

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 757

S.P. 262

In Senate, January 28, 1999

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### An Act Concerning Recreational Clam Harvesting Licenses.

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.  
Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.  
Cosponsored by Representatives: HONEY of Boothbay, USHER of Westbrook, VOLENIK of Brooklin.

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

2           **Sec. 1. 12 MRSA §6671, sub-§3**, as repealed and replaced by PL  
4 1989, c. 257, §3, is amended to read:

6           **3. Shellfish conservation ordinance.** Within any area of  
8 the municipality, a shellfish conservation ordinance may regulate  
10 or prohibit the possession of shellfish; may fix the amount of  
12 shellfish that may be taken; may provide for enforcement,  
14 protection and evaluation of a green crab fencing program; and  
16 may authorize the municipal ~~officers~~ officials to open and close  
flats under specified conditions. An ordinance shall must limit  
the size of soft-shell clams in accordance with article 5.  
Except as provided in section 6621, subsection 3, paragraph C, a  
program or ordinance may not allow surveying, sampling or  
harvesting of shellfish in areas closed by regulation of the  
commissioner.

18           **Sec. 2. 12 MRSA §6671, sub-§3-A, ¶E**, as enacted by PL 1989, c.  
20 257, §§4 and 5, is amended to read:

22           E. The municipality shall provide and reserve a minimum  
24 number of ~~commercial~~ licenses of each class for nonresidents  
~~which shall be that is~~ a number not less than 10% of the  
26 number of ~~commercial~~ licenses in a class provided for  
residents. When the number of resident ~~commercial~~ licenses  
28 in a class is fewer than 10 but more than 5, at least one  
nonresident ~~commercial~~ license shall in that class must be  
30 provided. When the number of resident ~~commercial~~ licenses  
in a class is 5 or fewer, nonresident ~~commercial~~ licenses  
32 shall in that class are not be required.

34           **Sec. 3. 12 MRSA §6671, sub-§3-A, ¶F**, as amended by PL 1995, c.  
531, §2, is further amended to read:

36           F. When 2 or more municipalities have entered into a  
38 regional shellfish management agreement pursuant to  
subsection 7, the combined total number of ~~commercial~~  
40 licenses for nonresidents provided by those municipalities  
for each license class must be a number not less than 10% of  
42 the combined total number of ~~commercial~~ licenses in a class  
issued for residents. When the combined total number of  
44 resident ~~commercial~~ licenses in a class is fewer than 10 but  
more than 5, at least one nonresident ~~commercial~~ license in  
46 that class must be provided. When the combined total number  
of resident ~~commercial~~ licenses in a class is 5 or fewer,  
48 nonresident ~~commercial~~ licenses in that class are not  
required.

50           **Sec. 4. 12 MRSA §6671, sub-§4, ¶A**, as repealed and replaced by  
PL 1991, c. 390, §5, is amended to read:

52

2 A. Prior to adopting an ordinance, a municipality or  
unorganized township shall raise or appropriate money for a  
shellfish conservation program ~~within the 2 previous years.~~

4  
6 **Sec. 5. 12 MRSA §6671, sub-§4, ¶B**, as amended by PL 1997, c.  
247, §2, is further amended to read:

8 B. Any ~~An~~ ordinance proposed by a municipality or  
unorganized territory under this section must be approved in  
10 writing by the commissioner prior to its adoption, except  
that the commissioner may not withhold approval based on the  
12 amount of license fees specified in an ordinance.

14 **Sec. 6. 12 MRSA §6671, sub-§4-B**, as enacted by PL 1985, c. 52,  
§2, is amended to read:

16 **4-B. Management program approval.** The commissioner may  
18 ~~promulgate regulations~~ adopt rules that set the criteria which  
that must be met by municipal shellfish conservation programs and  
20 ordinances in order to obtain approval by the commissioner.

22 **Sec. 7. 12 MRSA §6671, sub-§8, ¶C**, as amended by PL 1991, c.  
242, §3, is further amended to read:

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

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

42 **Sec. 8. Retroactivity.** This Act is retroactive to January 1,  
1999.

44  
46 **SUMMARY**

48 This bill clarifies that municipalities that implement  
municipal shellfish management programs that include

2 noncommercial licenses must issue them using the same procedures that are applied to the issuance of commercial licenses.