

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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

J.S. McCarthy Company
Augusta, Maine
1999

Sec. 2. Effective date. This Act takes effect January 1, 2000.

Effective January 1, 2000.

CHAPTER 315

S.P. 153 - L.D. 473

**An Act to Clarify the Laws
Pertaining to the Importation of Fish**

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

Sec. 1. 12 MRSA §7201, sub-§1, as amended by PL 1997, c. 432, §28, is further amended to read:

1. Issuance. The commissioner may issue a license to cultivate and sell fish that have been either commercially grown within the State or imported from without the State except that the commissioner may not issue permits governing any aspect of either the commercial aquaculture of Atlantic salmon when intended for use in commercial aquaculture in coastal waters or the Atlantic salmon restoration program.

Sec. 2. 12 MRSA §7201, sub-§2, as amended by PL 1993, c. 419, §18, is further amended to read:

2. Fee. The fee for a license to sell commercially grown or imported fish is ~~\$21 for 1993, \$23 for 1994, \$24 for 1995 and \$25 for 1996 and every year thereafter annually.~~

Sec. 3. 12 MRSA §7202, sub-§1, as enacted by PL 1979, c. 420, §1, is amended to read:

1. Issuance. The commissioner may grant permits to introduce, import or transport any live ~~freshwater~~ fish or ~~eggs gametes~~ into the State or to receive or have in possession fish or ~~eggs gametes~~ so introduced, imported or transported if the commissioner determines that the species does not pose an unreasonable risk to any species of fish or other organism after evaluating fish health, habitat and population management issues. The commissioner may not adopt rules or issue permits governing any aspect of either the commercial aquaculture of Atlantic salmon when intended for use in commercial aquaculture in coastal waters or the Atlantic salmon restoration program.

Sec. 4. 12 MRSA §7202, sub-§2, ¶¶B and C, as enacted by PL 1979, c. 420, §1, are amended to read:

B. The name and address of the source; ~~and~~

C. A statement from a ~~recognized fish pathologist, from a college or university, from a state conservation department or from the United States Fish and Wildlife Service~~ an American Fisheries Society certified fish health inspector, an American Fisheries Society certified fish pathologist or a licensed accredited veterinarian, certifying that the fish or ~~eggs gametes~~ are from sources ~~which that~~ show no evidence of viral hemorrhagic septicemia, infectious pancreatic necrosis, infectious hematopoietic necrosis, Myxosoma cerebralis or other diseases ~~which that~~ may threaten fish stocks within the State; ~~and~~

Sec. 5. 12 MRSA §7202, sub-§2, ¶D is enacted to read:

D. Other professionally recognized tests or analyses, including evaluation of fish health, habitat or population management issues that the commissioner may require by rule to ensure that the species will not pose an unreasonable risk to any species of fish or other organism.

Sec. 6. 12 MRSA §7202, sub-§3 is enacted to read:

3. Rules. The commissioner may adopt rules allowing the importation of certain species of tropical ~~fish and goldfish without a permit, for aquarium purposes only, if the commissioner determines that the species does not pose an unreasonable risk to any species of fish or other organism after evaluating fish health, habitat and population management issues.~~ Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 316

S.P. 708 - L.D. 2017

**An Act to Allow the Taking of
Endangered or Threatened Species
Under the Authority of the
Department of Inland Fisheries and
Wildlife**

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

Sec. 1. 12 MRSA §7756, as amended by PL 1987, c. 175, §2, is further amended to read:

§7756. Prohibited acts

For the purposes of this section, "to take, take and taking" means the intentional or negligent act or omission that results in the death of any endangered or threatened species.

1. Misuse of endangered or threatened species. A person is guilty, except as provided in subsection 2, of misuse of an endangered or threatened species if that person does any of the following:

A. Exports Imports into the State or exports out of the State any endangered or threatened species from the State;

B. Hunts, takes, traps or possesses any endangered or threatened species within the State;

C. Possesses, processes, sells, offers for sale, delivers, carries, transports or ships, by any means whatsoever, any endangered or threatened species or any part of an endangered or threatened species; or

D. Deliberately feeds, sets bait for or harasses any endangered or threatened species, except as allowed under subsection 2, paragraph A. A warning ~~shall~~ must be issued for the first violation. The 2nd violation ~~shall be~~ is punishable as a Class E crime.

2. Exceptions. Notwithstanding subsection 1, the commissioner may:

A. Under such terms and conditions as ~~he~~ the commissioner may prescribe, permit any act prohibited by this section, for educational or scientific purposes or to enhance the propagation or survival of an endangered or threatened species; ~~and~~

B. Under such terms and conditions as ~~he~~ the commissioner may prescribe, permit any endangered or threatened species ~~which~~ that enters the State and is being transported to a point outside the State to be so entered and transported without restriction in accordance with the terms of any federal or state permit;

C. Permit the taking of any endangered species or threatened species if:

(1) Such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity;

(2) The taking will not impair the recovery of any endangered species or threatened species; and

(3) The person develops and implements an incidental take plan approved by the commissioner to take an endangered spe-

cies or threatened species pursuant to paragraph D; and

D. Allow a plan that minimizes the incidental taking of an endangered species or threatened species that specifies the following:

(1) A description of the specific activities sought to be authorized by the incidental take permit and an analysis of potential alternatives;

(2) The individual and cumulative effects that may reasonably be anticipated to result from the proposed actions covered by the plan;

(3) The recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects and any provisions that are necessary to prevent, minimize and mitigate circumstances that are likely to impair the recovery of any endangered or threatened species covered by the plan;

(4) The procedures for monitoring the effectiveness of the recovery measures in the plan;

(5) The anticipated costs of implementing the plan and the availability of necessary funding for the applicant to implement the plan; and

(6) Other modifications to the plan or other additional measures, if any, that the department may require and such other matters as the department determines to be necessary for the recovery of species consistent with this section.

3. Plan review. The department shall seek input from knowledgeable individuals or groups on each incidental take plan for endangered or threatened species.

4. Failure to comply. If any person fails to abide by the terms of any permit authorizing the incidental taking of an endangered or threatened species, the permit must be immediately suspended or revoked.

See title page for effective date.