



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 486

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H.P. 336

House of Representatives, February 14, 2013

### **An Act To Provide for the Effective Marketing and Promotion of Maine Lobster**

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.  
Reference to the Committee on Marine Resources suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KRUGER of Thomaston.  
Cosponsored by Senator: LANGLEY of Hancock.

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

2 **Sec. 1. 12 MRSA §6455**, as amended by PL 2009, c. 567, §§7 and 8, is further  
3 amended to read:

4 **§6455. Lobster Promotion Council**

5 **1. Council established; purpose.** The Lobster Promotion Council, established in  
6 Title 5, section 12004-H, subsection 14 and referred to in this subchapter as the "council,"  
7 is created to promote and market actively Maine lobsters in state, regional, national and  
8 international markets. The council shall draw upon the expertise of the Maine lobster  
9 industry and established private marketing firms to identify market areas that will provide  
10 the greatest return on the investments made by lobster license holders and undertake  
11 those media or promotional efforts that represent the most cost-effective use of a limited  
12 promotional budget. The council shall remain responsive to the Maine lobster industry,  
13 conduct its business in a public manner and undertake marketing efforts that promote the  
14 quality and full utilization of the product and the unique character of the coastal Maine  
15 lobster fishery.

16 ~~The council consists of 9 voting members appointed as follows:~~

17 ~~A. From the western district of the State, consisting of lands located between the~~  
18 ~~Piscataqua River and the Kennebec River, 3 members meeting the qualifications in~~  
19 ~~subsection 2;~~

20 ~~B. From the midcoast district of the State, consisting of all lands located between~~  
21 ~~the Kennebec River and the Penobscot River, 3 members meeting the qualifications~~  
22 ~~in subsection 2; and~~

23 ~~C. From the eastern district of the State, consisting of all lands located between the~~  
24 ~~Penobscot River and the St. Croix River, 3 members meeting the qualifications in~~  
25 ~~subsection 2.~~

26 ~~The commissioner shall appoint the members of the council from among a list of~~  
27 ~~nominees prepared by the Lobster Advisory Council. The commissioner shall appoint~~  
28 ~~one member within each district for an initial term of one year, one member within each~~  
29 ~~district for an initial term of 2 years and one member within each district for an initial~~  
30 ~~term of 3 years. All subsequent members are appointed by the commissioner for terms of~~  
31 ~~3 years. A person may not serve more than 2 consecutive 3 year terms as a member of~~  
32 ~~the council. By majority vote, the council shall annually elect a chair from among its~~  
33 ~~members. The commissioner is an ex officio, nonvoting member of the council.~~

34 **1-A. Council is a public instrumentality.** The council is established as a public  
35 instrumentality serving a public purpose. As a public instrumentality:

36 A. Employees of the council may not be construed to be state employees for any  
37 purpose, including the state civil service provisions of Title 5, Part 2 and Title 5,  
38 chapter 372 and the state retirement system provisions of Title 5, Part 20;

1 B. The council may not be construed to be a state agency for any purposes,  
2 including the budget, accounts and control, auditing, purchasing or other provisions  
3 of Title 5, Part 4; and

4 C. Notwithstanding any provisions of paragraphs A and B:

5 (1) All meetings and records of the council are subject to the provisions of Title  
6 1, chapter 13, subchapter 1, except as provided in subsection 1-B. The  
7 commissioner and those members of the Legislature appointed to serve on the  
8 joint standing committee of the Legislature having jurisdiction over marine  
9 resource matters have access to all material designated confidential by the  
10 council;

11 (2) ~~Except as required by subsection 2, members~~ Members of the council are  
12 governed by the conflict of interest provisions set forth in Title 5, section 18; and

13 (3) For the purposes of the Maine Tort Claims Act, the council is a  
14 "governmental entity" and its employees are "employees" as those terms are  
15 defined in Title 14, section 8102.

16 **1-B. Market studies and promotional plans; proprietary information.**

17 Information provided to or developed by the council and included in a promotional plan  
18 or market study is public unless the council determines that it contains proprietary  
19 information. For the purposes of this subsection, "proprietary information" means  
20 information that is a trade secret or production, commercial or financial information the  
21 disclosure of which would impair the competitive position of the council or the person  
22 submitting the information and would make available information not otherwise publicly  
23 available.

