

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 421

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H.P. 293

House of Representatives, February 14, 2013

### **An Act To Prohibit the Unauthorized Harvesting of Wild Mushrooms and Fiddleheads**

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Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BLACK of Wilton.  
Cosponsored by Senator SHERMAN of Aroostook and  
Representatives: CRAFTS of Lisbon, CRAY of Palmyra, GIFFORD of Lincoln, JONES of  
Freedom, KUMIEGA of Deer Isle, LONG of Sherman, NOON of Sanford, TIMBERLAKE of  
Turner.

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

2 **Sec. 1. 12 MRSA §8841, sub-§4** is enacted to read:

3 **4. Fiddlehead.** "Fiddlehead" means the coiled frond of the ostrich fern, or  
4 Matteuccia struthiopteris, that is harvested for commercial purposes.

5 **Sec. 2. 12 MRSA §8841, sub-§5** is enacted to read:

6 **5. Wild mushroom.** "Wild mushroom" means a mushroom that is harvested for  
7 commercial purposes in the wild. "Wild mushroom" does not include a cultivated  
8 mushroom that is grown, harvested, processed and packaged by a commercial  
9 organization.

10 **Sec. 3. 12 MRSA §8842-A**, as enacted by PL 2003, c. 452, Pt. F, §40 and affected  
11 by Pt. X, §2, is amended to read:

12 **§8842-A. Owner's permission required**

13 **1. Cutting or harvesting prohibited.** A person may not:

14 A. Cut or harvest Christmas trees ~~or~~ evergreen boughs, wild mushrooms or  
15 fiddleheads on land of another without securing written permission or a bill of sale  
16 from the owner or the owner's authorized agents. Only one such permit is needed per  
17 work crew. Violation of this paragraph is a Class E crime; or

18 B. Violate paragraph A when:

19 (1) The value of the trees ~~or~~ boughs, wild mushrooms or fiddleheads is more  
20 than \$10,000. Violation of this subparagraph is a Class B crime;

21 (2) The person is armed with a dangerous weapon at the time of the offense.  
22 Violation of this subparagraph is a Class B crime;

23 (3) The value of the trees ~~or~~ boughs, wild mushrooms or fiddleheads is more  
24 than \$2,000 but not more than \$10,000. Violation of this subparagraph is a Class  
25 C crime;

26 (4) The value of the trees ~~or~~ boughs, wild mushrooms or fiddleheads is more  
27 than \$1,000 but not more than \$2,000. Violation of this subparagraph is a Class  
28 D crime; or

29 (5) The person has 2 prior Maine convictions for any combination of the  
30 following: theft; any violation of Title 17-A, section 401 in which the crime  
31 intended to be committed inside the structure is theft; any violation of Title 17-A,  
32 section 651; any violation of Title 17-A, section 702, 703 or 708; or attempts  
33 thereat. Title 17-A, section 9-A governs the use of prior convictions when  
34 determining a sentence. Violation of this subparagraph is a Class C crime.

35 **2. Transport prohibited.** A person may not:

36 A. Transport Christmas trees ~~or~~ evergreen boughs, wild mushrooms or fiddleheads  
37 without written permission or a bill of sale from the owner of the land where the trees

1           ~~ø~~evergreen boughs, wild mushrooms or fiddleheads were harvested or that owner's  
2 authorized agents. Violation of this paragraph is a Class E crime; or

3           B. Violate paragraph A when:

4           (1) The value of the trees ~~ø~~boughs, wild mushrooms or fiddleheads is more  
5 than \$10,000. Violation of this subparagraph is a Class B crime;

6           (2) The person is armed with a dangerous weapon at the time of the offense.  
7 Violation of this subparagraph is a Class B crime;

8           (3) The value of the trees ~~ø~~boughs, wild mushrooms or fiddleheads is more  
9 than \$2,000 but not more than \$10,000. Violation of this subparagraph is a Class  
10 C crime;

11           (4) The value of the trees ~~ø~~boughs, wild mushrooms or fiddleheads is more  
12 than \$1,000 but not more than \$2,000. Violation of this subparagraph is a Class  
13 D crime; or

14           (5) The person has 2 prior Maine convictions for any combination of the  
15 following: theft; any violation of Title 17-A, section 401 in which the crime  
16 intended to be committed inside the structure is theft; any violation of Title 17-A,  
17 section 651; any violation of Title 17-A, section 702, 703 or 708; or attempts  
18 thereat. Title 17-A, section 9-A governs the use of prior convictions when  
19 determining a sentence. Violation of this subparagraph is a Class C crime.

