

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 441 - L.D. 558

An Act To Provide Members of the Penobscot Nation with Marine Resources Licenses

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 expands the availability of marine resources licenses for members of the Penobscot Nation; and

Whereas, it is important that these licenses be available during the summer to take advantage of the seasonal nature of harvesting certain marine species; 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. 12 MRSA §6302-A, as amended by PL 2009, c. 396, §1, is further amended to read:

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

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

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

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe or nation in a manner consistent with tags issued pursuant to 6505-B. A member of the tribe or nation is not required to pay elver fishing gear fees under section 6505-B if the tribe or nation 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 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. 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. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe or nation 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.

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 Penobscot Indian Reservation 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 noncommercial 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.

3. Lobster, sea urchin, scallop and elver licenses; limitations. ~~The Passamaquoddy Tribe may not issue pursuant~~ Pursuant to subsection 1:

A. ~~More than~~ The Passamaquoddy Tribe and Penobscot Nation may each issue up to 24 commercial lobster and crab fishing licenses in any calendar year 1998, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Any lobster and crab fishing license issued by the tribe after calendar year 1998 is Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5; and

B. ~~More~~ The Passamaquoddy Tribe may not issue 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 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 in any calendar year;

D. The Penobscot Nation may not issue 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 for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses; and

E. The Penobscot Nation may not issue 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 for the taking of elvers if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses.

The Passamaquoddy Tribe, Penobscot Nation 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 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 unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or a tribal official in accordance with section 6027.

6. License suspension. If a member of the Passamaquoddy Tribe or Penobscot Nation 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 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 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 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 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 is a political subdivision of the State.

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

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor