

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1545

S.P. 588

In Senate, May 20, 2013

**An Act To Make Technical Changes to Maine's Marine Resources
Laws and Elver Enforcement Mechanisms**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator JOHNSON of Lincoln. (GOVERNOR'S BILL)

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

2 **Sec. 1. 12 MRSA §6072, sub-§13, ¶G,** as amended by PL 2003, c. 660, Pt. A,
3 §12, is further amended to read:

4 G. For adding or deleting authorization for the holder of an aquaculture lease to grow
5 specific species and use specific gear on the lease site. The commissioner may grant
6 authorization for a species or gear amendment under this paragraph only upon a
7 determination by the commissioner that the amendment is consistent with the
8 findings made under subsection 7-A when the lease was approved; and

9 **Sec. 2. 12 MRSA §6072-A, sub-§1,** as amended by PL 2003, c. 247, §9, is
10 further amended to read:

11 **1. Authority.** The commissioner may issue a limited-purpose lease for areas in, on
12 and under the coastal waters, including the public lands beneath those waters and portions
13 of the intertidal zone, for commercial aquaculture research and development or for
14 scientific research. The commissioner or the deputy commissioner acting on the
15 commissioner's behalf may authorize in writing qualified professional department staff to
16 issue a final decision and sign a lease document on an application for a limited-purpose
17 lease. A decision issued by department staff pursuant to this subsection is a final agency
18 action with respect to that lease application. The commissioner may adopt regulations for
19 adding or deleting authorization for the holder of an aquaculture lease to grow specific
20 species and use specific gear on the lease site. The commissioner may grant authorization
21 for species or gear amendments under this paragraph only upon a determination by the
22 commissioner that the amendment is consistent with the findings made under subsection
23 13 when the lease was approved.

24 **Sec. 3. 12 MRSA §6074, sub-§1,** as amended by PL 1999, c. 156, §§2 and 3, is
25 further amended to read:

26 **1. Exception.** A special license ~~shall~~ does not permit the holder to sell or, beyond the
27 state limits, to ship or transport any marine organism that is less than the minimum size
28 established by statute. This subsection ~~shall~~ does not apply to:

29 B. Any species grown in a hatchery for stock enhancement or resale for purposes of
30 cultivation or stock enhancement; or

31 C. Scallop spat collected under the authority of a special license and sold for the
32 purpose of placement on a lease site authorized pursuant to section 6072 or 6072-A
33 or under the authority of a license issued pursuant to section 6072-C. For purposes of
34 this paragraph, "scallop spat" means scallops less than 40 millimeters in the longest
35 diameter.

36 **Sec. 4. 12 MRSA §6074, sub-§8, ¶F,** as enacted by PL 2003, c. 104, §2, is
37 amended to read:

38 F. A teacher who is providing a primary ~~or~~, secondary or postsecondary school
39 program.

1 **Sec. 5. 12 MRSA §6078-A, sub-§1**, as amended by PL 2009, c. 240, §15, is
2 further amended to read:

3 **1. Fund established.** The Aquaculture Monitoring, Research and Development
4 Fund, referred to in this section as "the fund," is established. In addition to the fees
5 derived pursuant to rules adopted under subsection 6, the commissioner may receive on
6 behalf of the fund funds from any source. All income received by the commissioner
7 under this section must be deposited with the Treasurer of State, tracked according to its
8 source and credited to the fund. Any balance remaining in the fund at the end of a fiscal
9 year does not lapse but must be carried forward to the next fiscal year. Any interest
10 earned on assets of the fund is credited to the fund. All records related to harvests
11 submitted by aquaculture lease holders are considered proprietary information for the
12 purposes of section 6077, subsection 4.

13 **Sec. 6. 12 MRSA §6140-B, sub-§4, ¶C**, as enacted by PL 2007, c. 240, Pt. QQ,
14 §9, is amended to read:

15 C. Atlantic salmon raised by means of aquaculture, except that Atlantic salmon
16 raised in a hatchery for the purpose of restoration are not exempt.

17 **Sec. 7. 12 MRSA §6431, sub-§6-B**, as enacted by PL 2011, c. 247, §2, is
18 amended to read:

19 **6-B. Exception; lobster processing; rules.** A person who holds both a wholesale
20 seafood license with a lobster permit and a lobster processor license and who possesses
21 lobster in accordance with subsection 6 may process those imported lobsters in
22 accordance with rules adopted by the commissioner, as long as the following criteria are
23 met:

24 A. The lobsters are not harvested or landed in this State;

25 B. The lobsters are legal in the waters from which they were harvested; and

26 C. The lobsters are not less than the minimum size established in this section.

27 Lobster tails processed under this subsection may not be offered for sale within this State
28 in the wholesale or retail trade. Lobster meat processed from the claws and knuckles may
29 be sold within this State in the wholesale or retail trade.

30 This subsection takes effect November 1, 2011 ~~and is repealed 90 days after the~~
31 ~~adjournment of the First Regular Session of the 126th Legislature.~~

32 **Sec. 8. 12 MRSA §6505-A, sub-§5-A** is enacted to read:

33 **5-A. Possession of elvers.** The holder of an elver fishing license may possess elvers
34 only during the open season established in section 6575 and for up to 6 hours beyond the
35 end of the open season.

