

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

may receive money from any source for the purposes described in subsection 2.

§6810. Method of fishing

1. Authorized traps. It is unlawful to fish for green crabs under a license issued pursuant to subsection 6808 with traps not authorized by the commissioner.

2. Trap design; rules. The commissioner shall establish authorized green crab trap designs by rule. Rules adopted by the commissioner pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	2001-02	2002-03
MARINE RESOURCES, DEPARTMENT OF		
Division of Administrative Services		
All Other	\$500	\$500
Provides initial allocations for the Green Crab Management Fund.		

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2001.

Effective July 1, 2001.

CHAPTER 187

S.P. 394 - L.D. 1309

**An Act to Amend the Laws
Pertaining to the Harvest of Adult
Eels**

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

Sec. 1. 12 MRSA §6505-C, sub-§2, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

2. Exemptions. A person may fish for or take for personal use ~~an eel~~ eels in the coastal waters of the State by speargun, harpoon, trap or hook and line and may possess or transport ~~that eel~~ eels that person has taken pursuant to this subsection. The department shall adopt rules establishing a limit on the number of eels that a person may fish for, take, possess or transport pursuant to this subsection. 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 188

H.P. 1266 - L.D. 1717

**An Act to Amend the Laws
Pertaining to Municipal Shellfish
Management**

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

Sec. 1. 12 MRSA §6671, sub-§2, as amended by PL 1995, c. 531, §1, is further amended to read:

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance ~~regulating the possession of shellfish in any area of the municipality~~ as provided by this section. A municipality may establish a municipal shellfish management committee comprised of residents of that municipality may be established to administer a municipal program.

Sec. 2. 12 MRSA §6671, sub-§3, as amended by PL 1999, c. 255, §1 and affected by §8, is repealed and the following enacted in its place:

3. Shellfish conservation ordinance. The following provisions govern a shellfish conservation ordinance.

A. Within any area of the municipality, a shellfish conservation ordinance may:

- (1) Regulate or prohibit the possession of shellfish;
- (2) Fix the amount of shellfish that may be taken;
- (3) Provide for protection from shellfish predators; and
- (4) Authorize the municipal officials to open and close flats under specified conditions.

B. An ordinance must limit the size of soft-shell clams in accordance with article 5.

C. Except as provided in section 6621, subsection 3, paragraph C, a program or ordinance may not allow surveying, sampling or harvesting of

shellfish in areas closed by regulation of the commissioner.

Sec. 3. 12 MRSA §6671, sub-§3-A, as amended by PL 1999, c. 255, §2 and affected by §8, is further amended to read:

3-A. Shellfish conservation licensing. A shellfish conservation ordinance may fix the qualifications for a license, including municipal residency, subject to the following provisions.

~~A. A person is not required to hold a shellfish license issued by the commissioner under section 6601 in order to obtain a municipal commercial license. A municipality may issue licenses under this section regardless of whether or not the area has been closed by the commissioner. A person taking shellfish from a closed area for depuration under a depuration certificate issued by the commissioner is not required to hold a municipal shellfish license.~~

A-1. The following exceptions apply.

(1) An individual is not required to hold a shellfish license issued by the commissioner under section 6601 in order to obtain a municipal commercial license.

(2) A municipality may issue licenses under this section regardless of whether or not the area has been closed by the commissioner.

(3) An individual taking shellfish from a closed area for depuration under a depuration certificate issued by the commissioner is not required to hold a municipal shellfish license.

B. A shellfish conservation ordinance may fix license fees as follows.

(1) If the ordinance sets a fee of \$200 or less for a resident license, the fee for a nonresident license may not exceed twice the resident fee.

(2) If the ordinance sets a fee of more than \$200 for a resident license, the fee for a nonresident license may not exceed 1 1/2 times the resident fee.

C. Application methods and procedures for licenses may be determined by the shellfish conservation ordinance subject to the provisions of this section. Notice of the number and the procedure for application shall must be published in a trade or industry publication or in a newspaper or combination of newspapers with general cir-

ulation ~~which~~ that the municipal officers consider effective in reaching ~~persons~~ individuals affected not less than 10 days prior to the period of issuance and ~~shall must~~ be posted in the municipal offices until the period of issuance concludes. The period of issuance for resident and nonresident licenses ~~shall must~~ be the same. Subsequent to ~~that~~ the period of issuance, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

D. Except as otherwise provided in this section, a shellfish conservation ordinance ~~shall may~~ not discriminate between resident license holders and nonresident license holders.

E. ~~The municipality~~ A licensing authority shall provide and reserve a minimum number of commercial licenses for nonresidents ~~which shall be~~ a. The number of nonresident commercial licenses may not be less than 10% of the number of commercial licenses provided for residents. When the number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license ~~shall must~~ be provided. When the number of resident commercial licenses is 5 or fewer, nonresident commercial licenses ~~shall are~~ not be required.

F. When 2 or more municipalities have entered into a regional shellfish management agreement pursuant to subsection 7, the combined total number of commercial licenses for nonresidents provided by those municipalities must be a number not less than 10% of the combined total number of commercial licenses issued for residents. When the combined total number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the combined total number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

~~G. A municipality that issues recreational licenses to residents shall also make available to nonresidents recreational licenses in a number that is not less than 10% of the number of recreational licenses issued to residents. When 2 or more municipalities have entered into a regional shellfish management agreement and those municipalities issue recreational licenses to residents pursuant to the agreement, the combined total number of recreational licenses made available to nonresidents must be a number not less than 10% of the combined total number of recreational licenses issued to residents.~~

~~For the purposes of this paragraph, the term "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.~~

G-1. A licensing authority that issues recreational licenses to residents shall also make available to nonresidents recreational licenses. The number of nonresident recreational licenses may not be less than 10% of the number of recreational licenses issued to residents.

For the purposes of this paragraph, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

For purposes of this subsection, "licensing authority" means a municipality or 2 or more municipalities that have entered into a regional shellfish management agreement pursuant to subsection 7.

Sec. 4. 12 MRSA §6671, sub-§4, ¶C, as enacted by PL 1991, c. 390, §5, is repealed and the following enacted in its place:

C. Unorganized townships may adopt ordinances if:

(1) At least 10 inhabitants have petitioned the county commissioners to adopt the ordinances;

(2) The county commissioners of the townships have held a public hearing with at least 7 days' prior notice in one of the affected townships; and

(3) A majority of the inhabitants eligible to vote voting at referendum approve the ordinances.

The county commissioners act as the municipal legislative body within unorganized townships that have elected to adopt ordinances under this section.

Sec. 5. 12 MRSA §6671, sub-§4-B, as amended by PL 1999, c. 255, §5 and affected by §8, is further amended to read:

4-B. Management program approval. The commissioner may adopt rules that set the criteria that ~~must be met by~~ municipal shellfish conservation programs and ordinances must meet in order to ~~obtain approval~~ be approved by the commissioner.

Sec. 6. 12 MRSA §6671, sub-§5, as amended by PL 1979, c. 608, §3, is further amended to read:

5. Period of ordinance. Ordinances adopted under this section ~~shall~~ may not remain in effect for ~~no~~

more than 3 years. A certified copy of the ordinance ~~shall~~ must be filed with the commissioner within 20 days of ~~its~~ the adoption ~~of the ordinance.~~

Sec. 7. 12 MRSA §6671, sub-§7, as amended by PL 1995, c. 531, §3, is further amended to read:

7. Joint programs; reciprocal privileges. Municipalities may enter into regional shellfish management agreements with other municipalities and adopt regional shellfish management programs. The agreements, and the programs and ordinances adopted under them, are subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a regional shellfish management agreement may be extended to the residents of other municipalities in the agreement. ~~Notwithstanding subsection 2, a~~ A regional shellfish management committee comprised of at least one resident from each municipality named in the regional agreement may be established to administer a regional program.

