

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 246

S.P. 87

January 27, 2009

An Act Regarding Violations of Lobster Conservation Laws

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 RECTOR of Knox.
Cosponsored by Representative PRESCOTT of Topsham and
Senator: DAMON of Hancock, Representatives: EATON of Sullivan, PERCY of Phippsburg,
Speaker PINGREE of North Haven, TILTON of Harrington.

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

2 **Sec. 1. 12 MRSA §6351, sub-§1**, as enacted by PL 2001, c. 421, Pt. B, §15 and
3 affected by Pt. C, §1, is amended to read:

4 **1. Grounds for suspension.** Any of the following is grounds for suspension of a
5 license, the right to obtain a license or a certificate issued under this Part:

6 A. A conviction for a violation of a marine resources law;

7 B. A conviction for a violation of Title 17-A, chapter 31;

8 B-1. A conviction for a violation of Title 17-A, chapter 15;

9 C. A conviction for a criminal offense against a marine patrol officer while that
10 officer is engaged in the performance of official duty; ~~or~~

11 D. A civil adjudication of having violated a marine resources law; or

12 E. A suspension authorized under section 6409 or 6410.

13 **Sec. 2. 12 MRSA §6351, sub-§3** is enacted to read:

14 **3. Denial of license.** An applicant for any license or certificate as set out in this
15 chapter may be denied a license or certificate in the same manner as provided for in this
16 section.

17 **Sec. 3. 12 MRSA §6402, first ¶**, as amended by PL 2007, c. 201, §1, is further
18 amended to read:

19 The commissioner shall suspend the lobster and crab fishing license of a license
20 holder or the nonresident lobster and crab landing permit of a permit holder convicted in
21 court of violating section 6434. This suspension is for 3 years from the date of conviction.
22 For a 3rd or subsequent conviction, the commissioner may permanently revoke the
23 license holder's license.

24 **Sec. 4. 12 MRSA §6402-B**, as amended by PL 2007, c. 201, §2, is further
25 amended to read:

26 **§6402-B. Suspension based on 2 or more convictions of possessing illegal lobsters**

27 Notwithstanding section 6401, subsection 2, the commissioner shall suspend the
28 lobster and crab fishing license of any license holder or the nonresident lobster and crab
29 landing permit of a permit holder convicted of a 2nd or subsequent offense of possessing
30 a lobster ~~smaller than the minimum size established in section 6431, subsection 1 in~~
31 violation of section 6431, 6436, 6438-A or 6952-A if the conviction of the 2nd or
32 subsequent offense involved possession of 3 5 or more illegal lobsters smaller than that
33 minimum size. If the 2nd offense occurs on the same day as the first offense, the
34 commissioner may waive the mandatory suspension.

1 **1. Second offense.** For a 2nd conviction the commissioner shall suspend the license
2 for at least one year from the date of conviction and may suspend the license for up to 3
3 years.

4 **2. Third or subsequent offense.** For a 3rd or subsequent conviction, the
5 commissioner shall suspend the license for 3 years from the date of conviction and may
6 permanently revoke the license holder's license.

7 ~~**3. Offenses after July 1, 1994.** Subsections 1 and 2 apply only if that person's first
8 conviction for possessing a lobster smaller than the minimum size established in section
9 6431, subsection 1 was for an offense that occurred after July 1, 1994.~~

10 **Sec. 5. 12 MRSA §6406, sub-§2,** as repealed and replaced by PL 1989, c. 455,
11 §1, is amended to read:

12 **2. Penalty.** Violation of this section shall be is a Class D crime, except that the court
13 shall impose a fine of not less than ~~\$100~~ \$500 nor more than ~~\$1,000~~ \$2,000.

14 **Sec. 6. 12 MRSA §6431, sub-§7,** as amended by PL 1999, c. 82, §1, is further
15 amended to read:

16 **7. Penalty.** Possession of lobsters in violation of this section is a Class D crime,
17 except that the court shall impose a fine of ~~\$50~~ \$500 for each violation and, in addition, a
18 fine of ~~\$25~~ \$100 for each lobster involved, up to and including the first 5, and a fine of
19 ~~\$50~~ \$200 for each lobster in excess of 5, or, if the number of lobsters cannot be
20 determined, a fine of not more than ~~\$2,000~~ \$5,000. A court may not suspend a fine
21 imposed under this subsection.

