

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2017

S.P. 708

In Senate, March 23, 1999

**An Act to Allow the Taking of Endangered or Threatened Species Under
the Authority of the Department of Inland Fisheries and Wildlife.**

Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 204.
Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln.
Cosponsored by Representative DUNLAP of Old Town.

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

2
4 **Sec. 1. 12 MRSA §7756**, as amended by PL 1987, c. 175, §2, is further amended to read:

6 **§7756. Prohibited acts**

8 For the purposes of this section, "to take, take and taking"
10 means the intentional or negligent act or omission that results
12 in the death of any endangered or threatened species.

14 **1. Misuse of endangered or threatened species.** A person is
16 guilty, except as provided in subsection 2, of misuse of an
18 endangered or threatened species if that person does any of the
20 following:

22 A. ~~Exports~~ Imports into the State or exports out of the
24 State any endangered or threatened species ~~from the State~~;

26 B. Hunts, takes, traps or possesses any endangered or
28 threatened species within the State;

30 C. Possesses, processes, sells, offers for sale, delivers,
32 carries, transports or ships, by any means whatsoever, any
34 endangered or threatened species or any part of an
36 endangered or threatened species; or

38 D. Deliberately feeds, sets bait for or harasses any
40 endangered or threatened species, except as allowed under
42 subsection 2, paragraph A. A warning ~~shall~~ must be issued
44 for the first violation. The 2nd violation ~~shall--be~~ is
46 punishable as a Class E crime.

48 **2. Exceptions.** Notwithstanding subsection 1, the
50 commissioner may:

52 A. Under such terms and conditions as he the commissioner
54 may prescribe, permit any act prohibited by this section,
56 for educational or scientific purposes or to enhance the
58 propagation or survival of an endangered or threatened
60 species; and

62 B. Under such terms and conditions as he the commissioner
64 may prescribe, permit any endangered or threatened species
66 which that enters the State and is being transported to a
68 point outside the State to be so entered and transported
70 without restriction in accordance with the terms of any
72 federal or state permit;

74 C. Permit the taking of any endangered species or
76 threatened species if:

2 (1) Such taking is incidental to, and not the purpose
3 of, carrying out an otherwise lawful activity;

4 (2) The taking will not impair the recovery of any
5 endangered species or threatened species; and

6 (3) The person develops and implements an incidental
7 take plan approved by the commissioner to take an
8 endangered species or threatened species pursuant to
9 paragraph D; and

10 D. Allow a plan that minimizes the incidental taking of an
11 endangered species or threatened species that specifies the
12 following:

13 (1) A description of the specific activities sought to
14 be authorized by the incidental take permit and an
15 analysis of potential alternatives;

16 (2) The individual and cumulative effects that may
17 reasonably be anticipated to result from the proposed
18 actions covered by the plan;

19 (3) The recovery measures the applicant will implement
20 to prevent, minimize and mitigate the individual and
21 cumulative effects and any provisions that are
22 necessary to prevent, minimize and mitigate
23 circumstances that are likely to impair the recovery of
24 any endangered or threatened species covered by the
25 plan;

26 (4) The procedures for monitoring the effectiveness of
27 the recovery measures in the plan;

28 (5) The anticipated costs of implementing the plan and
29 the availability of necessary funding for the applicant
30 to implement the plan; and

31 (6) Other modifications to the plan or other
32 additional measures, if any, that the department may
33 require and such other matters as the department
34 determines to be necessary for the recovery of species
35 consistent with this section.

36 3. Plan review. The department shall seek input from
37 knowledgeable individuals or groups on each incidental take plan
38 for endangered or threatened species.

39 4. Failure to comply. If any person fails to abide by the
40 terms of any permit authorizing the incidental taking of an

2 endangered or threatened species, the permit must be immediately
3 suspended or revoked.

4

6 SUMMARY

6

8 This bill authorizes the Department of Inland Fisheries and
9 Wildlife to permit the taking of endangered or threatened species
10 under certain circumstances. When applicants have developed a
11 plan to avoid or minimize the impact of their activities on
12 species listed as threatened or endangered an unavoidable taking
13 may still occur. The department may allow the project and
14 approved plan to go forward, providing that the population of the
listed species is not in serious jeopardy.