

§6302-A. Taking of marine organisms by federally recognized Indian tribes

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation or Houlton Band of Maliseet Indians who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6502-A, 6502-C, 6505-A, 6505-C, 6506, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803, 6804 or 6808 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe, 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, Penobscot Nation, Mi'kmaq Nation or Houlton Band of Maliseet Indians 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, nation or band:

A. May utilize lobster traps tagged with trap tags issued by the tribe, 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, nation or band is not required to pay trap tag fees under section 6431-B if the tribe, nation or band or the agent of the band issues that member trap tags; [PL 2011, c. 598, §17 (AMD).]

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe, 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, nation or band is not required to pay elver fishing gear fees under section 6505-B if the tribe, nation or band or the agent of the band issues that member elver fishing gear tags; [PL 2023, c. 207, §7 (AMD).]

C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671; and [PL 2023, c. 207, §8 (AMD).]

D. Is not required to complete an apprentice program established under section 6422 if the tribe, nation or band provides documentation to the commissioner to show that the license applicant has completed an apprentice program that is satisfactory to the tribe, nation or band. [PL 2023, c. 207, §9 (NEW).]

[PL 2023, c. 207, §§7-9 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

2. Tribal exemption; sustenance or ceremonial tribal use. Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation or Houlton Band of Maliseet Indians 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, 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; [PL 2011, c. 598, §17 (AMD).]

B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe, 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, 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 [PL 2011, c. 598, §17 (AMD).]

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, by the Penobscot Reservation Tribal Council, by the Mi'kmaq Nation Tribal Council

or its agent or by the Houlton Band of Maliseet Indians Tribal Council or its agent. [PL 2013, c. 254, §2 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within Passamaquoddy Indian territory, as defined in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30, section 6205, subsection 2, Mi'kmaq Nation Trust Land, as defined in Title 30, section 7203, subsection 6, or Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A, 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, Penobscot Nation, Mi'kmaq Nation or Houlton Band of Maliseet Indians 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, Mi'kmaq Nation or Houlton Band of Maliseet Indians who takes a marine organism for sustenance use or for noncommercial use in a tribal ceremony. A member of the Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation or Houlton Band of Maliseet Indians 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, Mi'kmaq Nation or Houlton Band of Maliseet Indians 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.

[PL 2023, c. 646, Pt. A, §13 (AMD).]

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; [PL 2011, c. 598, §17 (AMD).]

A-1. The Mi'kmaq Nation 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; [PL 2011, c. 598, §17 (NEW); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

A-2. The Houlton Band of Maliseet Indians 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; [PL 2013, c. 254, §3 (NEW).]

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; [PL 2011, c. 598, §17 (AMD).]

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; [PL 2011, c. 598, §17 (AMD).]

C-1. The commissioner shall adopt rules authorizing the Mi'kmaq Nation or its agent 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 Mi'kmaq Nation or its agent to issue more than 24 commercial sea urchin licenses to members of the nation in any calendar year; [PL 2011, c. 598, §17 (NEW); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

C-2. The commissioner shall adopt rules authorizing the Houlton Band of Maliseet Indians 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 Houlton Band of Maliseet Indians or its agent to issue more than 24 commercial sea urchin licenses to members of the band in any calendar year; [PL 2013, c. 254, §3 (NEW).]

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; [PL 2011, c. 598, §17 (AMD).]

D-1. The Mi'kmaq Nation or its agent may not issue to members of the nation more than 10 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Mi'kmaq Nation or its agent 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; [PL 2011, c. 598, §17 (NEW); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

D-2. The Passamaquoddy Tribe may not issue to members of the tribe more than 20 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Passamaquoddy Tribe to issue additional commercial licenses to members of the tribe for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses; [PL 2013, c. 8, §1 (NEW).]

D-3. The Houlton Band of Maliseet Indians 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 Houlton Band of Maliseet Indians 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; [PL 2013, c. 254, §3 (NEW).]