22 **Sec. 7. 12 MRSA §6431-E, sub-§2,** as enacted by PL 1997, c. 693, §1 and
23 affected by §3, is amended to read:

24 **2. Owner or family member on board.** Except as provided in subsection 3,
25 beginning January 1, 2000 a person who holds a Class I, Class II or Class III lobster and
26 crab fishing license a vessel may not be used to fish for or take lobsters from a unless that
27 vessel unless is owned by a Class I, Class II or Class III lobster and crab fishing license
28 holder and:

29 A. The owner of that vessel is present on that vessel ~~and holds a~~ and has that vessel
30 named on the owner's Class I, Class II or Class III lobster and crab fishing license; or

31 B. A family member of the vessel owner ~~under paragraph A is present on that~~
32 ~~vessel and holds a Class I, Class II or Class III lobster and crab fishing license and is~~
33 ~~present on that vessel.~~

34 **Sec. 8. 12 MRSA §6431-G** is enacted to read:

35 **§6431-G. Vessel operation**

36 **1. Limitation.** Except as provided in subsection 2, the holder of a Class I, Class II
37 or Class III lobster and crab fishing license may not operate a vessel for the purposes of
38 fishing for or taking lobster other than the vessel named on the holder's lobster and crab

1 fishing license. For the purposes of this section, "operate a vessel" means steering the
2 vessel, operating the vessel's engine throttle or gear shift or operating the mechanism used
3 to haul lobster traps from the water. "Operating a vessel" does not include the baiting of
4 traps or the handling of traps once they are on board the vessel.

5 **2. Exemptions.** The commissioner may authorize an individual who possesses a
6 Class I, Class II or Class III lobster and crab fishing license to fish for or take lobsters
7 from a vessel other than the vessel named on the holder's lobster and crab fishing license
8 if:

9 A. A Class I, Class II or Class III license holder is temporarily prevented by illness
10 or disability from fishing for or taking lobsters from the license holder's vessel and
11 requests in writing to the commissioner that the commissioner authorize the
12 individual to operate that vessel to fish for or take lobsters and tend the license
13 holder's traps pursuant to section 6434;

14 B. The vessel named on the individual's license has become temporarily inoperable
15 because of an accident or a mechanical failure and the individual requests in writing
16 and is granted permission from the commissioner to use another vessel to fish for or
17 take lobsters; or

18 C. The individual is designated as the sponsor of a student pursuant to section 6421
19 and is operating the vessel named on the student's license for the purposes of
20 providing practical lobster fishing training to the student while the student is present
21 on the vessel.

22 **Sec. 9. 12 MRSA §6432, sub-§5,** as amended by PL 1999, c. 82, §2, is further
23 amended to read:

24 **5. Penalty for possession.** Possession of lobsters other than caught by the method
25 specified in subsection 1 is a Class D crime, except that in addition to any punishment
26 that may be imposed under Title 17-A, Part 3, the court shall impose a fine of \$50 ~~\$500~~
27 for each violation and, in addition, a fine of \$100 for each lobster involved, up to and
28 including the first 5, and a fine of \$200 for each lobster in excess of 5, or, if the number
29 of lobsters cannot be determined, a fine of not more than \$5,000. A court may not
30 suspend a fine imposed under this subsection.

31 **Sec. 10. 12 MRSA §6436, sub-§5,** as amended by PL 1999, c. 82, §3, is repealed
32 and the following enacted in its place:

33 **5. Penalty for possession of egg-bearing lobsters.** Possession of lobsters in
34 violation of subsection 1, paragraph A is a Class D crime, except that in addition to any
35 punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of
36 \$1,000 for each violation and, in addition, a fine of \$200 for each lobster involved, up to
37 and including the first 5, and a fine of \$400 for each lobster in excess of 5, or, if the
38 number of lobsters cannot be determined, a fine of not more than \$10,000. A court may
39 not suspend a fine imposed under this subsection.

40 **Sec. 11. 12 MRSA §6436, sub-§6** is enacted to read:

1 Commissioner of Marine Resources may permanently revoke a license holder's license.
2 It expands the types of illegal lobsters for which a 2nd offense will result in a mandatory
3 suspension. It also creates a requirement that a lobster and crab fishing license holder
4 fishing for or taking lobsters may operate only the vessel listed on the license holder's
5 license. This is meant to address an existing loophole in Maine's owner-operator
6 requirements for lobster fishing. This bill increases the monetary fines for conviction of
7 violation of certain lobster conservation laws. Finally, it provides that an individual is not
8 eligible for election as a lobster management policy council member if that individual has
9 been convicted of a lobster law violation within the past 7 years.