S T A T E O F N E W Y O R K

7801

2011-2012 Regular Sessions

I N A S S E M B L Y

May 17, 2011

Introduced by M. of A. SWEENEY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to commercial fishing licenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 13-0328 of the environmental conservation law, as amended by chapter 366 of the laws of 2007, is amended to read as follows:

S 13-0328. Commercial licenses; limited entry.

1. Commercial food fish licenses. Commercial food fish licenses provided for by section 13-0335 of this title shall be issued as follows:

a. [for the period beginning July first, nineteen hundred ninety-nine and ending December thirty-first, nineteen hundred ninety-nine, the following persons shall be eligible to be issued a commercial food fish license:

(i) persons who held a valid commercial food fish license in nineteen hundred ninety-eight;

(ii) persons who held a valid commercial food fish license in nineteen hundred ninety-six but not in nineteen hundred ninety-seven; and

(iii) persons who submitted applications to the department during the period commencing January first, nineteen hundred ninety-nine and ending on the effective date of this section and who were eligible to receive such license but had not been issued such license during such period.

b.] for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, the number of [residential] RESIDENT commercial food fish licenses and the number of [non-residential] NON-RESIDENT commercial food fish licenses shall not exceed the following annual limits:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(i) [for two thousand four, the number of licenses shall be limited to the greater of the number of licenses issued in two thousand two or the number of licenses issued in two thousand three;

(ii) for two thousand five, the number of licenses shall be limited to the number of licenses issued in two thousand four, plus fifty percent of any difference between the number of licenses issued in two thousand four and the limit established in subparagraph (i) of this paragraph;

(iii) for two thousand six, the number of licenses shall be limited to the number of licenses issued in two thousand five, plus fifty percent of any difference between the number of licenses issued in two thousand five and the limit established in subparagraph (ii) of this paragraph;

(iv) for two thousand seven, the number of licenses shall be limited to the number of licenses issued in two thousand six, plus fifty percent of any difference between the number of licenses issued in two thousand six and the limit established in subparagraph (iii) of this paragraph;

(v)] for two thousand [eight] TWELVE, the number of licenses shall be limited to the number of licenses issued in two thousand [seven] ELEVEN, plus fifty percent of any difference between the number of licenses issued in two thousand [seven] ELEVEN and [the limit established in subparagraph (iv) of this paragraph] ONE THOUSAND FIFTY-THREE;

[(vi)] (II) for two thousand [nine] THIRTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [eight] TWELVE, plus fifty percent of any difference between the number of licenses issued in two thousand [eight] TWELVE and the limit established in subparagraph [(v)] (I) of this paragraph;

[(vii)] (III) for two thousand [ten] FOURTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [nine] THIRTEEN, plus fifty percent of any difference between the number of licenses issued in two thousand [nine] THIRTEEN and the limit established in subparagraph [(vi)] (II) of this paragraph;

[(viii)] (IV) for two thousand [eleven] FIFTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [ten] FOURTEEN, plus fifty percent of any difference between the number of licenses issued in two thousand [ten] FOURTEEN and the limit established in subparagraph [(vii)] (III) of this paragraph.

[c.] B. for the period beginning January first, two thousand TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, persons who were issued a commercial food fish license in the previous year shall be eligible to be issued such license.

[d.] C. for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, the department shall issue commercial food fish licenses to persons who were not issued such license in the previous year provided that the total number of such licenses issued to such persons does not exceed the difference between the number of licenses established in paragraph [b] A of this subdivision and the number of such licenses issued pursuant to paragraph [c] B of this subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete a commercial food fish apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based solely upon income derived from operation of or employment by a party or charter boat.

2. Commercial lobster permits. Commercial lobster permits provided for by section 13-0329 of this title shall be issued as follows:

[a. for the period beginning July first, nineteen hundred ninety-nine and ending December thirty-first, nineteen hundred ninety-nine, the following persons shall be eligible to be issued a commercial lobster permit:

(i) persons who held a valid commercial lobster permit in nineteen hundred ninety-eight;

(ii) persons who held a valid commercial lobster permit in nineteen hundred ninety-six but not in nineteen hundred ninety-seven; and

(iii) persons who submitted applications to the department during the period commencing January first, nineteen hundred ninety-nine and ending on the effective date of this section and who were eligible to receive such permit but had not been issued such permit during such period.

b.] for the period beginning January first, two thousand TWELVE, through December thirty-first, two thousand [eleven] FIFTEEN, only persons who were issued a commercial lobster permit in the previous year shall be eligible to be issued such permit.

3. Commercial crab permits. Commercial crab permits provided for by section 13-0331 of this title shall be issued as follows:

a. [for the period beginning July first, nineteen hundred ninety-nine and ending December thirty-first, nineteen hundred ninety-nine, the following persons shall be eligible to be issued a commercial crab permit:

(i) persons who held a valid commercial crab permit in nineteen hundred ninety-eight;

(ii) persons who held a valid commercial crab permit in nineteen hundred ninety-six but not in nineteen hundred ninety-seven; and

(iii) persons who submitted applications to the department during the period commencing January first, nineteen hundred ninety-nine and ending on the effective date of this section and who were eligible to receive such permit but had not been issued such permit during such period.

b.] for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, the number of [residential] RESIDENT commercial crab permits and the number of [non-residential] NON-RESIDENT commercial crab permits shall not exceed the following annual limits:

(i) [for two thousand four, the number of permits shall be limited to the greater of the number of permits issued in two thousand two or the number of permits issued in two thousand three;

(ii) for two thousand five, the number of permits shall be limited to the number of permits issued in two thousand four, plus fifty percent of any difference between the number of permits issued in two thousand four and the limit established in subparagraph (i) of this paragraph;

(iii) for two thousand six, the number of permits shall be limited to the number of permits issued in two thousand five, plus fifty percent of any difference between the number of permits issued in two thousand five and the limit established in subparagraph (ii) of this paragraph;

(iv) for two thousand seven, the number of licenses shall be limited to the number of permits issued in two thousand six, plus fifty percent of any difference between the number of permits issued in two thousand six and the limit established in subparagraph (iii) of this paragraph;

(v)] for two thousand [eight] TWELVE, the number of permits shall be limited to the number of permits issued in two thousand [seven] ELEVEN, plus fifty percent of any difference between the number of permits issued in two thousand [seven] ELEVEN and [the limit established in subparagraph (iv) of this paragraph] SIX HUNDRED SIXTEEN;

[(vi)] (II) for two thousand [nine] THIRTEEN, the number of permits shall be limited to the number of permits issued in two thousand [eight] TWELVE, plus fifty percent of any difference between the number of permits issued in two thousand [eight] TWELVE and the limit established in subparagraph [(v)] (I) of this paragraph;

[(vii)] (III) for two thousand [ten] FOURTEEN, the number of permits shall be limited to the number of permits issued in two thousand [nine] THIRTEEN, plus fifty percent of any difference between the number of permits issued in two thousand [nine] THIRTEEN and the limit established in subparagraph [(vi)] (II) of this paragraph;

[(viii)] (IV) for two thousand [eleven] FIFTEEN, the number of permits shall be limited to the number of permits issued in two thousand [ten] FOURTEEN, plus fifty percent of any difference between the number of permits issued in two thousand [ten] FOURTEEN and the limit established in subparagraph [(vii)] (III) of this paragraph.

[c.] B. for the period beginning January first, two thousand TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, persons who were issued a commercial crab permit in the previous year shall be eligible to be issued such permit.

[d.] C. for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, the department shall issue commercial crab permits to persons who were not issued such permit in the previous year provided that the total number of such permits issued to such persons does not exceed the difference between the number of permits established in paragraph [b] A of this subdivision and the number of such permits issued pursuant to paragraph [c] B of this subdivision, subject to the following:

(i) permits shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) permits may be issued to individuals only;

(iii) permits shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) permits shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years

from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the permits issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

4. Commercial whelk or conch licenses. Commercial whelk or conch licenses provided for by section 13-0330 of this title shall be issued as follows:

a. for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, the number of [residential] RESIDENT commercial whelk or conch licenses and the number of [non-residential] NON-RESIDENT commercial whelk or conch licenses shall not exceed the following annual limits:

(i) [for two thousand four, the number of licenses shall be limited to three hundred or the number of licenses issued in two thousand three, whichever is greater;

(ii) for two thousand five, the number of licenses shall be limited to the number of licenses issued in two thousand four, plus fifty percent of any difference between the number of licenses issued in two thousand four and the limit established in subparagraph (i) of this paragraph;

(iii) for two thousand six, the number of licenses shall be limited to the number of licenses issued in two thousand five, plus fifty percent of any difference between the number of licenses issued in two thousand five and the limit established in subparagraph (ii) of this paragraph;

(iv) for two thousand seven, the number of licenses shall be limited to the number of licenses issued in two thousand six, plus fifty percent of any difference between the number of licenses issued in two thousand six and the limit established in subparagraph (iii) of this paragraph;

