

MAINE STATE LEGISLATURE

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Date:

5/12/17

Minority

L.D. 200

(Filing No. H-172)

MARINE RESOURCES

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STATE OF MAINE

HOUSE OF REPRESENTATIVES

128TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 156, L.D. 200, Bill, "An Act To Allow Certain Municipal Shellfish Conservation Wardens To Seize and Sell Marine Organisms Taken in Violation of a Shellfish Conservation Ordinance"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 12 MRSA §6671, sub-§13 is enacted to read:

13. Seizure and forfeiture. A certified municipal shellfish conservation warden who has met the requirements of Title 25, section 2804-I and who is authorized by the municipality to arrest violators of a shellfish conservation ordinance may seize and sell shellfish in accordance with this subsection.

A. The warden may only seize shellfish upon arresting or issuing a citation to an alleged violator for a violation of a provision of the shellfish conservation ordinance that regulates the taking or possession of the shellfish, including taking or possessing an amount greater than allowed under the ordinance or taking from an area protected from shellfish predators under subsection 10-B.

B. The warden may only sell seized shellfish that could legally be possessed if the shellfish had been taken in accordance with a shellfish conservation ordinance and the warden knows the shellfish to have been taken from an area that was not closed under section 6172 or under the ordinance due to contamination or pollution.

C. The seized shellfish, or the proceeds of the sale of the seized shellfish, must be deposited with and retained by the municipality pending disposition of a libel proceeding in accordance with paragraph D.

D. The warden making the shellfish seizure shall file, within a reasonable time, a libel against the shellfish. The libel must describe the shellfish seized and the date and place of that seizure, cite the provision of law that is alleged to have been violated and request a decree of forfeiture. The judge shall fix a time for the hearing of the libel and issue a notice of the libel to all persons interested, citing them to appear at the time and place appointed and show cause why the shellfish should not

COMMITTEE AMENDMENT

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1 be declared forfeited. A true and attested copy of the libel and notice must be posted
2 as ordered by the court, at least 10 days before the day on which the libel is
3 returnable.

4 (1) If no claimant appears, the judge shall declare the seized shellfish, or the
5 proceeds from the sale of the seized shellfish, forfeited to the municipality.

6 (2) If a person appears and claims a right to the possession of the shellfish at the
7 time when they were seized, that claimant shall file with the court a claim in
8 writing stating specifically the right so claimed, the foundation of the claim, the
9 time and place of the seizure, the name of the officer by whom the shellfish were
10 seized and that the shellfish were not possessed in violation of the shellfish
11 conservation ordinance with the person's knowledge or consent.

12 (3) If a person makes a claim in accordance with this paragraph, that claimant
13 must be admitted as a party to the process, and the court shall proceed to
14 determine the truth of the allegations in the claim and libel and may hear any
15 pertinent evidence offered by the libelant or claimant.

16 (4) If the court, upon the hearing, is satisfied that the shellfish was not possessed
17 in violation of the shellfish conservation ordinance and that the claimant is
18 entitled to the custody of the shellfish, the court shall direct the municipality
19 having the shellfish or proceeds derived from the sale to deliver to the claimant
20 the shellfish or proceeds to which the claimant is found to be entitled within 48
21 hours.

22 (5) If the court finds the claimant is not entitled to the shellfish seized, the court
23 shall render judgment against that claimant and order the claimant to pay the
24 libelant costs, including costs of the municipality incurred to hold and handle the
25 shellfish, and declare the shellfish, or the proceeds from the sale of the shellfish,
26 forfeited to the municipality.

27 E. The municipality must use the proceeds of any sale of shellfish forfeited to the
28 municipality to support its shellfish conservation program.'

29 SUMMARY

30 This amendment replaces the bill. The amendment expands upon the provisions of
31 the bill and provides that a municipal shellfish conservation warden may seize and sell
32 shellfish under certain circumstances pursuant to a libel proceeding.

FISCAL NOTE REQUIRED
(See Attached)



128th MAINE LEGISLATURE

LD 200

LR 354(02)

An Act To Allow Certain Municipal Shellfish Conservation Wardens To Seize and Sell Marine Organisms Taken in Violation of a Shellfish Conservation Ordinance

Fiscal Note for Bill as Amended by Committee Amendment *A (H-172)*
Committee: Marine Resources
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase to municipalities

Correctional and Judicial Impact Statements

Increases libel proceedings.

Fiscal Detail and Notes

Allowing municipalities to seize and sell marine organisms taken in violation of shellfish conservation ordinances may increase the amount of funds municipalities spend on shellfish conservation. There is no impact to the State.