

MAINE STATE LEGISLATURE

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MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1104, L.D. 1567, Bill, "An Act To Correct Errors and Inconsistencies in Marine Resources Laws"

Amend the bill by inserting before section 1 the following:

Sec. 1. 3 MRSA §959, sub-§1, ¶G, as amended by PL 2005, c. 477, §1, is further amended to read:

G. The joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Inland Fisheries and Wildlife in 2007; and
(2) Advisory Board for the Licensing of Taxidermists in 2007; and
(3) Atlantic Salmon Commission in 2011.

Sec. 2. 5 MRSA §12004-G, sub-§20-A, as amended by PL 2007, c. 240, Pt. QQ, §1, is repealed.

Sec. 3. 12 MRSA §6022, sub-§16 is enacted to read:

16. Atlantic salmon powers and responsibilities. The commissioner has the sole authority to introduce Atlantic salmon into the inland waters, other than in commercial aquaculture facilities. The commissioner has the sole authority to limit or prohibit the taking of Atlantic salmon and may adopt rules establishing the time, place and manner of Atlantic salmon fishing in all waters of the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 12 MRSA §6071, sub-§1, as amended by PL 2007, c. 695, Pt. C, §2, is further amended to read:

1. Live importing for introduction into coastal waters. Except for Atlantic salmon imported by the Atlantic Salmon Commission under Part 9 commissioner, it is unlawful to import for introduction, possess for purposes of introduction or introduce into

1 coastal waters a live marine organism without a permit issued by the commissioner
2 pursuant to subsection 2.

3 **Sec. 5. 12 MRSA §6137**, as enacted by PL 2007, c. 240, Pt. QQ, §4, is repealed.

4 **Sec. 6. 12 MRSA §6138**, as enacted by PL 2007, c. 240, Pt. QQ, §5, is repealed.'

5 Amend the bill by striking out all of section 8 (page 1, line 34 and page 2, lines 1 to 9
6 in L.D.) and inserting the following:

7 **'Sec. 8. 12 MRSA §6409**, as reallocated by RR 1999, c. 2, §13, is amended to
8 read:

9 **§6409. Suspension of license for failure to appear, answer or pay**

10 If a license is suspended pursuant to Title 14, section 3142, the suspension remains in
11 effect and that person is ineligible to obtain or hold a license until the person pays the
12 fine. On payment of the fine and on condition of payment of a \$25 reinstatement
13 administrative fee to the department, the clerk of the court in which the suspension was
14 ordered shall rescind the suspension and notify the department, which, upon receipt of the
15 \$25 reinstatement fee, shall delete any record of the suspension from that person's record
16 is rescinded and the eligibility to obtain or hold a license reinstated. For the purposes of
17 this section, "fine" has the same meaning as in Title 14, section 3141, subsection 1.'

18 Amend the bill in section 9 in §6410 in the first paragraph in the first line (page 2,
19 line 12 in L.D.) by striking out the following: "right to obtain" and inserting the
20 following: 'eligibility to obtain or hold'

21 Amend the bill in section 9 in §6410 in the first paragraph in the 4th and 5th lines
22 (page 2, lines 15 and 16 in L.D.) by striking out the following: "right to obtain" and
23 inserting the following: 'eligibility to obtain or hold'

24 Amend the bill by striking out all of section 10 (page 2, lines 17 to 22 in L.D.) and
25 inserting the following:

26 **'Sec. 10. 12 MRSA §6411** is enacted to read:

27 **§6411. Refusal to renew or reissue license for failure to file or failure to pay state**
28 **tax obligations**

29 If a person's eligibility to obtain a license is suspended pursuant to Title 36, section
30 175, the suspension is in effect until the State Tax Assessor issues a certificate of good
31 standing. On condition of payment of a \$25 administrative fee to the department, the
32 suspension is rescinded and the person's eligibility to obtain a license reinstated.'

33 Amend the bill in section 12 in subsection 1 in the 2nd line (page 2, line 37 in L.D.)
34 by striking out the following: "\$20 of each \$136 fee," and inserting the following: '\$10 of
35 each \$136 fee.'

