

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "C" to H.P. 715, L.D. 851, Bill,
"AN ACT to Clarify and Limit the Authority of Municipalities
to Establish Shellfish Conservation Programs and to License
and Regulate the Taking of Shellfish."

Amend the Bill by striking out all of the title and
inserting in its place the following new title:

'AN ACT Relating to Municipal Shellfish Conservation Programs.'

Further amend the Bill by striking out everything after
the enacting clause and inserting in its place the following:

'Sec. 1. 12 MRSA §4251, as amended by PL 1965, c. 33, §4,
is repealed.

Sec. 2. 12 MRSA §4251-A, is enacted to read:
§4251-A. Municipal shellfish conservation programs

1. Municipal funds. Any municipality may, by vote of
its legislative body, raise and appropriate money for the im-
plementation of a shellfish conservation program.

2. Municipal program and ordinance. Any municipality may,
by vote of its legislative body, adopt, amend or repeal a shell-
fish conservation program and a shellfish conservation ordinance
regulating the taking of shellfish in any area in the inter-
tidal zone of the municipality as provided by this section.

3. Shellfish conservation commission. A shellfish conser-
vation commission shall consist of at least 3 municipal residents,
appointed or elected, and shall have general responsibility for
the implementation of the shellfish conservation program.

4. Shellfish conservation program. A shellfish conservation program shall be in writing and shall include provisions for regular assessment of municipal stocks, estimation of the number of diggers and their potential harvest, enforcement and conservation. The program shall be designed to protect and preserve the potential for a sustained yield of shellfish from the municipal intertidal zone or to restore the shellfish population in depleted areas. The program shall also include the duties of the shellfish conservation commission. The program may include provisions for a green crab fencing program.

5. Shellfish conservation ordinance. A shellfish conservation ordinance shall be based on a shellfish conservation program. Within any area in the intertidal zone in the municipality, the ordinance may regulate or prohibit the taking of shellfish, may fix the times when shellfish may be taken, may limit the size of shellfish, may fix the qualifications for a license, including municipal residency, and may fix license fees. The ordinance may authorize the municipal officers to entirely close areas of the intertidal zone to the digging of shellfish, if the closing is necessary to conserve the shellfish from imminent depletion, and to open those areas after the threat is passed. The municipal officers may also be authorized to routinely open and close areas as part of the conservation program. The opening or closing of flats under this authority shall require the recommendation of the municipal shellfish conservation commission and the approval of the commissioner. The ordinance may also provide for enforcement and protection of a green crab fencing program.

6. Limitations on programs and ordinances. No program or ordinance shall regulate areas closed by regulation of the commissioner. The commercial digging licenses may be limited to municipal residents only if the municipality can show that the restriction is necessary to conserve the municipal shellfish resource and prevent its undue depletion, based on a current assessment of stocks, the potential harvest and the estimated production under the proposed licensing system.

7. Recreational digging. No program or ordinance, except an ordinance prohibiting all persons from taking any shellfish, shall restrict or regulate any person who takes one peck or less of shellfish in any one day for consumption by himself or his family, provided that an ordinance or program may require licenses for that activity at a nominal fee. Recreational digging may be limited to municipal residents for not more than 3 months if the municipality can show this restriction is necessary to prevent undue depletion or substantial damage of the shellfish stock during periods of potentially great recreational digging. The number of recreational digging licenses issued shall only be restricted for conservation purposes.

8. Fees. Fees for licenses shall be reasonable and shall be used only to defray the costs of the program. Expenditures of general tax revenues by the municipality may be considered in providing different fees for residents and nonresidents.

9. Adoption requirements. Prior to adopting an ordinance under this section, the municipality shall:

- A. Raise or appropriate the money required to implement the conservation, assessment and estimation requirements of a shellfish conservation program; and
- B. Receive the written approval of the commissioner for the program and proposed ordinance.

10. Approval. The commissioner may approve a shellfish conservation program and proposed shellfish conservation ordinance if he finds that they comply with this section, and that any restrictions or limitations are valid, appropriate and reasonable conservation methods. The commissioner may only approve a program and ordinance that limits commercial digging to municipal residents or uses municipal residency as a qualification for digging in certain areas, if:

- A. He has reviewed the current municipal assessment of stocks, the estimation of the actual and potential harvests, and estimated production and has found them valid and accurate;
- B. He has reviewed the number of licenses to be issued to commercial diggers and has found that that number of diggers may reasonably be expected to take the entire potential harvest;
- C. He has reviewed any area or location limitations using municipal residency as a qualification and has found them necessary to limit the effort and thus to conserve the stock in unproductive flats; and

D. He finds that the residency restriction is necessary to protect the municipal shellfish stocks from undue depletion.

All findings and approvals of the commissioner shall be in writing.

11. Commissioner's duty. The commissioner shall provide technical assistance to municipalities in the development and implementation of their programs and ordinances. The commissioner shall annually review all municipal programs and ordinances to insure that the municipality continues to comply with this section, and that it is carrying out the program in good faith. If the commissioner finds, at any time after approval, that the municipal funds raised or appropriated for the program are not being expended, or that the municipal program is not being carried out, and ~~K~~ that the municipality is not acting in good faith, he shall revoke his approval of the program and ordinance. The revocation shall immediately terminate the ordinance and the ordinance shall have no further force or effect until readopted under this section.

12. Period of ordinance. Ordinances adopted under this section shall remain in effect for 3 years unless sooner terminated or repealed. A certified copy of the ordinance shall be filed with the commissioner within 14 days of its adoption.

13. Municipality defined. For the purposes of this section, "municipality" includes a village corporation and the combined towns of Yarmouth and North Yarmouth as one municipality.

14. Joint programs; reciprocal privileges. Municipalities may enter into joint conservation agreements with other municipalities and adopt joint programs. The agreements and the programs and ordinances adopted under them shall be subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a joint agreement may be extended to the residents of other municipalities in the agreement.

15. Local enforcement. A municipality that enacts an ordinance under this section shall be responsible to enforce it. The commissioner may assist the municipalities in their enforcement programs.

16. Penalty. Whoever takes or possesses shellfish contrary to a municipal ordinance authorized by this section shall be punished as provided under section 4504.

17. Severability. The provisions of this section are severable. If any provision of this section is invalid or if its application to any person or circumstance is invalid, that invalidity shall not affect other provisions or applications which can be given effect without the invalid provision of application.

Sec. 3. 12 MRSA §4252, as last amended by PL 1975, c. 692, §1, is repealed.

Sec. 4. Transition. All ordinances adopted under Title 12, sections 4251 and 4252, prior to the effective date of this Act shall terminate on June 30, 1979, unless they are repealed or terminate under their own terms prior thereto.'

Statement of Fact

This amendment requires that ordinances and programs adopted under the municipal shellfish act meet certain specific requirements to insure their conservation purpose.

Reported by the Majority of the Committee on Marine Resources.

Reproduced and distributed under the direction of the Clerk of the House.

1/30/78

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