STATE OF NEW YORK

9024

IN SENATE

May 4, 2022

Introduced by Sen. HINCHEY -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to limits on the number of commercial licenses that may be issued by the department of environmental conservation for food fish, lobster, crab, and whelk, and the process for issuing such licenses to applicants, and provides for temporary authorization to undertake licensed activities on the licensee's behalf

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 3, 4 and 5 of section 13-0328 of the environmental conservation law, as amended by chapter 656 of the laws of 2021, are amended to read as follows:

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-two~~] **twenty-four**, 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;

(iii) for two thousand twenty, 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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(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~~;~~

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

(vii) for two thousand twenty-four, 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-one~~] **twenty-two** through December thirty-first, two thousand [~~twenty-two~~] **twenty-four**, 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-one~~] **twenty-two** through December thirty-first, two thousand [~~twenty-two~~] **twenty-four**, 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,~~] **where the total number of commercial food fish license applications from persons who were not issued such license in the previous year exceeds the number of licenses that are available, the department shall randomly select recipients of the available licenses from among those applications received by the first business day of the applicable license year, provided however that applicants shall receive one extra entry for each previous year that they applied for such license and were not selected, and** 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~~] **receive one extra entry, and provided further that the department is authorized to adopt regulations to amend or supplement this process for issuing commercial food fish licenses**;

(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-one~~] twenty-two, through December thirty-first, two thousand [~~twenty-two~~] twenty-four, 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-two~~] twenty-four, 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;

(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;

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

(vii) for two thousand twenty-four, 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-one~~] twenty-two through December thirty-first, two thousand [~~twenty-two~~] twenty-four, 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-one~~] twenty-two through December thirty-first, two thousand [~~twenty-two~~] twenty-four, 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 para-

graph 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,~~] where the total number of commercial crab permit applications from persons who were not issued such permit in the previous year exceeds the number of permits that are available, the department shall randomly select recipients of the available permits from among those applications received by the first business day of the applicable permit year, provided however that applicants shall receive one extra entry for each previous year that they applied for such permit and were not selected, and 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~~] receive one extra entry, and provided further that the department is authorized to adopt regulations to amend or supplement this process for issuing commercial crab permits;

(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-two~~] twenty-four, 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;

(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;

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

(vii) for two thousand twenty-four, 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-one~~] **twenty-two** through December thirty-first, two thousand [~~twenty-two~~] **twenty-four**, 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-one~~] **twenty-two** through December thirty-first, two thousand [~~twenty-two~~] **twenty-four**, 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,~~] **where the total number of commercial whelk or conch license applications from persons who were not issued such license in the previous year exceeds the number of licenses that are available, the department shall randomly select recipients of the available licenses from among those applications received by the first business day of the applicable license year, provided however that applicants shall receive one extra entry for each previous year that they applied for such license and were not selected, and** 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~~] **receive one extra entry, and provided further that the department is authorized to adopt regulations to amend or supplement this process for issuing commercial whelk or conch licenses**;

(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-one~~] twenty-two through two thousand [~~twenty-two~~] twenty-four, 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-one~~] twenty-two through two thousand [~~twenty-two~~] twenty-four, 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-one~~] twenty-two through two thousand [~~twenty-two~~] twenty-four, 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~~] where the total number of marine and coastal district party and charter boat license applications from persons who were not issued such license in the previous year exceeds the number of licenses that are available, the department shall randomly select recipients of the available licenses from among those applications received by the first business day of the applicable license year, provided however that applicants shall receive one extra entry for each previous year that they applied and were not selected, and provided further that the department is authorized to adopt regulations to amend or supplement this process for issuing marine and coastal district party and charter boat licenses;

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

§ 2. Section 13-0328 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. Temporary authorization. In the event of a temporary emergency, a licensee or permittee may provide written authorization for a person to temporarily undertake any licensed activities on the licensee's or permittee's behalf. Such authorization shall not be effective until it has been approved by the department. A copy of such written authorization shall be filed with the department, and the department shall determine what constitutes a temporary emergency and the appropriate maximum duration of a temporary emergency for the purposes of this subdivision. The department is authorized to adopt regulations to establish requirements for this program.

§ 3. This act shall take effect December 31, 2022; provided, however, that if chapter 656 of the laws of 2021 shall not have taken effect on or before such date then this act shall take effect on the same date and in the same manner as such chapter of the laws of 2021, takes effect. 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.