Sec. 8. 12 MRSA §6671, sub-§8, as amended by PL 1999, c. 682, §1, is further amended to read:

8. Local enforcement. The following provisions ~~shall~~ apply to enforcement.

A. A municipality that enacts an ordinance under this section ~~shall be~~ is responsible for enforcing it.

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this article, ~~within one year of appointment,~~ must be certified by the commissioner within one year of the warden's appointment. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The program must include training in sampling techniques for the detection of pollutants and contaminants in shellfish areas. The commissioner may establish by rule procedures for certification, recertification and ~~for~~ revocation of certification. ~~A certificate~~ The commissioner may be revoked revoke a certificate for failure of the warden to comply with the performance standards ~~established by the commissioner.~~

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing the warden and, if the warden is authorized by the municipality and

meets the training requirements of Title 25, section 2804-I, the warden may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden also has, within that warden's jurisdiction, the powers of a marine patrol officer provided in section 6025, subsection 4. All of the powers conferred in this subsection are limited to the enforcement of a municipal shellfish conservation ordinance.

At the commissioner's request, a certified municipal shellfish conservation warden may collect samples and otherwise assist the department in the detection of pollutants and contaminants. The commissioner is not required to conduct tests on samples not requested by the commissioner.

See title page for effective date.

CHAPTER 189

S.P. 113 - L.D. 339

An Act to Address Violence in Schools

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

Sec. 1. 20-A MRSA §§6804 and 6806, as enacted by PL 1981, c. 693, §§5 and 8, are amended to read:

§6804. Disturbing schools

A person who enters the property of a public or private school ~~building~~ or another place of instruction during or out of school hours, while the teacher or student is present, and willfully interrupts or disturbs the teacher or student by loud speaking, rude or indecent behavior, signs or gestures, or engages in hostile, aggressive or threatening behavior toward a student, teacher, administrator or other staff member, or willfully interrupts a school by prowling about the building, making noises, throwing missiles at the schoolhouse or disturbing the school, ~~shall commit~~ commits a civil offense and shall forfeit not less than ~~\$2~~ \$200 nor more than ~~\$20~~ \$500.

§6806. Defacing schoolhouses; outbuildings

A person who defaces, ~~damages or destroys~~ the walls, benches, seats, blackboards or other parts of a schoolhouse or school outbuildings, ~~by obscene pictures, language, marks or descriptions~~, commits a civil offense and shall pay a ~~fine of not more than \$10~~ double the damages.

Sec. 2. 20-A MRSA §6807, as amended by PL 1983, c. 806, §62, is further amended to read:

§6807. Liability for injury to books or appliances

If a public school student loses, destroys or unnecessarily injures a schoolbook or appliance furnished to the student at the expense of the school administrative unit, the student's parent ~~shall~~ must be notified. If the loss or damage is not made good to the satisfaction of the school board within ~~a reasonable time~~ 45 working days, ~~they~~ the board shall report the case to the assessors of the municipality in which the student resides. The municipal assessors shall include in the next municipal tax of the delinquent parent the ~~value~~ replacement costs of the book or appliance, to be assessed and collected as other municipal taxes, and the money collected must go the municipality.

See title page for effective date.

CHAPTER 190

H.P. 464 - L.D. 592

An Act to Ensure that Fishways on Tidal Waters are Working

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

Sec. 1. 12 MRSA §6121, sub-§2, as repealed and replaced by PL 1983, c. 388, §1, is amended to read:

2. Examination of dams. The commissioner shall ~~periodically~~ annually examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous fish.

Sec. 2. 12 MRSA §6121, sub-§7, as repealed and replaced by PL 1983, c. 388, §1, is amended to read:

7. Privileged entry. The commissioner, ~~his~~ the ~~commissioner's~~ agents or subcontractors ~~shall be~~ are privileged to enter upon any private land in order to ~~periodically~~ at least annually examine, at least annually, fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall restore