

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND THIRTEEN

—
 H.P. 336 - L.D. 486

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

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

Sec. 1. 5 MRSA §12004-H, sub-§14, as enacted by PL 1991, c. 523, §1, is amended to read:

14.

<u>Maine Lobster Promotion</u>	\$55 Per Diem Plus	12 MRSA §6455
<u>Council Marketing</u>	Expenses	
<u>Collaborative</u>		

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

§6455. Maine Lobster Marketing Collaborative

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

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

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

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

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

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

1-A. Collaborative is a public instrumentality. The ~~council~~ collaborative is established as a public instrumentality serving a public purpose. As a public instrumentality:

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

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

C. Notwithstanding any provisions of paragraphs A and B:

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

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

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

1-B. Market studies and promotional plans; proprietary information. Information provided to or developed by the ~~council~~ collaborative and included in a

promotional plan or market study is public unless the ~~council~~ collaborative determines that it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the ~~council~~ collaborative or the person submitting the information and would make available information not otherwise publicly available.

1-C. Collaborative members; appointments; terms. The collaborative consists of 11 voting members, 9 appointed by the commissioner as follows:

A. Four individuals representing the lobster management policy councils established pursuant to section 6447. Each lobster management policy council shall prepare a list of up to 3 nominees from its zone for consideration by the commissioner for the appointments under this paragraph. In making appointments under this paragraph, the commissioner shall select members to ensure a geographic distribution of representation from lobster management zones established pursuant to section 6446;

B. Three individuals:

(1) At least 2 of whom are owners, managers or officers of business entities operating in the State that hold valid wholesale seafood licenses with lobster permits, from a list of nominees prepared for the commissioner by the Lobster Advisory Council established under section 6462-A; and

(2) At least one of whom represents the interests of lobster dealers and processors; and

C. Two individuals who are public members with experience in marketing and promotion, retail sales, food service or food science, from a list of nominees prepared for the commissioner by the Lobster Advisory Council established under section 6462-A.

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

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

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

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

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

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

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

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

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

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

3. Meetings. ~~The council collaborative~~ shall meet at least quarterly. A quorum of ~~5~~ 6 members is required to conduct the business of the ~~council collaborative~~. Additional meetings may be called by the chair. If 3 or more members of the ~~council collaborative~~ submit to the chair a written request for a meeting, the chair shall call a meeting to be held no sooner than 14 days after receipt of the written request. The commissioner may remove any member with unexcused absences from 2 or more consecutive meetings of the ~~council collaborative~~.

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

4. Powers and duties. ~~The council collaborative~~ may:

- A. Undertake promotional marketing programs in cooperation with the lobster industry;
- B. Promote national and international markets for lobsters harvested or processed in the State;
- C. Provide material and technical assistance to persons seeking to market lobsters harvested or processed in the State;
- D. Conduct other efforts as determined necessary to increase the sales of lobsters harvested or processed in the State;
- D-1. Market and sell goods directly related to the functions of the council collaborative and deposit all proceeds in the Lobster Promotion Fund;
- E. Make expenditures from the Lobster Promotion Fund to carry out the purposes of this subchapter. Money in the fund may be used only for the following purposes:
 - (1) Promotion, advertising and marketing development. ~~The council collaborative~~ may implement programs and activities to promote, advertise and develop markets for lobster and make or enter into contracts with any local, state, federal or private agency, department, firm, corporation, entity or person for those purposes; and
 - (2) The hiring of staff and the payment of compensation for employees, payment of per diem and reimbursement of expenses for members pursuant to Title 5, section 12004-H and payment of administrative and overhead costs associated with the business of the ~~council collaborative~~; and
- F. Accept and deposit in the fund additional funding from any source, public or private.

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

- ~~A. Class I crab and lobster licenses for persons 18 to 69 years of age, \$31.25;~~
- ~~B. Class II crab and lobster licenses, \$62.50, except that for license holders 70 years of age or older the surcharge is \$32;~~
- ~~C. Class III crab and lobster licenses, \$93.75, except that for license holders 70 years of age or older the surcharge is \$47;~~
- ~~D. Wholesale seafood licenses with lobster permits, \$250;~~
- ~~E. Lobster transportation licenses, \$250; and~~
- ~~F. Nonresident lobster and crab landing permits, \$250.~~

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

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

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

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

5-A. License surcharge assessed. The fund is capitalized from annual surcharges assessed on licenses issued by the department for calendar years as follows.

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

- (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age, \$31.25;
- (2) Class II lobster and crab fishing licenses, \$62.50, except that for license holders 70 years of age or older the surcharge is \$32;
- (3) Class III lobster and crab fishing licenses, \$93.75, except that for license holders 70 years of age or older the surcharge is \$47;

- (4) Nonresident lobster and crab landing permits, \$250;
- (5) Wholesale seafood licenses with lobster permits, \$250; and
- (6) Lobster transportation licenses, \$250.

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

- (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age, \$55.25;
- (2) Class II lobster and crab fishing licenses, \$110.50, except that for license holders 70 years of age or older the surcharge is \$55;
- (3) Class III lobster and crab fishing licenses, \$160.75, except that for license holders 70 years of age or older the surcharge is \$80;
- (4) Nonresident lobster and crab landing permits, \$425;
- (5) Wholesale seafood licenses with lobster permits if the license holders hold no supplemental wholesale seafood licenses with lobster permits, or lobster transportation licenses if the license holders hold no supplemental lobster transportation licenses, \$400;
- (6) Supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses as follows:
 - (a) Six hundred dollars for up to 2 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses;
 - (b) Eight hundred dollars for 3 to 5 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and
 - (c) One thousand dollars for 6 or more supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and
- (7) Lobster processor licenses, \$333 if less than 1,000,000 pounds of raw product is processed, and \$1,333 if 1,000,000 pounds or more of raw product is processed.