24 **1-C. Council members; appointments; terms.** The council consists of 13 voting  
25 members, 11 appointed by the commissioner as follows:

26 A. Seven individuals representing the lobster management policy councils  
27 established pursuant to section 6447. Each lobster management policy council shall  
28 prepare a list of nominees from its zone for consideration by the commissioner for the  
29 appointments under this paragraph;

30 B. Two individuals who are managers or officers of business entities operating in the  
31 State that hold valid wholesale seafood licenses with lobster permit, from a list of  
32 nominees prepared for the commissioner by the Lobster Advisory Council; and

33 C. Two individuals who are public members, from a list of nominees prepared for  
34 the commissioner by the Lobster Advisory Council.

35 Members are appointed by the commissioner for terms of 3 years. A person may not  
36 serve more than 2 consecutive 3-year terms as a member of the council.

37 The commissioner serves as an ex officio member of the council. The Commissioner of  
38 Economic and Community Development or the commissioner's designee serves as an ex  
39 officio member of the council.

40 ~~**2. Qualifications of members.** From each district, 3 members must be appointed~~  
41 ~~who meet the following criteria:~~

1           A.— ~~One person who is a full-time harvester and who has held a valid lobster and~~  
2           ~~crab fishing license for at least 5 consecutive years;~~

3           B.— ~~One person who is a dealer or pound operator and who:~~

4                 ~~(1) Has held a valid wholesale shellfish license or lobster transport license for a~~  
5                 ~~period of at least 5 consecutive years; or~~

6                 ~~(2) Is the manager of, or an officer in, a business entity operating in the State that~~  
7                 ~~holds a valid wholesale shellfish license or lobster transport license; and~~

8           C.— ~~One person who is a public member.~~

9           ~~A person is eligible for appointment to the council from a district only if that person is a~~  
10           ~~resident of the district or if that person's place of business is located within the district.~~

11           **2-A. Officers.** By majority vote, the council shall annually elect a chair from among  
12           its members and may elect other officers in accordance with the bylaws.

13           **3. Meetings.** The council shall meet at least quarterly. A quorum of 5 7 members is  
14           required to conduct the business of the council. Additional meetings may be called by the  
15           chair. If 3 or more members of the council submit to the chair a written request for a  
16           meeting, the chair shall call a meeting to be held no sooner than 14 days after receipt of  
17           the written request. The commissioner may remove any member with unexcused  
18           absences from 2 or more consecutive meetings of the council.

19           **3-A. Employees.** The council shall hire ~~a full-time~~ an executive director and may  
20           hire staff as needed to perform its duties. Employees of the Lobster Promotion Council  
21           serve at the pleasure of the council. The salary and benefits for employees of the council  
22           are determined by the council.

23           **4. Powers and duties.** The council may:

24           A. Undertake promotional marketing programs in cooperation with the lobster  
25           industry;

26           B. Promote national and international markets for lobsters harvested or processed in  
27           the State;

28           C. Provide material and technical assistance to persons seeking to market lobsters  
29           harvested or processed in the State;

30           D. Conduct other efforts as determined necessary to increase the sales of lobsters  
31           harvested or processed in the State;

32           D-1. Market and sell goods directly related to the functions of the council and  
33           deposit all proceeds in the Lobster Promotion Fund;

34           E. Make expenditures from the Lobster Promotion Fund to carry out the purposes  
35           of this subchapter. Money in the fund may be used only for the following purposes:

36                 (1) Promotion, advertising and marketing development. The council may  
37                 implement programs and activities to promote, advertise and develop markets for  
38                 lobster and make or enter into contracts with any local, state, federal or private  
39                 agency, department, firm, corporation, entity or person for those purposes; and

1 (2) The hiring of staff and the payment of compensation for employees, payment  
2 of per diem and reimbursement of expenses for members pursuant to Title 5,  
3 section 12004-H and payment of administrative and overhead costs associated  
4 with the business of the council; and

5 F. Accept and deposit in the fund additional funding from any source, public or  
6 private.

7 ~~**5. Fund established; license surcharge assessed.** The Lobster Promotion Fund,~~  
8 ~~referred to in this subchapter as the "fund," is established to carry out the purposes of this~~  
9 ~~subchapter. The department shall pay to the fund all money appropriated or received by~~  
10 ~~the department for the purposes of this subchapter, except that the department may retain~~  
11 ~~funds necessary to reimburse the department for the actual cost of collecting the license~~  
12 ~~surcharges established in this subsection. The fund is capitalized from the following~~  
13 ~~annual surcharges assessed on the following licenses issued by the department for~~  
14 ~~calendar years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003,~~  
15 ~~2004 and 2005 to 2020:~~

