

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1510

S.P. 526

In Senate, March 30, 2005

### **An Act To Amend the Lobster Fishing Laws of Maine**

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.  
Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator DAMON of Hancock.

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

2  
4       **Sec. 1. 12 MRSA §6421, sub-§5-A**, as amended by PL 2003, c. 468, §2, is further amended to read:

6       **5-A. Student license eligibility.** A student license may  
8 only be issued only to a person who, at the time of application,  
10 is a full-time student 8 years of age or older and under 23 years  
12 of age. For the purposes of this subsection, "full-time student"  
14 means ~~"student"-as-defined-in-Title-39-A, section-102, subsection~~  
16 ~~8, paragraph-C~~ a person regularly attending a public school in  
accordance with Title 20-A, section 5001-A, subsection 1 or in  
accordance with an alternative to attendance at a public school  
pursuant to Title 20-A, section 5001-A, subsection 3 or a college  
or university that has been accredited by a state-recognized  
accrediting agency or body.

18 A person may not be considered to have ceased to be a student  
20 during any interim between school years if the interim does not  
22 exceed 5 months and if it is shown that the person has a bona  
24 fide intention of continuing to pursue a full-time course of  
study during the semester or other enrollment period immediately  
following the interim period. For purposes of this subsection,  
"full-time course of study" means at least 60% of the usual  
course load for the program in which the person is enrolled.

26  
28       **Sec. 2. 12 MRSA §6431-F**, as amended by PL 2003, c. 510, Pt. A, §6, is further amended to read:

30       **§6431-F. Trap tags**

32       **1. Trap tag limits.** ~~Beginning with the 2000 license year,~~  
34 the following provisions govern trap tag limits apply to  
holders of Class I, Class II or Class III lobster and crab  
fishing licenses.

36       ~~A. If the license holder purchased as of November 20, 1998~~  
38 ~~for the 1998 license year between zero and 200 trap tags,~~  
40 ~~the license holder may not purchase more than 300 trap tags~~  
42 ~~for the initial license year. For each following year, the~~  
44 ~~license holder may purchase up to an increase of 100 trap~~  
tags each year as long as the total number does not exceed  
the trap limit established by rule for the zone in which the  
person fishes a majority of that person's traps.

46       ~~B. If the license holder purchased as of November 20, 1998~~  
48 ~~for the 1998 license year 201 or more trap tags, for the~~  
50 ~~initial license year, the license holder may purchase a~~  
number of trap tags not greater than 100 more than the  
number the license holder purchased as of November 20, 1998  
for the 1998 license year as long as that number does not

2 ~~exceed the trap limit established by rule for the zone in~~  
3 ~~which the person fishes a majority of that person's traps.~~  
4 For each following year, the Each year, a Class I, Class II  
5 or Class III lobster and crab fishing license holder may  
6 purchase a number of trap tags that is not greater than 100  
7 more than the number the license holder purchased for the  
8 previous license year as long as the number does not exceed  
9 the trap limit established by rule for the zone in which the  
10 person fishes a majority of that person's traps.

11 **2. Exceptions.** Notwithstanding subsection 1, the following  
12 trap tag limits apply:

13 A. If the license holder was issued a Class I, Class II or  
14 Class III lobster and crab fishing license for the first  
15 time after meeting the requirements of the apprentice  
16 program under section 6422, the license holder may not  
17 purchase more than 300 trap tags for the initial license  
18 year. For each following year, the license holder may  
19 purchase up to an increase of 100 trap tags each year as  
20 long as the total number does not exceed the trap limit  
21 established by rule for the zone in which the person fishes  
22 a majority of that person's traps; and

23 ~~B.--If the license holder was issued a Class I, Class II or~~  
24 ~~Class III lobster and crab fishing license pursuant to~~  
25 ~~former section 6421, subsection 5, paragraph H or former~~  
26 ~~section 6421-A, subsection 1, paragraph D, the license~~  
27 ~~holder may not purchase more than 300 trap tags for the~~  
28 ~~initial license year. For each following year, the license~~  
29 ~~holder may purchase up to an increase of 100 trap tags each~~  
30 ~~year as long as the total number does not exceed the trap~~  
31 ~~limit established by rule for the zone in which the person~~  
32 ~~fishes a majority of that person's traps, and~~