36 Amend the bill in section 14 in §6533 in the first paragraph in the 2nd line (page 3,
37 line 16 in L.D.) by striking out the following: "It is unlawful for a person to" and inserting
38 the following: 'a A person to may not'

1 Amend the bill in section 15 in §6535 by striking out all of subsection 4 (page 4, lines
2 3 and 4 in L.D.) and inserting the following:

3 '4. Fees. The fee for a license issued under this section is \$133.'

4 Amend the bill by inserting after section 16 the following:

5 **'Sec. 17. 12 MRSA §6721-A, sub-§2,** as amended by PL 2007, c. 607, Pt. A, §5,
6 is further amended to read:

7 **2. Prima facie evidence.** It is prima facie evidence of possession of illegal scallops
8 if a vessel contains scallops less than the minimum shell size set by this section or the
9 minimum shell size set by rules adopted pursuant to this section while a ~~scallop dragging~~
10 ~~license holder or crew member~~ person licensed under this subchapter or crew member of
11 a person licensed under this subchapter is shucking scallops.'

12 Amend the bill in section 19 in paragraph E (page 5, line 13 in L.D.) by striking out
13 the following: "\$40" and inserting the following: '\$100'

14 Amend the bill by inserting after section 23 the following:

15 **'Sec. 24. 12 MRSA §6851, sub-§2-D,** as amended by PL 2003, c. 170, §4, is
16 further amended to read:

17 **2-D. Wholesale seafood license with shrimp permit.** At the request of the
18 applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit.
19 A person holding a wholesale seafood license with a shrimp permit may engage in all of
20 the activities in subsection 2 and may buy, sell, process, ship or transport shrimp.

21 **Sec. 25. 12 MRSA §6856, sub-§3-A,** as enacted by PL 2007, c. 15, §2 and
22 affected by §6, is amended to read:

23 **3-A. Municipal consultation and approval; depuration harvesting.** Within The
24 following provisions apply within a municipality that has a municipal shellfish
25 conservation committee established pursuant to section 6671, ~~the following provisions,~~
26 Paragraphs A and B apply to shellfish growing areas that have been ~~downgraded~~
27 reclassified after January 1, 2006 from an approved to a restricted classification for water
28 quality as defined in rule. Paragraph B-1 applies to shellfish growing areas reclassified
29 after January 1, 2010 from a prohibited to restricted classification.

30 A. Unless the commissioner obtains the approval of the affected municipality, the
31 commissioner may not open an area ~~downgraded~~ reclassified from an approved to a
32 restricted classification for depuration harvesting for 2 years from the date of the
33 reclassification to allow the municipality to develop a pollution abatement plan under
34 subsection 3-B.

35 B. ~~Beginning April 1, 2007,~~ a municipality must notify the commissioner within 8
36 weeks of ~~the a~~ reclassification from an approved to a restricted classification of an
37 area whether or not it intends to develop a pollution abatement plan. If the
38 municipality does not wish to develop a pollution abatement plan in accordance with
39 subsection 3-B or if it fails to notify the commissioner within the 8-week period,
40 municipal approval is not required.

1 B-1. Unless the commissioner obtains the approval of the affected municipality, the
2 commissioner may not open an area reclassified from a prohibited to a restricted
3 classification for depuration harvesting. A municipality must document to the
4 commissioner within 4 weeks of the reclassification from a prohibited to a restricted
5 classification that the municipality intends to take significant measures following the
6 reclassification to be incorporated in its pollution abatement plan. If the municipality
7 fails to provide sufficient documentation or does not wish to develop a pollution
8 abatement plan or if it fails to notify the commissioner within the 4-week period,
9 municipal approval is not required. The municipality must provide the commissioner
10 a progress report on activities under its abatement plan every 6 months.

11 C. If a municipal shellfish conservation committee has a pollution abatement plan as
12 provided in subsection 3-B on file with the commissioner, the commissioner must
13 obtain the approval of the committee before taking action to open an area within that
14 municipality for depuration digging.

15 D. If a municipal shellfish conservation committee has a depuration management
16 plan as provided in subsection 3-C approved by the commissioner, the municipality
17 may manage the depuration harvesting over a shellfish growing area within that
18 municipality.

