

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1544

H.P. 1113

House of Representatives, May 20, 2013

**An Act To Expand the Authority of Lobster Management Policy
Councils To Address Entry into Lobster Management Zones and To
Create a Temporary Medical Allowance**

(EMERGENCY)

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KUMIEGA of Deer Isle. (GOVERNOR'S BILL)

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** immediate enactment of this legislation is necessary in order for it to be
4 effective in time to assist lobster and crab fishing licensees who require the temporary
5 medical allowance for this coming fishing season; and

6 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,

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

11 **Sec. 1. 12 MRSA §6447, sub-§5-D,** as amended by PL 2007, c. 615, §10, is
12 further amended to read:

13 **5-D. Council authority; under 18 waiting list.** Notwithstanding any other
14 provision in this subchapter and upon approval in a referendum under subsection 6, a
15 lobster management policy council in a limited-entry zone may propose to the
16 commissioner that the limitation described in this subsection be placed on entry by
17 individuals into that zone in accordance with rules adopted by the department.

18 This limitation would require that the number of individuals who are authorized to be
19 issued a lobster and crab fishing license that identifies a limited-entry zone as the
20 declared lobster zone without meeting the requirements of section 6448, subsection 4, in
21 accordance with section 6448, subsection 8, paragraph A, be limited to the number of
22 new zone entrants who enter that zone in accordance with section 6448, subsection ~~7~~ 7-A.
23 This limitation may not be applied to a person who is under 18 years of age and lives on a
24 year-round basis on an island within the coastal waters that is not connected to the
25 mainland by any artificial structure.

26 The commissioner shall maintain a waiting list of individuals who have identified the
27 limited-entry zone as their declared lobster zone in accordance with section 6448,
28 subsection 8, paragraph A. For the purposes of this subsection, an individual on a waiting
29 list maintained by the commissioner does not need to meet the eligibility requirements of
30 section 6421, subsection 5-A in order to purchase a student license.

31 The commissioner may establish by rule procedures to implement this subsection. Rules
32 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
33 chapter 375, subchapter 2-A.

34 **Sec. 2. 12 MRSA §6448, sub-§2,** as amended by PL 2007, c. 204, §§4 to 6, is
35 further amended to read:

36 **2. Rules for limited-entry zones.** The commissioner may adopt rules establishing
37 limits on new zone entrants to a lobster management zone. These rules must be adopted
38 in accordance with this subsection.

1 A. After conducting a written survey in the zone, a lobster management policy
2 council may propose to the commissioner an exit ratio to limit new zone entrants to
3 the zone. The lobster management policy council is not required to submit the
4 proposal to referendum and the proposed exit ratio does not need to receive approval
5 through the survey in order to be forwarded to the commissioner.

6 A-1. A lobster management policy council may recommend to the commissioner
7 whether the exit ratio adopted for a lobster management zone should be applied to the
8 number of licenses that are not renewed or to the number of trap tags associated with
9 the licenses that are not renewed. The lobster management policy council is not
10 required to submit the recommendation to referendum.

11 B. The commissioner may initiate rulemaking under this subsection only upon
12 receipt of a proposal under paragraph A or a recommendation under paragraph A-1.
13 The commissioner shall hold a public hearing on the proposed rules pursuant to Title
14 5, section 8052. The public hearing must be held in the zone in which the rules
15 would apply and the results of the written survey regarding the exit ratio must be
16 entered into the record.

17 C. In accordance with subsection ~~7~~ 7-A, the commissioner shall adopt rules that
18 establish an exit ratio between ~~the number of trap tags retired by individuals who~~
19 ~~declared that zone as their declared lobster zone in the year prior to the previous~~
20 ~~calendar year, but who did not declare that zone as their declared lobster zone in the~~
21 ~~previous calendar year, and the number of trap tags issued to new zone entrants~~
22 ~~authorized under subsection 7. An exit ratio established by rule under this subsection~~
23 ~~is not required to be the same as the exit ratio proposed by the lobster management~~
24 ~~policy council. either:~~

25 (1) The number of trap tags retired by individuals who declared that zone as their
26 declared lobster zone in the year prior to the previous calendar year, but who did
27 not declare that zone as their declared lobster zone in the previous calendar year,
28 and the number of trap tags issued to new zone entrants authorized under
29 subsection 7-A; or

30 (2) The number of individuals who declared that zone as their declared lobster
31 zone in the year prior to the previous calendar year, but who did not declare that
32 zone as their declared lobster zone in the previous calendar year, and the number
33 of new zone entrants authorized under subsection 7-A.

