

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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SEPTEMBER 13, 2003

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
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under section ~~6078~~, ~~subsections 4 and 7~~ 6078-A, ~~subsections 3 and 4~~.

4. Chair and officers. The council annually shall choose one of its members to serve as chair for a one-year term. The council may select other officers and designate their duties.

5. Meetings. The council shall meet at least once each year. It may also meet at other times at the call of the chair or the chair's designee or the commissioner or the commissioner's designee. The council may conduct a meeting by means of a conference call linking 2 or more members of the council.

Sec. 21. Transfers from existing accounts. The Department of Marine Resources may transfer the existing balance and encumbrances from the Salmon Aquaculture Monitoring, Research and Development Fund at any time prior to its lapsing to the Aquaculture Monitoring, Research and Development Fund in order to fund any of the activities outlined in the Maine Revised Statutes, Title 12, section 6080.

Sec. 22. Transition clause. The operation, purpose, duties and obligations of the Maine Salmon Aquaculture Advisory Council are transferred to the Aquaculture Advisory Council. Members serving on the Maine Salmon Aquaculture Advisory Council on the effective date of this Act may continue to serve out their terms as members of the Aquaculture Advisory Council.

See title page for effective date.

CHAPTER 248

H.P. 1076 - L.D. 1471

An Act To Correct Certain Errors and Inconsistencies in Laws Relating to Marine Resources

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

Sec. 1. 12 MRSA §6001, sub-§8, as enacted by PL 1977, c. 661, §5, is amended to read:

8. Common carrier. "Common carrier" means a vehicle engaged in carrying goods for profit in interstate commerce, ~~which that~~ that is licensed by the ~~Interstate Commerce Commission~~ Federal Highway Administration.

Sec. 2. 12 MRSA §6171-B, sub-§1, ¶A, as enacted by PL 1999, c. 297, §1, is amended to read:

A. "Emerging fishery" means the commercial fishing for any marine organism, except ~~shrimp~~,

herring and groundfish species, that requires a commercial fishing license issued under section 6501.

Sec. 3. 12 MRSA §6174, as enacted by PL 1977, c. 661, §5, is amended to read:

§6174. Rules as law; proof of rules; penalty

1. Rules as law. All ~~regulations of rules adopted by~~ regulations ~~shall~~ are the force of law.

2. Proof of rules. A certified copy of a ~~regulation shall be~~ rule is admissible in court to prove the ~~regulation rule~~ and ~~shall be~~ is prima facie evidence that the ~~regulation rule~~ rule was properly adopted. A ~~regulation shall~~ rule must be personally certified by the commissioner, deputy commissioner or Chief of the Bureau of Marine Patrol and ~~shall must~~ must be accompanied by ~~his~~ his a signed statement that it was in force on the date of the alleged violation. The certified copy ~~shall be~~ is admissible in evidence on the testimony of a marine patrol officer that ~~he~~ the patrol officer received the certified ~~regulation rule~~ rule after requesting it by telephone or otherwise from the department. No further foundation ~~shall be~~ is necessary for the admission of the certified copy.

3. Penalty. Whoever violates a ~~regulation shall be punished by the penalties under section 6204, unless a specific penalty is otherwise authorized and provided rule commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.~~ rule shall be punished by the penalties under section 6204, unless a specific penalty is otherwise authorized and provided rule commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.

Sec. 4. 12 MRSA §6191, as enacted by PL 1977, c. 661, §5, is amended to read:

§6191. Rulemaking

1. Procedures. In adopting or amending any ~~regulation rule~~ rule, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act, Title 5, chapter 375, and the additional requirements of this subchapter.

2. Other requirements.

A. A public hearing may be held but is not required unless it is requested by an interested person.

B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.

C. ~~No regulation~~ A rule, except a ~~regulation rule~~ rule authorized under section 6172, ~~shall may not~~ may not be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.

Sec. 5. 12 MRSA §6192, as amended by PL 1993, c. 42, §1, is further amended to read:

§6192. Emergency rulemaking

1. Procedures. In an emergency adoption of a rule or amendment to a rule, the commissioner may modify the procedures required under the Maine Administrative Procedure Act and section 6191 in the following manner.

A. In an emergency adoption of a rule or amendment of ~~rules~~ to a rule relating to the public health and safety, including rules authorized under section 6172, prior public notice and hearing ~~shall is~~ not be required.

