# PASSAMAQUODDY TRIBE

Ordinances Regulating
Salt Water Fishing & Gathering

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PASSAMAQUODDY TRIBE

Ordinances Regulating
Salt Water Fishing & Gathering


Section 1.1 Authority; intent. These Ordinances governing fishing and gathering are adopted by the Passamaquoddy Tribe in the exercise of its inherent authority over tribal members and internal tribal matters of the Tribe. These Ordinances govern the taking of marine resources by members of the Passamaquoddy Tribe, and are intended to permit tribal use of marine resources in a manner that will:

- maintain historic and traditional Passamaquoddy fishing and gathering practices in the marine environment;
- provide for the immediate needs of the Passamaquoddy communities and of tribal members, consistent with the long-term need to maintain tribal culture;
- avoid or minimize friction with non-tribal members who use the same resources; and
- cooperate with Canadian, U.S. and Maine authorities to protect the area’s marine resources for the future of all.

These Ordinances also govern the taking of shellfish from within the Pleasant Point Passamaquoddy Reservation.

Section 1.2. Applicability. These Ordinances are applicable to all members of the Passamaquoddy Tribe, and those persons acting in concert with tribal members in connection with the taking of marine resources under the authority of this Ordinance and chapter 708 of the 1998 Public Laws of Maine. They govern the taking of any animal, plant or other form of marine life that inhabits the waters below the head of tide, or the flats or bottom regularly or continuously covered by sea water, and the possession, transportation and distribution of marine resources so taken.

These Ordinances are also applicable to any person who is not a member of the Passamaquoddy Tribe taking shellfish from the Pleasant Point Passamaquoddy Reservation, or involved in the possession, transportation and distribution of shellfish taken from the reservation.

Effective November 18, 1998
Section 1.3. Administration.

A. Licensing. Passamaquoddy tribal licenses for the various activities governed by these Ordinances shall be issued only by the tribal officials to whom that authority has been delegated by this section.

1. Sustenance licenses. The Tribal Clerk of either the Pleasant Point Reservation or the Indian Township Reservation may issue a sustenance fishing license to any resident member of the Tribe who demonstrates their eligibility for such a license under the terms of Part 2 of these Ordinances.

2. Ceremonial permits. The Tribal Clerk of either the Pleasant Point Reservation or the Indian Township Reservation, or any other official designated by the Governor and Council at either Reservation, may issue a ceremonial fishing permit to any resident member of the Tribe who has been approved for such a permit by the Joint Tribal Council or the Governor and Council of either Reservation under the terms of Part 2 of these Ordinances.

3. Commercial fishing licenses.

All tribal members must complete a written application before receiving a commercial fishing license. Each license issued shall identify the type of license or permit, the name of the tribal member to whom it is issued, the date of its expiration, the name of the official who issued it, any conditions or restrictions imposed upon the license or permit, and a place for the licensee to sign or initial, confirming that he or she has read and understood this tribal Ordinance.

(a) Lobster and crab. The Clerk of the Joint Tribal Council (or, if there is more than one, the Clerk maintaining an office at Pleasant Point) may issue an initial commercial lobster and crab license to any resident member of the Tribe who demonstrates his or her eligibility for such a license under the terms of Part 3 of these Ordinances, provided that not more than 22 such tribal licenses may be issued in 1998, and the Clerk of the Joint Tribal Council (or, if there is more than one, the Clerk maintaining an office at Pleasant Point) may issue an initial commercial lobster and crab license to a resident member of the Tribe designated by the Governor and Council for either the Indian Township or the Pleasant Point Passamaquoddy Reservation to use a fishing vessel owned by the Tribe for economic development purposes, provided that not more than two such tribal licenses may be issued in 1998. For purposes of this section,
“commercial lobster and crab licenses” includes all licenses for the taking of lobster and crab equivalent to State of Maine Class I, Class II, or Class III licenses as defined in Title 12, section 6421; the term does not include commercial apprentice licenses, sustenance licenses, student licenses, or ceremonial permits, even though lobster and crab may be taken under those licenses or permits;

“initial” license means a license issued in calendar year 1998 to a tribal member who has not completed an apprenticeship program for commercial lobster fishing as provided under Title 12, section 6422 of the Maine laws (as amended from time to time); and

“sustenance licenses” and “ceremonial permits” mean the licenses and permits described in Part 2 of these Ordinances.

The Clerk of the Joint Tribal Council may reissue or renew any commercial lobster and crab license after its expiration, to the previous holder of that license, provided that the license was issued to that holder during the previous calendar year (whether the license was active or under suspension), or the holder is at least 65 years old.

The Clerk of the Joint Tribal Council may issue and renew additional commercial lobster and crab licenses (in excess of the 24 initial licenses) to any resident member of the tribe who

- is at least 65 years old and has previously held a commercial lobster and crab fishing license, or
- who has completed an apprenticeship program for commercial lobster fishing as provided under Title 12, section 6422 of the Maine laws (as amended from time to time), or
- otherwise meets the requirements for issuance of a State commercial lobster and crab fishing license under Title 12, section 6421 of Maine law, and otherwise demonstrates their eligibility for such a license under the terms of Part 4 of these Ordinances.