19 **Sec. 26. 12 MRSA §12760, sub-§3,** as enacted by PL 2003, c. 414, Pt. A, §2 and
20 affected by c. 614, §9, is amended to read:

21 **3. Monitoring program.** The commissioner shall, in cooperation with the
22 Department of Marine Resources ~~and the Atlantic Salmon Commission~~, establish a
23 program to ensure fishways are functioning properly and remain sufficient or suitable for
24 the passage of anadromous or migratory fish. The commissioner has sole authority to
25 take corrective action at fishways as prescribed under this section.

26 **Sec. 27. 12 MRSA §12804, sub-§1, ¶D,** as enacted by PL 2003, c. 414, Pt. A, §2
27 and affected by c. 614, §9, is amended to read:

28 D. Transplantation. Prior to the transplantation, introduction or reintroduction of an
29 endangered or threatened species in the State, the commissioner shall, in conjunction
30 with the ~~Atlantic Salmon Commission~~ Department of Marine Resources, when
31 appropriate, develop a recovery plan for that species, conduct a public hearing on that
32 recovery plan pursuant to Title 5, Part 18 and submit that plan to the joint standing
33 committee of the Legislature having jurisdiction over inland fisheries and wildlife
34 matters. The introduction or reintroduction of that species must be conducted in
35 accordance with the recovery plan developed under this paragraph and may not begin
36 sooner than 90 days after all conditions of this paragraph have been met; and

37 **Sec. 28. 37-B MRSA §1112,** as enacted by PL 2001, c. 460, §3, is amended to
38 read:

39 **§1112. Administration**

40 The department shall administer this chapter. In carrying out the provisions of this
41 chapter, the department shall consult as appropriate with other state agencies, including
42 the Department of Conservation, the Department of Environmental Protection, the
43 Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the

1 Department of Public Safety, the Department of Transportation, the Maine Land Use
2 Regulation Commission, ~~the Maine Atlantic Salmon Commission~~ and the State Planning
3 Office, for their aid and assistance.

4 **Sec. 29. 37-B MRSA §1119, sub-§3**, as enacted by PL 2001, c. 460, §3, is
5 amended to read:

6 **3. Review conference.** After receiving the inspector's report and prior to issuing any
7 dam safety order, the commissioner shall hold a review conference and shall invite the
8 emergency management director of the county in which the dam is located to the review
9 conference as well as representatives from appropriate state agencies which may include
10 the Department of Conservation, the Department of Environmental Protection, the
11 Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the
12 Department of Public Safety, the Department of Transportation, the Maine Land Use
13 Regulation Commission, ~~the Maine Atlantic Salmon Commission~~ and the State Planning
14 Office, to discuss the public safety, environmental, economic and other concerns relating
15 to the dam and the necessary remedial measures under consideration. A state dam
16 inspector shall attend the review conference. The commissioner shall maintain a written
17 record of the conference and shall make a copy of this record available to all parties
18 participating in the conference.

19 **Sec. 30. 38 MRSA §480-B, sub-§10, ¶A**, as enacted by PL 2005, c. 116, §2, is
20 amended to read:

21 A. The following areas to the extent that they have been mapped by the Department
22 of Inland Fisheries and Wildlife or are within any other protected natural resource:
23 habitat, as defined by the Department of Inland Fisheries and Wildlife, for species
24 appearing on the official state or federal list of endangered or threatened animal
25 species; high and moderate value deer wintering areas and travel corridors as defined
26 by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined
27 by the Department of Inland Fisheries and Wildlife; and critical spawning and
28 nursery areas for Atlantic salmon as defined by the ~~Atlantic Salmon Commission~~
29 Department of Marine Resources; and

30 **Sec. 31. 38 MRSA §480-U, sub-§2, ¶A**, as amended by PL 2005, c. 330, §17, is
31 further amended to read:

32 A. The application must contain written certification by a knowledgeable
33 professional that the cranberry cultivation project will not be located in a wetland that
34 has one or more of the following characteristics:

- 35 (1) Is a coastal wetland or is located within 250 feet of a coastal wetland;
- 36 (2) Is a great pond;
- 37 (3) Contains endangered or threatened plant species as defined in Title 12,
38 section 544;
- 39 (4) Contains any type of palustrine natural community of which there are 20 or
40 fewer occurrences in the State;
- 41 (5) Contains any of the following resources:

1 (a) Habitat for species appearing on the official state or federal lists of
2 endangered or threatened species when there is evidence that the species is
3 present;

