grams per day, except for inorganic arsenic which uses 138 grams per day in 06-096 CMR 584, Appendix A). Maine's human health criteria are therefore inappropriate for Penobscot Waters.

Also, even if the Maine WQS were adequate, the Penobscot Nation would have the right to impose more stringent standards if it determined that they were necessary. CWA § 510; 40 C.F.R. § 131.4(a). The Penobscot Nation determined that more stringent human health criteria were necessary to protect tribal members that consume a significant amount of fish and shellfish from Penobscot Waters in accordance with traditional and cultural practices.

Finally, the Penobscot Nation wishes to make clear that, at the same time as its WQS are more stringent than the Maine WQS in some instances, in all instances the Penobscot WQS are intended to be at least as stringent as the Maine WQS. The Penobscot WQS have therefore been revised by adding language in Section 101(B) and Section 404(E) to clarify this intent.

Comment 6:

The Municipal and Industry Coalition maintains that the Penobscot Nation does not have jurisdiction over Penobscot Waters, as defined in the Penobscot WQS, because the Maine Implementing Act, 30 M.R.S.A. § 6203(8), does not specify that the waters surrounding the Penobscot Indian Reservation are part of the Reservation.

Response to Comment 6:

The Penobscot Nation disagrees with the Coalition. As the United States Department of the Interior has confirmed, the Penobscot Indian Reservation includes the Penobscot River wherein Congress confirmed that the Penobscot Nation engages in "expressly retained sovereign activities," namely, sustenance fishing, hunting, and trapping. S. Rep. No. 96-957, at 15; H.R. Rep. No. 96-1353, at 15, *reprinted in* 1980 U.S.C.C.A.N. at 3791. *See, e.g.,* Letter from U.S. Department of the Interior Deputy Solicitor General Edward B. Cohen to U.S. EPA Region 1 Regional Administrator John P. DeVillars, p. 4 (Sept. 2, 1997).² *See also* Opinion of Maine Attorney General James Tierney, dated February 16, 1988 to William J. Vail, Chair, Atlantic Sea Run Salmon Commission (confirming the Penobscot Nation's sustenance fishing right in the

² The letter from Edward B. Cohen is an attachment to the Penobscot Nation's 2012 request for an EPA determination of qualification for NPDES permit program approval, available at <http://www.epa.gov/region1/govt/tribes/pdfs/cd/PINRequest4NPDESTAS.pdf>.

Penobscot River)³; Letter from Bennett Katz, Chair, Maine Indian Tribal State Commission, dated November 1, 1995, to Lois Cashell, Secretary, FERC (same).⁴

Comment 7:

The Municipal and Industry Coalition comments that the Penobscot Nation cannot receive “treatment as a state” (“TAS”) to establish water quality standards under CWA § 518 due to the provisions of the Maine Indian Claims Settlement Act and the Maine Implementing Act, the legislative history of CWA § 518, and the holding in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007).

Response to Comment 7:

This comment is not a comment on the Penobscot WQS but rather on the Penobscot Nation’s authority to seek TAS for a water quality standards program under the CWA. It therefore is not addressed here. The Municipal and Industry Coalition may raise the comment at such time as the Penobscot Nation seeks TAS, and it will be addressed as part of that process.

Comment 8:

The Municipal and Industry Coalition maintains that sustenance fishing is not permitted in waters outside the Penobscot Indian Reservation, that the Penobscot Waters regulated in the Penobscot WQS are outside of the Penobscot Indian Reservation, and that sustenance fishing therefore cannot be included as a designated use in the Penobscot WQS.

Response to Comment 8:

See Response to Comment 6. Also, sustenance fishing is a valid designated use under CWA §§ 101(a)(2) and 303(c)(2) and 40 CFR Part 131 because it is designed to protect the health and welfare of tribal members, enhance water quality, and serve the purposes of the CWA.

Comment 9:

The Municipal and Industry Coalition maintains that numerous narrative and numeric water quality standards are unclear, inconsistent with existing Maine standards, and/or

³ The opinion of Attorney General Tierney is attached as Exhibit B to the United States’ Complaint in Intervention in case 1:12-cv-00254-GZS, Document 58-2 (filed 2/4/14), United States District Court for the District of Maine, available via PACER, <https://pacer.login.uscourts.gov/csologin/login.jsf?appurl=pcl.uscourts.gov/search>.

