

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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**Legislative Document**

**No. 1567**

H.P. 1104

House of Representatives, December 21, 2009

**An Act To Correct Errors and Inconsistencies in Marine Resources  
Laws**

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.

Received by the Clerk of the House on December 17, 2009. Referred to the Committee on Marine Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PERCY of Phippsburg.  
Cosponsored by Senator DAMON of Hancock.

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

2 **Sec. 1. 12 MRSA §6301, sub-§2, ¶Q**, as amended by PL 1999, c. 491, §1 and  
3 affected by §9, is further amended to read:

4 Q. A lobster transportation supplemental license issued under section 6854 expires  
5 on March 31st of each year; and

6 **Sec. 2. 12 MRSA §6301, sub-§2, ¶R**, as enacted by PL 1999, c. 491, §2 and  
7 affected by §9, is amended to read:

8 R. A wholesale seafood license with a shrimp permit issued under section 6851  
9 expires on March 31st of each year;

10 **Sec. 3. 12 MRSA §6301, sub-§2, ¶S** is enacted to read:

11 S. An enhanced retail seafood license issued under section 6852-A expires on March  
12 31st of each year;

13 **Sec. 4. 12 MRSA §6301, sub-§2, ¶T** is enacted to read:

14 T. A seaweed buyer's license issued under section 6803-A expires on March 31st of  
15 each year; and

16 **Sec. 5. 12 MRSA §6301, sub-§2, ¶U** is enacted to read:

17 U. A limited wholesale shellfish harvester's license issued under section 6851-A  
18 expires on March 31st of each year.

19 **Sec. 6. 12 MRSA §6371, sub-§2**, as amended by PL 2001, c. 421, Pt. B, §16 and  
20 affected by Pt. C, §1, is further amended to read:

21 **2. Suspension for refusal to allow a shellfish inspection or for violation of**  
22 **shellfish sanitation provisions.** Refusal to allow a shellfish inspection under section  
23 6852-A or 6856 or violation of shellfish sanitation regulations rules adopted under section  
24 6856 is grounds for suspension of any licenses or certificates issued under marine  
25 resources laws. In order to suspend a license or certificate for these reasons, the  
26 commissioner shall follow the procedures of section 6373.

27 **Sec. 7. 12 MRSA §6402, first ¶**, as amended by PL 2009, c. 151, §5 and c. 394,  
28 §3, is repealed and the following enacted in its place:

29 The commissioner shall suspend the lobster and crab fishing license of a license  
30 holder or the nonresident lobster and crab landing permit of a permit holder adjudicated  
31 in court of violating section 6434. This suspension is for 3 years from the date of  
32 adjudication. For a 3rd or subsequent adjudication, the commissioner may permanently  
33 revoke the license holder's license.

34 **Sec. 8. 12 MRSA §6409**, as reallocated by RR 1999, c. 2, §13, is amended to read:

1           **§6409. Suspension of license for failure to appear, answer or pay**

2           If a person's right to obtain a license is suspended pursuant to Title 14, section 3142,  
3 the suspension remains in effect until the person pays the fine. On payment of the fine  
4 and on condition of payment of a \$25 reinstatement administrative fee to the department,  
5 the clerk of the court in which the suspension was ordered shall ~~rescind the suspension~~  
6 and notify the department, which, upon receipt of the \$25 reinstatement fee, shall delete  
7 any record of the suspension from that person's record is rescinded and the right to obtain  
8 a license reinstated. For the purposes of this section, "fine" has the same meaning as in  
9 Title 14, section 3141, subsection 1.

10           **Sec. 9. 12 MRSA §6410**, as enacted by PL 2003, c. 520, §3, is amended to read:

11           **§6410. Suspension of license for failure to comply with court order of support**

12           If a person's right to obtain a license or registration is suspended pursuant to Title  
13 19-A, section 2201, the suspension remains in effect until the person is in compliance  
14 with a court order of support. On condition of payment of a \$25 reinstatement  
15 administrative fee to the department, the suspension is rescinded and the person's right to  
16 obtain a license reinstated.

17           **Sec. 10. 12 MRSA §6411** is enacted to read:

18           **§6411. Suspension of license for failure to file or failure to pay state tax obligations**

19           If a person's right to obtain a license is suspended pursuant to Title 36, section 175,  
20 the suspension is in effect until the State Tax Assessor issues a certificate of good  
21 standing. On condition of payment of a \$25 administrative fee to the department, the  
22 suspension is rescinded and the person's right to obtain a license reinstated.

23           **Sec. 11. 12 MRSA §6434, sub-§4**, as repealed and replaced by PL 2007, c. 695,  
24 Pt. A, §15, is amended to read:

25           **4. Restitution.** ~~If the holder of a lobster and crab fishing license or a nonresident~~  
26 ~~lobster and crab landing permit~~ a person violates this section by cutting a lobster trap line,  
27 the court shall:

28           A. Order that person to pay to the owner of the trap line that was cut an amount  
29 equal to twice the replacement value of all traps lost as a result of that cutting; and

30           B. Direct that person to provide proof of payment of that restitution to the  
31 commissioner as required by section 6402, subsection 1.

32           Restitution imposed under this subsection is in addition to any penalty imposed under  
33 subsection 3-A.

34           **Sec. 12. 12 MRSA §6451, sub-§1**, as amended by PL 2009, c. 213, Pt. G, §4, is  
35 further amended to read:

36           **1. Allocation of license fees.** Ten dollars of each \$135.75 fee, \$10 of each \$132 fee,  
37 \$20 of each \$136 fee, \$20 of each \$203 fee, \$20 of each \$272.50 fee, \$30 of each

1 \$407.25 fee, \$30 of each \$387 fee, \$60 of each \$785 fee, \$60 of each \$790.75 fee, \$120  
2 of each \$1,587.50 fee, \$180 of each \$2,369.25 fee, \$5 of each \$65 fee and \$5 of each \$66  
3 fee for each lobster and crab fishing license must be allocated to the Lobster Fund, which  
4 must be used for the purposes of lobster biology research, of propagation of lobsters by  
5 liberating seed lobsters and female lobsters in Maine coastal waters and of establishing  
6 and supporting lobster hatcheries.

7 **Sec. 13. 12 MRSA §6505-C, sub-§5**, as enacted by PL 1995, c. 536, Pt. A, §8, is  
8 amended to read:

9 **5. Disposition of fees.** All fees collected under this section accrue to the Eel and  
10 Elver Management Fund established in section 6505-D, except that ~~\$33~~ \$50 must accrue  
11 to the General Fund for each license sold under this section.

12 **Sec. 14. 12 MRSA §6533**, as amended by PL 2009, c. 396, §2, is further amended  
13 to read:

14 **§6533. Training required to act as a scallop or sea urchin tender**

15 ~~The commissioner may not issue a sea urchin and scallop diving tender license under~~  
16 ~~section 6535 to a person or allow~~ It is unlawful for a person to act as a tender ~~under a~~  
17 ~~license issued pursuant to section 6535, section 6701, subsection 5, paragraph B or~~  
18 ~~section 6748, subsection 4, paragraph B unless that person has met the diving tender~~  
19 ~~safety requirements established in rule.~~

20 **Sec. 15. 12 MRSA §6535**, as amended by PL 2009, c. 213, Pt. G, §11 and c. 396,  
21 §3, is repealed and the following enacted in its place:

22 **§6535. Sea urchin and scallop diving tender license**

23 **1. License required.** A person may not act as a diving tender on a boat engaged as a  
24 platform for the harvesting of sea urchins and scallops by hand unless that person is  
25 licensed under this section.

26 **2. Licensed activity.** A person licensed under this section may tend divers who  
27 harvest sea urchins and scallops by hand and operate a boat as a platform for the  
28 harvesting of sea urchins and scallops by hand and may possess, ship, transport and sell  
29 sea urchins and scallops harvested by licensed harvesters the tender has tended. A sea  
30 urchin and scallop diving tender license does not authorize the holder to harvest sea  
31 urchins and scallops. As used in this subsection, "tend" means to assist the diver in any  
32 way, to operate a boat as a platform for harvesting or to cull or otherwise handle the  
33 harvested product.

34 As long as one person present on a boat engaged as a platform for the harvesting of sea  
35 urchins and scallops by hand has met the tender safety requirements adopted by rule  
36 pursuant to section 6533, all other persons present on the boat may operate the boat or  
37 engage in culling activities or otherwise handle the harvested product. An individual who  
38 engages in harvesting activities in accordance with a license issued under section 6701 or  
39 6748 may not be considered as the person who has met the tender safety requirements  
40 adopted by rule pursuant to section 6533.

1        3. Eligibility. A sea urchin and scallop diving tender license may be issued only to  
2        an individual who is a resident.

3        4. Fees. Fees for licenses issued under this section are:

4        A. For a sea urchin and scallop diving tender license, \$133.

5        4-A. Exception. A person acting as a tender under section 6701, subsection 5,  
6        paragraph B or section 6748, subsection 4, paragraph B does not need to possess a license  
7        issued under this Part.

8        6. Violation. A person who violates this section commits a civil violation for which  
9        a fine of not less than \$100 nor more than \$500 may be adjudged.

10       Sec. 16. 12 MRSA §6701, as amended by PL 2009, c. 213, Pt. G, §17 and c. 396,  
11       §§5 to 7, is repealed and the following enacted in its place:

12       §6701. Scallop license

13       1. License required. A person may not engage in the activities authorized under  
14       this section without a current hand fishing scallop license or other license issued under  
15       this Part authorizing the activities. A person acting as tender to an individual possessing  
16       a current individual hand fishing scallop license issued under subsection 5, paragraph A  
17       shall possess a scallop or sea urchin tender license issued under section 6535.

18       2. Licensed activity. The holder of a hand fishing scallop license may take scallops  
19       by hand or possess, ship, transport or sell shucked scallops the holder has taken. An  
20       unlicensed person acting as a tender for an individual licensed under subsection 5,  
21       paragraph B, in accordance with subsection 4, may possess, ship, transport and sell  
22       shucked scallops the hand fishing scallop license holder has taken. A person may not act  
23       as a tender under subsection 5, paragraph B unless that person has met the tender safety  
24       requirements adopted by rule pursuant to section 6533.

25       3. Eligibility. A hand fishing scallop license may be issued only to an individual  
26       who is a resident.

27       4. Exception. A person may act as a tender to an individual possessing a current  
28       hand fishing scallop license with tender issued under subsection 5, paragraph B without  
29       being licensed under this Part if that person has met the tender safety requirements  
30       adopted by rule pursuant to section 6533.

31       5. Fees. Fees for hand fishing scallop licenses are:

32       A. For an individual hand fishing scallop license, \$143; and

33       B. For a hand fishing scallop license with tender, \$193.

34       6. Violation. A person who violates this section commits a civil violation for which  
35       the following penalties apply:

36       A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on  
37       board may be seized;

1 B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on  
2 board may be seized; and

3 C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all  
4 scallops on board may be seized. This penalty is imposed in addition to the penalty  
5 imposed under section 6728-B.

6 **Sec. 17. 12 MRSA §6729, sub-§1, ¶C,** as amended by PL 2007, c. 607, Pt. A,  
7 §12, is further amended to read:

8 C. For a sea urchin and scallop diving tender license, \$50; and

9 **Sec. 18. 12 MRSA §6729, sub-§1, ¶D,** as enacted by PL 2007, c. 607, Pt. A,  
10 §12, is amended to read:

11 D. For a noncommercial scallop license, \$40; and

12 **Sec. 19. 12 MRSA §6729, sub-§1, ¶E** is enacted to read:

13 E. For a hand fishing scallop license with tender, \$40.

14 **Sec. 20. 12 MRSA §6729, sub-§2,** as enacted by PL 2003, c. 319, §2, is amended  
15 to read:

16 **2. Deposit.** The commissioner shall deposit surcharges assessed in this section in the  
17 Scallop Research Fund under section 6729-A, except that fees collected under subsection  
18 1, paragraph C must be divided equally between the Scallop Research Fund and the Sea  
19 Urchin Research Fund established in section 6749-R.

