

MAINE STATE LEGISLATURE

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MAJORITY
MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1523, L.D. 2145, Bill, "An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe"

Amend the bill in the emergency preamble by striking out all of the 2nd **Whereas** paragraph (page 1, lines 5 to 8 in L.D.) and inserting in its place the following:

'Whereas, it is imperative that this Act take effect before the expiration of the 90-day period so that members of the Passamaquoddy Tribe may exercise the licensing provisions of this Act for the spring and summer fisheries; and'

Further amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 12 MRSA §6302-A is enacted to read:

§6302-A. Taking of marine organisms by Passamaquoddy tribal members

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6505-A, 6505-C, 6535, 6536, 6601, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751 or 6803 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe to conduct the activities authorized under the state license or

COMMITTEE AMENDMENT

2 permit. A member of the Passamaquoddy Tribe issued a tribal
3 license pursuant to this subsection to conduct activities is
4 subject to all laws and rules applicable to a person who holds a
5 state license or permit to conduct those activities and to all
6 the provisions of chapter 625, except that the member of the
7 tribe:

8 A. May utilize lobster traps tagged with trap tags issued
9 by the tribe in a manner consistent with trap tags issued
10 pursuant to section 6431-B. A member of the tribe is not
11 required to pay trap tag fees under section 6431-B if the
12 tribe issues that member trap tags;

13 B. May utilize elver fishing gear tagged with elver gear
14 tags issued by the tribe in a manner consistent with tags
15 issued pursuant to 6505-B. A member of the tribe is not
16 required to pay elver fishing gear fees under section 6505-B
17 if the tribe issues that member elver fishing gear tags; and

18 C. Is not required to hold a state shellfish license issued
19 under section 6601 to obtain a municipal shellfish license
20 pursuant to section 6671.

21 2. Tribal exemption; sustenance or ceremonial tribal use.
22 Notwithstanding any other provision of law, a member of the
23 Passamaquoddy Tribe who is a resident of the State may at any
24 time take, possess, transport and distribute:

25 A. Any marine organism, except lobster, for sustenance use
26 if the tribal member holds a valid sustenance fishing
27 license issued by the tribe. A sustenance fishing license
28 holder who fishes for elvers must utilize elver fishing gear
29 that is tagged with sustenance use elver tags issued by the
30 tribe in a manner consistent with elver fishing gear tags
31 issued pursuant to section 6505-B;

32 B. Lobsters for sustenance use, if the tribal member holds
33 a valid sustenance lobster license issued by the tribe. The
34 sustenance lobster license holder's traps must be tagged
35 with sustenance use trap tags issued by the tribe in a
36 manner consistent with trap tags issued pursuant to section
37 6431-B; however, a sustenance lobster license holder may not
38 harvest lobsters for sustenance use with more than 25 traps;
39 and

40 C. Any marine organism for noncommercial use in a tribal
41 ceremony within the State, if the member holds a valid
42 ceremonial tribal permit issued to the tribal member by the
43 Joint Tribal Council of the Passamaquoddy Tribe or the
44 governor and council at either Passamaquoddy reservation.

2 For purposes of this subsection, "sustenance use" means all
4 noncommercial consumption or noncommercial use by any person
6 within the Passamaquoddy reservation at Pleasant Point or Indian
8 Township or at any location within the State by a tribal member,
10 by a tribal member's immediate family or within a tribal member's
12 household. The term "sustenance use" does not include the sale
14 of marine organisms. A member of the Passamaquoddy Tribe who
16 takes a marine organism under a license or permit issued pursuant
18 to this subsection must comply with all laws and rules applicable
20 to a person who holds a state license or permit that authorizes
22 the taking of that organism, except that a state law or rule that
24 sets a season for the harvesting of a marine organism does not
apply to a member of the Passamaquoddy Tribe who takes a marine
organism for sustenance use or for noncommercial use in a tribal
ceremony. A member of the Passamaquoddy Tribe issued a license
or permit under this subsection is exempt from paying elver gear
fees under section 6505-B or trap tag fees under section 6431-B
and is not required to hold a state shellfish license issued
under section 6601 to obtain a municipal shellfish license
pursuant to section 6671. A member of the Passamaquoddy Tribe
who fishes for or takes lobster under a license or permit issued
pursuant to this subsection must comply with the closed periods
under section 6440.

26 **3. Lobster and sea urchin licenses; limitations.** The
28 Passamaquoddy Tribe may not issue pursuant to subsection 1:

30 A. More than 24 commercial lobster and crab fishing
32 licenses in calendar year 1998, including all licenses
34 equivalent to Class I, Class II or Class III licenses and
student licenses, but not including apprentice licenses.
Any lobster and crab fishing license issued by the tribe
after calendar year 1998 is subject to the eligibility
requirements of section 6421, subsection 5; and

36 B. More than 24 commercial licenses for the taking of sea
38 urchins in any calendar year. Sea urchin licenses must be
40 issued by zone in accordance with section 6749-P.

42 **4. Sea urchin and scallop handfishing and tender licenses;**
limitations. The Passamaquoddy Tribe may not issue a license or
44 permit pursuant to subsection 1 or 2:

46 A. For the harvesting of sea urchins or scallops by hand
48 unless the license or permit applicant meets the diver
competency requirements of section 6531; and

2 B. For the tending of a person who fishes for or takes
3 scallops or sea urchins by diving unless the applicant meets
4 the safety training requirements of section 6533.

