

MAINE STATE LEGISLATURE

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L.D. 1722

Date: 3-22-12

(Filing No. S-466)

MARINE RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 587, L.D. 1722, Bill, "An Act To Make Technical Changes to Maine's Marine Resources Laws"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, this legislation provides an exemption for the Aroostook Band of Micmacs for commercial marine resource harvesting licenses; and

Whereas, because the commercial marine resource harvesting seasons are currently open or soon to open, it is essential that this exemption take effect immediately; 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,'

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 5 MRSA §12004-I, sub-§57-C, as repealed by PL 2011, c. 344, §10, is reenacted to read:

57-C.

Marine Resources Aquaculture Not Authorized 12 MRSA §6080
Advisory Council

Amend the bill by striking out all of section 6 (page 1, lines 28 and 29 in L.D.) and inserting the following:

Sec. 6. 12 MRSA §6072-D, sub-§5, as enacted by PL 2003, c. 660, Pt. A, §16, is amended to read:

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1 **5. Reports.** ~~On or before February 1st of each year, the~~ The commissioner shall
 2 report annually to the ~~joint standing committee of the Legislature having jurisdiction over~~
 3 ~~marine resources matters~~ Aquaculture Advisory Council under section 6080 on all
 4 expenditures made from the fund in the previous fiscal year and a summary of work
 5 accomplished and planned.'

6 Amend the bill by inserting after section 7 the following:

7 '**Sec. 8. 12 MRSA §6080**, as repealed by PL 2011, c. 344, §19, is reenacted to
 8 read:

9 **§6080. Aquaculture Advisory Council**

10 **1. Appointment; composition.** The Aquaculture Advisory Council, referred to in
 11 this section as the "council" and established by Title 5, section 12004-I, subsection 57-C,
 12 consists of 5 members. The commissioner or the commissioner's designee is a nonvoting,
 13 ex officio member of the council. The commissioner shall appoint 4 members from the
 14 State's aquaculture industry. No more than 2 of the appointed members may represent
 15 similar segments of the State's aquaculture industry.

16 **2. Term.** Council members serve for 3 years and continue serving until a successor
 17 is duly appointed and qualified. In the case of a vacancy, the commissioner shall
 18 promptly fill the vacancy.

19 **3. Purpose.** The council shall make recommendations to the commissioner
 20 concerning expenditures from the Aquaculture Management Fund for the purposes
 21 described under section 6072-D and concerning other matters of interest to the
 22 aquaculture industry.

23 **4. Chair and officers.** The council annually shall choose one of its members to
 24 serve as chair for a one-year term. The council may select other officers and designate
 25 their duties.

26 **5. Meetings.** The council shall meet at least once each year. It may also meet at
 27 other times at the call of the chair or the chair's designee or the commissioner or the
 28 commissioner's designee. The council may conduct a meeting by means of a conference
 29 call linking 2 or more members of the council.'

30 Amend the bill by striking out all of section 14 (page 5, lines 8 to 30 in L.D.) and
 31 inserting the following:

32 '**Sec. 14. 12 MRSA §6301, sub-§2, ¶S**, as enacted by PL 2009, c. 561, §9, is
 33 amended to read:

34 S. An enhanced retail ~~seafood license~~ certificate issued under section ~~6852-A~~ 6852,
 35 subsection 2-A expires on March 31st of each year;

36 **Sec. 15. 12 MRSA §6302-A**, as amended by PL 2011, c. 266, Pt. A, §2, is further
 37 amended to read:

1 §6302-A. Taking of marine organisms by Passamaquoddy tribal members,
2 members of the Penobscot Nation and members of the Aroostook Band of
3 Micmacs

4 1. Tribal exemption; commercial harvesting licenses. A member of the
5 Passamaquoddy Tribe or, Penobscot Nation or Aroostook Band of Micmacs who is a
6 resident of the State is not required to hold a state license or permit issued under section
7 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745,
8 6746, 6748, 6748-A, 6748-D, 6751, 6803 or, 6804 or 6808 to conduct activities
9 authorized under the state license or permit if that member holds a valid license issued by
10 the tribe or, nation or band or the agent of the band to conduct the activities authorized
11 under the state license or permit. A member of the Passamaquoddy Tribe or, Penobscot
12 Nation or Aroostook Band of Micmacs issued a tribal license pursuant to this subsection
13 to conduct activities is subject to all laws and rules applicable to a person who holds a
14 state license or permit to conduct those activities and to all the provisions of chapter 625,
15 except that the member of the tribe or, nation or band:

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

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

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

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

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

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

42 C. Any marine organism for noncommercial use in a tribal ceremony within the
43 State, if the member holds a valid ceremonial tribal permit issued to the tribal
44 member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and

1 council at either Passamaquoddy reservation or, by the Penobscot Reservation Tribal
 2 Council or by the Aroostook Band of Micmacs Tribal Council or its agent.

3 For purposes of this subsection, "sustenance use" means all noncommercial consumption
 4 or noncommercial use by any person within the Passamaquoddy reservation at Pleasant
 5 Point or Indian Township, the Indian territory, as defined in Title 30, section 6205,
 6 subsection 1, Penobscot Indian Reservation territory, as defined in Title 30, section 6205,
 7 subsection 2, or Aroostook Band Trust Land, as defined in Title 30, section 7202,
 8 subsection 2, or at any location within the State by a tribal member, by a tribal member's
 9 immediate family or within a tribal member's household. The term "sustenance use" does
 10 not include the sale of marine organisms. A member of the Passamaquoddy Tribe or
 11 Penobscot Nation who takes a marine organism under a license or permit issued pursuant
 12 to this subsection must comply with all laws and rules applicable to a person who holds a
 13 state license or permit that authorizes the taking of that organism, except that a state law
 14 or rule that sets a season for the harvesting of a marine organism does not apply to a
 15 member of the Passamaquoddy Tribe or Penobscot Nation who takes a marine organism
 16 for sustenance use or for noncommercial use in a tribal ceremony. A member of the
 17 Passamaquoddy Tribe or Penobscot Nation issued a license or permit under this
 18 subsection is exempt from paying elver gear fees under section 6505 B or trap tag fees
 19 under section 6431 B and is not required to hold a state shellfish license issued under
 20 section 6601 to obtain a municipal shellfish license pursuant to section 6671. A member
 21 of the Passamaquoddy Tribe or Penobscot Nation who fishes for or takes lobster under a
 22 license or permit issued pursuant to this subsection must comply with the closed periods
 23 under section 6440.

24 A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of
 25 Micmacs who takes a marine organism under a license or permit issued pursuant to this
 26 subsection must comply with all laws and rules applicable to a person who holds a state
 27 license or permit that authorizes the taking of that organism, except that a state law or
 28 rule that sets a season for the harvesting of a marine organism does not apply to a
 29 member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs
 30 who takes a marine organism for sustenance use or for noncommercial use in a tribal
 31 ceremony. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook
 32 Band of Micmacs issued a license or permit under this subsection is exempt from paying
 33 elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not
 34 required to hold a state shellfish license issued under section 6601 to obtain a municipal
 35 shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe,
 36 Penobscot Nation or Aroostook Band of Micmacs who fishes for or takes lobster under a
 37 license or permit issued pursuant to this subsection must comply with the closed periods
 38 under section 6440.

