

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1518

H. P. 1310

House of Representatives, April 3, 1981

Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 24.

Referred to the Committee on Fisheries and Wildlife. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative MacEachern of Lincoln.

STATE OF MAINE

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

AN ACT to Prohibit the Importing of Certain Species of Live Fish and to Establish Penalties for such Importation.

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

Sec. 1. 12 MRSA § 7001, sub-§ 1-A is enacted to read:

1-A. Baitfish. "Baitfish" means only those species in the following list:

- A. Lake chub, *Couesius plumbeus*;
- B. Golden shiner, *Notemigonus chrysoleucas*;
- C. Emerald shiner, *Notropis atherinoides*;
- D. Bridled shiner, *Notropis bifrenatus*;
- E. Common shiner, *Notropis cornutus*;
- F. Blacknose shiner, *Notropis heterolepis*;
- G. Spottail shiner, *Notropis hudsonius*;
- H. Northern redbelly dace, *Phoxinus eos*;
- I. Finescale dace, *Phoxinus neogaeus*;

- J. Fathead minnow, *Pimephales promelas*;
- K. Blacknose dace, *Rhinichthys atratulus*;
- L. Longnose dace, *Rhinichthys cataractae*;
- M. Creek chub, *Semotilus atromaculatus*;
- N. Fallfish, *Semotilus corporalis*;
- O. Pearl dace, *Semotilus margarita*;
- P. Banded killifish, *Fundulus diaphanus*;
- Q. Mummichog, *Fundulus heteroclitus*;
- R. Longnose sucker, *Catostomus catostomus*;
- S. White sucker, *Catostomus commersoni*;
- T. Creek chubsucker, *Erimyzon oblongus*; and
- U. Rainbow smelt, *Osmerus mordax*.

Sec. 2. 12 MRSA § 7001, sub-§ 38-A is enacted to read:

38-A. Tropical fish and goldfish. "Tropical fish and goldfish" means any species of fishes that cannot survive the year round in a wild environment north of 30° north latitude or south of 30° south latitude and goldfish, *Carassius auratus*, except piranhas, Genera *Serrasalmus*, *Rooseveltiella* and *Pygocentrus*, walking catfish, *Clarias batrachus* and white amur or grass carp, *Ctenopharyngodon idella*.

Sec. 3. 12 MRSA § 7171, sub-§ 3, ¶ A, as enacted by PL 1979, c. 420, § 1, is amended to read:

A. The holder of a live bait dealer's license may use the ordinary commercial type minnow seine or bag net not to exceed 8 feet in depth by 150 feet in length in the taking of ~~minnows and other unprotected fish commonly used for bait purposes~~ baitfish, except smelts.

Sec. 4. 12 MRSA § 7171, sub-§ 3, ¶ D, as enacted by PL 1979, c. 420, § 1, is amended to read:

D. Any bait trap used for the taking of ~~bait~~ baitfish in accordance with this section shall bear the name and address of the person who is taking the ~~bait~~ baitfish.

Sec. 5. 12 MRSA § 7173, sub-§ 1, as amended by PL 1979, c. 723, § 8, is further amended to read:

1. **Issuance.** Whenever any inland waters are closed to fishing, the commissioner may issue permits to take ~~minnows for bait purposes~~ baitfish from those waters.

Sec. 6. 12 MRSA § 7377, sub-§ 5, as amended by PL 1979, c. 723, § 15, is repealed and the following enacted in its place:

5. **Importing live freshwater fish or eggs.** Notwithstanding section 7371 as it applies to section 7202, section 7371 shall not apply to tropical fish and goldfish as defined by section 7001, subsection 38-A, which are for aquarium purposes, nor to the chemically preserved eggs of either salmon or trout, chemically preserved in such a manner as to preclude viability.

Sec. 7. 12 MRSA § 7606, as enacted by PL 1979, c. 420, § 1, is repealed and the following enacted in its place:

§ 7606. Possession of baitfish and live fish

A person is guilty of:

1. **Baitfish.** Illegally selling, using or possessing fish or parts thereof for fish bait purposes if he sells, uses or possesses any fish or part thereof for fish bait purposes, except baitfish as defined by section 7001, subsection 1-A and the chemically preserved eggs of either salmon or trout.

2. **Live fish.** Illegal possession of live freshwater fish if he possesses, without written permission of the commissioner, any live freshwater fish other than baitfish as defined by section 7001, subsection 1-A; tropical fish and goldfish, as defined by section 7001, subsection 38-A, which are for aquarium purposes; eels, *Anguilla rostrata*; alewives, *Alosa pseudoharengus*; and fish not to be used for bait purposes which are in or on the body of water from which they were taken.

Sec. 7. 12 MRSA § 7606, as enacted by PL 1979, c. 420, § 1, is repealed and the following enacted in its place:

§ 7606. Possession of baitfish and live fish

A person is guilty of:

1. **Baitfish.** Illegally selling, using or possessing fish or parts thereof for fish bait purposes if he sells, uses or possesses any fish or part thereof for fish bait purposes, except baitfish as defined by section 7001, subsection 1-A and the chemically preserved eggs of either salmon or trout.

2. **Live fish.** Illegal possession of live freshwater fish if he possesses, without written permission of the commissioner, any live freshwater fish other than baitfish as defined by section 7001, subsection 1-A; tropical fish and goldfish, as defined by section 7001, subsection 38-A, which are for aquarium purposes; eels, *Anguilla rostrata*; alewives, *Alosa pseudoharengus*; and fish not to be used for bait purposes which are in or on the body of water from which they were taken.