20           **3. Inspections and investigations.** An officer authorized to make inspections and  
21 investigations under this article may require of any person, firm or corporation engaged in  
22 cutting, harvesting or transporting Christmas trees ~~ø~~evergreen boughs, wild mushrooms  
23 or fiddleheads to show:

24           A. If engaged in cutting or harvesting trees ~~ø~~boughs, wild mushrooms or  
25 fiddleheads belonging to another, a current written permit or bill of sale issued  
26 pursuant to subsection 1, paragraph A; and

27           B. If engaged in transportation, a current written permit, bill of sale, port of entry  
28 statement or other written proof of ownership when transporting for commercial  
29 purposes trees, loose or in bundles, ~~ø~~boughs, loose or baled, wild mushrooms or  
30 fiddleheads. A driver shall carry this permit on the driver's person or in the vehicle.

31           **4. Remedies not exclusive.** Prosecution under this section does not preclude the  
32 civil remedy available under Title 14, section 7552.

33           **5. Strict liability.** Violation of this section is a strict liability crime as defined in  
34 Title 17-A, section 34, subsection 4-A.

35           **Sec. 4. 12 MRSA §8844**, as repealed and replaced by PL 1983, c. 507, §2, is  
36 amended to read:

37           **§8844. Seizure or attachment**

38           Any officer authorized to make inspections, investigations or arrests under this  
39 Article may seize and hold Christmas trees ~~ø~~evergreen boughs, wild mushrooms or

1 fiddleheads until proof of ownership has been established. If no proof of ownership has  
2 been established, the officer shall try to determine where those trees ~~or~~, boughs, wild  
3 mushrooms or fiddleheads were cut or harvested and notify the landowner. If the owner  
4 does not want the trees ~~or~~, boughs, wild mushrooms or fiddleheads, or ownership cannot  
5 be determined, the State may dispose of them and any money derived from the  
6 disposition of the trees ~~and~~, boughs shall, wild mushrooms or fiddleheads must be paid to  
7 the landowner, if ~~his~~ the landowner's identity can be established and, otherwise, to the  
8 Treasurer of State to be credited to the General Fund.

9 **Sec. 5. 12 MRSA §8847**, as repealed and replaced by PL 1983, c. 507, §4, is  
10 amended to read:

11 **§8847. Enforcement agencies**

12 State police, county sheriffs, municipal law enforcement officers, state forest rangers  
13 and game wardens are authorized to make ~~inspections~~ inspections, investigations, arrests  
14 and disposals of trees ~~and~~, boughs, wild mushrooms and fiddleheads under this Article.

15 **Sec. 6. 22 MRSA §2175, sub-§3**, as amended by PL 2011, c. 587, §1, is further  
16 amended to read:

17 **3. Refusal to certify; revocation of certification.** The Department of Health and  
18 Human Services may decline to certify any person adjudged to have violated Title 12,  
19 chapter 805, subchapter 3, article 2 or determined to lack the appropriate training to  
20 safely harvest, broker or sell wild mushrooms, in accordance with recommendations of  
21 the Maine Wild Mushroom Harvesting Advisory Committee under subsection 5 and rules  
22 adopted by the Department of Health and Human Services pursuant to this section. The  
23 Department of Health and Human Services may revoke, in accordance with the Maine  
24 Administrative Procedure Act, the certification of any person in accordance with  
25 recommendations of the Maine Wild Mushroom Harvesting Advisory Committee and  
26 rules adopted by the Department of Health and Human Services pursuant to this section,  
27 or any person adjudged to have violated Title 12, chapter 805, subchapter 3, article 2.

28 **Sec. 7. Maine Revised Statutes headnote amended; revision clause.** In the  
29 Maine Revised Statutes, Title 12, chapter 805, subchapter 3, article 2, in the article  
30 headnote, the words "transportation or cutting of christmas trees" are amended to read  
31 "transportation, cutting or harvesting of christmas trees, evergreen boughs, wild  
32 mushrooms and fiddleheads" and the Revisor of Statutes shall implement this revision  
33 when updating, publishing or republishing the statutes.

34 **SUMMARY**

35 The purpose of this bill is to protect woodland owners by requiring anyone harvesting  
36 wild mushrooms or fiddleheads commercially to have written permission or a bill of sale  
37 from the landowner before harvesting or transportation. The permission requirements  
38 and enforcement provisions of this bill are the same as currently exist in Maine law for  
39 commercial harvesting of Christmas trees and boughs for wreaths. The bill also  
40 authorizes the Department of Health and Human Services to decline to certify or revoke

1 the certification under the Maine Wild Mushroom Harvesting Certification Program of  
2 any person found in violation of the prohibition.