

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND THIRTEEN

—
 S.P. 588 - L.D. 1545

An Act To Make Technical Changes to Maine's Marine Resources Laws and Elver Enforcement Mechanisms

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

Sec. 1. 12 MRSA §6072, sub-§13, ¶G, as amended by PL 2003, c. 660, Pt. A, §12, is further amended to read:

G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species and use specific gear on the lease site; ~~and. A change in authorization is not an adjudicatory proceeding. The regulations must provide for notice of proposed changes in gear authorization to the lessee, the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. Authorization to add or delete species or gear must be consistent with the findings made under subsection 7-A when the lease was approved.~~

Sec. 2. 12 MRSA §6072-A, sub-§1, as amended by PL 2003, c. 247, §9, is further amended to read:

1. Authority. The commissioner may issue a limited-purpose lease for areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for commercial aquaculture research and development or for scientific research. The commissioner or the deputy commissioner acting on the commissioner's behalf may authorize in writing qualified professional department staff to issue a final decision and sign a lease document on an application for a limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application. The commissioner may adopt regulations for adding or deleting authorization for the holder of an aquaculture lease to grow specific species and use specific gear on the lease site. The commissioner may grant authorization for species or gear amendments under this subsection only:

A. After giving notice of the proposed amendment to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an

opportunity to submit written comments on the proposed amendment within 14 days; and

B. Upon a determination by the commissioner that the amendment is consistent with the findings made under subsection 13 when the lease was approved.

Sec. 3. 12 MRSA §6072-A, sub-§8, as amended by PL 2001, c. 122, §1, is further amended to read:

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J. The rules must also require an applicant to provide to the department proof of access to the lease area. If access will be across riparian land, the applicant shall provide to the department the written permission of every riparian owner whose land will be used to access the lease area. The commissioner may adopt rules to add or delete authorization for the holder of an aquaculture lease to grow specific species and to use specific gear on the lease site. A change in authorization is not an adjudicatory proceeding. The rules must provide for notice of proposed changes in gear authorization to the lessee, the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. Authorization to add or delete species or gear must be consistent with the findings made under subsection 13 when the lease was approved.

Sec. 4. 12 MRSA §6074, sub-§1, as amended by PL 1999, c. 156, §§2 and 3, is further amended to read:

1. Exception. A special license ~~shall~~ does not permit the holder to sell or, beyond the state limits, to ship or transport any marine organism that is less than the minimum size established by statute. This subsection ~~shall~~ does not apply to:

B. Any species grown in a hatchery for stock enhancement or resale for purposes of cultivation or stock enhancement; or

C. Scallop spat collected under the authority of a special license and sold for the purpose of placement on a lease site authorized pursuant to section 6072 or 6072-A or under the authority of a license issued pursuant to section 6072-C. For purposes of this paragraph, until September 1, 2015, "scallop spat" means scallops less than 40 millimeters in the longest diameter and, beginning September 1, 2015, "scallop spat" means scallops less than 25 millimeters in the longest diameter.

Sec. 5. 12 MRSA §6074, sub-§8, ¶F, as enacted by PL 2003, c. 104, §2, is amended to read:

F. A teacher who is providing a primary ~~or~~ secondary or postsecondary school program for educational purposes only.

Sec. 6. 12 MRSA §6078-A, sub-§1, as amended by PL 2009, c. 240, §15, is further amended to read:

1. Fund established. The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. In addition to the fees derived pursuant to rules adopted under subsection 6, the commissioner may receive on behalf of the fund funds from any source. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered proprietary information for the purposes of section 6077, subsection 4.

Sec. 7. 12 MRSA §6140-B, sub-§4, ¶C, as enacted by PL 2007, c. 240, Pt. QQ, §9, is amended to read:

C. Atlantic salmon raised by means of aquaculture, except that Atlantic salmon raised in a hatchery for the purpose of restoration are not exempt.

Sec. 8. 12 MRSA §6431, sub-§6-B, as enacted by PL 2011, c. 247, §2, is amended to read:

6-B. Exception; lobster processing; rules. A person who holds both a wholesale seafood license with a lobster permit and a lobster processor license and who possesses lobster in accordance with subsection 6 may process those imported lobsters in accordance with rules adopted by the commissioner, as long as the following criteria are met:

- A. The lobsters are not harvested or landed in this State;
- B. The lobsters are legal in the waters from which they were harvested; and
- C. The lobsters are not less than the minimum size established in this section.

Lobster tails processed under this subsection may not be offered for sale within this State in the wholesale or retail trade. Lobster meat processed from the claws and knuckles may be sold within this State in the wholesale or retail trade.

