

MAINE STATE LEGISLATURE

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(Emergency)
(New Draft of S.P. 539, L.D. 1628)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1836

S.P. 624

In Senate, June 12, 1987

Reported by Senator Estes of York for the Committee on Marine Resources and printed under Joint Rule 2. Original Bill sponsored by Senator Cahill of Sagadahoc. Cosponsored by: Representative Rice of Stonington, Representative Look of Jonesboro, Representative Crowley of Stockton Springs.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1 **AN ACT to Clarify Certain Errors and**
2 **Inconsistencies in Marine Resources**
3 **Law.**
4

5 **Emergency preamble.** Whereas, Acts of the Legis-
6 lature do not become effective until 90 days after
7 adjournment unless enacted as emergencies; and

8 Whereas, ambiguities exist in the marine re-
9 sources laws; and

10 Whereas, these ambiguities create uncertainty and
11 confusion in interpreting legislative intent; and

12 Whereas, it is vitally necessary that this uncer-
13 tainty and confusion be resolved in order to prevent
14 any injustice to the citizens of Maine; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

9 **Sec. 1.** 12 MRSA §4602 is amended to read:

10 §4602. Entry into force -- article II

11 This agreement shall become operative immediately
12 as to those states executing it whenever any 2 or
13 more of the States of Maine, New Hampshire, Massachu-
14 setts, Rhode Island, Connecticut, New York, New Jer-
15 sey, Delaware, Maryland, Virginia, North Carolina,
16 South Carolina, Georgia and Florida have executed it
17 in the form that is in accordance with the laws of
18 the executing state and the Congress has given its
19 consent. Any state contiguous with any of the afore-
20 mentioned states and riparian upon coastal waters
21 frequented by anadromous fish, flowing into coastal
22 waters under the jurisdiction of any of the aforemen-
23 tioned states, may become a party hereto as provided.

24 **Sec. 2.** 12 MRSA §6131, sub-§2, ¶A, as enacted by
25 PL 1977, c. 661, §5, is amended to read:

26 A. It shall be unlawful to take alewives from
27 sunrise 6 a.m. each Saturday morning until
28 sunrise 6 a.m. Sunday morning. Municipalities
29 which make other provisions for escape of spawn-
30 ing alewives, which are approved by the commis-
31 sioner, shall be exempt from this limit.

32 **Sec. 3.** 12 MRSA §6208, sub-§2, ¶B, as enacted by
33 PL 1985, c. 481, Pt. A, §37, is amended to read:

34 B. The commissioner may in his discretion pro-
35 vide books to other law enforcement agencies and
36 officers listed in section 7055 6025, subsection
37 5 for their use in the enforcement of chapters
38 601 to 627. The commissioner may not require
39 other agencies to use this form.

1 Sec. 4. 12 MRSA §6431, sub-§6, as enacted by PL
2 1977, c. 661, §5, is repealed and the following en-
3 acted in its place:

4 6. Exception; wholesale dealer; regulations.
5 This section shall not apply to lobsters imported in-
6 tact in the original crates by a holder of a whole-
7 sale seafood license to another wholesale seafood li-
8 cence holder if the crates are sealed in accordance
9 with regulations adopted by the commissioner; or to
10 imported lobsters being shipped or transported out-
11 of-state if they are in containers sealed in accord-
12 ance with regulations adopted by the commissioner.
13 The commissioner may adopt or amend regulations to
14 prescribe the time, manner and method of sealing
15 crates or containers for the effective operation of
16 this subsection. The regulations may contain a re-
17 quirement for a special permit and provisions for in-
18 spection of the crates, containers, contents and
19 seals.

20 Sec. 5. 12 MRSA §6451, sub-§1, as repealed and
21 replaced by PL 1985, c. 737, Pt. A, §27, is amended
22 to read:

23 1. Allocation of license fees. Ten dollars of
24 each ~~§33~~ §53 fee and \$5 of each ~~§13~~ §26 fee for each
25 lobster and crab fishing license shall be allocated
26 to the Lobster Fund, which shall be used for the pur-
27 poses of lobster biology research, of propagation of
28 lobsters by liberating seed and female lobsters in
29 Maine coastal waters and of establishing and support-
30 ing lobster hatcheries.

31 Sec. 6. 12 MRSA §6555, last ¶, as amended by PL
32 1985, c. 596, §1, is further amended to read:

33 It is unlawful to take or possess striped bass
34 which are less than 33 inches total length and it is
35 unlawful to possess striped bass unless the fish is
36 whole with head on and is 33 inches or more in total
37 length.

38 Sec. 7. 12 MRSA §6555, last ¶, as repealed and
39 replaced by PL 1985, c. 596, §§2 and 5, is amended to
40 read:

1 It is unlawful to take or possess striped bass
2 which are less than 24 inches fork length and it is
3 unlawful to possess striped bass unless the fish is
4 whole with head on and is 24 inches or more in fork
5 length.

6 Sec. 8. 12 MRSA §6742-A, as enacted by Pl 1985,
7 c. 784, §2, is repealed.

8 Sec. 9. 12 MRSA §6861, sub-§14 is enacted to
9 read:

10 14. Exception for bait purposes. A license
11 shall not be required for crawfish kept or sold for
12 bait purposes and marked or labeled "Not for Human
13 Consumption."

14 Sec. 10. 36 MRSA c. 714 is enacted to read:

15 CHAPTER 714

16 MAHOGANY QUAHOG TAX

17 §4711. Definitions

18 As used in this chapter, unless the context indi-
19 cates otherwise, the following terms have the follow-
20 ing meanings:

21 1. Bushel. "Bushel" means a unit of dry capaci-
22 ty equivalent to 2150.4 cubic inches. For the pur-
23 poses of this chapter, the conversion figure for
24 pounds of whole shell stock per bushel shall be 80.

