



Mashpee Wampanoag Tribe
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MASHPEE WAMPANOAG TRIBE ABORIGINAL RIGHTS

What are aboriginal rights?

Aboriginal hunting, fishing, trapping and gathering rights arise from the immemorial custom and practice of Indian tribes. As the United States Supreme Court said in *United States v. Winans*:¹

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.

Tribes retain their aboriginal rights unless abrogated by treaty, abandoned or extinguished by statute.³ Since time immemorial, the Mashpee Wampanoag have been located in and have occupied, lived and died in, and survived on sustenance and other means from the land and natural resources of what is now southeastern Massachusetts and eastern Rhode Island.

is to provide for the inventory, enforcement, protection, restoration, and management of the Tribe's environmental and natural resources.⁵

B. On-Reservation Aboriginal Rights

Indian tribes retain exclusive enjoyment of hunting, fishing and trapping on their reservation lands unless clearly relinquished by treaty or statute. The establishment of a reservation by treaty, statute or agreement includes an implied right of Indians to hunt and fish on that reservation free of regulation by the state.

C. Off-Reservation Aboriginal Rights

Various federal court rulings throughout the country confirm that Indian tribes enjoy off-reservation aboriginal rights. Further, the scope of hunting, fishing and trapping rights derived from aboriginal possession continue to be exercisable just as other non-reservation rights are under treaties, statutes, agreements, or executive action unless clearly abrogated by Congress.

Any questions regarding the Aboriginal Rights of the Mashpee Wampanoag can be directed to the Mashpee Wampanoag Tribe at (508) 477-0208

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND EIGHTY-TWO

RESOLUTIONS RECOGNIZING AND PROTECTING THE ANCIENT AND
ABORIGINAL CLAIM OF THE INDIANS OF THE COMMONWEALTH.

WHEREAS, INDIANS IN THE COMMONWEALTH OF MASSACHUSETTS HAVE AN ANCIENT AND ABORIGINAL CLAIM TO THE WILDLIFE OF THIS LAND AS A SOURCE OF FOOD FOR THE SUSTENANCE OF THEIR FAMILIES; AND

WHEREAS, THIS ANCIENT AND ABORIGINAL CLAIM HAS BEEN RECOGNIZED BY TREATIES, INCLUDING THE FALMOUTH TREATY OF 1749; AND

WHEREAS, THIS ANCIENT AND ABORIGINAL CLAIM HAS BEEN RECOGNIZED BY LEGISLATIVE ENACTMENTS OF THE COMMONWEALTH, INCLUDING CHAPTER 71 OF THE ACTS OF 1795, AND SUBSEQUENT ENACTMENTS, UP TO AND INCLUDING SECTION 136 OF CHAPTER 130 OF THE GENERAL LAWS; AND

WHEREAS, THIS ANCIENT AND ABORIGINAL CLAIM WAS IGNORED IN THE REVISION OF THE GENERAL LAWS, BY THE ACTS OF 1941; AND

WHEREAS, THE COMMONWEALTH OF MASSACHUSETTS HAS CONTINUED, EVEN AFTER 1941, TO RECOGNIZE THE SPECIAL STATUS OF INDIANS WITHIN THE STATE, BY EXECUTIVE ORDERS, AGENCY AGREEMENTS, AND LEGISLATION; AND

WHEREAS, INDIANS IN THE COMMONWEALTH OF MASSACHUSETTS HAVE CONTINUED, EVEN AFTER 1941, TO MAKE CLAIM UPON THE WILDLIFE OF THIS LAND AS A SOURCE OF FOOD FOR THE SUSTENANCE OF THEIR FAMILIES; AND

WHEREAS, THE ANCIENT AND ABORIGINAL INDIAN CLAIM TO WILDLIFE FOR SUSTENANCE IS SUPPORTED BY CONSIDERATIONS OF JUSTICE AND EQUITY; AND

WHEREAS, THE ANCIENT AND ABORIGINAL INDIAN CLAIM TO WILDLIFE FOR SUSTENANCE DOES NOT INTERFERE WITH THE PROPER MANAGEMENT OF NATURAL RESOURCES BY THE COMMONWEALTH; AND

WHEREAS, STATE INTERFERENCE WITH, OR FAILURE TO RECOGNIZE, INDIAN HUNTING AND FISHING RIGHTS ELSEWHERE IN THE UNITED STATES HAS RESULTED IN EXTENSIVE LITIGATION, COSTLY TO ALL PARTIES; AND

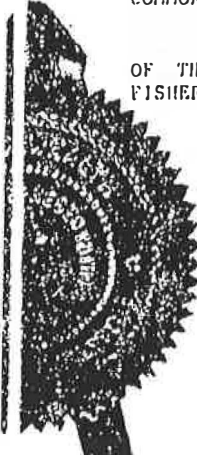
WHEREAS, STATE INTERFERENCE WITH, OR FAILURE TO RECOGNIZE, INDIAN HUNTING AND FISHING RIGHTS ELSEWHERE IN THE UNITED STATES HAS RESULTED IN SOCIAL AND RACIAL TENSION; AND

WHEREAS, STATE INTERFERENCE WITH, OR FAILURE TO RECOGNIZE, INDIAN HUNTING AND FISHING RIGHTS ELSEWHERE IN THE UNITED STATES HAS PROMPTED THE FEDERAL GOVERNMENT TO INTERVENE IN LOCAL AND REGIONAL MATTERS; THEREFORE BE IT

RESOLVED, THAT THE MASSACHUSETTS HOUSE OF REPRESENTATIVES HEREBY RECOGNIZES THE ANCIENT AND ABORIGINAL CLAIM OF INDIANS WITHIN THE COMMONWEALTH OF MASSACHUSETTS TO HUNT AND FISH THE WILDLIFE OF THIS LAND FOR THE SUSTENANCE OF THEIR FAMILIES, BUT NOTHING IN THESE RESOLUTIONS SHALL BE TAKEN TO PERMIT ANY PERSON TO ENGAGE IN SPORT OR RECREATIONAL HUNTING OR FISHING WITHIN THE COMMONWEALTH EXCEPT AS PROVIDED FOR AND REGULATED IN THE GENERAL LAWS OF THE COMMONWEALTH; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE FORWARDED BY THE CLERK OF THE HOUSE OF REPRESENTATIVES TO RICHARD CRONIN, DIRECTOR, DIVISION OF FISHERIES AND WILDLIFE OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES, ADOPTED, NOVEMBER 8, 1982.


Thomas W. McLaughlin
SPEAKER OF THE HOUSE

Wallace C. Mills
CLERK OF THE HOUSE

OFFERED BY:

Kevin W. Fitzgerald
REPRESENTATIVE KEVIN W. FITZGERALD