

MAINE STATE LEGISLATURE

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L.D. 451

2

Date: 3/18/13

(Filing No. H- 8)

3

MARINE RESOURCES

4

Reproduced and distributed under the direction of the Clerk of the House.

5

STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

126TH LEGISLATURE

8

FIRST REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to H.P. 301, L.D. 451, Bill, "An Act To Cap
10 Certain Marine Resources Licenses Issued by the Passamaquoddy Tribe"

11

Amend the bill by striking out the title and substituting the following:

12

'An Act Relating to Certain Marine Resources Licenses'

13

Amend the bill by striking out everything after the title and before the summary and
14 inserting the following:

15

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

17

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

20

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

24

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

25

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

27

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

28

1. Tribal exemption; commercial harvesting licenses. A member of the
29 Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is a
30 resident of the State is not required to hold a state license or permit issued under section
31 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745,
32 6746, 6748, 6748-A, 6748-D, 6751, 6803, 6804 or 6808 to conduct activities authorized
33 under the state license or permit if that member holds a valid license issued by the tribe,

1 nation or band or the agent of the band to conduct the activities authorized under the state
2 license or permit. A member of the Passamaquoddy Tribe, Penobscot Nation or
3 Aroostook Band of Micmacs issued a tribal license pursuant to this subsection to conduct
4 activities is subject to all laws and rules applicable to a person who holds a state license
5 or permit to conduct those activities and to all the provisions of chapter 625, except that
6 the member of the tribe, nation or band:

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

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

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

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

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

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

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

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

6 For purposes of this subsection, "sustenance use" means all noncommercial consumption
7 or noncommercial use by any person within Passamaquoddy Indian territory, as defined
8 in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30,
9 section 6205, subsection 2, or Aroostook Band Trust Land, as defined in Title 30, section
10 7202, subsection 2, or at any location within the State by a tribal member, by a tribal
11 member's immediate family or within a tribal member's household. The term "sustenance
12 use" does not include the sale of marine organisms.

13 A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of
14 Micmacs who takes a marine organism under a license or permit issued pursuant to this
15 subsection must comply with all laws and rules applicable to a person who holds a state
16 license or permit that authorizes the taking of that organism, except that a state law or
17 rule that sets a season for the harvesting of a marine organism does not apply to a
18 member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs
19 who takes a marine organism for sustenance use or for noncommercial use in a tribal
20 ceremony. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook
21 Band of Micmacs issued a license or permit under this subsection is exempt from paying
22 elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not
23 required to hold a state shellfish license issued under section 6601 to obtain a municipal
24 shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe,
25 Penobscot Nation or Aroostook Band of Micmacs who fishes for or takes lobster under a
26 license or permit issued pursuant to this subsection must comply with the closed periods
27 under section 6440.

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

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

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

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

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

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

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

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

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

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

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

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

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

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(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

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1 Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of
2 Micmacs issued a license or permit under this section is convicted or adjudicated of a
3 violation for which the commissioner may suspend a license, the commissioner may
4 suspend that member's license or permit in accordance with chapter 617.

5 **7. Enforcement.** A violation of a marine resources law or rule by a member of the
6 Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or
7 Aroostook Band of Micmacs who is issued a license or permit pursuant to this section
8 must be enforced pursuant to chapter 609. A member of the Passamaquoddy Tribe,
9 Penobscot Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs
10 who is issued a license or permit pursuant to this section must possess and exhibit that
11 license or permit in accordance with section 6305 and must comply with the provisions of
12 section 6306 regarding inspections and searches by marine patrol officers for violations
13 related to licensed or permitted activities.

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

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

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

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

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

34 **2-B. Elver lotteries.** The commissioner shall establish a dual lottery system under
35 which the number of pieces of gear authorized does not exceed the number of pieces of
36 gear authorized as of December 31, 2011, except that beginning in 2013 that number
37 must be increased to include an additional 25 dip nets.

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

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

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

4 (3) In order to be eligible for the elver gear lottery, a person must submit to the
5 Commissioner of Marine Resources a lottery application together with a \$25
6 nonrefundable application fee no later than January 15th for the lottery to be held
7 by the following February 15th.

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

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

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

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

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

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

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

26 The commissioner shall adopt rules no later than December 31, 2012 to implement the
27 elver gear lottery and the elver fishing license lottery. The rules must include provisions
28 for the method and administration of the lotteries. The elver gear lottery must be set up so
29 that gear authorizations associated with a license that is not renewed go into the elver
30 gear lottery. If a person who held a license that is not renewed has 2 authorized pieces of
31 gear, the gear authorizations must be divided and made available to 2 lottery entrants.
32 Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter
33 375, subchapter 2-A.

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

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

38 **Sec. 4. Additional lottery.** Notwithstanding the provisions of the Maine Revised
39 Statutes, Title 12, section 6505-A, subsection 2-B, paragraph A, subparagraph (1), for the
40 2013 elver fishing season the Commissioner of Marine Resources shall reopen the 2013

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1 elver gear lottery to make available the additional 25 dip nets required to be made
2 available in 2013 under Title 12, section 6505-A, subsection 2-B.

3 **Sec. 5. Examination of elver fishery; report.** The Commissioner of Marine
4 Resources shall examine the elver fishery, including harvesting levels and fishery
5 management plans affecting the elver fishery proposed or adopted by the Atlantic States
6 Marine Fisheries Commission, and, consistent with the commissioner's findings from the
7 examination, shall develop recommendations for any appropriate modifications of the
8 State's regulation of elver fishing, including licensing and gear use.

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

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

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

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

30 **SUMMARY**

31 This amendment makes the following changes to the bill.

32 1. It provides that the Passamaquoddy Tribe may not issue to members of the tribe
33 commercial licenses for the taking of elvers in any calendar year that exceed the
34 following limits:

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

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

39 C. An additional 50 limited licenses that allow the taking of elvers only in the St.
40 Croix River and only with a dip net.



126th MAINE LEGISLATURE

LD 451

LR 466(02)

An Act To Cap Certain Marine Resources Licenses Issued by the Passamaquoddy Tribe

Fiscal Note for Bill as Amended by Committee Amendment A" (H-8)

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Marine Resources associated with examining the elver fishery, developing recommendations for any appropriate modifications to the state's regulation of elver fishing and reporting the results can be absorbed within existing budgeted resources.