

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

H.P. 301 - L.D. 451

**An Act Relating to Certain Marine Resources Licenses**

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

**Whereas,** the elver fishing season begins March 22, 2013, and changes made to elver fishing licensing regulations by this legislation must be made prior to the beginning of this season; and

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

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

**Sec. 1. 12 MRSA §6302-A,** as amended by PL 2011, c. 598, §17, is further amended to read:

**§6302-A. Taking of marine organisms by federally recognized Indian tribes**

**1. Tribal exemption; commercial harvesting licenses.** A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803, 6804 or 6808 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe, nation or band or the agent of the band to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs issued a tribal license pursuant to this subsection to conduct activities is subject to all laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe, nation or band:

A. May utilize lobster traps tagged with trap tags issued by the tribe, nation or band or the agent of the band in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe, nation or band is not required to pay trap tag fees under section 6431-B if the tribe, nation or band or the agent of the band issues that member trap tags;

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe, nation or band or the agent of the band in a manner consistent with tags issued pursuant to section 6505-B. A member of the tribe, nation or band is not required to pay elver fishing gear fees under section 6505-B if the tribe, nation or band or the agent of the band issues that member elver fishing gear tags; and

C. 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 Houlton Band of Maliseet Indians who is a resident of the State is not required to hold an elver fishing license under section 6505-A to conduct activities authorized under that license if that member holds a valid license issued by the band or the agent of the band to conduct the activities authorized under that license. A member of the Houlton Band of Maliseet Indians issued a tribal license pursuant to this subsection is subject to all laws and rules applicable to a person who holds an elver fishing license issued under section 6505-A and to all the provisions of chapter 625, except that the member of the band may utilize elver fishing gear tagged with elver fishing gear tags issued by the band or the agent of the band in a manner consistent with tags issued pursuant to section 6505-B. A member of the Houlton Band of Maliseet Indians is not required to pay elver fishing gear fees under section 6505-B if the band or the agent of the band issues that member elver fishing gear tags.

**2. Tribal exemption; sustenance or ceremonial tribal use.** Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is a resident of the State may at any time take, possess, transport and distribute:

A. Any marine organism, except lobster, for sustenance use if the tribal member holds a valid sustenance fishing license issued by the tribe, nation or band or the agent of the band. A sustenance fishing license holder who fishes for sea urchins may not harvest sea urchins out of season;

B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe, nation or band or the agent of the band. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe, nation or band or the agent of the band in a manner consistent with trap tags issued pursuant to section 6431-B; however, a sustenance lobster license holder may not harvest lobsters for sustenance use with more than 25 traps; and

C. Any marine organism for noncommercial use in a tribal ceremony within the State, if the member holds a valid ceremonial tribal permit issued to the tribal member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and council at either Passamaquoddy reservation, by the Penobscot Reservation Tribal Council or by the Aroostook Band of Micmacs Tribal Council or its agent.

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within Passamaquoddy Indian territory, as defined in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30, section 6205, subsection 2, or Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2, or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms.

A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who takes a marine organism under a license or permit issued pursuant to this subsection must comply with all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism, except that a state law or rule that sets a season for the harvesting of a marine organism does not apply to a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who takes a marine organism for sustenance use or for noncommercial use in a tribal ceremony. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs 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, Penobscot Nation or Aroostook Band of Micmacs 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.

**3. Lobster, sea urchin, scallop and elver licenses; limitations.** Pursuant to subsection 1:

A. The Passamaquoddy Tribe and Penobscot Nation may each issue to members of its tribe or nation, as the case may be, up to 24 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

A-1. The Aroostook Band of Micmacs or its agent may issue to members of the band up to 10 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

B. The Passamaquoddy Tribe may not issue to members of the tribe more than 24 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in accordance with section 6749-P;

C. The commissioner shall adopt rules authorizing the Penobscot Nation to issue to members of the nation commercial sea urchin licenses if the commissioner determines that sea urchin resources are sufficient to permit the issuance of new licenses. The commissioner may not authorize the Penobscot Nation to issue more than 24 commercial sea urchin licenses to members of the nation in any calendar year;

