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S.P. 483

In Senate, April 28, 2011

An Act To Make Technical Changes to 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.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SNOWE-MELLO of Androscoggin.

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

2 **PART A**

3 **Sec. A-1. 12 MRSA §6302-A, sub-§1**, as amended by PL 2009, c. 396, §1, is
4 further amended to read:

5 **1. Tribal exemption; commercial harvesting licenses.** A member of the
6 Passamaquoddy Tribe who is a resident of the State is not required to hold a state license
7 or permit issued under section 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6701,
8 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803 or 6804 to conduct
9 activities authorized under the state license or permit if that member holds a valid license
10 issued by the tribe to conduct the activities authorized under the state license or permit.
11 A member of the Passamaquoddy Tribe issued a tribal license pursuant to this subsection
12 to conduct activities is subject to all laws and rules applicable to a person who holds a
13 state license or permit to conduct those activities and to all the provisions of chapter 625,
14 except that the member of the tribe:

15 A. May utilize lobster traps tagged with trap tags issued by the tribe in a manner
16 consistent with trap tags issued pursuant to section 6431-B. A member of the tribe is
17 not required to pay trap tag fees under section 6431-B if the tribe issues that member
18 trap tags;

19 B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe in a
20 manner consistent with tags issued pursuant to 6505-B. A member of the tribe is not
21 required to pay elver fishing gear fees under section 6505-B if the tribe issues that
22 member elver fishing gear tags; and

23 C. Is not required to hold a state shellfish license issued under section 6601 to obtain
24 a municipal shellfish license pursuant to section 6671.

25 **Sec. A-2. 12 MRSA §6310, sub-§1**, as enacted by PL 1999, c. 643, §1, is
26 amended to read:

27 **1. Appeal of license denial.** A person who is denied a Class I, Class II or Class III
28 lobster and crab fishing license because that person does not meet the eligibility
29 requirements of section 6421, subsection 5, paragraph A ~~or~~; a person who is denied a
30 handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking
31 and trapping license because that person does not meet the eligibility requirements of
32 section 6749-O, subsection 2-A; or a person who is denied a hand fishing scallop license
33 or a scallop dragging license because that person does not meet the eligibility
34 requirements of section 6706, subsection 2 may appeal to the commissioner under this
35 section for a review of that license denial.

36 **Sec. A-3. 12 MRSA §6310, sub-§2, ¶C** is enacted to read:

37 C. A hand fishing scallop license or a scallop dragging license may be issued to a
38 person on appeal only if:

39 (1) A substantial illness or medical condition on the part of the person or a
40 family member prevented that person from meeting the eligibility requirements

1 for that license, and the person documents that the person harvested scallops
2 while in possession of the same license within one year prior to the onset of the
3 illness or medical condition. The person shall provide the commissioner with
4 documentation from a physician describing the illness or other medical condition.
5 A person must request an appeal under this subparagraph within one year of the
6 onset of the illness or medical condition; or

7 (2) Service in the United States Armed Forces or the United States Coast Guard
8 precluded that person from participating in the scallop fishery and meeting the
9 eligibility requirements for that license, and the person documents that the person
10 harvested scallops while in possession of the same license within one year prior
11 to entering the service. The person may not have served for more than 6
12 consecutive years since the most recent year in which the person held a license,
13 and the person must have been honorably discharged from service. A person
14 must request an appeal under this subparagraph within one year of discharge
15 from service.

16 **Sec. A-4. 12 MRSA §6421, sub-§5-D, ¶B,** as enacted by PL 2007, c. 201, §7, is
17 amended to read:

18 B. Possesses a valid federal lobster permit or a valid lobster fishing license from a
19 state other than this State; and

20 **Sec. A-5. 12 MRSA §6421, sub-§5-D, ¶C,** as enacted by PL 2007, c. 201, §7, is
21 amended to read:

22 C. Except as authorized under subsection 5-E, does not operate a lobster and crab
23 fishing vessel with an established base of operations in this State; ~~and.~~

24 **Sec. A-6. 12 MRSA §6421, sub-§5-D, ¶D,** as enacted by PL 2007, c. 201, §7, is
25 repealed.