36 **Sec. 9. 12 MRSA §6575-E**, as amended by PL 2001, c. 272, §13, is further
37 amended to read:

1 **§6575-E. Method of eel fishing**

2 Except as provided in section 6505-C, subsection 2, it is unlawful for a person
3 licensed under section 6505-C to fish for or take eels by any method other than eel pot or
4 hoop-net.

5 **Sec. 10. 12 MRSA §6575-H**, as enacted by PL 2013, c. 49, §15, is repealed.

6 **Sec. 11. 12 MRSA §§6575-I and 6575-J** are enacted to read:

7 **§6575-I. Assisting in illegal harvest of elvers**

8 **1. Prohibition.** A person may not assist another person to harvest elvers in violation
9 of any law or rule pertaining to elvers. For the purposes of this section, "assist" includes,
10 but is not limited to, providing transportation or providing services as a lookout in order
11 to avoid detection or to warn an elver harvester of impending law enforcement action.

12 **2. Violation.** A person who violates this section commits a civil violation for which
13 a fine of \$2,000 must be adjudged. A court may not suspend any portion of a fine
14 imposed under this subsection.

15 **§6575-J. Seizure of illegally harvested elvers**

16 In addition to any other penalty imposed, elvers that are purchased or possessed that
17 were taken in violation of any law or rule pertaining to elvers are subject to seizure by
18 any officer authorized to enforce this Part. The entire bulk pile containing illegally
19 harvested elvers may be seized.

20 **Sec. 12. 12 MRSA §6671, sub-§8, ¶B**, as amended by PL 2001, c. 188, §8, is
21 further amended to read:

22 B. Any municipal shellfish conservation warden appointed by a municipality to
23 enforce the provisions of this article must be certified by the commissioner within
24 one year of the warden's appointment. The commissioner shall establish a program to
25 provide shellfish conservation training in principles of shellfish conservation,
26 management, enforcement and protection and shall establish standards for
27 certification of municipal conservation wardens upon their satisfactory completion of
28 the training program. ~~The program must include training in sampling techniques for~~
29 ~~the detection of pollutants and contaminants in shellfish areas.~~ The commissioner
30 may establish by rule procedures for certification, recertification and revocation of
31 certification. The commissioner may revoke a certificate for failure of the warden to
32 comply with performance standards.

33 **Sec. 13. 12 MRSA §6702, sub-§4**, as amended by PL 2007, c. 607, Pt. A, §2, is
34 further amended to read:

35 **4. Personal use exception.** In any one day, a person licensed pursuant to section
36 6703 may take or possess not more than one bushel of shell scallops or ~~2-quarts~~ one
37 gallon of shucked scallops for personal use without a scallop dragging license under this
38 section.

1 **Sec. 14. 12 MRSA §6703, sub-§3**, as amended by PL 2007, c. 607, Pt. A, §3, is
2 further amended to read:

3 **3. License limitation; quantity.** In any one day, the holder of a noncommercial
4 scallop license may not take or possess more than one bushel of shell scallops or ~~2 quarts~~
5 one gallon of shucked scallops.

6 **Sec. 15. 12 MRSA §6749-N, sub-§1**, as amended by PL 1995, c. 595, §2 and
7 affected by §6, is further amended to read:

8 **1. Zone 1.** Zone 1, from May 1st to July 31st. For the purposes of this article,
9 "Zone 1" means all coastal waters west of a line beginning at the easternmost point of
10 Fort Point State Park on Cape Jellison then running southwesterly to channel marker #1
11 south of Sears Island, then running southwesterly to channel marker ~~BW "11"~~ RW "11"
12 located between Marshall's Point and Bayside in the Town of Northport, then running
13 southwesterly ~~to channel marker #9 east of Great Spruce Head located in the Town of~~
14 ~~Northport, then running southerly~~ to Graves channel marker ~~northeast~~ southeast of the
15 Town of Camden, then running southeasterly to the Penobscot Bay Buoy "PB" east of
16 Rockland harbor, then running southerly to the ~~TB1~~ TBI whistle southwest of Junken
17 Ledge, then running southeasterly to Red Nun #10 buoy at Foster Ledges, then running
18 due south magnetic to the boundary of the State's coastal waters; and

19 **Sec. 16. 12 MRSA §6752**, as enacted by PL 1977, c. 661, §5, is amended to read:

20 **§6752. Exception for personal use**

21 Any person may take or possess not more than ~~125~~ 50 marine worms in any one day
22 for personal use without a marine worm digger's license or a marine worm dealer's
23 license.

24 **Sec. 17. 12 MRSA §6804, sub-§5**, as amended by PL 2003, c. 248, §10, is
25 further amended to read:

26 **5. Exemption.** Notwithstanding subsection 1, a license is not required to fish for,
27 take, possess or transport up to one standard fish tote of northern shrimp only for personal
28 use. This exemption does not apply to an individual whose ability to obtain a commercial
29 northern shrimp license has been suspended by the commissioner.