Sec. 8. 12 MRSA § 7613, as enacted by PL 1979, c. 420, § 1, is repealed and the following enacted in its place:

§ 7613. Importing live bait; importing live bait for commercial purposes

1. General prohibition. A person is guilty of importing live bait if he imports into this State any live fish, including smelts, which are commonly used for bait in inland waters.

For the purposes of this section, live fish commonly used for bait includes any freshwater member of the minnow family (Cyprinidae), topminnow family (Cyprinodontidae), sucker family (Castostomidae), smelt family (Osmeridae), mudminnow family (Umbridae) or other fish commonly used or intended for use as bait, except tropical fish and goldfish which are for aquarium purposes as defined in section 7001, subsection 38-A.

2. Importation for commercial purposes. A person is guilty of importing live bait for commercial purposes if he imports into this State any live fish commonly used for bait for commercial purposes.

For the purposes of this section, importing live fish commonly used for bait for commercial purposes means importing 100 or more fish of any species at one time commonly used or intended for use as bait.

Sec. 9. 12 MRSA § 7630, sub-§ 1, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 10. 12 MRSA § 7901, sub-§ 5 is enacted to read:

5. Section 7613, subsection 2. A violation of section 7613, subsection 2, importing live bait for commercial purposes, is a Class E crime and may be punished as follows.

A. All live fish commonly used for bait so possessed shall become the property of the department and shall be destroyed in the manner prescribed by the commissioner.

B. Vehicles and equipment used for importing live bait for commercial purposes into Maine may become the property of the department and shall be disposed of in the manner prescribed by the commissioner.

C. A forfeiture of \$500, plus \$5 per pound for all live fish so possessed may be adjudged.

D. A term of imprisonment not to exceed 6 months may be imposed.

Forfeitures under paragraph A or B shall be pursuant to the procedures established in sections 7907 to 7909.

STATEMENT OF FACT

The purpose of this bill is to clarify existing laws relating to the possession of live fish, with a view to preventing the introduction of unwanted species of fishes into the inland waters of the State.

Section 1 establishes a precise definition for baitfish, something that was previously absent from the laws, although implied by Title 12, section 7606, the so-

called "spiny-finned fish" law. The definition lists all of the freshwater minnows, except carp and goldfish, killifish and smelts which are known to exist in the wild in the State by their proper common and scientific names. Excluded are all nonnative baitfish which might otherwise be illegally smuggled into the State and subsequently sold with the danger of their introduction and establishment in Maine waters.

Section 2 moves the existing definition of tropical fish and goldfish from Title 12, section 7377, subsection 5, to its proper place in the definition section where it will be easier for both enforcement officers and tropical fish dealers to find. In addition, the exclusion of piranhas is clarified.

The purpose of excluding of piranhas from importation is to prevent the subjecting of citizens to possible physical harm from dangerous and unpredictable species of fishes. "Piranha" is a broad term which includes a large number of harmless varieties, as well. The dangerous species are largely restricted to 3, very similar genera: *Serrasalmus*, *Roseveltiella* and *Pygocentrus*.

Section 3 brings the existing law into line with the definition of baitfish established in section 1 of this bill. The taking of smelts with a seine has never been allowed. Legal methods for the taking of smelts are described elsewhere in the laws.

Section 4 corrects the term "bait" to "baitfish" in an existing law so that it coincides with the definition of baitfish established by section 1 of the bill.

Section 5 corrects an existing law in reference to the definition established by section 1 of the bill.

Section 6 removes the definition of tropical fish and goldfish from Title 12, section 7377 and transfers it to the definition section. The portion referring to salmon eggs is changed to read "the chemically preserved eggs of either salmon or trout." In doing so it will now become legal to import chemically preserved salmonid eggs for use as bait. Although actually illegal at present, there is no biological reason to prohibit this. Once chemically preserved, these eggs are no longer viable and do not pose the threat of introducing fish diseases.

Section 7 repeals a rather confusing and vague law previously known as the "spiny-finned fish law" and replaces it with a law which will make it illegal to possess any live freshwater fish without written permission of the commissioner except: Tropical fish and goldfish; eels; alewives; and fish, on stringers or in live-wells, while in or on the body of water from which they are taken or to sell, use or possess any fish for fish bait purposes except baitfish.

In addition, it is worded so that species, dead or alive, other than baitfish cannot be used as bait, even on the body of water from which they were taken. The legality of the use and possession of chemically preserved eggs of either salmon or trout is established by reference to such in this section.

In recent years, black bass and certain other species have been established in

many inland waters through illegal introduction, often to the detriment of existing fish populations. Most notable was the introduction of small mouth bass into Moosehead Lake. The enactment of this section is meant to serve as another tool in the prevention of these acts by making it illegal to possess live freshwater fish except as provided. This law will in no way affect the otherwise legitimate possession of live fish such as commercial species, eels, alewives and commercially grown trout for private ponds which are presently processed and regulated through the department.

Section 8 creates a new crime of importing live bait for commercial purposes. The activity prohibited poses a serious threat to Maine fisheries and habitat by introducing foreign species into the waters of the State.

Section 9 repeals a section which makes the use of salmon eggs as bait, which section is superfluous because of the language in section 6.

Section 10 provides special penalties for importing live bait for commercial purposes including forfeiture of the fish involved and the equipment used in the illegal activity.