4 (b) As defined by rule by the Commissioner of Inland Fisheries and Wildlife,
5 whether or not the resource has been mapped, high-value and moderate-value
6 deer wintering areas; deer travel corridors; high-value and moderate-value
7 waterfowl or wading bird habitats, including nesting and feeding areas;
8 shorebird nesting, feeding or staging areas; or seabird nesting islands; or

9 (c) Critical spawning and nesting areas for Atlantic salmon as defined by rule
10 by the ~~Atlantic Salmon Commission~~ Department of Marine Resources
11 whether or not mapped;

12 (6) Is located within 250 feet of the normal high water line and within the same
13 watershed of any lake or pond classified as GPA under section 465-A;

14 (7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and
15 usually having a saturated water regime, except that applications proposing
16 reclamation of previously mined peat bogs may be considered;

17 (8) Is land adjacent to the main stem of a major river, as classified in section
18 467, that is inundated with floodwater during a 100-year flood event and that
19 under normal circumstances supports a prevalence of wetland vegetation,
20 typically adapted for life in saturated soils; or

21 (9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh
22 vegetation or open water, except for artificial ponds or impoundments, during
23 most of the growing season in most years; except that cranberry cultivation is
24 allowed more than 250 feet from the edge of the area of aquatic vegetation,
25 emergent marsh vegetation or open water.

26 A project to cultivate indigenous cranberries may be located in wetlands described in
27 subparagraphs (6) and (7) only if the project location is a natural cranberry bog and
28 provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry
29 bog" means an area with indigenous large cranberries, *Vaccinium macrocarpon* Ait.,
30 comprising more than 50% of the cover in the herbaceous layer; and "cover in the
31 herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in
32 height.

33 **Sec. 32. 38 MRSA §636, sub-§7, ¶B**, as amended by PL 1999, c. 401, Pt. BB,
34 §19, is further amended to read:

35 B. Whether the project will result in significant benefit or harm to fish and wildlife
36 resources. In making its determination, the department shall consider other existing
37 uses of the watershed and fisheries management plans adopted by the Department of
38 Inland Fisheries and Wildlife, and the Department of Marine Resources ~~and the~~
39 ~~Atlantic Salmon Commission;~~

40 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
41 section number to read consecutively.

SUMMARY

This amendment does the following.

1. It eliminates the Atlantic Salmon Commission and the per diem reimbursement for commission members. The funding for the commission was eliminated in Public Law 2009, chapter 462.

2. It removes references to a person's "right" to obtain a license regarding suspensions for failure to pay taxes, comply with support orders or appear in court and replaces them with "eligibility to obtain or hold."

3. It corrects the proposed allocation of \$20 to \$10 from each Class II lobster and crab fishing license for persons over 70 years of age to the Lobster Fund.

4. It clarifies that it is prima facie evidence of possessing illegal scallops if a person licensed under the scallop laws is shucking scallops when the vessel has scallops onboard under the minimum size restriction.

5. It changes the license surcharge for a hand fishing scallop license with tender from \$40 to \$100 to correct a conflict created during the First Regular Session of the 124th Legislature.

6. It provides that the Commissioner of Marine Resources may not open a shellfish area that has been reclassified from a prohibited to a restricted classification after January 1, 2010 to depuration harvesting without the approval of the affected municipality. If a municipality fails to document to the commissioner within 4 weeks of the reclassification that it intends to take significant measures to be incorporated into its pollution abatement plan or if the municipality indicates it will not develop a pollution abatement plan, the commissioner may open that area to depuration harvesting without the consent of the municipality. A municipality must report its progress on the pollution abatement plan every 6 months.

7. It authorizes a wholesale seafood license with shrimp permit holder to process shrimp.

8. It makes a number of technical changes to existing statutes.

FISCAL NOTE REQUIRED

(See attached)



124th MAINE LEGISLATURE

LD 1567

LR 2223(02)

An Act To Correct Errors and Inconsistencies in Marine Resources Laws

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Revenue				
Other Special Revenue Funds	\$0	\$368	\$368	\$368

Fiscal Detail and Notes

This legislation makes corrections to statutes governing marine resources and results in additional Other Special Revenue Funds revenue to the Department of Marine Resources of \$368 beginning in fiscal year 2010-11.