

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1530

S.P. 562

In Senate, May 16, 1995

An Act to Modify and Update Certain Laws Pertaining to Inland Fisheries and Wildlife.

(EMERGENCY)

Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 24.
Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator HALL of Piscataquis.

Cosponsored by Senator: MICHAUD of Penobscot, Representative: GREENLAW of Standish.

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

4
6 **Whereas,** confusion exists as to the application of certain
laws administered by the Department of Inland Fisheries and
Wildlife; and

8
10 **Whereas,** this confusion poses difficulties for the sporting
public and those charged with enforcement of these laws; and

12 **Whereas,** it is vitally necessary that this confusion be
resolved to prevent any injustice or hardship to the hunters,
14 anglers, trappers and recreational vehicle owners of the State;
and

16
18 **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
20 necessary for the preservation of the public peace, health and
safety; now, therefore,

22
24 **Be it enacted by the People of the State of Maine as follows:**

26 **Sec. 1. 12 MRSA §7035, sub-§11-A,** as enacted by PL 1989, c.
177, is amended to read:

28 **11-A. Free fishing days.** As a means to promote sport
fishing within the inland waters of the State, the commissioner
30 may designate no more than 2 days in each calendar year as "free
fishing days." Notwithstanding section 7371 as it applies to
32 section 7151, it ~~shall-be~~ is lawful during any free fishing day
established pursuant to this subsection for any ~~resident person~~
34 to fish without a license in the inland waters, except that this
provision ~~shall~~ does not apply to any ~~resident person~~ whose
36 license to fish is under suspension or revocation. All other
provisions of chapters 701 to 721 relating to fish ~~shall-be~~ are
38 applicable during any free fishing day.

40 **Sec. 2. 12 MRSA §7074, sub-§6** is enacted to read:

42 **6. Rules.** Notwithstanding this section, the commissioner
may adopt rules as necessary to satisfy the provisions of the
44 federal migratory bird harvest information program. These rules
may include a requirement that agents appointed to sell hunting
46 licenses submit license sales information on a weekly basis. The
commissioner is responsible for all costs associated with any
48 additional reporting requirements imposed on agents appointed to
sell hunting licenses, including mailing costs.

50

2
3 **Sec. 3. 12 MRSA §7109-A** is enacted to read:

4 **§7109-A. Migratory game bird certification**

6 **1. Certification required.** Beginning January 1, 1996, a person may not hunt migratory game birds unless that person is certified under this section.

8 **2. Eligibility.** Any resident of the State, nonresident or alien who is eligible to obtain a state hunting license is eligible to be certified to hunt migratory game birds.

10 **3. Certification procedure.** An eligible person becomes certified to hunt migratory game birds when that person:

12 A. Indicates on that person's hunting license at the time of purchase the intention to hunt migratory game birds during the calendar year for which the license is valid; and

14 B. Completes a questionnaire about that person's migratory bird hunting activity during the previous year.

16 **Sec. 4. 12 MRSA §7171, sub-§4, ¶C**, as amended by PL 1993, c. 438, §9, is further amended by amending subparagraphs (2) and (8) to read:

18 (2) The holder of a smelt wholesaler's license may take live smelts for resale from any inland water in accordance with general rules ~~promulgated~~ adopted by the commissioner in regard to the taking of smelts. In taking smelts under the general rules, the holder of a smelt wholesaler's license shall comply with the same daily bag limit and the same tackle restrictions that apply to all other anglers. Under no circumstances may the holder of a smelt wholesaler's license take multiple limits from waters governed by general rules in order to attain the 8-quart limit of smelts described in subparagraph (3).

20 (8) The holder of a smelt wholesaler's license, or the holder's designee, may transport live smelts, except that live smelts being transported directly from an inland water source must be accompanied by the licensee. Under no circumstances may the holder of a smelt wholesaler's license transport from an inland water source to the licensee's place of business more than 8 quarts of live smelts.

22 **Sec. 5. 12 MRSA §7171, sub-§4, ¶D** is enacted to read:

2 D. For purposes of this section, "business facility" means
4 a fixed place of business and does not include a motor
6 vehicle or trailer. Live smelts or baitfish that are held
8 in or on a motor vehicle or trailer by a person licensed
10 under this section are considered in transport even if the
12 motor vehicle or trailer may be temporarily placed at a
14 specific location by the licensee, or the licensee's
16 designee, for the purpose of selling live smelts and
18 baitfish to anglers.

20 **Sec. 6. 12 MRSA §7377, sub-§5**, as amended by PL 1979, c. 723,
22 §15, is repealed and the following enacted in its place:

24 **5. Importing live freshwater fish or eggs.** Notwithstanding
26 section 7371 as it applies to section 7202, section 7371 does not
28 apply to tropical fish and goldfish, or *Carassius auratus*, that
30 are for aquarium purposes, provided that each species introduced,
32 imported, transported, received or possessed is designated by
34 rule of the commissioner as a species that will pose no
36 significant risk to the health, habitat or genetic integrity of
38 any native species of fish or other aquatic organism.

40 **Sec. 7. 12 MRSA §7406, sub-§20, ¶A**, as amended by PL 1983, c.
42 797, §10, is further amended to read:

- 44 A. Notwithstanding the provisions of subsection 8:
- 46 (1) A person may hunt migratory waterfowl from a
48 motorboat in accordance with federal regulations;
 - 50 (2) A person who has a valid Maine permit to carry a
 concealed weapon may have in or on a motor vehicle or
 trailer a loaded pistol or revolver covered by such
 that permit; and
 - (3) Paraplegics and single or double amputees of the
 legs may hunt from motor vehicles which that are not in
 motion; and
 - (4) The commissioner may, upon the written
 recommendation of a licensed physician, authorize any
 physically handicapped person to hunt from a stationary
 motor vehicle when the person's physical condition
 would otherwise prevent that person from hunting.

Sec. 8. 12 MRSA §7456, sub-§1-A is enacted to read:

1-A. Hunting migratory game birds without certification. A
 person is guilty of hunting migratory game birds without
 certification if that person hunts migratory game birds and has
 not been certified to do so as provided in section 7109-A.

2 **Sec. 9. 12 MRSA §7457, sub-§1, ¶D**, as amended by PL 1981, c.
644, §24, is further amended by amending subparagraph (7) to read:

4 (7) The Town of Islesboro in Waldo County, except that
6 a person may hunt deer in that town with bow and arrow
8 from the first day of ~~October~~ the special archery
10 season on deer, established in accordance with section
 7102-A, subsection 6, paragraph C, to the end of the
 regular firearm season on deer of each calendar year in
 Waldo County;

12 **Sec. 10. 12 MRSA §7463-A, sub-§13, ¶C**, as enacted by PL 1993,
14 c. 577, §1, is amended to read:

16 C. An eligible person wishing to apply for a permit under
18 this subsection shall submit a written application in such
 form as the commissioner may require. The application must
20 be accompanied by a bidding fee of \$25, which, except as
 otherwise provided in paragraph D, may not be refunded. The
22 commissioner may waive the requirements of this paragraph
 when, as provided in paragraph G, the commissioner enters
24 into contract with a conservation organization to auction
 the permits.

26 **Sec. 11. 12 MRSA §7464, sub-§6**, as enacted by PL 1979, c. 543,
28 §50, is amended to read:

30 **6. Failure to attach moose tag to moose.** A person is
 guilty of failure to attach a moose tag to a moose if, prior to
32 presenting a moose for registration, he that person possesses or
 leaves in the fields or forests a moose ~~which he~~ that the person
34 has killed ~~which that~~ does not have securely attached to one of
 its head hind legs, and plainly visible, the moose tag portion of
36 his the permit, bearing his the person's full name and address.

38 **Sec. 12. 12 MRSA §7606-B** is enacted to read:

40 **§7606-B. Failure to check baitfish traps**

42 A person is guilty of failure to check a baitfish trap if
 that person, while trapping for baitfish in the inland waters
44 with the use of a baitfish trap as defined in section 7001,
 subsection 1-B, fails to check the baitfish trap or cause the
46 same to be checked at least once in every 3 calendar days.

48 **Sec. 13. 12 MRSA §7652, sub-§3, ¶B**, as amended by PL 1991, c.
443, §32, is repealed and the following enacted in its place:

2 B. The following areas are classified as state-owned
3 wildlife management areas, or "WMAs":

4 (1) Blanchard/AuClair WMA (Roach River Corridor) - T1
5 R14 WELS - Piscataquis County;

6 (2) Brownfield WMA - Brownfield, Denmark, Fryeburg -
7 Oxford County;

8 (3) George Bucknam WMA (Belgrade Stream) -
9 Mt. Vernon - Kennebec County;

10 (4) Caesar Pond WMA - Bowdoin - Sagadahoc County;

11 (5) Chesterville WMA - Chesterville - Franklin County;

12 (6) Coast of Maine WMA - all state-owned coastal
13 islands that are owned or managed by the Department of
14 Inland Fisheries and Wildlife;

15 (7) Dickwood Lake WMA - Eagle Lake - Aroostook County;

16 (8) Francis D. Dunn WMA (Sawtelle Deadwater) - T6 R7
17 WELS - Penobscot County;

18 (9) Fahi Pond WMA - Embden - Somerset County;

19 (10) Lyle Frost WMA (formerly Scammon) - Eastbrook,
20 Franklin - Hancock County;

21 (11) Alonzo H. Garcelon WMA (Mud Mill Flowage) -
22 Augusta, Windsor - Kennebec County;

23 (12) Great Works WMA - Edmunds Township - Washington
24 County;

25 (13) Jamies Pond WMA - Manchester, Farmingdale -
26 Kennebec County;

27 (14) Jonesboro WMA - Jonesboro - Washington County;

28 (15) Earle R. Kelley WMA (Dresden Bog) - Alna, Dresden
29 - Lincoln County;

30 (16) Kennebunk Plains WMA - Kennebunk - York County;

31 (17) Bud Leavitt WMA (Bull Hill) - Atkinson,
32 Charleston, Dover-Foxcroft, Garland - Penobscot and
33 Piscataquis Counties;

- 2 (18) Gene Letourneau WMA (Frye Mountain) - Montville,
Knox, Morrill - Waldo County;
- 4 (19) Long Lake WMA - St. Agatha - Aroostook County
(All of Long Lake within the Town of St. Agatha);
- 6 (20) Madawaska WMA - Palmyra - Somerset County;
- 8 (21) Mainstream WMA - Cambridge - Somerset County;
- 10 (22) Lt. Gordon Manuel WMA - Hodgdon, Cary Plantation,
12 Linneus - Aroostook County;
- 14 (23) Maynard F. Marsh WMA (Killick Pond) - Hollis,
16 Limington - York County;
- 18 (24) Mercer Bog WMA - Mercer - Somerset County;
- 20 (25) Merrymeeting Bay WMA - Dresden, Bowdoinham -
Lincoln and Sagadahoc Counties;
- 22 (26) Morgan Meadow WMA - Raymond - Cumberland County;
- 24 (27) Mt. Agamenticus WMA - York, south Berwick - York
26 County;
- 28 (28) Muddy River WMA - Topsham - Sagadahoc County;
- 30 (29) Narraguagus Junction WMA - Cherryfield -
Washington County;
- 32 (30) Old Pond Farm WMA - Maxfield, Howland - Penobscot
34 County;
- 36 (31) Orange River WMA - Whiting - Washington County;
- 38 (32) Peaks Island WMA - Portland - Cumberland County;
- 40 (33) Pennamaquam WMA - Pembroke, Charlotte -
Washington County;
- 42 (34) Steve Powell WMA - Perkins Township - Sagadahoc
44 County. (Being the islands in the Kennebec River near
Richmond known as Swan Island and Little Swan Island,
46 formerly known as Alexander Islands);
- 48 (35) David Priest WMA (Dwinal Pond) - Lee, Winn -
Penobscot County;

