

# MAINE STATE LEGISLATURE

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L.D. 2584

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MARINE RESOURCES

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

COMMITTEE AMENDMENT "A" to H.P. 1847, L.D. 2584, Bill, "An Act to Establish an Appeals Process for License Denial Under Limited-entry Fisheries"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, people have been denied lobster and crab fishing licenses and sea urchin harvesting licenses because of illness or military service since limited-entry laws were enacted for those fisheries; and

Whereas, it is important to provide a timely opportunity for those people to appeal the license denial and return to fishing; 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, '

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

COMMITTEE AMENDMENT

'Sec. 1. 12 MRSA §6310 is enacted to read:

**§6310. Appeal of license denial**

**1. Appeal of license denial.** A person who is denied a Class I, Class II or Class III lobster and crab fishing license because that person does not meet the eligibility requirements of section 642L, subsection 5, paragraph A or a person who is denied a handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license because that person does not meet the eligibility requirements of section 6749-O, subsection 2-A may appeal to the commissioner under this section for a review of that license denial.

**2. Criteria for license issuance on appeal.** The commissioner may issue a license on appeal only if the criteria in this subsection are met.

**A. A Class I, Class II or Class III lobster and crab fishing license may be issued to a person on appeal only if:**

**(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in 1997, 1998 or 1999, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person may not request an appeal under this subparagraph after December 31, 2001;**

**(2) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in licensing year 2000 or in subsequent years, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition;**  
**or**

**(3) Service in the United States Armed Forces or the**

2 United States Coast Guard precluded that person from  
3 participating in the lobster fishery and meeting the  
4 eligibility requirements for a license, and the person  
5 documents that the person harvested lobsters while in  
6 possession of a Class I, Class II or Class III lobster  
7 and crab fishing license within one year prior to  
8 entering the service. The person may not have served  
9 for more than 6 consecutive years since the most recent  
10 year in which the person held a license, and the person  
11 must have been honorably discharged from service. A  
12 person must request an appeal under this subparagraph  
13 within one year of discharge from service.

14 B. A handfishing sea urchin license, a sea urchin dragging  
15 license or a sea urchin hand-raking and trapping license may  
16 be issued to a person on appeal only if:

17 (1) A substantial illness or medical condition on the  
18 part of the person or a family member prevented that  
19 person from meeting the eligibility requirements for  
20 that license, and the person documents that the person  
21 harvested sea urchins while in possession of the same  
22 license within one year prior to the onset of the  
23 illness or medical condition. The person shall provide  
24 the commissioner with documentation from a physician  
25 describing the illness or other medical condition. A  
26 person must request an appeal under this subparagraph  
27 within one year of the onset of the illness or medical  
28 condition; or

29 (2) Service in the United States Armed Forces or the  
30 United States Coast Guard precluded that person from  
31 participating in the urchin fishery and meeting the  
32 eligibility requirements for that license and the  
33 person documents that the person harvested sea urchins  
34 while in possession of the same license within one year  
35 prior to entering the service. The person may not have  
36 served for more than 6 consecutive years since the most  
37 recent year in which the person held a license, and the  
38 person must have been honorably discharged from  
39 service. A person must request an appeal under this  
40 subparagraph within one year of discharge from service.

41 For the purposes of this subsection, "family member" means a  
42 spouse, brother, sister, son-in-law, daughter-in-law, parent by  
43 blood, parent by adoption, mother-in-law, father-in-law, child by  
44 blood, child by adoption, stepchild, stepparent, grandchild or  
45 grandparent.

2 3. Appeals process. A person appealing a license denial  
3 under this section must request the appeal in writing. The  
4 commissioner shall hold a hearing on the appeal if a hearing is  
5 requested in writing within 10 days of the initial request for  
6 appeal. If a hearing is requested, it must be held within 30 days  
7 of the request unless a longer period is mutually agreed to in  
8 writing, and it must be conducted in the Augusta area.

10 A hearing held under this subsection is informal. At the  
11 hearing, the appellant may present any evidence concerning the  
12 criteria listed in subsection 2 that might justify issuing a  
13 license to the person, and the commissioner may request any  
14 additional information the commissioner considers necessary. Any  
15 medical information provided as part of the appeal is a  
16 confidential record for the purposes of Title 1, section 402,  
17 subsection 3, paragraph A.

