

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective February 25, 1998

CHAPTER 574

S.P. 743 - L.D. 2021

An Act Concerning Commercial Fishing in the Vicinity of Monhegan Island

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

Sec. 1. 12 MRSA §6421, sub-§5, ¶C, as enacted by PL 1995, c. 468, §3, is amended to read:

C. Meets the requirements of the apprentice program under section 6422 or section 6475;

Sec. 2. 12 MRSA §6422, sub-§4, ¶¶A and B, as amended by PL 1997, c. 250, §7, are further amended to read:

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; ~~or~~

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

Sec. 3. 12 MRSA §6422, sub-§4, ¶E is enacted to read:

E. Documents to the commissioner that the person obtained practical lobster fishing experience as an apprentice in the Monhegan Lobster Conservation Area pursuant to section 6475.

Sec. 4. 12 MRSA c. 619, sub-c. V is enacted to read:

SUBCHAPTER V

MONHEGAN LOBSTER CONSERVATION AREA

§6471. Monhegan Lobster Conservation Area

1. Monhegan Lobster Conservation Area. The following coastal waters of the State in the vicinity of Monhegan Island are known as the Monhegan Lobster Conservation Area:

Beginning at a point located on Loran line 9960-25850 that is 2 nautical miles southwest-erly of the nearest shore of Monhegan Island; then following Loran line 9960-25850 in a southwesterly direction to the point where it in-tersects the 3-mile territorial sea line; then fol-lowing the territorial sea line around the southern end of Monhegan Island to the point where it in-tersects Loran line 9960-12889; then following Loran line 9960-12889 in a somewhat northerly direction to the point where it intersects a point that is 2 nautical miles from the nearest shore of Monhegan Island; then following a line that is 2 nautical miles from the nearest shore of Monhe-gan Island and that continues around the north-ern end of Monhegan Island to the point of beginning.

§6472. Closed and open seasons

1. Closed season. It is unlawful for a person to fish for or take lobsters in the Monhegan Lobster Conservation Area from June 26th to November 30th, both days inclusive, and on any day not included in the open season established by the commissioner under subsection 2.

2. Open season. The commissioner shall an-nually by November 1st establish by rule an open season of 180 consecutive days between December 1st and the following June 25th during which a person may fish for or take lobsters in the Monhegan Lobster Conservation Area.

A. Before establishing the open season under this section, the commissioner shall determine the open season preferred by 2/3 of the indi-viduals registered to obtain Monhegan Lobster Conservation Area trap tags under section 6474.

B. In adopting rules under this subsection, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052.

C. A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule establishing the open lobster season in the Monhegan Lobster Conser-vation Area.

D. Notwithstanding any provisions to the con-trary, the commissioner may adopt rules under this subsection without the advice and consent of the Marine Resources Advisory Council. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6473. Fishing in other waters

1. Limitations. A person registered for Monhegan Lobster Conservation Area trap tags under section 6474 may not fish for or take lobsters:

A. In the State's 3-mile territorial sea at any time, except in that portion of the coastal waters designated under section 6471 as the Monhegan Lobster Conservation Area during the open season established for the area under section 6472; and

B. In federal waters during the Monhegan Lobster Conservation Area closed season.

§6474. Fishing without Monhegan trap tags prohibited

1. Prohibition. It is unlawful for a person to submerge a lobster trap in the Monhegan Lobster Conservation Area unless a lobster trap tag designated for use in the Monhegan Lobster Conservation Area is affixed to the trap. The commissioner shall charge fees and deposit those fees for Monhegan Lobster Conservation Area trap tags in accordance with section 6431-B.

2. Trap tag expiration. Trap tags issued for use during a Monhegan Lobster Conservation Area open season expire upon the closing of that season.

