

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 202

H.P. 158

House of Representatives, January 24, 2017

An Act To Abolish Municipal Shellfish Ordinances

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SIMMONS of Waldoboro.

Cosponsored by Representatives: O'CONNOR of Berwick, PIERCE of Dresden.

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

2 **Sec. 1. 12 MRSA §6038, sub-§1, ¶F**, as enacted by PL 2007, c. 606, Pt. A, §2, is
3 amended to read:

4 F. Two members who ~~are municipal shellfish wardens~~ represent municipal shellfish
5 interests. In making the appointments under this paragraph, the commissioner shall
6 solicit and consider up to 3 recommendations for these 2 appointments from
7 associations representing the interests of persons who protect and help manage
8 municipal shellfish resources; and

9 **Sec. 2. 12 MRSA §6072, sub-§3**, as amended by PL 1999, c. 267, §1, is repealed.

10 **Sec. 3. 12 MRSA §6072-A, sub-§11**, as enacted by PL 1997, c. 231, §6, is
11 repealed.

12 **Sec. 4. 12 MRSA §6072-C, sub-§3**, as amended by PL 2009, c. 229, §6, is
13 further amended to read:

14 **3. Eligibility.** A limited-purpose aquaculture license may be issued only to an
15 individual ~~or to a municipal shellfish management committee established pursuant to~~
16 ~~section 6671.~~

17 **Sec. 5. 12 MRSA §6302-A, sub-§1**, as amended by PL 2013, c. 254, §1, is
18 further amended to read:

19 **1. Tribal exemption; commercial harvesting licenses.** A member of the
20 Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band
21 of Maliseet Indians who is a resident of the State is not required to hold a state license or
22 permit issued under section 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6602,
23 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803, 6804 or 6808 to
24 conduct activities authorized under the state license or permit if that member holds a valid
25 license issued by the tribe, nation or band or the agent of the band to conduct the
26 activities authorized under the state license or permit. A member of the Passamaquoddy
27 Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet
28 Indians issued a tribal license pursuant to this subsection to conduct activities is subject to
29 all laws and rules applicable to a person who holds a state license or permit to conduct
30 those activities and to all the provisions of chapter 625, except that the member of the
31 tribe, nation or band:

32 A. May utilize lobster traps tagged with trap tags issued by the tribe, nation or band
33 or the agent of the band in a manner consistent with trap tags issued pursuant to
34 section 6431-B. A member of the tribe, nation or band is not required to pay trap tag
35 fees under section 6431-B if the tribe, nation or band or the agent of the band issues
36 that member trap tags; and

37 B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe,
38 nation or band or the agent of the band in a manner consistent with tags issued
39 pursuant to section 6505-B. A member of the tribe, nation or band is not required to

1 pay elver fishing gear fees under section 6505-B if the tribe, nation or band or the
2 agent of the band issues that member elver fishing gear tags; and.

3 ~~C. Is not required to hold a state shellfish license issued under section 6601 to obtain~~
4 ~~a municipal shellfish license pursuant to section 6671.~~

5 **Sec. 6. 12 MRSA §6302-A, sub-§2**, as amended by PL 2013, c. 254, §2, is
6 further amended to read:

7 **2. Tribal exemption; sustenance or ceremonial tribal use.** Notwithstanding any
8 other provision of law, a member of the Passamaquoddy Tribe, Penobscot Nation,
9 Aroostook Band of Micmacs or Houlton Band of Maliseet Indians who is a resident of
10 the State may at any time take, possess, transport and distribute:

11 A. Any marine organism, except lobster, for sustenance use if the tribal member
12 holds a valid sustenance fishing license issued by the tribe, nation or band or the
13 agent of the band. A sustenance fishing license holder who fishes for sea urchins
14 may not harvest sea urchins out of season;

15 B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster
16 license issued by the tribe, nation or band or the agent of the band. The sustenance
17 lobster license holder's traps must be tagged with sustenance use trap tags issued by
18 the tribe, nation or band or the agent of the band in a manner consistent with trap tags
19 issued pursuant to section 6431-B; however, a sustenance lobster license holder may
20 not harvest lobsters for sustenance use with more than 25 traps; and

21 C. Any marine organism for noncommercial use in a tribal ceremony within the
22 State, if the member holds a valid ceremonial tribal permit issued to the tribal
23 member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and
24 council at either Passamaquoddy reservation, by the Penobscot Reservation Tribal
25 Council, by the Aroostook Band of Micmacs Tribal Council or its agent or by the
26 Houlton Band of Maliseet Indians Tribal Council or its agent.

27 For purposes of this subsection, "sustenance use" means all noncommercial consumption
28 or noncommercial use by any person within Passamaquoddy Indian territory, as defined
29 in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30,
30 section 6205, subsection 2, Aroostook Band Trust Land, as defined in Title 30, section
31 7202, subsection 2, or Houlton Band Trust Land, as defined in Title 30, section 6203,
32 subsection 2-A, or at any location within the State by a tribal member, by a tribal
33 member's immediate family or within a tribal member's household. The term "sustenance
34 use" does not include the sale of marine organisms.

