

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

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Legislative Document

No. 1297

H.P. 883

House of Representatives, April 9, 2015

**An Act To Amend Marine Resources Licensing Restrictions for
Wabanaki Tribal Members**

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

R. B. Hunt
ROBERT B. HUNT
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 §6001, sub-§50-A** is enacted to read:

3 **50-A. Tribal community.** "Tribal community" means the Penobscot Nation, the
4 Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy
5 Tribe at Sipayik or the Passamaquoddy Tribe at Motahkmikuk.

6 **Sec. 2. 12 MRSA §6302-A, sub-§3,** as amended by PL 2013, c. 254, §§1 to 4 and
7 c. 485, §2 and c. 588, Pt. E, §5, is repealed.

8 **Sec. 3. 12 MRSA §6302-A, sub-§3-A** is enacted to read:

9 **3-A. Marine resource fishing licenses; limitations.** In accordance with subsection
10 1, the following apply.

11 A. The tribal communities may issue a total of 44 lobster and crab fishing licenses in
12 any calendar year, including all licenses equivalent to Class I, Class II or Class III
13 licenses and student licenses, but not including apprentice licenses. Of the total of 44
14 licenses, each tribal community may issue to its members the number allocated to
15 that tribal community under section 6302-B, subsection 4.

16 B. The tribal communities may issue a total of 96 commercial licenses for the taking
17 of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in
18 accordance with section 6749-P. Of the total of 96 licenses, each tribal community
19 may issue to its members the number allocated to that tribal community under section
20 6302-B, subsection 4.

21 A tribal community may not issue a license pursuant to this paragraph for the
22 harvesting of sea urchins by hand unless the license applicant meets the diver
23 competency requirements of section 6531. A tribal community may not issue a
24 license pursuant to this paragraph for the tending of a person who fishes for or takes
25 sea urchins by diving unless the applicant meets the safety training requirements of
26 section 6533.

27 C. The tribal communities may issue a total of 60 commercial licenses for the taking
28 of scallops in any calendar year, except that the commissioner shall by rule allow the
29 tribal communities to issue additional commercial licenses to members, allocated
30 pursuant to section 6302-B, subsection 4, for the taking of scallops if the
31 commissioner determines that scallop resources are sufficient to permit the issuance
32 of new licenses. Of the total of 60 licenses, each tribal community may issue to its
33 members the number allocated to that tribal community under section 6302-B,
34 subsection 4.

35 A tribal community may not issue a license pursuant to this paragraph for the
36 harvesting of scallops by hand unless the license applicant meets the diver
37 competency requirements of section 6531. A tribal community may not issue a
38 license pursuant to this paragraph for the tending of a person who fishes for or takes
39 scallops by diving unless the applicant meets the safety training requirements of
40 section 6533.

1 D. The tribal communities may issue a total of 78 commercial licenses for the taking
2 of elvers in any calendar year, except that the commissioner shall by rule allow the
3 tribal communities to issue additional commercial licenses to members, allocated
4 pursuant to section 6302-B, subsection 4, for the taking of elvers if the commissioner
5 determines that elver resources are sufficient to permit the issuance of new licenses.
6 Of the total of 78 licenses, each tribal community may issue to its members the
7 number allocated to that tribal community under section 6302-B, subsection 4.

8 The tribal communities and the department shall report on the status of the sea urchin,
9 scallop and elver fisheries to the joint standing committee of the Legislature having
10 jurisdiction over marine resources matters by January 15th of each even-numbered year.

11 The department shall adopt rules to implement this subsection. Rules adopted pursuant to
12 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
13 2-A.

14 **Sec. 4. 12 MRSA §6302-B**, as enacted by PL 2013, c. 485, §3, is amended to
15 read:

16 **§6302-B. Elver quota for federally recognized Indian tribes in the State**

17 If the commissioner adopts an elver individual fishing quota system pursuant to
18 section 6505-A, subsection 3-A, this section governs the allocation of the elver quota to
19 federally recognized Indian tribes in the State.

20 **1. Annual allocation.** In accordance with section 6505-A, the commissioner shall
21 annually allocate 21.9% of the overall annual quota of elver fishery annual landings to the
22 federally recognized Indian tribes in the State tribal communities. If the Passamaquoddy
23 Tribe, the Penobscot Nation, the Aroostook Band of Micmaes and the Houlton Band of
24 Maliseet Indians tribal communities reach an agreement regarding the division of this
25 21.9% portion of the overall annual quota among them and communicate in writing that
26 agreement to the commissioner prior to March 1st of the year in which the quota is
27 allocated, the commissioner shall allocate that portion of the quota in accordance with
28 that agreement. If no agreement is reached, the commissioner shall allocate that portion
29 of the quota in accordance with the following: section 6505-A, subsection 3-A, paragraph
30 C.