3. Trap tag eligibility for the 1998-99 open season. The commissioner may not issue Monhegan Lobster Conservation Area trap tags to a person between the effective date of this section and June 25, 1999 unless that person:

A. Possesses a Class I, Class II or Class III lobster and crab fishing license;

B. Registered with the commissioner for harvesting lobsters during the January 1, 1997 to June 25, 1997 open season under rules that established the Monhegan Island Area Lobster Trap Regulation; and

C. Documents to the commissioner that that person harvested lobsters at any time between January 1, 1997 and June 25, 1997 under rules that established the Monhegan Island Area Lobster Trap Regulation.

A person eligible to obtain trap tags under this section is deemed registered for the purpose of obtaining Monhegan Lobster Conservation Area trap tags for the 1998-99 open season, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

4. Trap tag eligibility after July 31, 1999. Except as provided under subsection 5, the commissioner may not issue Monhegan Lobster Conservation Area

trap tags to a person after July 31, 1999 unless that person:

A. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that the person harvested lobsters from the Monhegan Lobster Conservation Area in the prior open season and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season;

B. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that that person did not harvest lobsters from the Monhegan Lobster Conservation Area in the prior open season because of an illness or medical condition and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season; or

C. Becomes registered for trap tag registration pursuant to section 6475.

5. License suspension and eligibility. A person eligible to register for Monhegan Lobster Conservation Area trap tags under subsection 4, paragraph A if not for the suspension of that person's Class I, Class II or Class III lobster and crab fishing license may not, for the purpose of admitting new registrants, be considered to have failed to register pursuant to section 6475, subsection 1, paragraph C, subparagraph (3). Upon reinstatement of that person's license, that person is deemed registered and the commissioner may issue trap tags to that person, unless that person notifies the commissioner before reinstatement that the person chooses to not be registered.

6. Limit on number of registrants. The total number of individuals registered to obtain Monhegan Lobster Conservation Area trap tags may not exceed the number of individuals initially eligible pursuant to subsection 3, paragraphs A, B and C.

7. Periods of registration. Monhegan Lobster Conservation Area trap tag registrations are valid as follows.

A. A person registered under subsection 3 is registered for the entire period from the effective date of this section until July 31, 1999, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

B. A person registered under subsection 4, paragraph A or B is registered for the entire period from August 1st of the year of registration until the following July 31st.

C. A person registered under subsection 4, paragraph C is registered for the entire period from the date of registration until the following July 31st.

D. A person registered under section 5 through the reinstatement of a suspended license is registered for the entire period from the date of license reinstatement until the following July 31st.

§6475. New participants; apprenticeship

1. New participants. A person who is not registered to obtain Monhegan Lobster Conservation Area trap tags may obtain trap tags if that person becomes registered for Monhegan Lobster Conservation Area trap tags pursuant to this section.

A. The commissioner shall maintain a registry of persons who have completed the Monhegan Lobster Conservation Area apprenticeship under paragraph B. Each person included in the registry must be listed chronologically according to the time and date the commissioner received a validated log book under paragraph B.

B. A person fulfills the time requirements of a Monhegan Lobster Conservation Area apprenticeship if, after November 30, 1998, that person serves for 150 fishing days during a minimum period of 24 months in the Monhegan Lobster Conservation Area on a vessel operated by a Monhegan Lobster Conservation Area trap tag registrant who agrees to sponsor that person as an apprentice. For the purposes of this subsection, a "fishing day" means 5 hours or more in a calendar day of lobster-fishing-related activity. The commissioner shall administer the apprenticeship pursuant to rules adopted under section 6422 regarding an apprentice log book and educational courses. A person completes a Monhegan Lobster Conservation Area apprenticeship upon presentation to the commissioner of a validated log book that documents that person meets the requirements of this paragraph.

C. A person listed in the registry under paragraph A may register for Monhegan Lobster Conservation Area trap tags if:

(1) That person possesses a Class I, Class II or Class III lobster and crab fishing license;

(2) That person has been listed in the registry longer than all other persons listed; and

(3) A person registered for trap tags in an open season does not register to obtain trap tags for the subsequent open season under section 6474, subsection 4, paragraph A or B.

