

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)



123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2156

S.P. 824

January 16, 2008

An Act To Amend the Laws Governing 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.

A handwritten signature in black ink, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAMON of Hancock.
Cosponsored by Representative EATON of Sullivan.

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

2 **Sec. 1. 12 MRSA §6001, sub-§8**, as amended by PL 2003, c. 248, §1, is repealed
3 and the following enacted in its place:

4 **8. Common carrier.** "Common carrier" means a vehicle that is:

5 A. Operating under authority granted by either the Federal Government or the
6 carrier's home state; and

7 B. Transporting goods for hire and the carrier does not own the marine organisms
8 being transported.

9 **Sec. 2. 12 MRSA §6022, sub-§5**, as enacted by PL 1977, c. 661, §5, is amended
10 to read:

11 **5. Property.** The commissioner may acquire and hold any right or interest in real or
12 personal property on behalf of the State. The commissioner may by sale, lease or
13 otherwise dispose of any such property, or portion of any such property or interest in any
14 such property, subject to the provisions of section 598-A.

15 **Sec. 3. 12 MRSA §6024, sub-§1-A**, as amended by PL 2007, c. 176, §1 and c.
16 240, Pt. QQ, §2, is repealed and the following enacted in its place:

17 **1-A. Appointment; composition; term; compensation.** The Marine Resources
18 Advisory Council, established by Title 5, section 12004-G, subsection 27, consists of 16
19 members. The chair of the Lobster Advisory Council, the chair of the Marine
20 Recreational Fishing Advisory Council, the chair of the Sea Run Fisheries and Habitat
21 Advisory Council and the chair of the Sea Urchin Zone Council are ex officio members
22 of the council. Each other member is appointed by the Governor and is subject to review
23 by the joint standing committee of the Legislature having jurisdiction over marine
24 resources matters and to confirmation by the Legislature. Six members must be persons
25 who are licensed under this Part to engage in commercial harvesting activities. Those 6
26 members are selected by the Governor from names recommended to the Governor by
27 groups representing commercial harvesting interests. Each member must represent a
28 different commercial harvesting activity, except that none of those 6 members may
29 represent lobster harvesters. The remaining 6 members must include one public member,
30 4 persons who hold a nonharvesting-related license under this Part and one person
31 representing the aquaculture industry. The Governor shall select the person to represent
32 the aquaculture industry from among the names recommended by the aquaculture
33 industry. The composition of the council must reflect a geographical distribution along
34 the coast. All appointed members are appointed for a term of 3 years, except a vacancy
35 must be filled in the same manner as an original member for the unexpired portion of the
36 term. An appointed member may not serve for more than 2 consecutive terms.
37 Appointed members serve until their successors are appointed. The chair of the Lobster
38 Advisory Council, the chair of the Marine Recreational Fishing Advisory Council, the
39 chair of the Sea Run Fisheries and Habitat Advisory Council and the chair of the Sea
40 Urchin Zone Council shall serve until a new chair of the Lobster Advisory Council, a new
41 chair of the Marine Recreational Fishing Advisory Council, a new chair of the Sea Run

1 Fisheries and Habitat Advisory Council or a new chair of the Sea Urchin Zone Council,
2 respectively, is chosen. Members are compensated as provided in Title 5, chapter 379.

3 **Sec. 4. 12 MRSA §6029-A, sub-§2,** as corrected by RR 2003, c. 2, §17, is
4 amended to read:

5 **2. Memorandum of agreement.** Prior to engaging in the activities authorized under
6 this section, the Bureau of Marine Patrol must enter into a memorandum of agreement
7 with the United States Coast Guard that establishes the appropriate procedures and
8 protocols for enforcement activities authorized under this section. Any funds received
9 from the Federal Government for reimbursement to the State for activities authorized
10 under this section must be deposited in the ~~watercraft fund pursuant to section 10202,~~
11 ~~subsection 1, paragraph D~~ Bureau of Marine Patrol federal programs account.

12 **Sec. 5. 12 MRSA §6038** is enacted to read:

13 **§6038. Watercraft Fund**

14 The Watercraft Fund, referred to in this section as "the fund," is established within
15 the department.

16 **1. Sources.** The fund is capitalized by money collected from boat registrations and
17 finer. In addition to those revenues, the commissioner may accept and deposit into the
18 fund money from any other source, public or private.

