

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

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No. 1380

H.P. 959

House of Representatives, April 11, 2017

**An Act To Implement an Owner-Operator Requirement in the
Scallop and Sea Urchin Fisheries**

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

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative KUMIEGA of Deer Isle.

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

2 **Sec. 1. 12 MRSA §6702, sub-§2**, as amended by PL 2011, c. 598, §31, is further
3 amended to read:

4 **2. Licensed activity.** A person licensed under this section may use the boat
5 identified on the license to drag for scallops in the State's territorial waters and possess,
6 ship, sell or transport shucked scallops taken under the license. The license also
7 authorizes the captain and crew members aboard the boat identified on the license when
8 engaged in dragging for scallops to undertake these activities, except that the captain and
9 crew members may not fish for or take scallops if the license holder is not aboard that
10 boat ~~except as provided in subsection 2-A.~~

11 **Sec. 2. 12 MRSA §6702, sub-§2-A**, as enacted by PL 2007, c. 607, Pt. A, §2, is
12 repealed.

13 **Sec. 3. 12 MRSA §6706, sub-§3**, as amended by PL 2011, c. 237, §2, is further
14 amended to read:

15 **3. Scallop license limited entry system.** Notwithstanding subsection 2, the
16 commissioner shall establish by rule a limited entry system under which a person who did
17 not hold a hand fishing scallop license or a scallop dragging license in the previous
18 calendar year may become eligible to obtain that license. The rules for a limited entry
19 system must include provisions for the method and administration of the program. Rules
20 adopted pursuant to this subsection are ~~major-substantive~~ routine technical rules as
21 defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. 4. 12 MRSA §6720** is enacted to read:

23 **§6720. Vessel limitation**

24 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
25 following terms have the following meanings.

26 A. "Family member" means a spouse, brother, sister, son-in-law, daughter-in-law,
27 parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood,
28 child by adoption, stepchild, stepparent, grandchild or grandparent.

29 B. "Owner" means:

30 (1) An individual who is the owner of a vessel registered under chapter 935 or
31 the owner of a vessel documented under 46 Code of Federal Regulations, Part 67;

32 (2) The person who owns the highest percentage of a partnership, corporation or
33 other entity that is the owner of a vessel registered under chapter 935 or a vessel
34 documented under 46 Code of Federal Regulations, Part 67; or

35 (3) When 2 or more people own in equal proportion the highest percentages of a
36 partnership, corporation or other entity that owns a vessel registered under
37 chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part

1 67, one of the highest percentage owners as designated by the owners of that
2 partnership, corporation or other entity.

3 **2. Owner or family member on board.** Except as provided in subsection 3, a
4 vessel may not be used for dragging for scallops in the State's territorial waters unless that
5 vessel is owned by a person holding a scallop dragging license issued under section 6702
6 and:

7 A. The owner of that vessel is present on that vessel and has that vessel named on the
8 owner's scallop dragging license; or

9 B. A family member of the vessel owner holds a scallop dragging license issued
10 under section 6702 and is present on that vessel.

11 **3. Exemptions; individuals.** The commissioner may authorize a person to drag for
12 scallops from a vessel when an owner or family member is not on board pursuant to
13 subsection 2 if that person holds a scallop dragging license issued under section 6702
14 and:

15 A. The owner of that vessel holds a scallop dragging license issued under section
16 6702, documents to the commissioner that an illness or disability temporarily
17 prevents that owner from fishing for or taking scallops from that vessel and requests
18 in writing to the commissioner that the commissioner authorize that person to use
19 another owner's vessel to fish for or take scallops;

20 B. Is the owner of a vessel that has become temporarily inoperable because of an
21 accident or a mechanical failure and requests in writing permission from the
22 commissioner to use another owner's vessel to fish for or take scallops; or

23 C. Was the owner of a vessel that was named on that person's scallop dragging
24 license but is no longer the owner of that vessel due to sale or foreclosure. The person
25 must demonstrate immediate intent to become the owner of another vessel to be used
26 to fish for or take scallops and request in writing permission from the commissioner
27 to use another owner's vessel to fish for or take scallops for a limited period of time.

28 **4. Rules.** The commissioner may adopt rules to implement and administer this
29 section. Rules adopted pursuant to this subsection are routine technical rules pursuant to
30 Title 5, chapter 375, subchapter 2-A.

31 **Sec. 5. 12 MRSA §6722, sub-§1,** as repealed and replaced by PL 2007, c. 695,
32 Pt. I, §6, is amended to read:

33 **1. Scallop dragging season.** Unless modified by rules adopted under section
34 6171-A, a person may not fish for or take scallops by dragging in the territorial waters
35 from April 16th to November 30th, both days inclusive.

36 **Sec. 6. 12 MRSA §6748-A, sub-§2-B, ¶¶A and B,** as enacted by PL 2001, c.
37 327, §7 and affected by §21, are repealed.

38 **Sec. 7. 12 MRSA §6749-D** is enacted to read:

1 **§6749-D. Vessel limitation**

2 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
3 following terms have the following meanings.

4 A. "Family member" means a spouse, brother, sister, son-in-law, daughter-in-law,
5 parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood,
6 child by adoption, stepchild, stepparent, grandchild or grandparent.

