

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
LAWS IS
SEPTEMBER 28, 2011

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 30, 2012

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2012

A. A conviction for an offense under Title 17-A, section 259-A or for an attempt or conspiracy to commit an offense under Title 17-A, section 259-A;

B. A violation in another jurisdiction that includes the essential elements of an offense listed under Title 17-A, section 259-A; or

C. A conviction for a military, tribal or federal offense requiring registration pursuant to:

(1) The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, also known as the Jacob Wetterling Act, Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, as amended; or

(2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248.

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

Effective April 6, 2012.

CHAPTER 598

S.P. 587 - L.D. 1722

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

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,

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

Sec. 1. 5 MRSA §12004-I, sub-§57-C, as repealed by PL 2011, c. 344, §10, is reenacted to read: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 Advisory Council	Not Authorized	12 MRSA §6080
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Sec. 2. 12 MRSA §6001, sub-§1-A, as enacted by PL 1981, c. 63, is repealed.

Sec. 3. 12 MRSA §6001, sub-§37-B is enacted to read:

37-B. River herring. "River herring" means the species *Alosa pseudoharengus*, commonly called alewife, and *Alosa aestivalis*, commonly called blueback herring.

Sec. 4. 12 MRSA §6022, sub-§17, as enacted by PL 2011, c. 10, §1, is amended to read:

17. Permit banking program. The commissioner may administer a permit banking program in which the department holds federal limited access fishing permits and distributes the rights associated with those permits to eligible residents of the State with the goal of restoring and preserving access to federally managed fisheries. The commissioner may lease fisheries allocations, as required, to fund the costs associated with the permit banking program and may use funds in excess of those needed to administer the program to provide assistance to groundfish sectors consistent with the goals of the program.

Sec. 5. 12 MRSA §6030, sub-§2, as amended by PL 2003, c. 520, §1, is repealed.

Sec. 6. 12 MRSA §6032-A is enacted to read:

§6032-A. Marine Recreation Fishing Conservation and Management Fund

1. Fund established. The Marine Recreation Fishing Conservation and Management Fund, referred to in this section as "the fund," is established within the department. The commissioner may receive on behalf of the fund funds from any source. All money received into the fund must be used for the purposes of the fund under subsection 2. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund. Any interest earned on the money in the fund must be credited to the fund.

2. Uses of fund. The commissioner may authorize the expenditure of money from the fund for research and conservation efforts related to the saltwater recreational fishery.

Sec. 7. 12 MRSA §6072-D, sub-§5, as enacted by PL 2003, c. 660, Pt. A, §16, is amended to read:

5. Reports. ~~On or before February 1st of each year, the~~ The commissioner shall report annually to

the joint standing committee of the Legislature having jurisdiction over marine resources matters Aquaculture Advisory Council under section 6080 on all expenditures made from the fund in the previous fiscal year and a summary of work accomplished and planned.

Sec. 8. 12 MRSA §6078-A, sub-§5, as enacted by PL 2003, c. 247, §19, is repealed.

Sec. 9. 12 MRSA §6080, as repealed by PL 2011, c. 344, §19, is reenacted to read:

§6080. Aquaculture Advisory Council

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

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

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

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

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

Sec. 10. 12 MRSA §6121, sub-§1, as repealed and replaced by PL 1983, c. 388, §1, is amended to read:

1. Commissioner's authority. In order to conserve, develop or restore anadromous fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other artificial obstruction within coastal waters frequented by alewives river herring, shad, salmon, sturgeon or other anadromous fish species.

Sec. 11. 12 MRSA §6131, as amended by PL 2009, c. 17, §§1 to 4, is further amended to read:

§6131. River herring fishing rights

The commissioner is authorized to develop, manage or lease ~~alewife~~ river herring fishing rights as follows.

1. River herring rights. The commissioner shall grant the right, exclusive or otherwise, to take ~~alewives~~ river herring to any municipality entitled to those rights on January 1, 1974 and may grant the right to take ~~alewives~~ river herring to any other municipality provided:

A. Any municipality that has had the right to take ~~alewives~~ river herring, exclusive or otherwise, or is granted that right by the commissioner, shall take action through its legislative body and file a copy of this action with the commissioner prior to April 20th or lose that right for the remaining part of that year;

B. Municipal rights that are not exercised for 3 consecutive years lapse;

C. At its annual meeting the municipality may determine by vote:

(1) Whether ~~alewife~~ river herring fishing will be operated by the municipality through the municipal officers or a committee; and

(2) Whether the municipal rights to take ~~alewives~~ river herring will be sold by the municipal officers or committee; and

D. Harvesting plans ~~shall~~ must be developed as follows.

(1) Any municipality engaged in harvesting ~~alewives~~ river herring shall submit a written harvesting plan to the commissioner prior to April 20th of each calendar year. All harvesting plans ~~shall~~ must set forth in detail the exact conditions under which ~~alewives~~ river herring may be taken, all in accordance with good conservation practices.

