

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve Enforcement of Maine's Marine Resources Laws

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

Sec. 1. 12 MRSA §6210, sub-§2, as amended by PL 2013, c. 485, §1, is further amended to read:

2. 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 section 6575-K or section 6864, subsection 7-A has been committed, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. The notice must state that the person may request a hearing in writing within 10 days of the notice. The notice is deemed received 3 days after the mailing.

Sec. 2. 12 MRSA §6210, sub-§7 is enacted to read:

7. Renewal of licenses. If a holder of a license issued under section 6302-A, 6505-A or 6864 fails to make payment of a pecuniary gain penalty assessed under this section, the commissioner may refuse to renew that holder's license until the holder complies with the payment requirements.

Sec. 3. 12 MRSA §6306, sub-§1, ¶A, as amended by PL 2009, c. 229, §14, is further amended to read:

A. Watercraft or vehicles and the equipment located on watercraft or vehicles used primarily in a trade or business requiring a license or aquaculture lease under this Part may be searched or inspected at any time. This inspection includes covert electronic surveillance to monitor and enforce any law or rule relating to the deployment or retrieval of lobster gear.

Sec. 4. 12 MRSA §6374, sub-§1, as enacted by PL 2011, c. 311, §4, is 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 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. 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.

Sec. 5. 12 MRSA §6374, sub-§2, as amended by PL 2011, c. 598, §20, is further amended to read:

2. Hearing. A hearing requested under subsection 1 must be held within 30 business days after receipt by the commissioner of a request for hearing except that a hearing may be held more than 30 business days after the request if the delay is requested by the person requesting the hearing. If the hearing is continued, it must be held no later than 60 days after the original notice, and any further continuance must be with the consent of both parties. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license and whether that person committed a violation of marine resources law; and

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing.

Sec. 6. 12 MRSA §6404, as amended by PL 2007, c. 201, §3, is further amended to read:

§ 6404. Revocation based on conviction of scrubbing lobsters

The commissioner shall ~~suspend~~revoke the lobster and crab fishing license, wholesale seafood license and the commercial fishing license of any license holder or the nonresident lobster and crab landing permit of a permit holder convicted in court of violating section 6438-A. ~~The suspension must be for one year from the date of conviction.~~

Sec. 7. 12 MRSA §6412, sub-§3, as amended by PL 2013, c. 468, §13, is further amended to read:

3. Process for suspension for failing to comply with monthly reporting. If the commissioner determines that a person who holds a license or certificate under this Part has failed to comply with a monthly reporting requirement established by rule pursuant to section 6173, the commissioner shall notify the person at the telephone number provided on the application for the license or certificate and by e-mail if an e-mail address is provided on the application by mailing the notice to the person at the last known address provided in the department's marine resources licensing and enforcement database, or by serving the notice in hand. If the license or certificate holder has not complied with the reporting requirements within 45 days after the commissioner has provided the notice, the commissioner shall mail a notice of suspension to the license or certificate holder. The notice is deemed received 3 days after the mailing. The notice must:

A. Describe the information that the license or certificate holder is required to provide pursuant to this Part that the department has not received; and

B. State that, unless all the information described in paragraph A is provided to the department or the license or certificate holder requests a hearing, the license or certificate will be suspended in 3 business days after the license or certificate holder's receipt of the notice.

If the license or certificate holder has not complied with the reporting requirements or requested a hearing within 3 business days after receipt of the notice, the commissioner shall suspend the license or certificate.

SUMMARY

This bill amends the laws governing the enforcement of the marine resources laws in the following ways.

1. It specifies that notices of penalties and hearings are deemed received 3 days after they are mailed.
2. It authorizes the Commissioner of Marine Resources to deny the renewal of a license for an elver harvester or elver dealer who has not paid a pecuniary gain fine assessed to that harvester or dealer for buying or selling elvers in excess of that harvester's or dealer's quota.
3. It amends the consent to inspection provision to allow covert electronic surveillance by the Bureau of Marine Patrol, including allowing the bureau to place electronic surveillance equipment on lobster vessels for the purpose of determining if a lobster and crab fishing license holder is fishing over the trap limit.
4. It imposes a time limit of up to 60 days for an administrative hearing on a license suspension to be held, in order to prevent an individual from continually delaying a license suspension.
5. It changes the penalty for scrubbing egged lobsters from a one-year license suspension to license revocation.
6. It specifies that notice of failure to comply with monthly reporting requirements must be by mail or by serving the notice in hand and not by e-mail or telephone.