The Tribal Clerk of either the Pleasant Point Reservation or the Indian Township Reservation may issue an apprentice lobster and crab license to any resident member of the Tribe who demonstrates their eligibility for such a license under the terms of Part 3 of these Ordinances.

The Tribal Clerk of either the Pleasant Point Reservation or the Indian Township Reservation may issue a student lobster and crab license to any resident
member of the Tribe who demonstrates their eligibility for such a license under the 
terms of Part 3 of these Ordinances.

(b) Sea urchins. The Clerk of the Joint Tribal Council (or, if there 
is more than one, the Clerk maintaining an office at Pleasant Point) may issue 
commercial sea urchin licenses to any resident member of the Tribe who 
demonstrates their eligibility for such a license under the terms of Part 4 of these 
Ordinances, provided that not more than 24 such tribal licenses may be issued in 
any calendar year.

(c) All other commercial fishing. The Tribal Clerk of either the 
Pleasant Point Reservation or the Indian Township Reservation may issue a 
general commercial fishing license to any resident member of the Tribe who 
demonstrates their eligibility for such a license under the terms of Part 3 of these 
Ordinances.

4. Notification. A copy of every license or permit issued under this 
Ordinance shall be mailed to the Commissioner of the Maine Department of 
Marine Resources by the issuing tribal official as provided in Title 12, section 
6027 of Maine law.

B. Enforcement.

1. Law Enforcement Officers. These Ordinances will be enforced by 
tribal law enforcement officers. For that purpose, tribal law enforcement officers 
are encouraged to work in cooperation with Canadian, U.S. and Maine law 
enforcement personnel responsible for the management and regulation of marine 
resources. Tribal law enforcement officers shall have all the powers and authority 
of a Warden of the Maine Marine Patrol in enforcing these Ordinances, and may 
summons any tribal member, any person taking shellfish from the flats within the 
Pleasant Point Reservation, or any other person acting in concert with a tribal 
member or such other person, to Passamaquoddy Tribal Court or the courts of the 
State of Maine as provided in Part 4, for any violation of any term or condition of 
these Ordinances or a license or permit issued under these Ordinances.

2. Implied Consent. Any person who applies for or receives a license 
under this Ordinance, or who takes shellfish from the flats within the Pleasant 
Point Reservation, has a responsibility to submit to inspection and search by a 
tribal law enforcement officer or Maine marine patrol officer for violations related 
to the activities authorized by the tribal license or this Ordinance, under the 
following conditions:

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(a) Watercraft or vehicles and the equipment located on or in them which are used primarily for taking marine resources, for which a license under this Ordinance is required, may be searched or inspected at any time;

(b) Any other location where activities are conducted for which a license under this Ordinance is required may be inspected or searched during the hours when those activities occur;

(c) A location specified in part (b) of this subsection may be inspected at any time if the law enforcement officer has a reasonable suspicion of a violation of this Ordinance or the marine resources laws incorporated herein;

(d) No residence dwelling may be searched without a search warrant unless otherwise allowed by law.

Any person who applies for or receives a license under this Ordinance has a responsibility to permit the seizure of evidence of a violation of this Ordinance or the marine resources laws incorporated herein which is found during an inspection or search conducted in accordance with this section. Refusal to permit inspection or seizure as provided in this section is grounds for suspension of any or all licenses issued under this Ordinance.

3. Tribal Court. The Passamaquoddy Tribal Court is hereby granted the jurisdiction to hear and decide any alleged violation of these Ordinances in accordance with Part 4 of these Ordinances, whether the violation is alleged by a tribal law enforcement officer or an officer of the Maine Marine Patrol, or other law enforcement officer having jurisdiction over the location and activity involved.

C. Planning/ordinances. The Natural Resources Committee, or such other officers or group within the Tribe as may be designated by the Joint Tribal Council, is authorized and directed to participate in state and federal marine resource management planning programs and activities in order to ensure appropriate consideration of tribal interests in marine resources and the activities regulated by this Ordinance. In addition, the Natural Resources Committee or other persons designated by the Joint Tribal Council shall periodically review the effectiveness of these Ordinances and propose any amendments to the Joint Tribal Council as needed. For these purposes, the Committee or other designee is to have the cooperation of tribal members and staff with relevant experience and qualifications, and of agencies and officials of the federal, state or other tribal governments with expertise in marine resources or fisheries management.

Effective November 18, 1998
Part 2. Tribal Sustenance and Ceremonial Uses.

Section 2.1. Eligibility. A tribal license to engage in sustenance fishing will be issued to any person who

- is listed on the official Census Roll of the Passamaquoddy Tribe, and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law.