The commissioner shall by August 15th notify a person who becomes eligible for registration under this paragraph. If that person does not register with the commissioner within 30 days, that person becomes ineligible for registration and the commissioner shall immediately notify the next individual who has been listed for the longest period of time in the registry. That individual must register within 30 days.

2. Registration in later years. A person who registers for Monhegan Lobster Conservation Area trap tags under subsection 1 must follow the provisions of section 6474, subsection 4, paragraph A or B to register for trap tags for each subsequent open season.

3. License requirements; apprenticeship. License requirements for an apprenticeship in the Monhegan Lobster Conservation Area are as follows.

A. A person who does not possess a Class I, Class II or Class III lobster and crab fishing license must possess an apprentice license issued under section 6421 to be an apprentice in the Monhegan Lobster Conservation Area. The waiver provisions of the apprentice program under section 6422, subsection 4 do not apply to an apprentice in the Monhegan Lobster Conservation Area.

B. A person who possesses a Class I, Class II or Class III lobster and crab fishing license is not required to possess an apprentice license issued under section 6421 to be an apprentice in the Monhegan Lobster Conservation Area.

4. Issuance of commercial lobster license. A person who does not possess a Class I, Class II or Class III lobster and crab fishing license may be issued a Class I, Class II or Class III lobster and crab fishing license upon completion of the apprenticeship under subsection 1, paragraph B.

§6476. Former registrants

A person whose registration to obtain Monhegan Lobster Conservation Area trap tags has lapsed may be listed in the registry under section 6475, subsection 1, paragraph A and may purchase trap tags if the person becomes registered pursuant to section 6475, subsection 1, paragraph C. A person included in the registry pursuant to this subsection must be listed chronologically according to the time and date the

commissioner received written notification from that person requesting that person be listed in the registry.

§6477. Student license holder

Notwithstanding section 6474, the commissioner may issue up to 15 Monhegan Lobster Conservation Area trap tags to a person issued a student license under section 6421. The license holder must tend the tagged traps from a vessel operated by a person registered under section 6474. The student license holder must be present when that license holder's lobster traps are tended. A student license holder shall certify on forms supplied by the commissioner that a person registered under section 6474 agrees to allow the student license holder to fish for or take lobsters from that person's vessel.

Sec. 5. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

DEPARTMENT OF MARINE RESOURCES

Administration - Division of

All Other	\$2,700
Allocates funds for the estimated travel, meal and lodging expenses of the Task Force to Study Lobster Subzones and Exclusive Use of the Lobster Resource.	

Sec. 6. Task force established. The Task Force to Study Lobster Subzones and Exclusive Use of the Lobster Resource, referred to in this Act as the "task force," is established.

1. Appointments. Appointments to the task force must be made within 30 days of the effective date of this Act. The task force is comprised of the following 13 members appointed by the Commissioner of Marine Resources:

- A. Two members representing the general public;
- B. One member who is a resident of Monhegan Island and who holds a Class I, Class II or Class III lobster and crab fishing license;
- C. One member who is a resident of Friendship and who holds a Class I, Class II or Class III lobster and crab fishing license;

- D. One member who is a resident of a town on the State's western coast and who holds a Class I, Class II or Class III lobster and crab fishing license;
- E. One member who is a resident of a town on the State's eastern coast and who holds a Class I, Class II or Class III lobster and crab fishing license;
- F. One member who is a resident of a town on the State's central coast and who holds a Class I, Class II or Class III lobster and crab fishing license;
- G. Two members with scientific expertise in the State's lobster fishery;
- H. Two employees of the Department of Marine Resources, one of whom is an employee of the Bureau of Marine Patrol;
- I. One member who is a member of the Lobster Advisory Council; and
- J. One member who is a member of the Marine Resources Advisory Council.

2. Duties. The task force shall study the use of subzones within the current lobster zone structure as a management tool.

The task force shall study issues related to subzones, including, but not limited to, exclusive access in those subzones to the lobster resource and the relationship of the subzones to the existing 7 lobster policy management zones established by the commissioner under Title 12, section 6446. The task force shall also examine the policy and legal implications and benefits and risks of establishing the subzones, including the preservation of local culture and traditions on island communities and in mainland communities.

