

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

25. Fraudulent acquisition of a snowmobile registration. A person is guilty of fraudulently obtaining a snowmobile registration if that person obtains that registration through fraud, misstatement or misrepresentation.

Sec. 15. 36 MRSA §1760, sub-§25-A, as enacted by PL 1991, c. 846, §22, is amended to read:

25-A. All-terrain vehicles. All-terrain vehicles as defined in Title 12, section 7851 ~~and snowmobiles as defined in Title 12, section 7821~~ purchased by a nonresident and intended to be driven or transported outside the State immediately upon delivery by the seller. The purchaser is exempt from use tax, unless the ~~snowmobile~~ or all-terrain vehicle is present in the State for more than 30 days during the 12-month period following the date of purchase or is registered in the State without being registered in another state within 12 months of the date of purchase;

Sec. 16. 36 MRSA §1760, sub-§25-B is enacted to read:

25-B. Snowmobiles. A snowmobile, as that term is defined in Title 12, section 7821, subsection 5, purchased by a person who is not a resident of this State;

Sec. 17. 36 MRSA §1760, sub-§45, as amended by PL 1995, c. 65, Pt. A, §142 and affected by Pt. A, §153 and Pt. C, §15, is further amended to read:

45. Certain property purchased outside the State. Sales of property purchased and used by the present owner outside the State:

A. If the property is an automobile, as defined in Title 29-A, section 101, subsection 7, and if the owner was, at the time of purchase, a resident of the other state and either employed or registered to vote there;

A-1. If the property is a watercraft, ~~snowmobile~~ or all-terrain vehicle that is registered outside the State by an owner who at the time of purchase was a resident of another state and the watercraft, ~~snowmobile~~ or all-terrain vehicle is present in the State not more than 30 days during the 12 months following its purchase; or

B. For more than 12 months in all other cases.

For purposes of this subsection, "use" does not include storage, but means actual utilization of the property for a purpose consistent with its design. Property, other than automobiles, watercraft, ~~snowmobiles~~ and all-terrain vehicles, that is required to be registered for use in this State does not qualify for exemption unless it was registered by its present owner outside this State

more than 12 months prior to its registration in this State.

Sec. 18. 36 MRSA §1952-A, as amended by PL 1995, c. 65, Pt. A, §143 and affected by Pt. A, §153 and Pt. C, §15, is further amended to read:

§1952-A. Payment of tax on vehicles and watercraft

The tax imposed by chapters 211 to 225 on the sale or use of any vehicle or watercraft must, except where the dealer ~~thereof~~ of the vehicle or watercraft has collected ~~such~~ the tax in full, be paid by the purchaser or other person seeking registration of the vehicle or watercraft at the time and place of registration of ~~such~~ the vehicle or watercraft. In the case of vehicles except snowmobiles and all-terrain vehicles, the tax must be collected by the Secretary of State and transmitted to the Treasurer of State as provided by Title 29-A, section 409. In the case of watercraft, snowmobiles and all-terrain vehicles, the tax must be collected by the Commissioner of Inland Fisheries and Wildlife and transmitted to the Treasurer of State as provided by Title 12, sections 7793-A to 7793-E, 7824-A to 7824-E or 7854-A ~~to 7854-E, 7824-B, 7824-E and 7824-F.~~

Sec. 19. 36 MRSA §1955-C, as amended by PL 1995, c. 65, Pt. A, §146 and affected by Pt. A, §153 and Pt. C, §15, is further amended to read:

§1955-C. Assessment for vehicles

Certificates forwarded to the State Tax Assessor under Title 29-A, section 409, subsection 4 or Title 12, section 7793-C, ~~7824-C~~ 7824-F or 7854-C, must be treated as returns filed under this Title for purposes of section 141.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 1995.

Effective July 1, 1995.