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

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

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- 1 A-1. The Aroostook Band of Micmacs or its agent may issue to members of the band
 2 up to 10 commercial lobster and crab fishing licenses in any calendar year, including
 3 all licenses equivalent to Class I, Class II or Class III licenses and student licenses,
 4 but not including apprentice licenses. Licenses issued under this paragraph are
 5 subject to the eligibility requirements of section 6421, subsection 5;
- 6 B. The Passamaquoddy Tribe may not issue to members of the tribe more than 24
 7 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin
 8 licenses must be issued by zone in accordance with section 6749-P;
- 9 C. The commissioner shall adopt rules authorizing the Penobscot Nation to issue to
 10 members of the nation commercial sea urchin licenses if the commissioner
 11 determines that sea urchin resources are sufficient to permit the issuance of new
 12 licenses. The commissioner may not authorize the Penobscot Nation to issue more
 13 than 24 commercial sea urchin licenses to members of the nation in any calendar
 14 year;
- 15 C-1. The commissioner shall adopt rules authorizing the Aroostook Band of
 16 Micmacs or its agent to issue to members of the band commercial sea urchin licenses
 17 if the commissioner determines that sea urchin resources are sufficient to permit the
 18 issuance of new licenses. The commissioner may not authorize the Aroostook Band
 19 of Micmacs or its agent to issue more than 24 commercial sea urchin licenses to
 20 members of the band in any calendar year;
- 21 D. The Penobscot Nation may not issue to members of the nation more than 20
 22 commercial licenses for the taking of scallops in any calendar year, except that the
 23 commissioner shall by rule allow the Penobscot Nation to issue additional
 24 commercial licenses to members of the nation for the taking of scallops if the
 25 commissioner determines that scallop resources are sufficient to permit the issuance
 26 of new licenses; ~~and~~
- 27 D-1. The Aroostook Band of Micmacs or its agent may not issue to members of the
 28 band more than 10 commercial licenses for the taking of scallops in any calendar
 29 year, except that the commissioner shall by rule allow the Aroostook Band of
 30 Micmacs or its agent to issue additional commercial licenses to members of the band
 31 for the taking of scallops if the commissioner determines that scallop resources are
 32 sufficient to permit the issuance of new licenses;
- 33 E. The Penobscot Nation may not issue to members of the nation more than 8
 34 commercial licenses for the taking of elvers in any calendar year, except that the
 35 commissioner shall by rule allow the Penobscot Nation to issue additional
 36 commercial licenses to members of the nation for the taking of elvers if the
 37 commissioner determines that elver resources are sufficient to permit the issuance of
 38 new licenses; ~~and~~
- 39 F. The Aroostook Band of Micmacs or its agent may not issue to members of the
 40 band more than 8 commercial licenses for the taking of elvers in any calendar year,
 41 except that the commissioner shall by rule allow the Aroostook Band of Micmacs or
 42 its agent to issue additional commercial licenses for the taking of elvers to members
 43 of the band if the commissioner determines that elver resources are sufficient to
 44 permit the issuance of new licenses.

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

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

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

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

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

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

18 **6. License suspension.** If a member of the Passamaquoddy Tribe or, Penobscot
19 Nation or Aroostook Band of Micmacs issued a license or permit under this section is
20 convicted or adjudicated of a violation for which a license suspension is mandatory under
21 chapter 617, the commissioner shall suspend that member's license or permit for the
22 specified period. If a member of the Passamaquoddy Tribe or, Penobscot Nation or
23 Aroostook Band of Micmacs issued a license or permit under this section is convicted or
24 adjudicated of a violation for which the commissioner may suspend a license, the
25 commissioner may suspend that member's license or permit in accordance with chapter
26 617.

27 **7. Enforcement.** A violation of a marine resources law or rule by a member of the
28 Passamaquoddy Tribe or, Penobscot Nation or Aroostook Band of Micmacs who is
29 issued a license or permit pursuant to this section must be enforced pursuant to chapter
30 609. A member of the Passamaquoddy Tribe or, Penobscot Nation or Aroostook Band of
31 Micmacs who is issued a license or permit pursuant to this section must possess and
32 exhibit that license or permit in accordance with section 6305 and must comply with the
33 provisions of section 6306 regarding inspections and searches by marine patrol officers
34 for violations related to licensed or permitted activities.

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

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

42 **10. Agent.** For purposes of this section, an agent of the Aroostook Band of Micmacs
43 is any entity authorized by the Aroostook Band of Micmacs Tribal Council to act on its

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1 behalf under this section. The Aroostook Band of Micmacs Tribal Council shall certify
 2 to the department any agent it has designated to act on its behalf under this section.

3 **Sec. 16. 12 MRSA §6371, sub-§2**, as amended by PL 2011, c. 311, §1, is further
 4 amended to read:

5 **2. Suspension for refusal to allow a shellfish inspection by a department**
 6 **shellfish inspector.** Refusal to allow a shellfish inspection under section ~~6852-A~~ or 6856
 7 is grounds for suspension of any licenses or certificates issued under marine resources
 8 laws. In order to suspend a license or certificate under this subsection, the commissioner
 9 shall follow the procedures of section 6372.