26 **Sec. A-7. 12 MRSA §6421, sub-§5-E,** as enacted by PL 2007, c. 201, §8, is
27 amended to read:

28 **5-E. Exception; nonresident lobster and crab landing permit with an**
29 **established base of operations in State.** An individual may be excepted from
30 subsection 5-D, paragraph C as long as the individual submits documentation to the
31 commissioner by December 31, ~~2007~~ 2011 that the individual operated a lobster and crab
32 fishing vessel with an established base of operations in the State as a nonresident in
33 calendar years ~~2006~~ 2010 and ~~2007~~ 2011. Documentation must include at a minimum
34 proof of lobster landings at a Maine dealer, proof of utilization of a mooring or dock in a
35 Maine harbor for a sufficient time to meet the requirements to be an established base of
36 operations in this State pursuant to ~~Title 12,~~ section 6001, subsection 13-I, proof that the
37 individual possessed a valid federal lobster permit or a valid lobster fishing license from a
38 state other than this State and proof that the individual did not meet the resident
39 provisions under section 6301, subsection 1.

40 **Sec. A-8. 12 MRSA §6431, sub-§3,** as repealed and replaced by PL 1995, c. 491,
41 §1, is amended to read:

1 **3. Certified lobster measure.** The department shall use a ~~double-gauge~~ lobster
2 measure that is certified for accuracy by the Department of Agriculture, Food and Rural
3 Resources, Office of Sealer of Weights and Measures. The measure must ~~have one gauge~~
4 ~~that conforms to the minimum legal lobster size in effect and another gauge 5 inches in~~
5 ~~length conform to the legal lobster sizes in effect at the time.~~ Any measurement used to
6 substantiate a violation of this section must be made with a certified ~~double-gauge~~ lobster
7 measure.

8 **Sec. A-9. 12 MRSA §6431-E, sub-§1, ¶E** is enacted to read:

9 E. "Temporarily" means for a period of time not exceeding one year in duration.

10 **Sec. A-10. 12 MRSA §6431-G, sub-§2**, as enacted by PL 2009, c. 394, §8, is
11 amended to read:

12 **2. Exemptions.** The commissioner may authorize an individual who possesses a
13 Class I, Class II or Class III lobster and crab fishing license to fish for or take lobsters
14 from a vessel other than the vessel named on the holder's lobster and crab fishing license
15 if:

16 A. A Class I, Class II or Class III license holder is temporarily prevented by illness
17 or disability from fishing for or taking lobsters from the license holder's vessel and
18 requests in writing to the commissioner that the commissioner authorize the
19 individual to operate that vessel to fish for or take lobsters and tend the license
20 holder's traps pursuant to section 6434;

21 B. The vessel named on the individual's license has become temporarily inoperable
22 because of an accident or a mechanical failure and the individual requests in writing
23 and is granted permission from the commissioner to use another vessel to fish for or
24 take lobsters; or

25 C. The individual is designated as the sponsor of a student pursuant to section 6421
26 and is operating the vessel named on the student's license for the purposes of
27 providing practical lobster fishing training to the student while the student is present
28 on the vessel.

29 For the purposes of this subsection, "temporarily" means for a period of time not
30 exceeding one year in duration.

31 **Sec. A-11. 12 MRSA §6432, sub-§2**, as amended by PL 2007, c. 201, §14, is
32 further amended to read:

33 **2. Marking.** It is unlawful to set, raise, lift or transfer any lobster trap or buoy
34 unless it is clearly marked with the owner's lobster and crab fishing license number or the
35 owner's nonresident lobster and crab landing permit number. A lobster or crab trap or
36 trawl must be marked by a lobster buoy as described in subsections 3 and 4. The buoy
37 must be visible at the surface.