19 **2. Purposes.** The commissioner shall use the fund primarily for the purpose of
20 funding vessel operations and maintenance and safety and enforcement programs.

21 **3. Interest and balances credited to fund.** Any interest earned on the money in the
22 fund must be credited to the fund. Unexpended balances in the fund at the end of the
23 fiscal year do not lapse but must be carried forward to the next fiscal year and credited to
24 the fund.

25 **Sec. 6. 12 MRSA §6039** is enacted to read:

26 **§6039. Halibut Fund**

27 The Halibut Fund, referred to in this section as "the fund," is established within the
28 department.

29 **1. Sources.** The fund is capitalized by fees received through the sale of halibut tags.
30 In addition to those revenues, the commissioner may accept and deposit into the fund
31 money from any other source, public or private. All money in the fund must be used for
32 the purposes set forth in this section.

33 **2. Purposes.** The commissioner shall use the fund for halibut research and for the
34 implementation of management measures needed for the halibut fishery.

35 **3. Interest and balances credited to fund.** Any interest earned on the money in the
36 fund must be credited to the fund. Unexpended balances in the fund at the end of the

1 fiscal year do not lapse but must be carried forward to the next fiscal year and credited to
2 the fund.

3 **Sec. 7. 12 MRSA §6140, sub-§4**, as enacted by PL 2007, c. 240, Pt. QQ, §7, is
4 amended to read:

5 **4. Atlantic salmon; possession, buying or selling.** A person may not possess, buy
6 or sell Atlantic salmon unless each fish is clearly identified by one of the following
7 methods:

8 A. Tagged with a New Brunswick, Quebec, Nova Scotia, Prince Edward Island or
9 Newfoundland-Labrador Atlantic salmon tag if imported from those Canadian
10 provinces;

11 B. Identified by a sales receipt less than 24 hours old; or

12 C. For wholesale and retail seafood dealers, identified by a bill of sale indicating
13 numbers of fish purchased, dates of purchase and point of origin of all fish purchased;
14 ; or

15 D. Tagged with a tag that conforms to rules adopted by the commissioner and
16 identifies the fish as having been legally obtained from a private fee pond licensed
17 pursuant to section 12508. Fish obtained in this manner may not be resold.

18 **Sec. 8. 12 MRSA §6404-F** is enacted to read:

19 **§6404-F. Suspension based on 3 or more convictions of possessing oversize sea**
20 **urchins**

21 The commissioner shall suspend the sea urchin fishing license of any license holder
22 convicted in court of a 3rd or subsequent offense of possessing sea urchins larger than the
23 maximum size established pursuant to rule. The suspension must be for at least one year
24 but not more than 3 years from the date of conviction. Any conviction occurring more
25 than 5 years before the last conviction may not be counted in determining the suspension.

26 **Sec. 9. 12 MRSA §6447, sub-§5-D**, as enacted by PL 2007, c. 204, §3, is
27 amended to read:

28 **5-D. Council authority; under 18 waiting list.** Notwithstanding any other
29 provision in this subchapter and upon approval in a referendum under subsection 6, a
30 lobster management policy council in a limited-entry zone may propose to the
31 commissioner that the limitation described in this subsection be placed on entry by
32 individuals into that zone in accordance with rules adopted by the department.

33 This limitation would require that the number of individuals who are authorized to be
34 issued a lobster and crab fishing license that identifies a limited-entry zone as the
35 declared lobster zone without meeting the requirements of section 6448, subsection 4, in
36 accordance with section 6448, subsection 8, paragraph A, be limited to the number of
37 new zone entrants who enter that zone in accordance with section 6448, subsection 7.
38 This limitation may not be applied to a person who is under 18 years of age and lives on a

1 year-round basis on an island within the coastal waters that is not connected to the
2 mainland by any artificial structure.

3 The commissioner shall maintain a waiting list of individuals who have identified the
4 limited-entry zone as their declared lobster zone in accordance with section 6448,
5 subsection 8, paragraph A. For the purposes of this subsection, an individual on a waiting
6 list maintained by the commissioner does not need to meet the eligibility requirements of
7 section 6421, subsection 5-A in order to purchase a student license.

8 The commissioner may establish by rule procedures to implement this subsection. Rules
9 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
10 chapter 375, subchapter 2-A.

11 **Sec. 10. 12 MRSA §6448, sub-§8, ¶A-1**, as enacted by PL 2007, c. 204, §8, is
12 repealed.

13 **Sec. 11. 12 MRSA §6451, sub-§1**, as amended by PL 2005, c. 354, §3, is further
14 amended to read:

15 **1. Allocation of license fees.** Ten dollars of each \$113.75 fee, \$10 of each \$114 fee,
16 \$20 of each \$170 fee, \$20 of each \$228.50 fee, \$30 of each \$341.25 fee, \$30 of each
17 \$336 fee, \$60 of each \$682.75 fee, \$120 of each \$1,371.50 fee, \$180 of each \$2,047.25
18 fee and, \$5 of each \$56 fee and \$5 of each \$57 fee for each lobster and crab fishing
19 license must be allocated to the Lobster Fund, which must be used for the purposes of
20 lobster biology research, of propagation of lobsters by liberating seed lobsters and female
21 lobsters in Maine coastal waters and of establishing and supporting lobster hatcheries.

22 **Sec. 12. 12 MRSA §6505-A, sub-§2**, as amended by PL 2005, c. 533, §1, is
23 further amended to read:

24 **2. Eligibility.** An elver fishing license may be issued only to an individual who:

25 C. Possessed an elver fishing license in the previous calendar year; or

26 E. Did not possess an elver fishing license in the previous calendar year because the
27 commissioner had suspended the person's license privileges for a length of time that
28 included the previous calendar year.

29 **Sec. 13. 12 MRSA §6521, sub-§1**, as amended by PL 1999, c. 771, Pt. B, §4 and
30 affected by Pt. D, §§1 and 2, is repealed and the following enacted in its place:

31 **1. Deposition of dead marine animals; exception.** A person may not deposit or
32 discard, in intertidal zones or in harbors or rivers below the dividing line between
33 tidewater and fresh water, any dead marine animal or its parts, except that:

34 A. A person may deposit oyster shell cultch in those waters solely to promote growth
35 of oysters with the written permission of the commissioner and under any conditions
36 the commissioner determines appropriate; and

37 B. A person may deposit a dead marine mammal for research purposes with the
38 written permission of the commissioner and under any conditions the commissioner
39 determines appropriate.

1 **Sec. 14. 12 MRSA §6746-A** is enacted to read:

2 **§6746-A. Night prohibition**

3 A person may not fish for or take mussels between sunset and sunrise within the
4 territorial waters.

5 **Sec. 15. 12 MRSA §6749-O, sub-§2-A**, as amended by PL 2001, c. 327, §11, is
6 repealed and the following enacted in its place:

7 **2-A. License eligibility.** The commissioner may not issue a handfishing sea urchin
8 license, a sea urchin dragging license or a sea urchin hand-raking and trapping license to
9 any person unless that person:

10 A. Possessed that license in the previous calendar year;

11 B. Becomes eligible to obtain that license pursuant to a limited entry system under
12 subsection 2-B; or

13 C. Did not possess a sea urchin license in the previous calendar year because the
14 commissioner had suspended the person's license privileges for a length of time that
15 included the previous calendar year.

16 **Sec. 16. 12 MRSA §6749-Q, sub-§3**, as enacted by PL 1993, c. 740, §3, is
17 amended to read:

18 **3. Sea urchin and scallop diving tender license.** Thirty-five dollars on a sea urchin
19 boat tender's and scallop diving tender license;

20 **Sec. 17. 12 MRSA §6749-Q, last ¶**, as enacted by PL 1995, c. 392, §8 and c.
21 462, Pt. A, §32, is amended to read:

22 The commissioner shall deposit all surcharges assessed in this section in the Sea
23 Urchin Research Fund established in section 6749-R, except that fees collected under
24 subsection 3 must be evenly split between the Sea Urchin Research Fund and the Scallop
25 Research Fund established in section 6729-A.

26 **Sec. 18. 12 MRSA §6851, sub-§2-A**, as amended by PL 2005, c. 239, §8, is
27 further amended to read:

28 **2-A. Wholesale seafood license with lobster permit.** At the request of the
29 applicant, the commissioner shall issue a wholesale seafood license with a lobster permit.
30 A person holding a wholesale seafood license with a lobster permit may engage in all the
31 activities in subsection 2 and may buy, sell, process, or ship ~~or transport~~ lobster or
32 properly permitted or lawfully imported lobster meat or parts. A person holding a
33 wholesale seafood license with a lobster permit may transport lobster or properly
34 permitted or lawfully imported lobster meat or parts anywhere within the state limits. A
35 license under this subsection does not authorize a person to possess or transport lobster
36 that person has taken unless that person is in possession of a license issued under section
37 6421, subsection 3-A, paragraph A, B, C or E. A license under this subsection does not

1 authorize a person to remove lobster meat from the shell unless a permit under section
2 6857 is held.

3 **Sec. 19. 12 MRSA §6957, sub-§1**, as amended by PL 1995, c. 169, §2, is further
4 amended to read:

5 **1. Prohibition.** A person may not operate a vessel using drags, otter trawls, pair
6 trawls, beam trawls, scottish seines or midwater trawls to fish for or take finfish, shellfish,
7 sea urchins or any other marine organisms within 300 feet of any suspended culture
8 floating cages, tray racks or other floating equipment authorized in a lease issued by the
9 commissioner under section 6072, 6072-A or 6072-B, or a license issued under section
10 6072-C, if the equipment is marked in accordance with subsection 1-A.

11 SUMMARY

12 This bill makes the following changes to the laws governing marine resources.

13 1. It modifies the definition of “common carrier” to ensure that the intrastate
14 transportation of marine organisms by common carrier is allowed.

15 2. It provides the Commissioner of Marine Resources the authority to dispose of
16 property as well as acquire and hold property.

17 3. It corrects a conflict created when Public Law 2007, chapters 176 and 240 both
18 amended a provision of law that governs the Marine Resources Advisory Council. It
19 corrects the conflict by incorporating the changes made by both laws.

20 4. It corrects a reference regarding where United States Coast Guard funding should
21 be deposited within the Department of Marine Resources.

22 5. It creates the Watercraft Fund within the Department of Marine Resources.

23 6. It creates the Halibut Fund within the Department of Marine Resources.

24 7. It creates an exception to the prohibition against the possession, buying or selling
25 of Atlantic salmon for those fish that have been legally obtained from a licensed private
26 fee pond and are tagged in conformance with rules adopted by the Commissioner of
27 Marine Resources.

28 8. It creates a mandatory suspension based on 3 or more convictions of possessing
29 oversize sea urchins.

30 9. It clarifies that an individual who is under 18 years of age and living year round on
31 an island that is not connected to the mainland by an artificial structure may not be
32 subject to being placed on a waiting list when issued a license in a limited-entry zone.

33 10. It provides for a portion of the fees for Class I and Class III lobster and crab
34 fishing licenses for applicants 70 years of age and older to be deposited in the Lobster
35 Fund.

- 1 11. It creates an exemption to limited entry in the elver fishery to allow a person
2 whose elver fishing license was suspended for longer than a year to purchase a license in
3 the year after the suspension is concluded.
- 4 12. It creates an exemption to allow dead marine mammals to be brought to shore for
5 the purpose of research with written permission of the Commissioner of Marine
6 Resources and subject to conditions imposed by the commissioner.
- 7 13. It prohibits a person from fishing for or taking mussels between sunset and
8 sunrise.
- 9 14. It provides that half of the research surcharge on a sea urchin and scallop diving
10 tender license is deposited into the Scallop Research Fund and half is deposited into the
11 Sea Urchin Research Fund.
- 12 15. It creates an exemption to limited entry in the sea urchin fishery to allow a
13 person whose urchin license was suspended for longer than a year to purchase a license in
14 the year after the suspension is concluded.
- 15 16. It clarifies that an individual with a wholesale seafood license with lobster permit
16 may ship lobster out of state, but may only transport within the State, unless they also
17 hold a lobster transportation permit.
- 18 17. It adds areas covered by limited purpose leases for commercial aquaculture
19 research and development or for scientific research, emergency aquaculture leases for
20 shellfish relocation and the limited-purpose aquaculture license to the areas where fishing
21 near floating equipment is prohibited.