

# MAINE STATE LEGISLATURE

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MAJORITY  
MARINE RESOURCES

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 359, L.D. 482, Bill, "An Act Regarding the Harvesting of Periwinkles in the Unorganized Townships"

Amend the bill by striking out the title and substituting the following:

**'An Act to Allow Municipalities and Unorganized Townships to Adopt Ordinances Regulating the Harvesting of Periwinkles'**

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

**'Sec. 1. 12 MRSA §6501, sub-§3, ¶D is enacted to read:**

D. Any person may fish for, take, possess or transport periwinkles if they are taken for personal use.

**Sec. 2. 12 MRSA §6671, sub-8, ¶C, as amended by PL 1991, c. 242, §3, is further amended to read:**

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing the warden and may arrest all violators. The warden shall also enforce a periwinkle ordinance adopted pursuant to section 6811. The warden may serve all process pertaining to the ~~ordinance~~ ordinances. The warden also has, within that warden's jurisdiction, the powers of a marine patrol officer provided in section 6025, subsection 4. All of the powers conferred in this subsection are

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limited to the enforcement of a municipal shellfish conservation ordinance and a periwinkle ordinance adopted pursuant to section 6811.

At the commissioner's request, a certified municipal shellfish conservation warden may collect samples and otherwise assist the department in the detection of pollutants and contaminants. The commissioner is not required to conduct tests on samples not requested by the commissioner.

Sec. 3. 12 MRSA c. 623, sub-c. V is enacted to read:

**SUBCHAPTER V**

**PERIWINKLES**

**§6811. Local periwinkle conservation programs**

**1. Ordinance.** A municipality or unorganized township, by vote of its legislative body, may adopt, amend or repeal a periwinkle conservation ordinance regulating the possession of periwinkles as provided under this section. For the purposes of this section, the term "municipality" includes village corporations and the combined municipalities of Yarmouth and North Yarmouth.

**2. Requirements for ordinance adoption.** A municipality or unorganized township may adopt and enforce a periwinkle conservation ordinance if the municipality or unorganized township:

**A. Has in effect a shellfish conservation ordinance adopted pursuant to section 6671;**

**B. Has formed a shellfish management committee pursuant to section 6671; and**

**C. Receives written approval of the ordinance by the commissioner prior to adoption of the ordinance. The commissioner may adopt rules that set the criteria that must be met by periwinkle conservation ordinances in order to obtain approval by the commissioner.**

**3. Contents of ordinance.** A periwinkle conservation ordinance may:

**A. Regulate or prohibit the possession of periwinkles;**

**B. Fix the amount of periwinkles that may be taken;**

- 2        C. Establish periwinkle licensing requirements in  
3        accordance with subsection 6:
- 4        D. Regulate the method of periwinkle harvesting; and
- 6        E. Authorize the municipal officers to open and close  
7        periwinkle harvesting areas under specified conditions.
- 8
- 10       4. Funds. A municipality or unorganized township, by vote  
11       of its legislative body, may raise and appropriate money for the  
12       implementation of a periwinkle conservation program.
- 14       5. Area of application. A periwinkle ordinance adopted by  
15       a municipality or unorganized township applies only to the  
16       intertidal zone located in that municipality or unorganized  
17       township.
- 18       6. Licensing. A periwinkle conservation ordinance may fix  
19       the qualifications for a license, including municipal residency,  
20       subject to the following provisions.
- 22       A. A person is not required to hold a commercial fishing  
23       license issued by the commissioner under section 6501 in  
24       order to obtain a municipal license.
- 26       B. A person who holds a municipal periwinkle license is not  
27       required to hold a commercial fishing license issued by the  
28       commissioner under section 6501 in order to harvest  
29       periwinkles within that municipality for personal use.
- 30
- 32       C. A person who holds a municipal periwinkle license must  
33       also hold a commercial fishing license issued by the  
34       commissioner under section 6501 in order to fish for or take  
35       periwinkles within that municipality for the purposes of  
36       sale or to possess, ship, transport or sell those  
37       periwinkles.
- 38       D. A periwinkle conservation ordinance may fix license  
39       fees. The fee for a nonresident license may not be more  
40       than twice the resident fee.
- 42       E. Application methods and procedures for licenses may be  
43       determined by the periwinkle conservation ordinance subject  
44       to the provisions of this section. Notice of the number of  
45       available licenses and the procedure for application must be  
46       published in a trade or industry publication or in a  
47       newspaper or combination of newspapers with general  
48       circulation the municipal officers consider effective in  
49       reaching persons interested in harvesting periwinkles.  
50       Notice must appear not less than 10 days prior to the period

during which licenses are issued. Notice must be posted in the municipal offices until the conclusion of the period during which licenses are issued. The period during which licenses are issued must be the same for resident and nonresident licenses. Subsequent to that period, the municipality must make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

