

MAINE STATE LEGISLATURE

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EMERGENCY
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 134

H. P. 73

House of Representatives, January 6, 1981

Submitted by the Department of Marine Resources pursuant to Joint Rule
24.

Referred to the Committee on Marine Resources. Sent up for concurrence
and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Fowlie of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify Certain Provisions of the Marine Resources Laws.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and confusion be resolved in order to prevent any injustice or hardship on the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA § 6025, sub-§ 4, as last amended by PL 1979, c. 541, Part B, § 14, is further amended to read:

4. Search powers. Any marine patrol officer, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag,

locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, **possessed or transported** contrary to law is concealed thereon or therein.

Sec. 2. 12 MRSA § 6025, sub-§ 5, as last amended by PL 1979, c. 541, Part B, § 14, is further amended to read:

5. Sheriff and police powers as marine patrol officers. A sheriff, deputy sheriff, ~~deputy sheriff~~ police officer, constable ~~or~~, inland fisheries and wildlife warden or **National Marine Fisheries Service agent**, within their respective jurisdictions, shall be vested with the powers of a marine patrol officer, except the powers provided in sections 6306 and 6434. When an officer acts under this section, the same fees shall be paid for his services to the usual recipient of the officer's fees.

Sec. 3. 12 MRSA § 6131, sub-§ 9, is enacted to read:

9. Closed period in rivers and streams not under lease agreement. In any river or stream not managed under a lease agreement there is a 24-hour closed period on the taking of alewives and obstruction of the watercourse to allow the free passage of fish from 6 a.m. on Saturday to 6 a.m. the following Sunday.

Sec. 4. 12 MRSA § 6251, sub-§ 1, paragraph A, as enacted by PL 1977, c. 661, § 5, is amended to read:

A. The Commissioner of Marine Resources and the Commissioner of Inland Fisheries and Wildlife or their respective designees; and

Sec. 5. 12 MRSA § 6253, sub-§ 2, as enacted by PL 1977, c. 661, § 5, is amended by adding at the end a new sentence to read:

Such commission regulations are valid only if approved by 2 or all of the following: The Commissioner of Marine Resources, the Commissioner of Inland Fisheries and Wildlife and the 3rd member of the commission appointed by the Governor.

Sec. 6. 12 MRSA § 6435, as enacted by PL 1977, c. 661, § 5, is amended to read:
§ 6435. Setting near weirs

It shall be unlawful to set any lobster trap within 300 feet of the mouth of any fish weir when the weir owner or operator is licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

Sec. 7. 12 MRSA § 6436, sub-§ 5, is enacted to read:

5. Penalty. Possession of lobsters in violation of this section is a Class D crime, except that in addition to any punishment which may be imposed under Title 17-A, Part 3, the court shall impose a fine of \$25 for each violation and, in addition, a fine of \$30 for each lobster involved.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 1 of this bill is designed to improve the enforceability of marine resource laws in those situations where illegally taken, possessed or transported marine organisms are concealed.

Section 2 of this bill would enable the Department of Marine Resources to enter into reciprocal enforcement contracts with the National Marine Fisheries Service. Such a reciprocal enforcement agreement would authorize Maine marine patrol officers to enforce federal fishery laws and would authorize national marine fisheries service agents to enforce Maine marine resource laws, thereby assuring more effective enforcement of the Maine marine resource laws and greater protection for the Maine fishing industry.

Section 3 of this bill remedies the inconsistency in statutory provisions for closed time on alewife fishing in those streams where alewife fishing rights have been leased to municipalities and those streams not subject to such a municipal lease. The 24-hour closed time applicable to a municipally-leased stream, pursuant to the provisions of Title 12, section 6131, subsection 2, paragraph A, is extended to all other streams not subject to a lease arrangement.

Section 4 and 5 of this bill would authorize the Commissioner of Marine Resources and the Commissioner of Inland Fisheries and Wildlife to designate other individuals to be voting members of the commission. However, the approval of at least 2 of the original commission members, Commissioner of Marine Resources, Commissioner of Inland Fisheries and Wildlife and the 3rd commission member appointed by the Governor, will still be required for valid promulgation of Atlantic salmon regulations.

Section 6 of this bill remedies an inconsistency between statutory provisions for protection of fish weirs. Presently, Title 12, section 6525 provides that only those weirs validly licensed under Title 38, section 1021 et seq., qualify for a 2,000-foot protective buffer zone around the mouth of the weir, in which zone seining is prohibited. This bill requires the same licensing procedure under Title 38, section 1021, et seq., before a weir can qualify for the 300-foot protective buffer zone in which lobstering is prohibited, under Title 12, section 6435.

Section 7 of this bill establishes minimum fines for violations of the egg-bearing and v-notched lobster laws, in addition to the general penalty provided for Class D crimes. These minimum fines reflect the serious nature of any violation of these important conservation laws. Similar minimum fines have already been established for violations of other lobster conservation laws, such as Title 12, sections 6431 and 6438.