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No. 68

H.P. 55

House of Representatives, January 11, 2017

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

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BLUME of York.
Cosponsored by Senator LANGLEY of Hancock and
Representatives: ALLEY of Beals, BATTLE of South Portland, DEVIN of Newcastle,
HUBBELL of Bar Harbor, PARRY of Arundel, PERRY of Calais, TUELL of East Machias,
Senator: DOW of Lincoln.

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

2 **Sec. 1. 12 MRSA §6001, sub-§14-A** is enacted to read:

3 **14-A. Family member.** "Family member" means a spouse, brother, sister, son-in-
4 law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law,
5 child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

6 **Sec. 2. 12 MRSA §6310, sub-§2,** as amended by PL 2013, c. 319, §1, is further
7 amended to read:

8 **2. Criteria for license issuance on appeal.** The commissioner may issue a license
9 on appeal only if the criteria in this subsection are met.

10 A. A Class I, Class II or Class III lobster and crab fishing license may be issued to a
11 person on appeal only if:

12 (1) A substantial illness or medical condition on the part of the person or a
13 family member prevented that person from meeting the eligibility requirements
14 for a license in 1997, 1998 or 1999, and the person documents that the person
15 harvested lobsters while in possession of a Class I, Class II or Class III lobster
16 and crab fishing license within one year prior to the onset of the illness or
17 medical condition. The person shall provide the commissioner with
18 documentation from a physician describing the illness or other medical condition.
19 A person may not request an appeal under this subparagraph after December 31,
20 2001; or

21 (2) A substantial illness or medical condition on the part of the person or a
22 family member prevented that person from meeting the eligibility requirements
23 for a license in licensing year 2000 or in subsequent years, and the person
24 documents that the person harvested lobsters while in possession of a Class I,
25 Class II or Class III lobster and crab fishing license within one year prior to the
26 onset of the illness or medical condition. The person shall provide the
27 commissioner with documentation from a physician describing the illness or
28 other medical condition. A person must request an appeal under this
29 subparagraph within one year of the onset of the illness or medical condition.

30 B. A handfishing sea urchin license, a sea urchin dragging license or a sea urchin
31 hand-raking and trapping license may be issued to a person on appeal only if:

32 (1) A substantial illness or medical condition on the part of the person or a
33 family member prevented that person from meeting the eligibility requirements
34 for that license, and the person documents that the person harvested sea urchins
35 while in possession of the same license within one year prior to the onset of the
36 illness or medical condition. The person shall provide the commissioner with
37 documentation from a physician describing the illness or other medical condition.
38 A person must request an appeal under this subparagraph within one year of the
39 onset of the illness or medical condition.

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

1 (1) A substantial illness or medical condition on the part of the person or a
2 family member prevented that person from meeting the eligibility requirements
3 for that license, and the person documents that the person harvested scallops
4 while in possession of the same license within one year prior to the onset of the
5 illness or medical condition. The person shall provide the commissioner with
6 documentation from a physician describing the illness or other medical condition.
7 A person must request an appeal under this subparagraph within one year of the
8 onset of the illness or medical condition.

9 ~~For the purposes of this subsection, "family member" means a spouse, brother, sister, son-~~
10 ~~in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-~~
11 ~~law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.~~

12 **Sec. 3. 12 MRSA §6431-E, sub-§1, ¶A**, as amended by PL 1999, c. 26, §1, is
13 repealed.

14 **Sec. 4. 12 MRSA §6432, sub-§3**, as amended by PL 2011, c. 266, Pt. A, §12, is
15 further amended to read:

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

25 **Sec. 5. 12 MRSA §6702, sub-§§1-A and 1-B** are enacted to read:

26 **1-A. Boat ownership requirement.** Except as provided in subsection 1-B, a boat
27 may not be used to drag for scallops unless that boat is owned by a scallop dragging
28 license holder and:

29 A. The owner of that boat is present on that boat; or

30 B. A family member of the boat owner holds a scallop dragging license and is
31 present on that boat.

32 **1-B. Exemptions to ownership requirement.** Notwithstanding subsection 1-A, the
33 commissioner may authorize a person to drag for scallops from a boat when an owner or
34 family member is not on board if that person holds a scallop dragging license and:

35 A. The owner of that boat holds a scallop dragging license, documents to the
36 commissioner that an illness or disability temporarily prevents that owner from
37 dragging for scallops from that boat and requests in writing that the commissioner
38 authorize that person to use that boat to drag for scallops;