30 **Sec. 18. 12 MRSA §6864, sub-§1-A** is enacted to read:

31 **1-A. Limits on issuance.** The department may not issue an elver dealer's license or
32 a supplemental license for the following licensing year after February 1st of the current
33 licensing year.

34 **Sec. 19. 12 MRSA §6864, sub-§2**, as amended by PL 2011, c. 549, §9, is further
35 amended to read:

36 **2. License limited.** An elver dealer's license authorizes the licensed activities at
37 only one permanent facility. For the purposes of this section, "permanent facility" means

1 a permanent building that is owned or legally leased by the license holder and is not a
2 dwelling.

3 **Sec. 20. 12 MRSA §6864, sub-§10**, as amended by PL 2013, c. 49, §17, is
4 further amended to read:

5 **10. Purchase of elvers.** A person who holds an elver dealer's license, or the
6 authorized representative of that person under subsection 9, may purchase elvers from
7 licensed harvesters at locations other than the permanent facility identified on the license
8 holder's license. The license holder or the license holder's authorized representative shall
9 keep a record that identifies each harvester from which elvers were purchased and the
10 amount of elvers purchased from each harvester. The license holder or the license holder's
11 authorized representative shall make the record available for inspection by a marine
12 patrol officer. ~~The license holder or the license holder's authorized representative may~~
13 ~~not purchase elvers for cash or credit or provide to any person any goods, wares,~~
14 ~~merchandise or other articles or form of payment in exchange for elvers other than a~~
15 ~~check that identifies both the seller and the buyer, each of whom must be a person~~
16 ~~holding a license issued under this section, a person who, pursuant to subsection 9, is an~~
17 ~~authorized representative of a person holding a license issued under this section or a~~
18 ~~person holding a license issued under section 6505-A.~~

19 **Sec. 21. 12 MRSA §6864, sub-§12**, as enacted by PL 2013, c. 49, §18, is
20 repealed.

21 SUMMARY

22 This bill makes changes in the laws governing marine resources, including changes
23 designed to improve enforcement mechanisms for the elver industry. This bill:

24 1. Specifically authorizes the Commissioner of Marine Resources to adopt or amend
25 rules to add or delete authorization for the holders of aquaculture leases to use specific
26 gear on the lease site and provides that the commissioner may grant authorization for a
27 gear or species amendment only upon a determination that the change is consistent with
28 the findings made by the commissioner when the lease was approved;

29 2. Specifies size limits on scallop spat collected under the authority of a special
30 license and sold for placement on a lease site;

31 3. Provides that approval by the applicable advisory council is not required for a
32 special license issued by the commissioner to a teacher who is providing a postsecondary
33 school program;

34 4. Authorizes the commissioner to receive on behalf of the Aquaculture Monitoring,
35 Research and Development Fund funds from any source;

36 5. Specifies that Atlantic salmon raised in a hatchery for purposes of restoration are
37 not exempt from the possession prohibitions;

- 1 6. Eliminates language that would have repealed the exception allowing lobster
2 processing by a person who holds both a wholesale seafood license with a lobster permit
3 and a lobster processor license;
- 4 7. Specifies that the holder of an elver fishing license may possess elvers only during
5 the open season and for up to 6 hours after the end of open season;
- 6 8. Eliminates language that allows the taking of eels by hoop net;
- 7 9. Repeals a provision that prohibits a person from selling elvers for any form of
8 payment other than a check that identifies both the seller and the buyer;
- 9 10. Eliminates language that prohibits an elver license holder or authorized
10 representative from purchasing elvers in any manner other than by a check that identifies
11 both the seller and buyer;
- 12 11. Enacts a provision that prohibits a person from assisting another person to
13 illegally harvest elvers;
- 14 12. Specifically provides that elvers that are purchased or possessed that were
15 illegally taken are subject to seizure;
- 16 13. Removes language requiring that shellfish conservation training programs
17 include training in sampling techniques for the detection of pollutants and contaminants
18 in shellfish areas;
- 19 14. Increases from 2 quarts to one gallon the amount of shucked scallops a person
20 may take for personal use in any one day without possessing a scallop dragging license;
- 21 15. Increases from 2 quarts to one gallon the amount of shucked scallops a holder of
22 a noncommercial scallop license may take for personal use in any one day;
- 23 16. Amends the description of the zone that is closed to sea urchin fishing that is
24 designated "Zone 1";
- 25 17. Decreases from 125 to 50 the number of marine worms a person may take for
26 personal use in any one day without possessing a marine worm digger's license or a
27 marine worm dealer's license;
- 28 18. Restricts the allowable landings of northern shrimp for personal use to one
29 standard fish tote;
- 30 19. Prohibits the issuance of an elver dealer's license after February 1st for the
31 following licensing year;
- 32 20. Clarifies that an elver dealer's license authorizes licensed activities at only one
33 permanent facility, which cannot be a dwelling, that is owned or legally leased by the
34 license holder; and
- 35 21. Removes language prohibiting a licensed elver dealer or dealer's representative
36 from purchasing or attempting to purchase elvers with a nonnegotiable check.