

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 953

H.P. 666

House of Representatives, March 12, 2013

**An Act To Provide for and Recognize the Right of the Houlton Band
of Maliseet Indians To Fish for Marine Organisms**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BEAR of the Houlton Band of Maliseet Indians.

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

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

4 **§6302-A. Taking of marine organisms by federally recognized Indian tribes in the**
5 **State**

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

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

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

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

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 or Houlton Band of Maliseet Indians who is a resident of
34 the State may at any time take, possess, 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

1 the tribe, nation or band or the agent of the band in a manner consistent with trap tags
2 issued pursuant to section 6431-B; however, a sustenance lobster license holder may
3 not harvest lobsters for sustenance use with more than 25 traps; and

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

10 For purposes of this subsection, "sustenance use" means all noncommercial consumption
11 or noncommercial use by any person within Passamaquoddy Indian territory, as defined
12 in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30,
13 section 6205, subsection 2, ~~or~~ Aroostook Band Trust Land, as defined in Title 30, section
14 7202, subsection 2, or Houlton Band Trust Land, as defined in Title 30, section 6203,
15 subsection 2-A, or at any location within the State by a tribal member, by a tribal
16 member's immediate family or within a tribal member's household. The term "sustenance
17 use" does not include the sale of marine organisms.

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

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

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

42 A-1. The Aroostook Band of Micmacs or its agent may issue to members of the band
43 up to 10 commercial lobster and crab fishing licenses in any calendar year, including
44 all licenses equivalent to Class I, Class II or Class III licenses and student licenses,

1 but not including apprentice licenses. Licenses issued under this paragraph are
2 subject to the eligibility requirements of section 6421, subsection 5;

3 A-2. The Houlton Band of Maliseet Indians or its agent may issue to members of the
4 band up to 25 commercial lobster and crab fishing licenses in any calendar year,
5 including all licenses equivalent to Class I, Class II or Class III licenses and student
6 licenses, but not including apprentice licenses. Licenses issued under this paragraph
7 are subject to the eligibility requirements of section 6421, subsection 5;

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

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

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

23 C-2. The commissioner shall adopt rules authorizing the Houlton Band of Maliseet
24 Indians or its agent to issue to members of the band commercial sea urchin licenses if
25 the commissioner determines that sea urchin resources are sufficient to permit the
26 issuance of new licenses. The commissioner may not authorize the Houlton Band of
27 Maliseet Indians or its agent to issue more than 24 commercial sea urchin licenses to
28 members of the band in any calendar year;

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

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

41 D-2. The Houlton Band of Maliseet Indians or its agent may not issue to members of
42 the band more than 10 commercial licenses for the taking of scallops in any calendar
43 year, except that the commissioner shall by rule allow the Houlton Band of Maliseet
44 Indians or its agent to issue additional commercial licenses to members of the band

1 for the taking of scallops if the commissioner determines that scallop resources are
2 sufficient to permit the issuance of new licenses;

3 E. The Penobscot Nation may not issue to members of the nation more than 8 50
4 commercial licenses for the taking of elvers in any calendar year, except that the
5 commissioner shall by rule allow the Penobscot Nation to issue additional
6 commercial licenses to members of the nation for the taking of elvers if the
7 commissioner determines that elver resources are sufficient to permit the issuance of
8 new licenses; ~~and~~

9 F. The Aroostook Band of Micmacs or its agent may not issue to members of the
10 band more than 8 25 commercial licenses for the taking of elvers in any calendar
11 year, except that the commissioner shall by rule allow the Aroostook Band of
12 Micmacs or its agent to issue additional commercial licenses for the taking of elvers
13 to members of the band if the commissioner determines that elver resources are
14 sufficient to permit the issuance of new licenses; ~~and~~

15 G. The Houlton Band of Maliseet Indians or its agent may not issue to members of
16 the band more than 25 commercial licenses for the taking of elvers in any calendar
17 year, except that the commissioner shall by rule allow the Houlton Band of Maliseet
18 Indians or its agent to issue additional commercial licenses to members of the band
19 for the taking of elvers if the commissioner determines that elver resources are
20 sufficient to permit the issuance of new licenses.

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

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

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

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

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

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

41 **6. License suspension.** If a member of the Passamaquoddy Tribe, Penobscot
42 Nation, Houlton Band of Maliseet Indians or Aroostook Band of Micmacs issued a

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

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

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

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

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

32 SUMMARY

33 This bill provides the Houlton Band of Maliseet Indians the same rights regarding the
34 taking of marine organisms as are provided to the other federally recognized Indian tribes
35 in this State, including the right to issue certain commercial licenses and permits for the
36 taking of marine organisms and the right of members of the band to take, possess,
37 transport and distribute marine organisms for sustenance and ceremonial uses. The bill
38 limits the number of lobster and crab fishing licenses issued by the band to 25, the
39 number of sea urchin licenses to 24, the number of scallop licenses to 10 and the number
40 of elver licenses to 25. The bill also increases the number of elver licenses that may be
41 issued by the Penobscot Nation to 50 and the number that may be issued by the
42 Aroostook Band of Micmacs to 25.