10 **Sec. 17. 12 MRSA §6372, first ¶**, as amended by PL 2011, c. 311, §2, is further
 11 amended to read:

12 Notwithstanding the Maine Administrative Procedure Act, the procedure for
 13 suspending a license for refusal to allow inspection or seizure under section 6306 or
 14 refusal to allow inspection under section ~~6852-A~~ 6852, subsection 2-A or section 6856 is
 15 as follows.'

16 Amend the bill by inserting after section 20 the following:

17 **'Sec. 21. 12 MRSA §6601, sub-§2**, as amended by PL 2009, c. 217, §1, is further
 18 amended to read:

19 **2. Licensed activities.** The holder of a commercial shellfish license may fish for,
 20 take, possess or transport shellfish within the state limits or sell shellstock the holder has
 21 taken to a wholesale seafood license holder certified under section 6856 or an enhanced
 22 retail ~~seafood license~~ certificate holder under section ~~6852-A~~ 6852, subsection 2-A. The
 23 holder may also sell shellstock the holder has taken from that license holder's home in the
 24 retail trade. This license does not authorize the holder to fish for or take shellfish in
 25 violation of a municipal ordinance adopted pursuant to section 6671.

26 **Sec. 22. 12 MRSA §6602, sub-§2**, as amended by PL 2009, c. 217, §2, is further
 27 amended to read:

28 **2. Licensed activity.** A surf clam boat license issued under this section may be used
 29 for harvesting surf clams. The holder of a surf clam boat license may also possess or
 30 transport surf clams within state limits or sell surf clams the holder has taken to a
 31 wholesale seafood license holder certified under section 6856 or an enhanced retail
 32 ~~seafood license~~ certificate holder under section ~~6852-A~~ 6852, subsection 2-A. The
 33 license also authorizes the captain and crew members aboard the licensed boat when
 34 engaged in harvesting surf clams to undertake these activities.

35 **Sec. 23. 12 MRSA §6651, sub-§1, ¶¶F and G**, as enacted by PL 2009, c. 213,
 36 Pt. G, §16, are amended to read:

37 F. Two hundred fifty dollars and twenty-five cents from a wholesale seafood license;
 38 ~~and~~

39 G. Forty-eight dollars and seventy-five cents from a wholesale seafood supplemental
 40 license; ~~and~~

41 **Sec. 24. 12 MRSA §6651, sub-§1, ¶H** is enacted to read:

1 H. Twenty-eight dollars from an enhanced retail certificate.'

2 Amend the bill by inserting after section 21 the following:

3 'Sec. 22. 12 MRSA §6702, sub-§§1 and 2, as amended by PL 2007, c. 607, Pt.
4 A, §2, are further amended to read:

5 1. **License required.** A person may not use a boat for dragging for scallops in the
6 State's territorial waters unless that person holds a scallop dragging license issued by the
7 commissioner and that boat is identified on the license.

8 2. **Licensed activity.** A person licensed under this section may use the boat
9 identified on the license to drag for scallops in the State's territorial waters and possess,
10 ship, sell or transport shucked scallops taken under the license. The license also
11 authorizes the captain and crew members aboard the boat identified on the license when
12 engaged in dragging for scallops to undertake these activities, except that the captain and
13 crew members may not fish for or take scallops if the license holder is not aboard that
14 boat except as provided in subsection 2-A.

15 **Sec. 23. 12 MRSA §6731, sub-§2, ¶C,** as amended by PL 2009, c. 217, §3, is
16 further amended to read:

17 C. Sell mahogany quahogs that the holder has taken to a wholesale seafood license
18 holder certified under section 6856 or an enhanced retail ~~seafood license~~ certificate
19 holder under section ~~6852-A~~ 6852, subsection 2-A.'

20 Amend the bill by inserting after section 22 the following:

21 'Sec. 23. 12 MRSA §6745, sub-§2, as amended by PL 2009, c. 217, §4, is further
22 amended to read:

23 2. **Licensed activity.** The holder of a hand-raking mussel license may take mussels
24 by hand raking or possess or transport mussels within the state limits or sell mussels the
25 holder has taken to a wholesale seafood license holder certified under section 6856 or an
26 enhanced retail ~~seafood license~~ certificate holder under section ~~6852-A~~ 6852, subsection
27 2-A.

