An Act to Make Technical Changes to 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.

Presented by Representative HEPLER of Woolwich.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §6001, sub-§38, as enacted by PL 1977, c. 661, §5, is amended to read:


Sec. 2. 12 MRSA §6001, sub-§41, as enacted by PL 1977, c. 661, §5, is amended to read:

41. Shellfish. "Shellfish" means clams, quahogs, oysters, scallops and mussels and includes shellstock and shucked shellfish.

Sec. 3. 12 MRSA §6001, sub-§55, as enacted by PL 2001, c. 112, §1, is amended to read:

55. Whole scallop. "Whole scallop" means a cultured scallop in any form, except when the final product form is only the adductor muscle of the scallop or only the adductor muscle on the shell of the scallop.

Sec. 4. 12 MRSA §6302-A, sub-§1, ¶B, as amended by PL 2011, c. 598, §17, is further amended to read:

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

Sec. 5. 12 MRSA §6302-A, sub-§1, ¶C, as enacted by PL 1997, c. 708, §1 and affected by §3, is amended to read:

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

Sec. 6. 12 MRSA §6302-A, sub-§1, ¶D is enacted to read:

D. Is not required to complete an apprentice program established under section 6422 if the tribe, nation or band provides documentation to the commissioner to show that the license applicant has completed an apprentice program that is satisfactory to the tribe, nation or band.

Sec. 7. 12 MRSA §6374, first ¶, as amended by PL 2017, c. 197, §4, is further amended to read:

The procedure for suspending a license or certificate under section 6371, subsections subsection 3 and 4 is governed by this section.

Sec. 8. 12 MRSA §6374, sub-§1, as amended by PL 2017, c. 197, §4, is further amended to read:

1. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of marine resources law or conduct described in section 6371, subsection 4 3 has been committed, the commissioner shall immediately examine the affidavit and
determine if a suspension is necessary. If the commissioner determines based on a preponderance of the evidence that a suspension is necessary, the commissioner shall immediately notify in writing the person who violated the law or engaged in the conduct. The notice must state that there is an opportunity for a hearing, if the person requests the hearing in writing within 10 days of the notice. The notice is deemed received 3 days after the mailing. The commissioner may suspend the license or certificate of a person who has been notified pursuant to this subsection but who does not request a hearing within the allowed time.

Sec. 9. 12 MRSA §6374, sub-§2, ¶A, as amended by PL 2017, c. 197, §4, is further amended to read:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license or certificate and whether that person committed a violation of marine resources law or conduct described in section 6371, subsection 4 3; and

Sec. 10. 12 MRSA §6374, sub-§2, as amended by PL 2017, c. 197, §4, is further amended by amending the first blocked paragraph to read:

If the presiding officer of the hearing finds that a violation of marine resources law or conduct described in section 6371, subsection 4 3 has been committed, the presiding officer shall immediately notify the commissioner of the finding.

Sec. 11. 12 MRSA §6374, sub-§3, as amended by PL 2017, c. 197, §4, is further amended to read:

3. Finding of violation and suspension. The commissioner may suspend the license or certificate of the person requesting the hearing under subsection 2 if the presiding officer of the hearing finds that a violation of marine resources law or conduct described in section 6371, subsection 4 3 has been committed. Except as provided in this subsection and subsection 3-A, the length of the suspension of the license or certificate may not exceed:

A. One year from the date of a first finding of a violation or finding that conduct described in section 6371, subsection 4 3 has been committed;
B. Two years from the date of a 2nd finding of a violation or finding that conduct described in section 6371, subsection 4 3 has been committed; or
C. Three years from the date of a 3rd or subsequent finding of a violation or finding that conduct described in section 6371, subsection 4 3 has been committed.

The commissioner may suspend any license or certificate for a period of time not to exceed the maximum amount of time allowable for a criminal conviction or civil adjudication of the same violation.

Sec. 12. 12 MRSA §6506, sub-§6 is enacted to read:

6. License exemption. Notwithstanding subsection 1, a person may fish for, take, possess or transport a halibut without a license if the person has fished for or taken the halibut by tub trawl or by hook and line and if the halibut is only for personal use.

Sec. 13. 12 MRSA §6506, sub-§7 is enacted to read:

7. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
Sec. 14. 12 MRSA §6506, sub-§8 is enacted to read:

8. Rules. The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 15. 12 MRSA §6852, sub-§2-A, ¶C, as enacted by PL 2011, c. 598, §44, is amended to read:

C. Shellstock bought from a mahogany quahog license holder licensed under section 6731; and

Sec. 16. 12 MRSA §6852, sub-§2-A, ¶D, as enacted by PL 2011, c. 598, §44, is amended to read:

D. Shellstock bought from a hand-raking mussel license holder licensed under section 6745 or a mussel boat license holder licensed under section 6746; and

Sec. 17. 12 MRSA §6852, sub-§2-A, ¶E is enacted to read:

E. Shellstock bought from an aquaculture license holder licensed under section 6810-B.

SUMMARY

This bill accomplishes the following.

1. It amends the definition of “scallop” to include bay scallops.

2. It amends a definition of “shellfish” to include scallops.

3. It amends the definition of “whole scallop” to exclude the adductor muscle on the shell.

4. It clarifies that a license-holding member of the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians is not required to complete the lobster fishery apprentice program if the license applicant has completed an apprentice program that satisfies the tribe, nation or band.

5. It replaces a license exemption for personal use to the commercial halibut fishing license, adds a violation for fishing for halibut without a commercial halibut fishing license and requires the Commissioner of Marine Resources to adopt rules for commercial halibut fishing licenses.

6. It allows the holder of an enhanced retail certificate to purchase shellfish from the holder of an aquaculture license.

7. It corrects cross-references in the administrative suspension process for licenses and certificates issued under marine resources laws.