

MAINE STATE LEGISLATURE

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Majority

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MARINE RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

128TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 190, L.D. 575, Bill, "An Act To Improve the Enforcement of Maine's Lobster Laws"

Amend the bill by striking out everything after the title and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, conduct that is prohibited under the marine resources laws threatens the sustainability of Maine's fisheries and the lobster industry particularly; and

Whereas, providing the Bureau of Marine Patrol broader enforcement options and deterring conduct that is detrimental to the sustainability of marine fisheries is necessary before the summer fishing season begins; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §6351, sub-§1, ¶¶B-2 and B-3 are enacted to read:

B-2. A conviction for a violation of Title 17-A, section 802 that is directly related to an activity for which a lobster and crab fishing license is required;

B-3. A conviction for a violation of Title 17-A, section 805 that is directly related to an activity for which a lobster and crab fishing license is required;

Sec. 2. 12 MRSA §6371, sub-§3, as amended by PL 2011, c. 311, §1, is repealed and the following enacted in its place:

3. Suspension for violations. Except as provided in subsections 1 and 2, the commissioner may suspend any licenses or certificates issued under this Part on the following grounds:

COMMITTEE AMENDMENT

- 1 A. Violation of any section of marine resources laws or rules adopted under this Part;
- 2 B. The commission of conduct as provided in subsection 4; or
- 3 C. Setting fire to, sinking or damaging a vessel used to carry out the activities
- 4 authorized under a lobster and crab fishing license to such an extent that the vessel
- 5 cannot be used to carry out those activities by the person who has that vessel named
- 6 on the person's lobster and crab fishing license.

7 **Sec. 3. 12 MRSA §6371, sub-§4** is enacted to read:

8 **4. Suspensions for certain violations of Title 17-A.** Conduct that would constitute

9 a violation of any of the following provisions is grounds for suspension under section

10 6374 of any licenses or certificates issued under this Part:

- 11 A. Title 17-A, section 353, when the offense is directly related to an activity for
- 12 which a lobster and crab fishing license is required;
- 13 B. Title 17-A, section 359, when the offense is directly related to an activity for
- 14 which a lobster and crab fishing license is required;
- 15 C. Title 17-A, section 751, when the offense is committed against a marine patrol
- 16 officer while that officer is engaged in the performance of official duty;
- 17 D. Title 17-A, section 752-A, when the offense is committed against a marine patrol
- 18 officer while that officer is engaged in the performance of official duty;
- 19 E. Title 17-A, section 753, when the offense is directly related to an investigation by
- 20 the Bureau of Marine Patrol;
- 21 F. Title 17-A, section 754, when the offense is directly related to an investigation by
- 22 the Bureau of Marine Patrol;
- 23 G. Title 17-A, section 802, when the offense is directly related to an activity for
- 24 which a lobster and crab fishing license is required;
- 25 H. Title 17-A, section 805, when the offense is directly related to an activity for
- 26 which a lobster and crab fishing license is required; or
- 27 I. Title 17-A, sections 207, 209, 210, 210-A or 211, when the offense is committed
- 28 against a marine patrol officer or a family member of a marine patrol officer as a
- 29 result of the marine patrol officer performing what the license holder knows or has
- 30 reason to know are the marine patrol officer's official duties. As used in this
- 31 paragraph, "family member" means a spouse, brother, sister, son-in-law, daughter-in-
- 32 law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by
- 33 blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

34 **Sec. 4. 12 MRSA §6374**, as amended by PL 2015, c. 172, §§4 and 5, is further

35 amended to read:

36 **§6374. Procedure for suspending without criminal conviction or civil adjudication**

37 ~~Except as provided in section 6371, subsections 1 and 2, the~~ The procedure for

38 suspending a license or certificate ~~for a violation of marine resources law without a~~

COMMITTEE AMENDMENT

1 ~~criminal conviction or civil adjudication~~ under section 6371, subsections 3 and 4 is
2 governed by this section.

3 **1. Initiation and notice.** If the Chief of the Bureau of Marine Patrol delivers to the
4 commissioner a written statement under oath that the chief has probable cause to suspect
5 that a violation of marine resources law or conduct described in section 6371, subsection
6 4 has been committed, the commissioner shall immediately examine the affidavit and
7 determine if a suspension is necessary. If the commissioner determines based on a
8 preponderance of the evidence that a suspension is necessary, the commissioner shall
9 immediately notify in writing the person who violated the law or engaged in the conduct.
10 The notice must state that there is an opportunity for a hearing, if the person requests the
11 hearing in writing within 10 days of the notice. The notice is deemed received 3 days
12 after the mailing. The commissioner may suspend the license or certificate of a person
13 who has been notified pursuant to this subsection but who does not request a hearing
14 within the allowed time.

