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

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

Sec. 1. 12 MRSA §6702, sub-§2, as amended by PL 2011, c. 598, §31, is further amended to read:

2. Licensed activity. A person licensed under this section may use the boat identified on the license to drag for scallops in the State's territorial waters and possess, ship, sell or transport shucked scallops taken under the license. The license also authorizes the captain and crew members aboard the boat identified on the license when engaged in dragging for scallops to undertake these activities, except that the captain and crew members may not fish for or take scallops if the license holder is not aboard that boat except as provided in subsection 2-A.

Sec. 2. 12 MRSA §6702, sub-§2-A, as enacted by PL 2007, c. 607, Pt. A, §2, is repealed.

Sec. 3. 12 MRSA §6706, sub-§3, as amended by PL 2011, c. 237, §2, is further amended to read:

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

Sec. 4. 12 MRSA §6720 is enacted to read:

§ 6720. Vessel limitation

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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.

B. "Owner" means:

(1) An individual who is the owner of a vessel registered under chapter 935 or the owner of a vessel documented under 46 Code of Federal Regulations, Part 67;

(2) The person who owns the highest percentage of a partnership, corporation or other entity that is the owner of a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67; or

(3) When 2 or more people own in equal proportion the highest percentages of a partnership, corporation or other entity that owns a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67, one of the highest percentage owners as designated by the owners of that partnership, corporation or other entity.

2. Owner or family member on board. Except as provided in subsection 3, a vessel may not be used for dragging for scallops in the State's territorial waters unless that vessel is owned by a person holding a scallop dragging license issued under section 6702 and:

A. The owner of that vessel is present on that vessel and has that vessel named on the owner's scallop dragging license; or

B. A family member of the vessel owner holds a scallop dragging license issued under section 6702 and is present on that vessel.

3. Exemptions; individuals. The commissioner may authorize a person to drag for scallops from a vessel when an owner or family member is not on board pursuant to subsection 2 if that person holds a scallop dragging license issued under section 6702 and:

A. The owner of that vessel holds a scallop dragging license issued under section 6702, documents to the commissioner that an illness or disability temporarily prevents that owner from fishing for or taking scallops from that vessel and requests in writing to the commissioner that the commissioner authorize that person to use another owner's vessel to fish for or take scallops;

B. Is the owner of a vessel that has become temporarily inoperable because of an accident or a mechanical failure and requests in writing permission from the commissioner to use another owner's vessel to fish for or take scallops; or

C. Was the owner of a vessel that was named on that person's scallop dragging license but is no longer the owner of that vessel due to sale or foreclosure. The person must demonstrate immediate intent to become the owner of another vessel to be used to fish for or take scallops and request in writing permission from the commissioner to use another owner's vessel to fish for or take scallops for a limited period of time.

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

Sec. 5. 12 MRSA §6722, sub-§1, as repealed and replaced by PL 2007, c. 695, Pt. I, §6, is amended to read:

1. Scallop dragging season. Unless modified by rules adopted under section 6171-A, a person may not fish for or take scallops by dragging in the territorial waters from April 16th to November 30th, both days inclusive.

Sec. 6. 12 MRSA §6748-A, sub-§2-B, ¶¶A and B, as enacted by PL 2001, c. 327, §7 and affected by §21, are repealed.

Sec. 7. 12 MRSA §6749-D is enacted to read:

§ 6749-D. Vessel limitation

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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.

B. "Owner" means:

(1) An individual who is the owner of a vessel registered under chapter 935 or the owner of a vessel documented under 46 Code of Federal Regulations, Part 67;

(2) The person who owns the highest percentage of a partnership, corporation or other entity that is the owner of a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67; or

(3) When 2 or more people own in equal proportion the highest percentages of a partnership, corporation or other entity that owns a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67, one of the highest percentage owners as designated by the owners of that partnership, corporation or other entity.

2. Owner or family member on board. Except as provided in subsection 3, a vessel may not be used for dragging for sea urchins in the State's territorial waters unless that vessel is owned by a person holding a sea urchin dragging license issued under section 6748-A and:

A. The owner of that vessel is present on that vessel and has that vessel named on the owner's sea urchin dragging license; or

B. A family member of the vessel owner holds a sea urchin dragging license issued under section 6748-A and is present on that vessel.

3. Exemptions; individuals. The commissioner may authorize a person to drag for sea urchins from a vessel when an owner or family member is not on board pursuant to subsection 2 if that person holds a sea urchin dragging license issued under section 6748-A and:

A. The owner of that vessel holds a sea urchin dragging license issued under section 6748-A, documents to the commissioner that an illness or disability temporarily prevents that owner from fishing for or taking sea urchins from that vessel and requests in writing to the commissioner that the commissioner authorize that person to use that vessel to fish for or take sea urchins;

B. Is the owner of a vessel that has become temporarily inoperable because of an accident or a mechanical failure and requests in writing permission from the commissioner to use another owner's vessel to fish for or take sea urchins; or

C. Was the owner of a vessel that was named on that person's sea urchin dragging license but is no longer the owner of that vessel due to sale or foreclosure. The person must demonstrate immediate intent to become the owner of another vessel to be used to fish for or take sea urchins and request in writing permission from the commissioner to use another owner's vessel to fish for or take sea urchins for a limited period of time.

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

Sec. 8. 12 MRSA §6749-N, as amended by PL 2013, c. 301, §17, is further amended to read:

§ 6749-N. Closed areas; zone identification

~~Notwithstanding section 6749, it is unlawful for a person to fish for or take sea urchins from:~~

1. Zone 1. Notwithstanding section 6749, it is unlawful for a person to fish for or take sea urchins from Zone 1; from May 1st to July 31st. For the purposes of this article, unless modified by rules adopted pursuant to this section, "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 RW "11" located between Marshall's Point and Bayside in the Town of Northport, then running southwesterly to Graves channel marker southeast of the Town of Camden, then running southeasterly to the Penobscot Bay Buoy "PB" east of Rockland harbor, then running southerly to the 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.~~

2. Zone 2. Notwithstanding section 6749, it is unlawful for a person to fish for or take sea urchins from Zone 2; from May 1st to July 31st. For the purpose of this article, unless modified by rules adopted pursuant to this section, "Zone 2" means all coastal waters east of that line established in subsection 1, including all coastal waters of the Penobscot River north of Fort Point State Park.

3. Conservation areas. The commissioner may adopt rules to establish conservation areas pursuant to section 6171 for the purposes of sea urchin research that are considered closed areas for the purpose of this section. Fishing for sea urchins in a conservation area adopted through the department for sea urchin research is considered a violation of this subchapter and subject to the penalties under section 6749-Y. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~2-A.

The commissioner may adopt rules to define boundaries for Zone 1 under subsection 1 and Zone 2 under subsection 2. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. If the commissioner adopts rules to define boundaries different from those under this section, the commissioner shall timely submit legislation to amend this section accordingly.

SUMMARY

This bill creates an owner-operator requirement for a scallop dragging license and sea urchin dragging license. It changes from major substantive rules to routine technical rules the rules to allow entry in the scallop fishery. It specifies that the prohibition against fishing for or taking scallops from April 16th to November 30th applies only to scallop dragging. It also allows the Commissioner of Marine Resources to amend by rule the boundaries of sea urchin Zone 1 and Zone 2.