1 B. Is the owner of a boat that has become temporarily inoperable because of an
2 accident or a mechanical failure and requests in writing permission from the
3 commissioner to use another specific boat to drag for scallops;

4 C. Was the owner of a boat that was named on that person's scallop dragging license
5 but is no longer the owner of that boat due to sale or foreclosure, demonstrates
6 immediate intent to become the owner of another boat that will be used to drag for
7 scallops and requests in writing permission from the commissioner to use the other
8 boat to drag for scallops for a limited period of time; or

9 D. Documents to the commissioner by December 31, 2017 that that person dragged
10 for scallops and recorded landings of scallops taken by dragging during each of the
11 calendar years 2015, 2016 and 2017 from the same boat and that boat did not have on
12 board an individual who meets the requirements of subsection 1-A, paragraph A or B.
13 A person may not qualify for the exemption under this paragraph unless that person
14 continues to drag for scallops from the boat from which the person dragged for
15 scallops during each of the calendar years 2015, 2016 and 2017.

16 **Sec. 6. 12 MRSA §6702, sub-§2**, as amended by PL 2011, c. 598, §31, is
17 repealed and the following enacted in its place:

18 **2. Licensed activity; operation requirement.** The holder of a scallop dragging
19 license and the license holder's crew may drag for scallops in the State's territorial waters
20 and possess, ship, sell or transport shucked scallops taken under the license. Except as
21 provided in subsection 2-A, the holder of a scallop dragging license may not operate a
22 boat for the purpose of dragging for scallops other than the boat named on the license
23 holder's scallop dragging license. For the purposes of this subsection and subsection 2-A,
24 "operate a boat" means steering the boat, operating the boat's engine throttle or gear shift
25 or operating the mechanism used to haul scallops from the water.

26 **Sec. 7. 12 MRSA §6702, sub-§2-A**, as enacted by PL 2007, c. 607, Pt. A, §2, is
27 amended to read:

28 **2-A. Exemptions to operation requirement.** Notwithstanding subsection 2, the
29 commissioner may authorize a person to fish for or take scallops from a boat when the
30 person holding a scallop dragging license that contains the name of that boat is not on
31 board the holder of a scallop dragging license to operate a boat for the purpose of
32 dragging for scallops other than the boat named on the license holder's scallop dragging
33 license if:

34 A. ~~The~~ A holder of ~~the~~ a scallop dragging license documents to the commissioner
35 that an illness or disability temporarily prevents ~~the~~ that license holder from ~~fishing~~
36 ~~for or taking scallops from that boat~~ operating the boat named on that license holder's
37 scallop dragging license and requests in writing ~~to the commissioner~~ that the
38 commissioner authorize another person to ~~use~~ operate that boat to ~~fish for or take~~
39 drag for scallops; ~~or~~

40 B. The boat named on the license of a license holder is temporarily inoperable
41 because of an accident or a mechanical failure and the license holder requests in

1 writing to the commissioner that the commissioner authorize the license holder to use
2 operate another boat to fish for or take drag for scallops; or

3 C. The person was the owner of a boat that was named on that person's scallop
4 dragging license but is no longer the owner of that boat due to sale or foreclosure,
5 demonstrates immediate intent to become the owner of another boat that will be used
6 to drag for scallops and requests in writing permission from the commissioner to
7 operate the other boat to drag for scallops for a limited period of time.

8 **Sec. 8. 12 MRSA §6702, sub-§§7 and 8** are enacted to read:

9 **7. "Owner" defined.** As used in this section, unless the context otherwise indicates,
10 "owner" means an individual who is the owner of a vessel registered under chapter 935 or
11 the owner of a vessel documented under 46 Code of Federal Regulations, Part 67; the
12 person who owns the highest percentage of a partnership, corporation or other entity that
13 is the owner of a vessel registered under chapter 935 or a vessel documented under 46
14 Code of Federal Regulations, Part 67; or, when 2 or more persons own in equal
15 proportion the highest percentages of a partnership, corporation or other entity that owns
16 a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal
17 Regulations, Part 67, one of the highest percentage owners as designated by the owners of
18 that partnership, corporation or other entity.

