



Developing Policies and Protocols for the Culturally Sensitive Intellectual Properties of the Penobscot Nation Of Maine

Project Summary

The Penobscot Indian Nation (Maine, USA), with support from partners at the University of Massachusetts-Amherst, developed tribal protocols, tools, and organizational structures to address intellectual property (IP) issues related to archaeology and heritage-based places.

What community needs or questions did this project address?

- How does the concept of IP apply to the Penobscot Nation?
- How can the Penobscot Nation identify and prevent abuses of their IP rights?
- What priorities and goals for safeguarding and protecting tribal IP should be adopted by the Penobscot Nation and how can these be integrated into existing tribal organizational structures and cultural/research initiatives?
- The need for certification and training for researchers who want to work with the Penobscot Nation.

How did the team approach their work and what methods did they use?

- Members of the Penobscot Nation designed, directed, and implemented this community-based project, with support from UMass partners.
- Penobscot sovereignty and self-determination were foundational principles that guided every aspect of the project
- The methodology was deliberately designed to counter the invasive and extractive qualities all too common in relationships between researchers and Indigenous communities.
- Conducted background research on tribal historic preservation law and policy and on applications of IP law.
- Created a working group of tribal experts to explore the concept of IP and its applications to the Penobscot Nation and its people.
- Organized a workshop that invited outside experts to expand understandings of IP, identify challenges for the Penobscot Nation, and explore legal channels for protecting knowledge and material culture.
- Designed and administered a community survey to promote awareness of IP issues among community members and obtain feedback on plans for protecting Penobscot IP.
- Developed a community education initiative, focused on Penobscot IP rights.

What did the project accomplish?

- The IP Working Group developed a definition of Penobscot

Community IP Rights and created administrative structures, policies, and tools to support tribal decision-making on IP issues and research relationships.

- The Penobscot Tribal Rights and Resources Protection Board (PTRRPB) formed, responsible for review and oversight of research conducted by non-tribal members that involves Penobscot Nation cultural resources.
- The group carried out activities to assist tribal officials and community members to understand IP issues better.
- Recommendations outlined for continued attention to tribal IP rights in heritage-related decision-making, both within the Penobscot Nation and in relation to state government.

What were the main challenges?

- Issues related to bureaucratic requirements for academic research came close to derailing the project: delays in ethics review; differences of opinion over consent forms; difficulties in transferring funds; and disagreement over language in the grant agreement about who would own the intellectual property resulting from the study.
- Limits on the time, capacity, and priorities of those involved.
- Changes in tribal administration mean that periodic updates will continue to be necessary.
- Ongoing creative and sustained efforts are needed to integrate this project with research review processes and heritage work.

What insights about intellectual property and cultural heritage emerged?

- Discussions about heritage-related IP (What is it? How does it affect us? What do we need to protect and how?) need to take place at the community level, and even then at several different community levels, such as among key officials as well as the general public.
- Outsider knowledge, experience, and resources can support these conversations, but not replace them.
- Once communities identify areas of concern, they can begin to set priorities and work together to develop policies and protocols that will protect community IP rights.



One major challenge is identifying the human and financial resources to devote to such an effort. Another is acquiring the knowledge necessary to do so effectively. Getting buy-in from the tribal community for the importance of this effort is also a challenge.”
-Member, Penobscot IP Working Group

“ The most profound part of this experience for me is when we as a group and individually were confronted with the question of what it means to be Penobscot. Culturally we come from such a fractured experience. It’s not always clear what has been passed down to us by our ancestors and what has been imposed on us by the dominant society. Defining for ourselves who we are and what is important to us culturally is a daunting task.”
-Member, Penobscot IP Working Group

What lessons about good research practices emerged?

