

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

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H.P. 1523

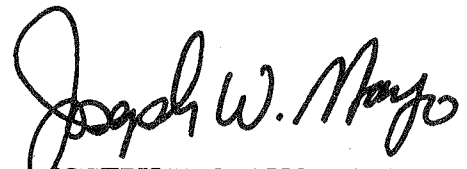
House of Representatives, January 20, 1998

**An Act Concerning the Taking of Marine Resources by Members of the
Passamaquoddy Tribe.**

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule
203.

Reference to the Committee on Marine Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative MOORE of the Passamaquoddy Tribe.
Cosponsored by Representatives: GOODWIN of Pembroke, JONES of Bar Harbor, PERKINS
of Penobscot.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, it is imperative that this Act take effect before
the expiration of the 90-day period because Passamaquoddy tribal
members are being prosecuted in the criminal courts of this State
8 for engaging in traditional tribal uses of marine resources; and

10 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
12 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
14 safety; now, therefore,

16 **Be it enacted by the People of the State of Maine as follows:**

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

20 §6302-A. Taking of marine resources by Passamaquoddy tribal
 members

22 1. Commercial use. Notwithstanding any other provision of
24 law regarding licensing, the taking of marine resources by
26 resident members of the Passamaquoddy Tribe for commercial use is
28 governed by a license to be issued by the Passamaquoddy Tribe
30 under the terms of a licensing compact to be negotiated between
32 the State and the Passamaquoddy Tribe, approved by the
34 legislative body of each party and certified to the Secretary of
State in accordance with the procedures in Title 3, section 601.
If a licensing compact has not been agreed upon by October 1,
1998, either party may submit a proposed compact to the
Legislature in any year no later than December 15th for
consideration by the Legislature that is in session the following
January.

36 2. Status pending approval of licensing compact. Until a
38 licensing compact has been approved and takes effect, a license
40 issued under this Title is not required of any member of the
42 Passamaquoddy Tribe who acts in accordance with subsection 3 or
44 4, or who holds a valid license issued by the tribe for the
46 taking of marine resources under a tribal regulatory program
substantially the same as that governing other residents of this
State engaged in the same fishery. A tribal regulatory program
complies with this standard if, for each species regulated,
Passamaquoddy tribal members are required to observe:

48 A. The same conservation-based restrictions as the holders
50 of the comparable state license; or

2 B. An alternative regulation determined by the Maine Indian
3 Tribal-State Commission to be of cultural significance to
4 the Passamaquoddy tribal community or licensee yet
5 sufficiently restrictive when limited to tribal licensees as
6 to have no significant impact on the marine resource.

7 Notwithstanding any other provision of law, until a licensing
8 compact has been approved under subsection 1 and takes effect,
9 any member of the Passamaquoddy Tribe holding a valid tribal
10 license may take, possess and transport any marine resources for
11 use, distribution or sale as though that member were the holder
12 of a valid state license issued under this Title for the resource
13 or activity involved.

14 Any regulation approved by the Maine Indian Tribal-State
15 Commission under this subsection must be certified by the
16 commission's chair to the Secretary of State as having been so
17 approved. A copy of the regulation and certification must be
18 submitted by the Secretary of State to the commissioner.

19 3. Sustenance use. Notwithstanding any other provision of
20 law, any member of the Passamaquoddy Tribe properly identified by
21 a tribal identity card may take, possess, transport and sell or
22 distribute any marine resources for sustenance use. As used in
23 this subsection, the term "sustenance use" includes all
24 noncommercial consumption or use within the Passamaquoddy
25 reservations at Pleasant Point Reservation and Indian Township,
26 and any consumption or use by tribal members or within a member's
27 household or immediate family. The term "sustenance use" does
28 not include the commercial sale to any person who is not eligible
29 for sustenance use under this subsection.

30 4. Ceremonial tribal use. Notwithstanding any other
31 provision of law, any member of the Passamaquoddy Tribe may take,
32 possess and transport any marine resources identified in a
33 special tribal permit issued to the tribal member by the
34 Passamaquoddy Joint Tribal Council or the Governor and Council at
35 either Passamaquoddy reservation when those marine resources are
36 exclusively for use in a gathering that is identified in the
37 permit and designed and intended to support or advance the public
38 interests of the Passamaquoddy tribal community.

39 5. Enforcement. Law enforcement officers appointed by the
40 Passamaquoddy Tribe shall enforce requirements regarding
41 Passamaquoddy tribal licenses and tribal laws regulating the
42 taking, possession, transportation and use of marine resources.
43 Officers of the marine patrol and the National Marine Fisheries
44 Service may assist, to ensure compliance and aid the enforcement
45 of tribal marine resources licenses and laws, through
46 cross-deputization or cooperation with tribal law enforcement
47 agencies.

2 officers. The following penalties may be imposed for any
3 violation of tribal laws regulating the taking of marine
4 resources.

5 A. Any tribal license for the taking of marine resources is
6 subject to suspension for any period not longer than one
7 year upon a judicial finding that the license holder has
8 violated the terms of the license or the Passamaquoddy
9 tribal regulatory program.

10 B. The holder of any tribal license for the taking of
11 marine resources is subject to a civil penalty of no more
12 than \$2,000 for any violation of the terms of the license or
13 the Passamaquoddy tribal regulatory program in addition to
14 any other remedy. In determining the appropriateness of a
15 civil penalty, the nature of the violation, any history of
16 prior violations and any adverse consequences to others,
17 their property or the natural resources that may have
18 resulted from the violation must be considered. In the
19 event that a violation has caused monetary loss or damage to
20 another person, the court may order restitution in addition
21 to or instead of other penalties.

22 C. Any marine resource taken or possessed in violation of
23 this section or the Passamaquoddy tribal regulatory program
24 is subject to seizure by any law enforcement officer with
25 authority to enforce the Passamaquoddy tribal regulatory
26 program and to forfeiture.

27 The Passamaquoddy Tribe has the right to exercise exclusive
28 jurisdiction separate and distinct from the State over any
29 violation of the Passamaquoddy tribal laws regulating marine
30 resources in an action commenced by the Passamaquoddy Tribe. The
31 decision to exercise or terminate the exercise of the
32 jurisdiction authorized by this subsection may be made only by
33 the tribal governing body. If the Passamaquoddy Tribe chooses to
34 terminate its exercise of or not to exercise jurisdiction under
35 this subsection, the State has exclusive jurisdiction over those
36 matters until such time as the tribal governing body elects to
37 begin or resume the exercise of exclusive tribal jurisdiction.

38 **Sec. 2. Retroactivity.** This Act applies retroactively to June
39 1, 1997.

40 **Sec. 3. Effective date.** This Act does not take effect unless
41 the Secretary of State receives written certification by the
42 Joint Tribal Council of the Passamaquoddy Tribe that the tribe
43 has agreed to the provisions of this Act, copies of which must be
44 submitted by the Secretary of State to the Secretary of the
45 Senate and the Clerk of the House.

