

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

Amend the bill by striking out everything after the title and inserting the following:

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

Whereas, conduct that is prohibited under the marine resources laws threatens the sustainability of Maine's fisheries and the lobster industry particularly; and

Whereas, providing the Bureau of Marine Patrol broader enforcement options and deterring conduct that is detrimental to the sustainability of marine fisheries is necessary before the summer fishing season begins; 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 §6351, sub-§1, ¶¶B-2 and B-3 are enacted to read:

B-2. A conviction for a violation of Title 17-A, section 802 that is directly related to an activity for which a lobster and crab fishing license is required;

B-3. A conviction for a violation of Title 17-A, section 805 that is directly related to an activity for which a lobster and crab fishing license is required;

Sec. 2. 12 MRSA §6371, sub-§3, as amended by PL 2011, c. 311, §1, is repealed and the following enacted in its place:

3. Suspension for violations. Except as provided in subsections 1 and 2, the commissioner may suspend any licenses or certificates issued under this Part on the following grounds:

A. Violation of any section of marine resources laws or rules adopted under this Part;

B. The commission of conduct as provided in subsection 4; or

C. Setting fire to, sinking or damaging a vessel used to carry out the activities authorized under a lobster and crab fishing license to such an extent that the vessel cannot be used to carry out those activities by the person who has that vessel named on the person's lobster and crab fishing license.

Sec. 3. 12 MRSA §6371, sub-§4 is enacted to read:

4. Suspensions for certain violations of Title 17-A. Conduct that would constitute a violation of any of the following provisions is grounds for suspension under section 6374 of any licenses or certificates issued under this Part:

- A. Title 17-A, section 353, when the offense is directly related to an activity for which a lobster and crab fishing license is required;
- B. Title 17-A, section 359, when the offense is directly related to an activity for which a lobster and crab fishing license is required;
- C. Title 17-A, section 751, when the offense is committed against a marine patrol officer while that officer is engaged in the performance of official duty;
- D. Title 17-A, section 752-A, when the offense is committed against a marine patrol officer while that officer is engaged in the performance of official duty;
- E. Title 17-A, section 753, when the offense is directly related to an investigation by the Bureau of Marine Patrol;
- F. Title 17-A, section 754, when the offense is directly related to an investigation by the Bureau of Marine Patrol;
- G. Title 17-A, section 802, when the offense is directly related to an activity for which a lobster and crab fishing license is required;
- H. Title 17-A, section 805, when the offense is directly related to an activity for which a lobster and crab fishing license is required; or
- I. Title 17-A, sections 207, 209, 210, 210-A or 211, when the offense is committed against a marine patrol officer or a family member of a marine patrol officer as a result of the marine patrol officer performing what the license holder knows or has reason to know are the marine patrol officer's official duties. As used in this paragraph, "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.

Sec. 4. 12 MRSA §6374, as amended by PL 2015, c. 172, §§4 and 5, is further amended to read:

§ 6374. Procedure for suspending without criminal conviction or civil adjudication

~~Except as provided in section 6371, subsections 1 and 2, the~~The procedure for suspending a license or certificate for a violation of marine resources law ~~without a criminal conviction or civil adjudication under~~ section 6371, subsections 3 and 4 is governed by this section.

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 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.

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 or certificate and whether that person committed a violation of marine resources law or conduct described in section 6371, subsection 4; 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.

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

3. Finding of violation and suspension. ~~If the presiding officer of the hearing under subsection 2 finds that a violation of marine resources law has been committed, the presiding officer shall immediately notify the commissioner of the finding, and the~~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 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 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 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 has been committed.

The commissioner may not suspend any license or certificate for a period of time ~~not to exceed~~that exceeds the length of the suspension authorized under this subsection or the maximum amount of time allowable for a criminal conviction or civil adjudication of the same violation, whichever is shorter.