35 A member of the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs
36 or Houlton Band of Maliseet Indians who takes a marine organism under a license or
37 permit issued pursuant to this subsection must comply with all laws and rules applicable
38 to a person who holds a state license or permit that authorizes the taking of that organism,
39 except that a state law or rule that sets a season for the harvesting of a marine organism
40 does not apply to a member of the Passamaquoddy Tribe, Penobscot Nation, Aroostook
41 Band of Micmacs or Houlton Band of Maliseet Indians who takes a marine organism for
42 sustenance use or for noncommercial use in a tribal ceremony. A member of the
43 Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band

1 of Maliseet Indians issued a license or permit under this subsection is exempt from
2 paying elver gear fees under section 6505-B or trap tag fees under section 6431-B ~~and is~~
3 ~~not required to hold a state shellfish license issued under section 6601 to obtain a~~
4 ~~municipal shellfish license pursuant to section 6671.~~ A member of the Passamaquoddy
5 Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet
6 Indians who fishes for or takes lobster under a license or permit issued pursuant to this
7 subsection must comply with the closed periods under section 6440.

8 **Sec. 7. 12 MRSA §6601, sub-§2**, as amended by PL 2011, c. 598, §26, is further
9 amended to read:

10 **2. Licensed activities.** The holder of a commercial shellfish license may fish for,
11 take, possess or transport shellfish within the state limits or sell shellstock the holder has
12 taken to a wholesale seafood license holder certified under section 6856 or an enhanced
13 retail certificate holder under section 6852, subsection 2-A. The holder may also sell
14 shellstock the holder has taken from that license holder's home in the retail trade. ~~This~~
15 ~~license does not authorize the holder to fish for or take shellfish in violation of a~~
16 ~~municipal ordinance adopted pursuant to section 6671.~~

17 **Sec. 8. 12 MRSA §6621, sub-§3, ¶C**, as amended by PL 1995, c. 323, §1, is
18 repealed.

19 **Sec. 9. 12 MRSA c. 623, sub-c. 1, art. 4**, as amended, is repealed.

20 **Sec. 10. 12 MRSA c. 623, sub-c. 1, art. 4-A** is enacted to read:

21 ARTICLE 4-A

22 MUNICIPAL SHELLFISH MANAGEMENT

23 §6677. Municipal shellfish ordinances

24 A municipality may not adopt or enforce an ordinance that regulates the taking or
25 possession of shellfish, provides protection from shellfish predators or authorizes
26 municipal officials to open and close flats.

27 §6678. Shellfish reseeding program

28 The department shall carry out a program of shellfish reseeding. The program must
29 include such activities as the transplanting of soft-shelled clams from areas of large
30 concentrations to potentially productive areas and relaying shellfish otherwise inhibited
31 from attaining optimum market size. The department may close areas to protect reseeded
32 flats.

33 **Sec. 11. 12 MRSA §6746, sub-§2**, as amended by PL 2011, c. 598, §35, is
34 further amended to read:

35 **2. Licensed activity.** A boat license under this section may be used for dragging for
36 mussels. The holder of a mussel boat license may also possess or transport mussels

1 within the state limits or sell mussels the holder has taken to a wholesale seafood license
2 holder certified under section 6856 or an enhanced retail certificate holder under section
3 6852, subsection 2-A. The license also authorizes the captain and crew members aboard
4 the licensed boat when engaged in dragging for mussels to undertake these activities. A
5 ~~mussel boat license does not authorize the holder to fish for or take mussels in violation~~
6 ~~of a municipal ordinance adopted pursuant to section 6671.~~

7 **Sec. 12. 12 MRSA §6856, sub-§3-D**, as amended by PL 2015, c. 68, §11, is
8 repealed.

9 **Sec. 13. 25 MRSA §2801-B, sub-§1, ¶F**, as repealed and replaced by PL 2001,
10 c. 710, §11 and affected by §12, is repealed.

11 **Sec. 14. 25 MRSA §2804-I**, as enacted by PL 1999, c. 682, §5, is amended to
12 read:

13 **§2804-I. Law enforcement training for harbor masters**

14 Harbor masters ~~and municipal shellfish conservation wardens~~ must successfully
15 complete the preservice law enforcement training requirements in section 2804-B and the
16 in-service law enforcement training requirements in section 2804-E in order to have the
17 power to make arrests or to carry a firearm. Harbor masters ~~and municipal shellfish~~
18 ~~conservation wardens~~ are exempt from section 2804-C.

19 **Sec. 15. 38 MRSA §410-I, sub-§3**, as enacted by PL 2009, c. 213, Pt. FFFF, §4,
20 is amended to read:

21 **3. Annual coastal water quality monitoring and remediation planning.** The
22 department shall in coordination with the public health division of the Department of
23 Marine Resources create an annual work plan outlining priorities for the monitoring and
24 classification of shellfish growing areas and for hydrographic studies in shellfish growing
25 areas. The work plan must also prioritize remediation projects that will improve water
26 quality within shellfish growing areas. Staff from both agencies must be assigned in
27 determining responsibilities of the work plan. The Department of Marine Resources shall
28 solicit priorities from the Shellfish Advisory Council established under Title 12, section
29 6038 ~~and from municipalities with approved municipal shellfish programs for work~~
30 ~~within shellfish growing areas in those communities.~~ In order for municipal
31 recommendations to be considered for inclusion in a work plan, the municipality must
32 commit to assist in the identification and remediation of nonpoint source pollution,
33 including failing subsurface wastewater disposal systems, in areas affecting the water
34 quality of shellfish growing areas.

35 The agencies shall prepare a draft work plan by February 1st of each year and make it
36 available for review at a regularly scheduled meeting of the Shellfish Advisory Council,
37 set out under Title 12, section 6038.

38 The agencies shall begin implementing the work plan by March 1st annually.

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SUMMARY

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This bill eliminates the authority of a municipality to adopt a shellfish conservation program and ordinance and prohibits a municipality from adopting or enforcing an ordinance that regulates shellfish, provides protection from shellfish predators or

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authorizes municipal officials to open and close flats.