33 C. If the license holder was issued a Class I, Class II or  
34 Class III lobster and crab fishing license on appeal, the  
35 license holder may purchase for the initial license year a  
36 number of trap tags up to the number of trap tags purchased  
37 by the person for the most recent year in which the person  
38 held a license ~~if the person held a license in 1996 or later~~  
39 ~~or 300 trap tags if the person did not hold a license in~~  
40 ~~1996 or later.~~ For each following year, the license holder  
41 may purchase up to an increase of 100 trap tags each year.  
42 The number of trap tags may not exceed the trap limit  
43 established by rule for the zone in which the person fishes  
44 a majority of that person's traps.

45 ~~3.--Appeal of trap tag denial.--A lobster and crab fishing~~  
46 ~~license holder who was issued 300 or fewer trap tags under~~

2 subsection-1-for-the-2000-license-year-because-that-person-had  
3 purchased-no-trap-tags-as-of-November-20,-1998-may-appeal-to-the  
4 commissioner-for-additional-trap-tags.--The-appeals-process-is-as  
follows.

6 A.-The-commissioner-may-issue-trap-tags-on-appeal-only-if  
7 the-following-criteria-are-met:

8 (1)--The-person-documents-that-the-person-harvested  
9 lobsters-in-1996-or-1997,-and

10 (2)--The-person-documents-that-the-person-did-not  
11 purchase-trap-tags-in-1998--because-of-a-substantial  
12 illness-or-other-medical-condition-on-the-part-of-the  
13 person-or-a-family-member-or-the-person-documents-that  
14 service-in-the-Armed-Forces-of-the-United-States-or-the  
15 United-States-Coast-Guard-precluded-participation-in  
16 the-lobster-fishery-and-the-purchase-of-trap-tags-in  
17 1998.--For-the-purposes-of-this-subparagraph,-"family  
18 member"--means-a-spouse,-brother,-sister,-son-in-law,  
19 daughter-in-law,-parent-by-blood,-parent-by-adoption,  
20 mother-in-law,-father-in-law,-child-by-blood,-child-by  
21 adoption,-stepchild,-stepparent,-grandchild-or  
22 grandparent.

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

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

38 C.--A-license-holder-whose-appeal-is-approved-under-this  
39 subsection-may-purchase-a-number-of-trap-tags-up-to-the  
40 number-of-trap-tags-purchased-in-1996-or-1997,-whichever-is  
41 greater.--For-each-following-year,-the-license-holder-may  
42 purchase-up-to-an-increase-of-100-trap-tags-each-year.--The  
43 number-of-trap-tags-may-not-exceed-the-trap-limit  
44 established-by-rule-for-the-zone-in-which-the-person-fishes  
45 a-majority-of-that-person's-traps.

2 ~~Issuance of trap tags on appeal is at the discretion of the~~  
3 ~~commissioner, except that trap tags may not be issued unless the~~  
4 ~~criteria in paragraph A are met. Decisions of the commissioner~~  
5 ~~must be in writing.~~

6  
7 **4. Trap limit for zone.** A person may not purchase a number  
8 of trap tags greater than the trap limit established by rule for  
9 a lobster management zone in which that person fishes declared on  
10 that person's lobster and crab fishing license.

11 ~~**5. Repeal.** This section is repealed December 31, 2005.~~

12  
13 **Sec. 3. 12 MRSA §6446, sub-§1-A,** as amended by PL 2003, c.  
14 466, §2 and affected by §5, is further amended to read:

15  
16 **1-A. Declared lobster zone.** A person shall declare on an  
17 application for a Class I, Class II, Class III or noncommercial  
18 lobster and crab fishing license ~~the~~ all lobster management ~~zone~~  
19 zones in which that person proposes to fish a ~~majority of~~ that  
20 person's lobster traps. A license must identify the zone in  
21 which the person ~~is authorized to~~ must fish a majority of that  
22 person's lobster traps. For the purposes of this section, the  
23 majority of a person's lobster traps must be determined from the  
24 number of trap tags issued to that person. The license must also  
25 identify all zones in which a person is authorized to fish that  
26 person's lobster traps. It is unlawful for a person to place any  
27 lobster traps in a zone that has not been identified on that  
28 person's license.

29  
30 **Sec. 4. 12 MRSA §6448, sub-§2,** as amended by PL 2003, c. 510,  
31 Pt. A, §7, is further amended to read:

32  
33 **2. Rules for limited-entry zones.** The commissioner may  
34 adopt rules establishing limits on new zone entrants to a lobster  
35 management zone. These rules must be adopted in accordance with  
36 this subsection.

37  
38 **A.** After conducting a written survey in the zone, a lobster  
39 management policy council may propose to the commissioner an  
40 exit ratio to limit new zone entrants to the zone. ~~The~~  
41 ~~lobster management policy council may also propose to the~~  
42 ~~commissioner a provision to exempt from the requirements of~~  
43 ~~this section an individual who became eligible for but had~~  
44 ~~not been issued a Class I, Class II or Class III license~~  
45 ~~pursuant to section 6421, subsection 5, paragraph C or~~  
46 ~~former paragraph H prior to January 1, 2000 and to allow~~  
47 ~~that individual to declare the zone as that individual's~~  
48 ~~declared lobster zone.~~ The lobster management policy

2 council is not required to submit the proposal to referendum  
and the proposed exit ratio does not need to receive  
4 approval through the survey in order to be forwarded to the  
commissioner.

6 B. The commissioner may initiate rulemaking under this  
subsection only upon receipt of a proposal under paragraph  
8 A. The commissioner shall hold a public hearing on the  
proposed rules pursuant to Title 5, section 8052. The  
10 public hearing must be held in the zone in which the rules  
would apply and the results of the written survey must be  
12 entered into the record.

14 C. Rules adopted under this subsection must establish an  
exit ratio between the number of individuals who declared  
16 that zone as their declared lobster zone in the year prior  
to the previous calendar year, but who did not declare that  
18 zone as their declared lobster zone in the previous calendar  
year, and the number of new zone entrants authorized under  
20 subsection 7. An exit ratio established by rule under this  
subsection is not required to be the same as the exit ratio  
22 proposed by the lobster management policy council. Rules  
adopted under this subsection may exempt from the  
24 requirements of this section an individual who became  
eligible for but who had not been issued a Class I, Class II  
26 or Class III license pursuant to section 6421, subsection 5,  
paragraph C or former paragraph H prior to January 1, 2000  
28 and allow such an individual to declare the zone as that  
individual's declared lobster zone.

30 D. Upon written notification from the lobster management  
32 policy council that a majority of the council has voted to  
conduct a survey in a zone regarding a proposal for an exit  
34 ratio to limit new zone entrants to the zone, the  
commissioner shall close the zone to new zone entrants until  
36 the commissioner either adopts rules under this subsection  
or declares that the commissioner will not initiate  
38 rulemaking under this subsection. In no event may the zone  
remain closed for longer than one year unless the  
40 commissioner has adopted rules establishing limits on new  
zone entrants to the zone.

42 E. When a lobster management policy council proposes to the  
44 commissioner a change in the exit ratio established under  
paragraph C, the lobster management policy council may also  
46 propose to the commissioner a provision to allow individuals  
who meet the following conditions to enter the zone in  
48 accordance with the previously existing exit ratio:

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

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

14           **Sec. 5. 12 MRSA §6465, sub-§§1 and 2,** as enacted by PL 2001, c.  
16    623, §1, are amended to read:

18           **1. Sources and uses of fund.** Revenues from lobster special  
20    registration plate fees credited to the fund under Title 29-A,  
          section 456-A may be used for research and education to support  
22    the development of the lobster industry in this State. Revenues  
24    may also be used to support the operation of the research,  
          education and development board described in subsection 2,  
          including reimbursement for travel expenses of its members.

