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Legislative Document

No. 1233

S.P. 438

In Senate, April 7, 2015

An Act To Improve Enforcement of Maine's 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.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BURNS of Washington.
Cosponsored by Representative KUMIEGA of Deer Isle and
Senator: MIRAMANT of Knox, Representative: SAWICKI of Auburn.

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

2 **Sec. 1. 12 MRSA §6210, sub-§2**, as amended by PL 2013, c. 485, §1, is further
3 amended to read:

4 **2. Initiation and notice.** If the Chief of the Bureau of Marine Patrol delivers to the
5 commissioner a written statement under oath that the chief has probable cause to suspect
6 that a violation of section 6575-K or section 6864, subsection 7-A has been committed,
7 the commissioner shall immediately examine the statement and determine whether to
8 conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty
9 under this section. If the commissioner determines that the imposition of a penalty is
10 necessary, the commissioner shall immediately notify the person who is alleged to have
11 violated the law in accordance with Title 5, section 9052. The notice must state that the
12 person may request a hearing in writing within 10 days of the notice. The notice is
13 deemed received 3 days after the mailing.

14 **Sec. 2. 12 MRSA §6210, sub-§7** is enacted to read:

15 **7. Renewal of licenses.** If a holder of a license issued under section 6302-A, 6505-A
16 or 6864 fails to make payment of a pecuniary gain penalty assessed under this section, the
17 commissioner may refuse to renew that holder's license until the holder complies with the
18 payment requirements.

19 **Sec. 3. 12 MRSA §6306, sub-§1, ¶A**, as amended by PL 2009, c. 229, §14, is
20 further amended to read:

21 A. Watercraft or vehicles and the equipment located on watercraft or vehicles used
22 primarily in a trade or business requiring a license or aquaculture lease under this Part
23 may be searched or inspected at any time. This inspection includes covert electronic
24 surveillance to monitor and enforce any law or rule relating to the deployment or
25 retrieval of lobster gear.

26 **Sec. 4. 12 MRSA §6374, sub-§1**, as enacted by PL 2011, c. 311, §4, is amended
27 to read:

28 **1. Initiation and notice.** If the Chief of the Bureau of Marine Patrol delivers to the
29 commissioner a written statement under oath that the chief has probable cause to suspect
30 that a violation of marine resources law has been committed, the commissioner shall
31 immediately examine the affidavit and determine if a suspension is necessary. If the
32 commissioner determines based on a preponderance of the evidence that a suspension is
33 necessary, the commissioner shall immediately notify in writing the person who violated
34 the law. The notice must state that there is an opportunity for a hearing, if the person
35 requests the hearing in writing within 10 days of the notice. The notice is deemed
36 received 3 days after the mailing.

37 **Sec. 5. 12 MRSA §6374, sub-§2**, as amended by PL 2011, c. 598, §20, is further
38 amended to read:

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

8 A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether
9 the person requesting the hearing had a license and whether that person committed a
10 violation of marine resources law; and

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

14 **Sec. 6. 12 MRSA §6404**, as amended by PL 2007, c. 201, §3, is further amended
15 to read:

16 **§6404. Revocation based on conviction of scrubbing lobsters**

17 The commissioner shall ~~suspend~~ revoke the lobster and crab fishing license,
18 wholesale seafood license and the commercial fishing license of any license holder or the
19 nonresident lobster and crab landing permit of a permit holder convicted in court of
20 violating section 6438-A. ~~The suspension must be for one year from the date of~~
21 ~~conviction.~~

22 **Sec. 7. 12 MRSA §6412, sub-§3**, as amended by PL 2013, c. 468, §13, is further
23 amended to read:

24 **3. Process for suspension for failing to comply with monthly reporting.** If the
25 commissioner determines that a person who holds a license or certificate under this Part
26 has failed to comply with a monthly reporting requirement established by rule pursuant to
27 section 6173, the commissioner shall notify the person ~~at the telephone number provided~~
28 ~~on the application for the license or certificate and by e-mail if an e-mail address is~~
29 ~~provided on the application~~ by mailing the notice to the person at the last known address
30 provided in the department's marine resources licensing and enforcement database, or by
31 serving the notice in hand. If the license or certificate holder has not complied with the
32 reporting requirements within 45 days after the commissioner has provided the notice, the
33 commissioner shall mail a notice of suspension to the license or certificate holder. The
34 notice is deemed received 3 days after the mailing. The notice must:

35 A. Describe the information that the license or certificate holder is required to
36 provide pursuant to this Part that the department has not received; and

37 B. State that, unless all the information described in paragraph A is provided to the
38 department or the license or certificate holder requests a hearing, the license or
39 certificate will be suspended in 3 business days after the license or certificate holder's
40 receipt of the notice.

1 If the license or certificate holder has not complied with the reporting requirements or
2 requested a hearing within 3 business days after receipt of the notice, the commissioner
3 shall suspend the license or certificate.

4 **SUMMARY**

5 This bill amends the laws governing the enforcement of the marine resources laws in
6 the following ways.

7 1. It specifies that notices of penalties and hearings are deemed received 3 days after
8 they are mailed.

9 2. It authorizes the Commissioner of Marine Resources to deny the renewal of a
10 license for an elver harvester or elver dealer who has not paid a pecuniary gain fine
11 assessed to that harvester or dealer for buying or selling elvers in excess of that
12 harvester's or dealer's quota.

13 3. It amends the consent to inspection provision to allow covert electronic
14 surveillance by the Bureau of Marine Patrol, including allowing the bureau to place
15 electronic surveillance equipment on lobster vessels for the purpose of determining if a
16 lobster and crab fishing license holder is fishing over the trap limit.

17 4. It imposes a time limit of up to 60 days for an administrative hearing on a license
18 suspension to be held, in order to prevent an individual from continually delaying a
19 license suspension.

20 5. It changes the penalty for scrubbing egged lobsters from a one-year license
21 suspension to license revocation.

22 6. It specifies that notice of failure to comply with monthly reporting requirements
23 must be by mail or by serving the notice in hand and not by e-mail or telephone.