F. The municipality shall provide and reserve a minimum number of commercial licenses for nonresidents, which must be a number not less than 10% of the number of commercial licenses provided for residents. When the number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

G. When 2 or more municipalities have entered into a regional periwinkle management agreement pursuant to subsection 10, the combined total number of commercial licenses for nonresidents provided by those municipalities must be a number not less than 10% of the combined total number of commercial licenses issued for residents. When the combined total number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the combined total number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

7. State parks. The commissioner shall consult with the Commissioner of Conservation in the review of any periwinkle ordinance that affects intertidal areas located within state parks. The commissioner may not approve any ordinance that threatens any important resources or provides insufficient opportunity for recreational periwinkle harvesting within state parks.

8. Relation to state laws. A periwinkle ordinance adopted under this section may not be less restrictive than state law or rules regarding the management and harvesting of periwinkles.

9. Period of ordinance. Ordinances adopted under this section remain in effect for no more than 3 years. A certified copy of the ordinance must be filed with the commissioner within 20 days of its adoption.

10. Joint programs; reciprocal privileges. Municipalities and unorganized townships may enter into regional periwinkle

management agreements with other municipalities and unorganized townships and adopt regional periwinkle management programs. The agreements, and the ordinances adopted under them, are subject to the same requirements as ordinances adopted by municipalities and unorganized townships. Resident privileges of one municipality or unorganized township in a regional periwinkle management agreement may be extended to the residents of other municipalities or unorganized townships in the agreement. Notwithstanding subsection 2, a regional periwinkle management committee of at least one resident from each municipality named in the regional agreement may be established to administer a regional program.

11. Local enforcement. A municipality or unorganized territory that enacts an ordinance under this section is responsible for enforcing that ordinance. A municipal or unorganized township shellfish conservation warden certified pursuant to section 6671 shall enforce a periwinkle ordinance.

12. Administration. A shellfish management committee established by a municipality or unorganized township pursuant to section 6671 may administer that municipality's or unorganized township's periwinkle ordinance.

13. Penalty. Notwithstanding Title 17-A, section 4-B, a person who violates a provision of a municipal ordinance adopted under this section commits a crime punishable by the following fines:

A. For harvesting periwinkles from a closed area or harvesting periwinkles without a license:

(1) For the first offense, a fine of not less than \$300 and not more than \$1,500; and

(2) For subsequent offenses, a fine of not less than \$500 and not more than \$1,500.

The court may not suspend a fine imposed under this paragraph or impose a penalty other than the monetary payment of a fine as provided in this paragraph; or

B. For violating any other provision of a municipal ordinance adopted under this section, a fine of not less than \$100 and not more than \$1,000.

Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

**§6812. Periwinkle management in coastal waters**

The commissioner shall adopt rules by January 1, 1998 regarding the conservation and propagation of periwinkles. Prior to adopting the rules, the commissioner shall evaluate methods of periwinkle harvest, seasons for periwinkle harvest and geographical limitations on harvesting periwinkles. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.'

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

Administering various requirements pertaining to the harvesting of periwinkles will require the equivalent of one month's work from a Marine Scientist IV position in the Department of Marine Resources. At the present time, the department will be able to perform these duties with existing personnel and resources.

The Department of Marine Resources will incur some minor additional costs to adopt rules pertaining to periwinkles. These costs can be absorbed within the department's existing budgeted resources.

This bill may reduce prosecutions for Class D crimes. If jail sentences are reduced, the savings to the counties are estimated to be \$83.78 per day per prisoner. These savings do not affect reimbursement by the State. The reduction in the number of prosecutions that would have resulted in a jail sentence and the resulting savings to the county jail system are expected to be insignificant.

The Judicial Department may realize some minor administrative savings from net reductions of workload, administrative costs and indigent defense costs as a result of reducing the penalties for violating periwinkle harvesting laws from a Class D crime to a civil violation. The net impact on the collection of fines as General Fund revenue will also be insignificant.'

**SUMMARY**

The amendment replaces the bill. It provides municipalities and unorganized territories authority to adopt ordinances regulating the harvesting of periwinkles in the intertidal zone.

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It also requires the Commissioner of Marine Resources to adopt rules by January 1, 1998 regarding the conservation and propagation of periwinkles. It permits the harvesting of periwinkles for personal use without a state commercial fishing license.

This amendment also adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**