25 2. Dealer. "Dealer" means a person who holds a
26 wholesale seafood license, a shellfish transportation
27 license or a shellfish certificate and who buys
28 mahogany quahogs from a harvester and distributes
29 that species in wholesale channels of trade.

30 3. Mahogany quahog. "Mahogany quahog" means a
31 marine mollusk, also know as ocean quahog, Artica
32 islandica, landed in this State and subject to the
33 authority and provisions of this chapter.

34 §4712. Rate of tax

1 An excise tax of \$1.20 per bushel of mahogany
2 quahogs is levied upon the dealer and imposed at the
3 point of first sale of this species.

4 §4713. Dealer application for mahogany quahog cer-
5 tificate

6 Every dealer shall file an application with the
7 State Tax Assessor on forms prescribed and furnished
8 by the State Tax Assessor which shall contain the
9 name under which such dealer is transacting business
10 within the State, the place or places of business,
11 the dealer's social security or tax identification
12 number and names and addresses of the persons consti-
13 tuting a firm or partnership and, if a corporation,
14 the corporate name and the names and addresses of its
15 principal officers and agents within the State and
16 the Federal Employer Identification Number. Upon re-
17 ceipt of this information, the State Tax Assessor
18 shall issue a mahogany quahog certificate to the
19 dealer. No dealer may conduct business until the
20 certificate required by this section is furnished.
21 The mahogany quahog certificate is not a license
22 within the meaning of that term in the Maine Adminis-
23 trative Procedure Act, Title 5, chapter 375.

24 §4714. Certificate required for license

25 The Department of Marine Resources shall not is-
26 sue or renew a wholesale seafood license as set forth
27 in Title 12, section 6851; a shellfish transportation
28 license as set forth in Title 12, section 6855; or a
29 shellfish certificate as set forth in Title 12, sec-
30 tion 6856, for the purpose of dealing in mahogany
31 quahogs without proof of certification by the State
32 Tax Assessor, as required by this chapter. The De-
33 partment of Marine Resources shall make available to
34 the State Tax Assessor any licensing information nec-
35 essary to implement this section.

36 §4715. Dealer reports of purchases and payment of
37 taxes

38 Every dealer shall keep, as a part of his perma-
39 nent records, a record of all mahogany quahogs pur-
40 chased at point of first sale. These records shall
41 be open for inspection by the State Tax Assessor at

1 all times. Every dealer shall, on or before the 10th
2 day of each month, render a report to the State Tax
3 Assessor, stating the number of bushels purchased by
4 him during the preceding calendar month, on forms to
5 be furnished by the State Tax Assessor, and, at the
6 same time, shall pay to the State Tax Assessor the
7 tax of \$1.20 per bushel on all mahogany quahogs re-
8 ported as purchased. If it appears to the State Tax
9 Assessor from inspection of records or otherwise that
10 an additional tax is due or overpayment of tax has
11 been made, additional assessments or refunds shall be
12 made by the State Tax Assessor to the dealer.

13 §4716. Review

14 The joint standing committee of the Legislature
15 having jurisdiction over appropriations and financial
16 affairs shall review the program established in this
17 chapter and shall make its report, including any nec-
18 essary legislation, to the First Regular Session of
19 the 114th Legislature.

20 **Sec. 11. Appropriation.** The following funds are
21 appropriated from the General Fund to carry out the
22 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
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MARINE RESOURCES,
DEPARTMENT OF

Bureau of Marine Sciences

All Other	\$36,150	\$42,702
Capital Expenditures	14,000	15,000
Total	<u>50,150</u>	<u>57,702</u>

Provides funds for
needed capital
equipment and im-
provements.

FINANCE, DEPARTMENT
OF

1 Bureau of Taxation

2 All Other \$3,000 \$3,000

3 These funds are for
4 data processing of
5 mahogany quahog tax
6 reports.

7 **Emergency clause.** In view of the emergency cited
8 in the preamble, this Act shall take effect when ap-
9 proved, except that section 7 of this Act shall take
10 effect on December 31, 1987.

11 STATEMENT OF FACT

12 Section 1 clarifies statutory language to distin-
13 guish where the Atlantic States Marine Fisheries Com-
14 pact applies.

15 Section 2 clarifies a specific time during which
16 a legal prohibition on taking alewives shall be in
17 effect.

18 Section 3 corrects a statutory reference to law
19 enforcement officers of all jurisdictions in this
20 State.

21 Section 4 allows wholesale dealers to remove
22 lobsters from out-of-state from their original ship-
23 ping crates to store in containers specified by the
24 Commissioner of the Department of Marine Resources.

25 Section 5 corrects a statutory reference to lob-
26 ster and crab license fees to make it consistent with
27 current rates.

28 Section 6 and 7 clarify that striped bass must be
29 kept whole until the fish is prepared for immediate
30 consumption. The common practice of filleting or
31 steaking striped bass when caught prevents law en-
32 forcement officers from determining that fish are of
33 legal size.

1 Section 8 repeals the technically flawed tax on
2 mahogany quahogs and section 10 replaces it with an
3 excise tax equivalent to the same 8% of landed value.
4 Tax revenues will provide the State with the re-
5 sources necessary to implement an effective paralytic
6 shellfish poison monitoring program for mahogany
7 quahogs. Without immediate provisions of these moni-
8 toring resources, the peak fishing season and orderly
9 market for this species may be disrupted by unneces-
10 sary closures of production areas. This tax will
11 support the equipment and personnel needed to allow
12 the State to identify and keep open noninfected areas
13 in a confident and timely manner. This tax is ex-
14 pected to generate approximately \$140,000 annually.

15 Section 9 exempts crawfish kept and sold for bait
16 from the crawfish licensing requirements.

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