

§6207. Regulation of fish and wildlife resources

1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

- A. Hunting, trapping or other taking of wildlife; and [PL 1979, c. 732, §§1, 31 (NEW).]
- B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area. [PL 1979, c. 732, §§1, 31 (NEW).]

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

[PL 1979, c. 732, §§1, 31 (NEW).]

2. Registration stations. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner. [PL 1979, c. 732, §§1, 31 (NEW).]

3. Adoption of regulations by the commission. Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:

- A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory; [PL 1979, c. 732, §§1, 31 (NEW).]
- B. Any section of a river or stream both sides of which are within Indian territory; and [PL 1979, c. 732, §§1, 31 (NEW).]
- C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more. [PL 1979, c. 732, §§1, 31 (NEW).]

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the

Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.

[PL 1979, c. 732, §§1, 31 (NEW).]

3-A. Horsepower and use of motors. Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.

[PL 1997, c. 739, §12 (NEW); PL 1997, c. 739, §§13, 14 (AFF).]

REVISOR'S NOTE: Subsection 3-A not in effect as to Passamaquoddy Tribe or Penobscot Nation because requirements of PL 1997, c. 739, §§13, 14 were not met

4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

[PL 1979, c. 732, §§1, 31 (NEW).]

5. Posting. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

[PL 1979, c. 732, §§1, 31 (NEW).]

6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence. [PL 1979, c. 732, §§1, 31 (NEW).]

7. Transportation of game. Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State. [PL 1979, c. 732, §§1, 31 (NEW).]

8. Fish and wildlife on non-Indian lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission. [PL 1979, c. 732, §§1, 31 (NEW).]

9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water. [PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1997, c. 739, §12 (AMD). PL 1997, c. 739, §§13,14 (AFF).

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