A tribal permit to engage in fishing for ceremonial use will be issued to any person who

- is listed on the official Census Roll of the Passamaquoddy Tribe, and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law, and
- has been approved for a tribal ceremonial use permit by the Joint Tribal Council or the Governor and Council at either Passamaquoddy reservation.

Section 2.2. Activities authorized. A Passamaquoddy Sustenance Fishing License or Ceremonial Use Permit authorizes the holder to take, possess, transport and distribute any marine organism, for sustenance use or ceremonial use only, as stated in the license or permit, without a state license for those activities, subject to the following limitations:

A. A Sustenance Fishing License does not authorize the license holder to take lobster unless:

- the license specifically includes lobster;
- the license holder uses no more than 25 traps;
- each trap is tagged to show that it is a sustenance trap, and the license number of the owner; and
- the lobster is taken at a time when taking lobsters is legal under Maine law and regulation, as provided in section 2.4(A) of this Ordinance.

B. Neither a Sustenance Fishing License nor a Ceremonial Use Permit authorizes the license or permit holder to take sea urchins:

- unless the license or permit specifically includes sea urchins;
- unless the urchins are taken at a time when taking sea urchins is legal under Maine law and regulation, as provided in section 2.4(A) of this Ordinance; and

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• if taken by diving, unless the license or permit holder meets the same diver competency requirements that non-tribal members must meet to dive for urchins legally under Maine law (Title 12, sections 6532 and 6534), and the tender meets the same safety training requirements that non-tribal members must meet to legally work as a tender for an urchin diver under Maine law (Title 12, section 6533).

C. Neither a Sustenance Fishing License nor a Ceremonial Use Permit authorizes the holder to take scallops by diving unless the license or permit holder meets the same diver competency requirements that non-tribal members must meet to dive for scallops legally under Maine law, and the tender meets the same safety training requirements that non-tribal members must meet to legally work as a tender for a scallop diver under Maine law.

D. Neither a tribal Sustenance Fishing License nor a Ceremonial Use Permit authorizes the holder to take shellfish in violation of any municipal shellfish conservation ordinance. In any municipality, village corporation or township where a municipal shellfish conservation ordinance is in effect, a tribal member holding a Sustenance Fishing License or a Ceremonial Use Permit must comply with the terms of that ordinance, including, where applicable, obtaining a municipal shellfish harvesting license, not harvesting in areas closed by the municipal officers under the ordinance, and satisfying any conservation program requirements imposed upon municipal licensees, or upon applicants for municipal licenses, by the ordinance.

Section 2.3. Sustenance Use or Ceremonial Use. It is a violation of this tribal law for any marine organism taken or distributed for sustenance or ceremonial use to be sold at any time to any person, or to be put to any commercial use.

A. Sustenance Use. Sustenance use means any consumption or other use of the marine organism:
• within the boundaries of either the Pleasant Point or the Indian Township Passamaquoddy Reservation, by any person; or

• at any location within Maine:
  by any member of the Passamaquoddy Tribe, or
  within the household of any member of the Passamaquoddy Tribe, or
  by the immediate family of any member of the Passamaquoddy Tribe.
B. Ceremonial Use. Ceremonial use means use of a marine organism at any public or private ceremonial event meant to enhance the cultural and traditional practices of the Passamaquoddy Tribe and its members.

Section 2.4. State regulations generally applicable; exceptions. Except as stated in this section, it is a violation of this tribal law for a tribal member engaged in sustenance fishing or fishing for ceremonial use to violate any gear restriction, size requirement, trap limit, closed area or other state law or regulation that non-tribal members are subject to. The exceptions are:

A. Closed seasons. Tribal members holding a Sustenance Fishing License or a Ceremonial Use Permit may take marine organisms other than sea urchins or lobster for sustenance or ceremonial use at any time of the year.

Sea urchins may not be taken under a Sustenance Fishing License or a Ceremonial Use Permit during the closed season for sea urchins under Maine law.

Lobsters may not be taken under a Sustenance Fishing License or a Ceremonial Use Permit at night between June 1st and October 31st, or between 4 p.m. Saturday and ½ hour before sunrise the following Monday on weekends between June 1st and August 31st, as provided in Title 12, section 6440 of Maine law.

B. Lobster trap tags. Tribal members holding a Sustenance Lobster License must tag their sustenance traps with tribal trap tags issued by the designated official of the Passamaquoddy Tribe.
Part 3. Commercial Fishing

Section 3.1 Tribal commercial fishing license. A commercial fishing license issued by the Passamaquoddy Tribe may authorize a resident member of the Tribe to engage in any one or more of the following activities, without a state license to engage in those activities under the provisions of Maine law listed:

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<td>fish for, take, possess, ship or transport any marine finfish, squid, shrimp or other marine animals except lobster, crab, sea urchin, shellfish, scallops, marine worms, evers or eels</td>
<td>12 MRSA § 6501</td>
</tr>
<tr>
<td>fish for, take, possess, ship or transport and sell lobsters and crabs</td>
<td>12 MRSA § 6421</td>
</tr>
<tr>
<td>fish for, take, possess, ship or transport within Maine and sell shellfish taken</td>
<td>12 MRSA § 6601</td>
</tr>
<tr>
<td>fish for and take in open areas, possess, ship, transport within Maine and sell mahogany quahogs</td>
<td>12 MRSA § 6731</td>
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<tr>
<td>take mussels by hand raking, and ship, transport and sell mussels taken</td>
<td>12 MRSA § 6745</td>
</tr>
<tr>
<td>using boat for dragging mussels in open areas</td>
<td>12 MRSA § 6746</td>
</tr>
<tr>
<td>fish for, take, possess, ship, transport and sell marine worms taken</td>
<td>12 MRSA § 6751</td>
</tr>
<tr>
<td>take scallops by hand, possess, ship, transport and sell scallops taken</td>
<td>12 MRSA § 6701</td>
</tr>
<tr>
<td>using boat for dragging scallops</td>
<td>12 MRSA § 6702</td>
</tr>
<tr>
<td>operate a boat as a platform for harvesting sea urchins and scallops by hand, tending diver for hand harvest of sea urchins and scallops, and possess, ship, transport or sell sea urchins or scallops</td>
<td>12 MRSA § 6535</td>
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• operate a boat as a platform for harvesting scallops by hand, tending a diver for hand harvesting scallops, and possess, ship, transport or sell scallops

• taking scallops by hand or drag, and possess, ship and transport up to 2 bushels of shell scallops or 4 quarts of shucked scallops for noncommercial use

• take sea urchins by hand, possess, ship, transport and sell sea urchins taken

• using boat for dragging sea urchins, possess, ship, transport and sell sea urchins taken

• take sea urchins by hand-raking or trap, possess, ship, transport and sell sea urchins taken

• fish for, take, possess, ship or transport and sell elvers

• fish for, take from Maine coastal waters, possess, ship or transport and sell eels

• harvest, possess, ship, transport and sell seaweed

12 MRSA § 6535, § 6536, § 6701, § 6748

• 12 MRSA § 6703

• 12 MRSA § 6748

• 12 MRSA § 6748-A

• 12 MRSA § 6748-D

• 12 MRSA § 6505-A

• 12 MRSA § 6505-C

• 12 MRSA § 6803

A sea urchin dragging license authorizes the Tribal Member license holder engage in the licensed activities with a boat. The license cannot be transferred to any other individual. License holder must be on board the vessel that is being used for dragging urchins. The urchin dragging license must identify the boat that is being used for dragging.

In the event that a licensed Tribal member is married and living with a non-member and the non-member spouse provides support and income to the Tribal household, the Tribal Member does not have to be on board the vessel. For a tribal urchin dragging license to be used by a non-member spouse, the Tribal Member must provide proof of ownership of at least 51% of the boat.
Section 3.2 Eligibility. Passamaquoddy tribal members are eligible for commercial fishing licenses issued by the Tribe in accordance with the following criteria:

A. General commercial fishing license. A general commercial fishing license will be issued to any person who:

- is listed on the official Census roll of the Passamaquoddy Tribe; and
- has complied with all application procedures of the Tribe; and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- whose right to such a tribal license is not under suspension.

B. Commercial lobster and crab fishing license.

1. 1998. In the calendar year 1998, a commercial lobster and crab fishing license may be issued to not more than 22 persons:

- who are listed on the official Census roll of the Passamaquoddy Tribe; and
- who have complied with all application procedures of the Tribe; and
- who have been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- who owns or operates a boat suitable for engaging in lobster and crab fishing; and
- whose right to such a tribal license is not under suspension; and

and to not more than 2 persons:

- who are listed on the official Census roll of the Passamaquoddy Tribe; and
- who have complied with all application procedures of the Tribe; and
- who have been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- who have been designated by the Governor and Council of either Passamaquoddy Reservation to use a tribal fishing vessel for economic development by engaging in lobster and crab fishing; and
- whose right to such a tribal license is not under suspension.

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2. After 1998. In the calendar year 1999 and thereafter, a commercial lobster and crab fishing license may be issued to any person who:

- is at least 65 years old and has previously held a commercial lobster and crab fishing license, or
- held a commercial lobster and crab fishing license during the preceding calendar year, or
- has been designated by the Governor and Council of either reservation to succeed the prior holder of a commercial lobster and crab license for economic development purposes, or
- has previously held an apprentice lobster and crab fishing license issued by the Tribe, and has completed an apprenticeship program for commercial lobster fishing as provided under Title 12, section 6422 of the Maine laws (as amended from time to time)

and who continues to meet the membership, application, residency, boat ownership/use, and non-suspension requirements of section 3.2(B)(1).

In issuing any commercial lobster and crab fishing license, preference will be given to tribal members who have held a tribal or state lobster license within the preceding three years.

C. Apprentice lobster and crab fishing license. An apprentice lobster and crab fishing license will be issued to any person who:

- is listed on the official Census roll of the Passamaquoddy Tribe; and
- who has complied with all application procedures of the Tribe; and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- presents a written statement signed by the holder of a state or tribal commercial lobster and crab fishing license, agreeing to sponsor the apprentice by working together tending the sponsor's lobster traps; and
- agrees to take any educational courses required for apprentice lobster licensees under Title 12, section 6422 of Maine law; and
- whose right to such a tribal license is not under suspension.

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D. Student lobster and crab fishing license. A student lobster and crab fishing license will be issued to any person who:

- is listed on the official Census roll of the Passamaquoddy Tribe; and
- who has complied with all application procedures of the Tribe; and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- is a full-time student at least 18 years and not more than 22 years of age; and
- whose right to such a tribal license is not under suspension.

E. Handfishing scallop license, and/or handfishing sea urchin license. A commercial handfishing scallop license, and/or handfishing sea urchin fishing license will be issued to any person who:

- is listed on the official Census roll of the Passamaquoddy Tribe; and
- who has complied with all application procedures of the Tribe; and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- has completed a commercial underwater handharvesting competency course offered in accordance with 12 M.R.S.A. § 6532; and
- whose right to such a tribal license is not under suspension.

In the issuance of any commercial sea urchin license, preference will be given to tribal members who have held a tribal or state sea urchin license within the preceding three years.

F. Sea urchin and/or scallop diving tender license. A sea urchin and/or scallop diving tender license will be issued to any person who:

- is listed on the official Census roll of the Passamaquoddy Tribe; and
- who has complied with all application procedures of the Tribe; and
- has been a resident of Maine for the six months preceding issuance of the license, as defined in Title 12, section 6301(1) of Maine law; and
- has completed a boat tender safety training session offered in accordance with 12 M.R.S.A. § 6533; and
- whose right to such a tribal license is not under suspension.

Effective November 18, 1998
Section 3.3. License terms. A tribal commercial fishing license must contain the following terms:

A. Licensee identification. The name, and date of birth of the tribal member to whom the license is issued, and whose activities are authorized by the license, and a photo of the licensee or a description of height, weight, hair and eye color;

B. License number. A number or other means of identifying the license and distinguishing it from all other tribal fishing licenses;

C. Activities licensed. A clear statement of the activities that are covered by the license;

D. Boat. A description of any boat owned or operated by the licensee and covered by the license;

E. Effective dates. The date of issue and the term of the license or its date of expiration;

F. Issuing official. The name and title of the tribal official who issued the license;

G. Possession; Implied Consent. A plain statement that the licensee’s acceptance of the tribal license constitutes the licensee’s understanding that
- fishing activities are only authorized by the license to the extent that the tribal licensee is actively engaged in those activities,
- the license must be in the possession of the licensee when engaged in the activities governed by the license,
- the license must be displayed upon request by a state or tribal law enforcement officer, and
- the licensee consents to the boarding, inspection and search of watercraft, vehicles and equipment used in conducting the activities governed by the tribal license.

A tribal commercial, apprentice or student lobster and crab license must also contain the following terms:

H. Trap tags. Tribal members holding a tribal commercial, apprentice or student lobster and crab license must tag each of their lobster traps with tribal trap tags issued by the designated official of the Passamaquoddy Tribe. Each lobster trap tag must have both a means of identifying the license holder to whom it is
issued, and a tag number identifying each of the licensee holder's traps. A tag on which this information is not legible is not valid.

A tribal commercial fishing license permitting shellfish harvesting must also contain the following terms:

I. Shellfish tags. If required by state law for non-tribal members, tribal members holding a tribal commercial shellfish harvesting license must attach a tag to each container, hod or bag containing shellstock with tribal tags issued by the designated official of the Passamaquoddy Tribe, containing the same information required by state law.

Part 4. Reciprocal Shellfish Licensing Agreements.

A commercial shellfish harvesting license issued by or for any Maine municipality, village corporation or township may be used to harvest clams from the flats of the Pleasant Point Passamaquoddy Reservation only if a reciprocal licensing agreement with the municipality or other licensing authority has been approved by the Joint Tribal Council. In order to be approved, a reciprocal licensing agreement must:

• specify the type(s) of shellfish governed by the agreement;

• provide that tribal licenses authorizing the harvest of shellfish will be recognized as sufficient authority for the holder to harvest clams on the flats of the municipality, village corporation or township, whether the tribal license is for commercial, sustenance or ceremonial purposes;

• provide that resident members of the Passamaquoddy Tribe and the residents of the municipality, village corporation or township party to the agreement may take shellfish without a license in the other jurisdiction to the same extent that licensees of the other jurisdiction may legally do so in their own jurisdiction;

• provide that any person harvesting shellfish within the jurisdiction of the other party under the terms of the reciprocal agreement is fully subject to enforcement of any local shellfish harvesting or conservation ordinance, and to the penalties provided for any violation thereof, including suspension or revocation of person's shellfish harvesting license, where provided by local law;

Effective November 18, 1998
• provide for termination of the reciprocal licensing agreement upon 30 days written notice by the governing body of either jurisdiction to the governing body of the other jurisdiction.