CHAPTER 468

H.P. 577 - L.D. 782

An Act to Establish a Management Framework for the Lobster Fishery within State Waters

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

Sec. 1. 5 MRSA §12004-I, sub-§57-A is enacted to read:

<u>57-A.</u>	<u>Lobster</u>	<u>Expenses</u>	<u>12</u>
<u>Marine</u>	<u>Management</u>	<u>Only</u>	<u>MRSA</u>
<u>Resources</u>	<u>Policy</u>		<u>\$6447</u>
<u>Zones</u>	<u>Councils</u>		

Sec. 2. 12 MRSA §6404, as enacted by PL 1977, c. 661, §5, is amended to read:

§6404. Suspension based on conviction of scrubbing lobsters

The commissioner shall suspend the lobster and crab fishing license, wholesale seafood license and the commercial fishing license of any license holder convicted in court of violating section ~~6437~~ 6438-A. The suspension ~~shall~~ must be for one year from the date of conviction.

Sec. 3. 12 MRSA §6421, as amended by PL 1993, c. 499, §§2 and 3, is further amended to read:

§6421. Lobster and crab fishing licenses

1. License required. It is unlawful for any person to engage in the activities authorized by this license under this section without a current Class I, Class II ~~or~~ Class III, Class IV or student lobster and crab fishing license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a Class I, Class II ~~or~~ Class III, Class IV or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

3-A. License limitation. A license authorizes activities by individuals as follows.

A. A Class I license authorizes the licensed activities by the individual who is named in the license. Any individual assisting or helping a Class I license holder in these activities must also be licensed.

B. A Class II license authorizes the license holder to engage in the licensed activities. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

C. A Class III license authorizes the license holder to engage in the licensed activities. A Class III license holder may engage 2 unlicensed crew members to assist in the licensed activities

under the direct supervision of the Class III license holder.

D. A Class IV license authorizes the apprentice so licensed to engage in the licensed activities on that apprentice's sponsor's vessel when the apprentice's sponsor is on board the vessel. A Class IV license holder may not tend any traps unless the traps are fished by the sponsor of the apprentice so licensed.

E. A student license authorizes the license holder to engage in the licensed activities using not more than 150 lobster traps at any one time.

4. Exception. A license is not required to take or catch crabs with bare hands or hook and line.

5. Eligibility. A Class I, Class II ~~or~~ Class III, Class IV or student lobster and crab fishing license may only be issued to an individual and is a resident license. A Class I, Class II or Class III license may be issued to a person only if the person:

A. Possessed a calendar year 1993 or calendar year 1994 Class I, Class II or Class III license issued under this section or possessed a Class I, Class II or Class III license under this section that was issued between January 1, 1995 and March 31, 1995 and owned and operated a boat used for harvesting lobsters in the coastal waters in calendar year 1993 or 1994 or between January 1, 1995 and March 31, 1995;

B. Held a Class I, Class II or Class III license issued under this section in calendar year 1992 and documents to the satisfaction of the commissioner that the person did not possess a license issued under this section in calendar year 1993 or 1994 and did not apply for a license issued under this section between January 1, 1995 and March 31, 1995 because of an injury or other medical condition;

C. Meets the requirements of the apprentice program under section 6422;

D. Documents to the commissioner that the commissioner had suspended the person's license privileges for a length of time that included the entire period between January 1, 1993 and March 31, 1995;

E. Documents to the commissioner that the person made a substantial investment between January 1, 1993 and April 30, 1995 in equipment directly related to the harvesting of lobsters. The commissioner shall define by rule the term "substantial investment"; or

F. Is 65 years of age or older and has held a lobster and crab fishing license.

5-A. Student license eligibility. A student license may only be issued to a person who, at the time of application, is a full-time student not more than 22 years of age.

6. Buoy colors. Each license applicant must describe, on the application, a single color design of the applicant's buoys.

