

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 2019**

H. P. 1939

Office of the Clerk of the House

The Committee on Marine Resources suggested. Approved for introduction by the Legislative Council pursuant to Joint Rule 24 and 2,500 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Greenlaw of Stonington.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

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**AN ACT Making Certain Substantive Revisions to the Marine Resources Statutes.**

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

**Sec. 1. 12 MRSA § 3502-A**, as enacted by PL 1973, c. 513, § 7 is repealed.

**Sec. 2. 12 MRSA § 3502-C** is enacted to read:

**§ 3502-C. General department activities**

**1. Specific activities.** The department, under the direction of the commissioner, may also:

**A. Assist members of the fisheries industry by providing technical, biological, managerial or other assistance within departmental capability;**

**B. Conduct educational programs on all educational levels, including the training of teachers, conducting workshops and instructional programs, developing curriculum, courses and texts for elementary and secondary students, providing access to and information on department facilities for any student and developing and distributing information concerning marine resources and departmental programs and facilities;**

**C. Serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assistance in marketing seafood, stimulation of consumer interest in and consumption of seafood, increasing the sales of seafood domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species; and**

**D. Engage in all aspects of marine research, including developing information on the biological and environmental requirements of marine organisms, providing information on stock levels and environments of commercially valuable marine organisms, providing monitoring of potential environmental hazards, providing information and solutions to particular problems that relate to the state's commercial fishing industries and providing technical and scientific information and support for all department activities and activities of other governmental and private institutions.**

Sec. 3. 12 MRSA c. 407, as amended, is repealed and the following enacted in its place:

**CHAPTER 407**

**ADVISORY COUNCIL**

**§ 3551. Advisory Council**

**1. Appointment; composition; term; compensation. The 9 members of the Advisory Council shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Marine Resources and to confirmation by the Legislature. The members shall be selected from persons engaged in commercial activities or industries based on marine resources. The composition of the council shall adequately represent the commercial fisheries activities over which the department has jurisdiction and shall also reflect a geographical distribution along the coast. All members shall be appointed for a term of 3 years, except a vacancy shall be filled for the unexpired portion of the term. Members shall serve until their successors are appointed and qualified. Members shall be compensated at \$25 for each day spent at a regular or special council meeting and may be reimbursed for actual expenses. The total compensation and expenses of the council shall not exceed \$5,000 in any year.**

Sec. 4. 12 MRSA § 3605, as enacted by PL 1975, c. 14, is repealed.

Sec. 5. 12 MRSA § 3606 is enacted to read:

**§ 3606. Head of tide**

**The commissioner may, by regulation, establish the head of tide on any river for the purpose of determining the regulatory jurisdiction over anadromous fish or other marine or fresh-water organisms.**

Sec. 6. 12 MRSA § 3732 is enacted to read:

**§ 3732. Aquaculture license**

**1. License required. It is unlawful for any person to engage in aquaculture in, on or under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, without an aquaculture license or on an aquaculture lease.**

**2. Licensed activity. An aquaculture license authorizes the holder to use an area for aquaculture of one species in, or under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone.**

**3. License limitations.**

**A. The area may not exceed 300 square feet nor more than 100 linear feet on any side.**

**B. The aquaculture may only be of a species identified in the license and shall be in the general licensed area.**

**C. Each piece of equipment shall be marked with the license number.**

**D. No more than 2 licenses may be issued to any one person.**

**4. Renewal. A license may be renewed once without application. The commissioner may refuse to renew a license when he determines that it is in the best interests of the State that the applicant apply for an aquaculture lease.**

**Sec. 7. 12 MRSA § 4202 is repealed.**

**Sec. 8. 12 MRSA § 4204, as last amended by PL 1969, c. 408, § 9 is repealed.**

**Sec. 9. 12 MRSA 4205, as amended by PL 1967, c. 337, § 7, is repealed.**

**Sec. 10. 12 MRSA § 4208, sub-§ 5 is enacted to read:**

**5. Geographic exception. This section shall not apply to the setting or assisting in setting of nets around Monhegan, Matinicus, Seal, Wooden Ball or Metinic Islands.**