Part 5. Judicial Powers; Penalties.

Section 5.1. Criminal violations; penalties. The criminal penalties that are provided by Maine law for the violation of any provision of state law that is adopted as tribal law by reference or incorporation in these Ordinances shall also be applicable to the corresponding violation of this Ordinance. Jurisdiction over such a violation by a tribal member shall be in the Passamaquoddy Tribal Court or state court, as provided in Title 30, section 6209-A. Jurisdiction over such a violation by a nonmember of the Tribe shall be in state court.

Section 5.2. Civil violations; penalties. Any violation by any person of the provisions of these Ordinances, or of the terms or conditions of any license issued under these Ordinances or recognized under a reciprocal licensing agreement, is declared to be a civil violation, whether or not the same conduct is punishable criminally. Civil violations may be enforced in an action by the Tribe in the Passamaquoddy Tribal Court when alleged to have been committed by a tribal member, or in the state courts when alleged to have been committed by a nonmember of the Tribe. In either case, the following civil penalties are applicable:

1. License suspension. Any license for the taking of marine resources shall be subject to suspension for any period up to one year upon a judicial finding that the license holder has violated the terms of the license or of these Ordinances, or allowed another to commit such a violation under the authority of his or her license.

2. Civil penalties. The holder of any license for the taking of marine resources shall be subject to a civil money penalty of up to $2,000 for any violation of the terms of the license or of these Ordinances, or for allowing another to commit such a violation under the authority of his or her license, in addition to any other remedy. Any other person who, acting in concert with the holder of any tribal license for the taking of marine resources, or with the holder of any shellfish harvesting license recognized by the Tribe under a reciprocal licensing agreement, violates or participates in any violation of the terms of that license or of these Ordinances shall be subject to a civil money penalty of up to $2,000 for each violation.
In determining the appropriateness of a civil penalty, the Court shall consider the nature of the violation, any history of prior violations, and any adverse consequences to others, their property or the natural resources that may have resulted from the violation. In the event that a violation has caused monetary loss or damage to the Tribe or to another person, the Court may order restitution, in addition to or instead of other penalties.

3. Forfeiture. Any marine resource taken or possessed in violation of these Ordinances shall be subject to seizure by any law enforcement officer with authority to enforce these Ordinances, and to forfeiture to the Tribe in accordance with the same procedures for forfeiture provided in the state marine resources laws. Forfeiture proceedings shall be conducted in a court having jurisdiction over the violation giving rise to the forfeiture.

Section 5.3. State agency suspension. If the holder of a license issued by the Tribe under this Ordinance, or a license recognized by the Tribe under a reciprocal licensing agreement, is convicted of a violation for which a license suspension is provided under the terms of Title 12, chapter 609 of Maine law, the right to engage in the activities authorized under that license may be suspended by the Commissioner of the Maine Department of Marine Resources for the period specified in state law, provided that the procedures of that chapter are followed.

Section 5.4. Procedure. Actions to enforce these Ordinances in the Passamaquoddy Tribal Court shall be conducted in accordance with the Rules of Procedure of that Court.

Adopted: November 18, 1998

Amended: August 15, 2001 [Adding two paragraphs at the end of § 3.1 concerning sea urchin dragging licenses.]
April 3, 1998

Governor Angus King
One State House Station
Augusta, ME 04333-0001

RE: Implementation of LD 2145

Dear Governor King:

Enclosed with this letter you will find a letter addressed to you on behalf of the Passamaquoddy Tribe providing certain assurances of the Tribe's understandings and intentions with respect to the implementation of the above-referenced new law.

Please also consider this letter as certification of the fact that the persons who have signed the enclosed letter of assurance concerning LD 2145 represent more than a majority of the members of the Tribal Council and that they are authorized to act on behalf of the Passamaquoddy Tribe in connection with this matter.

Sincerely,

John Stevens
April 1, 1998

Governor Angus S. King, Jr.
One State House Station
Augusta, Maine 04333-0001

Re: Implementation of LD 2145

Dear Governor King:

On behalf of the Passamaquoddy Tribe, its Governors and Joint Tribal Council we thank you for your willingness to sign LD 2145 into law. We appreciate your taking time to meet with us on Friday morning and the recognition of the tribe's efforts in offering this legislation which embodies a new working arrangement of the Tribe and the State of Maine with regard to marine resource licensing. We want to provide you, on behalf of the Passamaquoddy Tribe, with assurances of the Tribe’s understandings and intentions with respect to the implementation of this new law.

We have been and remain committed to cooperative enforcement of this law. We will consult and cooperate with both policy-making and law enforcement branches of the State Department of Marine Resources, and it is our intention to work out administrative protocols with the Department to implement the new law. We understand that those will include a process whereby we may be notified promptly of any violation of applicable law by any tribal member acting under a tribal license, or even without a license, so that we may put in place the necessary actions on our part. We commit to working closely with the Department to assure the consistent interpretation and application of state laws on licensing and conservation by the Passamaquoddy Tribe and the Department as we go forward to implement this new law.
We submit the following as the appropriate construction of the bill's specific provisions:

A. The provision in section 6302-A(2) making sustenance fishing subject to "all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism..." includes those State laws and rules that govern a person permitted by law to harvest marine organisms without any license. For example, state laws or rules setting daily "bag limits", size requirements, or gear limitations for particular species, such as striped bass, that can be harvested for recreational purpose without a license, would apply to tribal sustenance or ceremonial fishing.

B. Section 6302-A(2) creates an exception for tribal members fishing in compliance with a tribal sustenance or ceremonial use permit from otherwise applicable state law and rules setting a harvest season. This exception does not extend to the lobster and urchin fisheries, where all laws and rules establishing closed seasons apply to tribal members fishing in compliance with tribal sustenance and ceremonial use permits. This partial harvest season exception is properly interpreted narrowly, to exempt the tribal members fishing in compliance with a tribal sustenance or ceremonial use permit from only the closed season harvest laws and regulations, and not from any other conservation restrictions. For example, restrictions such as closed area, size restrictions, time of day, day of week restrictions, and catch-and-release requirements are intended to be applicable to tribal fishing. Tribal members with a tribal sustenance or ceremonial fishing license will comply with catch and release regulations which apply to the seven Downeast rivers and will not take or possess salmon for sustenance or ceremonial purposes from those rivers.

C. The license suspension provision of section 6302-A(6) is understood to mean that the Commissioner of DMR may (or shall as specified) suspend the exemption from State licensing as well as the tribal license and right to obtain such a license that a tribal member may have under subsections 1 or 2 of section 6302-A. Any such suspension will be on the same terms as State licenses issued by DMR are suspended under Title 12 chapter 617. For example, just as DMR may suspend the licenses of non-Tribal members, DMR also may suspend the tribal licenses and associated State licensing exemption of Tribal members, all pursuant to Chapter 617 and other particular license suspension provisions of the state Marine Resources laws.

D. Section 6302-A(7) is properly interpreted to authorize Department personnel to enforce Maine marine resource laws and regulations, as amended for tribal commercial, sustenance and ceremonial use tribal licenses under this LD 2145, pursuant to the general enforcement provisions applicable to all other Maine citizens. Specifically, the tribal license issued pursuant to the State license exemption in section 6302-A authorizes the boarding and inspection of vessels of tribal license holders by marine patrol officers under 12 MRSA section 6306, and require a tribal license holder to display the tribal license upon request of a marine patrol officer or other authorized person under 12 MRSA section 6303. The Department may undertake judicial enforcement in Maine courts under Title 12, Chapter 607, or alternatively, in Passamaquoddy Tribal Court pursuant to 30 MRSA section 6209-A. To make these important
points clear to Passamaquoddy Tribal license holders, the tribal license will include language notifying tribal members that their acceptance of a tribal license pursuant to the State exemption created by LD 2145 gives their implied consent to such boarding, inspection, license display demand and enforcement.

Finally, we are committed as well to observing state conservation laws and regulations, as amended from time to time, in order to preserve these resources for future generations. We hereby confirm that the provisions of LD 2145, uniformly administered, will fulfill the needs of our Tribe to pursue our traditional salt water fishing practices, by providing for the sustenance and ceremonial needs of our tribal members and communities, and a reasonable means of participation in commercial fishing activities. Therefore, the Tribe will not support or pursue an appeal of State of Maine v. Allie Beal, et al. Maine District Court Docket Nos. 96-957 (March 27, 1998). We look forward to continuing cooperation between the Tribe and the State and, if appropriate in order to carry out the intentions incorporated in the bill, to modify this legislation or procedures in order to better implement the conservation and effective licensing goals, as we may mutually agree.

Sincerely,

Passamaquoddy Tribe
Pleasant Point

Passamaquoddy Tribe
Indian Township

Tribal Governor

Lt. Governor

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Tribal Governor

Lt. Governor

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

Council Member

74-03-98
CERTIFICATION OF INCUMBENCY

1. I am the duly appointed and acting Clerk of the Joint Tribal Council of the Passamaquoddy Tribe in charge of the books and records of the said Council, including the minutes of the meetings of the Joint Tribal Council.