- 2 (36) Ruffingham WMA - Montville, Searsmont - Waldo
County;
- 4 (37) St. Albans WMA - St. Albans - Somerset County;
- 6 (38) Sandy Point WMA - Stockton Springs - Waldo County;
- 8 (39) Scarborough WMA - Scarborough, Old Orchard Beach,
Saco - Cumberland and York Counties;
- 10 (40) Steep Falls WMA - Standish, Baldwin - Cumberland
County;
- 12 (41) Tyler Pond WMA - Manchester, Augusta - Kennebec
County;
- 14 (42) Vernon S. Walker WMA - Newfield, Shapleigh - York
County;
- 16 (43) Weskeag Marsh WMA - South Thomaston, Thomaston,
Rockland, Owl's Head - Knox County; and
- 18 (44) Such other areas as the commissioner designates,
by rules adopted in accordance with section 7653, as
state-owned wildlife management areas.

26 **Sec. 14. 12 MRSA §7653**, as amended by PL 1981, c. 414, §36,
 28 is further amended to read:

30 **§7653. Commissioner's authority over sanctuaries;**
 32 **wildlife management areas and access sites**

34 **1. Public use.** The commissioner may, pursuant to section
 36 7035, subsection 1, ~~premulgate~~ adopt rules regulating hunting,
 38 fishing, trapping or other public use of any wildlife management
 area or wildlife sanctuary as designated in section 7651,
 subsection 1, except that no landowner ~~shall~~ may be prohibited
 from operating any vehicle on land on which he that person is
 domiciled.

40 **2. Natural products.** The commissioner may harvest and sell
 42 natural products of the land on lands owned by the department.

44 **3. Trapping.** The commissioner may regulate the trapping of
 46 wild animals on wildlife sanctuaries or closed territories.

48 **4. Fees.** The commissioner may establish reasonable fees for
 50 admission to the Fish and Wildlife Visitors' Center at Gray,
Maine Cumberland County, and the Steve Powell Wildlife Management
Area at Perkins Township, Sagadahoc County, known as Swan Island
and Little Swan Island.

2 5. Access sites to inland and coastal waters. The
3 commissioner may, pursuant to section 7035, subsection 1, adopt
4 rules regulating public use of department-owned or
5 department-maintained sites that provide public access to inland
6 or coastal waters. The commissioner may establish reasonable
7 fees for use of these sites by members of the public as necessary
8 to help defray the cost of routine maintenance and security.

10 **Sec. 15. 12 MRSA §7827, sub-§9**, as repealed and replaced by PL
11 1991, c. 443, §34, is further amended to read:

12 **9. Operating a snowmobile under the influence or with**
13 **excessive blood-alcohol level.** A person is guilty of a Class E D
14 crime if that person operates or attempts to operate any
15 snowmobile:

16 A. While under the influence of intoxicating liquor or
17 drugs or a combination of liquor and drugs; or

18 B. While having 0.08% or more by weight of alcohol in that
19 person's blood.

20 **Sec. 16. 12 MRSA §§7829 and 7830** are enacted to read:

21 **§7829. Liability for damage by other persons**

22 The owner of a snowmobile, the person who gives or furnishes
23 that snowmobile to a person under 18 years of age and the parent
24 or guardian responsible for the care of that minor are jointly
25 and severally liable with the minor for any damages caused in the
26 operation of the snowmobile by that minor.