B. In an emergency adoption of a rule or amendment of ~~rules~~ to a rule relating to the general welfare, as authorized by section 6171, the rule ~~shall be~~ is effective immediately, as provided in subsection 4. A public hearing ~~shall~~ must be held in the affected area immediately thereafter if requested of the commissioner in writing by 5 persons. The hearing ~~shall~~ must be held within 30 days of the commissioner receiving the written request. Notice of that hearing ~~shall~~ must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area.

C. In an emergency adoption of a rule or amendment of ~~rules~~ to a rule relating to gear conflicts, as authorized by section 6171-A, the ~~regulation shall be~~ rule is effective immediately, as provided in subsection 4. Prior public notice and hearing ~~shall is~~ not be required. Notwithstanding any other provisions of law, a public hearing ~~shall~~ must be held in the affected area immediately if requested of the commissioner in writing by 5 persons. The hearing ~~shall~~ must be held within 30 days of the commissioner receiving the written request. Notice of that hearing ~~shall~~ must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area. The commissioner shall decide within 5 business days after the hearing whether to continue or repeal the emergency closure. ~~His~~ The commissioner's findings of fact must include the justification for the repeal or continuance of the closure, an analysis of the objections expressed at the public hearing and the date for the end of the closure. Emergency ~~regulations~~ rules under this paragraph may be repealed by the advisory council.

2. Advisory council. The advice and consent of the advisory council ~~shall is~~ not be required prior to an emergency adoption of a rule or amendment to a rule.

3. Effective period. Any emergency ~~regulation~~ rule is effective only for 90 days, or any lesser period of time specified in the ~~emergency regulation~~ rule. After the expiration of the emergency period, the ~~regulation shall not thereafter~~ rule may only be adopted ~~except in the manner as~~ provided by section 6191. This subsection ~~shall~~ does not apply to emergency ~~regulations~~ rules authorized under section 6172, which ~~shall be~~ are effective until repealed.

4. Effective date. Except as provided in this subsection, emergency ~~regulations~~ rules become effective immediately upon publication in a newspaper of general circulation in the area of the State affected, provided ~~it is~~ those rules are submitted to the Attorney General and filed with the Secretary of State as required under the Maine Administrative Procedure Act, Title 5, chapter 375, within the next business day following publication.

Notwithstanding any provisions of the Maine Administrative Procedure Act, an emergency ~~regulation~~ rule authorized by section 6172, subsection 2 or 3 is effective immediately upon signature by the commissioner or the commissioner's authorized designee. Upon signing an emergency ~~regulation~~ rule that closes or opens an area or waters to the taking of marine organisms, the commissioner or the commissioner's authorized designee shall give oral notice of that action to local governmental authorities and shall publish notice of a closure as soon as possible in a newspaper of general circulation in the area of the State affected. Marine patrol officers shall take action to prevent taking of shellfish from a closed area, including the embargo of contaminated shellfish under section 6856, subsection 6 and the arrest of any person violating the emergency ~~regulation~~ rule.

5. Repeal. Emergency ~~regulations~~ rules may be repealed in the same manner as they are adopted.

Sec. 6. 12 MRSA §6204, as enacted by PL 1977, c. 661, §5, is amended to read:

§6204. General penalty

A violation of any provision of marine resources' laws ~~or any regulation authorized thereunder or adopted by legislative directive shall be~~ is a Class D crime, unless another penalty has been expressly provided.

Sec. 7. 12 MRSA §6701, sub-§2, as amended by PL 2001, c. 421, Pt. B, §40 and affected by Pt. C, §1, is further amended to read:

2. Licensed activity. The holder of a hand fishing scallop license may take scallops by hand or possess, ship, transport or sell shucked scallops the holder has taken.

Sec. 8. 12 MRSA §6702, sub-§2, as amended by PL 1997, c. 572, §2, is further amended to read:

2. Licensed activity. A boat licensed under this section may be used for dragging for scallops and to possess, ship, sell or transport shucked scallops taken under the license. The license also authorizes the captain and crew members aboard the licensed boat when engaged in dragging for scallops to undertake these activities.

Sec. 9. 12 MRSA §6749-Y, as enacted by PL 1995, c. 595, §5, is amended to read:

§6749-Y. Penalty

Notwithstanding section 6204 and unless otherwise specified, a person who violates or fails to comply with this subchapter commits a Class D crime that is punishable by a fine of not less than \$500. The fine may not be suspended.