15 **2. Hearing.** A hearing requested under subsection 1 must be held within 30 business
16 days after receipt by the commissioner of a request for hearing except that a hearing may
17 be held more than 30 business days after the request if the delay is requested by the
18 person requesting the hearing. If the hearing is continued, it must be held no later than 60
19 days after the original notice, and any further continuance must be with the consent of
20 both parties. The hearing must be held in accordance with the Maine Administrative
21 Procedure Act, except that:

22 A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether
23 the person requesting the hearing had a license or certificate and whether that person
24 committed a violation of marine resources law or conduct described in section 6371,
25 subsection 4; and

26 B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under
27 Title 5, section 9062 must be made not more than 10 business days after completion
28 of the hearing.

29 If the presiding officer of the hearing finds that a violation of marine resources law or
30 conduct described in section 6371, subsection 4 has been committed, the presiding officer
31 shall immediately notify the commissioner of the finding.

32 **3. Finding of violation and suspension.** ~~If the presiding officer of the hearing~~
33 ~~under subsection 2 finds that a violation of marine resources law has been committed, the~~
34 ~~presiding officer shall immediately notify the commissioner of the finding, and the~~ The
35 commissioner may suspend the license or certificate of the person requesting the hearing
36 under subsection 2 if the presiding officer of the hearing finds that a violation of marine
37 resources law or conduct described in section 6371, subsection 4 has been committed.
38 Except as provided in this subsection and subsection 3-A, the length of the suspension of
39 the license or certificate may not exceed:

40 A. One year from the date of a first finding of a violation or finding that conduct
41 described in section 6371, subsection 4 has been committed;

42 B. Two years from the date of a 2nd finding of a violation or finding that conduct
43 described in section 6371, subsection 4 has been committed; or

1 C. Three years from the date of a 3rd or subsequent finding of a violation or finding
2 that conduct described in section 6371, subsection 4 has been committed.

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

6 **3-A. Finding of violation and suspension; specific violations.** The length of a
7 suspension of a license or certificate under this section for the following violations or
8 conduct is:

9 A. Not less than 2 years and not more than 6 years from the date of a first finding of
10 a violation, not less than 2 years and not more than 10 years from the date of a 2nd
11 violation and permanent for a 3rd violation of section 6434;

12 B. Not less than 3 years and not more than 10 years from the date of a first finding of
13 a violation and permanent for a 2nd violation of section 6431-F, subsection 4;

14 C. Not less than 3 years and not more than 10 years from the date of a first finding of
15 a violation and permanent for a 2nd violation of section 6432, subsection 2,
16 paragraph B;

17 D. Not less than 4 years from the date of a finding of a violation of section 6438-A;
18 and

19 E. Permanent for conduct that is grounds for suspension under section 6371,
20 subsection 3, paragraph C.

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

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

27 **6. Request for hearing on suspension length; place of hearing.** The license or
28 certificate holder may request a hearing regarding the length of suspension under this
29 section. A hearing must be requested in writing within 10 days from the effective date of
30 the suspension. The hearing must be held within 10 days of the request unless a longer
31 period of time is mutually agreed to in writing. The hearing must be conducted in the
32 Augusta area.

33 **7. Vessel monitoring following suspension or revocation.** The commissioner may
34 require a person whose lobster and crab fishing license was suspended or revoked
35 pursuant to subsection 3-A or section 6402, 6402-D, 6402-E or 6404 or section 6371,
36 subsection 3, paragraph C to install equipment that allows the department to track the
37 geographic location of the vessel listed on that person's lobster and crab fishing license
38 for a period immediately following the reinstatement of the license not to exceed the
39 duration of the license suspension. Costs associated with equipment required to be
40 installed under this subsection must be paid by the license holder.

41 **Sec. 5. 12 MRSA §6402,** as amended by PL 2009, c. 561, §13, is further amended
42 to read:

1 **§6402. Suspension or revocation based on conviction of molesting**

2 ~~The Notwithstanding section 6401, subsection 2, the commissioner shall suspend the~~
3 ~~lobster and crab fishing license of a license holder or the nonresident lobster and crab~~
4 ~~landing permit of a permit holder adjudicated in court convicted of violating section 6434~~
5 ~~for not less than 2 years and not more than 6 years from the date of a first conviction and~~
6 ~~not less than 2 years and not more than 10 years from the date of a 2nd conviction. This~~
7 ~~suspension is for 3 years from the date of adjudication. For a 3rd or subsequent~~
8 ~~adjudication conviction, the commissioner may shall permanently revoke the license~~
9 ~~holder's person's license or permit.~~

10 1. **Convictions for cutting lobster trap lines.** A person ~~adjudicated~~ convicted
11 under section 6434 of molesting lobster gear by cutting a lobster trap line shall, upon
12 making full payment as ordered by the court under section 6434, subsection 4, paragraph
13 A, provide the commissioner with proof of that payment. If the commissioner does not
14 receive that proof within 3 years after the date of adjudication conviction, the
15 commissioner shall continue that license suspension until such time as that proof is
16 received.