E. The Penobscot Nation may not issue to members of the nation commercial licenses for the taking of elvers in any calendar year that exceed the following limits:

- (1) Eight licenses that allow the taking of elvers with 2 pieces of gear; and
- (2) Forty licenses that allow the taking of elvers with one piece of gear.

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 and the Penobscot Nation determine that elver resources are sufficient to permit the issuance of new licenses; [PL 2015, c. 391, §3 (AMD).]

E-1. The Passamaquoddy Tribe may issue to members of the tribe commercial licenses for the taking of elvers with one piece of gear; [PL 2015, c. 391, §4 (AMD).]

F. The Mi'kmaq Nation or its agent 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 Mi'kmaq Nation or its agent to issue additional commercial licenses for the taking of elvers to members of the nation if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses; and [PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

G. The Houlton Band of Maliseet Indians or its agent may not issue to members of the band more than 16 commercial licenses for the taking of elvers in any calendar year except that the commissioner shall by rule allow the Houlton Band of Maliseet Indians 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. [PL 2015, c. 391, §5 (RPR).]

The Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation, Houlton Band of Maliseet Indians 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.

[PL 2015, c. 391, §§3-5 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

4. Sea urchin and scallop handfishing and tender licenses; limitations. The Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation or its agent or Houlton Band of Maliseet Indians 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 [PL 1997, c. 708, §1 (NEW); PL 1997, c. 708, §3 (AFF).]

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. [PL 1997, c. 708, §1 (NEW); PL 1997, c. 708, §3 (AFF).]

[PL 2013, c. 254, §4 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

5. Notification. Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Mi'kmaq Nation 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.

[PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

6. License suspension. If a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Mi'kmaq 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, Penobscot Nation, Houlton Band of Maliseet Indians or Mi'kmaq 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.

[PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

7. Enforcement. A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians or Mi'kmaq 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, Penobscot Nation, Houlton Band of Maliseet Indians or Mi'kmaq 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.

[PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

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

[PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

9. Political subdivision. Nothing in this section may be construed to indicate that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Mi'kmaq Nation is a political subdivision of the State.

[PL 2013, c. 8, §1 (AMD); PL 2023, c. 369, Pt. A, §4 (REV); PL 2023, c. 369, Pt. A, §5 (AFF).]

10. Agent. For purposes of this section, an agent of the Mi'kmaq Nation is any entity authorized by the Mi'kmaq Nation Tribal Council to act on its behalf under this section and an agent of the Houlton Band of Maliseet Indians is any entity authorized by the Houlton Band of Maliseet Indians Tribal Council to act on its behalf under this section. The Mi'kmaq Nation Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section. The Houlton Band of Maliseet Indians Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section.

[PL 2023, c. 646, Pt. A, §14 (AMD).]

11. Renewal of licenses. If a holder of a license issued under this section fails to provide information required under section 6173, the license may not be renewed until the holder complies with the requirements of that section.

[PL 2013, c. 8, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 708, §1 (NEW). PL 1997, c. 708, §3 (AFF). PL 1999, c. 491, §3 (AMD). PL 1999, c. 491, §9 (AFF). PL 2001, c. 421, §B14 (AMD). PL 2001, c. 421, §C1 (AFF). PL 2009, c. 396, §1 (AMD). PL 2011, c. 137, §1 (AMD). PL 2011, c. 266, Pt. A, §2 (AMD). PL 2011, c. 598, §17 (AMD). PL 2013, c. 8, §1 (AMD). PL 2013, c. 9, §1 (AMD). PL 2013, c. 254, §§1-4 (AMD). PL 2013, c. 485, §2 (AMD). PL 2013, c. 588, Pt. E, §5 (AMD). PL 2015, c. 391, §§3-5 (AMD). PL 2019, c. 640, §2 (AMD). PL 2021, c. 627, §2 (AMD). PL 2023, c. 207, §§7-9 (AMD). PL 2023, c. 369, Pt. A, §4 (REV). PL 2023, c. 369, Pt. A, §5 (AFF). PL 2023, c. 646, Pt. A, §§13, 14 (AMD).

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