

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1399

H.P. 995

House of Representatives, April 10, 2013

An Act To Provide for the Aroostook Band of Micmacs Certain Rights Regarding Hunting, Fishing and Wildlife Management

Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WILLETTE of Mapleton.
Cosponsored by Senator JACKSON of Aroostook and
Representative: SAUCIER of Presque Isle, Senator: SHERMAN of Aroostook.

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

2 **Sec. 1. 12 MRSA §11154, sub-§14** is enacted to read:

3 **14. Aroostook Band of Micmacs.** Notwithstanding subsections 4 and 6 and section
4 11102, the commissioner shall issue a moose permit to a member of the Aroostook Band
5 of Micmacs upon written request of the member that allows the member to take one
6 moose per calendar year. A permit issued under this subsection is in addition to the
7 moose hunting permits issued under subsection 2 for each wildlife management district
8 and is not subject to the fee for a moose permit.

9 **Sec. 2. 30 MRSA §7208** is enacted to read:

10 **§7208. Regulation of fish and wildlife resources**

11 **1. Adoption of ordinances by band.** Subject to the limitations of subsection 7, the
12 Aroostook Band of Micmacs has exclusive authority within the Aroostook Band of
13 Micmacs territory to adopt ordinances regulating:

14 A. Hunting, trapping or other taking of wildlife; and

15 B. Taking of fish on any pond in which all the shoreline and all submerged lands are
16 wholly within the Aroostook Band of Micmacs territory and that is less than 10 acres
17 in surface area.

18 An ordinance adopted under this subsection must be equally applicable, on a
19 nondiscriminatory basis, to a person regardless of whether the person is a member of the
20 Aroostook Band of Micmacs; however, subject to the limitations of subsection 7, the
21 ordinance may include special provisions for the sustenance of the individual members of
22 the Aroostook Band of Micmacs. In addition to the authority provided by this subsection,
23 the Aroostook Band of Micmacs, subject to the limitations of subsection 7, may exercise
24 within the Aroostook Band of Micmacs territory all the rights incident to ownership of
25 land under the laws of the State.

26 **2. Registration of wildlife killed within the Aroostook Band of Micmacs**
27 **territory.** The Aroostook Band of Micmacs shall establish and maintain registration
28 stations for the purpose of registering bear, moose, deer and other wildlife killed within
29 the Aroostook Band of Micmacs territory and shall adopt an ordinance requiring
30 registration of bear, moose, deer and other wildlife killed within the Aroostook Band of
31 Micmacs territory to the extent and in substantially the same manner as bear, moose, deer
32 and other wildlife that are killed in the State are required to be registered under the laws
33 of the State. An ordinance requiring registration of bear, moose, deer and other wildlife
34 killed within the Aroostook Band of Micmacs territory must be equally applicable to all
35 persons without distinction based on membership in the band. The Aroostook Band of
36 Micmacs shall report the bear, moose, deer and other wildlife killed and registered within
37 the Aroostook Band of Micmacs territory to the Commissioner of Inland Fisheries and
38 Wildlife at such times as the commissioner determines appropriate. The records of
39 registration of bear, moose, deer and other wildlife killed within the Aroostook Band of
40 Micmacs territory required by this subsection must be available for inspection and
41 examination by the Commissioner of Inland Fisheries and Wildlife.

1 **3. Adoption of ordinances concerning fishing on bodies of water.** Subject to the
2 limitations of subsection 7, the Aroostook Band of Micmacs has exclusive authority to
3 adopt ordinances for fishing on:

4 A. Any pond other than a pond specified in subsection 1, paragraph B if 50% or
5 more of the linear shoreline of the pond is within the Aroostook Band of Micmacs
6 territory;

7 B. Any section of a river or stream both sides of which are within the Aroostook
8 Band of Micmacs territory; and

9 C. Any section of a river or stream one side of which is within the Aroostook Band
10 of Micmacs territory for a continuous length of 1/2 mile or more.

11 In adopting an ordinance under this subsection, the Aroostook Band of Micmacs shall
12 consider and balance the need to preserve and protect existing and future sport and
13 commercial fisheries, the historical fishing interests of other persons, the needs or desires
14 of the Aroostook Band of Micmacs to establish fishery practices for the sustenance of the
15 Aroostook Band of Micmacs or to contribute to the economic independence of the
16 Aroostook Band of Micmacs, the traditional fishing techniques employed by and
17 ceremonial practices of Native Americans in the State and the ecological interrelationship
18 between the fishery regulated under this subsection and other fisheries throughout the
19 State. An ordinance adopted under this subsection may include without limitation
20 provisions on the methods, manners, bag and size limits and seasons for fishing.

21 An ordinance adopted under this subsection must be equally applicable on a
22 nondiscriminatory basis to all persons regardless of whether a person is a member of the
23 Aroostook Band of Micmacs and may include the imposition of fees and permits or
24 license requirements on users of regulated waters under this subsection other than
25 members of the Aroostook Band of Micmacs.

26 For an orderly transition of regulatory authority, all fishing laws and rules of the State
27 remain applicable to all waters regulated by this subsection until the Aroostook Band of
28 Micmacs certifies to the Commissioner of Inland Fisheries and Wildlife the adoption of
29 ordinances under this subsection in substitution for laws and rules of the State.