This subsection takes effect November 1, 2011 ~~and is repealed 90 days after the adjournment of the First Regular Session of the 126th Legislature.~~

Sec. 9. 12 MRSA §6505-A, sub-§2-B, as amended by PL 2013, c. 8, §2, is further amended to read:

2-B. Elver lotteries. The commissioner shall establish a dual lottery system under which the number of pieces of gear authorized does not exceed the number of pieces of gear authorized as of December 31, 2011, except that beginning in 2013 that number must be increased to include an additional 25 dip nets.

- A. The commissioner shall establish an elver gear lottery under which gear authorizations for use under a license issued under subsection 1 that is not renewed become available to other license holders in the elver gear lottery.

(1) The elver gear lottery must be held on or before February 15th of each calendar year beginning in 2013.

(2) In order to be eligible for the elver gear lottery, a person must hold an elver fishing license pursuant to subsection 1 and must have authorization to use only a dip net.

(3) In order to be eligible for the elver gear lottery, a person must submit to the Commissioner of Marine Resources a lottery application together with a \$25 nonrefundable application fee no later than January 15th for the lottery to be held by the following February 15th.

(4) A person may submit no more than one elver gear lottery application per lottery year.

(5) A person selected in the elver gear lottery must relinquish a dip net authorization that person holds in exchange for authorization to use an elver fyke net.

B. The commissioner shall establish an elver fishing license lottery under which a person who did not hold an elver fishing license in the previous calendar year may become eligible to obtain that license. The number of persons issued licenses under this paragraph may not exceed the number of individual gear authorizations remaining after the elver gear lottery.

(1) The elver fishing license lottery must take place after the elver gear lottery.

(2) The elver fishing license lottery must be held on or before February 15th of each calendar year beginning in 2013.

(3) In order to be eligible for the elver fishing license lottery, a person must submit a lottery application together with a \$25 nonrefundable application fee no later than January 15th of the same calendar year as the lottery.

(4) A person may submit no more than one elver fishing license lottery application per lottery year.

The commissioner shall adopt rules no later than December 31, 2012 to implement the elver gear lottery and the elver fishing license lottery. The rules must include provisions for the method and administration of the lotteries. The elver gear lottery must be set up so that gear authorizations associated with a license that is not renewed go into the elver gear lottery. If a person who held a license that is not renewed has 2 authorized pieces of gear, the gear authorizations must be divided and made available to 2 lottery entrants. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Application fees collected under this subsection must be deposited in the Eel and Elver Management Fund established in section 6505-D.

Notwithstanding any other provision of this section, the commissioner may not hold a lottery under this subsection.

Sec. 10. 12 MRSA §6505-A, sub-§5-A is enacted to read:

5-A. Possession of elvers. The holder of an elver fishing license may possess elvers only during the open season established in section 6575 and for up to 6 hours beyond the end of the open season.

Sec. 11. 12 MRSA §6575-E, as amended by PL 2001, c. 272, §13, is further amended to read:

§6575-E. Method of eel fishing

Except as provided in section 6505-C, subsection 2, it is unlawful for a person licensed under section 6505-C to fish for or take eels by any method other than eel pot or hoop-net.

Sec. 12. 12 MRSA §6575-H, sub-§1, as enacted by PL 2013, c. 49, §15, is repealed and the following enacted in its place:

1. Sale of elvers. A person may not sell elvers except as follows.

A. A person may not sell elvers except to a person who holds a valid elver dealer's license under section 6864 or a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864.

B. A person may not accept payment for elvers in any form other than a check or cashier's check that identifies both the buyer and the seller, unless the purchaser provides to the seller a written or electronic receipt that identifies both the seller and buyer, each of whom must be a person holding a license issued under section 6864, a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864 or a person holding a license issued under section 6505-A.

Sec. 13. 12 MRSA §§6575-I and 6575-J are enacted to read:

§6575-I. Assisting in illegal harvest of elvers

1. Prohibition. A person may not assist another person to harvest elvers in violation of any law or rule pertaining to elvers. For the purposes of this section, "assist" includes, but is not limited to, providing transportation or providing services as a lookout in order to avoid detection or to warn an elver harvester of impending law enforcement action.

2. Violation. A person who violates this section commits a civil violation for which a fine of \$2,000 must be adjudged. A court may not suspend any portion of a fine imposed under this subsection.

§6575-J. Seizure of illegally harvested elvers

In addition to any other penalty imposed, elvers that are purchased or possessed that were taken in violation of any law or rule pertaining to elvers are subject to seizure by any officer authorized to enforce this Part. The entire bulk pile containing illegally harvested elvers may be seized.

