

L.D. 1975

(Filing No. H-537)

3 STATE OF MAINE HOUSE OF REPRESENTATIVES 4 5 111TH LEGISLATURE 6 SECOND REGULAR SESSION HOUSE AMENDMENT " \mathcal{E} " to H.P. 1501, L.D. 1975, 7 Bill, "AN ACT to Permit Possession of Soft-shell Clam 8 Stocks 2 Inches or Greater in the Largest Diameter." 9 10 Amend the Bill by striking out everything after 11 the enacting clause and inserting in its place the 12 following: 'Sec. 1. 12 MRSA §6651, sub-§§1 and 2, 13 as enacted by PL 1977, c. 661, §5, are amended to read: 14 1. Fees to be paid into fund. Twenty-five Seventy-five percent of all fees from shellfish li-15 **Twenty-five** 16 17 censes, shellfish transportation licenses and wholesale seafood licenses shall be paid into the Shell-18 19 fish Fund. 20 2. Uses of fund. The commissioner may expend the 21 money in the Shellfish Fund for management, enforce-22 ment, restoration, development and conservation of shellfish in the intertidal zone or coastal waters. 23 24 Sec. 2. 12 MRSA §6671, sub-§2, as enacted by PL 25 1977, c. 661, §5, is amended to read: 26 2. Municipal program and ordinance. Any munici-27 pality may, by vote of its legislative body, adopt, 28 amend or repeal a shellfish conservation ordinance 29 regulating the taking possession of shellfish in any areas in the intertidal zone or coastal waters area 30 31 of the municipality as provided by this section. 32 Sec. 3. 12 MRSA §6671, sub-§3, as amended by PL 33 1979, c. 608, §1, is further amended to read: 34 Shellfish conservation ordinance. Within any 35 area in of the intertidal zone or coastal waters in

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the municipality, a shellfish conservation ordinance 1 2 may regulate or prohibit the taking possession of 3 shellfish; may fix the amount of shellfish that may may shall limit the size of soft shell 4 be taken; 5 soft-shell clams in accordance with subchapter I, Ar-6 ticle 5; may fix the qualifications for a license, including municipal residency; may fix license fees; 7 and may authorize the municipal officers to open and 8 flats under specified conditions. No A program 9 close 10 or ordinance shell shall not regulate areas closed by 11 regulation of the commissioner. An ordinance may also 12 provide for enforcement, protection and evaluation of 13 a green crab fencing program. No municipal commercial license may be issued unless the applicant has a current shellfish license, as provided in section 6601. The fee for a nonresident license shall be not 14 15 16 more than 10 times the fee for a resident license, provided that in no case may the fee for a nonresi-17 18 19 dent license exceed \$150. Notice of the number and 20 the procedure for application shall be published in a 21 trade or industry publication which the municipal of-22 ficers consider effective in reaching persons af-23 fected, not less than 10 days prior to the period of 24 issuance and shall be posted in the municipal offices 25 until the period concludes. Subsequent to that perithe municipality shall make any resident or non-26 od, 27 resident licenses not granted during the period 28 available to residents or nonresidents.

29 Sec. 4. 12 MRSA §6671, sub-§8, as enacted by PL 30 1977, c. 661, §5, is repealed and the following en-31 acted in its place:

32 <u>8. Local enforcement. The following provisions</u>
 33 shall apply to enforcement.

- A. A municipality that enacts an ordinance under
 this section shall be responsible for enforcing
 it.
- 37B. Any municipal shellfish conservation warden38appointed by a municipality to enforce the provi-