17 **Sec. 6. 12 MRSA §§6402-D and 6402-E** are enacted to read:

18 **§6402-D. Suspension or revocation based on conviction of fishing over trap limit**

19 Notwithstanding section 6401, subsection 2, the commissioner shall suspend the
20 lobster and crab fishing license or nonresident lobster and crab landing permit of a person
21 convicted of a violation of section 6431-F, subsection 4 for not less than 3 years and not
22 more than 10 years from the date of a first conviction. For a 2nd conviction, the
23 commissioner shall permanently revoke the person's license or permit.

24 **§6402-E. Suspension or revocation based on conviction of fishing sunken trap or**
25 **trawl**

26 Notwithstanding section 6401, subsection 2, the commissioner shall suspend the
27 lobster and crab landing license or nonresident lobster and crab landing permit of a
28 person convicted of a violation of section 6432, subsection 2, paragraph B for not less
29 than 3 years and not more than 10 years from the date of a first conviction. For a 2nd
30 conviction, the commissioner shall permanently revoke the person's license or permit.

31 **Sec. 7. 12 MRSA §6404**, as amended by PL 2015, c. 172, §6, is further amended
32 to read:

33 **§6404. Revocation based on conviction of scrubbing lobsters**

34 The commissioner ~~shall~~ may permanently revoke the lobster and crab fishing license,
35 wholesale seafood license and the commercial fishing license of any license holder or the
36 nonresident lobster and crab landing permit of a permit holder convicted in court of
37 violating section 6438-A.

38 **Sec. 8. 12 MRSA §6413** is enacted to read:

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§6413. Reduction in trap limit after certain suspensions

The commissioner may reduce the number of trap tags a person whose lobster and crab fishing license has been suspended pursuant to section 6374, subsection 3-A may purchase in the year following the suspension, except that if the person holds a Class I, Class II or Class III lobster and crab fishing license the person must be allowed to purchase at least 300 trap tags. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit for the license or established by rule for the zones identified on that person's license pursuant to section 6446, subsection 1-A.

Sec. 9. 12 MRSA §6431-B, as amended by PL 2007, c. 201, §13, is repealed and the following enacted in its place:

§6431-B. Tag system

1. Tag system established. The commissioner shall establish by rule a lobster trap tag system under which lobster and crab fishing license holders and nonresident lobster and crab landing permit holders must purchase tags for the purpose of identifying and tracking traps. The rules must contain provisions for replacing lost tags. The commissioner may impose a per tag fee to cover the cost of trap tags, the costs of administering and enforcing a lobster trap tag system, the costs of management of the lobster fishery and the costs associated with lobster management policy councils and referenda pursuant to section 6447. Trap tag fees must be deposited in the Lobster Management Fund established under section 6431-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Penalties. A person who violates a rule adopted pursuant to subsection 1 commits:

A. A civil violation for which a fine of \$250 must be adjudged if the person fishes 25 or fewer traps that are not tagged in accordance with rules adopted pursuant to subsection 1; and

B. A Class D crime if the person fishes more than 25 traps that are not tagged in accordance with rules adopted pursuant to subsection 1.

Sec. 10. 12 MRSA §6432, sub-§2, as amended by PL 2011, c. 266, Pt. A, §11, is repealed and the following enacted in its place:

2. Marking. A lobster or crab trap or trawl must be marked by a lobster buoy as described in subsections 3 and 4. The buoy must be visible at the surface. A person may not:

A. Set, raise, lift or transfer any lobster trap or buoy unless it is clearly marked with the owner's lobster and crab fishing license number or the owner's nonresident lobster and crab landing permit number; or

B. Intentionally set or fish a lobster or crab trap or trawl in a manner that is designed to avoid detection that the trap or trawl has been set or fished.



Approved: 05/26/17 *MCC*

128th MAINE LEGISLATURE

LD 575

LR 1561(02)

An Act To Improve the Enforcement of Maine's Lobster Laws

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-200)

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class D crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Marine Resources from implementing the provisions of this bill are anticipated to be minor and can be absorbed within existing budgeted resources.