- 31 A. To the Passamaquoddy Tribe, 14% of the overall annual quota;
32 B. To the Penobscot Nation, 6.4% of the overall annual quota;
33 C. To the Houlton Band of Maliseet Indians, 1.1% of the overall annual quota; and
34 D. To the Aroostook Band of Micmaes, 0.4% of the overall annual quota.

35 In making any allocations under this subsection, the commissioner shall reserve a portion
36 no greater than 10% of each allocation in order to ensure that the quota is not exceeded.

37 **2. Individual allocation.** The Passamaquoddy Tribe Each of the tribal communities
38 shall allocate to each person to whom it issues a license under section 6302-A, subsection
39 3 3-A, paragraph E-1 D a specific amount of the quota allocated to the Passamaquoddy
40 Tribe that tribal community under subsection 1, paragraph A and shall provide

1 documentation to the department of that allocation for each individual license holder.
2 ~~The Passamaquoddy Tribe Each of the tribal communities~~ shall allocate all of the quota
3 that it has been allocated and may not alter any individual allocations once documentation
4 has been provided to the department. ~~The Penobscot Nation shall allocate to each person~~
5 ~~to whom it issues a license under section 6302 A, subsection 3, paragraph E~~ a specific
6 ~~amount of the quota allocated to the Penobscot Nation under subsection 1, paragraph B~~
7 and shall provide documentation to the department of that allocation for each individual
8 license holder. ~~The Penobscot Nation shall allocate all of the quota that it has been~~
9 ~~allocated and may not alter any individual allocations once documentation has been~~
10 ~~provided to the department.~~ The Houlton Band of Maliseet Indians shall allocate to each
11 person to whom it issues a license under section 6302 A, subsection 3, paragraph G a
12 specific amount of the quota allocated to the Houlton Band of Maliseet Indians under
13 subsection 1, paragraph C and shall provide documentation to the department of that
14 allocation for each individual license holder. The Houlton Band of Maliseet Indians shall
15 allocate all of the quota that it has been allocated and may not alter any individual
16 allocations once documentation has been provided to the department. The Aroostook
17 Band of Micmaes shall allocate to each person to whom it issues a license under section
18 6302 A, subsection 3, paragraph F a specific amount of the quota allocated to the
19 Aroostook Band of Micmaes under subsection 1, paragraph D and shall provide
20 documentation to the department of that allocation for each individual license holder.
21 The Aroostook Band of Micmaes shall allocate all of the quota that it has been allocated
22 and may not alter any individual allocations once documentation has been provided to the
23 department.

24 The department shall issue elver transaction cards under section 6305 to a person licensed
25 by ~~the Passamaquoddy Tribe~~ under section 6302-A, subsection 3-A, paragraph E+D,
26 the Penobscot Nation under section 6302 A, subsection 3, paragraph E, the Houlton Band
27 of Maliseet Indians under section 6302 A, subsection 3, paragraph G or the Aroostook
28 Band of Micmaes under section 6302 A, subsection 3, paragraph F only upon receipt of
29 adequate documentation specifying the individual quota allocated to that person by the
30 ~~tribe, nation or band tribal community~~ under this subsection.

31 **3. Overage.** If the total weight of elvers sold by persons licensed by ~~the~~
32 ~~Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmaes or Houlton Band~~
33 ~~of Maliseet Indians a tribal community~~ exceeds the quota allocated under subsection 1 to
34 that ~~tribe, nation or band tribal community~~, the commissioner shall deduct the amount of
35 the overage from any future allocation to that ~~tribe, nation or band tribal community~~. If
36 the overage exceeds the overall annual quota allocated to that ~~tribe, nation or band tribal~~
37 ~~community~~ for the following year, the overage must be deducted from the overall annual
38 quota allocations to that ~~tribe, nation or band tribal community~~ in subsequent years until
39 the entire overage has been accounted for.

40 **4. Allocation of licenses.** The commissioner shall establish the number of licenses
41 issued by each tribal community under section 6302-A, subsection 3-A, which must be an
42 amount that represents a tribal community's percentage of the total population of tribal
43 communities as determined from population data provided to the commissioner from
44 each of the tribal communities. In establishing the number of licenses each tribal
45 community may issue under section 6302-A, subsection 3-A, the commissioner shall
46 reserve a portion no greater than 10% of the licenses each tribal community may issue in

1 order to ensure that the amount of licenses issued by the tribal communities is not
2 exceeded.

