

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 scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(Filing No. H-1112)

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

HOUSE AMENDMENT "A" to H.P. 2146, L.D. 2166, Bill, "AN ACT to Revise the Laws Concerning Marine Resources."

Amend the bill by inserting after section 2 a new section to read:

'3. 5. MRSA §8002, sub-§2, as enacted by PL 1977, c.551, §3, is amended by adding at the end a new sentence to read:

From July 1, 1978 until January 1, 1979, the term "agency" shall not include the Department of Marine Resources.'

Further amend the bill in section 4, in that part designated "§6001." subsection 10, by striking out in the 2nd line (same in L.D.) the underlined^{words} "genera Palinurus" and inserting in their place the following underlined words 'genera Panulirus'

Further amend the bill in section 4, in that part designated "§6001." subsection 14, by striking out the underlined word "building" and inserting in its place the underlined word 'buildings'

Further amend the bill in section 4, in that part designated "§6001." by inserting after subsection 53 a new subsection to read:

'54. Wholesale. "Wholesale" means sale, trade or service that is not directly to a consumer and is not retail.'

Further amend the bill in section 4, in that part designated "§6022." in subsection 3, by inserting in the last line after the underlined word "Law" the following ',except as provided in section 6023,'

Further amend the bill in section 4, in that part designated "§6022." in subsection 7, by striking out in the last sentence the underlined word "reports" and inserting in its place the underlined word 'report'

Further amend the bill in section 4, in that part designated "§6023." by striking out the first sentence and inserting in its place the following:

'The commissioner shall designate a deputy commissioner, who shall serve at the pleasure of the commissioner. The deputy commissioner shall be responsible, under the direction of the commissioner, for the administration and enforcement of the marine resources' laws and shall have all the powers of a coastal warden.'

Further amend the bill in section 4, in that part designated "§6024." in subsection 3, by striking out the underlined word "is" and inserting in its place the underlined words 'shall be'

Further amend the bill in section 4, in that part designated "§6025." in subsection 5, by striking out in the first sentence the underlined word "are" and inserting in its place

the following underlined words 'shall be'

Further amend the bill in section 4, in that part designated "§6052." by striking out subsection 4 and inserting in its place the following:

4. Research. Serve as the primary state agency engaging in research for the conservation of marine resources; and engage in all aspects of marine research, including:

A. Providing information on stock levels and environments of commercially valuable marine organisms;

B. ^{Solving}particular problems that relate to the State's commercial fishing industry; and

C. Providing technical and scientific information and support for all department activities.'

Further amend the bill in section 4, in that part designated "§6071." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6071." in subsection 2, in the last sentence by striking out everything after the underlined word "disease" and inserting in its place the following: 'or parasite, predator or other organism that may be dangerous to indigenous marine life or its environment.'

Further amend the bill in section 4, in that part designated "§6072." in subsection 13 by inserting after the underlined words "leases and" the following underlined word 'for'

Further amend the bill in section 4, in that part designated "§6073." in subsection 2, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6101." by striking out all of subsection 6 and inserting in its place the following:

'6. Misleading labeling prohibited. It shall be unlawful to sell any article inspected under this section under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size. Established trade names approved by the commissioner are permitted. It shall be unlawful to sell any article not inspected under this section under any name or other marking or labeling which is false and misleading when the mark or label is intended to represent the contents as having been inspected and graded.'

Further amend the bill in section 4, in that part designated "§6131." subsection 1, paragraph A, by striking out the underlined words "the taking of" and inserting in their place the following underlined word 'take'

Further amend the bill in section 4, in that part designated "§6131." subsection 7, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated subsection 8, "§6131." by striking out the underlined words "As all" and inserting in their place the following underlined word 'All'

Further amend the bill in section 4, in that part designated "§6172." in subsection 1 by striking out in the 2nd sentence the following underlined words and punctuation ", with the advice and consent of the advisory council,"

Further amend the bill in section 4, in that part designated "§6191." in subsection 2, paragraph C, by inserting after the underlined word "regulation" the following underlined words and punctuation ', except a regulation authorized under section 6172,'

Further amend the bill in section 4, in that part designated "§6192." in subsection 2, by striking out the underlined words "is not" and inserting in their place the following underlined words 'shall not be'

Further amend the bill in section 4, in that part designated subsection 2
nated "§6206." /paragraph B, by striking out in the 3rd line
(2nd in L.D.) of the 3rd paragraph the underlined word "the"

Further amend the bill in section 4, in that part designated
subsection 2
nated "§6206." /paragraph B, by striking out in the 3rd line
(2nd in L.D.) of the 4th paragraph the underlined word "the"

Further amend the bill in section 4, in that part designated
subsection 2
"§6206." /paragraph C, by striking out in the 3rd line (2nd in
L.D.) of the first paragraph the underlined word "said"

Further amend the bill in section 4, in that part designated
"§6202." subsection 2, paragraph D, by striking out in the 5th
paragraph, last sentence the underlined word "cost" and insert-
ing in its place the underlined word 'costs'

Further amend the bill in section 4, in that part designated first sentence, "§6301." in subsection 1, by striking out the underlined word "person" and inserting the underlined word 'individual'

Further amend the bill in section 4, in that part designated "§6301." in subsection 3, by striking out the underlined words "is not" and inserting in their place the underlined words 'shall not be'

Further amend the bill in section 4, in that part designated "§6302." in the first sentence by striking out the underlined word "is" and inserting in its place the underlined words 'shall be'

Further amend the bill in section 4, in that part designated "§6302." in subsection 1, by striking out in the 2nd sentence

the underlined word "is" and inserting in its place the underlined words 'shall be'

Further amend the bill in section 4, in that part designated "§6303." in subsection 2, by striking out in both the first and 2nd sentences the underlined word "is" and inserting their in / place the underlined words 'shall be'

Further amend the bill in section 4, in that part designated "§6305." in subsection 2 by striking out the underlined words "is prima" and inserting in their place /the underlined words 'shall be prima'

Further amend the bill in section 4, in that part designated "§6306." in subsection 2 by striking out at the end the following ← → "subchapter II"

Further amend the bill in section 4, in that part designated "§6307." by striking out the first sentence and inserting in its place the following:

'It shall be unlawful to intentionally or knowingly make a misstatement or misrepresentation on an application for a license or certificate.'

Further amend the bill in section 4, in that part designated "§6373." in the second paragraph by striking out at the end underlined the/figure "6207" and inserting in its place the following: '6856'

Further amend the bill in section 4, in that part designated "§6401." in subsection 1, by striking out the underlined words "any part" and inserting the underlined words 'any section'

Further amend the bill in section 4, in that part designated "§6421." in subsection 4, by striking out the underlined word "licensee" and inserting in its place the underlined word 'license'

Further amend the bill in section 4, in that part designated "§6421." in subsection 5, by inserting after the underlined word "shall" the following: 'only be issued to an individual and shall'

Further amend the bill in section 4, in that part designated "§6431." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6433." in subsection 1, paragraphs C and D/^{by} inserting at the end before the semicolon the following '(44.5 mm)'

Further amend the bill in section 4, in that part designated "§6435." by striking out in the first paragraph the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6436." subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6437." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6438." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6501." by inserting after subsection 3 a new subsection to read:

'4. Eligibility. A commercial fishing license shall only be issued to an individual.'

Further amend the bill in section 4, in that part designated "§6501." by renumbering subsections 4 and 5 to be 5 and 6

Further amend the bill in section 4, in that part designated "§6502." in the first paragraph, by inserting after the underlined word "nonresident" the underlined word 'individual'

Further amend the bill in section 4, in that part designated "§6502." in subsection 1, by inserting after the underlined word "nonresident" the underlined word 'individual'

Further amend the bill in section 4, in that part designated "§6502." in subsection 1, by striking out in the 2nd sentence the underlined word "person" and inserting in its place the underlined word 'individual'

Further amend the bill in section 4, in that part designated "§6521." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6521." in subsection 2, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6522." by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6541." in the first paragraph, by inserting after the underlined words "use of or" the following 'with the'

Further amend the bill in section 4, in that part designated "§6542." in the first paragraph, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6543." in the first paragraph, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6544." in the first paragraph, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6551." by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6552." in subsection 1, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6553." by striking out the first line and inserting in its place the following:

'§6553. Atlantic salmon; limits; method of taking; closed season'

Further amend the bill in section 4, in that part designated "§6554." by striking out subsection 1 and inserting in its place the following:

'1. Minimum length. It shall be unlawful to take or possess coho salmon which are less than 14 inches in length.'

Further amend the bill in section 4, in that part designated "§6554." in subsection 2, by inserting after the underlined words "to fish" the following underlined word 'for'

Further amend the bill in section 4, in that part designated "§6601." in subsection 3, by inserting after the underlined word "shall" the underlined words 'only be issued to an individual and shall'

Further amend the Bill in section 4 in that part designated "§6621." by striking out all of subsections 1 and 2 and inserting in their place the following:

'1. Taking from closed areas. It shall be unlawful to fish for or take shellfish from any area closed by regulation or to possess, ship, transport or sell shellfish so taken.'

'2. Washing or holding in closed areas. It shall be unlawful to wash, hold or keep shellfish in any area closed by regulation or to possess, ship, transport or sell shellfish so washed, held or kept.'

Further amend the Bill in section 4 in that part designated "§6622." by striking out in the first sentence the underlined words "for any person"

Further amend the Bill in section 4 in that part designated "§6622." by inserting at the end the following underlined sentence: 'Notwithstanding the provisions of Title 17-A, section 4-A, whoever takes or possesses shellfish contrary to a municipal ordinance authorized by section 6671 shall be guilty of a crime punishable by a fine of not more than \$1,000.'

Further amend the Bill in section 4 in that part designated "§6623." in subsection 1 by striking out the underlined words "for any person"

Further amend the Bill in section 4 in that part designated "§6624." in subsection 1 by striking out the underlined words "for any person"

Further amend the Bill in section 4 in that part designated "§6625." in subsection 3 by striking out all of the 3rd sentence and inserting in its place the following:
'The commissioner may expend the money in the fund for research related to quahogs or the quahog industry, for the restoration, development and conservation of the quahog industry, including buying, maintaining and operating boats and equipment for transplanting seed quahogs or for enforcing this section.'

Further amend the Bill in section 4 in that part designated "§6651." by striking out all of subsection 2 and inserting in its place the following:

'2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for restoration, development and conservation of shellfish in the intertidal zone or coastal waters.'

Further amend the Bill in section 4 by striking out all of that part designated "§6670."

Further amend the bill in section 4 by striking out all of that part designated "§6671." and inserting in its place the following:

'§6671. Municipal shellfish conservation programs

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

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance regulating the taking of shellfish in any areas in the intertidal zone or coastal waters of the municipality as provided by this section.

3. Shellfish conservation ordinance. Within any area in the intertidal zone or coastal waters in the municipality, a shellfish conservation ordinance may regulate or prohibit the taking of shellfish; may fix the amount of shellfish that may be taken; may limit the size of soft shell clams; may fix the qualifications for a license, including municipal residency; and may fix license fees. No program or ordinance shall regulate areas closed by regulation of the commissioner. An ordinance may also provide for enforcement, protection and evaluation of a green crab fencing program.

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

A. Raise or appropriate money for a shellfish conservation program within the 2 previous years; and

B. Receive and file with the municipal clerk the written approval of the commissioner for the proposed ordinance.

5. Period of ordinance. Ordinances adopted under this section shall remain in effect for no more than 3 years. A certified copy of the ordinance shall be filed with the commissioner within 7 days of its adoption.

6. 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.

7. 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.

8. Local enforcement. A municipality that enacts an ordinance under this section shall be responsible for enforcing it.

9. Penalty. Notwithstanding the provisions of Title 17-A, section 4-A, whoever takes or possesses shellfish contrary to a municipal ordinance authorized by this section shall be guilty of a crime punishable by a fine of not more than \$1,000.'

Further amend the bill in section 4 in that part designated "§6673." subsection 1, by striking out in the first sentence the following: "under license" and inserting in its place the following: 'under lease'

Further amend the bill in section 4 in that part designated "§6673." subsection 2, by striking out in the first line the following: "2. Department procedure." and inserting in its place the following: '2. Department procedure for review and approval.'

Further amend the bill in section 4 in that part designated "§6673." subsection 2, paragraph B, by striking out the underlined word: "license" and inserting in its place the following: 'lease'

Further amend the bill in section 4 in that part designated "§6674." first paragraph, by striking out the following: "for any person"

Further amend the bill in section 4 in that part designated "6701." by striking out all of subsection 3 and inserting in its place the following:

'3. Eligibility. A scallop license shall only be issued to an individual and shall be a resident license.'

Further amend the bill in section 4 in that part designated "§6721." subsection 1, by striking out in the first sentence the following: "for any person"

Further amend the bill in section 4 in that part designated "§6722." in the first line of the first paragraph, by striking out the following: "for any person"

Further amend the bill in section 4 in that part designated "§6751." by striking out all of subsection 3 and inserting in its place the following:

'3. Eligibility. A marine worm digger's license shall only be issued to an individual and shall be a resident license.'

Further amend the bill in section 4 in that part designated "§6772." in subsection 1, first sentence, by striking out the underlined word "storing" and inserting in its place the following: 'storage'

Further amend the bill in section 4 in that part designated "§6801." by striking out all of subsection 3 and inserting in its place the following:

'3. Eligibility. A sea moss license shall only be issued to an individual.'

Further amend the bill in section 4 in that part designated "§6801." by inserting after subsection 3 the following:

'4. Fees. Fees for a sea moss license shall be:

A. \$10 for a resident; and

B. \$25 for a nonresident.'

Further amend the bill in section 4 in that part designated "§6858." subsection 1, by striking out in the first sentence the following: "for any person"

Further amend the bill in section 4 in that part designated "§6858." subsection 2, by striking out in the first sentence the following: "for any person"

Further amend the bill in section 4 in that part designated "§6859." first paragraph, by striking out the following: "for any person"

Further amend the bill in section 4 in that part designated "§6860." first paragraph, by striking out the following: "for any person"

Further amend the bill in section 4 in that part designated "§6861." subsection 6, in the first sentence, by striking out the following: "for any person"

Further amend the bill in section 4, in that part designated "§6861." subsection 7, first sentence, by striking out the underlined words "for any person"

Further amend the bill in section 4, in that part designated "§6861." in subsection 8, first sentence, by striking out the underlined words "for any person"

Further amend the bill in section 4 in that part designated "6861." subsection 13, by striking out at the end/the following: before the period, "\$500 nor more than \$1,000" and inserting in its place the following: '\$100'

Further amend the bill in section 4 in that part designated "§6952." first paragraph, by striking out in the first line the following: "for any person"

Further amend the bill in section 4, in that part designated "§6953." subsection 4, by striking out at the end, before the period, the following: "nor more than \$500"

Further amend the bill by renumbering sections 3 and 4 to be sections 5 and 6

Further amend the bill by striking out all of sections 5, 6 and 7 and inserting in their place the following:

'Sec. 6. 17-A MRSA §4-A, sub-§2, as amended by PL 1977,
further
c. 510, §15, is/amended to read:

2. Statutes defining crimes which are outside the code are classified as civil violations or as Class A, Class B, Class C, Class D or Class E crimes according to the provisions of subsections 3 and 4, ~~provided that this section shall not apply to crimes defined in Title 12, Part 4.~~

Sec. 7. 36 MRSA c. 711, as amended by PL 1973, c. 513, §22, is repealed.

Sec. 8. Present regulations. All regulations of the department or of the Atlantic Sea Run Salmon Commission in effect on the effective date of this Act shall remain in full force until amended or repealed by the commissioner or commission, as provided under this Act. The provisions to Title 12, section 3856, subsections 1 and 2, as in effect on December 31, 1978, shall become regulations of the commissioner under Title 12, section 6541, until amended or repealed by the commissioner. The provisions of Title 12, sections 4212 and 4213, as in effect on December 31, 1978, shall also become regulations of the commissioner until amended or repealed by the commissioner.

Sec. 9. Transitional provisions.

1. Legislative intent. It is the intent of the Legislature that this Act shall be considered a revision of the department's governing statutes.

2. Agreements; leases; contracts or authorizations. All agreements, leases, contracts or authorizations, except licenses, permits or certificates issued under prior ~~Marine Resources~~' laws shall continue to be valid under the terms of issuance, unless in conflict with this Act, until they expire or are rescinded, amended or revoked.

3. Dedicated revenue. This Act shall not be construed to change the status of any dedicated revenue. All dedicated funds existing prior to this Act shall not lapse because of this Act, but shall be transferred to the funds of the same name which are created by this Act.

4. Advisory Council. This Act shall not terminate the terms of members of the advisory council or the ^{Atlantic Sea Run} ~~Salmon~~ Commission which have been appointed under prior marine resources' laws, which shall continue until they expire under the term as established by statute at the time of appointment. The new qualifications for membership to the advisory council shall only apply to members appointed under this Act after its effective date.

5. Personnel. This Act shall have no effect on the term or appointment of any employee of the department, except as provided in subsection 6.

6. Deputy commissioner. Notwithstanding the provisions of this Act, the incumbent deputy commissioner on December 31, 1978, may retain his appointment subject to the Personnel Law until January 1, 1983.

7. Funds and equipment transferred. Notwithstanding the provisions of Title 5, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account or subdivision of any account of the department shall be transferred to the proper place under this Act by the State Controller, upon the recommendation of the commissioner and State Budget Officer, and with the approval of the Governor.

8. Municipal programs and ordinances. Municipal programs and ordinances authorized and adopted under prior marine resources' laws shall continue to be valid under the terms of authorization and adoption until they expire or are rescinded, amended or revoked.

Sec. 10. Effective date. Sections 1, 2, 4, 5, 6, 7, 8 and 9 of this Act shall become effective January 1, 1979. Section 3 of this Act shall become effective 90 days after adjournment.

Fiscal Note

This bill gives the ~~Deputy~~ Commissioner the powers of a coastal warden, thus making him eligible for retirement benefits under the ^{Maine State} State Retirement System as a law enforcement officer. However, the bill also makes those benefits, and the increase employee contributions, optional. If the ~~Deputy~~ Commissioner elected law enforcement benefits under the ^{Maine State} Retirement System, the State would have to increase contributions to the ^{Maine State} Retirement System by 1.52% of the ~~Deputy~~ Commissioner's compensation, in order to fully fund the additional benefits. (Estimated \$317.11 per year). Because of minor changes in supplemental license fees to create uniform fees, this potential cost will be offset by increased revenues.

Statement of Fact

This amendment corrects grammatical and semantic errors in the bill. The amendment also includes these changes:

1. A new definition of "wholesale;"
2. An exemption for the department from the Maine Administrative Procedure Act for the period between July 1, 1978 to January 1, 1979;
3. A requirement that the deputy commissioner serve at the pleasure of the commissioner, as provided in L.D. 2111;
4. A clarification of the department role in undertaking marine research;
5. A removal of the department's exemption from the penalty conversions of the Criminal Code;
6. A reduction in the minimum fine for a violation of the crawfish license provisions; and
7. A new transition clause to correct omissions in the transition.

Filed by Mrs. Post of Owls Head.

Reproduced and distributed under the direction of the Clerk of the House.
3/3/78

(Filing No. H-1112)