⁴ The letter of Bennett Katz is attached as Exhibit 1 to the United States’ Reply to the State of Maine’s Opposition to the United States’ Motion to Intervene in case 1:12-cv-00254-GZS, Document 46-2 (filed 9/20/13), United States District Court for the District of Maine, available via PACER <https://pacer.login.uscourts.gov/csologin/login.jsf?appurl=pcl.uscourts.gov/search>.

inappropriate for regulation of the Penobscot River and its tributaries and branches. Their specific comments and the Department's corresponding responses are provided below.

Comment 9a:

Penobscot WQS § 101 promotes the “propagation of native and other desirable aquatic plant and animal life,” but such propagation may be inconsistent with the protection of indigenous fish and other aquatic species under the Maine WQS.

Response to Comment 9a:

The Penobscot WQS are separate and distinct from the Maine WQS. As such, the Penobscot Nation is entitled to promote different priorities from Maine in its WQS even if the Penobscot priorities have the potential to be inconsistent with Maine priorities. However, the propagation of native and other aquatic plant and animal life under the Penobscot WQS is intended to complement, not conflict with, the propagation of indigenous aquatic species pursuant to the Maine WQS. Moreover, the Penobscot WQS are intended to be at least as stringent as the Maine WQS (see Response to Comment 5).

Comment 9b:

Penobscot WQS § 101 refers to future beneficial uses of Penobscot Waters, but future uses are not clearly identified and will likely conflict with Maine regulations.

Response to Comment 9b:

Future uses of Penobscot Waters cannot be identified in the WQS because they are, by definition, not currently occurring in Penobscot Waters. Future uses may be impacted by a range of social, economic, and other conditions on the Penobscot Nation and in and upstream from Penobscot Waters. However, the potential future uses of any Penobscot Waters are currently limited to the designated uses listed in Subchapter IV of the Penobscot WQS and include domestic, cultural, agricultural, recreational, and industrial uses. Table 1 identifies the current designated uses of all Penobscot Waters. Any revisions to those designated uses would need to be made pursuant to the process outlined in WQS § 105, which provides, among other things, for public notice and comment and judicial review in Penobscot Nation Tribal Court.

Future uses of Penobscot Waters are not likely to conflict with designated uses of Maine waters. Under 40 CFR § 131.10, the designation of uses must “take into consideration the water quality standards of downstream waters” and ensure that “water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”

Comment 9c:

Penobscot WQS § 102 applies the water quality standards to all persons and all activities within the Penobscot Nation, but it does not specify activities that will be regulated and is broader than activities regulated under Maine laws.

Response to Comment 9c:

Any activities that may affect water quality are covered by the WQS, but the only activities which may actually be impacted by the WQS are those which may cause degradation of Penobscot Waters, lead to violations of narrative or numeric standards, or otherwise violate the terms and conditions of the WQS, as specified in the WQS. It is therefore necessary to consider the WQS as a whole in order to identify covered activities, and by not listing specific regulated activities the WQS avoid the risk of over- or under-regulation. See also Response to Comment 5 (Penobscot WQS may be more stringent than Maine WQS).

Comment 9d:

The definition of “point source” in WQS § 103(29) does not contain many exemptions that are contained in Maine law (including erosion related to certain agricultural activities, aquaculture operations, and oil and hazardous substance spill response discharges).

Response to Comment 9d:

The exemptions to the definition of “point source” referenced by the Municipal and Industry Coalition are exemptions to the requirement to obtain a waste discharge license under Maine law, 38 MRSA 413. Those exemptions are not relevant here because the Penobscot WQS do not contain requirements for NPDES permits or other licenses for discharges. The definition of “point source” in WQS § 103(29) is consistent with the federal definition under the Clean Water Act.

Comment 9e:

WQS § 105(B)(8)(b) provides for revised standards to become effective upon approval of the Penobscot Nation Chief and Tribal Council, but revisions to WQS require EPA approval prior to taking effect.

Response to Comment 9e:

The Penobscot WQS are tribal law and, as such, do not require EPA approval before becoming effective as the law of the Penobscot Nation. WQS § 105(B)(8)(b) therefore does not require revision for the reason stated by the commenter. In reviewing this provision, however, the Department realized that, according to the Penobscot Nation’s internal legislative process, revisions to the WQS should not become effective until approved by the Penobscot Nation General Meeting, and the Department has revised the provision accordingly.