7-A. Fee. Except as provided in subsection 8, the fee for the license is:

A. Forty-six dollars for a Class I license for applicants under 18 years of age;

B. Ninety-three dollars for a Class I license for applicants 18 years of age or older;

C. One hundred eighty-six dollars for a Class II license; ~~and~~

D. Two hundred seventy-nine dollars for a Class III license;

E. Forty-six dollars for a Class IV license for applicants under 18 years of age;

F. Ninety-three dollars for a Class IV license for applicants 18 years of age or older; and

G. Forty-six dollars for a student license.

8. Exception. The fee for a Class I or a Class IV license for applicants 70 years of age or older is \$46.

Sec. 4. 12 MRSA §6422 is enacted to read:

§6422. Apprentice program

1. Program established; experience component. By July 1, 1996, the commissioner shall establish by rule an apprentice program for entry into the lobster fishery. The program must include practical lobster fishing experience. A person must hold a Class IV license under section 6421 to participate in the program.

2. Length of program. The commissioner shall determine the length of time an apprentice is enrolled in the program, which must be a minimum of 2 years.

3. Educational courses. The program may include any educational courses the commissioner determines appropriate. Educational courses may be taught by the department or by any public or private sector association or organization authorized by the commissioner. For any course taught by the department, the commissioner shall set an enrollment fee

sufficient to recover all costs incurred by the department in teaching the course.

4. Allowance for waivers. Notwithstanding subsections 1 and 2, the commissioner may waive all or part of the practical lobster fishing experience component or the program length for a person who holds a Class IV license if the person:

A. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class II or Class III license issued under section 6421;

B. Documents to the commissioner that the person obtained practical lobster fishing experience as a holder of a student license issued under section 6421; or

C. Documents to the commissioner that the person:

(1) Held a license issued under section 6421 during any calendar year between calendar year 1984 and calendar year 1994 or between January 1, 1995 and March 31, 1995; and

(2) Held a license issued under section 6501, 6701, 6702, 6731, 6745, 6746, 6748 or 6748-A in calendar year 1994 or between January 1, 1995 and March 31, 1995.

Sec. 5. 12 MRSA §§6431-A, 6431-B, 6431-C and 6431-D are enacted to read:

§6431-A. Trap limit

1. Limit. Except as provided in subsection 2, it is unlawful for the holder of a Class I, Class II or Class III license issued under section 6421 to have more than 1,200 traps submerged in the coastal waters of the State.

2. Trap limit exception. The holder of a Class I, Class II or Class III license issued under section 6421 who documents to the commissioner that the license holder had an average of more than 1,200 traps submerged in the coastal waters of the State in calendar year 1994 and calendar year 1995 has until March 1, 2003 to reduce that average number of traps to 1,200 or less. At a minimum, the license holder must divide the average number of submerged traps in excess of 1,200 by the number 7 and, starting in calendar year 1996, annually reduce the number of traps by the resulting number.

3. Effective date. This section takes effect March 1, 1996.

§6431-B. Tag system

By March 1, 1996, the commissioner shall establish by rule a lobster trap tag system under which lobster and crab fishing license 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 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.

§6431-C. Lobster Management Fund

1. Lobster Management Fund. The Lobster Management Fund is established as a dedicated nonlapsing fund. The fund is administered by the department.

2. Purpose. All money credited to the Lobster Management Fund must be used to cover the costs of trap tags and the administration and enforcement of a lobster trap tag system under section 6431-B and the costs associated with lobster management policy councils and referenda pursuant to section 6447.

§6431-D. Boat trap limit

1. Boat limit. Except as provided in subsection 2, it is unlawful to tend more than 1,200 traps from a boat in the coastal waters of the State.

2. Exception. Two or more holders of Class I, Class II or Class III licenses issued under section 6421 who harvest lobsters from the same boat may collectively tend more than 1,200 traps from that boat if the license holders:

A. Document to the commissioner the average number of traps the license holders fished from the boat in the coastal waters of the State in calendar year 1995 and that average number exceeds 1,200.

