



Maine Forest Products Council

The voice of Maine's forest economy

Testimony in Opposition to LD 2004

Companies represented on the MFPC Board

A & A Brochu Logging
American Forest Mgmt.
Baskahegan Co.
BBC Land, LLC
Columbia Forest Prod.
Cross Insurance
Family Forestry
Farm Credit East
Fontaine Inc.
H.C. Haynes
Huber Resources
INRS
J.D. Irving
Katahdin Forest Mgmt.
Key Bank
Kennebec Lumber
LandVest Inc.
Louisiana Pacific
Maibec Logging
ND Paper
Nicols Brothers
Pingree Associates
Prentiss & Carlisle
ReEnergy
Richard Wing & Son
Robbins Lumber
Sappi North America
Southern Maine Forestry
Stead Timberlands
St. Croix Tissue
St. Croix Chipping
TD Bank
Timber Resource Group
Timberstate G.
Wadsworth Woodlands
Wagner Forest Mgt.
Weyerhaeuser
Woodland Pulp

“An Act to Amend the Maine Indian Claims Settlement Act Regarding the Application of Beneficial Federal Laws to the Wabanaki Nations”

May 31, 2023

Patrick Strauch, Executive Director

Senator Carney, Representative Moonen, and distinguished members of the Judiciary Committee, my name is Patrick Strauch and I am from Exeter, Maine. I am the Executive Director of the Maine Forest Products Council. MFPC represents the forest industry with over 30,000 direct and indirect jobs in the forest management and wood manufacturing business, with 8 million acres of forestland in the state of Maine. In many areas of Maine, the Tribes are neighbors of Council members and fellow landowners, we are all part of a natural resources environment.

The Council has been on record with both State and Federal Tribal legislation in the past year that would change the Implementation Acts provisions on the statewide jurisdiction of environmental laws. We have voiced our concerns with the Tribes and have provided a position statement published in our April newsletter (see attached).

Today we are fundamentally protesting the lack of proper legislative protocol with the printing of this bill and with less than 24 hours' notice for a hearing on such an important issue to Maine citizens. Dozens of federal laws are proposed for modification and there is no time available for a reasonable discussion of all the factors that need to be debated before legislators to make an informed decision.

We have remained respectful of the tribal neighbors who share common natural resources within the forestland ownerships we manage in our testimonies. LD 2004 would eliminate the current jurisdictional structure over land and natural resources. This is a system that has been in place for more than 40 years. It is well known to all in the forest products industry, the State, the Tribes, private landowners, and forest products harvesters and wood product manufacturers.

The rules governing forest resources are, for the most part, issued by departments of the State of Maine. The State places high demands on the landowners and the Tribes in the management of these resources. The consistency and expertise of these officials provides a measure of predictability to our efforts which, in turn, allows us to grow the resource as well as our businesses and provide livelihoods for our employees, their families, and the communities in which they live.

It should be understood that a significant reason behind the uniform application of State laws to tribal lands was the clear understanding on the part of the State and the Tribes that, under the Settlement Acts, the Tribes would be acquiring trust lands that would be widely distributed over central and parts of northern Maine.

which, in the absence of uniform laws, would lead to a scattered patchwork of tribal jurisdictional enclaves (see map)

LD 2004 proposes to dismantle that carefully constructed system by rendering ineffective Sections 6(b) and 16(b) of the Maine Indian Claims Settlement Act. LD 2004's purpose is to oust Maine law from every parcel of land in Maine held in trust for the tribes.

This new and radically different regulatory system would bring uncertainty and additional expense to the forest products industry. It could result in conflicting regulations—state, federal, and tribal—and raise questions as to which controls. For example, if differing water quality standards are established in a common watershed, which standards would prevail? And, how many years of litigation would it take to get the answer? In short, LD 2004 would bring great uncertainty to the environmental-regulatory framework that now governs Maine's forest lands and manufacturing facilities.

Of further concern still is that under the terms of the federal portion of the settlement act, if the Legislature were to amend the Maine Implementing Act, which it could only do with the consent of the Tribes, and were later to conclude that some or all of the changes were not working, it could not unilaterally repeal or amend them. The consent that Congress gave to amend the Maine Implementing Act requires the Tribes' consent. LD 2004 presents the very real risk that, if enacted into law, the State could find itself locked into statutory consequences it never intended, that is, Maine could effectively lose its ability to control rule-making not only for tribal lands, but any lands in that area or region. This is particularly true with respect to clean air and clean water standards where effects arising upstream or downstream or through the shifting impact of wind patterns could be profound.

Tribal consent to amendment to the Maine Implementing Act is important and appropriate. But, because once the Maine Implementing Act is amended and it cannot be changed without the Tribes' consent, the Legislature has always moved cautiously in approving any such amendments. Given LD 2004's sweeping nature, the Legislature should exercise the same caution here.