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1	sions of this Article shall, within one year of
2	appointment, be certified by the commissioner.
3	The commissioner shall establish a program to
4	provide shellfish conservation training in prin-
5	ciples of shellfish conservation, management, en-
6	forcement and protection and shall establish
7	standards for certification of municipal conser-
8	vation wardens upon their satisfactory completion
9	of the training program. The commissioner may establish by rule procedures for certification,
10	establish by rule procedures for certification,
11	recertification and for revocation of certifica-
12	tion. A certificate may be revoked for failure
13	of the warden to comply with the performance
14	standards established by the commissioner.
15	C. A certified municipal shellfish conservation
16	warden shall enforce the shellfish ordinances of
17	the municipality employing him and may arrest all
18	violators. The warden may serve all process per-
19	taining to the ordinance. The warden shall also
20	have, within his jurisdiction, the powers of a
21	marine patrol officer provided in section 6025,
22	subsection 4. All of the powers conferred in this
23	subsection shall be limited to the enforcement of
24	a municipal shellfish conservation ordinance.
25	Sec. 5. 12 MRSA §6671, sub-§9, as enacted by PL
26	1977, c. 661, §5, is amended to read:
27	9. Penalty. Notwithstanding the provisions of
28	Title 17-A, section 4-A, whoever takes or possesses
29	shellfish contrary to a municipal ordinance autho-
30	rized by this section shall be guilty of a crime pun-
31	ishable by a fine of not less than \$100 nor more than
32	\$1,000, except that fines for violation of subchapter
33	I, Article 5, shall be as provided in section 6681.
34	Sec. 6. 12 MRSA c. 623, sub-c. I, Art. 5 is en-
35	acted to read:
36	ARTICLE 5

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1	SOFT-SHELL CLAM MANAGEMENT
2	§6681. Soft-shell clam management
3	1. Purpose. The Legislature finds that the con-
4	servation and wise use of the State's shellfish re-
5	source may be enhanced by a 2-inch minimum size limit
6	on possession of soft-shell clam shell stock in com-
7	bination with other management programs.
8	The Legislature further finds that management pro-
9	grams should be designed to meet local circumstances
10	as appropriate, but also finds that a minimum size
11	limit to be beneficial must be a uniform standard
12	statewide.
13	The Legislature intends by this Article to enhance
14	the value of the State's shellfish resource by the
15	institution of uniform standards which can be imple-
16	mented and enforced statewide.
17	2. Definition. For the purposes of this sub-
18	chapter, "possess" means dig, take, harvest, ship,
19	transport, hold, buy and sell retail and wholesale
20	soft-shelled clam shell stock.
21	3. Minimum size. It is unlawful to possess
22	soft-shelled clam shell stock whose shells are less
23	than 2 inches in the largest diameter.
24	4. Tolerance. Any person may possess
25	soft-shelled clams that are less than 2 inches if,
26	beginning on the effective date of this Article, they
27	comprise less than 30% of any bulk pile; beginning in
28	calendar year 1985, they comprise less than 20% of
29	any bulk pile; and beginning in calendar year 1986,
30	they comprise less than 10% of any bulk pile. The
31	tolerance shall be determined by numerical count of
32	not less than one peck nor more than 4 pecks taken at
33	random from various parts of the bulk pile or by a
34	count of the entire pile if it contains less than one
35	peck.

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1 5. Enforcement. State, county and municipal 2 wardens and enforcement officers shall enforce this 3 subchapter. 6. Penalty. A minimum fine of \$100 and not more than \$1,000 shall be imposed for conviction of viola-4 5 6 tion of this Article. 7 7. Sunset. This section shall be reviewed by 8 the joint standing committee of the Legislature having jurisdiction over marine resources in the Second 9 Regular Session of the 113th Legislature. That com-mittee shall report its findings no later than March 10 11 12 1, 1988. 13 Sec. 7. Allocation. The following funds are allocated from the Shellfish Fund to carry out the pur-14 15 poses of the Revised Statutes, Title 12, section 16 6671, subsection 8, paragraph B. 17 1984-85 MARINE RESOURCES, 18 19 DEPARTMENT OF 20 Positions (2)21 Personal Services \$35,000 22 All Other 10,900 23 Capital Expenditures 9,000 24 Total \$54,900 25 The 2 positions will include one 26 marine patrol sergeant and one 27 volunteer marine patrol offi-28 cer.'

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STATEMENT OF FACT

The purpose of this amendment is to 2 delete spe-3 cific reference to a set-aside requirement for nonresident licenses. The Commissioner of Marine Re-4 5 sources follows a model municipal ordinance when re-6 viewing and approving proposed municipal ordinances. 7 The model incorporates guidelines on nonresident li-8 censes.

9 The amendment makes a town solely responsible for 10 the enforcement of the provisions of its municipal 11 ordinance.

12 The amendment also changes the tolerance require-13 ments to reduce the initial economic impact of the 14 2-inch limitation.

15 The entire bill is presented in the amendment to 16 allow readers to see all the amendments in context 17 and to avoid confusion.

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Filed by Rep. Crowley of Stockton Springs Reproduced and distributed under the direction of the Clerk of the House 3/19/84 (Filing No. H-537)