(1) When license holders qualify under this paragraph, the trap limit for the boat in calendar year 1996 is the average number of traps the license holders fished from the boat in the coastal waters of the State in calendar year 1994 and calendar year 1995. The number of traps fished from the boat must be reduced to 1,200 or less by March 1, 2003. The commissioner may determine by rule a method for proportionally reducing the number of traps fished from a boat;
or

B. Document to the commissioner that the license holders fished an average of more than 1,200 traps from a boat in the coastal waters of the State in calendar year 1994 and calendar year 1995 and are family members. For the purposes of this paragraph, being "family members" means that one license holder on the boat must be related to each of the license holders on the boat as either a spouse, sibling, parent by blood, parent by adoption, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

(1) When license holders qualify under this paragraph, the trap limit for the boat is the product of 1,200 multiplied by the number of license holders who are family members documented under this paragraph who continue to harvest lobsters from the boat in calendar year 1996 and consecutive calendar years thereafter. A license holder who is a family member documented under this paragraph and who does not harvest lobsters from the boat in calendar year 1996 or any subsequent calendar year may not harvest lobsters from the boat.

3. Effective date. This section takes effect March 1, 1996.

Sec. 6. 12 MRSA §§6437 and 6438, as enacted by PL 1977, c. 661, §5, are repealed.

Sec. 7. 12 MRSA §6438-A is enacted to read:

§6438-A. Artificial removal of eggs; prohibition

1. Prohibition. It is unlawful to remove extruded eggs from any female lobster or to take, buy, sell, possess, transport or ship any female lobster from which extruded eggs have been removed by any means other than natural hatching.

2. Penalty. A violation of this section is a Class D crime, except that the court shall impose a fine of \$100 for each lobster.

Sec. 8. 12 MRSA §§6446 and 6447 are enacted to read:

§6446. Lobster management zones

1. Establishment of zones. The commissioner may establish by rule zones to facilitate local or regional management of lobster fishery efforts.

2. Rules for zones. Notwithstanding any other provision of law, the commissioner may not adopt rules that limit fishing efforts in a zone established under subsection 1 unless those rules are proposed by a lobster management policy council established for a zone pursuant to section 6447 and the proposed rules

were approved in a referendum pursuant to section 6447, subsection 6. The rules adopted by the commissioner must accurately reflect the intent of the rules proposed by the lobster management policy council, but are not required to be a verbatim rendition of the proposed rules. The rules adopted under this section may regulate only the following:

- A. The number of lobster traps fished and the time periods allowed for complying with that number;
- B. The number of lobster traps allowed on a trawl; and
- C. The time of day when lobster fishing may occur.

3. Application of zone rules. The commissioner may adopt rules that define the application of zone rules to a person who holds a license under section 6421 and who fishes for lobsters in more than one zone.

4. Public hearing not required. In adopting rules under subsection 2, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052. The commissioner shall comply with all other provisions of Title 5, chapter 375 when adopting rules under subsection 2.

5. Role of advisory council. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this section without the advice and consent of the Marine Resources Advisory Council.

§6447. Lobster management policy councils

1. Councils. The commissioner shall establish a lobster management policy council for each zone created under section 6446. Council members must be reimbursed pursuant to Title 5, section 12004-1, subsection 57-A.

2. Rules for operation. By July 1, 1996, the commissioner shall establish by rule operating procedures for lobster management policy councils, including, but not limited to, the number of members on councils, the election and terms of council members and the process for referenda on council policies. A council must have an odd number of voting members.

3. Council members appointment; election. Upon establishing a lobster management policy council, the commissioner shall appoint members to the council to equitably represent lobster harvesters throughout a zone. Members appointed by the commissioner serve one-year terms. An election of subsequent council members must be held within one

year of the commissioner's appointments. Council members are elected by plurality vote.

4. Legislative representation. The President of the Senate and the Speaker of the House shall jointly appoint a Legislator to each lobster management policy council. The Legislator is a nonvoting member and serves a 2-year term.

5. Council authority. Upon approval in a referendum under subsection 6, a lobster management policy council may propose to the commissioner regulations for a zone to place the following limitations on lobster and crab fishing license holders that fish in that zone, provided the proposed limitations are stricter than the limitations under section 6431-A, 6439, 6439-A or 6440:

- A. The number of lobster traps fished and the time periods allowed for complying with that number;
- B. The number of lobster traps allowed on a trawl; and
- C. The time of day when lobster fishing may occur.