On this point, I would add that all this uncertainty could be avoided if the Tribes had specific regulatory objectives they would like to achieve, and we could all meet and discuss them before adopting them. If the Tribes were open to that process, the Council would gladly participate.

We want to better understand the Tribes' concerns about the jurisdictional and regulatory laws under the settlement acts. We also understand that for most purposes the Legislature has the approval of Congress to change the Maine Implementing Act, if the State and the tribes agree. The Maine Forest Products Council supports efforts by State representatives and the Tribes to reach agreement on very particular changes to the Maine Implementing Act's jurisdictional framework and would review with great interest any such proposals.

We support a continued collaborative approach to regulating shared natural resources under the current framework. There are surely compromises that can be made to improve the economic status of Tribes in Maine, but any updates or changes to the Settlement Acts must maintain environmental regulatory uniformity. We look forward to continued conversations with all parties involved in order to find the best path forward.

I appreciate your consideration of these remarks and ask that you not act on this legislation during this session.

MFPC April 2023 Newsletter

Tribal Sovereignty: Proceed with extreme caution

Patrick Strauch, Executive Director

This year, the Legislature will consider a host of Tribal issues, with sovereignty front and center in the form of LR 1184, “An Act Implementing the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act.” This bill, which is still in the drafting stage and has not yet been released publicly for review, is sponsored by House Speaker Rachel Talbot Ross of Portland.

While the Council will refrain from taking an official position on the bill until the bill is printed, we have been working behind the scenes with tribal attorneys and lawmakers to ensure that our concerns are heard and considered during the drafting process, and we would like to take this opportunity to explain our position on this important issue.

To understand how we got to where we are today, it’s important to look to the past, specifically to the Maine Implementing Act (MIA) negotiated between the State of Maine and the Tribes, and then to the Maine Indian Claims Settlement Act, which solidified this agreement in federal law in 1980.

The settlements provided significant benefits to the Penobscot and Passamaquoddy tribes, including

- A fund of \$54.5 million (\$196 million when adjusted for inflation to today’s dollar) for the acquisition of up to 300,000 acres of land,
- \$16 million in federal tax incentives to compel landowners to voluntarily sell land for inclusion in tribal land holdings,
- a \$27 million trust fund for Maine tribes.

For the Houlton Band of Maliseet Indians, and later the Aroostook Band of Micmacs, federal laws recognized them as tribes, making them eligible for federal Indian programs and assistance.

MIA recognized and protected tribal sovereignty by eliminating State authority to interfere in internal tribal government affairs. At the same time, because the tribes would be acquiring up to 300,000 acres of land, spread widely over central and part of northern Maine, the tribes agreed that state laws dealing with the environment would apply uniformly across all jurisdictions. The Settlement Acts also authorized the State and tribes to change these terms, provided they both agreed.

These agreements, reached by three sovereign entities, helped Maine’s tribes secure the most significant tribal land holdings east of the Mississippi River in a patchwork unlike any other state in the nation. For context, prior to the Settlement Acts, the Penobscot Nation had 4,446 acres and the Passamaquoddy Tribe had 23,200 acres for Indian Township and another 100 acres for Pleasant Point. Considering this fact, the uniform jurisdictional framework established by the Settlement Acts was crucial to ensuring regulatory certainty for all citizens – tribal and non-tribal alike – for environmental resources that flow from one property to the next (air, water, wildlife).

And that brings me to the Maine Forest Products Council's position, which is this The Settlement Acts were designed in a way to allow the flexibility to update and change the agreement as circumstances change over time There are certainly changes that can and should be addressed to ensure that the freedom and sovereignty of the Tribes isn't infringed upon, and that all economic opportunities are available