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

22 **Sec. 9. 12 MRSA §6706**, as amended by PL 2011, c. 237, §§1 to 3 and c. 266, Pt.
23 A, §19, is further amended to read:

24 **§6706. Limited entry**

25 ~~**1. License eligibility in 2009.** The commissioner may not issue a 2009 hand fishing~~
26 ~~scallop license or a 2009 scallop dragging license to a person unless that person possessed~~
27 ~~a scallop license issued pursuant to section 6701 or a scallop boat license issued pursuant~~
28 ~~to section 6702 in either:~~

29 ~~A. The 2005, 2006 or 2007 license year; or~~

30 ~~B. The 2008 license year prior to May 1, 2008.~~

31 **2. License eligibility.** Except as provided in ~~subsection~~ subsections 2-A and 3, the
32 commissioner may not issue a hand fishing scallop license or a scallop dragging license
33 to any person in any year ~~subsequent to 2009~~ unless that person possessed that license in
34 the previous calendar year or is eligible to obtain a license in accordance with the limited
35 entry system established under subsection 3.

36 **2-A. License eligibility in 2018 and subsequent years.** A holder of a scallop
37 dragging license who does not meet the boat ownership requirements or exemptions of
38 section 6702, subsection 1-A or 1-B may be issued a scallop dragging license in 2018 and
39 in subsequent consecutive years for the purpose of maintaining eligibility for a scallop
40 dragging license issued under subsection 2. When the holder of a scallop dragging

1 license issued under this subsection for the purpose of maintaining eligibility for a scallop
2 dragging license meets the requirements or exemptions of section 6702, subsection 1-A
3 or 1-B, that person may drag for scallops in accordance with this Part.

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

11 **Sec. 10. 12 MRSA §6748-A**, as amended by PL 2011, c. 598, §§38 and 39, is
12 further amended to read:

13 **§6748-A. Sea urchin dragging license**

14 **1. License required.** ~~A person may not engage in the activities authorized under~~
15 ~~this section without a current use a boat for dragging for sea urchins in the State's~~
16 ~~territorial waters unless that person holds a sea urchin dragging license issued by the~~
17 ~~commissioner and that boat is identified on the license.~~

18 **1-A. Boat ownership requirement.** Except as provided in subsection 1-B, a boat
19 may not be used to drag for sea urchins unless that boat is owned by a sea urchin
20 dragging license holder and:

21 A. The owner of that boat is present on that boat; or

22 B. A family member of the boat owner holds a sea urchin dragging license and is
23 present on that boat.

24 **1-B. Exemptions to ownership requirement.** Notwithstanding subsection 1-A, the
25 commissioner may authorize a person to drag for sea urchins from a boat when an owner
26 or family member is not on board if that person holds a sea urchin dragging license and:

27 A. The owner of that boat holds a sea urchin dragging license, documents to the
28 commissioner that an illness or disability temporarily prevents that owner from
29 dragging for sea urchins from that boat and requests in writing that the commissioner
30 authorize that person to use that boat to drag for sea urchins;

31 B. Is the owner of a boat that has become temporarily inoperable because of an
32 accident or a mechanical failure and requests in writing permission from the
33 commissioner to use another specific boat to drag for sea urchins;

34 C. Was the owner of a boat that was named on that person's sea urchin dragging
35 license but is no longer the owner of that boat due to sale or foreclosure,
36 demonstrates immediate intent to become the owner of another boat that will be used
37 to drag for sea urchins and requests in writing permission from the commissioner to
38 use the other boat to drag for sea urchins for a limited period of time; or

39 D. Documents to the commissioner by December 31, 2017 that that person dragged
40 for sea urchins and recorded landings of sea urchins taken by dragging during each of

1 the calendar years 2015, 2016 and 2017 from the same boat and that boat did not
2 have on board an individual who meets the requirements of subsection 1-A,
3 paragraph A or B. A person may not qualify for the exemption under this paragraph
4 unless that person continues to drag for sea urchins from the boat from which the
5 person dragged for sea urchins during each of the calendar years 2015, 2016 and
6 2017.

7 **2. Licensed activity; operation requirement.** The holder of a sea urchin dragging
8 license may use the vessel named on the holder's license to drag for sea urchins. The
9 license also authorizes the captain and crew members aboard the vessel named on the
10 license to drag for and possess, ship, transport and sell sea urchins, except that the captain
11 and crew members may not drag for sea urchins if the license holder is not aboard the
12 vessel and the license holder's crew may drag for sea urchins in the State's territorial
13 waters and possess, ship, sell or transport sea urchins taken under the license. Except as
14 provided in subsection 2-B, the holder of a sea urchin dragging license may not operate a
15 boat for the purpose of dragging for sea urchins other than the boat named on the license
16 holder's sea urchin dragging license. For the purposes of this subsection and subsection
17 2-B, "operate a boat" means steering the boat, operating the boat's engine throttle or gear
18 shift or operating the mechanism used to haul sea urchins from the water.