16 A. ~~Class I crab and lobster licenses for persons 18 to 69 years of age, \$31.25;~~

17 B. ~~Class II crab and lobster licenses, \$62.50, except that for license holders 70 years~~  
18 ~~of age or older the surcharge is \$32;~~

19 C. ~~Class III crab and lobster licenses, \$93.75, except that for license holders 70~~  
20 ~~years of age or older the surcharge is \$47;~~

21 D. ~~Wholesale seafood licenses with lobster permits, \$250;~~

22 E. ~~Lobster transportation licenses, \$250; and~~

23 F. ~~Nonresident lobster and crab landing permits, \$250.~~

24 ~~A person holding more than one of the licenses listed in this subsection is assessed a~~  
25 ~~surcharge only on the highest surchargeable license held.~~

26 ~~The Treasurer of State shall hold all surcharges assessed by this subsection in the fund~~  
27 ~~and invest all money in the fund until disbursed to the council upon request of the~~  
28 ~~council. Interest from investments accrues to the fund.~~

29 ~~All money in the fund is subject to allocation by the Legislature. Unexpended balances in~~  
30 ~~the fund at the end of the fiscal year may not lapse but must be carried forward to be used~~  
31 ~~for the same purposes.~~

32 ~~In addition to payment of the regular license fee and the surcharge, a person purchasing a~~  
33 ~~license subject to the surcharges established in this subsection may make voluntary~~  
34 ~~contributions to the fund at the time the license is purchased. Voluntary contributions~~  
35 ~~received by the department from a licensee pursuant to this subsection must be deposited~~  
36 ~~in the fund by the department and must be used by the council for the purposes of this~~  
37 ~~subchapter.~~

38 **5-A. Lobster Promotion Fund; established; license surcharge assessed.** The  
39 Lobster Promotion Fund, referred to in this subchapter as "the fund," is established to  
40 carry out the purposes of this subchapter. The department shall pay to the fund all money  
41 appropriated or received by the department for the purposes of this subchapter, except

1 that the department may retain funds necessary to reimburse the department for the actual  
2 cost of collecting the license surcharges established in this subsection. The fund is  
3 capitalized from annual surcharges assessed on licenses issued by the department for  
4 calendar years as follows.

5 A. For the year 2013 the surcharges are, for:

- 6 (1) Class I crab and lobster licenses for persons 18 to 69 years of age, \$31.25;
- 7 (2) Class II crab and lobster licenses, \$62.50, except that for license holders 70  
8 years of age or older the surcharge is \$32;
- 9 (3) Class III crab and lobster licenses, \$93.75, except that for license holders 70  
10 years of age or older the surcharge is \$47;
- 11 (4) Wholesale seafood licenses with lobster permits, \$250;
- 12 (5) Lobster transportation licenses, \$250; and
- 13 (6) Nonresident lobster and crab landing permits, \$250.

14 B. For the year 2014 the surcharges are, for:

- 15 (1) Class I crab and lobster licenses for persons 18 to 69 years of age, \$93.25;
- 16 (2) Class II crab and lobster licenses, \$187.50, except that for license holders 70  
17 years of age or older the surcharge is \$93;
- 18 (3) Class III crab and lobster licenses, \$281.75, except that for license holders 70  
19 years of age or older the surcharge is \$140;
- 20 (4) Wholesale seafood licenses with lobster permits, \$750;
- 21 (5) Lobster transportation licenses, \$750;
- 22 (6) Nonresident lobster and crab landing permits, \$750; and
- 23 (7) Processor licenses, \$1,000.

24 C. For the year 2015 the surcharges are, for:

- 25 (1) Class I crab and lobster licenses for persons 18 to 69 years of age, \$187.25;
- 26 (2) Class II crab and lobster licenses, \$375.50, except that for license holders 70  
27 years of age or older the surcharge is \$187;
- 28 (3) Class III crab and lobster licenses, \$562.75, except that for license holders 70  
29 years of age or older the surcharge is \$281;
- 30 (4) Wholesale seafood licenses with lobster permits, \$1,500;
- 31 (5) Lobster transportation licenses, \$1,500;
- 32 (6) Nonresident lobster and crab landing permits, \$1,500; and
- 33 (7) Processor licenses, \$2,000.