3-A. Finding of violation and suspension; specific violations. The length of a suspension of a license or certificate under this section for the following violations or conduct is:

- A. Not less than 2 years and not more than 3 years from the date of a finding of a violation of section 6434;
- B. Three years from the date of a finding of a violation of section 6431-F, subsection 4;
- C. Three years from the date of a finding of a violation of section 6432, subsection 2, paragraph B;
- D. Three years from the date of a finding of a violation of section 6438-A; and
- E. Three years for conduct that is grounds for suspension under section 6371, subsection 3, paragraph C.

4. Prohibition against multiple suspensions. If the commissioner suspends a license or certificate under this section, the commissioner may not suspend the license or certificate because of a criminal conviction or civil adjudication for the same violation.

5. Appeal. A decision of the commissioner to suspend a license or certificate pursuant to this section may be appealed to the Superior Court if it is filed with the court within 30 days of the decision.

6. Request for hearing on suspension length; place of hearing. The license or certificate holder may request a hearing regarding the length of suspension under this section. A hearing must be requested in writing within 10 days from the effective date of the suspension. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to in writing. The hearing must be conducted in the Augusta area.

7. Vessel monitoring following suspension or revocation. The commissioner may require a person whose lobster and crab fishing license was suspended or revoked pursuant to subsection 3-A or section 6402, 6402-D, 6402-E or 6404 or section 6371, subsection 3, paragraph C to install equipment that allows the department to track the geographic location of the vessel listed on that person's lobster and crab fishing license for a period immediately following the reinstatement of the license not to exceed the duration of the license suspension. Costs associated with equipment required to be installed under this subsection must be paid by the license holder.

Sec. 5. 12 MRSA §6402, as amended by PL 2009, c. 561, §13, is further amended to read:

§ 6402.Suspension or revocation based on conviction of molesting

~~The~~Notwithstanding section 6401, subsection 2, the commissioner shall suspend the lobster and crab fishing license of a license holder or the nonresident lobster and crab landing permit of a permit holder ~~adjudicated in court~~convicted of violating section 6434 for not less than 2 years and not more than 6 years from the date of a first conviction and not less than 2 years and not more than 10 years from the date of a 2nd conviction. ~~This suspension is for 3 years from the date of adjudication.~~ For a 3rd or subsequent ~~adjudication~~conviction, the commissioner ~~may~~shall permanently revoke the ~~license holder's~~person's license or permit.

1. Convictions for cutting lobster trap lines. A person ~~adjudicated~~convicted under section 6434 of molesting lobster gear by cutting a lobster trap line shall, upon making full payment as ordered by the court under section 6434, subsection 4, paragraph A, provide the commissioner with proof of that payment. If the commissioner does not receive that proof within 3 years after the date of ~~adjudication~~conviction, the commissioner shall continue that license suspension until such time as that proof is received.

Sec. 6. 12 MRSA §§6402-D and 6402-E are enacted to read:

§ 6402-D. Suspension or revocation based on conviction of fishing over trap limit

Notwithstanding section 6401, subsection 2, the commissioner shall suspend the lobster and crab fishing license or nonresident lobster and crab landing permit of a person convicted of a violation of section 6431-F, subsection 4 for not less than 3 years and not more than 10 years from the date of a first conviction. For a 2nd conviction, the commissioner shall permanently revoke the person's license or permit.

§ 6402-E. Suspension or revocation based on conviction of fishing sunken trap or trawl

Notwithstanding section 6401, subsection 2, the commissioner shall suspend the lobster and crab landing license or nonresident lobster and crab landing permit of a person convicted of a violation of section 6432, subsection 2, paragraph B for not less than 3 years and not more than 10 years from the date of a first conviction. For a 2nd conviction, the commissioner shall permanently revoke the person's license or permit.

Sec. 7. 12 MRSA §6404, as amended by PL 2015, c. 172, §6, is further amended to read:

§ 6404.Revocation based on conviction of scrubbing lobsters

The commissioner ~~shall~~may permanently 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.