18 4. Issuance on appeal. Issuance of a license on appeal is  
19 at the discretion of the commissioner, except that a license may  
20 not be issued unless the criteria in subsection 2 are met.  
21 Decisions of the commissioner must be in writing.

24 Sec. 2. 12 MRSA §6408 is enacted to read:

26 **§6408. Suspension of lobster and crab fishing license**

28 A person whose Class I, Class II or Class III lobster and  
29 crab fishing license has been suspended for more than one year  
30 must appear in person before the commissioner prior to being  
31 issued a Class I, Class II or Class III lobster and crab fishing  
32 license pursuant to section 6421, subsection 5, paragraph D.

34 Sec. 3. 12 MRSA §6421, sub-§5, ¶D, as repealed by PL 1999, c.  
35 330, §2 and amended by c. 397, §1, is repealed and the following  
36 enacted in its place:

38 D. Did not possess a Class I, Class II or Class III lobster  
39 and crab fishing license in the previous calendar year  
40 because the commissioner had suspended the person's license  
41 privileges for a length of time that included the previous  
42 calendar year;

44 Sec. 4. 12 MRSA §6421-B, as enacted by PL 1999, c. 330, §5,  
45 is repealed.

46 Sec. 5. 12 MRSA §6431-F, sub-§2, ¶C, as enacted by PL 1999, c.  
47 397, §6, is amended to read:

50 C. If the license holder was issued a Class I, Class II or

2 Class III lobster and crab fishing license on appeal, the  
3 license holder may purchase for the initial license year a  
4 number of trap tags up to the number of trap tags purchased  
5 by the person for the most recent year in which the person  
6 held a license if the person held a license in 1996, ~~1997 or~~  
7 1998 or later or 300 trap tags if the person did not hold a  
8 license in 1996, ~~1997 or 1998~~ or later. For each following  
9 year, the license holder may purchase up to an increase of  
10 100 trap tags each year ~~as long as the total~~. The number  
11 does of trap tags may not exceed the trap limit established  
12 by rule for the zone in which the person fishes a majority  
13 of that person's traps.

14 **Sec. 6. 12 MRSA §6431-F, sub-§3**, as enacted by PL 1999, c. 397,  
15 §6, is amended to read:

16  
17 **3. Appeal of trap tag denial.** A lobster and crab fishing  
18 license holder who ~~is not issued any~~ was issued 300 or fewer trap  
19 tags under subsection 1 ~~or 2~~ for the 2000 license year because  
20 that person had purchased no trap tags as of November 20, 1998  
21 may appeal to the commissioner for a ~~review of that denial~~  
22 additional trap tags. The appeals process is as follows.

23  
24 A. The commissioner may issue trap tags on appeal only if  
25 the following criteria are met:

26  
27 (1) The person documents that the person harvested  
28 lobsters in 1996 and or 1997; and

29  
30 (2) The person documents that the person did not  
31 purchase trap tags in 1998 because of a substantial  
32 illness or other medical condition on the part of the  
33 person or a family member or the person documents that  
34 service in the Armed Forces of the United States or the  
35 United States Coast Guard precluded participation in  
36 the lobster fishery and the purchase of trap tags in  
37 1998. For the purposes of this subparagraph, "family  
38 member" means a spouse, brother, sister, son-in-law,  
39 daughter-in-law, parent by blood, parent by adoption,  
40 mother-in-law, father-in-law, child by blood, child by  
41 adoption, stepchild, stepparent, grandchild or  
42 grandparent.

43  
44 B. A person appealing the denial of trap tags under this  
45 subsection shall request the review in writing. The  
46 commissioner shall hold a hearing on the appeal if it is  
47 requested in writing within 10 days of the initial request.  
48 If a hearing is requested, it must be held within 10 days of  
49 the request, unless a longer period is mutually agreed to in  
50 writing, and it must be conducted in the Augusta area.

2 A hearing held under this subsection is informal. At the  
4 hearing, the appellant may present any evidence concerning  
6 the criteria listed in paragraph A that might justify  
8 issuing trap tags to the person, and the commissioner may  
10 request any additional information the commissioner  
12 considers necessary. Any medical information provided as  
14 part of the appeal is a confidential record as defined in  
16 Title 1, section 402, subsection 3, paragraph A.

18 C. A license holder whose appeal is approved under this  
20 subsection may purchase a number of trap tags up to the  
22 number of trap tags purchased in 1996 or 1997, whichever is  
24 greater. For each following year, the license holder may  
26 purchase up to an increase of 100 trap tags each year as  
long-as-the-total. The number does of trap tags may not  
exceed the trap limit established by rule for the zone in  
which the person fishes a majority of that person's traps.

