

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1449

H.P. 1013

House of Representatives, March 22, 2005

**An Act To Amend Maine's Shellfish Laws To Maintain Compliance
with Federal Law and Protect Maine's Shellfish Industry**

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 PERCY of Phippsburg.
Cosponsored by Senator MAYO of Sagadahoc.

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

4 **Sec. 1. 12 MRSA c. 420**, as amended, is repealed.

6 **Sec. 2. 12 MRSA §6103**, as amended by PL 1991, c. 784, §4, is further amended to read:

8 **§6103. Implementation of fishery product or shellfish inspection programs**

10 The Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Marine Resources shall cooperate in developing and implementing any fishery product or shellfish inspection programs, ~~including any national seafood inspection program developed and administered under chapter 420.~~ Those programs must meet the standards established by the Commissioner of Agriculture, Food and Rural Resources under the Maine Food Law.

18 **Sec. 3. 12 MRSA §6301, sub-§2, ¶D**, as amended by PL 1995, c. 492, §2, if further amended to read:

22 D. A shellfish sanitation certificate issued under section 6856 expires on ~~April 30th~~ May 31st of each year;

24 **Sec. 4. 12 MRSA §6601**, as amended by PL 2003, c. 20, Pt. WW, §11, is further amended to read:

28 **§6601. Commercial shellfish license**

30 **1. License required.** A person may not engage in the activities authorized under this section without a current commercial shellfish license or other license issued under this Part authorizing the activities.

34 **2. Licensed activities.** The holder of a commercial shellfish license may fish for or take shellfish or possess, ship or transport shellfish within the state limits or sell shellstock the holder has taken to a wholesale seafood license holder certified under section 6856. ~~The holder may also shuck, in the holder's home, shellfish the holder has taken and sell these shucked shellfish from that home in the retail trade.~~ This license does not authorize the holder to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671.

46 **3. Eligibility.** A commercial shellfish license may be issued only to an individual who is a resident.

48 **4. Personal use exception.** Any A person may take or possess no more than 1/2 bushel of ~~shellfish~~ shellstock or 3

2 bushels of "hen" or "surf" clams for personal use in one day
without a license, unless municipal ordinances further limit the
4 taking of shellfish.

6 **5. Fee.** The fee for a commercial shellfish license is \$115.

8 **6. Definition.** For the purposes of this subchapter,
"shellfish" means shellstock clams, quahogs other than mahogany
10 quahogs, ~~oysters and includes shellstock and shucked shellfish~~
oyster shellstock.

12 **8. Violation.** A person who violates this section commits a
civil violation for which a forfeiture of not less than \$100 nor
14 more than \$500 may be adjudged.

16 **Sec. 5. 12 MRSA §6625,** as enacted by PL 1993, c. 497, §3, is
amended to read:

18 **§6625. Identification and tagging of shellfish**

20 **1. Tagging required.** The holder of a commercial
22 shellfishing license issued under section 6601, 6731, 6732, 6745
or 6746 shall identify shellfish shellstock the license holder
24 has taken by means of a harvester's tag. The tag must be
consistent with the format required by the department under rules
26 adopted ~~under this section~~ to meet this requirement. Each
container, ~~box or bag~~ of shellstock must be tagged ~~prior to~~
28 landing the shellstock in accordance with department rules. The
tag must accompany the harvested product while the product is in
30 wholesale or retail commerce within the State.

32 ~~**2. Exception.** A commercial shellfish license holder who is~~
~~certified under section 6856 is not required to tag shellfish at~~
34 ~~the time of harvest.~~

36 **3. Rules.** The commissioner may adopt or amend rules that
establish requirements for shellfish harvesters' tags.

38 **Sec. 6. 12 MRSA §6676,** as enacted by PL 1985, c. 48, §2, is
40 amended to read:

42 **§6676. Summary of municipal ordinances**

44 The department shall prepare a summary description of all
municipal shellfish ordinances, which shall must include, but not
46 be limited to, a listing for each municipality of the license
application period, fee structure, and number of licenses
48 available to residents and nonresidents. The department shall
update the summary and ~~publish the summary every 6 months in a~~
50 ~~trade or industry journal which~~ make it available to the public

2 in a manner that the commissioner considers to be effective in
reaching the persons affected.

4 **Sec. 7. 12 MRSA §6731, sub-§2, ¶¶B and C,** as enacted by PL
1989, c. 828, §2, are amended to read:

6 B. Possess~~,-ship~~ or transport mahogany quahogs within the
8 State; or

10 C. Sell mahogany quahogs that the holder has taken to a
12 wholesale seafood license holder certified under section
6856.

14 **Sec. 8. 12 MRSA §6732, sub-§§1 and 2,** as amended by PL 2001, c.
421, Pt. B, §43 and affected by Pt. C, §1, are amended to read:

16 1. **License required.** A person may not engage in the
18 activities authorized under this section without a current
commercial shellfish license or other license issued under this
20 Part authorizing the activities.

22 2. **Licensed activities.** The holder of a commercial
shellfish license may fish for or take quahogs, other than
24 mahogany quahogs, or possess~~,-ship~~ or transport quahogs within
the state limits or sell quahogs the holder has taken to a
26 wholesale seafood license holder certified under section 6856.

