

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting.

**2. Limited duty.** An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

**3. Permissive use.** An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

- A. Extend any assurance that the premises are safe for those purposes;
- B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or
- C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

**4. Limitations on section.** This section does not limit the liability that would otherwise exist:

- A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;
- B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:
  - (1) The landowner or the landowner's agent by the State; or
  - (2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, provided that as long as the premises are not used primarily for commercial recreational purposes and that as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

**5. No duty created.** Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

**6. Costs and fees.** The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

See title page for effective date.

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## CHAPTER 567

### S.P. 667 - L.D. 1727

#### An Act Concerning Special Licenses in the Department of Marine Resources

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

**Sec. 1. 12 MRSA §6074, first ¶**, as amended by PL 1989, c. 204, §1, is further amended to read:

~~The commissioner may, with the advice and consent of the advisory council, issue a special license for research, aquaculture or education, which that exempts the holder from one or more marine resources' laws as to the time, place, length, condition, amount and manner of taking or possessing any a marine organism. Special licenses issued by the commissioner to employees of the department when they are acting in their capacity as employees under the direction of the commissioner or the commissioner's designated representative do not require the advice and consent of the advisory council. Except as provided in subsection 8, the commissioner may not issue a special license unless the application for that license is approved by the advisory council.~~

**Sec. 2. 12 MRSA §6074, sub-§8** is enacted to read:

**8. Council approval not required.** Approval by the advisory council is not required for a special license issued by the commissioner to the following:

- A. An employee of the department when the employee is acting under the direction of the

commissioner or the commissioner's designated representative;

B. A person who operates an aquarium;

C. A person who operates a festival;

D. A person who undertakes a public service activity; or

E. A municipality that operates a hydraulic or mechanical soft-shell clam dredge for municipal transplanting projects under section 6623.

See title page for effective date.

**CHAPTER 568**

**S.P. 673 - L.D. 1733**

**An Act to Clarify Certain Provisions of Law Pertaining to Lobster Management**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** lobster fishing is essential to the culture and economy of Maine's coastal communities; and

**Whereas,** the State's lobster laws need amending to enable participants in the lobster fishery to obtain licenses in 1996; and

**Whereas,** certain provisions of the State's lobster laws are in need of clarification; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 12 MRSA §6421,** as amended by PL 1995, c. 468, §3, is further amended to read:

**§6421. Lobster and crab fishing licenses**

**1. License required.** It is unlawful for any person to engage in the activities authorized by this license under this section without a current Class I, Class II, Class III, ~~Class IV~~ or apprentice, student or noncommercial lobster and crab fishing license or other license issued under this Part authorizing the activities.

**2. Licensed activity.** The holder of a Class I, Class II, Class III, ~~Class IV~~ apprentice or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

**2-A. Licensed activity; noncommercial license.** The holder of a noncommercial lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs the license holder has taken. The license does not authorize the license holder to sell lobsters or to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.

**3-A. License limitation.** A license authorizes activities by individuals as follows.

A. A Class I license authorizes the licensed activities under subsection 2 by the individual who is named in the license. Any individual assisting or helping a Class I license holder in these activities must also be licensed.

B. A Class II license authorizes the license holder to engage in the licensed activities under subsection 2. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

C. A Class III license authorizes the license holder to engage in the licensed activities under subsection 2. A Class III license holder may engage 2 unlicensed crew members to assist in the licensed activities under the direct supervision of the Class III license holder.

~~D. A Class IV~~ An apprentice lobster and crab fishing license authorizes the apprentice so licensed to engage in the licensed activities under subsection 2 on that apprentice's sponsor's vessel when the apprentice's sponsor is on board the vessel. ~~A Class IV license holder person who holds an apprentice lobster and crab fishing license~~ may not tend any traps unless the traps are fished by the sponsor of the apprentice so licensed. For the purpose of this paragraph, "apprentice's sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

E. A student license authorizes the license holder to engage in the licensed activities ~~using not more than 150 lobster traps at any one time~~