

# MAINE STATE LEGISLATURE

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AMS

L.D. 1993

DATE: 5-4-99

(Filing No. H-396)

MAJORITY  
MARINE RESOURCES

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
119TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1387, L.D. 1993, Bill, "An Act to Establish an Appeals Process for Lobster Fishing License Denial"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

**Whereas,** currently there is a moratorium on the issuance of new lobster and crab fishing licenses; and

**Whereas,** this moratorium may have the effect of depriving experienced persons who were previously licensed to fish for lobster and crabs, but who did not hold a lobster and crab fishing license in the prior year, of the opportunity to obtain a lobster and crab fishing license; and

**Whereas,** it is necessary that any inequities be corrected as soon as possible so that these persons may resume their trade; 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,

**COMMITTEE AMENDMENT**

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

4 **Sec. 1. 12 MRSA §6421, sub-§5, ¶C**, as amended by PL 1997, c.  
574, §1, is further amended to read:

6 C. Meets the requirements of the apprentice program under  
8 section 6422 or section 6475; or

10 **Sec. 2. 12 MRSA §6421, sub-§5, ¶D**, as repealed and replaced by  
12 PL 1997, c. 250, §3 and affected by §10, is repealed.

14 **Sec. 3. 12 MRSA §6421-A, sub-§1, ¶¶A and B**, as enacted by PL  
1997, c. 747, §1, are amended to read:

16 A. Possessed a Class I, Class II or Class III lobster and  
18 crab fishing license in the previous calendar year; or

20 B. Possessed an apprentice lobster and crab fishing license  
22 issued prior to February 13, 1998 and meets the requirements  
of the apprentice program under section 6422~~+-ex.~~

24 **Sec. 4. 12 MRSA §6421-A, sub-§1, ¶C**, as enacted by PL 1997, c.  
747, §1, is repealed.

26 **Sec. 5. 12 MRSA §6421-B** is enacted to read:

28 **§6421-B. Lobster license appeals process**

30 1. Appeal of license denial. A person who is denied a Class  
32 I, Class II or Class III lobster and crab fishing license because  
34 that person does not meet the eligibility requirements of section  
6421, subsection 5, paragraph A or section 6421-A may appeal to  
the commissioner under this section for a review of that license  
denial.

36 2. Criteria for license issuance on appeal. The  
38 commissioner may issue a license on appeal only if the following  
criteria are met:

40 A. The person held a lobster and crab fishing license for at  
42 least 5 consecutive years within the last 15 years; and

44 B. The person documents that:

46 (1) A substantial illness or other medical condition on  
48 the part of the person or a family member prevented  
that person from meeting the eligibility requirements  
for a Class I, Class II or Class III lobster and crab  
50 fishing license. The person must provide the

2 commissioner with documentation from a physician  
3 describing the illness or other medical condition. For  
4 the purposes of this subparagraph, "family member"  
5 means a spouse, brother, sister, son-in-law,  
6 daughter-in-law, parent by blood, parent by adoption,  
7 mother-in-law, father-in-law, child by blood, child by  
8 adoption, stepchild, stepparent, grandchild or  
9 grandparent;

10 (2) Service in the United States Armed Forces or the  
11 United States Coast Guard precluded that person from  
12 participating in the lobster fishery and meeting the  
13 requirements for a Class I, Class II or Class III  
14 lobster and crab fishing license; or

15 (3) That person did not possess a Class I, Class II or  
16 Class III lobster and crab fishing license in the  
17 previous calendar year because the commissioner had  
18 suspended the person's license privileges for a period  
19 of time that included the previous calendar year.

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22 3. Appeals process. A person appealing a license denial  
23 under this section must request the review in writing. The  
24 commissioner shall hold a hearing on the appeal if it is  
25 requested in writing within 10 days of the initial request. If a  
26 hearing is requested, it must be held within 10 days of the  
27 request unless a longer period is mutually agreed to in writing,  
28 and it must be conducted in the Augusta area.

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30 A hearing held under this subsection is informal. At the  
31 hearing, the appellant may present any evidence concerning the  
32 criteria listed in subsection 2 that might justify issuing a  
33 license to the person and the commissioner may request any  
34 additional information the commissioner considers necessary. Any  
35 medical information provided as part of the appeal is a  
36 confidential record for the purposes of Title 1, section 402,  
37 subsection 3, paragraph A.

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40 Issuance of a license on appeal is at the discretion of the  
41 commissioner, except that a license may not be issued unless the  
42 criteria in subsection 2 are met. Decisions of the commissioner  
43 must be in writing.

44 **Sec. 6. Report; general appeals process.** The Department of  
45 Marine Resources shall develop a proposed appeals process to be  
46 used when a license is denied under any limited-entry fishery,  
47 including the lobster, sea urchin and elver fisheries. The  
48 department shall submit a report with its recommendation and any  
49 draft legislation necessary to implement the proposed appeals  
50 process to the Joint Standing Committee on Marine Resources by

January 15, 2000. The Joint Standing Committee on Marine Resources may report out legislation to the Second Regular Session of the 119th Legislature regarding a license appeals process.

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

Further amend the bill by inserting at the end before the summary the following:

#### FISCAL NOTE

The Department of Marine Resources will incur some minor additional costs to administer an appeals process for lobster fishing license denials and to submit a required report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.'

#### SUMMARY

This amendment, which is the majority report of the Joint Standing Committee on Marine Resources, replaces the bill. The amendment adds an emergency preamble and clause to the bill. The amendment establishes an appeals process for people who are denied a Class I, Class II or Class III lobster and crab fishing license because they did not possess a license in the previous calendar year. The amendment authorizes the Commissioner of Marine Resources to issue a license on appeal if the person meets certain criteria, including having held a lobster and crab fishing license for 5 consecutive years within the previous 15 years and not having possessed one in the previous year because of an illness or medical condition; service in the United States Armed Forces or United States Coast Guard; or a license suspension.

The amendment repeals the provision that made a person eligible for a Class I, Class II or Class III lobster and crab fishing license if the person did not possess a license in the previous calendar year because the commissioner had suspended the person's license for the previous calendar year. Instead, the amendment authorizes the person to appeal a license denial under those circumstances.

The amendment requires the Department of Marine Resources to develop a proposed appeals process to be used when a license is denied under any limited-entry fishery and to submit a report to the Joint Standing Committee on Marine Resources by January 15,

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2000. The amendment also authorizes the Joint Standing Committee  
on Marine Resources to report out legislation to the Second  
Regular Session of the 119th Legislature regarding a license  
appeals process.

The amendment also adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**