C-1. The commissioner shall adopt rules authorizing the Aroostook Band of Micmacs or its agent to issue to members of the band commercial sea urchin licenses if the commissioner determines that sea urchin resources are sufficient to permit the issuance of new licenses. The commissioner may not authorize the Aroostook Band of Micmacs or its agent to issue more than 24 commercial sea urchin licenses to members of the band in any calendar year;

D. The Penobscot Nation may not issue to members of the nation more than 20 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses to members of the nation for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

D-1. The Aroostook Band of Micmacs or its agent may not issue to members of the band more than 10 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Aroostook Band of Micmacs or its agent to issue additional commercial licenses to members of the band for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

D-2. The Passamaquoddy Tribe may not issue to members of the tribe more than 20 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Passamaquoddy Tribe to issue additional commercial licenses to members of the tribe for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

E. The Penobscot Nation may not issue to members of the nation more than 8 commercial licenses for the taking of elvers in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses to members of the nation for the taking of elvers if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses; ~~and~~

E-1. The Passamaquoddy Tribe may not issue to members of the tribe commercial licenses for the taking of elvers in any calendar year that exceed the following limits:

(1) One hundred twenty-four licenses that allow the taking of elvers with one piece of gear only, consisting of either an elver fyke net or a dip net;

(2) An additional 26 licenses that allow the taking of elvers with 2 pieces of gear, consisting of an elver fyke net and a dip net; and

(3) An additional 50 limited licenses that allow the taking of elvers only in the St. Croix River and only with a dip net;

F. The Aroostook Band of Micmacs or its agent may not issue to members of the band more than 8 commercial licenses for the taking of elvers in any calendar year, except that the commissioner shall by rule allow the Aroostook Band of Micmacs or its agent to issue additional commercial licenses for the taking of elvers to members

of the band if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses-; and

G. The Houlton Band of Maliseet Indians or its agent may not issue to members of the band commercial licenses for the taking of elvers in any calendar year that exceed the following limits:

(1) Eight licenses that allow the taking of elvers with an elver fyke net only; and

(2) Eight licenses that allow the taking of elvers with a dip net only.

The commissioner shall by rule allow the Houlton Band of Maliseet Indians or its agent to issue additional commercial licenses for the taking of elvers to members of the band if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses.

The Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs, Houlton Band of Maliseet Indians and Department of Marine Resources shall report on the status of the sea urchin, scallop and elver fisheries to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of each even-numbered year.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**4. Sea urchin and scallop handfishing and tender licenses; limitations.** The Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs or its agent may not issue a license or permit pursuant to subsection 1 or 2:

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

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

**5. Notification.** Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or its agent or a tribal official in accordance with section 6027.

**6. License suspension.** If a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs issued a license or permit under this section is convicted or adjudicated of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs issued a license or permit under this section is convicted or adjudicated of a violation for which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.

**7. Enforcement.** A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or

Aroostook Band of Micmacs who is issued a license or permit pursuant to this section must be enforced pursuant to chapter 609. A member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs who is issued a license or permit pursuant to this section must possess and exhibit that license or permit in accordance with section 6305 and must comply with the provisions of section 6306 regarding inspections and searches by marine patrol officers for violations related to licensed or permitted activities.

**8. Resident of the State defined.** For the purposes of this section, "resident of the State" means a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs who is eligible to obtain a state resident license under section 6301, subsection 1.

**9. Political subdivision.** Nothing in this section may be construed to indicate that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Aroostook Band of Micmacs is a political subdivision of the State.

**10. Agent.** For purposes of this section, an agent of the Aroostook Band of Micmacs is any entity authorized by the Aroostook Band of Micmacs Tribal Council to act on its behalf under this section and an agent of the Houlton Band of Maliseet Indians is any entity authorized by the Houlton Band of Maliseet Indians Tribal Council to act on its behalf under this section. The Aroostook Band of Micmacs Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section. The Houlton Band of Maliseet Indians Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section.

**11. Renewal of licenses.** If a holder of a license issued under this section fails to provide information required under section 6173, the license may not be renewed until the holder complies with the requirements of that section.