34 An exit ratio established by rule under this subsection is not required to be the same
35 as the exit ratio proposed by the lobster management policy council.

36 D. Upon written notification from the lobster management policy council that a
37 majority of the council has voted to conduct a survey in a zone regarding a proposal
38 for an exit ratio to limit new zone entrants to the zone, the commissioner shall close
39 the zone to new zone entrants until the commissioner either adopts rules under this
40 subsection or declares that the commissioner will not initiate rulemaking under this
41 subsection. In no event may the zone remain closed for longer than one year unless
42 the commissioner has adopted rules establishing limits on new zone entrants to the
43 zone. ~~This paragraph does not apply to surveys conducted in accordance with~~
44 ~~subsection 10.~~

1 E. When a lobster management policy council proposes to the commissioner a
2 change in the exit ratio established under paragraph C and a new exit ratio is adopted
3 by rule under this subsection, the commissioner shall allow individuals who meet the
4 following conditions to enter the zone in accordance with the previously existing exit
5 ratio:

6 (1) The individual has completed the requirements of the apprenticeship program
7 established under section 6422 by the date the commissioner receives written
8 notification from the lobster management policy council that a majority of the
9 council has voted to conduct a survey pursuant to paragraph D; and

10 (2) The individual's name is listed on the waiting list maintained under
11 subsection 6 by the date the commissioner receives written notification from the
12 lobster management policy council that a majority of the council has voted to
13 conduct a survey pursuant to paragraph D.

14 This paragraph does not apply when the methodology by which new entrants are
15 calculated is changed from trap tags to licenses or when an exit ratio based on the
16 number of trap tags retired is adopted, in accordance with paragraph C, for the first
17 time in a lobster management zone.

18 F. When a lobster management policy council proposes to the commissioner to
19 establish an exit ratio for the first time to limit new zone entrants under paragraph A,
20 it may also propose to the commissioner a provision to exempt from the exit ratio,
21 upon completion of the apprentice program, an individual who has completed at least
22 92% of the hours required and at least 92% of the days required by the apprentice
23 program established under section 6422 by the date the commissioner receives
24 written notification from the lobster management policy council pursuant to
25 paragraph D.

26 **Sec. 3. 12 MRSA §6448, sub-§4, ¶B,** as enacted by PL 1999, c. 508, §3, is
27 amended to read:

28 B. Is authorized as a new zone entrant by the commissioner pursuant to subsection 7
29 7-A to declare that zone as the person's declared lobster zone.

30 **Sec. 4. 12 MRSA §6448, sub-§7,** as amended by PL 2007, c. 204, §7, is repealed.

31 **Sec. 5. 12 MRSA §6448, sub-§7-A** is enacted to read:

32 **7-A. Authorization of new zone entrants.** The commissioner shall determine by
33 February 1st of each licensing year the number of new zone entrants that may be
34 authorized for each limited-entry zone. The number of new zone entrants authorized in a
35 licensing year must be in accordance with the exit ratio established under subsection 2 for
36 that zone. The commissioner may adopt rules consistent with subsection 2, paragraph B
37 to implement this subsection. Upon adoption of rules, the exit ratio must be used to
38 establish the number of new zone entrants in accordance with subsection 2, paragraph C
39 by:

40 A. Dividing the number of trap tags that may be issued to new zone entrants by the
41 zone trap limit under section 6431-A. The number of new zone entrants must be

1 rounded down to the nearest whole number and the remaining trap tags carried over
2 to the following year's allocation; or

3 B. Applying the exit ratio to the number of individuals who declared that zone as
4 their declared lobster zone in the year prior to the previous calendar year, but who did
5 not declare that zone as their declared lobster zone in the previous calendar year.

6 The commissioner shall authorize new zone entrants in chronological order of requests
7 received under subsection 5. The commissioner shall notify the authorized new zone
8 entrants by certified mail. If a person does not declare a zone within 30 days after
9 receiving the notification by certified mail, that person must be taken off the waiting list
10 and the next person on the list must be authorized as a new zone entrant. If a person has
11 indicated a request for more than one zone pursuant to subsection 5, that person must be
12 taken off the waiting list for the 2nd zone when the person declares one of the zones as
13 that person's declared lobster zone after being authorized to do so. If a person who holds a
14 current Class I, Class II or Class III lobster and crab fishing license is authorized as a new
15 zone entrant and declares the zone as that person's declared lobster zone, the
16 commissioner shall change the zone identified on that person's license to the limited-entry
17 zone for which the person is authorized.

