

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 870

6
7 H.P. 690

House of Representatives, February 24, 1983

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

10 EDWIN H. PERT, Clerk

11 Presented by Representative Vose of Eastport.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Revise the Statutes Relating
18 to Fish Weirs.
19

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

22 Sec. 1. 38 MRSA §1021 is amended to read:

23 §1021. Definitions

24 The words "fish weir" mentioned in this chapter
25 are defined to be a fixed structure erected and main-
26 tained during part of each fishing season in the
27 tidewater, constructed of ~~at least~~ 25 spiling or
28 stakes fastened together by binders, surrounded by
29 brush, lath racks or netting, forming the catch pound
30 of at least 180 feet in diameter into which fish are
31 led or guided by one or more fixed leaders con-
32 structed of spiling or stakes not more than 20 feet
33 apart and at least ~~100~~ 50 feet long, fastened

1 together by binders surrounded by lath racks, brush
2 or netting and from which catch pound they cannot
3 readily escape.

4 Sec. 2. 38 MRSA §1022, first ¶ is amended to
5 read:

6 Any person intending to build or extend any
7 wharf, fish weir or trap in tidewaters, within the
8 limits of any city or town, may apply in writing to
9 the municipal officers thereof, stating the location,
10 limits and boundaries, as nearly as may be, of such
11 intended erection or extension, and asking license
12 therefor. Upon receiving such application, said offi-
13 cers shall give at least 3 days' public notice
14 thereof in a newspaper, published in the town, or, if
15 there is no newspaper published in the town, in a
16 newspaper published within the county, and shall
17 therein designate a day and time on which they will
18 meet on or near the premises described, to examine
19 the same and hear all parties interested. If, upon
20 such examination and hearing of all parties inter-
21 ested, said officers decide that such erection or
22 extension would not be an obstruction to navigation
23 or injury to the rights of others, and determine to
24 allow the same, they shall issue a license under
25 their hands to the applicant, authorizing him to make
26 such an erection or extension, and to maintain the
27 same within the limits mentioned in such license. The
28 applicant for license to build or extend a fish weir
29 or trap shall first give bond to the town, with sure-
30 ties, in the sum of \$500, conditioned that upon the
31 termination of such license he shall remove all
32 stakes and brush from the location therein described.
33 Said municipal officers shall, within 10 days after
34 the date of hearing, give written notice by regis-
35 tered mail of their decision to all parties inter-
36 ested. Any person aggrieved by the decision of the
37 municipal officers, in either granting or refusing to
38 grant a license as provided, may appeal to the Supe-
39 rior Court within 10 days after the mailing of such
40 written notice. The court shall set a time and place
41 for hearing and give notice thereof in the same man-
42 ner as provided for a hearing before the municipal
43 officers. The decision of said court shall be commu-
44 nicated within 10 days after the date of hearing to
45 the appellant and to the municipal officers of the

1 town in which the proposed wharf, weir or trap is to
2 be located. This decision shall be binding on said
3 municipal officers, who shall issue a license, if so
4 directed by the decision of said court, within 3 days
5 after said decision has been communicated to them. If
6 said appeal is sustained by said court in whole or in
7 part, the appellant shall have his costs against the
8 appellee. If the appeal is not so sustained, the
9 appellee shall have his costs against the appellant.
10 If any owner to whom a license has been issued, or
11 his heirs or assigns, fails to remove all stakes and
12 brush within a period of one year after the termina-
13 tion of the license, as provided in section 1023, any
14 person can remove the same without charge against
15 said owner, his heirs or assigns.

16 Sec. 3. 38 MRSA §1022-A is enacted to read:

17 §1022-A. Set offs

18 No license may be issued for construction of a
19 fish weir or trap that is to be located within 2000
20 feet of another currently licensed fish weir or trap.

21 Sec. 4. 38 MRSA §1023 is amended to read:

22 §1023. Expiration of license

23 The license for the building or extension of a
24 fish weir or trap issued under section 1022 or any
25 right or privilege granted by the Legislature for the
26 building or extension of any such fish weir or trap
27 shall terminate and become void unless such weir or
28 trap shall be built within one year from the date of
29 the license or the granting of such right or privi-
30 lege, and maintained and operated in good faith for
31 some part of each year thereafter. A weir that is not
32 under active construction by July 15th in any year
33 shall not be considered a weir for the remainder of
34 the year.

35 The Commissioner of Marine Resources shall pro-
36 vide that each fish weir and trap licensed under
37 section 1022 is inspected by July 15th of each year.
38 The commissioner shall report all weirs and traps
39 that are not being maintained and operated in compli-
40 ance with this section to the respective municipal

1 officers. The municipal officers, after public hear-
2 ing, may revoke the license of any such fish weir or
3 trap.

4 Sec. 5. 38 MRSA §1023-A is enacted to read:

5 §1023-A. Appeals

6 1. Administrative appeals. Any aggrieved person
7 may appeal any decision under this chapter to the
8 Commissioner of Marine Resources.

9 2. Judicial appeals. Any aggrieved person may
10 appeal any municipal decision under section 1022 or
11 any decision of the commissioner to the Superior
12 Court. The court may award reasonable attorneys'
13 fees to the prevailing party.

14 STATEMENT OF FACT

15 Title 12, section 6525, provides a 2000-foot re-
16 stricted zone around municipally licensed fish weirs.
17 No person other than the owner of the weir or his
18 crew is allowed to fish in this zone. While this set
19 off is necessary to protect legitimate weirs that are
20 actually being fished, some weirs are constructed for
21 the sole purpose of gaining exclusive use of a cove
22 or other area.

23 This bill clarifies the definition of a fish
24 weir, and makes it less likely that weirs will be
25 used only to get set-off protection. The bill pro-
26 hibits construction of a fish weir within 2000 feet
27 of another weir, and provides for annual review of
28 weir operation by the Department of Marine Resources.

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