38 **Sec. A-12. 12 MRSA §6432, sub-§3**, as enacted by PL 1977, c. 661, §5, is
39 amended to read:

1 **3. Color design.** It ~~shall be~~ is unlawful to set, raise, lift or transfer any lobster trap
2 unless the color design of the attached buoy is the same as the color design that is on file
3 with the license application and is displayed on the boat, or unless the person is duly
4 licensed and possesses written permission from the rightful owner of the lobster trap or
5 buoy. Prior notification of changes in buoy color design ~~shall~~ must be provided to the
6 commissioner. The Bureau of Marine Patrol may require the alteration of an individual's
7 lobster and crab fishing buoy color design if a marine patrol officer has determined that
8 the buoy color design is not distinct and distinguishable from the buoy color designs of
9 the individual's family members as defined by section 6431-E.

10 **Sec. A-13. 12 MRSA §6434, sub-§2,** as amended by PL 2003, c. 520, §5, is
11 further amended to read:

12 **2. Adoption of rules required.** The commissioner shall adopt rules, no later than
13 January 1, 1990, authorizing the removal of traps, warps, buoys or cars that are washed
14 up above the mean low tide mark or are otherwise abandoned or lost. Notwithstanding
15 Title 25, sections 3502 and 3503, the commissioner may dispose of such traps, warps,
16 buoys or cars, or authorize their disposal, if the owner cannot be identified or if the owner
17 has been notified and fails to respond within 30 days.

18 **Sec. A-14. 12 MRSA §6501, sub-§3, ¶B,** as amended by PL 2001, c. 421, Pt. B,
19 §25 and affected by Pt. C, §1, is further amended to read:

20 B. A person may fish for, take, possess or transport halibut if they have been taken
21 by tub trawl or by hook and line and are only for personal use.

22 **Sec. A-15. 12 MRSA §6501, sub-§3, ¶C,** as amended by PL 2001, c. 421, Pt. B,
23 §25 and affected by Pt. C, §1, is repealed.

24 **Sec. A-16. 12 MRSA §6501, sub-§6,** as amended by PL 2001, c. 272, §7, is
25 further amended to read:

26 **6. Definition.** For the purposes of this chapter, "fish" means all marine finfish ~~and~~
27 except Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, alewife, Atlantic
28 mackerel, blueback herring, squid ~~or~~, butterfish, scup, black sea bass, smelt and shad.
29 For the purposes of this chapter, "fish" also means all other marine organisms, except
30 lobsters, crabs, sea urchins, shellfish, scallops, marine worms, elvers, sea cucumbers,
31 eels, shrimp or seaweed.

32 **Sec. A-17. 12 MRSA §6505-D, sub-§2,** as amended by PL 1999, c. 309, §2, is
33 further amended to read:

34 **2. Permissible uses.** The commissioner may use the fund ~~in accordance with a plan~~
35 ~~required under subsection 3~~ to research and manage the State's eel and elver resources, to
36 enforce the laws related to eels and elvers and to cover the costs associated with
37 determining eligibility for elver fishing licenses.

38 **Sec. A-18. 12 MRSA §6505-D, sub-§3,** as enacted by PL 1995, c. 536, Pt. A, §8,
39 is repealed.

1 cooperation with the Commissioner of Marine Resources under the provisions of this
2 chapter and Title 12, section 6031-A. The fund consists of the proceeds from the sale of
3 bonds authorized for the purposes set forth in subsection 3 and funds received as
4 contributions from private and public sources for those purposes. The fund must be held
5 separate and apart from all other money, funds and accounts. Eligible investment
6 earnings credited to the assets of the fund become part of the assets of the fund. Any
7 balance remaining in the fund at the end of a fiscal year must be carried forward for the
8 next fiscal year.

9 **2. Grants.** The board may make grants to state agencies and designated cooperating
10 entities for the purposes identified in subsection 3. Grants are made according to rules
11 adopted by the board. Rules adopted pursuant to this subsection are routine technical
12 rules as defined in Title 5, chapter 375, subchapter 2-A.

