

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2584

H.P. 1847

House of Representatives, February 23, 2000

An Act to Establish an Appeals Process for License Denial Under Limited-entry Fisheries.

Reported by Representative ETNIER for the Joint Standing Committee on Marine Resources pursuant to Public Law 1999, chapter 330, section 6.

Reference to the Joint Standing Committee on Marine Resources suggested and printing ordered under Joint Rule 218.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

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

Sec. 1. 5 MRSA §12004-I, sub-§57-E is enacted to read:

<u>57-E.</u>	<u>License</u>	<u>Expenses</u>	<u>12 MRSA</u>
<u>Marine</u>	<u>Appeals</u>	<u>Only</u>	<u>§6310</u>
<u>Resources</u>	<u>Board</u>		

Sec. 2. 12 MRSA §6310 is enacted to read:

§6310. Appeal of license denial

1. Appeal of license denial. A person denied a license identified in subsection 2 because that person does not meet the eligibility requirements for that license may appeal under this section for a review of that license denial.

2. Limited-entry license. This section applies to the following licenses:

A. A Class I, Class II or Class III lobster and crab fishing license;

B. An elver fishing license; and

C. A handfishing sea urchin license; a sea urchin dragging license; and a sea urchin hand-raking and trapping license.

3. License Appeals Board; purpose. The License Appeals Board, established in Title 5, section 12004-I, subsection 57-E and referred to in this section as the "board," shall consider appeals on an individual basis from a person appealing a license denial under this section and shall make a recommendation to the commissioner for the commissioner's approval or denial of the appeal.

4. Board members appointment; term; compensation. The board consists of 8 members, except that 3 members of the board selected by the commissioner to preside over each appeal shall perform the duties of the board for that appeal as provided in subsection 5. The commissioner shall appoint the members as follows:

A. Two public members who do not hold licenses under this Part; and

B. Six members who are licensed under this Part to engage in commercial harvesting activities in limited-entry fisheries, including 2 members holding lobster and crab

2 fishing licenses, 2 members holding elver fishing licenses and 2
3 members holding sea urchin harvesting licenses.

4 A board member serves for a 3-year term and continues serving
5 until a successor is appointed. A member may not serve for more
6 than 2 consecutive terms. In the case of a vacancy, the
7 commissioner shall fill promptly the vacancy. Members are
8 compensated as provided in Title 5, chapter 379.

10 5. Meetings: powers and duties. The commissioner shall
11 convene a meeting of the board within 30 days of receipt of a
12 written request for review of a license denial. The commissioner
13 shall select 3 members of the board to preside over each appeal
14 as follows:

16 A. One of the public members;

18 B. One of the members licensed under this Part to engage in
19 commercial harvesting activities in a limited-entry fishery
20 not related to the license for which the appeal is
21 requested; and

22 C. One of the members licensed under this Part to engage in
23 commercial harvesting activities in the limited-entry
24 fishery for which the appeal is requested.

26 A quorum of 3 members is required to begin a meeting or take any
27 action. The board shall make a written recommendation to the
28 commissioner regarding the issuance of a license. The board may
29 recommend that the commissioner issue a license only if the board
30 finds that the applicable criteria in subsection 7 or 8 are met.
31 The commissioner shall make the final decision to approve or deny
32 the appeal.

34 6. Appeals process. A person appealing a license denial
35 under this section must request the review in writing. The board
36 shall hold a hearing on the appeal if a hearing is requested in
37 writing within 10 days of the initial request. If a hearing is
38 requested, it must be held within 30 days of the request unless a
39 longer period is agreed to by all parties in writing, and the
40 hearing must be conducted in the Augusta area.

42 A hearing held under this subsection is informal. At the
43 hearing, the appellant may present any evidence concerning the
44 criteria listed in subsection 7 or 8 that might justify issuing a
45 license to the person, and the board may request any additional
46 information the board considers necessary. Any medical
47 information provided as part of the appeal is a confidential
48 record for the purposes of Title 1, section 402, subsection 3,
49 paragraph A.

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

6 A. The person held a license as follows:

8 (1) For a person appealing the denial of a lobster and
9 crab fishing license, the person held a lobster and
10 crab fishing license for at least 5 consecutive years
11 within the last 15 years;

12 (2) For a person appealing the denial of an elver
13 fishing license, the person held an elver fishing
14 license for at least 2 consecutive years within the
15 last 4 years; or

16 (3) For a person appealing the denial of a handfishing
17 sea urchin license, a sea urchin dragging license or a
18 sea urchin hand-raking and trapping license, the person
19 held a sea urchin harvesting license for at least 4
20 consecutive years within the last 7 years; and

21 B. The person documents that:

22 (1) A substantial illness or other medical condition
23 on the part of the person or a family member prevented
24 that person from meeting the eligibility requirements
25 for a license. The person must provide the board with
26 documentation from a physician describing the illness
27 or other medical condition. For the purposes of this
28 subparagraph, "family member" means a spouse, brother,
29 sister, son-in-law, daughter-in-law, parent by blood,
30 parent by adoption, mother-in-law, father-in-law, child
31 by blood, child by adoption, stepchild, stepparent,
32 grandchild or grandparent;

33 (2) Service in the United States Armed Forces or the
34 United States Coast Guard precluded that person from
35 participating in the fishery and meeting the
36 eligibility requirements for a license; or

37 (3) That person did not possess a license in the
38 previous calendar year because the commissioner had
39 suspended the person's license privileges for a period
40 of time that included the previous calendar year.

41 8. Lobster license transfer. Notwithstanding subsection 7,
42 upon recommendation by the board, the commissioner may transfer
43 the Class I, Class II or Class III lobster and crab fishing
44 license.

license and trap tags of a deceased or disabled license holder to a person who is a member of the license holder's family if the person who is the member of the license holder's family documents that:

A. The person actively fished with the deceased or disabled license holder; and

B. The family of the deceased or disabled license holder will suffer undue financial hardship if the license and trap tags are not transferred to that person.

The new holder of the license has the same declared lobster zone as the deceased or disabled license holder and may not submerge a number of traps that is greater than the trap limit established by rule for a lobster management zone in which that person fishes. For the purposes of this subsection, "member of the license holder's family" means a license holder's child by birth or adoption, stepchild, grandchild or spouse.

Issuance of a license on appeal is at the discretion of the commissioner, except that a license may not be issued unless the criteria in subsection 7 or 8 are met. Decisions of the commissioner must be in writing.

Sec. 3. 12 MRSA §6421-B, as enacted by PL 1999, c. 330, §5, is repealed.

SUMMARY

This bill establishes an appeals process for a person denied a license in a limited-entry fishery, including a lobster and crab fishing license, an elver fishing license and a sea urchin harvesting license. The bill establishes the License Appeals Board to consider appeals on an individual basis and make recommendations to the Commissioner of Marine Resources regarding the issuance of the license on appeal. The commissioner makes the final decision to approve or deny the appeal. The bill specifies that the commissioner may issue a license on appeal only if the person appealing the license denial has historically participated in the fishery and there was either a medical condition, a period of military service or a license suspension that prevented that person from meeting the eligibility requirements for the license. The bill authorizes the commissioner to transfer the lobster and crab fishing license and trap tags of a deceased or disabled license holder upon recommendation by the License Appeals Board to a member of the license holder's family if the family member fished with the

license holder and the family would suffer undue financial
2 hardship if the license and trap tags were not transferred.

4 The bill repeals the current process for a person to appeal
the denial of a lobster and crab fishing license.