**Sec. 2. 12 MRSA §6505-A, sub-§2-B,** as enacted by PL 2011, c. 549, §4, is amended to read:

**2-B. Elver lotteries.** The commissioner shall establish a dual lottery system under which the number of pieces of gear authorized does not exceed the number of pieces of gear authorized as of December 31, 2011, except that beginning in 2013 that number must be increased to include an additional 25 dip nets.

A. The commissioner shall establish an elver gear lottery under which gear authorizations for use under a license issued under subsection 1 that is not renewed become available to other license holders in the elver gear lottery.

(1) The elver gear lottery must be held on or before February 15th of each calendar year beginning in 2013.

(2) In order to be eligible for the elver gear lottery, a person must hold an elver fishing license pursuant to subsection 1 and must have authorization to use only a dip net.

(3) In order to be eligible for the elver gear lottery, a person must submit to the Commissioner of Marine Resources a lottery application together with a \$25

nonrefundable application fee no later than January 15th for the lottery to be held by the following February 15th.

(4) A person may submit no more than one elver gear lottery application per lottery year.

(5) A person selected in the elver gear lottery must relinquish a dip net authorization that person holds in exchange for authorization to use an elver fyke net.

B. The commissioner shall establish an elver fishing license lottery under which a person who did not hold an elver fishing license in the previous calendar year may become eligible to obtain that license. The number of persons issued licenses under this paragraph may not exceed the number of individual gear authorizations remaining after the elver gear lottery.

(1) The elver fishing license lottery must take place after the elver gear lottery.

(2) The elver fishing license lottery must be held on or before February 15th of each calendar year beginning in 2013.

(3) In order to be eligible for the elver fishing license lottery, a person must submit a lottery application together with a \$25 nonrefundable application fee no later than January 15th of the same calendar year as the lottery.

(4) A person may submit no more than one elver fishing license lottery application per lottery year.

The commissioner shall adopt rules no later than December 31, 2012 to implement the elver gear lottery and the elver fishing license lottery. The rules must include provisions for the method and administration of the lotteries. The elver gear lottery must be set up so that gear authorizations associated with a license that is not renewed go into the elver gear lottery. If a person who held a license that is not renewed has 2 authorized pieces of gear, the gear authorizations must be divided and made available to 2 lottery entrants. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Application fees collected under this subsection must be deposited in the Eel and Elver Management Fund established in section 6505-D.

**Sec. 3. 12 MRSA §6505-A, sub-§3,** as amended by PL 1999, c. 7, §3, is repealed.

**Sec. 4. Additional lottery.** Notwithstanding the provisions of the Maine Revised Statutes, Title 12, section 6505-A, subsection 2-B, paragraph A, subparagraph (1), for the 2013 elver fishing season the Commissioner of Marine Resources shall reopen the 2013 elver gear lottery to make available the additional 25 dip nets required to be made available in 2013 under Title 12, section 6505-A, subsection 2-B.

**Sec. 5. Examination of elver fishery; report.** The Commissioner of Marine Resources shall examine the elver fishery, including harvesting levels and fishery management plans affecting the elver fishery proposed or adopted by the Atlantic States Marine Fisheries Commission, and, consistent with the commissioner's findings from the

examination, shall develop recommendations for any appropriate modifications of the State's regulation of elver fishing, including licensing and gear use.

In undertaking the examination under this section, the commissioner, pursuant to the Maine Revised Statutes, Title 12, section 6173, shall collect and analyze pertinent information regarding elver fishing, including pertinent information regarding elver fishing by persons issued tribal licenses under Title 12, section 6302-A.

As soon as practicable after making findings from the examination conducted under this section, the commissioner shall discuss with representatives of the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians those findings and shall seek through such discussions to develop a mutually agreeable structure for elver fishing licensing by those tribes.

No later than January 1, 2014, the commissioner shall provide to the Joint Standing Committee on Marine Resources a report of the commissioner's findings and recommendations under this section, including a summary of the commissioner's discussions with representatives of the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians seeking to develop a mutually agreeable structure for elver fishing licensing by those tribes. The report must include any draft legislation necessary to implement the commissioner's recommendations. The Joint Standing Committee on Marine Resources may report out a bill to the Second Regular Session of the 126th Legislature relating to the subject matter of the commissioner's report.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.