5 5. Notification. Subsections 1 and 2 do not apply to a
6 member of the Passamaquoddy Tribe unless a copy of that member's
7 tribal license or permit is filed with the commissioner by the
8 tribal licensing agency or a tribal official in accordance with
9 section 6027.

10 6. License suspension. If a member of the Passamaquoddy
11 Tribe issued a license or permit under this section is convicted
12 of a violation for which a license suspension is mandatory under
13 chapter 617, the commissioner shall suspend that member's license
14 or permit for the specified period. If a member of the
15 Passamaquoddy Tribe issued a license or permit under this section
16 is convicted of a violation for which the commissioner may
17 suspend a license, the commissioner may suspend that member's
18 license or permit in accordance with chapter 617.

19 7. Enforcement. A violation of a marine resources law or
20 rule by a member of the Passamaquoddy Tribe who is issued a
21 license or permit pursuant to this section must be enforced
22 pursuant to chapter 609. A member of the Passamaquoddy Tribe
23 who is issued a license or permit pursuant to this section must
24 possess and exhibit that license or permit in accordance with
25 section 6305 and must comply with the provisions of section 6306
26 regarding inspections and searches by marine patrol officers for
27 violations related to licensed or permitted activities.

28 8. Resident of the State defined. For the purposes of this
29 section, "resident of the State" means a member of the
30 Passamaquoddy Tribe who is eligible to obtain a state resident
31 license under section 6301, subsection 1.

32 **Sec. 2. Report.** The Maine Indian Tribal-State Commission
33 shall study any question or issue regarding the taking of marine
34 resources by members of the Passamaquoddy Tribe and the Penobscot
35 Nation. The commission shall report any findings and
36 recommendations to the Joint Standing Committee on Marine
37 Resources by December 15, 1998.

38 **Sec. 3. Relation to "An Act to Implement the Maine Indian Claims**
39 **Settlement."** This Act is not an amendment to the Maine Revised
40 Statutes, Title 30, chapter 601, An Act to Implement the Maine
41 Indian Claims Settlement, and is not subject to ratification by
42 the Passamaquoddy Tribe pursuant to United States Code, Title 25,
43 Section 1725(e)(1). If a court of competent jurisdiction finds
44 that this Act or any portion of this Act alters any provisions of

2 Title 30, chapter 601 so as to constitute an amendment to Title
30, chapter 601, this Act or that portion of this Act, if
4 separable, that constitutes an amendment to Title 30, chapter 601
is void.'

6 Further amend the bill by inserting at the end before the
summary the following:

8
10 **FISCAL NOTE**

12 The exemption of Passamaquoddy tribal members from
commercial marine harvesting licenses will result in
14 insignificant reductions of General Fund revenue and dedicated
revenue collected by the Department of Marine Resources from
16 license fees.

18 The Department of Marine Resources will incur some minor
additional costs to administer and enforce certain statutory
20 provisions pertaining to the taking of marine resources by
members of the Passamaquoddy Tribe. These costs can be absorbed
22 within the department's existing budgeted resources.

24 The Maine Indian Tribal-State Commission will incur some
minor additional costs to submit a required report to the
26 Legislature. These costs can be absorbed within the commission's
existing budgeted resources.

28 This bill may reduce prosecutions for Class D crimes. If
30 jail sentences are reduced, the savings to the counties are
estimated to be \$86.45 per day per prisoner. These savings do
32 not affect reimbursement by the State. The reduction in the
number of prosecutions that would have resulted in a jail
34 sentence and the resulting savings to the county jail system are
expected to be insignificant.

36 The Judicial Department may realize some minor
38 administrative savings from reductions of workload,
administrative costs and indigent defense costs. Reductions in
40 the collection of fines may decrease General Fund revenue by
minor amounts. Reductions in the collection of filing fees may
42 decrease General Fund revenue by minor amounts.'

44 **SUMMARY**

46 The amendment exempts Passamaquoddy tribal members who are
48 residents of Maine from licensing by the State when taking marine
resources for commercial use, for sustenance use or for tribal
50 ceremonial use under a special tribal permit. Tribal members are

2 subject to the same laws and rules and enforcement as are people
3 who hold a state license, except that seasons do not apply to
4 tribal members who harvest marine organisms for sustenance use or
5 tribal ceremonial use. Tribal licenses and permits must be
6 filed with the Commissioner of Marine Resources.

7 The amendment also allows the tribe to issue an initial
8 number of up to 24 licenses in the restricted lobster fishery and
9 an annual number of up to 24 licenses in the restricted sea
10 urchin fishery.

11 The amendment also directs the Maine Indian Tribal-State
12 Commission to study any questions or issues regarding the taking
13 of marine resources by members of the Passamaquoddy Tribe and the
14 Penobscot Nation. The commission must report any findings and
15 recommendations to the Joint Standing Committee on Marine
16 Resources by December 15, 1998.

17 The amendment also states that this Act is not an amendment
18 to the Maine Indian Claims Settlement Act and that ratification
19 by the Passamaquoddy Tribe is not required. In the event a court
20 finds that this Act or a portion of it is an amendment to the
21 Maine Indian Claims Settlement Act, the Act or that portion of
22 it, if separable, is void.

23 The amendment also adds a fiscal note to the bill.
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