As a separate matter, to the extent that the Penobscot Nation desires to have the WQS effective for CWA purposes, then the WQS must be approved by EPA. *See* CWA § 303(c)(2), 33 U.S.C. § 1313(c)(2). WQS § 102 expressly provides that “[t]hese Standards will become applicable and effective for purposes of the Clean Water Act, 33 U.S.C. §§ 1251-1387, if and to the extent they are approved by EPA pursuant to Clean Water Act § 303(c), 33 U.S.C. §

1313(c).” This requirement is also acknowledged in WQS § 105(A), which states that “[w]henver the Nation revises or adopts a new standard, the revised or new standard shall be submitted to EPA for review pursuant to CWA § 303(c)(2), 33 U.S.C. § 1313(c)(2), as amended.”

Comment 9f:

WQS § 201(D) provides for the designation of certain high-quality waters as Outstanding Tribal Resource Waters, but this designation may conflict with Maine’s management goals for the same waters.

Response to Comment 9f:

The Nation has established valid designated uses, including the Outstanding Tribal Resource Waters designated use, under CWA §§ 101(a)(2) and 303(c)(2) and 40 C.F.R. Part 131, to protect the health and welfare of its members and enhance the quality of Penobscot Waters. As discussed in the Response to Comment 9a, the Penobscot WQS are separate and distinct from Maine WQS but the Penobscot Nation intends for its WQS to complement the Maine WQS. The Nation anticipates working with the State of Maine to resolve any discrepancies that may arise from the application of different designated uses in upstream and downstream waters. See also Response to Comment 5.

Comment 9g:

WQS § 202(A)(5) requires the “highest and best degree of wastewater treatment practicable,” but the Nation’s judgment may differ from the judgment of Maine or EPA, which would create uncertainties for dischargers.

Response to Comment 9g:

The Penobscot WQS are designed to ensure that the water quality of Penobscot Waters (a) meets the standards of the CWA, (b) is no less protected than under the standards required by Maine law, and (c) supports the uses of members of the Penobscot Nation, in particular, the taking of fish for sustenance. Although the Nation will exercise its discretion in determining the highest and best degree of wastewater treatment practicable and may require a more protective form of wastewater treatment than the State of Maine, this is no different than divergent requirements in neighboring states. Under the CWA and its implementing regulations, neighboring jurisdictions are encouraged to cooperate to ensure adequate protection of water resources. The Penobscot Nation is committed to working with the State of Maine to minimize the effects of Penobscot requirements that may be more stringent than those required by Maine.

Comment 9h:

WQS § 202(A)(6) notes that the Water Resources Program will develop water quality-based effluent limitations but does not specify the assumptions that would be used to develop such effluent limitations.

Response to Comment 9h:

The Department may specify assumptions that would be used to develop water quality-based effluent limitations in the future, but in the meantime will rely on “coordination with federal, tribal, and state agencies, as appropriate,” as provided in WQS § 202(A). Moreover, any assumptions used must be consistent with the federal requirements specified in 40 C.F.R. § 122.44(d).

Comment 9i:

WQS § 202(A)(13) provides for the Water Resources Program to determine whether in-stream flows and water levels are adequate to support designated uses, but existing uses and permits could be significantly impacted by any changes the Nation makes to existing flows.

Response to Comment 9i:

The Nation will take steps to ensure that its designated uses are adequately protected but will also work cooperatively with the State of Maine to prevent unintended or avoidable impacts on Maine’s WQS and permitting program. The Nation anticipates working with the State of Maine, as well as with EPA, to ensure adequate protection of Penobscot Waters. Nevertheless, the Nation may ensure that the designated uses of Penobscot Waters are supported in a manner consistent with the CWA and 40 C.F.R. Part 131, even if that means that Penobscot Waters are afforded more protection than under Maine’s standards.

Comment 9j:

WQS § 301(C) includes human health criteria based on a fish ingestion rate of 286 grams/day and a cancer risk level of 1×10^{-6} , but this approach creates the potential for dischargers to exceed criteria that are not considered violations under Maine law.

Response to Comment 9j:

The Nation’s WQS may be more stringent than Maine standards. See Responses to Comments 5 and 9g. *See also* 40 C.F.R. § 131.10(b). In order to ensure adequate protection of the health and welfare of tribal members, the fish ingestion rate is based on the Wabanaki Traditional Cultural Lifeways Exposure Scenario 2009, and specifically on the inland non-anadromous diet contained in that Scenario because the populations of anadromous species in Penobscot Waters are currently too low to be harvested in significant quantities. *See id.* The cancer risk level of 1×10^{-6} is based on the risk level used in EPA’s National Recommended Water Quality Criteria for deriving human health criteria for carcinogenic chemicals and the risk level used by Maine ([06-096 C.M.R. 584](#)) (ME DEP’s Surface Water Quality Criteria for Toxic Pollutants for all carcinogenic chemicals except inorganic arsenic).