7 B. "Owner" means:

8 (1) An individual who is the owner of a vessel registered under chapter 935 or
9 the owner of a vessel documented under 46 Code of Federal Regulations, Part 67;

10 (2) The person who owns the highest percentage of a partnership, corporation or
11 other entity that is the owner of a vessel registered under chapter 935 or a vessel
12 documented under 46 Code of Federal Regulations, Part 67; or

13 (3) When 2 or more people own in equal proportion the highest percentages of a
14 partnership, corporation or other entity that owns a vessel registered under
15 chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part
16 67, one of the highest percentage owners as designated by the owners of that
17 partnership, corporation or other entity.

18 **2. Owner or family member on board.** Except as provided in subsection 3, a
19 vessel may not be used for dragging for sea urchins in the State's territorial waters unless
20 that vessel is owned by a person holding a sea urchin dragging license issued under
21 section 6748-A and:

22 A. The owner of that vessel is present on that vessel and has that vessel named on the
23 owner's sea urchin dragging license; or

24 B. A family member of the vessel owner holds a sea urchin dragging license issued
25 under section 6748-A and is present on that vessel.

26 **3. Exemptions; individuals.** The commissioner may authorize a person to drag for
27 sea urchins from a vessel when an owner or family member is not on board pursuant to
28 subsection 2 if that person holds a sea urchin dragging license issued under section
29 6748-A and:

30 A. The owner of that vessel holds a sea urchin dragging license issued under section
31 6748-A, documents to the commissioner that an illness or disability temporarily
32 prevents that owner from fishing for or taking sea urchins from that vessel and
33 requests in writing to the commissioner that the commissioner authorize that person
34 to use that vessel to fish for or take sea urchins;

35 B. Is the owner of a vessel that has become temporarily inoperable because of an
36 accident or a mechanical failure and requests in writing permission from the
37 commissioner to use another owner's vessel to fish for or take sea urchins; or

38 C. Was the owner of a vessel that was named on that person's sea urchin dragging
39 license but is no longer the owner of that vessel due to sale or foreclosure. The person
40 must demonstrate immediate intent to become the owner of another vessel to be used

1 to fish for or take sea urchins and request in writing permission from the
2 commissioner to use another owner's vessel to fish for or take sea urchins for a
3 limited period of time.

4 **4. Rules.** The commissioner may adopt rules to implement and administer this
5 section. Rules adopted pursuant to this subsection are routine technical rules pursuant to
6 Title 5, chapter 375, subchapter 2-A.

7 **Sec. 8. 12 MRSA §6749-N**, as amended by PL 2013, c. 301, §17, is further
8 amended to read:

9 **§6749-N. Closed areas; zone identification**

10 ~~Notwithstanding section 6749, it is unlawful for a person to fish for or take sea~~
11 ~~urchins from:~~

12 **1. Zone 1.** Notwithstanding section 6749, it is unlawful for a person to fish for or
13 take sea urchins from Zone 1; from May 1st to July 31st. For the purposes of this article,
14 unless modified by rules adopted pursuant to this section, "Zone 1" means all coastal
15 waters west of a line beginning at the easternmost point of Fort Point State Park on Cape
16 Jellison then running southwesterly to channel marker #1 south of Sears Island, then
17 running southwesterly to channel marker RW "11" located between Marshall's Point and
18 Bayside in the Town of Northport, then running southwesterly to Graves channel marker
19 southeast of the Town of Camden, then running southeasterly to the Penobscot Bay Buoy
20 "PB" east of Rockland harbor, then running southerly to the TBI whistle southwest of
21 Junken Ledge, then running southeasterly to Red Nun #10 buoy at Foster Ledges, then
22 running due south magnetic to the boundary of the State's coastal waters;~~and.~~

23 **2. Zone 2.** Notwithstanding section 6749, it is unlawful for a person to fish for or
24 take sea urchins from Zone 2; from May 1st to July 31st. For the purpose of this article,
25 unless modified by rules adopted pursuant to this section, "Zone 2" means all coastal
26 waters east of that line established in subsection 1, including all coastal waters of the
27 Penobscot River north of Fort Point State Park.

28 **3. Conservation areas.** The commissioner may adopt rules to establish
29 conservation areas pursuant to section 6171 for the purposes of sea urchin research that
30 are considered closed areas for the purpose of this section. Fishing for sea urchins in a
31 conservation area adopted through the department for sea urchin research is considered a
32 violation of this subchapter and subject to the penalties under section 6749-Y. Rules
33 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
34 chapter 375, subchapter ~~H-A~~ 2-A.

35 The commissioner may adopt rules to define boundaries for Zone 1 under subsection
36 1 and Zone 2 under subsection 2. Rules adopted pursuant to this section are routine
37 technical rules pursuant to Title 5, chapter 375, subchapter 2-A. If the commissioner
38 adopts rules to define boundaries different from those under this section, the
39 commissioner shall timely submit legislation to amend this section accordingly.

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SUMMARY

This bill creates an owner-operator requirement for a scallop dragging license and sea urchin dragging license. It changes from major substantive rules to routine technical rules the rules to allow entry in the scallop fishery. It specifies that the prohibition against fishing for or taking scallops from April 16th to November 30th applies only to scallop dragging. It also allows the Commissioner of Marine Resources to amend by rule the boundaries of sea urchin Zone 1 and Zone 2.