3 **Sec. 5. 12 MRSA §6305, sub-§1-A**, as amended by PL 2013, c. 468, §9, is
4 further amended to read:

5 **1-A. Photo identification.** When a person is engaged in an activity for which a
6 license is required under section 6302-A, subsection 3 3-A, paragraph ~~E, E-1, F or G~~ D or
7 section 6505-A, that person shall have a government-issued identification card with that
8 person's photograph and date of birth in that person's actual possession and shall, on the
9 request of a marine patrol officer or other authorized person, present the government-
10 issued identification card with that person's photograph and date of birth.

11 **Sec. 6. 12 MRSA §6305, sub-§1-B**, as enacted by PL 2013, c. 468, §9, is
12 amended to read:

13 **1-B. Elver transaction card.** When a person is engaged in an activity for which a
14 license is required under section 6302-A, subsection 3 3-A, paragraph ~~E, E-1, F or G~~ D or
15 section 6505-A, that person shall have the elver transaction card issued by the department
16 under section 6505-A to that person in that person's actual possession and shall, on the
17 request of a marine patrol officer or other authorized person, present the elver transaction
18 card.

19 **Sec. 7. 12 MRSA §6505-A, sub-§1-C**, as amended by PL 2013, c. 485, §6, is
20 further amended to read:

21 **1-C. Elver transaction card issued.** The department may issue an elver transaction
22 card to each license holder under this section and to each license holder under section
23 6302-A, subsection 3 3-A, paragraphs ~~E, E-1, F and G~~ paragraph D in accordance with
24 section 6302-B. The license holder shall use the elver transaction card to meet electronic
25 reporting requirements established by rule pursuant to section 6173. The elver
26 transaction card must include the license holder's name and license number.

27 **Sec. 8. 12 MRSA §6505-A, sub-§§1-D and 1-E**, as enacted by PL 2013, c. 468,
28 §24, are amended to read:

29 **1-D. Use of elver transaction card required.** The holder of an elver fishing license
30 issued under this section or section 6302-A, subsection 3 3-A, paragraph ~~E, E-1, F or G~~ D
31 may not sell or transfer elvers the license holder has taken to an elver dealer licensed
32 under section 6864 unless the holder of the elver fishing license presents to the elver
33 dealer the elver transaction card issued to that person under subsection 1-C.

34 **1-E. Elver transaction card limited.** A person may not possess an elver transaction
35 card unless that person holds a license issued under this section or section 6302-A,
36 subsection 3 3-A, paragraph ~~E, E-1, F or G~~ D and the elver transaction card was issued to
37 that person pursuant to subsection 1-C.

38 **Sec. 9. 12 MRSA §6505-A, sub-§3-A**, as enacted by PL 2013, c. 485, §7, is
39 amended to read:

1 **3-A. Elver fishing quotas.** The commissioner may adopt rules to establish,
2 implement and administer an elver individual fishing quota system in order to ensure that
3 the elver fishery annual landings do not exceed the overall annual quota established by
4 the Atlantic States Marine Fisheries Commission. A person issued a license under this
5 section or section 6302-A, subsection 3 3-A, paragraph E, E 1, F or G D may not take,
6 possess or sell elvers in excess of the weight quota allocated to that person under the
7 quota system. The rules must:

- 8 A. Establish an overall annual quota for the State;
- 9 B. Establish the amount of the overall annual quota under paragraph A that is
10 allocated to persons licensed under this section and specify a formula to establish
11 individual quotas for persons licensed under this section. The formula may take into
12 account the amount of elvers a person licensed under this section lawfully harvested
13 in previous seasons based on final harvesting reports. The rules must specify the date
14 by which harvester reports are considered final for the purpose of determining
15 individual quotas; and
- 16 C. Provide, in accordance with section 6302-B, that 21.9% of the overall annual
17 quota under paragraph A is allocated to the ~~federally recognized Indian tribes tribal~~
18 communities in the State ~~and establish the amount of that portion of the overall~~
19 annual quota allocated to the Passamaquoddy Tribe, the Penobscot Nation, the
20 Houlton Band of Maliseet Indians and the Aroostook Band of Micmaes.; and
- 21 D. Establish the percentage of that portion of the overall annual quota allocated to
22 each tribal community, which must be equal to that tribal community's percentage of
23 the total population of tribal communities as determined from population data
24 provided to the commissioner from each tribal community. This paragraph does not
25 apply if the tribal communities reach an agreement regarding the division of this
26 21.9% portion of the overall annual quota among them under section 6302-B.
27 subsection 1.