27 **§7830. Impoundment of snowmobiles**

28 When a law enforcement officer issues a summons for a
29 violation under this subchapter, the officer may impound the
30 snowmobile operated by the person who receives the summons if, in
31 the judgment of the officer, based on actual previous offenses by
32 the operator or other considerations, the operator will continue
33 to operate the machine in violation of this subchapter and that
34 operation may be a hazard to the safety of persons or property.

35 The operator or owner of an impounded snowmobile may reclaim
36 the snowmobile at any time subsequent to 24 hours after the
37 issuance of the summons upon payment of the costs of impoundment
38 to the enforcement agency impounding the snowmobile.

2 to attain the 8-quart limit that they are allowed in specifically
designated waters.

4 4. It prohibits smelt wholesalers from transporting from an
inland water source to their place of business more than 8 quarts
6 of live smelts.

8 5. It specifies that the business facility of any person
licensed to deal in live smelts and baitfish means a fixed place
10 of business and not a motor vehicle or trailer. Live smelts and
baitfish being held by a dealer in a motor vehicle or trailer
12 come under the same regulations as for the transporting of smelt
and baitfish, even if the vehicle or trailer might be temporarily
14 positioned at a specific site to aid the dealer in selling live
smelts and baitfish to the public.

16 6. It specifies that no species of nonnative fish or fish
18 eggs may be imported into the State for aquarium purposes without
a permit unless that species has been designated by rule of the
20 commissioner as a species that poses no significant threat to
native fish or other aquatic organisms.

22 7. It provides that the commissioner may, when appropriate,
24 authorize a physically handicapped person to hunt from a
stationary motor vehicle.

26 8. It establishes requirements for hunting migratory birds.

28 9. It provides that the season for hunting deer with bow
30 and arrow in the Town of Islesboro begins on the same day as the
statewide archery season on deer and not necessarily on the first
32 day of October.

34 10. It allows the commissioner to waive the written
application and \$25 bidding fee when contracting with a
36 conservation organization to conduct the auction of moose permits.

38 11. Current law requires that a successful moose hunter
attach the moose tag portion of the moose hunting permit to the
40 head of the animal. However, the moose tags currently in use are
designed to be attached to the leg of the animal as indicated in
42 the tagging instructions that the hunter receives. This bill
corrects the inconsistency and makes it clear that the tag is to
44 be attached to one of the hind legs of the animal.

46 12. It requires that all baitfish traps set in the inland
waters be checked at least once in every 3 days.

48 13. It updates the list of state-owned wildlife management
50 areas to include new acquisitions.

2 14. It provides that the commissioner has authority to
regulate public uses at department-owned sites that provide
4 public access to inland and coastal waters, to charge reasonable
fees for the use of these access sites to help defray the cost of
6 routine maintenance and security and to charge reasonable fees
for admission to the Steve Powell Wildlife Management Area near
8 Richmond, known as Swan Island and little Swan Island.

10 15. It raises from a Class E to a Class D crime the
operation of a snowmobile while under the influence of
12 intoxicating liquor or drugs and makes the snowmobile law
consistent with the current watercraft law with regard to this
14 violation.

16 16. It provides that a snowmobile owner, the parents or
guardians of a minor and the person who furnished a snowmobile to
18 a minor, are jointly and severally liable with the operator for
any damages caused by this minor in operating a snowmobile.

20 17. It permits a law enforcement officer to impound a
snowmobile operated in violation of law when it is likely that
22 the operator will continue to operate the machine in violation of
law and that the continued operation may threaten the safety of
24 persons or property.

26 18. It raises from a Class E to a Class D crime the
operation of an all-terrain vehicle while under the influence of
28 intoxicating liquor or drugs and makes the all-terrain vehicle
law consistent with the current watercraft law with regard to
30 this violation.

32 18. It authorizes the Department of Inland Fisheries and
34 Wildlife and the Atlantic Sea Run Salmon Commission to convey to
the Bangor Hydro-Electric Company any interest the State has in
36 the upstream fish passage facilities located at the Leonard Lake
Dam on the Union River in Ellsworth.

38