Sec. 14. 12 MRSA §6671, sub-§8, ¶B, as amended by PL 2001, c. 188, §8, is further amended to read:

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this article must be certified by the commissioner within one year of the warden's appointment. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. ~~The program must include training in sampling techniques for the detection of pollutants and contaminants in shellfish areas.~~ The commissioner may establish by rule procedures for certification, recertification and revocation of certification. The commissioner may revoke a certificate for failure of the warden to comply with performance standards.

Sec. 15. 12 MRSA §6702, sub-§4, as amended by PL 2007, c. 607, Pt. A, §2, is further amended to read:

4. Personal use exception. In any one day, a person licensed pursuant to section 6703 may take or possess not more than one bushel of shell scallops or ~~2 quarts~~ one gallon of shucked scallops for personal use without a scallop dragging license under this section.

Sec. 16. 12 MRSA §6703, sub-§3, as amended by PL 2007, c. 607, Pt. A, §3, is further amended to read:

3. License limitation; quantity. In any one day, the holder of a noncommercial scallop license may not take or possess more than one bushel of shell scallops or ~~2 quarts~~ one gallon of shucked scallops.

Sec. 17. 12 MRSA §6749-N, sub-§1, as amended by PL 1995, c. 595, §2 and affected by §6, is further amended to read:

1. Zone 1. Zone 1, from May 1st to July 31st. For the purposes of this article, "Zone 1" means all coastal waters west of a line beginning at the easternmost point of Fort Point State Park on Cape Jellison then running southwesterly to channel marker #1 south of Sears Island, then running southwesterly to channel marker ~~BW "11"~~ RW "11" located between Marshall's Point and Bayside in the Town of Northport, then running southwesterly to channel marker #9 east of Great Spruce Head located in the Town of Northport, then running southerly to Graves channel marker ~~northeast~~ southeast of the Town of Camden, then running southeasterly to the Penobscot Bay Buoy "PB" east of Rockland harbor, then running southerly to the ~~TB+~~ TBI whistle southwest of Junken Ledge, then running southeasterly to Red Nun #10 buoy at Foster Ledges, then running due south magnetic to the boundary of the State's coastal waters; and

Sec. 18. 12 MRSA §6752, as enacted by PL 1977, c. 661, §5, is amended to read:

§6752. Exception for personal use

Any person may take or possess not more than ~~425~~ 50 marine worms in any one day for personal use without a marine worm digger's license or a marine worm dealer's license.

Sec. 19. 12 MRSA §6804, sub-§5, as amended by PL 2003, c. 248, §10, is further amended to read:

5. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport up to one standard fish tote of northern shrimp only for personal use. This exemption does not apply to an individual whose ability to obtain a commercial northern shrimp license has been suspended by the commissioner.

Sec. 20. 12 MRSA §6864, sub-§1-A is enacted to read:

1-A. Limits on issuance. The department may not issue an elver dealer's license or a supplemental license for the following licensing year after February 1st of the current licensing year.

Sec. 21. 12 MRSA §6864, sub-§2, as amended by PL 2011, c. 549, §9, is further amended to read:

2. License limited. An elver dealer's license authorizes the licensed activities at only one permanent facility. For the purposes of this section, "permanent facility" means a permanent building that is owned or legally leased by the license holder and is not a dwelling.

Sec. 22. 12 MRSA §6864, sub-§10, as amended by PL 2013, c. 49, §17, is further amended to read:

10. Purchase of elvers. A person who holds an elver dealer's license, or the authorized representative of that person under subsection 9, may purchase elvers from licensed harvesters at locations other than the permanent facility identified on the license holder's license. The license holder or the license holder's authorized representative shall keep a record that identifies each harvester from which elvers were purchased and the amount of elvers purchased from each harvester. The license holder or the license holder's authorized representative shall make the record available for inspection by a marine patrol officer. The license holder or the license holder's authorized representative may not purchase elvers ~~for cash or credit or provide to any person any goods, wares, merchandise or other articles or with any form of payment in exchange for elvers other than a check or cashier's check that identifies both the seller and the buyer, unless the purchaser provides the seller a written or electronic receipt that identifies both the seller and buyer,~~ each of whom must be a person holding a license issued under this section, a person who, pursuant to subsection 9, is an authorized representative of a person holding a license issued under this section or a person holding a license issued under section 6505-A.

Sec. 23. 12 MRSA §6864, sub-§12, as enacted by PL 2013, c. 49, §18, is repealed.