13 **3. Fund proceeds.** The proceeds of the fund may be applied and expended to
14 acquire property or interests in property that are designed to protect access to working
15 waterfront property consistent with the provisions of Title 12, section 6042. The board
16 shall include as a condition of an acquisition or grant made under this section the
17 requirement that the protected property may not be used, altered or developed in a
18 manner that precludes its use by a commercial fisheries business consistent with the
19 provisions of Title 33, chapter 6-A. Consistent with the provisions of Title 12, section
20 6042, working waterfront covenants obtained through expenditures of these funds are
21 held by the Commissioner of Marine Resources.

22 **4. Matching funds.** For each grant made under this section, the board shall require
23 the grant recipient to provide matching funds at least equal to the amount of the grant.

24 **Sec. B-4. 12 MRSA §6001, sub-§6-A** is enacted to read:

25 **6-A. Commercial fisheries business.** "Commercial fisheries business" means an
26 enterprise directly or indirectly concerned with the commercial harvest of wild or
27 aquacultured marine organisms, whose primary source of income is derived from these
28 activities. "Commercial fisheries business" includes, but is not limited to:

29 A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;

30 B. Persons providing direct services to commercial fishermen, aquaculturists or
31 fishermen's cooperatives, as long as provision of these direct services requires the use
32 of working waterfront property; and

33 C. Municipal and private piers and wharves operated to provide waterfront access to
34 commercial fishermen, aquaculturists or fishermen's cooperatives.

35 **Sec. B-5. 12 MRSA §6001, sub-§56** is enacted to read:

36 **56. Working waterfront or working waterfront property.** "Working waterfront"
37 or "working waterfront property " means land, legally filled lands and piers and wharves
38 and other improvements to land adjacent to the navigable coastal waters of the State and
39 used by a commercial fisheries business.

40 **Sec. B-6. 12 MRSA §6042** is enacted to read:

1 **§6042. Maine Working Waterfront Access Protection Program**

2 **1. Program established; administration.** The Maine Working Waterfront Access
3 Protection Program, referred to in this section as "the program," is established to provide
4 protection to strategically significant working waterfront property whose continued
5 availability to commercial fisheries businesses is essential to the long-term future of the
6 economic sector. The department shall administer the program either directly or by
7 contract with a suitable organization.

8 **2. Review panel.** The department shall organize a review panel to advise the
9 commissioner in the operation of the program, including, but not limited to, evaluating
10 applications and recommending to the department applicants for participation in the
11 program.

12 **3. Selection criteria.** The selection criteria with which to evaluate applications for
13 protection of working waterfront property must include, but are not limited to:

14 A. The economic significance of the property to the commercial fisheries industry in
15 the immediate vicinity and in the State as a whole;

16 B. The availability of alternative working waterfront property in the same vicinity;

17 C. The degree of community support for the proposed protection;

18 D. The probability of conversion of the working waterfront property to uses
19 incompatible with commercial fisheries businesses; and

20 E. The utility of the working waterfront property for commercial fisheries business
21 uses in terms of its natural characteristics and developed infrastructure.

22 **4. Grant agreements.** The commissioner shall enter into grant agreements with
23 state agencies and designated cooperating entities for the purpose of receiving grants
24 from the Maine Working Waterfront Access Protection Fund under Title 5, section
25 6203-B.

26 **5. Right of first refusal.** The commissioner shall retain a permanent right of first
27 refusal on any working waterfront property protected under Title 5, section 6203-B,
28 acquired in fee or protected by working waterfront covenant or other less-than-fee
29 interests. Exercise of the right of first refusal must be at a price determined by an
30 independent professional appraiser based on the value of the working waterfront property
31 to a commercial fisheries business at the time of the exercise of the right. The
32 commissioner may assign this right to a commercial fisheries business or to a local
33 government if, in the commissioner's judgment, such an assignment is consistent with the
34 purposes of this section.