Sec. 8. 12 MRSA §6413 is enacted to read:

§ 6413. Reduction in trap limit after certain suspensions

The commissioner may reduce the number of trap tags a person whose lobster and crab fishing license has been suspended pursuant to section 6374, subsection 3-A may purchase in the year following the suspension, except that if the person holds a Class I, Class II or Class III lobster and crab fishing license the person must be allowed to purchase at least 300 trap tags. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit for the license or established by rule for the zones identified on that person's license pursuant to section 6446, subsection 1-A.

Sec. 9. 12 MRSA §6431-B, as amended by PL 2007, c. 201, §13, is repealed and the following enacted in its place:

§ 6431-B. Tag system

1. Tag system established. The commissioner shall establish by rule a lobster trap tag system under which lobster and crab fishing license holders and nonresident lobster and crab landing permit holders must purchase tags for the purpose of identifying and tracking traps. The rules must contain provisions for replacing lost tags. The commissioner may impose a per tag fee to cover the cost of trap tags, the costs of administering and enforcing a lobster trap tag system, the costs of management of the lobster fishery and the costs associated with lobster management policy councils and referenda pursuant to section 6447. Trap tag fees must be deposited in the Lobster Management Fund established under section 6431-C. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Penalties. A person who violates a rule adopted pursuant to subsection 1 commits:

A. A civil violation for which a fine of \$250 must be adjudged if the person fishes 25 or fewer traps that are not tagged in accordance with rules adopted pursuant to subsection 1; and

B. A Class D crime if the person fishes more than 25 traps that are not tagged in accordance with rules adopted pursuant to subsection 1.

Sec. 10. 12 MRSA §6432, sub-§2, as amended by PL 2011, c. 266, Pt. A, §11, is repealed and the following enacted in its place:

2. Marking. A lobster or crab trap or trawl must be marked by a lobster buoy as described in subsections 3 and 4. The buoy must be visible at the surface. A person may not:

A. Set, raise, lift or transfer any lobster trap or buoy unless it is clearly marked with the owner's lobster and crab fishing license number or the owner's nonresident lobster and crab landing permit number; or

B. Intentionally set or fish a lobster or crab trap or trawl in a manner that is designed to avoid detection that the trap or trawl has been set or fished.

Sec. 11. 12 MRSA §6434, sub-§3-A, as enacted by PL 2007, c. 283, §2, is amended to read:

3-A. Penalty. A person who violates this section commits a civil violation for which a fine of not less than \$100 or more than \$500 may be adjudged~~Class D crime.~~

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

SUMMARY

This amendment, which is the minority report of the committee, replaces the bill.

The amendment adds to the list of convictions or adjudications that are the basis for suspending a marine resources license a conviction for committing arson or aggravated criminal mischief. The

amendment makes molesting lobster gear, which is currently a civil offense, a Class D crime. The amendment provides that fishing 25 or fewer untagged lobster traps is a civil violation and fishing more than 25 untagged lobster traps is a Class D crime.

The amendment expands the behavior for which a marine resources license may be suspended through an administrative process to include setting fire to, sinking or damaging a lobster boat, conduct that would violate certain provisions of the Maine Criminal Code and offenses committed against a marine patrol officer or the officer's family as a result of the officer's performing official duties, regardless of whether that offensive behavior occurs while undertaking an activity for which a marine resources license is required. The amendment provides for specific lengths for suspension of a marine resources license upon an administrative finding or conviction of molesting lobster gear, fishing over the lobster trap limit, fishing a sunken trap or trawl, scrubbing lobsters or setting fire to, sinking or destroying a lobster boat. The amendment allows the Commissioner of Marine Resources to reduce the number of traps a lobster and crab fishing license holder may fish following a suspension for one of those offenses. The amendment provides that a suspension based upon a conviction or adjudication is the same length as an administrative suspension.

The amendment allows the commissioner to require a person whose lobster and crab fishing license was suspended for certain offenses to install equipment that allows the Department of Marine Resources to track the geographic location of the vessel listed on that person's lobster and crab fishing license for a period immediately following the reinstatement of the license that may not exceed the duration of the license suspension. Costs associated with equipment required to be installed must be paid by the license holder.

FISCAL NOTE REQUIRED
(See attached)