**Sec. 11. 12 MRSA § 4212, as enacted by PL 1971, c. 544, § 38, is repealed.**

**Sec. 12. 12 MRSA § 4213, as enacted by PL 1975, c. 663, is repealed.**

**Sec. 13. 12 MRSA § 4301-A, as enacted by PL 1965, c. 59, § 1, is repealed.**

**Sec. 14. 12 MRSA § 4301-B, as last amended by PL 1975, c. 743, § 6, is repealed.**

**Sec. 15. 12 MRSA § 4301-E is enacted to read:**

**§ 4301-E. Marine worm digger's license**

**1. License required. It is unlawful for any person to engage in the activities authorized by this license under this section without a current marine worm digger's license or other license issued under chapters 401 to 419 authorizing the activities.**

**Sec. 16. 12 MRSA § 4301-F is enacted to read:**

**§ 4301-F. Marine worm dealer's license**

**1. License required. It is unlawful for any person to engage in the activities authorized by this license under this section without a current marine worm dealer's license or other license issued under chapters 401 to 419 authorizing the activities.**

**2. Licensed activity. The marine worm dealer's license authorizes the holder to buy, possess, ship, transport or sell marine worms.**

**3. License limited. A license shall only authorize these activities at one establishment or with one vehicle.**

**4. Supplemental licenses. Supplemental licenses may be issued for each additional establishment or vehicle of the holder.**

**5. Fee. The fee for a marine worm dealer's license is \$25 and the fee for a supplemental license is \$10.**

**Sec. 17. 12 MRSA § 4352, sub-§ 4 is repealed.**

**Sec. 18. 12 MRSA § 4352, sub-§ 5, as enacted by PL 1965, c. 105, is repealed.**

**Sec. 19. 12 MRSA § 4352, sub-§ 6, as amended by PL 1973, c. 513 § 22, is repealed.**

**Sec. 20.** 12 MRSA § 4352, sub-§ 7 is enacted to read:

**7. Special license for dredging.** The commissioner may issue a special license to operate a hydraulic or mechanical clam dredge, provided the dredge design is approved by the commissioner, it is to be operated below low water, the operation will not substantially interfere with commercial digging and the operation is not to be used for taking any marine worms, lobsters or other crustaceans.

**Sec. 21.** 12 MRSA § 4404, sub-§ 5, as amended by PL 1975, c. 565, § 20, is repealed and the following enacted in its place:

**5. Fee.** The fee for the license is \$25 for applicants 17 years of age or older and \$10 for those under 17.

**Sec. 22.** 12 MRSA § 4404, sub-§ 6, 1st ¶, as repealed and replaced by PL 1977, c. 106, § 1, is repealed and the following enacted in its place:

**Ten dollars of each lobster and crab fishing license fee shall be allocated to the Lobster Fund which shall be used for the purpose of propagation of lobsters by liberating seed and female lobsters in Maine coastal waters.**

**Sec. 23.** 12 MRSA § 4453, sub-§ 3 is enacted to read:

**3. Biodegradable trap material.** It is unlawful to set, raise, lift or transfer any lobster trap unless it contains in the parlor section a section or part that is composed of biodegradable material. Biodegradable material shall be material that can be broken down in the marine environment by bacteria into basic elements.

**Sec. 24. Regulations.** The provisions of Title 12, sections 3605, 4212 and 4213 as in effect on January 1, 1978, shall become regulations of the commissioner until amended or repealed by the commissioner.

**Sec. 25. Effective date.** This Act shall become effective on January 1, 1979.

#### STATEMENT OF FACT

This bill complements the bill revising the marine resources statutes by presenting the major substantive changes for the revision bill. Though this bill must technically amend present statutes, it is designed and intended to incorporate the language of the revision and to amend that language in substantive matters.