3. Meetings; election of chair. Within 10 days after appointment of all members, the Commissioner of Marine Resources shall call and convene the first meeting of the task force. The task force shall select a chair from among its members. Additional meetings may be called by the chair or by a majority of task force members.

4. Compensation. Task force members serve without per diem. Members may be compensated for travel, meal and lodging expenses if such compensation is approved by a majority of task force members and if adequate funding is available.

5. Funding. The task force may seek, accept and expend private or public funding for any activity related to the accomplishment of its duties.

6. Staffing. The Department of Marine Resources shall provide the task force with staffing and clerical support from within existing budgeted resources.

7. Budget. The Department of Marine Resources shall administer the task force's budget.

8. Report. The task force shall submit its findings and recommendations, together with any implementing legislation, to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 1, 1999. The joint standing committee of the Legislature having jurisdiction over marine resources matters is authorized to report out legislation during the First Regular Session of the 119th Legislature regarding lobster management zones and subzones.

Sec. 7. Transition. The Commissioner of Marine Resources shall amend rules relating to the Monhegan Island Area Lobster Trap Regulation to make them conform to the requirements of this Act. Rules relating to the Monhegan Island Area Lobster Trap Regulation in effect on the effective date of this Act continue in effect until amended by the Commissioner of Marine Resources, except that any portion of those rules that are inconsistent with the provisions of this Act are void and of no effect. A person who holds a valid 1998 lobster and crab fishing license and who was registered to harvest lobsters in the Monhegan Island Conservation Area for the 1997-98 season but who is not deemed to be registered for Monhegan Lobster Conservation Area trap tags pursuant to the Maine Revised Statutes, Title 12, section 6474, subsection 3 may harvest lobsters under the person's 1998 license in waters other than those within the Monhegan Lobster Conservation Area in accordance with applicable laws and rules. Rulemaking under this section is routine technical rulemaking in accordance with Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 575

S.P. 736 - L.D. 2014

An Act Concerning Elver Fishing

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

Whereas, immediate conservation efforts are necessary to preserve the health of the elver fishery; 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 §6001, sub-§13-G, as amended by PL 1997, c. 91, §1, is further amended to read:

13-G. Elver fyke net. "Elver fyke net" means a fyke net that is 30 feet or less in length from cod end to either wing tip, is fitted with netting that measures ~~1/8 inch~~ 1/8-inch bar mesh or less ~~and that~~ contains a 1/2-inch or less bar mesh excluder panel that covers the entrance of the net, and consists of not more than one funnel end, one cod end and 2 wings.

Sec. 2. 12 MRSA §6505-B, sub-§2, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

2. Tags for elver fyke net and Sheldon eel trap. It is unlawful for a person to submerge an elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless a tag issued by the department is affixed to the shoreside wing of the net or trap and is clearly visible. The department may issue a replacement tag when an owner issued a tag documents that a net or trap has been damaged or lost.

Sec. 3. 12 MRSA §6575-A, as enacted by PL 1995, c. 536, Pt. A, §9 and affected by §13, is amended to read:

§6575-A. Closed period; elver harvesting

It is unlawful for a person to fish for or take elvers from noon ~~Saturday~~ Friday to noon Sunday. A person may leave an elver fyke net or a Sheldon eel trap in the coastal waters of the State during the closed period if the net or trap is left in a condition that prevents the capture of elvers.

Sec. 4. 12 MRSA §6575-B, sub-§5, as enacted by PL 1995, c. 536, Pt. A, §9, is amended to read:

5. Use of dip nets. It is unlawful for a person to use a dip net to fish for or take elvers while standing ~~in the water of a river, stream or brook within~~ the coastal waters of the State.

Sec. 5. 12 MRSA §6575-C, sub-§3, as amended by PL 1997, c. 91, §6, is further amended to read:

3. Portion of rivers, streams and brooks. It is unlawful for a person to fish for or take elvers at