26           **2. Research, education and development board.** The  
28    commissioner shall appoint a research, education and development  
30    board and consult with the board regarding the expenditures from  
          the fund. The board is composed of one member from each of the  
          following organizations:

32           A. A statewide association representing the interests of  
34           persons who harvest lobster commercially;

36           B. An association representing the interests of persons who  
          harvest lobster commercially in Washington and Hancock  
          counties;

38           C. A southern Maine association representing the interests  
40           of persons who harvest lobster commercially;

42           D. A statewide import-export lobster dealers' association;

44           E. A statewide lobster pound owners' association;

46           F. A statewide lobster processors' association;

48           G. The Lobster Promotion Council under section 6455;



2 H. The Lobster Advisory Council established by Title 5,  
section 12004-I, subsection 58; and

4 I. An international lobster institute. This member must be  
6 a resident of the State.

8 Members are entitled to compensation according to Title 5,  
chapter 379.

10 **Sec. 6. 12 MRSA §6473, sub-§2** is enacted to read:

12 **2. Exception.** Notwithstanding subsection 1, a person  
14 registered for Monhegan Lobster Conservation Area trap tags may  
16 serve as a crew member to assist in the licensed activities under  
the direct supervision of a Class I, Class II or Class III  
license holder outside the Monhegan Lobster Conservation Area.

18 **Sec. 7. 12 MRSA §6851, sub-§2-A,** as enacted by PL 1991, c.  
20 523, §3, is amended to read:

22 **2-A. Wholesale seafood license with lobster permit.** At the  
24 request of the applicant, the commissioner shall issue a  
26 wholesale seafood license with a lobster permit. A person  
28 holding a wholesale seafood license with a lobster permit may  
30 engage in all the activities in subsection 2 and may buy, sell,  
32 process, ship or transport lobster or properly permitted or  
34 lawfully imported lobster meat or parts anywhere within the state  
limits. A license under this subsection does not authorize a  
person to possess or transport lobster that person has taken  
unless that person is in possession of a license issued under  
section 6421, subsection 3-A, paragraph A, B, C or E. A license  
under this subsection does not authorize a person to remove  
lobster meat from the shell unless a permit under section 6857 is  
held.

36 **Sec. 8. 12 MRSA §6851, sub-§4,** as amended by PL 2001, c. 421,  
38 Pt. B, §53 and affected by Pt. C, §1, is further amended to read:

40 **4. License limited.** A license under this section  
42 authorizes activities at only one establishment or with only one  
44 vehicle, but not on a vessel rigged to fish, provided that this  
46 license also authorizes the sale and transportation of scallops  
from any vessel. The limitation in this subsection does not  
apply to holders of licenses issued under section 6421 when they  
are transporting lobsters on the vessel they have declared on  
their lobster license application.

48 **Sec. 9. 12 MRSA §6862, sub-§§2 and 4,** as amended by PL



2 4. It removes language that provides an exemption from an  
3 exit ratio for an individual who became eligible for but who had  
4 not been issued a Class I, Class II or Class III license prior to  
5 January 1, 2000. It also provides that when a lobster management  
6 policy council proposes to the commissioner a change in an  
7 established exit ratio, the lobster management policy council may  
8 also propose to the commissioner a provision to allow certain  
9 individuals to enter the zone in accordance with the previously  
10 existing exit ratio.

11 5. It provides that the members of the lobster research,  
12 education and development board may be reimbursed for travel  
13 expenses for board meetings.

14 6. It creates an exception to allow persons registered for  
15 Monhegan Lobster Conservation Area trap tags to work as crew  
16 members outside the Monhegan Lobster Conservation Area.

17 7. It amends the wholesale seafood license with lobster  
18 permit to prevent individuals from possessing or transporting  
19 lobster they have taken unless they possess a Class I, II or III  
20 or student lobster and crab fishing license. It clarifies that  
21 license holders licensed under the Maine Revised Statutes, Title  
22 12, section 6421 may transport lobsters they have not taken if  
23 they are using the vessel declared on their license.

24 8. It amends the lobster tail permit to allow the  
25 processing of only whole lobster tails and not portions of  
26 lobster tails.