

MAINE STATE LEGISLATURE

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R.S.

L.D. 1993

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MINORITY
MARINE RESOURCES

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

COMMITTEE AMENDMENT "B" 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10 **Sec. 2. 12 MRSA §6421, sub-§5, ¶D**, as repealed and replaced by
12 PL 1997, c. 250, §3 and affected by §10, is repealed.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
16 1997, c. 747, §1, are amended to read:

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

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

26 **Sec. 4. 12 MRSA §6421-A, sub-§1, ¶C**, as enacted by PL 1997, c.
28 747, §1, is repealed.

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

32 **§6421-B. Lobster license appeals process**

34 **1. Appeal of license denial.** A person who is denied a Class
36 I, Class II or Class III lobster and crab fishing license because
38 that person does not meet the eligibility requirements of section
40 6421, subsection 5, paragraph A or section 6421-A may appeal to
42 the commissioner under this section for a review of that license
44 denial.

46 **2. Criteria for license issuance on appeal.** The
48 commissioner may issue a license on appeal only if the following
50 criteria are met:

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

B. The person documents that:

(1) A substantial illness or other medical condition on
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
fishing license. The person must provide the

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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. Criteria for waiver under apprentice program. If a
23 person does not meet the criteria in subsection 2 but the person
24 documents that the person obtained practical lobster fishing
25 experience as a holder of a Class I, Class II or Class III
26 lobster and crab fishing license, the commissioner may waive all
27 or part of the practical lobster fishing experience component of
28 the apprentice program under section 6422 for that person. The
29 commissioner may waive up to half the required practical lobster
30 fishing experience for each 3 years of experience documented.

31
32 4. Appeals process. A person appealing a license denial
33 under this section must request the review in writing. The
34 commissioner shall hold a hearing on the appeal if it is
35 requested in writing within 10 days of the initial request. If a
36 hearing is requested, it must be held within 10 days of the
37 request unless a longer period is mutually agreed to in writing,
38 and it must be conducted in the Augusta area.

39
40 A hearing held under this subsection is informal. At the
41 hearing, the appellant may present any evidence concerning the
42 criteria listed in subsection 2 or 3 that might justify issuing a
43 license or waiver to the person and the commissioner may request
44 any additional information the commissioner considers necessary.
45 Any medical information provided as part of the appeal is a
46 confidential record for the purposes of Title 1, section 402,
47 subsection 3, paragraph A.

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50 Issuance of a license or a waiver on appeal is at the
discretion of the commissioner, except that a license may not be

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issued unless the criteria in subsection 2 are met. Decisions of the commissioner must be in writing.

Sec. 6. Report; general appeals process. The Department of Marine Resources shall develop a proposed appeals process to be used when a license is denied under any limited-entry fishery, including the lobster, sea urchin and elver fisheries. The department shall submit a report with its recommendation and any draft legislation necessary to implement the proposed appeals 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 minority 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 authorizes the Commissioner of Marine Resources to waive all or part of the practical lobster fishing

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2 experience component of the apprentice program on appeal if the
3 person documents that the person obtained practical lobster
4 fishing experience as a holder of a Class I, Class II or Class
5 III lobster and crab fishing license. The commissioner may waive
6 up to half the experience requirement for each 3 years of
7 experience documented.

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

16 The amendment requires the Department of Marine Resources to
17 develop a proposed appeals process to be used when a license is
18 denied under any limited-entry fishery and to submit a report to
19 the Joint Standing Committee on Marine Resources by January 15,
20 2000. The amendment also authorizes the Joint Standing Committee
21 on Marine Resources to report out legislation to the Second
22 Regular Session of the 119th Legislature regarding a license
23 appeals process.

24 This amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT