

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1122

S.P. 345

In Senate, February 20, 1997

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### An Act to Repeal Municipal Shellfish Ordinances.

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Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln.  
Cosponsored by Representative CHARTRAND of Rockland and  
Representative: McELROY of Unity.

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

2  
4       **Sec. 1. 12 MRSA §6072, sub-§3**, as enacted by PL 1977, c. 661,  
§5, is amended to read:

6       **3. Municipal approval.** In any municipality with a shellfish  
conservation program committee under section 6671 6653, the  
8 commissioner may not lease more than 2 acres of the intertidal  
zone within the municipality without the consent of the municipal  
10 officers.

12       **Sec. 2. 12 MRSA §6601, sub-§2**, as amended by PL 1989, c. 348,  
§5, is further amended to read:

14       **2. Licensed activities.** The holder of a shellfish license  
16 may fish for or take shellfish or possess, ship or transport  
within the state limits or sell shellstock the holder has taken.  
18 The holder may also shuck, in the holder's home, shellfish the  
holder has taken and sell those shucked shellfish from that home  
20 in the retail trade. ~~This license shall not authorize the holder  
to fish for or take shellfish in violation of a municipal  
22 ordinance adopted pursuant to section 6671.~~

24       **Sec. 3. 12 MRSA §6601, sub-§4**, as amended by PL 1979, c. 163,  
is further amended to read:

26       **4. Personal use exception.** Any person may take or possess  
28 no more than 1/2 bushel of shellfish or 3 bushels of "hen" or  
"surf" clams for personal use in one day without a license,  
30 ~~unless municipal ordinances further limit the taking of shellfish.~~

32       **Sec. 4. 12 MRSA §6601, sub-§5**, as amended by PL 1991, c. 591,  
Pt. T, §4, is repealed and the following enacted in its place:

34       **5. Fee.** By May 1, 1998, the commissioner shall by rule  
36 determine the fee for a shellfish license. The fee must be  
adequate to fund the activities undertaken by the commissioner  
38 pursuant to chapter 623, subchapter I, article 3. Rules adopted  
pursuant to this section are major substantive rules under Title  
40 5, chapter 375, subchapter II-A.

42       **Sec. 5. 12 MRSA c. 623, sub-c. I, art. 3**, is amended by repealing  
the article headnote and enacting the following in its place:

44  
46                   **Article 3**

48                   **SHELLFISH CONSERVATION**

2           **Sec. 6. 12 MRSA §6651, sub-§2**, as amended by PL 1987, c. 328,  
§2, is further amended to read:

4           **2. Uses of fund.** The commissioner may expend the money in  
6 the Shellfish Fund for management, enforcement, restoration,  
8 municipalities that have established municipal shellfish  
10 committees or regional shellfish committees and have entered into  
agreements with the commissioner pursuant to section 6653.

12           **Sec. 7. 12 MRSA §§6652 to 6654** are enacted to read:

14           **§6652. Shellfish reseeded program**

16           The department shall carry out a program of shellfish  
18 reseeding. The program must include such activities as the  
20 transplanting of soft-shell clams from areas of large  
22 concentrations to potentially productive areas and relaying  
shellfish otherwise inhibited from attaining optimum market  
size. The program may be carried out in cooperation with  
municipal and regional shellfish committees.

24           **§6653. Municipal participation**

26           **1. Municipal ordinances.** A municipality may not adopt an  
28 ordinance that limits the harvesting of shellfish in that  
30 municipality or that requires a municipal license to harvest  
32 shellfish in that municipality. A municipality may adopt  
ordinances to establish a shellfish conservation committee, or to  
join with one or more municipalities in a regional shellfish  
committee, to provide for the conservation of shellfish in  
accordance with this article.

34           **2. Agreements with commissioner.** The commissioner may  
36 enter into agreements with a municipality or with 2 or more  
38 municipalities that have established a regional shellfish  
40 committee to assist the commissioner with department programs  
related to the management, restoration, development and  
conservation of shellfish.

42           **3. Management program approval.** By May 1, 1998, the  
44 commissioner shall adopt rules that set the criteria that must be  
46 met by municipalities in order to assist the commissioner with  
48 department programs related to the management, restoration,  
development and conservation of shellfish. Rules adopted  
pursuant to this section are major substantive rules under Title  
5, chapter 375, subchapter II-A.

2       4. Application for grants. A municipality that has entered  
4       into an agreement with the commissioner and established a  
6       shellfish committee or regional shellfish committee pursuant to  
8       this section may apply to the commissioner for a grant to fund  
10      municipal activities related to the management, restoration,  
12      development or conservation of shellfish. By May 1, 1998, the  
14      commissioner shall adopt rules that establish the application  
16      form and criteria used for determining grants. Rules adopted  
18      pursuant to this section are major substantive rules under Title  
20      5, chapter 375, subchapter II-A.

22      **§6654. Municipal leasing of flats**

24      A municipality that has established a shellfish conservation  
26      committee as provided under section 6653 may lease areas in the  
28      intertidal zone to the extreme low water mark, within the  
30      municipality for the purpose of shellfish aquaculture.

32      1. Municipal procedure. A written application for a lease  
34      may be approved by the municipal officers if they find that the  
36      lease will not cause the total area under lease to exceed 1/4 of  
38      all the municipal intertidal zone that is open to the taking of  
40      shellfish and that granting the lease is in the best interests of  
42      the municipality. On approval, the lease must be forwarded to the  
44      commissioner.

46      2. Department procedure for review and approval. The  
48      commissioner shall use the same procedure and the same grounds  
50      for approval as required for aquaculture leases under section  
52      6072, except that:

54      A. Preference must be given to municipal leases;

56      B. No rent may be set, but there must be an annual  
58      municipal lease fee of not less than \$1 per acre;

60      C. The municipality may establish the conditions and limits  
62      on the lease; and

64      D. The advice and consent of the Marine Resources Advisory  
66      Council may not be required.

68      **Sec. 8. 12 MRSA c. 623, sub-c. I, art. 4, as amended, is repealed.**

70      **Sec. 9. Transition provisions.** Existing municipal ordinances  
72      and shellfish licenses are governed by the following provisions.

2 1. Existing municipal ordinances. A municipal shellfish  
ordinance in effect on the effective date of this Act remains in  
effect until April 30, 1998.

4  
6 2. Municipal shellfish licenses. If a municipality's  
licensing year differs from the State's licensing year, a person  
8 who holds a municipal shellfish license on April 30, 1998 may  
apply to the Commissioner of Marine Resources to prorate and  
10 apply the cost of the municipal shellfish license to the cost of  
the state shellfish license.

12

**SUMMARY**

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This bill repeals municipal authority to limit the  
16 harvesting of shellfish in that municipality or require a  
municipal license to harvest shellfish in that municipality. It  
18 permits the Commissioner of Marine Resources to enter into  
agreements with municipalities to participate in shellfish  
20 management activities undertaken by the Department of Marine  
Resources. It authorizes the Commissioner of Marine Resources to  
22 distribute grants from the Shellfish Fund to municipalities that  
have entered into shellfish management agreements with the  
24 commissioner and that have established shellfish committees. It  
requires the commissioner to set by rule the fee for a state  
26 shellfish license at a level that is adequate to fund the  
shellfish management activities of the department and activities  
28 related to any cooperative shellfish management agreements with  
municipalities.