

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1471

H.P. 1076

House of Representatives, March 28, 2003

**An Act To Correct Certain Errors and Inconsistencies in Laws
Relating to Marine Resources**

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 BULL of Freeport.

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

2
4 **Sec. 1. 12 MRSA §6001, sub-§8**, as enacted by PL 1977, c. 661, §5, is amended to read:

6 **8. Common carrier.** "Common carrier" means a vehicle
engaged in carrying goods for profit in interstate commerce,
8 which that is licensed by the ~~Interstate-Commerce-Commission~~
Federal Highway Administration.

10 **Sec. 2. 12 MRSA §6171-B, sub-§1, ¶A**, as enacted by PL 1999, c.
12 297, §1, is amended to read:

14 A. "Emerging fishery" means the commercial fishing for any
marine organism, except ~~shrimp~~, herring and groundfish
16 species, that requires a commercial fishing license issued
under section 6501.

18 **Sec. 3. 12 MRSA §6174**, as enacted by PL 1977, c. 661, §5, is
20 amended to read:

22 **§6174. Rules as law; proof of rules; penalty**

24 **1. Rules as law.** All ~~regulations-of~~ rules adopted by the
commissioner shall have the force of law.

26 **2. Proof of rules.** A certified copy of a ~~regulation-shall~~
28 be rule is admissible in court to prove the regulation rule and
shall-be is prima facie evidence that the regulation rule was
30 properly adopted. A ~~regulation-shall~~ rule must be personally
32 certified by the commissioner, deputy commissioner or Chief of
the Bureau of Marine Patrol and shall must be accompanied by his
34 a signed statement that it was in force on the date of the
alleged violation. The certified copy shall-be is admissible in
36 evidence on the testimony of a marine patrol officer that he the
patrol officer received the certified regulation after requesting
it by telephone or otherwise from the department. No further
38 foundation shall--be is necessary for the admission of the
certified copy.

40 **3. Penalty.** Whoever violates a ~~regulation--shall--be~~
42 punished-by-the-penalties-under-section-6204,-unless-a-specific
penalty-is-otherwise-authorized-and-provided rule commits a civil
44 violation for which a fine of not less than \$100 for each
violation may be adjudged.

46 **Sec. 4. 12 MRSA §6191**, as enacted by PL 1977, c. 661, §5, is
48 amended to read:

50 **§6191. Rulemaking**

2 **1. Procedures.** In adopting or amending any ~~regulation rule~~,
the commissioner shall use the procedures required for rulemaking
4 under the Maine Administrative Procedure Act, Title 5, chapter
375, and the additional requirements of this subchapter.

6 **2. Other requirements.**

8 A. A public hearing may be held but is not required unless
10 it is requested by an interested person.

12 B. The person conducting the hearing shall record and
retain all relevant evidence provided at the hearing.

14 C. ~~No--regulation~~ A rule, except a regulation rule
16 authorized under section 6172, ~~shall~~ may not be adopted or
amended without the advice and consent of the advisory
18 council, except as provided in section 6192, subsection 2.

20 **Sec. 5. 12 MRSA §6192**, as amended by PL 1993, c. 42, §1, is
further amended to read:

22 **§6192. Emergency rulemaking**

24 **1. Procedures.** In an emergency adoption of a rule or
26 amendment to a rule, the commissioner may modify the procedures
required under the Maine Administrative Procedure Act and section
28 6191 in the following manner.

30 A. In an emergency adoption of a rule or amendment ~~of rules~~
32 to a rule relating to the public health and safety,
including rules authorized under section 6172, prior public
notice and hearing ~~shall~~ is not be required.

34 B. In an emergency adoption of a rule or amendment ~~of rules~~
36 to a rule relating to the general welfare, as authorized by
section 6171, the rule ~~shall-be~~ is effective immediately, as
38 provided in subsection 4. A public hearing ~~shall~~ must be
held in the affected area immediately thereafter if
40 requested of the commissioner in writing by 5 persons. The
hearing ~~shall~~ must be held within 30 days of the
42 commissioner receiving the written request. Notice of that
hearing ~~shall~~ must be published once, not less than 5 days
44 prior to the hearing, in a newspaper of general circulation
in the affected area.

46 C. In an emergency adoption of a rule or amendment ~~of rules~~
48 to a rule relating to gear conflicts, as authorized by
section 6171-A, the ~~regulation--shall-be~~ rule is effective
50 immediately, as provided in subsection 4. Prior public

notice and hearing shall is not be required.
2 Notwithstanding any other provisions of law, a public
hearing shall must be held in the affected area immediately
4 if requested of the commissioner in writing by 5 persons.
The hearing shall must be held within 30 days of the
6 commissioner receiving the written request. Notice of that
hearing shall must be published once, not less than 5 days
8 prior to the hearing, in a newspaper of general circulation
in the affected area. The commissioner shall decide within
10 5 business days after the hearing whether to continue or
repeal the emergency closure. ~~His~~ The commissioner's
12 findings of fact must include the justification for the
repeal or continuance of the closure, an analysis of the
14 objections expressed at the public hearing and the date for
the end of the closure. ~~Emergency regulations~~ rules under
16 this paragraph may be repealed by the advisory council.

18 **2. Advisory council.** The advice and consent of the advisory
council shall is not be required prior to an emergency adoption
20 of a rule or amendment to a rule.

22 **3. Effective period.** Any emergency ~~regulation shall be~~
rule is effective only for 90 days, or any lesser period of time
24 specified in the ~~emergency regulation~~ rule. After the expiration
of the emergency period, the ~~regulation shall not thereafter~~ rule
26 may only be adopted ~~except in the manner as~~ provided by section
6191. This subsection shall does not apply to emergency
28 ~~regulations~~ rules authorized under section 6172, which shall ~~be~~
are effective until repealed.

30 **4. Effective date.** Except as provided in this subsection,
32 emergency ~~regulations~~ rules become effective immediately upon
publication in a newspaper of general circulation in the area of
34 the State affected, provided ~~it is~~ those rules are submitted to
the Attorney General and filed with the Secretary of State as
36 required under the Maine Administrative Procedure Act, Title 5,
chapter 375, within the next business day following publication.

38 Notwithstanding any provisions of the Maine Administrative
40 Procedure Act, an emergency ~~regulation~~ rule authorized by section
6172, subsection 2 or 3 is effective immediately upon signature
42 by the commissioner or the commissioner's authorized designee.
Upon signing an emergency ~~regulation~~ rule that closes or opens an
44 area or waters to the taking of marine organisms, the
commissioner or the commissioner's authorized designee shall give
46 oral notice of that action to local governmental authorities and
shall publish notice of a closure as soon as possible in a
48 newspaper of general circulation in the area of the State
affected. Marine patrol officers shall take action to prevent
50 taking of shellfish from a closed area, including the embargo of

2 contaminated shellfish under section 6856, subsection 6 and the
3 arrest of any person violating the emergency ~~regulation~~ rule.

4 **5. Repeal.** Emergency ~~regulations~~ rules may be repealed in
5 the same manner as they are adopted.

6 **Sec. 6. 12 MRSA §6204**, as enacted by PL 1977, c. 661, §5, is
7 amended to read:

10 **§6204. General penalty**

12 A violation of any provision of marine resources' laws ~~or~~
13 ~~any-regulation-authorized-thereunder-or-adopted-by-legislative~~
14 ~~directive-shall-be~~ is a Class D crime, unless another penalty has
15 been expressly provided.

16 **Sec. 7. 12 MRSA §6701, sub-§2**, as amended by PL 2001, c. 421,
17 Pt. B, §40 and affected by Pt. C, §1, is further amended to read:

20 **2. Licensed activity.** The holder of a hand fishing scallop
21 license may take scallops by hand or possess, ship, transport or
22 sell shucked scallops the holder has taken.

24 **Sec. 8. 12 MRSA §6702, sub-§2**, as amended by PL 1997, c. 572,
25 §2, is further amended to read:

26 **2. Licensed activity.** A boat licensed under this section
27 may be used for dragging for scallops and to possess, ship, sell
28 or transport shucked scallops taken under the license. The
29 license also authorizes the captain and crew members aboard the
30 licensed boat when engaged in dragging for scallops to undertake
31 these activities.

34 **Sec. 9. 12 MRSA §6749-Y**, as enacted by PL 1995, c. 595, §5,
35 is amended to read:

36 **§6749-Y. Penalty**

38 Notwithstanding section 6204 and unless otherwise specified,
39 a person who violates or fails to comply with this subchapter
40 commits a Class D crime that is punishable by a fine of not less
41 than \$500. The fine may not be suspended.

44 **Sec. 10. 12 MRSA §6804**, as amended by PL 2001, c. 421, Pt. B,
45 §§51 and 52 and affected by Pt. C, §1, is further amended to read:

46 **§6804. Commercial northern shrimp license**

48

2 **1. License required.** A person may not engage in the
activities authorized under this section without a current
commercial northern shrimp license.

4
6 **2. Licensed activities.** The holder of a commercial
northern shrimp license may fish for or take shrimp or possess,
ship, transport or sell northern shrimp that the license holder
8 has taken. A license issued under subsection 7, paragraph B or C
also authorizes unlicensed crew members aboard the vessel
10 declared by the license holder to engage in these activities.

12 **3. Boat declaration.** The license holder shall declare the
name of the vessel to be used for fishing under the commercial
14 northern shrimp license at the time of application for the
license and may not change that declaration during the license
16 year unless the original vessel is sold and replaced, has been
damaged and will be under repair for not less than one month or
18 has been destroyed or lost.

20 **4. Reporting.** The commissioner shall adopt rules regarding
data that the holder of a commercial northern shrimp license must
22 submit to the department. The commissioner may deny an
application for the renewal of a license issued under this
24 section if the license holder fails to report the information
required pursuant to this subsection.

26 **5. Exemption.** Notwithstanding subsection 1, a license is
28 not required to fish for, take, possess or transport northern
shrimp only for personal use.

30 **6. Eligibility.** A commercial northern shrimp license may
32 be issued only to an individual.

34 **7. Fees.** Fees for the commercial northern shrimp license
are as follows:

36 A. Thirty-three dollars for a resident license that
38 authorizes the license holder to engage in the licensed
activities under subsection 2;

40 B. Eighty-nine dollars for a resident license that
42 authorizes the license holder and crew members to engage in
the licensed activities under subsection 2; and

44 C. Three hundred and thirty-four dollars for a nonresident
46 license that authorizes the license holder and crew members
to engage in the licensed activities under subsection 2.

48

2 **8. Disposition of fees.** All fees for commercial northern
shrimp licenses must be deposited in the Shrimp Management Fund
established in section 6805.

4
6 **9. Violation.** A person who violates this section commits a
civil violation for which a ~~forfeiture~~ fine of not less than \$100
nor more than \$500 may be adjudged.

8
10 **Sec. 11. 12 MRSA §6856**, as amended by PL 2001, c. 112, §§2 to
4, is further amended to read:

12 **§6856. Shellfish sanitation and depuration certificate**

14 **1. Shellfish sanitation certificate.** A person may not
undertake the processing, buying, selling, shipping, transporting
or shucking of shellfish or whole scallops without a shellfish
sanitation certificate authorizes unless authorized under section
6701 or 6702. The commissioner may issue a shellfish sanitation
certificate to a wholesale seafood license holder or a shellfish
20 transportation license holder that authorizes the holder to
undertake the activities expressly authorized therein, which may
22 include buying and selling, shipping, transporting, shucking or
other processing of shellfish or whole scallops. A wholesale
24 seafood license or shellfish transportation license is also
necessary to undertake the activities authorized under those
26 licenses.

28 **2. Express authorizations.** The commissioner shall
expressly state the authorized activities on each shellfish
30 sanitation certificate. The activities authorized ~~shall~~ must be
sufficient to allow the holder to carry out ~~his~~ the holder's
32 wholesale or transportation operations, ~~provided-they~~ except that
the operations may be limited to the extent required to protect
34 the public health.

36 **3. Depuration certificate.** A person may not take shellfish
from closed areas for depuration, processing and transportation
without a depuration certificate. The commissioner may issue a
38 depuration certificate to a wholesale seafood license holder that
authorizes the holder to take shellfish from closed areas for
40 depuration, processing and transportation. The certificate must
42 establish limits on harvesting, depurating and processing methods
and any other provisions required to ~~assure~~ ensure the public
44 safety. The commissioner may permit depuration of shellfish not
contaminated by paralytic shellfish poisoning if it is
46 established that the water used during depuration will not
contaminate the shellfish with paralytic shellfish poisoning. To
48 ensure consistency with municipal shellfish conservation
programs, established pursuant to section 6671, the commissioner
50 must consult with a municipal shellfish conservation committee

2 before taking action to open an area within that municipality for
deputation digging. The commissioner may continue to issue
4 controlled purification certificates for areas that were
restricted to deputation digging on September 1, 1989, without
consulting municipalities.

6
8 **4. Rules.** The commissioner may adopt or amend ~~regulations~~
rules concerning:

10 A. The procedures for issuing certificates and the required
12 qualifications for each type of certificate;

14 B. The minimum sanitation standards for establishments and
vehicles;

16 C. The sanitation and quality control standards for
18 shellfish and whole scallops and their products;

20 D. The methods for taking, handling, shipping, transporting
and processing of shellfish and whole scallops taken from
closed areas;

22 E. The records and reports of takings, purchases,
24 processing, sales, shipping and transporting of shellfish
and whole scallops;

26 F. The labeling or marking of shipments of shellfish and
28 whole scallops; and

30 G. Other ~~regulations~~ rules necessary to the public health.

32 The ~~regulations~~ rules must be based on the particular operational
requirements of each activity, the most recently adopted federal
34 sanitation standards and the most recent generally accepted
research data, in a manner so as to protect the public health and
36 safety while allowing reasonable use of the State's shellfish and
whole scallops.

38
40 **5. Right of entry.** Whenever a certificate has been issued
under this section, the commissioner, or ~~his~~ the commissioner's
42 agent, shall must have access to any establishment or part
thereof for the purpose of inspection or collection of samples.
44 Denial of access ~~shall-be~~ is grounds for suspension or revocation
of any certificate or license under the provisions of section
6373.

46
48 **6. Products embargoed and condemned.** The commissioner, or
the commissioner's agent, shall indefinitely embargo, condemn or
order to be destroyed any shellfish, shellfish product or whole
50 scallop in any establishment whenever it is determined that the

2 product is of unsound quality, contains any filthy, decomposed or
3 putrid substance, or may be poisonous or deleterious to health,
4 or otherwise unsafe. The commissioner and the commissioner's
5 agent shall cooperate with those state and federal agencies,
6 having similar responsibility, in the protection of public health
and in enforcing the order to embargo, condemn or destroy.

8 In the event that any shellfish, shellfish product or whole
9 scallop in any establishment is embargoed, condemned or ordered
10 destroyed, the commissioner, or the commissioner's agent, shall,
11 as soon thereafter as practical, notify the owner in writing of
12 the amount and kind of shellfish, shellfish product or whole
scallop embargoed, condemned or destroyed.

14 **7. Resident depuration harvesters.** When harvesting
15 soft-shelled clams under a depuration certificate, the person
16 holding the certificate shall, to the extent possible, employ one
17 person who is a resident of the municipality as harvester for
18 every person employed as harvester who is not a resident of that
19 municipality.

22 **8. Payments to municipalities.** A person holding a
23 depuration certificate shall pay each municipality an amount
24 equal to 50¢ for each bushel of soft-shelled clams taken in that
25 municipality under that depuration certificate. When submitting
26 payment to a municipality under this subsection, the depuration
27 certificate holder shall include a copy of the applicable record
28 and report of takings submitted to the department pursuant to
29 rules adopted under subsection 4.

32 SUMMARY

34 This bill makes changes to the laws relating to marine
resources including the following.

- 36 1. It corrects a reference to a federal agency.
- 38 2. It eliminates a reference to shrimp in the laws relating
40 to emerging fisheries.
- 42 3. It clarifies that the violation of a rule adopted by the
Commissioner of Marine Resources is a civil violation for which a
44 fine of not less than \$100 may be adjudged.
- 46 4. It corrects an inconsistency with regard to the
48 processing of scallops. It clarifies that scallop harvesters may
process, possess, ship, transport or sell only shucked scallops.
50 It requires that a person, except a person authorized by either
of the scallop harvester licenses who processes, possesses, buys,

2 ships, transports or shucks shellfish or whole scallops, must
3 have a shellfish sanitation certificate to process, sell, ship,
4 transport or shuck shellfish or whole scallops.

5 5. It provides that, unless otherwise specified, a
6 violation of the laws relating to sea urchins is a criminal
7 violation.

8
9 6. It clarifies that the commercial shrimp license pertains
10 only to the northern shrimp species.

11 7. It stipulates that it is a violation of law to engage in
12 certain shellfish and whole scallop activities without a
13 shellfish sanitation certificate or a depuration certificate.

14 8. It changes all references to regulations to conform to
15 the rule-making process provided in the Maine Revised Statutes,
16 Title 5, chapter 375.

17 9. It also makes certain clerical corrections.
18
19
20