

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 502

S.P. 158

In Senate, February 6, 2001

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**An Act to Create the Right to Fish.**

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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 Representative ETNIER of Harpswell and  
Senators: EDMONDS of Cumberland, LEMONT of York, SHOREY of Washington,  
Representatives: DUDLEY of Portland, DUNLAP of Old Town, HONEY of Boothbay,  
KOFFMAN of Bar Harbor, McNEIL of Rockland.

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

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Sec. 1. 17 MRSA §2807 is enacted to read:

**§2807. Commercial fishing activities and commercial fishing operations**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commercial fishing activity" means an activity that occurs on a boat, a dock, a pier, a wharf, a float, a site or land adjacent to the water owned by a licensed person who fishes commercially, seafood dealer or processor or at the water's edge and involves the catching, transporting, buying, selling or processing of seafood for commercial uses.

B. "Commercial fishing operation" means a condition or activity that occurs in connection with the commercial harvesting, producing, purchasing, selling or processing of seafood and includes noise, odors, operation of a vessel, operation of harvesting or processing equipment and transfer or storage of bait.

C. "Commissioner" means the Commissioner of Marine Resources.

**2. Appropriate environmental practices; change in land use.** A person may not maintain a nuisance action against a commercial fishing activity or commercial fishing operation if the activity or operation:

A. Conforms to existing law regarding storage, use, transfer and disposal of any substance and observes other appropriate environmental practices as determined by the commissioner in accordance with Title 5, chapter 375; or

B. Existed before a change in the land use or occupancy of land within one mile of the activity or operation and, before the change in land use or occupancy of land, the activity or operation would not have been considered a nuisance.

**3. Violation of municipal ordinances.** A method of operation used in a commercial fishing activity or commercial fishing operation may not be considered a violation of a municipal ordinance if the activity conforms to environmental law and appropriate environmental practices as determined by the commissioner.

2           **4. Complaint resolution.**    The commissioner shall  
4   investigate all complaints involving a commercial fishing  
6   activity or commercial fishing operation. If the commissioner  
8   finds that the person responsible for the activity or operation  
10 is using appropriate environmental practices, the commissioner  
12 shall notify that person and the complainant of this finding in  
14 writing. If the commissioner identifies the source or sources of  
16 the problem and finds that the nuisance is caused by the use of  
18 other than appropriate environmental practices, the commissioner  
20 shall:

22           A. Determine the changes needed in the commercial fishing  
24 activity or commercial fishing operation to comply with  
26 appropriate environmental practices and prescribe  
28 site-specific practices for that activity or operation;

30           B. Advise the person responsible for the commercial fishing  
32 activity or commercial fishing operation of the changes, as  
34 determined in paragraph A, that are necessary to comply with  
36 appropriate environmental practices and determine  
38 subsequently if those changes are implemented; and

40           C. Give the findings of the initial investigation and  
42 subsequent investigations and any determination of  
44 compliance to the complainant and person responsible for the  
46 commercial fishing activity or commercial fishing operation.

48           **5. Failure to adopt appropriate environmental practices.**  
50 If the person responsible for the commercial fishing activity or  
commercial fishing operation does not apply appropriate  
environmental practices as required by the commissioner, the  
commissioner shall send a written report to the Attorney General  
and to the appropriate agency if a federal or state law has been  
violated. The Attorney General may institute an action to abate  
a nuisance, and the court may order the abatement with costs as  
provided under section 2702.

**6. Rules.**    The commissioner shall adopt rules in accordance  
with the Maine Administrative Procedure Act to interpret and  
implement this section. Rules adopted pursuant to this section  
are routine technical rules as defined in Title 5, chapter 375,  
subchapter II-A.

## SUMMARY

This bill creates a right-to-fish law that is similar to  
Maine's right-to-farm law. It provides that a commercial fishing  
activity or commercial fishing operation is not a nuisance if the

2 activity or operation predates a change in the land use or  
occupancy of land within one mile of the activity or operation or  
4 if the activity or operation conforms to appropriate  
environmental practices as determined by the Commissioner of  
Marine Resources.

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8 It directs the Commissioner of Marine Resources to  
investigate all complaints involving a commercial fishing  
activity or commercial fishing operation and to recommend changes  
10 to comply with appropriate environmental practices. It also  
provides that failure to apply appropriate environmental  
12 practices may result in an action to abate a nuisance.