

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1462

S.P. 453

In Senate, April 12, 2011

### **An Act To Amend the Department of Marine Resources' Administrative Suspension Process**

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Reference to the Committee on Marine Resources suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator RECTOR of Knox.  
Cosponsored by Representative DOW of Waldoboro and  
Senators: LANGLEY of Hancock, ROSEN of Hancock.

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

2 **Sec. 1. 12 MRSA §6371**, as amended by PL 2009, c. 561, §12, is further amended  
3 to read:

4 **§6371. Administrative suspension**

5 **1. Suspension for refusal to allow inspection.** Refusal to allow inspection or  
6 seizure under section 6306 is grounds for suspension of any licenses issued under marine  
7 resources laws. In order to suspend a license because of a refusal to allow inspection or  
8 seizure, the commissioner shall follow the procedures of section 6372.

9 **2. Suspension for refusal to allow a shellfish inspection by a department  
10 shellfish inspector.** Refusal to allow a shellfish inspection under section 6852-A or 6856  
11 ~~or violation of shellfish sanitation rules adopted under section 6856~~ is grounds for  
12 suspension of any licenses or certificates issued under marine resources laws. In order to  
13 suspend a license or certificate ~~for these reasons~~ under this subsection, the commissioner  
14 shall follow the procedures of section ~~6373~~ 6372.

15 **3. Suspension for violations.** ~~Violation~~ Except as provided in subsections 1 and 2,  
16 violation of any section of marine resources laws or rules adopted under this Part is  
17 grounds for suspension under section 6374 of any licenses or certificates issued under this  
18 Part. ~~In order to suspend a license or certificate for a violation, the commissioner shall~~  
19 ~~follow the procedures for license suspension or revocation in the District Court, as~~  
20 ~~provided under Title 4, chapter 5.~~

21 **Sec. 2. 12 MRSA §6372, first ¶**, as enacted by PL 1977, c. 661, §5, is amended  
22 to read:

23 Notwithstanding the Maine Administrative Procedure Act, the procedure for  
24 suspending a license ~~or for~~ or refusal to allow inspection or seizure under section 6306 shall  
25 be or refusal to allow inspection under section 6852-A or section 6856 is as follows.

26 **Sec. 3. 12 MRSA §6373**, as amended by PL 1999, c. 547, Pt. B, §30 and affected  
27 by §80, is repealed.

28 **Sec. 4. 12 MRSA §6374** is enacted to read:

29 **§6374. Procedure for suspending without criminal conviction or civil adjudication**

30 Except as provided in section 6371, subsections 1 and 2, the procedure for  
31 suspending a license or certificate for a violation of marine resources law without a  
32 criminal conviction or civil adjudication is governed by this section.

33 **1. Initiation and notice.** If the Chief of the Bureau of Marine Patrol delivers to the  
34 commissioner a written statement under oath that the chief has probable cause to suspect  
35 that a violation of marine resources law has been committed, the commissioner shall  
36 immediately examine the affidavit and determine if a suspension is necessary. If the  
37 commissioner determines that a suspension is necessary, the commissioner shall

1 immediately notify in writing the person who violated the law. The notice must state that  
2 there is an opportunity for a hearing, if the person requests the hearing in writing within  
3 10 days of the notice.

4 **2. Hearing.** A hearing requested under subsection 1 must be held within 3 business  
5 days after receipt by the commissioner of a request for hearing except that a hearing may  
6 be held more than 3 business days after the request if the delay is requested by the person  
7 requesting the hearing. The hearing must be held in accordance with the Maine  
8 Administrative Procedure Act, except that:

9 A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether  
10 the person requesting the hearing had a license and whether that person committed a  
11 violation of marine resources law; and

12 B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under  
13 Title 5, section 9062 must be made not more than one business day after completion  
14 of the hearing.

15 **3. Finding of marine resources violation and suspension.** If the presiding officer  
16 of the hearing under subsection 2 finds that a violation of marine resources law has been  
17 committed, the presiding officer shall immediately notify the commissioner of the  
18 finding, and the commissioner may suspend the license or certificate of the person  
19 requesting the hearing. The length of the suspension of the license or certificate may not  
20 exceed:

21 A. One year from the date of a first finding of a violation under this subsection;

22 B. Two years from the date of a 2nd finding of a violation under this subsection; or

23 C. Three years from the date of a 3rd or subsequent finding of a violation under this  
24 subsection.

25 **4. Prohibition against multiple suspensions.** If the commissioner suspends a  
26 license or certificate under this section, the commissioner may not suspend the license or  
27 certificate because of a criminal conviction or civil adjudication for the same violation.

28 **5. Appeal.** A decision of the commissioner to suspend a license or certificate  
29 pursuant to this section may be appealed to the Superior Court if it is filed with the court  
30 within 30 days of the decision.

31 **Sec. 5. 12 MRSA §6852-A, sub-§7** is enacted to read:

32 **7. Inspection.** For the purposes of inspection or collection of samples, the  
33 commissioner or the commissioner's agent may access an establishment or part thereof or  
34 vehicle in which activities authorized under this section are conducted by a person  
35 holding an enhanced retail seafood license. Denial of access is grounds for suspension or  
36 revocation of an enhanced retail seafood license under the provisions of section 6372.

37 **Sec. 6. 12 MRSA §6856, sub-§5**, as amended by PL 2003, c. 248, §11, is further  
38 amended to read:

