



Mashpee Wampanoag Tribe

TRIBAL ORDINANCE

2016-ORD-005

EMERGENCY HERRING FISHING ORDINANCE

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The Mashpee Wampanoag Tribal Council does ordain as follows:

Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

- (a) The Mashpee Wampanoag Tribe (the "Tribe") is a federally-recognized Indian Tribe with a duly-enacted Constitution and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the "Tribal Council") pursuant thereto.
- (b) Article VI, § 2.A. of the Constitution provides that the Tribal Council is empowered to promote and protect the peace, morals, political integrity, economic security and general welfare of the Tribe and its members.



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- (c) On December 30, 2015, the Assistant Secretary—Indian Affairs proclaimed certain lands as the Tribe's reservation, which lands included the property in and around the Tribe's Museum (the "Museum Property").
- (d) The Museum Property includes access points to inland waters in which herring run.
- (e) During the annual spring herring run, the Tribe believes non-Tribal members have been using the Museum Property to illegally take and possess herring.
- (f) The Tribe takes seriously both its stewardship of the natural resources of the Cape Cod region and its governance of natural resources on its Reservation lands.
- (g) 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, at Section 8(f) allows for the passage of emergency ordinances in the event of an immediate threat to the health, peace, safety, or property of the Tribe.
- (h) The Tribal Council deems it essential to promote and protect the political integrity, economic security and general welfare of the Tribe, by establishing this Emergency Herring Fishing Ordinance.
- (i) The illegal taking and possession of herring during the spring herring run is an immediate threat to the health, peace, safety, and property of the Tribe.

Section 2. AUTHORITY AND PURPOSE

- (a) **Authority.** The authority for this ordinance is found in Article VI, § 2.A, of the Mashpee Wampanoag Constitution.
- (b) **Purpose.** The purpose of this Ordinance is to accomplish the following objectives:
1. To protect the health of the annual herring run;
 2. To conserve the Tribe's natural resource of the herring run;
 3. To address the immediate and emergency threat to the now-ongoing spring herring run by preventing the illegal taking and possession of herring by non-Tribal members on Tribal lands.

Section 3. DEFINITIONS.



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- (a) "Herring" means the two species of fish in coastal Massachusetts which are collectively referred to commonly as "river herring": the alewife (*Alosa pseudoharengus*) and the blueback herring (*Alosa aestivalis*).
- (b) "Possession" means having or controlling something on one's person or in one's vehicle.
- (c) "Trespass" means to enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or to fail to leave premises that are open to the public after being lawfully directed to do so by a person in charge.
- (d) "Tribal Lands" means all reservation and trust lands of the Tribe and all waters and waterways on and contiguous to those lands.

Section 4. JURISDICTION.

- (a) The Mashpee Wampanoag Tribal Court has jurisdiction over cases arising under applicable federal law, this Ordinance, other ordinances and resolutions of the Tribe, and any cases arising under the customs and traditions of the Tribe concerning natural resources.
- (b) The Tribal Court is empowered to issue orders and the Tribe's Law Enforcement is empowered to issue citations, pertaining to violations of this Ordinance.
- (c) Subject Matter Jurisdiction. The Tribal Court shall have subject matter jurisdiction to hear all violations of this Ordinance that occur on Tribal Lands.
- (d) Personal Jurisdiction.
 - (1) Non-Tribal Member Indians. The Tribal Court shall have jurisdiction over non-Tribal member Indians over violations of this Ordinance that occur on Tribal Lands where those non-Tribal member Indians:
 - a. Have consented to the jurisdiction of the Tribe or Tribal Court,
 - b. Have close social and economic ties to the Tribe or a Tribal member, or
 - c. Whose conduct affects the political integrity, economic security, or health or welfare of the Tribe or any of its Tribal members.
 - (2) Non-Indians. The Tribal Court shall have jurisdiction over non-Indians over violations of this Ordinance that occur on Tribal Lands where those non-Indians:



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- a. Have consented to the jurisdiction of the Tribe or Tribal Court, or
- b. Whose conduct affects the political integrity, economic security, or health or welfare of the Tribe or any of its Tribal members.

Section 5. PROHIBITED ACTIVITIES.

- (a) The fishing, taking, and possession of, and other activity by non-Tribal members impacting or causing stress to herring on Tribal Lands is prohibited because of its effect on the political integrity, economic security, or health or welfare of the Tribe and its Tribal members.
- (b) Trespass on Tribal Lands by non-Tribal members for the purpose of illegal fishing is prohibited because of its effect on the political integrity, economic security, or health or welfare of the Tribe and its Tribal members.

Section 6. PENALTIES FOR VIOLATION.

- (a) In its discretion, the Tribal Court may issue the following civil penalties alone or in combination for violations under this Ordinance:
 - (1) Monetary penalties of not less than \$50 and not more than \$500;
 - (2) Community service;
 - (3) Injunction prohibiting the defendant from committing, or attempting to commit, certain acts;
 - (4) Seizure and forfeiture of fishing equipment; provided that the person whose fishing equipment has been seized shall be notified of and have the right to a hearing before the Tribal Court within 20 days of the seizure;
 - (5) Referral or reporting of case to Massachusetts Division of Marine Fisheries, Town of Mashpee Herring Warden, Town of Mashpee Police Department and the Division of Environmental Law Enforcement.

Section 7. APPEALS.

- (a) Appeals of decisions of the Mashpee Wampanoag Tribal District Court under this Ordinance must be filed within thirty (30) days and will be considered by a single Justice of the Mashpee Wampanoag Tribal Supreme Court.



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(b) The decision of the Mashpee Wampanoag Tribal Supreme Court Justice on appeal shall be final and not appealable.

Section 8. SOVEREIGN IMMUNITY. The sovereign immunity of the Tribe, its officials, employees and agents is in no manner waived by this Ordinance.

Section 9. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed.

Section 10. SEVERABILITY. If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 11. EFFECTIVE DATE. This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

Passed by the Mashpee Wampanoag Tribal Council on April 14, 2016.




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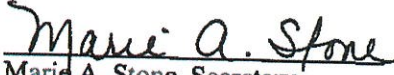
CERTIFICATION

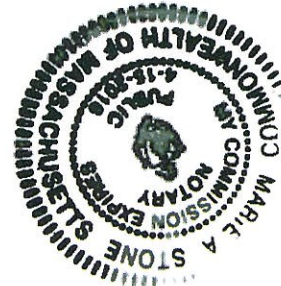
We, the undersigned Chairperson and Secretary of the Mashpee Wampanoag Tribal Council do hereby certify that the Tribal Council is composed of 13 members of whom 10, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 14th day of April, 2016, and that the foregoing Ordinance 2016-ORD-005, was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 0 not voting.

DATED this 14th day of April, 2016.


Cedric Cromwell, Chairman
Mashpee Wampanoag Tribal Council

ATTEST:



Marie A. Stone, Secretary
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-15-2016

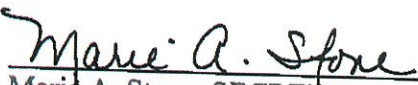


CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2015-ORD-002, Emergency Herring Fishing Ordinance, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions.

DATED this 14th day of April, 2016.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council