2. The following named persons have been elected to and currently hold the offices within the Tribe indicated opposite their names, and each is a current member of the Joint Tribal Council:

   From Pleasant Point Reservation:
   Richard Doyle            Governor
   William Altvater, Jr.    Lt. Governor
   Fred Francis             Council Member
   Margaret Dana            Council Member
   George Bassett III       Council Member
   Lorine Homan             Council Member
   Peter Clement III        Council Member
   Clifford Francis         Council Member

   From Indian Township Reservation:
   John Stevens             Governor
   Phyllis Saunders         Lt. Governor
   Victoria Boston          Council Member
   Ralph Doten              Council Member
   Martin Dana              Council Member
   Wayne Newell             Council Member
   Robert Newell            Council Member
   Dwayne Sockabasin        Council Member

Date: 4/18/98

ATTEST:

Mary J. Joh-Nicholas, Clerk
Passamaquoddy Joint Tribal Council
NOTICE
SPECIAL JOINT COUNCIL MEETING
WEDNESDAY, NOVEMBER 18, 1998
3:00 P.M.
PLEASANT POINT TRIBAL OFFICE BUILDING

AGENDA

1. SALT WATER FISHING ORDINANCE

“Tribal members are welcome to attend and comment”

Posted: November 13, 1998 MJn
Minutes
Passamaquoddy Tribe
Joint Tribal Council
11/18/98 PP

Indian Township
Governor Richard Stevens
Gerald Stevens
Ralph Doten
Richard Sabattus
Molly J. Parker
Vicki Boston
Absent: Dwayne Sockabasin
Lt Governor Phyllis Saunders

Pleasant Point
Governor Richard Doyle
Lt Governor Edward Bassett Jr
Reuben Clayton Cleaves
Gene Wayne Francis Sr
Clifford Francis Sr
Lorene Homan
Absent: Fred Francis Jr
George Bassett III

The meeting convened at 3:15 P.M. with Governor Doyle, the Chair.

AGENDA #1 SALT WATER FISHING ORDINANCE
Governor Doyle - We as a body, as well as some local fishermen are present for input to finalize this ordinance See Draft 1G Dated 11/10/98

Representative Donald Soctomah - The intention is to get this ordinance passed, subject to review in 6 months at that time, bring it back and review and make changes as necessary.

Porpoise, Blue Fin Tuna are not included in this ordinance, that could very well be a federal issue in the future. Representative Soctomah suggests that the Joint Council plan to go to the Bureau and ask them to protect our rights, pursue funding for a program dealing only in matters of Marine Resources. Basically, the Joint Council wishes to see this adopted to have a beginning, as Richard Sabattus put it "like stumbling through life" or as some see it, trial and error. We will learn as we go.

REUBEN CLAYTON CLEAVES MOTIONS TO APPROVE THE PASSAMAQUODDY TRIBAL ORDINANCE REGULATING SALT WATER FISHING AND GATHERING TO BE REVIEWED IN 6 MONTHS TIME FOR COMPLIANCE AND OR FOR AMENDMENTS IF NEED BE
SECONDED BY: MOLLY JEANNETTE PARKER

Discussion on fees: Clayton suggests a minimum $25.00 fee for commercial licenses including apprentice and student licenses. Sustenance will be free. Lt Governor Bassett comments that we need to do more planning also we need one person to handle just this, it's a good idea also to regulate this and to limit the State of Maine's involvement.

Vicki Boston states for the record that she has to vote against this and that she feels the document is real loose, she doesn't feel comfortable with it, afraid of the government.
Governor Doyle recommends to authorize both governors to work on a fee schedule with a $25.00 minimum fee if necessary and make recommendations as to how the licenses will be divided, with a commitment to get all the loose spots to get this program moving forward.

REUBEN CLAYTON CLEAVES RESTATE HIS MOTION - MOTION TO APPROVE THE PASSAMAQUODDY TRIBAL ORDINANCE REGULATING SALT WATER FISHING AND GATHERING TO BE REVIEWED IN 6 MONTHS TIME FOR COMPLIANCE AND OR FOR AMENDMENTS IF NEED BE AND TO AUTHORIZE THE TWO GOVERNORS TO WORK ON A FEE SCHEDULE AND WORK WITH THE DEVELOPERS TO DEVELOP A FORMULA TO ASSIGN THE LICENSES.
SECONDED BY: MOLLY JEANNETTE PARKER
Lt Governor Bassett states that he feels that we are giving up sovereignty, the State of Maine decides to close a certain species, we have to abide by it, the State of Maine is setting the tone which he thinks isn't fair and feels that it can be negotiated better through the legislature or in court.
VOTE: 7 IN FAVOR(RCC/MJP/RD/GS/RS/CF/GWF) 3 OPPOSE(VB/ERB/LH)
0 ABSTENTION 4 ABSENT(FF/GBIII/PS/DS)
MOTION CARRIES

VICKI BOSTON MOTIONS TO ADJOURN
SECONDED BY: CLIFFORD FRANCIS SR
VOTE: 10 IN FAVOR(RCC/MJP/RD/GS/RS/CF/GWF/VB/ERB/LH)
0 OPPOSE 0 ABSTENTION 4 ABSENT(FF/GBIII/PS/DS)
MOTION CARRIES

ATTEST:

Mary J. Lola-Nicholas/Joint Council Clerk

Tribal members present: Alonzo Francis, Representative Donald Soctomah, Bruce Francis, Francis (Lenny) Sapiel Jr, Edward Nicholas and William Altvater Jr.