6. Referendum on policy proposals. A lobster management policy council must submit proposed regulations to referendum in the zone in which the regulations would apply before submitting those proposed regulations to the commissioner. A lobster management council may submit proposed regulations to the commissioner if the proposed regulations are approved by 2/3 of those voting in the referendum.

7. Council member and voter qualifications. A person may not be a member of a zone's lobster management policy council or vote in a zone's council election or referendum unless that person:

- A. Possesses a Class I, Class II or Class III lobster and crab fishing license issued under section 6421; and
- B. Declared at the time of obtaining a Class I, Class II or Class III license the zone in which the person predominantly harvests lobsters. For the purposes of this subsection, a person may declare only one zone as the zone in which the person predominantly harvests lobsters.

The holder of a lobster and crab fishing license issued under section 6421 may fish for lobsters in any zone.

8. Role of advisory council. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this section without the advice and consent of the Marine Resources Advisory Council.

Sec. 9. 12 MRSA §6451, sub-§8 is enacted to read:

8. Apprentice program. The commissioner may authorize the expenditure of money in the Lobster Fund to cover the initial costs of developing and delivering the educational component of the apprentice program under section 6422, subsection 3. Any expenditures must be reimbursed to the Lobster Fund from the fees charged under section 6422, subsection 3.

Sec. 10. Allocation. The following funds are allocated from the Lobster Management Fund to carry out the purposes of this Act.

	1995-96	1996-97
MARINE RESOURCES, DEPARTMENT OF		
Administration - Marine Resources		
Positions - Other Count	(2.0)	(2.0)
Personal Services	\$36,624	\$48,832
All Other	62,500	80,000
Capital Expenditures	12,000	
TOTAL	\$111,124	\$128,832

Provides allocations for the costs of 2 additional Clerk Typist II positions and administrative costs necessary for administering new lobster management requirements and for the costs of establishing and operating 5 Lobster Management Policy Councils.

	1995-96	1996-97
Marine Patrol - Bureau of		
Positions - Other Count	(3.0)	(3.0)
Personal Services	\$79,388	\$105,850
All Other	30,300	40,400
Capital Expenditures	31,500	5,000
TOTAL	\$141,188	\$151,250

Allocates funds for one Boat Specialist position, 2 Marine Patrol Officer positions and additional operating and capital costs pertaining to the enforcement of the new lobster management framework.

DEPARTMENT OF MARINE RESOURCES		
TOTAL	\$252,312	\$280,082

See title page for effective date.

CHAPTER 469

H.P. 568 - L.D. 769

**An Act to Conform Maine Law
Related to Domestic Relations with
Federal Law**

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

Sec. 1. 15 MRSA §321, sub-§1, as enacted by PL 1983, c. 619, is amended to read:

1. Definition. For purposes of this section, "family or household members" means spouses or former spouses, individuals presently or formerly living as spouses, natural parents of the same child ~~or~~, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member. Holding oneself out to be a spouse ~~shall~~ is not ~~be~~ necessary to constitute "living as spouses."

Sec. 2. 15 MRSA §321, sub-§6, as enacted by PL 1983, c. 619, is amended to read:

6. Penalty. Violation of a protective order or of any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe, when the person has prior actual notice of the order, is a Class D crime. Notwithstanding any statutory provision to the contrary, an arrest for violation of a protective order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.

Sec. 3. 19 MRSA §762, sub-§4, as amended by PL 1989, c. 862, §8, is further amended to read:

4. Family or household members. "Family or household members" means spouses or former spouses, individuals presently or formerly living together as spouses, natural parents of the same child, ~~or~~ adult household members related by consanguinity or affinity or minor children of any household member when the defendant is an adult household member and for the purposes of this chapter only, includes individuals presently or formerly living together as sexual partners. Holding oneself out to be