

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1717

H.P. 1266

House of Representatives, March 20, 2001

**An Act to Amend the Laws Pertaining to Municipal Shellfish
Management.**

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative LEMOINE of Old Orchard Beach.
Cosponsored by Senator LEMONT of York.

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

2

Sec. 1. 12 MRSA §6671, sub-§2, as amended by PL 1995, c. 531, §1, is further amended to read:

6

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance ~~regulating the possession of shellfish in any area of the municipality~~ as provided by this section. A municipality may establish a municipal shellfish management committee ~~comprised of residents of that municipality~~ may be established to administer a municipal program.

14

Sec. 2. 12 MRSA §6671, sub-§3, as amended by PL 1999, c. 255, §1 and affected by §8, is repealed and the following enacted in its place:

18

3. Shellfish conservation ordinance. The following provisions govern a shellfish conservation ordinance.

20

A. Within any area of the municipality, a shellfish conservation ordinance may:

24

(1) Regulate or prohibit the possession of shellfish;

26

(2) Fix the amount of shellfish that may be taken;

28

(3) Provide for protection from shellfish predators;
and

30

(4) Authorize the municipal officials to open and close flats under specified conditions.

34

B. An ordinance must limit the size of soft-shell clams in accordance with article 5.

36

C. 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.

42

Sec. 3. 12 MRSA §6671, sub-§3-A, as amended by PL 1999, c. 255, §2 and affected by §8, is further amended to read:

44

3-A. Shellfish conservation licensing. A shellfish conservation ordinance may fix the qualifications for a license, including municipal residency, subject to the following provisions.

50

~~A person is not required to hold a shellfish license~~

2 issued-by-the-commissioner-under-section-6601-in-order-to
obtain-a-municipal-commercial-license.--A-municipality-may
4 issue-licenses-under-this-section-regardless-of-whether-or
not-the-area-has-been-closed-by-the-commissioner.--A-person
6 taking-shellfish-from-a-closed-area-for-depuration-under-a
depuration-certificate-issued-by-the-commissioner-is-not
8 required-to-hold-a-municipal-shellfish-license.

10 A-1. The following exceptions apply.

12 (1) An individual is not required to hold a shellfish
license issued by the commissioner under section 6601
in order to obtain a municipal commercial license.

14 (2) A municipality may issue licenses under this
section regardless of whether or not the area has been
closed by the commissioner.

18 (3) An individual taking shellfish from a closed area
20 for depuration under a depuration certificate issued by
the commissioner is not required to hold a municipal
22 shellfish license.

24 B. A shellfish conservation ordinance may fix license fees
as follows.

26 (1) If the ordinance sets a fee of \$200 or less for a
28 resident license, the fee for a nonresident license may
not exceed twice the resident fee.

30 (2) If the ordinance sets a fee of more than \$200 for
32 a resident license, the fee for a nonresident license
may not exceed 1 1/2 times the resident fee.

34 C. Application methods and procedures for licenses may be
36 determined by the shellfish conservation ordinance subject
to the provisions of this section. Notice of the number and
38 the procedure for application shall must be published in a
trade or industry publication or in a newspaper or
40 combination of newspapers with general circulation which
that the municipal officers consider effective in reaching
42 persons individuals affected not less than 10 days prior to
the period of issuance and shall must be posted in the
44 municipal offices until the period of issuance concludes.
The period of issuance for resident and nonresident licenses
46 shall must be the same. Subsequent to that the period of
issuance, the municipality shall make any resident or
48 nonresident licenses not granted during the period available
to residents or nonresidents.

2 D. Except as otherwise provided in this section, a
4 shellfish conservation ordinance shall may not discriminate
6 between resident license holders and nonresident license
8 holders.

10 E. ~~The municipality~~ A licensing authority shall provide and
12 reserve a minimum number of commercial licenses for
14 nonresidents ~~which shall be a.~~ The number of nonresident
16 commercial licenses may not be 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
shall must be provided. When the number of resident
commercial licenses is 5 or fewer, nonresident commercial
licenses shall are not be required.

18 F. When 2 or more municipalities have entered into a
20 regional shellfish management agreement pursuant to
22 subsection 7, the combined total number of commercial
24 licenses for nonresidents provided by those municipalities
26 must be a number not less than 10% of the combined total
28 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.

30 ~~G. A municipality that issues recreational licenses to~~
32 ~~residents shall also make available to nonresidents~~
34 ~~recreational licenses in a number that is not less than 10%~~
36 ~~of the number of recreational licenses issued to residents.~~
38 ~~When 2 or more municipalities have entered into a regional~~
40 ~~shellfish management agreement and those municipalities~~
~~issue recreational licenses to residents pursuant to the~~
~~agreement, the combined total number of recreational~~
~~licenses made available to nonresidents must be a number not~~
~~less than 10% of the combined total number of recreational~~
~~licenses issued to residents.~~

42 ~~For the purposes of this paragraph, the term "recreational~~
44 ~~license" means a license that authorizes a person to take or~~
~~possess shellfish only for personal use.~~

46 G-1. A licensing authority that issues recreational
48 licenses or licenses in other categories to residents shall
also make available to nonresidents recreational licenses
50 and licenses in other categories established by the
licensing authority. The number of nonresident recreational

2 licenses and licenses in other categories established by the
3 licensing authority may not be less than 10% of the number
4 of recreational licenses and licenses in other categories
5 established by the licensing authority issued to residents.

6 For the purposes of this paragraph, "recreational license"
7 means a license that authorizes a person to take or possess
8 shellfish only for personal use.

10 For purposes of this subsection, "licensing authority" means a
11 municipality or 2 or more municipalities that have entered into a
12 regional shellfish management agreement pursuant to subsection 7.

14 **Sec. 4. 12 MRSA §6671, sub-§4, ¶C**, as enacted by PL 1991, c.
15 390, §5, is repealed and the following enacted in its place:

16 C. Unorganized townships may adopt ordinances if:

18 (1) At least 10 inhabitants have petitioned the county
19 commissioners to adopt the ordinances;

22 (2) The county commissioners of the townships have
23 held a public hearing with at least 7 days' prior
24 notice in one of the affected townships; and

26 (3) A majority of the inhabitants eligible to vote
27 voting at referendum approve the ordinances.

28 The county commissioners act as the municipal legislative
29 body within unorganized townships that have elected to adopt
30 ordinances under this section.

32 **Sec. 5. 12 MRSA §6671, sub-§4-B**, as amended by PL 1999, c.
33 255, §5 and affected by §8, is further amended to read:

36 **4-B. Management program approval.** The commissioner may
37 adopt rules that set the criteria that ~~must be met by~~ municipal
38 shellfish conservation programs and ordinances must meet in order
39 to ~~obtain approval~~ be approved by the commissioner.

42 **Sec. 6. 12 MRSA §6671, sub-§5**, as amended by PL 1979, c. 608,
43 §3, is further amended to read:

44 **5. Period of ordinance.** Ordinances adopted under this
45 section shall may not remain in effect for ~~no~~ more than 3 years.
46 A certified copy of the ordinance shall must be filed with the
47 commissioner within 20 days of ~~its~~ the adoption of the ordinance.

48 **Sec. 7. 12 MRSA §6671, sub-§7**, as amended by PL 1995, c. 531,
49 §3, is further amended to read:

2 **7. Joint programs; reciprocal privileges.** Municipalities
4 may enter into regional shellfish management agreements with
6 other municipalities and adopt regional shellfish management
8 programs. The agreements, and the programs and ordinances adopted
10 under them, are subject to the same requirements as municipal
12 programs and ordinances. Resident privileges of one municipality
14 in a regional shellfish management agreement may be extended to
the residents of other municipalities in the agreement.
~~Notwithstanding subsection 2, a~~ A regional shellfish management
committee comprised of at least one resident from each
municipality named in the regional agreement may be established
to administer a regional program.

16 **Sec. 8. 12 MRSA §6671, sub-§8,** as amended by PL 1999, c. 682,
§1, is further amended to read:

18 **8. Local enforcement.** The following provisions shall apply
20 to enforcement.

22 A. A municipality that enacts an ordinance under this
section shall be is responsible for enforcing it.

24 B. Any municipal shellfish conservation warden appointed by
26 a municipality to enforce the provisions of this article,
~~within one year of appointment,~~ must be certified by the
28 commissioner within one year of the warden's appointment.
The commissioner shall establish a program to provide
30 shellfish conservation training in principles of shellfish
32 conservation, management, enforcement and protection and
shall establish standards for certification of municipal
34 conservation wardens upon their satisfactory completion of
the training program. The program must include training in
36 sampling techniques for the detection of pollutants and
contaminants in shellfish areas. The commissioner may
38 establish by rule procedures for certification,
recertification and ~~for~~ revocation of certification. ~~--A~~
~~certificate~~ The commissioner may be--revoke revoke a
certificate for failure of the warden to comply with the
40 performance standards ~~established by the commissioner.~~

42 C. A certified municipal shellfish conservation warden
44 shall enforce the shellfish ordinances of the municipality
employing the warden and, if the warden is authorized by the
46 municipality and meets the training requirements of Title
25, section 2804-I, the warden may arrest all violators. The
warden may serve all process pertaining to the ordinance.
48 The warden also has, within that warden's jurisdiction, the
powers of a marine patrol officer provided in section 6025,
50 subsection 4. All of the powers conferred in this subsection

2 are limited to the enforcement of a municipal shellfish
conservation ordinance.

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

10
12 **SUMMARY**

14 This bill amends the laws governing municipal shellfish
management programs to clarify portions of those laws.