28 **Sec. 24. 12 MRSA §6746, sub-§2,** as amended by PL 2009, c. 217, §5, is further
29 amended to read:

30 2. **Licensed activity.** A boat license under this section may be used for dragging for
31 mussels. The holder of a mussel boat license may also possess or transport mussels
32 within the state limits or sell mussels the holder has taken to a wholesale seafood license
33 holder certified under section 6856 or an enhanced retail ~~seafood license~~ certificate holder
34 under section ~~6852-A~~ 6852, subsection 2-A. The license also authorizes the captain and
35 crew members aboard the licensed boat when engaged in dragging for mussels to
36 undertake these activities. A mussel boat license does not authorize the holder to fish for
37 or take mussels in violation of a municipal ordinance adopted pursuant to section 6671.

38 **Sec. 25. 12 MRSA §6748, sub-§4,** as repealed and replaced by PL 2009, c. 561,
39 §28, is amended to read:

40 4. **Zone 2 fee.** Fees for Zone 2 handfishing sea urchin licenses are:

- 1 A. For an individual handfishing sea urchin license, \$152; and
- 2 B. For a handfishing sea urchin license with tender, \$202.

3 **Sec. 26. 12 MRSA §6748, sub-§4-B** is enacted to read:

4 **4-B. Zone 1 fee.** Fees for Zone 1 handfishing sea urchin licenses are, if the Zone 1
 5 season is not longer than 10 days:

- 6 A. For an individual handfishing sea urchin license, \$25; and
- 7 B. For a handfishing sea urchin license with tender, \$50.

8 If the Zone 1 season is longer than 10 days, the department may by rule increase the
 9 individual handfishing sea urchin license fee and handfishing sea urchin license with
 10 tender fee to an amount no higher than the amount specified in subsection 4. Rules
 11 adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375,
 12 subchapter 2-A.

13 **Sec. 27. 12 MRSA §6748-A, sub-§4**, as amended by PL 2009, c. 213, Pt. G, §24,
 14 is further amended to read:

15 **4. Zone 2 fee.** The fee for a Zone 2 sea urchin dragging license is \$152.

16 **Sec. 28. 12 MRSA §6748-A, sub-§4-B** is enacted to read:

17 **4-B. Zone 1 fee.** The fee for a Zone 1 sea urchin dragging license is \$25 per year
 18 when the season is no longer than 10 days. If the Zone 1 season is longer than 10 days,
 19 the department may by rule increase the sea urchin dragging license fee to an amount no
 20 higher than the amount specified in subsection 4. Rules adopted under this subsection are
 21 routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.'

22 Amend the bill by inserting after section 26 the following:

23 '**Sec. 27. 12 MRSA §6852**, as amended by PL 2009, c. 478, §3 and c. 523, §§10
 24 and 11, is further amended to read:

25 **§6852. Retail seafood license**

26 **1. License required.** A person may not engage in the activities authorized under
 27 this section without a retail seafood license ~~or other license~~ issued under this Part
 28 authorizing the activities.

29 **2. License activity.** The holder of a retail seafood license may, in the retail trade
 30 ~~within the state limits~~, buy, sell, transport, ship or serve:

- 31 A. Shellstock ~~and shucked shellfish if they are~~ bought from a wholesale seafood
 32 license holder certified under section 6856;
- 33 C. ~~Lobster parts or meat, if they are permitted under section 6857, purchased from a~~
 34 ~~wholesale seafood license holder who possesses a lobster processor license under~~
 35 ~~section 6851-B or have been lawfully imported;~~
- 36 D. Crayfish; or
- 37 E. Lobsters.

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1 A holder of a retail seafood license when buying directly from a harvester may buy only
2 from a harvester who possesses the license or permit for that species as required under
3 this Part. The harvester shall make the applicable marine resources license or permit
4 available for inspection upon the retail seafood license holder's request.

5 **2-A. Enhanced retail certificate authorized.** The holder of a retail seafood license
6 may obtain an enhanced retail certificate from the department. The holder of an
7 enhanced retail certificate may, in the retail trade within the state limits, buy, sell,
8 transport, ship or serve:

9 A. Shellstock bought from a commercial shellfish license holder licensed under
10 section 6601;

11 B. Shellstock bought from a surf clam boat license holder licensed under section
12 6602;

13 C. Shellstock bought from a mahogany quahog license holder licensed under section
14 6731; or

15 D. Shellstock bought from a hand-raking mussel license holder licensed under
16 section 6745 or a mussel boat license holder licensed under section 6746.