28 If persons issued licenses under this section collectively exceed the overall annual quota
29 allocated to those persons pursuant to paragraph B, the number of pounds by which the
30 license holders exceeded that overall annual quota must be deducted from the following
31 year's overall annual quota allocated to persons licensed under this section. If the overage
32 exceeds the overall annual quota allocated to persons licensed under this section for the
33 following year, the overage must be deducted from the overall annual quota allocated to
34 persons licensed under this section in subsequent years until the entire overage has been
35 accounted for.

36 The commissioner may adopt or amend rules on an emergency basis if immediate action
37 is necessary to establish and implement the elver individual fishing quota in advance of
38 the beginning of the elver fishing season.

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

41 **Sec. 10. 12 MRSA §6575-D, sub-§1,** as amended by PL 2013, c. 468, §28, is
42 further amended to read:

1 **1. Prohibition.** Except as provided in subsection 1-A, a person other than a marine
2 patrol officer or the license holder issued a tag for an elver fyke net may not utilize,
3 transfer, alter, possess or in any manner handle the net unless that person has been issued
4 a license to fish for elvers with an elver fyke net under section 6302-A, subsection 33-A,
5 paragraph E,E1,F or G D or section 6505-A or a license to fish for elvers with crew
6 with an elver fyke net under section 6505-A and the license holder issued the tag for the
7 elver fyke net is present and assisting in setting, tending or removing the net.

8 **Sec. 11. 12 MRSA §6575-H, sub-§1, ¶B,** as amended by PL 2013, c. 468, §29,
9 is further amended to read:

10 B. A person may not accept payment for elvers in any form other than a check or
11 cashier's check that identifies both the buyer, by whom the landings will be reported,
12 and the seller, each of whom must be a person holding a license issued under section
13 6864, a person who, pursuant to section 6864, subsection 9, is an authorized
14 representative of a person holding a license issued under section 6864 or a person
15 holding a license issued under section 6302-A, subsection 33-A, paragraph E,E1,F
16 or G D or section 6505-A.

17 **Sec. 12. 12 MRSA §6864, sub-§10,** as amended by PL 2013, c. 468, §40, is
18 further amended to read:

19 **10. Purchase of elvers.** Until May 31, 2014, a person who holds an elver dealer's
20 license, or the authorized representative of that person under subsection 9, may purchase
21 elvers from licensed harvesters at locations other than the permanent facility identified on
22 the license holder's license. Beginning in 2015, a person who holds an elver dealer's
23 license or the license holder's authorized representative may purchase elvers from
24 licensed harvesters only at the permanent facility identified on the license holder's
25 license. The license holder or the license holder's authorized representative shall keep
26 records on forms supplied by the department that identify each harvester from which
27 elvers were purchased and the amount of elvers purchased from each harvester and each
28 dealer to whom elvers were sold and the amount of elvers sold to each dealer. At all
29 times, the license holder or the license holder's authorized representative must be able to
30 fully account for the amount of elvers in the license holder's or the licensee—license
31 holder's authorized representative's possession. On the request of a marine patrol officer,
32 the license holder or the license holder's authorized representative shall weigh the amount
33 of elvers in the license holder's or the licensee license holder's authorized representative's
34 possession for the purpose of determining if the amount of elvers meets the license
35 holder's or the license holder's authorized representative's records. The license holder or
36 the license holder's authorized representative shall make the records available for
37 inspection by a marine patrol officer. If the license holder's or the license holder's
38 authorized representative's records do not match the amount of elvers in the license
39 holder's or the license holder's authorized representative's possession, the entire bulk pile
40 is subject to seizure pursuant to section 6575-J. The license holder or the license holder's
41 authorized representative may not purchase elvers with any form of payment other than a
42 check or cashier's check that identifies both the seller and the buyer, each of whom must
43 be a person holding a license issued under this section, a person who, pursuant to
44 subsection 9, is an authorized representative of a person holding a license issued under

this section or a person holding a license issued under section 6302-A, subsection 3 3-A, paragraph E, E 1, F or G D or section 6505-A.

SUMMARY

This bill repeals existing allocations of lobster and crab fishing licenses, commercial sea urchin licenses, commercial scallop licenses and elver fishing licenses to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs, and provides for an equal per capita distribution of those licenses among the Penobscot Nation, the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs, the Passamaquoddy Tribe at Sipayik and the Passamaquoddy Tribe at Motahkmikuk.