

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 530 - L.D. 1448

**An Act To Preserve Marine Resources Licenses for Active Duty Service
Members**

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

Whereas, there are military personnel being discharged that would like to take advantage of the provisions regarding licensure in this legislation for the upcoming commercial fishing seasons; and

Whereas, the relevant fisheries are limited entry fisheries and waiting for a new license could take several years; 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 §6310, as amended by PL 2011, c. 266, Pt. A, §§3 and 4, is further amended to read:

§6310. Appeal of license denial; illness or medical condition

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

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

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

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

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

~~(3) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the lobster fishery and meeting the eligibility requirements for a license, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service.~~

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

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

~~(2) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the urchin fishery and meeting the eligibility requirements for that license and the person documents that the person~~

~~harvested sea urchins while in possession of the same license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service.~~

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

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

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

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

3. Appeals process. A person appealing a license denial under this section must request the appeal in writing. The commissioner shall hold a hearing on the appeal if a hearing is requested in writing within 10 days of the initial request for appeal. If a hearing is requested, it must be held within 30 days of the request unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.

A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in subsection 2 that might justify issuing a license to the person, and the commissioner may request any additional information the commissioner considers necessary. Any medical information provided as part of the appeal is a confidential record for the purposes of Title 1, section 402, subsection 3, paragraph A.

4. Issuance on appeal. Issuance of a license on appeal is at the discretion of the commissioner, except that a license may not be issued unless the criteria in subsection 2 are met. Decisions of the commissioner must be in writing.

Sec. 2. 12 MRSA §6310-A is enacted to read:

§6310-A. Appeal of license denial; Armed Forces or Coast Guard service

1. Appeal of license denial. A person who is denied a license for a limited entry fishery because that person does not meet the eligibility requirements due to service in the United States Armed Forces or the United States Coast Guard precluding that person from participating in the fishery may appeal to the commissioner under this section for a review of that license denial. A license may be granted by the commissioner under this section only if the person:

A. Documents that the person harvested the relevant species while in possession of a fishing license for that species within one year prior to entering the service;

B. Has not served for more than 10 consecutive years since the most recent year in which the person held a license;

C. Has not been dishonorably discharged from service; and

D. Requests an appeal under this section within one year of discharge from service.

Notwithstanding paragraphs B and D, a license may be granted to a person pursuant to this section who is actively serving in the United States Armed Forces or the United States Coast Guard for a period of more than 10 consecutive years as long as the person pays a license fee for each year beyond those 10 years.

2. Limited entry fishery. For purposes of this section, "limited entry fishery" means a fishery in which licenses are limited to individuals who have held a license in the previous year or a fishery that is otherwise restricted by a limited entry system.

3. Appeals process. A person appealing a license denial under this section must request the appeal in writing. The commissioner shall hold a hearing on the appeal if a hearing is requested in writing within 10 days of the initial request for appeal. If a hearing is requested, it must be held within 30 days of the request unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.

A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in subsection 1 that might justify issuing a license to the person, and the commissioner may request any additional information the commissioner considers necessary.

4. Issuance on appeal. Issuance of a license on appeal is at the discretion of the commissioner, except that a license may not be issued unless the criteria in subsection 1 are met. Decisions of the commissioner must be in writing.

Sec. 3. 12 MRSA §6311, as enacted by PL 2005, c. 111, §2, is amended to read:

§6311. Active duty military members

1. Definitions. As used in this section, unless the context otherwise indicates, ~~"active duty for a period of more than 30 days" has the same meaning as in 10 United States Code, Section 101(d)(2)~~ the following terms have the following meanings.

A. "Active duty for a period of more than 30 days" has the same meaning as in 10 United States Code, Section 101(d)(2).

B. "Limited entry fishery" means a fishery in which licenses are limited to individuals who have held a license in the previous year or a fishery that is otherwise restricted by a limited entry system.

2. Partial waiver of lobster apprentice requirements. Notwithstanding Title 37-B, section 390-A or any other provision of this Part, the commissioner shall waive a portion of the number of days and hours of practical lobster fishing experience required under the apprentice program established pursuant to section 6422, subsection 1 for a person who is a member of the National Guard or the Reserves of the United States Armed Forces if:

- A. The person was under an order to active duty for a period of more than 30 days;
- B. The period of active duty conflicts with the requirements of the apprentice program; and
- C. The person was licensed pursuant to section 6421, subsection 1, paragraphs D and E.

This waiver does not apply to the 2-year minimum required under section 6422, subsection 2.

3. Waiver of licensing requirements. Notwithstanding Title 37-B, section 390-A or any other provision of this Part, the commissioner shall waive the licensing eligibility requirements under section 6421, subsection 5, paragraph A; section 6505 A, subsection 2, paragraph C; and section 6749 O, subsection 2 A applicable to a limited entry fishery for a person who is a member of the National Guard or the Reserves of the United States Armed Forces and was under an order to active duty for a period of more than 30 days. This subsection does not apply to a person who did not possess a license ~~pursuant to section 6421, 6505 A, 6748, 6748 D or 6749~~ for that limited entry fishery at the time of or in the calendar year prior to that person's being called to active duty. The waiver must be available for a period of up to 10 consecutive years of service, with no license fees being assessed during that time. For years consecutively served beyond 10 years, licensing eligibility requirements, other than licensing fees, must be waived.

4. Limited application. This section applies only if the member's service is in support of:

- A. An operational mission for which members of the Reserves of the United States Armed Forces have been ordered to active duty without volunteering for that mission; ~~or~~
- B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress; or
- C. A response to a precipitating event for which the member was drafted or enlisted during a period of an active draft.

Sec. 4. 12 MRSA §6311-A is enacted to read:

§6311-A. Student licenses after military service

An individual who is eligible for a student lobster and crab fishing license under section 6421, subsection 1, paragraph E either when enlisted in the United States Armed Forces or United States Coast Guard or when ordered to active duty in the National Guard or the Reserves of the United States Armed Forces may, upon that individual's return from service, have that individual's eligibility regarding age extended by the number of years that individual was not able to purchase a student license due to this service, for a period of up to 10 years. In order to extend eligibility under this section, that individual must initiate the license application within one year of that individual's return from service.

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