17 For the purposes of inspection or collection of samples, the commissioner or the
18 commissioner's agent may access an establishment or part thereof or vehicle in which
19 activities authorized under this certificate are conducted by a person holding a retail
20 seafood license. Denial of access is grounds for suspension or revocation of a retail
21 seafood license under the provisions of section 6372.

22 **3. License limited.** A license authorizes these activities pursuant to subsection 2 at
23 only one establishment or with only one vehicle.

24 ~~**3-A. Retail sale of certain seafood products.** Notwithstanding any provision of~~
25 ~~law to the contrary, a license or certificate is not required for a person to sell at retail:~~

26 ~~A. Shucked shellfish, if the shucked shellfish is purchased from a wholesale seafood~~
27 ~~license holder certified under section 6856; or~~

28 ~~B. Lobster parts or meat, if they are purchased from a wholesale seafood license~~
29 ~~holder who possesses a lobster processor license under section 6851-B or if they have~~
30 ~~been lawfully imported.~~

31 **3-B. Certificate limited.** An enhanced retail certificate authorizes activities
32 pursuant to subsection 2-A at only one establishment.

33 **4. Fee.** The fee for a retail seafood license under subsection 1 is \$122. The fee for
34 an enhanced retail certificate under subsection 2-A is \$28 and must be deposited in the
35 Shellfish Fund under section 6651.

36 **5. Violation.** A person who violates this section commits a civil violation for which
37 a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

38 **6. Rules.** The commissioner may adopt or amend rules that establish requirements
39 for retail seafood license holders and enhanced retail certificate holders concerning:

40 A. The minimum sanitation standards for establishments and vehicles;

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- 1 B. The sanitation and quality control standards for shellfish and whole scallops and
- 2 their products;
- 3 C. The methods for handling, shipping and transporting of shellfish and whole
- 4 scallops;
- 5 D. The records and reports of purchases, shipping and transporting of shellfish and
- 6 whole scallops;
- 7 E. The labeling or marking of shipments of shellfish and wholesale scallops; and
- 8 F. The protection of public health.

9 Rules adopted pursuant to this subsection must be based on the particular operational
 10 requirements of each activity, the most recently adopted federal sanitation standards and
 11 the most recent generally accepted research data and must be designed to protect the
 12 public health and safety while allowing reasonable use of shellfish and whole scallops.
 13 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
 14 chapter 375, subchapter 2-A.

15 **Sec. 28. 12 MRSA §6852-A**, as amended by PL 2011, c. 311, §5, is repealed.

16 **Sec. 29. 12 MRSA §6852-B** is enacted to read:

17 **§6852-B. Retail sale of certain seafood products**

18 Notwithstanding any provision of law to the contrary, a license or certificate is not
 19 required for a person to sell at retail:

20 1. Shucked shellfish. Shucked shellfish, if the shucked shellfish is purchased from a
 21 wholesale seafood license holder certified under section 6856; or

22 2. Lobster parts or meat. Lobster parts or meat, if they are purchased from a
 23 wholesale seafood license holder with a lobster permit, from the holder of a lobster
 24 processor license or from an individual permitted under section 6857 or if they have been
 25 lawfully imported.'

26 Amend the bill by inserting after section 28 the following:

27 '**Sec. 29. Rules.** Notwithstanding any provision of law to the contrary, rules
 28 adopted by the Department of Marine Resources pertaining to enhanced retail seafood
 29 license holders apply to enhanced retail certificate holders under the Maine Revised
 30 Statutes, Title 12, section 6852, subsection 2-A pending adoption by the department of
 31 revised rules in accordance with this Act.

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

34 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 35 section number to read consecutively.