30 **4. Horsepower and use of motors.** Subject to the limitations of subsection 7, the
31 Aroostook Band of Micmacs has exclusive authority to adopt ordinances to regulate the
32 horsepower and use of motors on waters less than 200 acres in surface area and entirely
33 within the Aroostook Band of Micmacs territory.

34 **5. Sustenance fishing within the Aroostook Band of Micmacs territory.**
35 Notwithstanding any other rule or law of the State and subject to the limitations of
36 subsection 7, the members of the Aroostook Band of Micmacs may take fish, within the
37 boundaries of the Aroostook Band of Micmacs territory, for the members' individual
38 sustenance.

39 **6. Posting.** Lands or waters subject to regulation by the Aroostook Band of
40 Micmacs must be conspicuously posted in a manner that provides reasonable notice to the
41 public of the limitations on hunting, trapping, fishing or other use of the lands or waters.

1 **7. Supervision by Commissioner of Inland Fisheries and Wildlife.** The
2 Commissioner of Inland Fisheries and Wildlife may conduct fish and wildlife surveys
3 within the Aroostook Band of Micmacs territory and on waters subject to the jurisdiction
4 of the Aroostook Band of Micmacs to the same extent as the commissioner is authorized
5 to do so in other areas of the State. Before conducting a fish and wildlife survey, the
6 Commissioner of Inland Fisheries and Wildlife shall provide reasonable advance notice
7 to afford the Aroostook Band of Micmacs a reasonable opportunity to participate in the
8 survey. If at any time the Commissioner of Inland Fisheries and Wildlife has reasonable
9 grounds to believe that an ordinance adopted by the Aroostook Band of Micmacs under
10 this section or the absence of an ordinance creates an adverse condition affecting or likely
11 to affect the stock of any fish or wildlife on lands or waters outside the boundaries of
12 lands or waters subject to regulation by the Aroostook Band of Micmacs, the
13 commissioner shall inform the governing body of the Aroostook Band of Micmacs of the
14 adverse condition and attempt to develop appropriate remedial standards in consultation
15 with the Aroostook Band of Micmacs. If the Commissioner of Inland Fisheries and
16 Wildlife is unable to develop appropriate remedial standards for an adverse condition
17 under this subsection, the commissioner may call a public hearing pursuant to Title 5,
18 chapter 375, subchapter 4 to investigate the adverse condition. If, after the public
19 hearing, the Commissioner of Inland Fisheries and Wildlife determines that the adverse
20 condition is causing or likely to cause a significant depletion of fish or wildlife stocks on
21 lands or waters outside the boundaries of lands or waters subject to regulation by the
22 Aroostook Band of Micmacs, the commissioner may adopt appropriate remedial
23 measures including rescission of an ordinance that is the cause of or that is likely to cause
24 the adverse condition and ordering the enforcement of the generally applicable laws or
25 rules of the State. In adopting any remedial measures after a hearing under this
26 subsection, the Commissioner of Inland Fisheries and Wildlife shall use the least
27 restrictive means possible to prevent a substantial diminution of the stocks in question
28 and shall take into consideration the effect that practices of other persons on the lands or
29 waters not within the Aroostook Band of Micmacs territory are having on such stocks. A
30 remedial measure adopted after a hearing under this subsection may not be more
31 restrictive than a remedial measure the Commissioner of Inland Fisheries and Wildlife
32 could impose if the area in question was not within the Aroostook Band of Micmacs
33 territory or waters subject to Aroostook Band of Micmacs regulation.

34 In any administrative proceeding under this section, the burden of proof is on the
35 Commissioner of Inland Fisheries and Wildlife, and the commissioner's decision may be
36 appealed pursuant to Title 5, chapter 375, subchapter 7 and be sustained only if supported
37 by substantial evidence.

38 **8. Transportation of game.** Fish lawfully taken within the Aroostook Band of
39 Micmacs territory or in waters subject to Aroostook Band of Micmacs regulation and
40 wildlife lawfully taken within the Aroostook Band of Micmacs territory and registered
41 pursuant to ordinances adopted by the Aroostook Band of Micmacs may be transported
42 within the State.

43 **9. Fish and wildlife on non-Indian lands.** The Aroostook Band of Micmacs shall
44 undertake appropriate studies, consult with affected landowners and state officials and
45 make recommendations to the Commissioner of Inland Fisheries and Wildlife and the
46 Legislature with respect to implementation of fish and wildlife management policies on

1 lands not within the Aroostook Band of Micmacs territory in order to protect fish and
2 wildlife stocks on lands and waters subject to regulation by the Aroostook Band of
3 Micmacs.

4 **10. Fish.** As used in this section, "fish" means a cold-blooded, completely aquatic
5 vertebrate animal having permanent fins, gills and an elongated, streamlined body usually
6 covered with scales and includes inland fish and anadromous and catadromous fish when
7 in inland waters.

8 SUMMARY

9 This bill provides the Aroostook Band of Micmacs the same authority to regulate
10 hunting, fishing and wildlife management as that of the Passamaquoddy Tribe and the
11 Penobscot Nation and provides upon request each member of the Aroostook Band of
12 Micmacs a moose permit allowing the member to take one moose per year.