20 **Sec. 21. 12 MRSA §6748,** as amended by PL 2009, c. 213, Pt. G, §23 and c. 396,  
21 §8, is repealed and the following enacted in its place:

22 **§6748. Handfishing sea urchin license**

23 **1. License required.** A person may not engage in the activities authorized under  
24 this section without a current handfishing sea urchin license or other license issued under  
25 this Part authorizing the activities. A person acting as tender to an individual possessing  
26 a current individual handfishing sea urchin license issued under subsection 4, paragraph  
27 A shall possess a sea urchin and scallop diving tender license issued under section 6535.  
28 The handfishing sea urchin license with tender issued under subsection 4, paragraph B  
29 authorizes a person to engage in the activities described in section 6535, subsection 2  
30 aboard the licensee's boat when it is engaged in the harvesting of sea urchins.

31 **1-A. Exception.** A person may act as a tender to an individual possessing a current  
32 handfishing sea urchin license with tender issued under subsection 4, paragraph B  
33 without being licensed under this Part if that person has met the tender safety  
34 requirements adopted by rule pursuant to section 6533.

35 **2. Licensed activity.** The holder of a handfishing sea urchin license may take sea  
36 urchins by hand or possess, ship, transport or sell sea urchins taken by that licensee. An  
37 unlicensed person acting as a tender for an individual licensed under subsection 4,

1 paragraph B, in accordance with subsection 1-A, may possess, ship, transport and sell sea  
2 urchins the handfishing sea urchin license holder has taken. A person may not act as a  
3 tender under subsection 4, paragraph B unless that person has met the tender safety  
4 requirements adopted by rule pursuant to section 6533.

5 3. Eligibility. A handfishing sea urchin license may be issued only to an individual  
6 who is a resident.

7 4. Fees. Fees for handfishing sea urchin licenses are:

8 A. For an individual handfishing sea urchin license, \$152; and

9 B. For a handfishing sea urchin license with tender, \$202.

10 4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fees for an  
11 individual handfishing sea urchin license and a handfishing sea urchin license with tender  
12 issued for calendar year 2010 or 2011 to handfish for sea urchins within the area  
13 designated as Zone 1 under section 6749-N are \$25 and \$50 per year, respectively.

14 This subsection is repealed December 31, 2011.

15 5. Rebuttable presumption. It is unlawful for an individual to dive from a vessel  
16 with sea urchins on board unless that individual is licensed under this section. It is a  
17 rebuttable presumption that an individual diving from a vessel with sea urchins on board  
18 at any time of the year is diving for the purpose of fishing for or taking sea urchins.

19 6. Violation. A person who violates this section commits a civil violation for which  
20 a fine of not less than \$100 nor more than \$500 may be adjudged.

21 Sec. 22. 12 MRSA §6749-Q, sub-§1-B is enacted to read:

22 1-B. Handfishing sea urchin license with tender. One hundred and sixty dollars  
23 on a handfishing sea urchin license with tender.

24 Sec. 23. 12 MRSA §6803-A, sub-§1, as enacted by PL 2009, c. 283, §1, is  
25 amended to read:

26 1. License required. A seaweed buyer's license is required for a person who  
27 purchases more than 10 wet tons or an equivalent number of dry tons annually directly  
28 from seaweed harvesters holding a permit under section 6803. A person may not engage  
29 in the activities authorized under this section without a current seaweed buyer's license.

30 **SUMMARY**

31 This bill corrects irregularities in the laws governing marine resources.