(2) The commissioner, after consultation with the appropriate municipal officers, shall approve or modify the harvesting plan as ~~he deems~~ the commissioner determines necessary for the conservation of ~~alewives~~ river herring and other anadromous fish, and shall file a copy of the approved plan with the clerk of the municipality.

2. Limitations. The following limitations apply to any grant.

A. It is unlawful to take ~~alewives~~ river herring from 6 a.m. each Thursday morning until 6 a.m. Sunday morning. Municipalities that make other provisions for escape of spawning ~~alewives~~, which river herring that are approved by the commissioner; are exempt from this limit.

B. It ~~shall be~~ is unlawful for any municipality or purchaser or lessee of the municipal right to take alewives river herring in any manner except as provided in the approved alewife river herring harvesting plan.

3. Closed period in rivers and streams not under lease agreement. In any river or stream not managed under a lease agreement, there is a 72-hour closed period on the taking of alewives river herring and obstruction of the watercourse to allow the free passage of fish from 6 a.m. on Thursday to 6 a.m. the following Sunday.

4. Violation of harvesting plan. If the commissioner determines after investigation that the municipality is not following its alewife river herring harvesting plan, ~~he the commissioner~~ shall notify the municipality. Any municipality ~~which that~~ fails to take corrective action within 48 hours of notification ~~shall lose~~ loses its alewife river herring fishing privilege for that calendar year. Upon further notification by the commissioner of loss of alewife river herring fishing privileges, the municipality or its agents shall cease all fishing activity and immediately remove all traps, weirs, seines or other alewife river herring fishing gear from their alewife river herring waters.

5. Leasing of rights. The commissioner:

A. When the commissioner decides to manage or lease any alewife river herring fishing rights ~~where~~ when a municipality has had those rights and has failed to act as provided in subsection 1, shall so notify the clerk of the municipality in writing. After the notice, the commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives river herring may be taken, all in accordance with good conservation practices; and

B. May manage or lease alewife river herring fishing rights in any river or stream where a municipality does not have those rights. The commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and approved and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives river herring may be taken, all in accordance with good conservation practices.

6. Violation of terms. It ~~shall be~~ is unlawful for any person holding such a lease to violate any of its terms or to cause the same to be done.

7. Molesting equipment. It ~~shall be~~ is unlawful to molest the fishing equipment of any lease holder or to interfere with the fishing rights granted by the lease.

8. Migratory Fish Fund. All fees received by the commissioner from alewife river herring leasing rights are allocated to the Migratory Fish Fund, as established. Expenditures from the Migratory Fish Fund must be made:

A. To build fishways for alewives river herring and other migratory fish;

B. For construction of other facilities for improving the environment of alewives river herring and other migratory fish;

C. For general propagation and conservation of alewives river herring and other migratory fish;

D. For research to enhance the fishing industry based on alewives river herring and other migratory fish; and

E. For management measures required to maintain or enhance alewife river herring populations or populations of other migratory fish.

The Migratory Fish Fund does not lapse.

Sec. 12. 12 MRSA §6134, as repealed and replaced by PL 2007, c. 587, §1, is amended to read:

§6134. River herring passage; fishways on the St. Croix River

This section governs the passage of alewives river herring on the Woodland Dam and the Grand Falls Dam located on the St. Croix River.

1. Woodland Dam. By May 1, 2008, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishway on the Woodland Dam is configured or operated in a manner that allows the passage of alewives river herring.

2. Grand Falls Dam. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishway on the Grand Falls Dam is configured or operated in a manner that prevents the passage of alewives river herring.

Sec. 13. 12 MRSA §6136, sub-§5, as enacted by PL 2005, c. 641, §1, is amended to read:

5. Amendment and termination of trust. The department shall ~~file a report~~ make recommendations as follows.

~~A. The department shall report to the Legislature on a biennial basis concerning the activities of the trust.~~

B. In the event the department determines that the provisions of the trust should be amended, the department shall make appropriate recommendations to the Legislature ~~in its biennial report~~.