(v)] for two thousand [eight] TWELVE, the number of licenses shall be limited to the number of licenses issued in two thousand [seven] ELEVEN, plus fifty percent of any difference between the number of licenses issued in two thousand [seven] ELEVEN and [the limit established in subparagraph (iv) of this paragraph] TWO HUNDRED SEVENTY-ONE;

[(vi)] (II) for two thousand [nine] THIRTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [eight] TWELVE, plus fifty percent of any difference between the number of licenses issued in two thousand [eight] TWELVE and the limit established in subparagraph [(v)] (I) of this paragraph;

[(vii)] (III) for two thousand [ten] FOURTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [nine] THIRTEEN, plus fifty percent of any difference between the number of licenses issued in two thousand [nine] THIRTEEN and the limit established in subparagraph [(vi)] (II) of this paragraph;

[(viii)] (IV) for two thousand [eleven] FIFTEEN, the number of licenses shall be limited to the number of licenses issued in two thousand [ten] FOURTEEN, plus fifty percent of any difference between the number of licenses issued in two thousand [ten] FOURTEEN and the limit established in subparagraph [(vii)] (III) of this paragraph.

b. for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, persons

who were issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand [four] TWELVE through December thirty-first, two thousand [eleven] FIFTEEN, persons who were not issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license provided that the total number of such licenses issued to such persons shall not exceed the difference between the number of licenses established in paragraph a of this subdivision and the number of such licenses issued pursuant to paragraph b of this subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

5. Marine and coastal district party and charter boat licenses. Marine and coastal district party and charter boat licenses provided for by section 13-0336 of this title shall be issued as follows, except that this subdivision shall not apply to the owner or operator of a party boat or charter boat whose vessel is classified by the United States Coast Guard as an Inspected Passenger Vessel and which is licensed to carry more than six passengers:

a. for the years two thousand eight through two thousand [eleven] FIFTEEN, the annual number of marine and coastal district party and charter boat licenses issued shall not exceed [the number issued in two thousand seven by more than one hundred licenses] FIVE HUNDRED SEVENTEEN.

b. for the years two thousand eight through two thousand [eleven] FIFTEEN, persons who were issued a marine and coastal district party and charter boat license in the previous year shall be eligible to be issued such license.

c. for the years two thousand eight through two thousand [eleven] FIFTEEN, the department shall issue marine and coastal district party and charter boat licenses to persons who were not issued such license in the previous year, provided that the total number of [such] licenses issued [to such persons] does not exceed [the difference between the annual limit established in paragraph a of this subdivision and the number of such licenses issued in the previous year pursuant to para-

graph b of this subdivision] FIVE HUNDRED SEVENTEEN, subject to the following:

(i) licenses shall be issued in the order in which the applications were received;

(ii) licenses shall be issued only to persons who hold an Uninspected Passenger Vessel license issued by the United States Coast Guard.

6. License or permit reissuance.

a. Notwithstanding the provisions of subdivisions one, two, three and four of this section, the department may permit reissuance of a license or permit to a member of the immediate family of the prior holder of such license or permit; provided that the individual to whom the license or permit is being reissued is at least sixteen years of age. The department may permit a license or permit holder to designate in writing a member of his or her immediate family to whom the license or permit shall be reissued in the event that the license or permit holder dies prior to surrendering his or her license or permit to the department.

b. In the event that a designated immediate family member does not wish to engage in the commercial fishing activities authorized by such license or permit, the department may permit such person to identify an alternate person to whom the license or permit shall be reissued. The department is authorized to adopt regulations concerning the reissuance of licenses or permits pursuant to this subdivision.

[b.] C. The holder of a reissued license or permit shall engage in the activity authorized by the license or permit within three years of the reissuance date. If the license or permit holder fails to engage in such activity during the three years following reissuance, the license or permit shall lapse at the end of the three year period and shall not be renewed unless the department, in its discretion, determines that the license or permit holder's inactivity was justified by significant hardship or unavoidable circumstances.

7. Commercial license apprenticeship program. The department is authorized to adopt regulations establishing an apprenticeship program for persons who wish to obtain a commercial crab permit pursuant to section 13-0331 of this title, a commercial food fish license pursuant to section 13-0335 of this title or a commercial whelk (conch) license pursuant to section 13-0330 of this title. Upon successful completion of the apprenticeship program, a person shall become eligible to receive a commercial crab permit, commercial food fish license or a commercial whelk (conch) license, as applicable, subject to the provisions of paragraph [d] C of subdivision one, paragraph [d] C of subdivision three, and paragraph c of subdivision four of this section, respectively.

S 2. This act shall take effect December 31, 2011.