28 **Sec. 9. 12 MRSA §6745, sub-§§2 and 4,** as amended by PL 2001, c.
421, Pt. B, §44 and affected by Pt. C, §1, are further amended to
30 read:

32 2. **Licensed activity.** The holder of a hand-raking mussel
license may take mussels by hand raking or possess~~,-ship,~~ or
34 transport mussels within the state limits or sell mussels the
holder has taken to a wholesale seafood license holder certified
36 under section 6856.

38 4. **Exception.** In any one day, a person may take or possess
not more than 2 bushels of ~~shell-mussels~~ shellstock for personal
40 use without a mussel license.

42 **Sec. 10. 12 MRSA §6746, sub-§2,** as amended by PL 2001, c. 421,
Pt. B, §45 and affected by Pt. C, §1, is further amended to read:

44 2. **Licensed activity.** A boat license under this section
46 may be used for dragging for mussels. The holder of a mussel
boat license may also possess or transport mussels within the
48 state limits or sell mussels the holder has taken to a wholesale

2 seafood license holder certified under section 6856. The license
also authorizes the captain and crew members aboard the licensed
4 boat when engaged in dragging for mussels to undertake these
activities.

6 **Sec. 11. 12 MRSA §6852, sub-§2,** as amended by PL 1989, c. 348,
§§10 and 11, is further amended to read:

8
2. **License activity.** The holder of a retail seafood license
10 may, in the retail trade within the state limits, buy, sell,
transport, ship or serve:

12
14 A. Shellstock ~~or lobsters~~ and shucked shellfish if they are
bought from a wholesale seafood license holder certified
under section 6856;

16
18 ~~B. Shucked shellfish, if they are bought from a wholesale
seafood license holder certified under section 6856;~~

20 C. Lobster parts or meat, if they are ~~properly~~ permitted
under section 6857, or have been lawfully imported; ~~or~~

22
24 D. Crayfish; or

26 E. Lobsters.

28 **Sec. 12. 12 MRSA §6852, sub-§6** is enacted to read:

30 **6. Rules.** The commissioner may adopt or amend rules that
establish requirements for retail seafood license holders
concerning:

32
34 A. The minimum sanitation standards for establishments and
vehicles;

36 B. The sanitation and quality control standards for
shellfish and whole scallops and their products;

38
40 C. The methods for handling, shipping and transporting of
shellfish and whole scallops;

42 D. The records and reports of purchases, shipping and
transporting of shellfish and whole scallops;

44
46 E. The labeling or marking of shipments of shellfish and
wholesale scallops; and

48 F. The protection of public health.

2 Rules adopted pursuant to this subsection must be based on the
4 particular operational requirements of each activity, the most
6 recently adopted federal sanitation standards and the most recent
8 generally accepted research data and must be designed to protect
10 the public health and safety while allowing reasonable use of
12 shellfish and whole scallops. Rules adopted pursuant to this
14 subsection are routine technical rules as defined in Title 5,
16 chapter 375, subchapter 2-A.

10 **Sec. 13. 22 MRSA §2152, sub-§4-A, ¶B,** as enacted by PL 1995,
12 c. 331, §1, is amended to read:

14 B. Fish and shellfish processing establishments inspected
16 under Title 12, section ~~4682~~, 6101, 6102 or 6856;

18 SUMMARY

20 This bill makes changes to the shellfish harvesting statutes.

22 1. It changes the activities permitted under a commercial
24 shellfish license to state that shellstock the license holder has
26 taken may be sold only to a wholesale seafood license holder
28 certified under the Maine Revised Statutes, Title 12, section
6856. It also eliminates the ability of a shellfish license
holder to shuck shellfish the holder has taken in the holder's
home and sell those shucked shellfish from that home in the
retail trade.

30 2. It corrects an inaccurate reference to the date when
32 shellfish sanitation certificates expire.

34 3. It adds mahogany quahogs, other quahogs, hand-raked
36 mussels and dragged mussels to the licenses under which the
38 holder must tag shellstock with a harvester's tag. It eliminates
the exemption of shellfish license holders certified under Title
12, section 6856 from having to tag their shellfish at the time
of harvest.

40 4. It allows the Department of Marine Resources to make the
42 summary description of municipal shellfish ordinances available
44 to the public in ways other than publication in a trade or
industry journal.

46 5. It changes the activities permitted under a mahogany
48 quahog license to provide that quahogs the holder has taken may
be sold only to a wholesale seafood license holder certified
under Title 12, section 6856.

2 6. It changes the activities permitted under the shellfish
4 license to provide that quahogs, other than mahogany quahogs,
4 that the holder has taken may be sold only to a wholesale seafood
license holder certified under Title 12, section 6856.

6 7. It changes the activities permitted under the
8 hand-raking mussel license to provide that mussels that the
holder has taken may be sold only to a wholesale seafood license
holder certified under Title 12, section 6856.

10 8. It changes the activities permitted under a mussel boat
12 license to include possessing and transporting mussels within
state limits and selling mussels the holder has taken to a
14 wholesale seafood license holder certified under Title 12,
section 6856.

16 9. It changes the licensed activities under a retail
18 seafood license to provide that the requirement that shellfish be
bought from a wholesale seafood license holder certified under
20 Title 12, section 6856 applies to both shellstock and shucked
shellfish. It also specifies that the Commissioner of Marine
22 Resources may adopt rules establishing requirements for retail
seafood license holders.

24 10. It repeals the seafood products inspection program.