19 ~~**2-A. Change of named individual.** A person who is the owner of a vessel named~~
20 ~~on a sea urchin dragging license in 2000 but not the individual named on that license may~~
21 ~~apply to the commissioner to be the individual named on that sea urchin dragging license~~
22 ~~in 2002. The person must provide written notarized documentation to the commissioner~~
23 ~~authorizing the change in license name by the individual who was named on that license~~
24 ~~in 2000. If no such request is received by the commissioner by December 1, 2001, then~~
25 ~~the individual named on the 2002 sea urchin dragging license will be the same as the~~
26 ~~individual named on the 2001 sea urchin dragging license and no future changes of the~~
27 ~~named individual will be permitted.~~

28 **2-B. Exemptions to operation requirement.** Notwithstanding subsection 2, the
29 commissioner may authorize a person to fish for or take sea urchins from a vessel when
30 the person holding a sea urchin dragging license that contains the name of that vessel is
31 not on board the holder of a sea urchin dragging license to operate a boat for the purpose
32 of dragging for sea urchins other than the boat named on the license holder's sea urchin
33 dragging license if:

34 A. ~~The~~ A holder of ~~the~~ a sea urchin dragging license documents to the commissioner
35 that an illness or disability temporarily prevents ~~the~~ that license holder from ~~fishing~~
36 ~~for or taking sea urchins from that vessel~~ operating the boat named on that license
37 holder's sea urchin dragging license and requests in writing ~~to the commissioner~~
38 that the commissioner authorize another person to use operate that ~~vessel~~ boat to ~~fish for~~
39 ~~or take~~ drag for sea urchins ~~from the vessel~~;

40 B. The ~~vessel~~ boat named on the license of a license holder is temporarily inoperable
41 because of an accident or a mechanical failure and the license holder requests in
42 writing ~~to the commissioner~~ that the commissioner authorize the license holder to use
43 operate another ~~vessel~~ boat to ~~fish for or take~~ drag for sea urchins; or

1 ~~C. An individual documents to the commissioner that the individual has held or~~
2 ~~leased more than one sea urchin dragging license for 3 consecutive years, was the~~
3 ~~owner of the vessels named on those licenses during those same years and is~~
4 ~~currently the owner of the vessels named on those licenses. Under this paragraph, the~~
5 ~~commissioner may renew each license held by the eligible individual if the vessel~~
6 ~~named on that license is unchanged from the vessel named on the license in 2000.~~

7 D. The person was the owner of a boat that was named on that person's sea urchin
8 dragging license but is no longer the owner of that boat due to sale or foreclosure,
9 demonstrates immediate intent to become the owner of another boat that will be used
10 to drag for sea urchins and requests in writing permission from the commissioner to
11 operate the other boat to drag for sea urchins for a limited period of time.

12 **3. Eligibility.** A sea urchin dragging license may be issued only to an individual
13 who is a resident.

14 **4. Zone 2 fee.** The fee for a Zone 2 sea urchin dragging license is \$152.

15 **4-B. Zone 1 fee.** The fee for a Zone 1 sea urchin dragging license is \$25 per year
16 when the season is no longer than 10 days. If the Zone 1 season is longer than 10 days,
17 the department may by rule increase the sea urchin dragging license fee to an amount no
18 higher than the amount specified in subsection 4. Rules adopted under this subsection are
19 routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

20 **5. Violation.** A person who violates this section commits a civil violation for which
21 a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

22 **6. "Owner" defined.** As used in this section, unless the context otherwise indicates,
23 "owner" means an individual who is the owner of a vessel registered under chapter 935 or
24 the owner of a vessel documented under 46 Code of Federal Regulations, Part 67; the
25 person who owns the highest percentage of a partnership, corporation or other entity that
26 is the owner of a vessel registered under chapter 935 or a vessel documented under 46
27 Code of Federal Regulations, Part 67; or, when 2 or more persons own in equal
28 proportion the highest percentages of a partnership, corporation or other entity that owns
29 a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal
30 Regulations, Part 67, one of the highest percentage owners as designated by the owners of
31 that partnership, corporation or other entity.

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

35 **Sec. 11. 12 MRSA §6749-O, sub-§2-A, ¶B,** as enacted by PL 2007, c. 615, §18,
36 is amended to read:

37 B. Becomes eligible to obtain that license pursuant to a limited entry system under
38 subsection 2-B or 2-C; or

39 **Sec. 12. 12 MRSA §6749-O, sub-§2-C** is enacted to read:

