

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1723

H.P. 1233

House of Representatives, January 13, 2014

An Act To Improve Enforcement of Marine Resources Laws

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DOAK of Columbia Falls.
Cosponsored by Representative: PARRY of Arundel.

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

2 **Sec. 1. 12 MRSA §6022, sub-§19** is enacted to read:

3 **19. Interstate wildlife violator compact.** The commissioner may enter into an
4 interstate wildlife violator compact to promote compliance with the laws, regulations and
5 rules that relate to the management of marine resources in the respective member states
6 and may adopt rules, which are routine technical rules as described in Title 5, chapter
7 375, subchapter 2-A, necessary to implement certain provisions of the compact.

8 **Sec. 2. 12 MRSA §6207, sub-§2, ¶A,** as enacted by PL 1977, c. 661, §5, is
9 amended to read:

10 A. If the aggregate value of all items seized is less than ~~\$75~~ \$200, unless there is
11 reasonable doubt as to their ownership; and

12 **Sec. 3. 12 MRSA §6207, sub-§3, ¶C,** as amended by PL 1979, c. 541, Pt. B,
13 §73, is further amended to read:

14 C. An order that a true copy of the libel and the order of the notice, attested by the
15 marine patrol officer, be mailed to the person from whom the items were seized at
16 that person's last known address and posted in 2 conspicuous places in the
17 municipality, or place where the items were seized, at least 10 days before the day set
18 for the hearing.

19 **Sec. 4. 12 MRSA §6207, sub-§4,** as enacted by PL 1977, c. 661, §5, is repealed
20 and the following enacted in its place:

21 **4. Sale or disposition of marine organisms prior to libel.** Any marine organism
22 seized pursuant to this section may be sold prior to being libeled under this section by any
23 marine patrol officer. The proceeds of the sale must be libeled in accordance with this
24 section.

25 A. The officer may sell organisms at public or private sale and hold any proceeds of
26 the sale until the libel is completed.

27 C. All money received from the sale of marine organisms sold in accordance with
28 this subsection must be in the form of a certified or cashier's check made out to the
29 Department of Marine Resources.

30 **Sec. 5. 12 MRSA §6207, sub-§5,** as enacted by PL 1977, c. 661, §5, is amended
31 to read:

32 **5. Items or proceeds forfeited if no court appearance.** If no claimant appears at
33 the time of the hearing on the libel, on return of service of the officer in compliance with
34 the order of notice, the judge shall declare the items forfeited to the State.

35 A. If the items have been sold in accordance with subsection 4, the officer shall turn
36 the proceeds over to the ~~judge who shall dispose of them in the same manner that he~~
37 ~~disposes of fines collected under marine resources' laws~~ commissioner, who may
38 dispose of them in any manner considered appropriate by the commissioner.

1 **Sec. 6. 12 MRSA §6207, sub-§9**, as enacted by PL 1977, c. 661, §5, is amended
2 to read:

3 **9. Forfeiture; executions for cost; appeal; recognizance.** If the judge finds that
4 the claimant is not entitled to any item claimed, the judge shall render judgment against
5 the claimant for the State for costs to be taxed as in civil cases before the judge. The
6 judge shall issue an execution for the costs as in civil cases. The judge shall declare the
7 articles forfeited to the State. If the items have been sold in accordance with subsection
8 4, the officer shall turn the proceeds of the sale over to the ~~judge who shall dispose of~~
9 ~~them in the same manner he disposes of fines collected under marine resources' laws~~
10 commissioner, who may dispose of them in any manner considered appropriate by the
11 commissioner.

12 A. The claimant may appeal to the Superior Court next to be held within the county
13 where the judge's court is located, and, if ~~he~~ the claimant appeals, the judge may
14 order the claimant to recognize with sureties as on appeals in civil cases.

15 B. The judge may order that the items or proceeds of sale remain in the custody of
16 the officer pending the appeal.

17 **Sec. 7. 12 MRSA §6374, sub-§3**, as enacted by PL 2011, c. 311, §4, is amended
18 to read:

19 **3. Finding of marine resources violation and suspension.** If the presiding officer
20 of the hearing under subsection 2 finds that a violation of marine resources law has been
21 committed, the presiding officer shall immediately notify the commissioner of the
22 finding, and the commissioner may suspend the license or certificate of the person
23 requesting the hearing. ~~The~~ Except as provided in this subsection, the length of the
24 suspension of the license or certificate may not exceed:

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

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

27 C. Three years from the date of a 3rd or subsequent finding of a violation ~~under this~~
28 ~~subsection.~~

29 The commissioner may suspend any license or certificate for a period of time not to
30 exceed the maximum amount of time allowable for a criminal conviction or civil
31 adjudication of the same violation.

32 **Sec. 8. 12 MRSA §6401**, as amended by PL 2001, c. 421, Pt. B, §17 and affected
33 by Pt. C, §1, is further amended to read:

34 **§6401. Suspension or revocation based on conviction or adjudication**

35 **1. Violation of marine resources laws.** ~~The~~ Notwithstanding specific penalties
36 authorized under this Part, the commissioner may suspend any licenses or certificates
37 issued under this Part if a person is convicted or adjudicated in court of violating any
38 section of the marine resources laws.

39 **2. Length of suspension.** The suspension of a license or certificate may not exceed:

- 1 A. One year from the date of the first conviction or adjudication;
- 2 B. Two years from the date of the 2nd conviction or adjudication; and
- 3 C. Three years from the date of the 3rd or subsequent conviction or adjudication.

4 **3. Applicable standards.** Any conviction or adjudication occurring more than 7
5 years before the last conviction or adjudication may not be counted in determining
6 lengths of suspension.

7 **4. Habitual violator.** The commissioner may permanently revoke any licenses or
8 certificates of a habitual violator following the conviction or adjudication of the 6th or
9 subsequent violation of marine resources laws.

10 **Sec. 9. 12 MRSA §6404-L** is enacted to read:

11 **§6404-L. Suspension or revocation based on interstate wildlife violator compact**

12 The commissioner may suspend or revoke the license, privilege or right of any person
13 to fish for, take, possess or transport any marine organism to the extent that the license,
14 privilege or right has been suspended or revoked by another member state of an interstate
15 wildlife violator compact entered into by the commissioner pursuant to section 6022,
16 subsection 19.

17 **Sec. 10. 12 MRSA §6431, sub-§7**, as amended by PL 2009, c. 394, §6, is further
18 amended to read:

19 **7. Penalty.** Possession of lobsters in violation of this section is a Class D crime,
20 except that the court shall impose a fine of \$500 for each violation and, in addition, a fine
21 of \$100 for each lobster involved, up to and including the first 5, and a fine of \$200 for
22 each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of
23 not less than \$1,000 or more than \$5,000. ~~A court may not suspend a fine imposed under~~
24 ~~this subsection.~~

25 **Sec. 11. 12 MRSA §6431-E, sub-§3, ¶B-1** is enacted to read:

26 B-1. Was the owner of a vessel that was named on that individual's Class I, Class II
27 or Class III lobster and crab fishing license but is no longer the owner of that vessel
28 due to sale or foreclosure. The individual must demonstrate immediate intent to
29 become the owner of another vessel that will be used to fish for or take lobsters and
30 request in writing permission from the commissioner to use the other vessel to fish
31 for or take lobsters for a limited period of time;

32 **Sec. 12. 12 MRSA §6431-G, sub-§2, ¶¶B and C**, as enacted by PL 2009, c.
33 394, §8, are amended to read:

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

1 C. The individual is designated as the sponsor of a student pursuant to section 6421
2 and is operating the vessel named on the student's license for the purposes of
3 providing practical lobster fishing training to the student while the student is present
4 on the vessel; ~~or~~

5 **Sec. 13. 12 MRSA §6431-G, sub-§2, ¶D** is enacted to read:

6 D. The individual was the owner of a vessel that was named on that individual's
7 Class I, Class II or Class III lobster and crab fishing license but is no longer the
8 owner of that vessel due to sale or foreclosure. The individual must demonstrate
9 immediate intent to become the owner of another vessel that will be used to fish for
10 or take lobsters and request in writing permission from the commissioner to use the
11 other vessel to fish for or take lobsters for a limited period of time.

12 **Sec. 14. 12 MRSA §6432, sub-§5**, as amended by PL 2009, c. 394, §9, is further
13 amended to read:

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

21 **Sec. 15. 12 MRSA §6436, sub-§5**, as repealed and replaced by PL 2009, c. 394,
22 §10, is amended to read:

23 **5. Penalty for possession of egg-bearing lobsters.** Possession of lobsters in
24 violation of subsection 1, paragraph A is a Class D crime, except that in addition to any
25 punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of
26 \$1,000 for each violation and, in addition, a fine of \$200 for each lobster involved, up to
27 and including the first 5, and a fine of \$400 for each lobster in excess of 5, or, if the
28 number of lobsters cannot be determined, a fine of not less than \$2,500 or more than
29 \$10,000. ~~A court may not suspend a fine imposed under this subsection.~~

30 **Sec. 16. 12 MRSA §6436, sub-§6**, as enacted by PL 2009, c. 394, §11, is
31 amended to read:

32 **6. Penalty for possession of v-notched lobsters.** Possession of lobsters in violation
33 of subsection 1, paragraph B is a Class D crime, except that in addition to any punishment
34 that may be imposed under Title 17-A, Part 3, the court shall impose a fine of \$500 for
35 each violation and, in addition, a fine of \$100 for each lobster involved, up to and
36 including the first 5, and a fine of \$400 for each lobster in excess of 5, or, if the number
37 of lobsters cannot be determined, a fine of not less than \$1,000 or more than \$5,000. ~~A~~
38 ~~court may not suspend a fine imposed under this subsection.~~

39 **Sec. 17. 12 MRSA §6438-A, sub-§2**, as amended by PL 2009, c. 394, §12, is
40 further amended to read:

1 1. It allows the Commissioner of Marine Resources to enter into an interstate wildlife
2 violator compact and allows the commissioner to suspend or revoke the licenses of
3 individuals whose licenses have been suspended or revoked for violations of marine
4 resources law in other member states.

5 2. It increases the limit on the value of items seized by a marine patrol officer that
6 need not be subject to judicial process for the disposition of property seized by the
7 government from \$75 to \$200. It provides for the notice of judicial process for the
8 disposition of property seized by the government to be mailed to the individual from
9 whom the items were seized, in addition to the existing requirement to post notice in the
10 municipality or place where the items were seized. It specifies the process for the sale or
11 disposition of marine organisms prior to judicial process for the disposition of property
12 seized by the government.

13 3. It provides that the commissioner may suspend a license or certificate for up to the
14 maximum time allowable for a criminal conviction or civil adjudication of the same
15 violation.

16 4. It allows the commissioner to permanently revoke any license of a habitual
17 violator who is convicted or adjudicated of 6 or more violations of marine resources laws.

18 5. It allows a court to suspend fines imposed for violations of lobster laws.

19 6. It creates a temporary exemption from owner-operator requirements for an
20 individual who holds a lobster and crab fishing license, has sold one vessel and is
21 purchasing another.

22 7. It lowers the fines for harvesting shellfish without a municipal shellfish license,
23 harvesting shellfish in violation of a license restriction and violating the laws related to
24 lobster processor licenses. It also provides that violation of certain laws governing
25 crayfish dealers is a civil violation rather than a Class D crime, as in current law.