Comment 9k:

The proposed temperature standard in WQS § 302 conflicts with the temperature standards in ME DEP Chapter 582 because the Penobscot standard does not provide for site-specific temperature criteria.

Response to Comment 9k:

There is no requirement in the CWA or federal regulations that the Penobscot WQS be the same as the Maine WQS, as noted in many of the responses above, nor is there a requirement for site-specific temperature criteria in lieu of generally applicable temperature criteria. In addition, it should be noted that in some instances the Penobscot WQS provide for temperature ranges (for example, WQS § 302). Moreover, the Penobscot WQS provide opportunities for site-specific conditions to be considered and taken into account, notably in the provisions for mixing zones (§ 307), variances (§ 502), and compliance schedules (§ 503).

Comment 9l:

WQS § 3 prohibits any filling or altering of wetlands, even if approved by the U.S. Army Corps of Engineers or Maine DEP under wetland permitting statutes.

Response to Comment 9l:

This appears to be a comment on Section 301(D) (prohibiting the placement into Penobscot Waters, including wetlands, of fill or related material). However, Section 301(D) specifically authorizes the placement of fill or similar materials into Penobscot Waters or onto their banks if authorized by a permit for the discharge of dredged or fill material issued by the U.S. Army Corps of Engineers under CWA § 404.

Comment 9m:

The commenter asks for the source of several of the standards for the primary human contact/cultural and ceremonial designated use in WQS § 401(B), including for chlorophyll a in WQS § 401(B)(2) and for several other contaminants listed in WQS § 401(B)(3). The commenter then states that the concentration of 8 µg/L for chlorophyll a in WQS § 401(B)(3) is inconsistent with any Maine criterion and that there are criteria listed in WQS § 401(D) for other substances (including total inorganic nitrogen, mercury, DDT, PCBs, and selenium) for which Maine does not have corresponding regulations.

Response to Comment 9m:

The water column chlorophyll a concentration of 8 µg/L is based on avoiding algal bloom conditions which when present can cause skin irritation, gastrointestinal disorders, or other health effects. The concentration used in the WQS is consistent with the water column chlorophyll a environmental response variable for class B, C, and GPA waters in Maine DEP's Draft Nutrient Criteria for Surface Waters (06-096 Chapter 583).

The Department reviewed the mercury criteria in WQS § 401(B)(3) as a result of this comment, and has revised the criteria to reflect the federal drinking water standard (MCL). This approach is now the same as the approach taken with the other criteria mentioned by the commenter, which also are based on the federal drinking water MCLs.

As discussed previously, more stringent water quality protection under Penobscot WQS than under Maine WQS does not invalidate or require changes to the Penobscot WQS.

Comment 9n:

The WQS contain a pH range of 6.6 to 8.8 for cold water fisheries in § 401(E) but contain a pH range of 5 to 9 in the appendix for acute and chronic criteria, making it unclear which pH range should apply.

Response to Comment 9n:

The pH range listed in Appendix II for acute and chronic criteria for aquatic life is 6.5 to 9.0 (not 5 to 9), and is based on the EPA criteria. The pH ranges in other parts of the WQS were based on the Maine criteria. However, the Department has since learned that the Maine criteria have not been updated since EPA issued the Gold Book in 1986, and therefore these and other pH ranges in the WQS have all been revised to incorporate the EPA criteria. The following provisions are affected: designated uses for secondary human contact (WQS § 401(C)(2)), high quality coldwater fishery (WQS § 401(E)(3)), and coldwater fishery (WQS § 401(F)(4)), and Appendix IV (human health criteria). In addition, the criteria for secondary human contact were added to those for primary human contact/cultural and ceremonial use (WQS § 401(B)(4)) for the sake of consistency.

* * *

All changes made to the WQS in light of the comments received are indicated above in the responses to comments and are indicated by underline and strike-out in the final Penobscot WQS. In addition, in reviewing the WQS, the Department realized that the East Branch Penobscot River was incorrectly identified as trust land only when it is in fact also part of the Penobscot Indian Reservation (WQS § 403 Table 1 – Designated Use Table); this error has been corrected. Also, the Department noticed that various references in Appendix II of the WQS to Subchapters III and IV are to a prior draft of the WQS and have been corrected as indicated in the final WQS. Finally, in order to avoid any chance of confusion, the Department has clarified in WQS § 102 that these final Penobscot WQS supersede any prior WQS that may have been enacted by the Penobscot Nation.