36 **SUMMARY**

37 This amendment adds an emergency preamble and emergency clause and makes the
 38 following changes to the bill.

ROFS

COMMITTEE AMENDMENT "A" to S.P. 587, L.D. 1722

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- 1. It reenacts the Aquaculture Advisory Council.
- 2. Instead of eliminating the Department of Marine Resources' requirement to report on the Aquaculture Advisory Fund by February 1st of each year to the joint standing committee of the Legislature having jurisdiction over marine resources matters, it requires the department to report annually to the Aquaculture Advisory Council.
- 3. It adds the Aroostook Band of Micmacs under the tribal exemption for certain commercial harvesting licenses and allows the band or an agent of the band to issue those licenses.
- 4. It specifies that the Aroostook Band of Micmacs or the agent of the band may issue up to 10 commercial lobster and crab fishing licenses, 10 commercial scallop licenses and 8 commercial elver licenses in any calendar year to members of the band.
- 5. It requires the commissioner to adopt rules authorizing the Aroostook Band of Micmacs or its agent to issue commercial sea urchin licenses if the commissioner determines that the sea urchin resources are sufficient to permit the issuance of new licenses.
- 6. It adds the Aroostook Band of Micmacs under the tribal exemption of sustenance or ceremonial tribal use.
- 7. It expands the area where sustenance use is allowed to include the Passamaquoddy Indian territory, Penobscot Indian territory and Aroostook Band Trust Land, instead of only Passamaquoddy Tribe and Penobscot Nation reservation land.
- 8. It allows the Aroostook Band of Micmacs to have an agent to act on its behalf if the Aroostook Band of Micmacs Tribal Council certifies the agent with the Department of Marine Resources.
- 9. It clarifies that a person may not use a boat for dragging scallops in the State's territorial waters unless that person holds a scallop dragging license. This continues to allow those with federal scallop licenses who fish in federal waters to land scallops in the State if they have a wholesale dealer's license.
- 10. It decreases the license fee for a Zone 1 individual handfishing sea urchin license from \$152 to \$25 and a handfishing sea urchin license with tender from \$202 to \$50 due to a short season in Zone 1. The fees remain in effect as long as the sea urchin season in Zone 1 is 10 days or less, after which the Department of Marine Resources may increase fees to an amount no higher than fees in Zone 2.
- 11. It repeals the enhanced retail seafood license and creates an enhanced retail certificate. A person must have a retail seafood license to obtain an enhanced retail certificate. A certificate authorizes the holder to buy, sell, transport, ship or serve shellstock bought from a commercial shellfish license holder, a surf clam boat license holder, a mahogany quahog license holder or a hand-raking mussel license holder or mussel boat license holder in the retail trade within state limits. A certificate authorizes activities at only one establishment. The fee for an enhanced retail certificate is \$28 and is deposited in the Shellfish Fund.
- 12. It removes "within state limits" from licensed activities under the retail seafood license in order to allow license holders to buy, sell, transport, ship or serve shellstock

COMMITTEE AMENDMENT

ROFS

COMMITTEE AMENDMENT "A" to S.P. 587, L.D. 1722

1 purchased from a wholesale seafood license holder, crayfish or lobsters in the retail trade
2 within or outside of the State. It eliminates shucked shellfish and lobster parts or meat
3 from what can be bought, sold, transported, shipped or served under this license.

4 13. It applies rules currently in effect pertaining to enhanced retail seafood license
5 holders to enhanced retail certificate holders until the Department of Marine Resources
6 updates its rules.

7 **FISCAL NOTE REQUIRED**

8 (See attached)



Approved: 03/20/12 *MRC*

125th MAINE LEGISLATURE

LD 1722

LR 2427(02)

An Act To Make Technical Changes to Maine's Marine Resources Laws

Fiscal Note for Bill as Amended by Committee Amendment "A" 5-466

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

Minor revenue decrease - General Fund

Minor revenue decrease - Other Special Revenue Funds

Minor savings - General Fund

Fiscal Detail and Notes

This legislation adds the Aroostook Band of Micmacs to the tribal exemption for certain commercial harvesting licenses and allows the band to issue those licenses, reduces the Zone 1 sea urchin license fees when the season is no longer than 10 days, repeals the enhanced retail seafood license and establishes the enhanced retail certificate. These changes will result in minor decreases in both General Fund and Other Special Revenue Funds revenue not requiring any change to the budget.

The legislation also eliminates a number of the Department of Marine Resources' reports to the legislature resulting in minor General Fund savings in personnel time not requiring any change to the budget.