The bill makes the following changes, with the relevant sections of the proposed revision bill printed in **Maine Commercial Fisheries** cross-referenced in parentheses.

**Secs. 1 and 2.** (Rev. § 3452 (2)). Sections 1 and 2 are rewritten to provide detailed direction and information to the department regarding its specific duties and activities.

**Sec. 3.** (Rev. § 3455 (1)). This section provides for legislative confirmation of members of the Advisory Council and also adds a requirement for geographical distribution of the members. The Advisory Council is presently required to advise the commissioner on policy affecting the fishing industry and to approve regulations proposed by the commissioner. The role and importance of the council is increasing and the check and balance of legislative confirmation is necessary to insure the council's quality, authority and responsiveness.

Secs. 4 and 5. (Rev. § 4404). These sections repeal the specific statutory determination of the head of tide of the Union River, and replace it with a provision granting the commissioner the authority to establish the head of tide by regulation.

Sec. 6. (Rev. § 3552 (new) ). This section creates an aquaculture license. Unlike the lease provisions, the license does not grant exclusive rights to use coastal waters or the intertidal zone. The license provides some legal protection for equipment that is being used, but the protection is only to allow a trial period for development and is limited in its scope and period.

Secs. 7, 8 and 9. (Rev. § 3741). These sections repeal the present fishing limitations on Casco Bay. Because of the 200-mile limit, these restrictions are no longer beneficial to the industry. If they are continued, the restrictions threaten to limit the building of larger vessels that could operate both inshore and offshore and thus to penalize the Maine industry in its attempts to modernize and expand.

Sec. 10. (Rev. § 3715). This section establishes an exception to the restrictions on setting nets and seines near weirs and stop seines. The exception is for the waters around Monhegan, Matinicus, Seal, Wooden Ball and Metinic Islands, where these restrictions are unnecessary.

Secs. 11 and 12. (Rev. §§ 3743 and 3744). These sections repeal provisions that limit fishing methods on certain rivers. These restrictions should be regulations of the commissioner rather than statutes.

Secs. 13 and 15. (Rev. § 3901). These sections eliminate a provision on the sale of worms by a digger that limits the sale to one "at retail or to the holder of a marine worm dealer's license." This is the only harvesting license that has a restriction on the sale of marine organisms that were lawfully harvested. There is no logical reason for continuing this restriction.

Secs. 14. and 16. (Rev. § 4103). These sections incorporate all the language of the revision, except the section requiring this to be a resident license. The resident-only restriction raises serious constitutional questions and is also probably in conflict with federal law. As there can be no conservation reason for this restriction, and no other reason is apparent, it has been removed.

Secs. 17 - 20. (Rev. § 3674 (2) ). These sections transfer from the statute the specific provisions allowing the taking of clams by dredging. The commissioner is authorized to grant special licenses for dredging, provided the dredging "will not substantially interfere with commercial digging..." This change properly transfers to the commissioner the authority to make specific detailed decisions on a case-by-case basis, rather than covering the subject with specific statutory provisions. The commissioner's authority is limited by specific standards.

Secs. 21 and 22. (Rev. §§ 3651 (1) & 3662 (1) ). These provisions increase the lobster and crab fishing license fee by \$5 and allocate the entire \$5 increase to the Lobster Fund. This increase is necessary because of the increase in lobster prices over the last several years. The increased price and supply of egg-bearing lobsters has surpassed the money in the Lobster Fund to purchase them, thus creating a deficit. This increase is entirely dedicated to the Lobster Fund.

Sec. 23. (Rev. § 3653 (5) (new) ). This is a new provision requiring the use of biodegradable materials in part of each lobster trap. This change has been requested by the

Maine Lobstermen's Association. It is intended to solve the problem of "ghost" traps that fish forever. By requiring a section of biodegradable material in each trap, the traps that are lost or abandoned will eventually stop fishing.

Sec. 24. This section makes certain repealed statutes into regulations of the commissioner.

Sec. 25. This section makes the effective date of this bill January 1, 1979, which coincides with the effective date of the revision bill.