STATE OF NEW YORK

7844

2021-2022 Regular Sessions

IN ASSEMBLY

May 27, 2021

Introduced by M. of A. THIELE -- 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 383 of the laws of 2011, subdivision 1 as amended by chapter 21 of the laws of 2019, paragraphs a and b and the opening paragraph of paragraph c of subdivision 1 as amended by section 1 and subdivisions 2, 3, 4 and 5 as amended by section 2 of item R of subpart A of part XXX of chapter 58 of the laws of 2020, subparagraph (iv) of paragraph c of subdivision 1 as amended by chapter 490 of the laws of 2019, and paragraph d of subdivision 6 as added by chapter 264 of the laws of 2014, is amended to read as follows:

§ 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 January first, two thousand eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial food fish licenses and the number of non-resident commercial food fish licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen, plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and nine hundred sixty-nine;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

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

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(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph**; and**

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] **twenty-one** through December thirty-first, two thousand [~~twenty-one~~] **twenty-two**, persons who were issued a commercial food fish license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand [~~twenty~~] **twenty-one** through December thirty-first, two thousand [~~twenty-one~~] **twenty-two**, 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 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 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. For the income evaluation of this subdivision, the department may consider persons who would otherwise be eligible but for having served in the United States armed forces on active duty, provided that such individual (1) has received an honorable or general discharge, or (2) has a qualifying condition, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and has received a discharge other than bad conduct or dishonorable from such service, shall not be deemed ineligible.

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

for the period beginning January first, two thousand [~~twenty~~] twenty-one, through December thirty-first, two thousand [~~twenty-one~~] twenty-two, 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 January first, two thousand eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial crab permits and the number of non-resident commercial crab permits shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of permits shall be limited to the number of permits issued in two thousand seventeen, plus fifty percent of any difference between the number of permits issued in two thousand seventeen and five hundred sixty-three;

(ii) for two thousand nineteen, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; and

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, persons who were issued a commercial crab permit in the previous year shall be eligible to be issued such permit.

c. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, 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 a of this subdivision and the number of such permits issued pursuant to paragraph 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 eighteen through December thirty-first, two thousand [~~twenty-one~~] twenty-two, the number of resident commercial whelk or conch licenses and the number of non-resident commercial whelk or conch licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and two hundred fifty-two;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; [~~and~~]

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; and

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, 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 [~~twenty~~] twenty-one through December thirty-first, two thousand [~~twenty-one~~] twenty-two, 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 [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, the annual number of marine and coastal district party and charter boat licenses issued shall not exceed five hundred seventeen.

b. for the years two thousand [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, 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 [~~twenty~~] twenty-one through two thousand [~~twenty-one~~] twenty-two, 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 licenses issued does not exceed 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.

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.

d. For purposes of this section, "immediate family" shall include spouse, sibling, parent, child, grandparent, grandchild, and[~~, in addition,~~] all **other** persons who are related by blood, marriage or adoption to the **license or** permit holder [~~**and domiciled in the house of the license or permit holder**~~] **to the third degree of consanguinity**.

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 c of subdivision one, paragraph c of subdivision three, and paragraph c of subdivision four of this section, respectively.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section, or item of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or item thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect December 31, 2021. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.