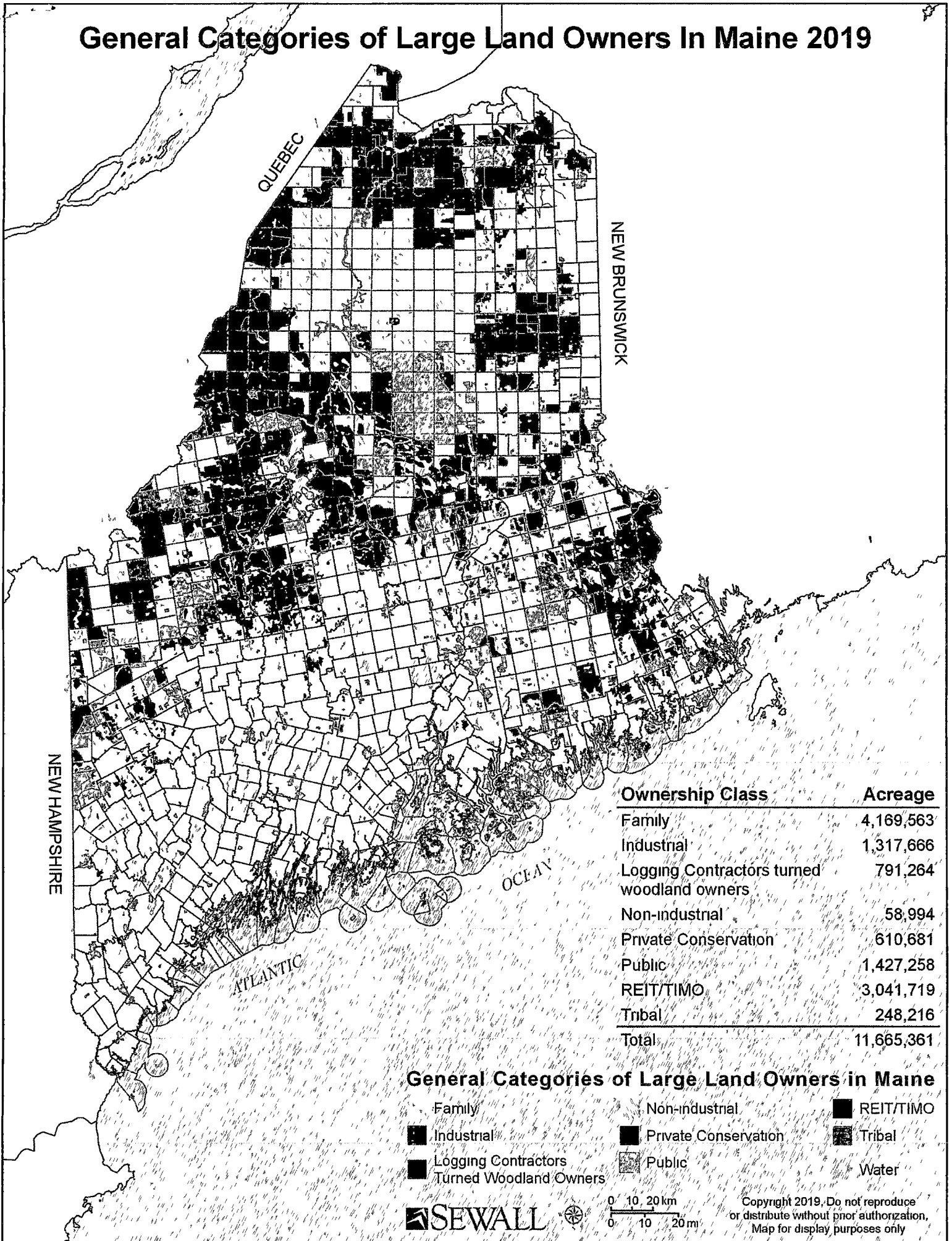
However, shared natural resources of air, water and wildlife flow and move freely across the lands, and the forest products industry requires the use of these resources to operate Outright sovereignty on their land would give the Tribes the new ability to set binding standards to these resources, separate from the State's already demanding standards impacting everything from forest road stream crossing permits to industrial water permits upstream of tribal lands

The result would be jurisdictional enclaves, each with its own laws, existing across central and part of northern Maine Some of these would lie within municipal boundaries in areas never intended to be removed from municipal jurisdiction, creating a dual system of regulation in those areas that would allow Maine's tribes to regulate Maine municipalities, companies and citizens This scenario would quickly become unworkable for industry in Maine, especially since we now know from the *Penobscot Nation v. Mills* 2015 lawsuit that the federal government would interpret tribal rights to extend beyond the borders of their lands with "halos" that extend beyond their boundaries

The State of Maine does an excellent job of protecting our natural resources, and it has done so with significant input from the Tribes For example, just a few years ago, Maine established the most stringent Human Health Consumption criteria in the country, with a fish consumption rate that is ten times more protective than the risk level used in many states These new criteria were the result of the State, Tribes and industry working together, under the current settlement framework, to benefit all residents of Maine

We support a continued collaborative approach to regulating shared natural resources under the current framework There are surely compromises that can be made to improve the economic status of Tribes in Maine, but any updates or changes to the Settlement Acts must maintain environmental regulatory uniformity We look forward to continued conversations with all parties involved in order to find the best path forward

General Categories of Large Land Owners In Maine 2019



Ownership Class	Acreage
Family	4,169,563
Industrial	1,317,666
Logging Contractors turned woodland owners	791,264
Non-industrial	58,994
Private Conservation	610,681
Public	1,427,258
REIT/TIMO	3,041,719
Tribal	248,216
Total	11,665,361

General Categories of Large Land Owners in Maine

- Family
- Non-industrial
- REIT/TIMO
- Industrial
- Private Conservation
- Tribal
- Logging Contractors
- Public
- Turned Woodland Owners
- Water

SEWALL



0 10 20 km
0 10 20 mi

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