C. The department may recommend ~~in its biennial report~~ that the trust be terminated if termination is determined to be appropriate. In the event

that the Legislature terminates the trust, the principal and operating funds must be disbursed in a manner consistent with the purpose of the trust.

Sec. 14. 12 MRSA §6141, sub-§5, as amended by PL 1987, c. 694, §2, is repealed.

Sec. 15. 12 MRSA §6171, sub-§5, ¶B, as enacted by PL 2007, c. 574, §1, is amended to read:

B. If the commissioner determines that for biological reasons a rule adopted under this section must take effect prior to final adoption under paragraph A, the commissioner may adopt the rule as a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A. A rule adopted under this paragraph is effective until 90 days after the adjournment of the next regular session of the Legislature. Rules adopted pursuant to this paragraph must also be submitted to the Legislature under paragraph A. The commissioner may not adopt rules under Title 5, section 8054 pursuant to this paragraph.

~~This paragraph is repealed July 31, 2012.~~

Sec. 16. 12 MRSA §6301, sub-§2, ¶S, as enacted by PL 2009, c. 561, §9, is amended to read:

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

Sec. 17. 12 MRSA §6302-A, as amended by PL 2011, c. 266, Pt. A, §2, is further amended to read:

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

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

A. May utilize lobster traps tagged with trap tags issued by the tribe or nation or band or the agent of the band in a manner consistent with trap tags

issued pursuant to section 6431-B. A member of the tribe or nation or band is not required to pay trap tag fees under section 6431-B if the tribe or nation or band or the agent of the band issues that member trap tags;

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

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

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

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

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

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

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within ~~the Passamaquoddy reservation at Pleasant Point or Indian Township, the~~ Indian territory, as defined in Title 30, section 6205, subsection 1, Penobscot Indian Reservation territory, as defined in Title 30, section 6205, subsection 2, or

~~Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2, or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms. A member of the Passamaquoddy Tribe or Penobscot Nation who takes a marine organism under a license or permit issued pursuant to this subsection must comply with all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism, except that a state law or rule that sets a season for the harvesting of a marine organism does not apply to a member of the Passamaquoddy Tribe or Penobscot Nation who takes a marine organism for sustenance use or for non-commercial use in a tribal ceremony. A member of the Passamaquoddy Tribe or Penobscot Nation issued a license or permit under this subsection is exempt from paying elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe or Penobscot Nation who fishes for or takes lobster under a license or permit issued pursuant to this subsection must comply with the closed periods under section 6440.~~

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

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

A. The Passamaquoddy Tribe and Penobscot Nation may each issue to members of its tribe or nation, as the case may be, up to 24 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class

II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

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

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

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

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

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

D-1. The Aroostook Band of Micmacs or its agent may not issue to members of the band more than 10 commercial licenses for the taking of scallops 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 to members of the band for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

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

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.

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

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

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

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

10. Agent. For purposes of this section, an agent of the Aroostook Band of Micmacs is any entity authorized by the Aroostook Band of Micmacs Tribal Council to act on its behalf under this section. The Aroostook Band of Micmacs Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section.

Sec. 18. 12 MRSA §6371, sub-§2, as amended by PL 2011, c. 311, §1, is further amended to read:

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

Sec. 19. 12 MRSA §6372, first ¶, as amended by PL 2011, c. 311, §2, is further amended to read:

Notwithstanding the Maine Administrative Procedure Act, the procedure for suspending a license for refusal to allow inspection or seizure under section 6306 or refusal to allow inspection under section

~~6852-A~~ 6852, subsection 2-A or section 6856 is as follows.

Sec. 20. 12 MRSA §6374, sub-§2, as enacted by PL 2011, c. 311, §4, is amended to read:

2. Hearing. A hearing requested under subsection 1 must be held within ~~40~~ 30 business days after receipt by the commissioner of a request for hearing except that a hearing may be held more than ~~40~~ 30 business days after the request if the delay is requested by the person requesting the hearing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license and whether that person committed a violation of marine resources law; and

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing.

Sec. 21. 12 MRSA §6501, sub-§6, as amended by PL 2011, c. 266, Pt. A, §16, is further amended to read:

6. Definition. For the purposes of this chapter, "fish" means all marine finfish except Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, ~~alewife river herring~~, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad. For the purposes of this chapter, "fish" also means all other marine organisms, except lobsters, crabs, sea urchins, shellfish, scallops, marine worms, elvers, sea cucumbers, eels, shrimp or seaweed.

Sec. 22. 12 MRSA §6502-A, sub-§1, as enacted by PL 2009, c. 527, §2, is amended to read:

1. Definition. As used in this section, "pelagic or anadromous fish" means Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, ~~alewife river herring~~, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad.

Sec. 23. 12 MRSA §6502-A, sub-§4, as enacted by PL 2009, c. 527, §2, is amended to read:

4. Exemption. The licensing requirement under subsection 2 does not apply to a person who fishes for, takes, possesses or transports any pelagic or anadromous fish that have been taken by speargun, harpoon, minnow trap, hand dip net or hook and line and are only for personal use.

Sec. 24. 12 MRSA §6553-A, as enacted by PL 1983, c. 830, is amended to read:

§6553-A. Implements and devices in Washington County waters

Between May 1st and December 1st of each year, it ~~shall be~~ is unlawful to set or use any device, such as fish spawn, grapnel, spear, trawl, weir, gaff, seine, gill net, trap or set line on the waters of the Pleasant River and its tributaries in Columbia Falls and Addison, in Washington County, above Maine River Bridge, so-called, in Addison, and during that closed period ~~no~~ a person may not have in ~~his~~ that person's possession any grapnel, trawl, weir, seine, gill net, trap or set line on the waters of the Pleasant River or its tributaries within those boundaries. This section does not apply to the taking of eels by spear from those waters during the month of November annually. This section does not apply to the taking of ~~alewives river herring~~ from those waters as authorized by the general law or by vote of the Town of Columbia Falls. Any equipment used in violation of this section ~~shall~~ must be confiscated by the commissioner, after final adjudication of any charge brought under this section.

Sec. 25. 12 MRSA §6575-C, sub-§2, as amended by PL 2003, c. 452, Pt. F, §13 and affected by Pt. X, §2, is further amended to read:

2. River herring traps. A person may not fish for or take elvers within 50 feet of a licensed ~~alewife river herring~~ trap.

Sec. 26. 12 MRSA §6601, sub-§2, as amended by PL 2009, c. 217, §1, is further amended to read:

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

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

2. Licensed activity. A surf clam boat license issued under this section may be used for harvesting surf clams. The holder of a surf clam boat license may also possess or transport surf clams within state limits or sell surf clams the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail ~~seafood license certificate~~ holder under section ~~6852-A~~ 6852, subsection 2-A. The license also authorizes the captain and crew members

aboard the licensed boat when engaged in harvesting surf clams to undertake these activities.

Sec. 28. 12 MRSA §6651, sub-§1, ¶¶F and G, as enacted by PL 2009, c. 213, Pt. G, §16, are amended to read:

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

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

Sec. 29. 12 MRSA §6651, sub-§1, ¶H is enacted to read:

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

Sec. 30. 12 MRSA §6672, as enacted by PL 1977, c. 661, §5, is repealed.

Sec. 31. 12 MRSA §6702, sub-§§1 and 2, as amended by PL 2007, c. 607, Pt. A, §2, are further amended to read:

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

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

Sec. 32. 12 MRSA §6731, sub-§2, ¶C, as amended by PL 2009, c. 217, §3, is further amended to read:

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

Sec. 33. 12 MRSA §6731-A, sub-§6, as enacted by PL 2003, c. 593, §2, is amended to read:

6. Stock assessment. The department shall conduct stock assessments of the mahogany quahog resource beginning no later than January 1, 2005. ~~The department shall report biennially to the joint standing committee of the Legislature having jurisdiction over marine resources matters on the progress of the stock assessment and the status of the Mahogany Quahog Monitoring Fund starting on January 1, 2006.~~

Sec. 34. 12 MRSA §6745, sub-§2, as amended by PL 2009, c. 217, §4, is further amended to read:

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

Sec. 35. 12 MRSA §6746, sub-§2, as amended by PL 2009, c. 217, §5, is further amended to read:

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

Sec. 36. 12 MRSA §6748, sub-§4, as repealed and replaced by PL 2009, c. 561, §28, is amended to read:

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

A. For an individual handfishing sea urchin license, \$152; and

B. For a handfishing sea urchin license with tender, \$202.

Sec. 37. 12 MRSA §6748, sub-§4-B is enacted to read:

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

A. For an individual handfishing sea urchin license, \$25; and

B. For a handfishing sea urchin license with tender, \$50.

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

Sec. 38. 12 MRSA §6748-A, sub-§4, as amended by PL 2009, c. 213, Pt. G, §24, is further amended to read:

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

Sec. 39. 12 MRSA §6748-A, sub-§4-B is enacted to read:

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

Sec. 40. 12 MRSA §6749-N, last ¶, as amended by PL 2001, c. 327, §10, is repealed.

Sec. 41. 12 MRSA §6851, sub-§2, ¶A, as amended by PL 1999, c. 491, §6 and affected by §9, is further amended to read:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts, except lobsters, ~~and~~ sea urchins and shrimp purchased directly from harvesters;

Sec. 42. 12 MRSA §6851, sub-§2-D, as amended by PL 2009, c. 561, §31, is further amended to read:

2-D. Wholesale seafood license with shrimp permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit. A person holding a wholesale seafood license with a shrimp permit may engage in all of the activities in subsection 2 ~~and~~ may buy, shrimp from harvesters and may sell, process, ship or transport shrimp.

Sec. 43. 12 MRSA §6851, sub-§3, as amended by PL 1991, c. 523, §3, is further amended to read:

3. Exceptions. This section does not apply to smoked herring or ~~alewives~~ river herring.

Sec. 44. 12 MRSA §6852, as amended by PL 2009, c. 478, §3 and c. 523, §§10 and 11, is further amended to read:

§6852. Retail seafood license

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

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

A. Shellstock ~~and shucked shellfish~~ if they are bought from a wholesale seafood license holder certified under section 6856;

~~C. Lobster parts or meat, if they are permitted under section 6857, purchased from a wholesale seafood license holder who possesses a lobster processor license under section 6851 B or have been lawfully imported;~~

D. Crayfish; or

E. Lobsters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. The minimum sanitation standards for establishments and vehicles;
- B. The sanitation and quality control standards for shellfish and whole scallops and their products;
- C. The methods for handling, shipping and transporting of shellfish and whole scallops;
- D. The records and reports of purchases, shipping and transporting of shellfish and whole scallops;
- E. The labeling or marking of shipments of shellfish and wholesale scallops; and
- F. The protection of public health.

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

Sec. 45. 12 MRSA §6852-A, as amended by PL 2011, c. 311, §5, is repealed.

Sec. 46. 12 MRSA §6852-B is enacted to read:

§6852-B. Retail sale of certain seafood products

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

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

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

Sec. 47. 12 MRSA §6955, as enacted by PL 1985, c. 211, is amended to read:

§6955. Fishing in waters of Union River Bay and the lower Union River

It is unlawful to fish with any type of net, fish trap or weir from April 15th to August 1st in the tidal waters of Union River Bay and the lower Union River north of a line drawn from the southernmost tip of Newbury Neck in the Town of Surry and extended eastward to the southernmost tip of Oak Point in the Town of Trenton. The closed area ~~shall extend~~ extends northward to the downstream side of the Bangor Hydropower Company dam in the City of Ellsworth. Fishing for eels or smelts by means of hand dip nets, fyke nets or baited eel traps ~~shall be~~ is exempt from this section. The taking of ~~alewives~~ river herring under the provisions of section 6131, subsection 5, ~~shall be~~ is exempt from this section.

Sec. 48. 12 MRSA §6977, as enacted by PL 2003, c. 573, §1, is repealed.

Sec. 49. Rules. Notwithstanding any provision of law to the contrary, rules adopted by the Department of Marine Resources pertaining to enhanced retail seafood license holders apply to enhanced retail certificate holders under the Maine Revised Statutes, Title 12, section 6852, subsection 2-A pending adoption by the department of revised rules in accordance with this Act.

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

Effective April 6, 2012.

CHAPTER 599

S.P. 596 - L.D. 1739

An Act To Change Regulation of Forestry Activities

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

Sec. 1. 12 MRSA §685-A, sub-§12, as repealed and replaced by PL 2005, c. 226, §1, is amended to read:

12. Timber harvesting activities. Rules adopted by the Commissioner of Conservation pursuant to section 8867-B for the purpose of regulating timber har-