34 D. For the years 2016 to 2018 the surcharges are, for:

- 35 (1) Class I crab and lobster licenses for persons 18 to 69 years of age, \$243.25;

1                   (2) Class II crab and lobster licenses, \$487.50, except that for license holders 70  
2                   years of age or older the surcharge is \$243;

3                   (3) Class III crab and lobster licenses, \$731.75, except that for license holders 70  
4                   years of age or older the surcharge is \$365;

5                   (4) Wholesale seafood licenses with lobster permits, \$1,950;

6                   (5) Lobster transportation licenses, \$1,950;

7                   (6) Nonresident lobster and crab landing permits, \$1,950; and

8                   (7) Processor licenses, \$2,600.

9                   A person holding more than one of the licenses listed in this subsection is assessed a  
10                  surcharge only on the highest surchargeable license held.

11                  The Treasurer of State shall hold all surcharges assessed by this subsection in the fund  
12                  and invest all money in the fund until disbursed to the council upon request of the  
13                  council. Interest from investments accrues to the fund.

14                  All money in the fund is subject to allocation by the Legislature. Unexpended balances in  
15                  the fund at the end of the fiscal year may not lapse but must be carried forward to be used  
16                  for the same purposes.

17                  In addition to payment of the regular license fee and the surcharge, a person purchasing a  
18                  license subject to the surcharges established in this subsection may make voluntary  
19                  contributions to the fund at the time the license is purchased. Voluntary contributions  
20                  received by the department from a licensee or any other source pursuant to this subsection  
21                  must be deposited in the fund by the department and must be used by the council for the  
22                  purposes of this subchapter.

23                  **6. Reports.** ~~By February 15th of each year, the~~ The council shall report annually to  
24                  the joint standing ~~committees~~ committee of the Legislature having jurisdiction over  
25                  financial affairs and marine resource matters ~~on the programs undertaken pursuant to this~~  
26                  subchapter, expenditures from the fund and balances in all accounts in the fund, to the  
27                  Lobster Advisory Council established under section 6462-A and, at a statewide meeting  
28                  of interested license holders, to the lobster industry. The council shall provide notice of  
29                  the date and location of the statewide meeting of license holders at the time of license  
30                  issuance or renewal.

31                  **7. Audit.** An annual audit of the expenditures of the council must be performed.  
32                  The council may contract with the Department of Audit or with a private sector  
33                  accounting firm to conduct the audit. The council shall report the results of that audit to  
34                  the joint standing committee of the Legislature having jurisdiction over marine resource  
35                  matters. If the annual audit is performed by the Department of Audit, the council shall  
36                  reimburse the department for its costs to conduct that audit.

37                  **8. Review; repeal.** By January 15, 2018, the council shall report to the Lobster  
38                  Advisory Council established under section 6462-A and the joint standing committee of  
39                  the Legislature having jurisdiction over marine resource matters the results of a 3rd-party  
40                  audit of the results of the council's programs and activities from 2014 to 2017. Based on  
41                  the outcome of that audit and with consideration of any recommendation by the Lobster

1 Advisory Council, the committee may submit legislation to the Legislature to renew the  
2 license surcharges or adjust them as appropriate.

3 This section is repealed October 1, 2018.

4 **Sec. 2. Lobster Promotion Council; transition.** Notwithstanding the Maine  
5 Revised Statutes, Title 12, section 6455, subsection 1-C, the members of the Lobster  
6 Promotion Council on the effective date of this Act continue to serve for the terms for  
7 which they were appointed, and as their terms expire members must be appointed by the  
8 Commissioner of Marine Resources to serve staggered terms so that 3 members serve a  
9 term of one year, 3 members serve a term of 2 years and 3 members serve a term of 3  
10 years. The 2 members initially appointed under Title 12, section 6455, subsection 1-C  
11 must be appointed so that one member serves for 2 years and one member serves for 3  
12 years.

13 **SUMMARY**

14 This bill amends provisions of the law establishing the Lobster Promotion Council as  
15 follows.

16 1. It increases the surcharge assessed on harvester and dealer licenses and creates a  
17 surcharge on the processor license to fund the council.

18 2. It changes the criteria for membership and the selection process.

19 3. It requires that the council report annually to the joint standing committee of the  
20 Legislature having jurisdiction over marine resource matters, the Lobster Advisory  
21 Council and the lobster industry.