28 Issuance of trap tags on appeal is at the discretion of the  
30 commissioner, except that trap tags may not be issued unless the  
32 criteria in paragraph A are met. Decisions of the commissioner  
must be in writing.

34 **Sec. 7. 12 MRSA §6448, sub-§8**, as enacted by PL 1999, c. 508,  
36 §3, is repealed and the following enacted in its place:

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

44 A. A person who is issued a Class I lobster and crab fishing  
45 license and who is under 18 years of age or is 70 years of  
46 age or older may declare any zone as that person's declared  
47 lobster zone.

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

C. A person who is issued a Class I, Class II or Class III  
lobster and crab fishing license pursuant to section 6421,  
subsection 5, paragraph D may declare as that person's  
declared lobster zone the zone in which the person was

2 authorized to fish a majority of that person's lobster traps  
3 in the most recent year in which the person held a license.

4 A person who declares a limited-entry zone as that person's  
5 declared lobster zone pursuant to this subsection may not be  
6 counted for the purposes of the exit ratio or the number of new  
7 zone entrants that may be authorized for that zone.

8  
9 **Sec. 8. 12 MRSA §6749-O, sub-§§3 and 4**, as enacted by PL 1995,  
10 c. 392, §7, are repealed.

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

13 Further amend the bill by inserting at the end before the  
14 summary the following:  
15

16  
17  
18 **FISCAL NOTE**

19 The Department of Marine Resources will incur some minor  
20 additional costs to administer a license appeals process. These  
21 costs can be absorbed within the department's existing budgeted  
22 resources.  
23

24 The establishment of an appeals process for the denial of  
25 certain fisheries licenses may result in insignificant increases  
26 of General Fund revenue and dedicated revenue collected by the  
27 Department of Marine Resources from license fees.'

28  
29  
30  
31 **SUMMARY**

32 This amendment replaces the bill and adds an emergency  
33 preamble and an emergency clause to the bill. The amendment  
34 changes the appeals process for a person who is denied a Class I,  
35 Class II or Class III lobster and crab fishing license because  
36 that person did not possess a license in the previous calendar  
37 year and establishes an appeals process for a person who is  
38 denied a handfishing sea urchin license, a sea urchin dragging  
39 license or a sea urchin hand-raking and trapping license because  
40 that person did not possess the same license in the previous  
41 calendar year. The amendment authorizes the Commissioner of  
42 Marine Resources to issue a license on appeal if the person meets  
43 certain criteria, including having been prevented from meeting  
44 the eligibility requirements because of a substantial illness or  
45 medical condition or a period of military service and having  
46 documented landings while in possession of a license within one  
47 year prior to the onset of the illness or medical condition or  
48 within one year prior to entering military service.



2           The amendment restores the provision that authorized a Class  
I, Class II or Class III lobster and crab fishing license to be  
4 issued to a person who did not possess the license in the  
previous calendar year because the commissioner had suspended the  
6 person's license for a length of time that included the previous  
calendar year. The amendment requires a person whose Class I,  
8 Class II or Class III lobster and crab fishing license has been  
suspended for more than one year to appear in person before the  
10 commissioner prior to being issued a Class I, Class II or Class  
III lobster and crab fishing license.

12  
14           The amendment authorizes a lobster and crab fishing license  
holder who was issued 300 or fewer trap tags for the 2000 license  
16 year because that person had purchased no trap tags as of  
November 20, 1998 because of a substantial illness or medical  
18 condition or a period of military service to appeal to the  
commissioner for additional trap tags.

20           The amendment authorizes a person who is issued a Class I,  
Class II or Class III lobster and crab fishing license on appeal  
22 based on a substantial illness or medical condition or after a  
license suspension to declare a limited-entry zone as that  
24 person's declared lobster zone if the person was authorized to  
fish a majority of that person's lobster traps in that zone in  
26 the most recent year in which the person held a license. The  
person may not be counted for the purposes of the exit ratio or  
28 the number of new zone entrants that may be authorized for that  
zone.

30  
32           The amendment repeals the current medical exception and  
license transfer provisions for handfishing sea urchin licenses,  
34 sea urchin dragging licenses and sea urchin hand-raking and  
trapping licenses.

36           The amendment also adds a fiscal note.