18 **Sec. 6. 12 MRSA §6448, sub-§8**, as amended by PL 2011, c. 486, §§3 and 4, is
19 further amended to read:

20 **8. Exceptions.** Notwithstanding subsection 4, the following persons may be issued a
21 Class I, Class II or Class III lobster and crab fishing license that identifies a limited-entry
22 zone as the declared lobster zone without meeting the requirements in subsection 4.

23 A. A person who is under 18 years of age who successfully completed the
24 requirements of the apprentice program under section 6422 and who submitted
25 documentation of completion of the apprentice program to the department before
26 attaining 18 years of age may declare any zone as that person's declared lobster zone
27 as long as the individual has met all apprentice program rules that may have been
28 adopted in that zone.

29 B. A person who is issued a Class I, Class II or Class III lobster and crab fishing
30 license on appeal pursuant to section 6310, subsection 2, paragraph A, subparagraph
31 (1) or (2) may declare as that person's declared lobster zone the zone in which the
32 person was authorized to fish a majority of that person's lobster traps in the most
33 recent year in which the person held a license.

34 C. A person who is issued a Class I, Class II or Class III lobster and crab fishing
35 license pursuant to section 6421, subsection 5, paragraph D may declare as that
36 person's declared lobster zone the zone in which the person was authorized to fish a
37 majority of that person's lobster traps in the most recent year in which the person held
38 a license.

39 D. A person who is issued a Class I, Class II or Class III lobster and crab fishing
40 license and is 70 years of age or older may declare any zone as that person's declared
41 lobster zone.

42 E. A person who has either successfully completed the requirements of the
43 apprentice program under section 6422 or held a Class I, Class II or Class III lobster

1 and crab fishing license in the previous calendar year and who has registered to enter
2 an established island limited-entry program as described under section 6449 may
3 declare as that person's declared lobster zone the zone in which that island limited-
4 entry program is located when the person becomes eligible to enter the island limited-
5 entry program.

6 The trap tags or license issued to a person who declares a limited-entry zone as that
7 person's declared lobster zone pursuant to this subsection may not be counted for the
8 purposes of the exit ratio or the number of new zone entrants that may be authorized for
9 that zone.

10 **Sec. 7. 12 MRSA §6448, sub-§10**, as enacted by PL 2007, c. 204, §9, is repealed.

11 **Sec. 8. 12 MRSA §6449, sub-§1**, as enacted by PL 2009, c. 294, §2, is amended
12 to read:

13 **1. Proposal to the commissioner.** Notwithstanding section 6448, subsection 7 7-A,
14 a year-round island community may petition the commissioner for the establishment of an
15 island limited-entry zone program if a minimum of 5 island residents that are holders of a
16 Class I, Class II or Class III lobster and crab fishing license or 10% of the island residents
17 that are holders of a Class I, Class II or Class III lobster and crab fishing license,
18 whichever is greater, signs the petition submitted to the commissioner. If 2/3 of the Class
19 I, Class II or Class III lobster and crab fishing license holders that are residents on the
20 island voting in a referendum held pursuant to section 6447, subsection 6 support the
21 establishment of an island limited-entry zone program, the commissioner may adopt rules
22 to establish such a program, including a waiting list. Before establishing or amending the
23 number of licenses available to island residents, the commissioner shall determine the
24 number of licenses preferred by 2/3 of the Class I, Class II or Class III lobster and crab
25 fishing license holders resident on the island. The commissioner may accept the
26 preferences proposed by 2/3 of the license holders as reasonable and adopt those
27 preferences or reject the preferences as unreasonable. The commissioner shall consult
28 with the lobster management policy council for the lobster management zone in which
29 the island is located before making the decision.

30 **Sec. 9. 12 MRSA §6450** is enacted to read:

31 **§6450. Temporary medical allowance**

32 **1. Temporary medical allowance.** Notwithstanding section 6421, upon request the
33 commissioner may issue a temporary medical allowance that permits an individual to fish
34 under the authority of the license of a Class I, Class II or Class III lobster and crab fishing
35 license holder but not under the license holder's direct supervision if the following criteria
36 are met:

37 A. The individual who will be fishing has successfully completed an apprentice
38 program under section 6422;

39 B. The individual who will be fishing is the child or spouse of the individual who
40 holds the Class I, Class II or Class III lobster and crab fishing license;

