

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 558

H.P. 441

House of Representatives, February 15, 2011

**An Act To Provide Equal Treatment to Members of the Penobscot
Nation with Regard to Marine Resources Licenses**

(EMERGENCY)

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MITCHELL of the Penobscot Nation.
Cosponsored by Senator SCHNEIDER of Penobscot and
Representatives: BEAVERS of South Berwick, CLARK of Millinocket, JOHNSON of
Greenville, PICCHIOTTI of Fairfield, SOCTOMAH of the Passamaquoddy Tribe, TUTTLE of
Sanford, WEAVER of York, WOOD of Sabattus.

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

3 **Whereas,** this legislation expands the availability of marine resources licenses for
4 members of the Penobscot Nation; and

5 **Whereas,** it is important that these licenses be available during the summer to take
6 advantage of the seasonal nature of harvesting certain marine species; and

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

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

12 **Sec. 1. 12 MRSA §6302-A,** as amended by PL 2009, c. 396, §1, is further
13 amended to read:

14 **§6302-A. Taking of marine organisms by Passamaquoddy tribal members and**
15 **members of the Penobscot Nation**

16 **1. Tribal exemption; commercial harvesting licenses.** A member of the
17 Passamaquoddy Tribe or Penobscot Nation who is a resident of the State is not required
18 to hold a state license or permit issued under section 6421, 6501, 6505-A, 6505-C, 6535,
19 6601, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803 or 6804 to
20 conduct activities authorized under the state license or permit if that member holds a valid
21 license issued by the tribe or nation to conduct the activities authorized under the state
22 license or permit. A member of the Passamaquoddy Tribe or Penobscot Nation issued a
23 tribal license pursuant to this subsection to conduct activities is subject to all laws and
24 rules applicable to a person who holds a state license or permit to conduct those activities
25 and to all the provisions of chapter 625, except that the member of the tribe or nation:

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

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

34 C. Is not required to hold a state shellfish license issued under section 6601 to obtain
35 a municipal shellfish license pursuant to section 6671.

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

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

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

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

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

34 **3. Lobster and sea urchin licenses; limitations.** The Passamaquoddy Tribe or
35 Penobscot Nation may not issue pursuant to subsection 1:

36 A. More than 24 commercial lobster and crab fishing licenses in calendar year
37 1998, including all licenses equivalent to Class I, Class II or Class III licenses and
38 student licenses, but not including apprentice licenses. Any lobster and crab fishing
39 license issued by the tribe or nation after calendar year 1998 is subject to the
40 eligibility requirements of section 6421, subsection 5; and

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