- Never assume to know what it is like to be a Penobscot or an Indigenous person if you are not a member of that community.
- Research should always be relevant and beneficial to the tribal community.
- Researchers should understand the fundamental values of the community, which will clarify the values that they bring to the research agreement.
- Researchers must respect the researched community and have empathy for past indiscretions and how these have contributed to current feelings of apprehension towards outside researchers.
- Academic partners can play important supporting roles, such as: a) assisting with negotiating university-level funding transfers, ethics review, and research agreements b) providing access to additional sources of knowledge, expertise, and funds.
- Engage with tribal leadership early on and sustain that engagement throughout.
- Situate the project within existing tribal infrastructure and administration to maximize capacity and minimize overlap.
- Establish a committed working group composed of people already involved and invested in these issues.
- Obtain informed consent on a community basis—either through a review board or formal governmental process.
- Inform the community about the work and keep them updated.
- Designate a key contact person within tribal administration to monitor the project and be available to assist and guide the researcher(s).
- Create a written agreement that clearly defines the responsibilities and rights of each party.
- Identify key players, then work to get buy-in from them.
- Give periodic updates, both to share progress and to ensure that people feel protected and informed about the work.
- People doing this work must feel comfortable so they can speak freely.

“ The key first step is to get a group of dedicated and motivated tribal members to undertake this work. Next it is important to identify what you are trying to protect. That is a difficult process.... Once you are able to identify what you are trying to protect then acquiring the knowledge of how to protect it is crucial. Then creating the processes and protocols to protect it and identifying the resources to carry out that protection are essential next steps. Finally, it is necessary to continue with this work and sustain the systems implemented to carry it out.”
-Member, Penobscot IP Working Group

- Draft policies that are clear enough to achieve your objective but not too specific to lock yourself into certain processes.
- People need to be able to trust that information is used and disbursed as agreed upon.
- Prepare to re-visit heritage protection plans. What works now may not work in a couple months or years.

What resources, guidelines, or tools created by the project are available?

- Management Plan for Penobscot Nation Intellectual Rights Related to Heritage-based Places that includes recommendations for strategies for protecting tribal IP through state legislative and public policy.
- Sample memorandum of agreement (MOA) for archaeology conducted on Penobscot lands.
- Certification procedure for archaeologists who work on Penobscot lands.
- A process to better educate or help researchers understand Penobscot Culture and IP issues.
- Community survey to evaluate local conceptions of IP.
- Public Service Announcements developed for community outreach on IP issues.
- Slide presentations from the Penobscot IP Workshop: Dr. Sonya Atalay on “Education, Protection and Management of ezhibiigaadek asin (Sanilac Petroglyph Site)”; Dr. Jane Anderson on legal aspects of IP rights, how these might work for the Penobscot Nation, and other alternatives for protecting tribal knowledge; Dr. William Freeman on community models for instituting an institutional review board.
- Webinar on Federal Historic Preservation Law and the Federal Tribal Consultation Process by the Native American Program Office of the Advisory Council for Historic Preservation.

Who participated in this initiative?

Bonnie Newsom, Project Coordinator (then serving as Tribal Historic Preservation Officer for the Penobscot Nation); The Penobscot Nation Intellectual Property Working Group: Mark Chavaree, Penobscot Nation Legal Analyst; Awendela “Mali” Dana, Assistant Director, Child Support Agency; James Francis, Director Cultural and Historic Preservation Department; Nick Francis, Information Technology Specialist; Marie Mitchell, Counselor, Indian Health Service; Dr. Darren Ranco, Director UMaine Native American Programs); Chris Sockalexis, Tribal Historic Preservation Officer; Bill Thompson, Vice Chief; Tim Walton, Tribal Planner; University of Massachusetts-Amherst: Dr. H. Martin Wobst (Principal Investigator); Julie Woods (Research Assistant). Additional contributors to this project include: The Penobscot Nation Community, Tribal Chief, and Tribal Council; The Penobscot Nation Cultural and Historic Preservation Department; Dr. Sonya Atalay (UMass-Amherst); Dr. Jane Anderson (UMass-Amherst); Dr. William Freeman (Director of Tribal Community Health Programs and Human Protections Administrator, Northwest Indian College); University of Maine Native American Programs; U.S. Advisory Council on Historic Preservation, Office of Native American Affairs.

Learn more

This summary was drawn from the final report of the “Developing Policies and Protocols” project. The full report and other resources created by the project team can be found here: <http://bit.ly/PqKlie>

www.penobscotculture.com
info@penobscotculture.com