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

- (1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age, \$110.25;
- (2) Class II lobster and crab fishing licenses, \$220.50, except that for license holders 70 years of age or older the surcharge is \$110;
- (3) Class III lobster and crab fishing licenses, \$320.75, except that for license holders 70 years of age or older the surcharge is \$160;
- (4) Nonresident lobster and crab landing permits, \$850;
- (5) Wholesale seafood licenses with lobster permits if the license holders hold no supplemental wholesale seafood licenses with lobster permits, or lobster transportation licenses if the license holders hold no supplemental lobster transportation licenses, \$800;

(6) Supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses as follows:

(a) One thousand two hundred dollars for up to 2 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses;

(b) One thousand six hundred dollars for 3 to 5 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(c) Two thousand dollars for 6 or more supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(7) Lobster processor licenses, \$666 if less than 1,000,000 pounds of raw product is processed, and \$2,666 if 1,000,000 pounds or more of raw product is processed.

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

(1) Class I lobster and crab fishing licenses for persons 18 to 69 years of age, \$165.25;

(2) Class II lobster and crab fishing licenses, \$330.50, except that for license holders 70 years of age or older the surcharge is \$165;

(3) Class III lobster and crab fishing licenses, \$480.75, except that for license holders 70 years of age or older the surcharge is \$240;

(4) Nonresident lobster and crab landing permits, \$1,275;

(5) Wholesale seafood licenses with lobster permits if the license holders hold no supplemental wholesale seafood licenses with lobster permits, or lobster transportation licenses if the license holders hold no supplemental lobster transportation licenses, \$1,200;

(6) Supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses as follows:

(a) One thousand eight hundred dollars for up to 2 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses;

(b) Two thousand four hundred dollars for 3 to 5 supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(c) Three thousand dollars for 6 or more supplemental wholesale seafood licenses with lobster permits or supplemental lobster transportation licenses; and

(7) Lobster processor licenses, \$1,000 if less than 1,000,000 pounds of raw product is processed, and \$4,000 if 1,000,000 pounds or more of raw product is processed.

A person holding more than one of the following licenses is assessed only the highest applicable surcharge for those licenses under this subsection: a wholesale seafood license with a lobster permit, a supplemental wholesale seafood license with a lobster permit, a lobster transportation license or a supplemental lobster transportation license.

Beginning in 2014, the commissioner shall review annually the surcharges established in this subsection and recommend changes to the joint standing committee of the Legislature having jurisdiction over marine resource matters, which after receiving the recommendations may report out a bill to the Legislature to adjust surcharges.

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

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

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

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

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

8. Review. By January 15, 2014, the collaborative shall present to the joint standing committee of the Legislature having jurisdiction over marine resource matters a 3-year marketing plan with a detailed work plan and budget for the collaborative's programs and activities from 2014 to 2015. By January 15, 2018, the collaborative shall report to the Lobster Advisory Council established under section 6462-A and the joint standing committee of the Legislature having jurisdiction over marine resource matters the results of a 3rd-party audit of the results of the collaborative's programs and activities from 2014

to 2017. Based on the outcome of that audit and with consideration of any recommendations by the Lobster Advisory Council, the committee may report out a bill to the Legislature to renew the license surcharges under subsection 5-A or adjust them as appropriate.

This section is repealed October 1, 2018.

Sec. 3. 12 MRSA §6465, sub-§2, ¶G, as enacted by PL 2001, c. 623, §1, is amended to read:

G. The ~~Lobster Promotion Council~~ Maine Lobster Marketing Collaborative under section 6455;

Sec. 4. 29-A MRSA §456-A, sub-§3, as enacted by PL 2001, c. 623, §4, is amended to read:

3. Design. The Secretary of State, in consultation with the ~~Lobster Promotion Council~~ Maine Lobster Marketing Collaborative under Title 12, section 6455, shall determine a design for the lobster special registration plates. The joint standing committee of the Legislature having jurisdiction over transportation matters shall review the final design prior to manufacture of the plates. The Secretary of State shall issue upon request lobster plates that are also vanity plates. Lobster plates are issued in accordance with the provisions of this section and section 453.

Sec. 5. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 12, chapter 619, subchapter 3-A, in the subchapter headnote, the words "lobster promotion council" are amended to read "maine lobster marketing collaborative" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 6. Members of Lobster Promotion Council; transition. Notwithstanding the Maine Revised Statutes, Title 12, section 6455, subsection 1-C, the members of the Lobster Promotion Council serving immediately prior to the effective date of this Act continue to serve as members of the Maine Lobster Marketing Collaborative for the terms for which they were appointed until the Commissioner of Marine Resources appoints their successors.

Sec. 7. Appropriations and allocations. The following appropriations and allocations are made.

LOBSTER PROMOTION COUNCIL

Lobster Promotion Fund 0701

Initiative: Provides funding to perform increased marketing efforts in the lobster industry.

OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
All Other	\$750,000	\$1,500,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$750,000	\$1,500,000