35 **6. Termination.** If the commissioner determines that the public purposes of a grant
36 made under subsection 4 are no longer served, the commissioner may, consistent with the
37 provisions of Title 33, chapter 6-A, terminate a grant agreement made under subsection 4
38 conditional on repayment of the original grant amount or an amount equal to that
39 proportion of the then-current value of the protected property that represents the ratio of
40 the original grant amount to the original fee interest value at the time of the grant. Any

1 funds recovered under this subsection must be deposited into the Maine Working
2 Waterfront Access Protection Fund under Title 5, section 6203-B and may be expended
3 only for the purposes of this section.

4 **Sec. B-7. 12 MRSA §6173-A, sub-§1**, as enacted by PL 2005, c. 683, Pt. F, §1,
5 is amended to read:

6 **1. Confidential information.** Information submitted to the department under the
7 provisions of the Maine Working Waterfront Access ~~Pilot~~ Protection Program established
8 by ~~Public Law 2005, chapter 462~~ section 6042 may be designated by the submitter as
9 proprietary information and as being only for the confidential use of the department, its
10 agents and employees, other agencies of State Government, as authorized by the
11 Governor, and the Attorney General. The designation must be clearly indicated on each
12 page or other unit of information. The commissioner shall establish procedures to ensure
13 that information so designated is segregated from public records of the department. The
14 department's public records must include the indication that information so designated
15 has been submitted to the department, giving the name of the submitter and the general
16 nature of the information. Upon a request for information the scope of which includes
17 information so designated, the commissioner shall notify the submitter. Within 15 days
18 after receipt of the notice, the submitter shall demonstrate to the satisfaction of the
19 department that the designated information should not be disclosed because the
20 information is proprietary information. Unless such a demonstration is made, the
21 information must be disclosed and becomes a public record. The department may grant or
22 deny disclosure for all or any part of the designated information requested and within 15
23 days shall give written notice of the decision to the submitter and the person requesting
24 the designated information. A person aggrieved by a decision of the department under
25 this subsection may appeal to the Superior Court.

26 **Sec. B-8. Holder of covenant.** The Commissioner of Marine Resources may
27 hold working waterfront covenants under the Maine Revised Statutes, Title 33, chapter
28 6-A on behalf of the Department of Marine Resources. All working waterfront covenants
29 obtained with funding under the provisions of Public Law 2005, chapter 462; Public Law
30 2007, chapter 39; and Public Law 2009, chapter 414 as amended by Public Law 2009,
31 chapter 645 are deemed to be held by the commissioner on behalf of the department.

32 SUMMARY

33 This bill makes technical changes to a variety of existing marine resources statutes.
34 It:

35 1. Adds the recently created pelagic and anadromous fishing license to the list of
36 state-issued licenses that members of the Passamaquoddy Tribe are not required to hold;

37 2. Adds the limited entry scallop fishery to those fisheries that allow medical or
38 military waivers from the yearly requirement to purchase a license in order to participate
39 in the fishery in the future;

- 1 3. Removes the part of the nonresident lobster and crab landing permit laws that
2 limits permit holders to Maine's trap limit and requires that they purchase Maine lobster
3 trap tags;
- 4 4. Extends the date for submitting information to the Commissioner of Marine
5 Resources in order to qualify for grandfathering under the established base of operations
6 requirement;
- 7 5. Clarifies that all lobster traps and trawls must be marked by a visible buoy and
8 that the Bureau of Marine Patrol may require more distinguishable buoy color designs in
9 instances where family members' buoys are not distinct enough to provide adequate
10 enforcement of current laws;
- 11 6. Specifies a process by which abandoned lobster gear may be disposed;
- 12 7. Clarifies the commercial fishing license to reflect the creation of 2 recently created
13 specific licenses, the pelagic and anadromous fishing license and the sea cucumber
14 harvesting license;
- 15 8. Repeals an error in the qualifying years for eligibility to hold a scallop license; and
- 16 9. Establishes in statutes the administration of the existing Maine Working
17 Waterfront Access Pilot Program.