Sec. 10. 12 MRSA §6804, as amended by PL 2001, c. 421, Pt. B, §§51 and 52 and affected by Pt. C, §1, is further amended to read:

§6804. Commercial northern shrimp license

1. License required. A person may not engage in the activities authorized under this section without a current commercial northern shrimp license.

2. Licensed activities. The holder of a commercial northern shrimp license may fish for or take shrimp or possess, ship, transport or sell northern shrimp that the license holder has taken. A license issued under subsection 7, paragraph B or C also authorizes unlicensed crew members aboard the vessel declared by the license holder to engage in these activities.

3. Boat declaration. The license holder shall declare the name of the vessel to be used for fishing under the commercial northern shrimp license at the time of application for the license and may not change that declaration during the license year unless the original vessel is sold and replaced, has been damaged and will be under repair for not less than one month or has been destroyed or lost.

4. Reporting. The commissioner shall adopt rules regarding data that the holder of a commercial northern shrimp license must submit to the department. The commissioner may deny an application for the renewal of a license issued under this section if the license holder fails to report the information required pursuant to this subsection.

5. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport northern shrimp only for personal use.

6. Eligibility. A commercial northern shrimp license may be issued only to an individual.

7. Fees. Fees for the commercial northern shrimp license are as follows:

A. Thirty-three dollars for a resident license that authorizes the license holder to engage in the licensed activities under subsection 2;

B. Eighty-nine dollars for a resident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2; and

C. Three hundred and thirty-four dollars for a nonresident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2.

8. Disposition of fees. All fees for commercial northern shrimp licenses must be deposited in the Shrimp Management Fund established in section 6805.

9. Violation. A person who violates this section commits a civil violation for which a ~~forfeiture~~ fine of not less than \$100 nor more than \$500 may be adjudged.

Sec. 11. 12 MRSA §6856, as amended by PL 2001, c. 112, §§2 to 4, is further amended to read:

§6856. Shellfish sanitation and depuration certificate

1. Shellfish sanitation certificate. A person may not undertake the processing, buying, selling, shipping, transporting or shucking of shellfish or whole scallops without a shellfish sanitation certificate ~~authorizes unless authorized under section 6701 or 6702.~~ The commissioner may issue a shellfish sanitation certificate to a wholesale seafood license holder or a shellfish transportation license holder that authorizes the holder to undertake the activities expressly authorized therein, which may include buying and selling, shipping, transporting, shucking or other processing of shellfish or whole scallops. A wholesale seafood license or shellfish transportation license is also necessary to undertake the activities authorized under those licenses.

2. Express authorizations. The commissioner shall expressly state the authorized activities on each shellfish sanitation certificate. The activities authorized ~~shall~~ must be sufficient to allow the holder to carry out ~~his~~ the holder's wholesale or transportation operations, ~~provided they~~ except that the operations

may be limited to the extent required to protect the public health.

3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ~~assure~~ ensure the public safety. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must consult with a municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.

4. Rules. The commissioner may adopt or amend ~~regulations~~ rules concerning:

- A. The procedures for issuing certificates and the required qualifications for each type of certificate;
- B. The minimum sanitation standards for establishments and vehicles;
- C. The sanitation and quality control standards for shellfish and whole scallops and their products;
- D. The methods for taking, handling, shipping, transporting and processing of shellfish and whole scallops taken from closed areas;
- E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish and whole scallops;
- F. The labeling or marking of shipments of shellfish and whole scallops; and
- G. Other ~~regulations~~ rules necessary to the public health.

The ~~regulations~~ rules must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety

while allowing reasonable use of the State's shellfish and whole scallops.

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or ~~his~~ the commissioner's agent, ~~shall~~ must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access ~~shall be~~ is grounds for suspension or revocation of any certificate or license under the provisions of section 6373.

6. Products embargoed and condemned. The commissioner, or the commissioner's agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish, shellfish product or whole scallop in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health, or otherwise unsafe. The commissioner and the commissioner's agent shall cooperate with those state and federal agencies, having similar responsibility, in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish, shellfish product or whole scallop in any establishment is embargoed, condemned or ordered destroyed, the commissioner, or the commissioner's agent, shall, as soon thereafter as practical, notify the owner in writing of the amount and kind of shellfish, shellfish product or whole scallop embargoed, condemned or destroyed.

7. Resident depuration harvesters. When harvesting soft-shelled clams under a depuration certificate, the person holding the certificate shall, to the extent possible, employ one person who is a resident of the municipality as harvester for every person employed as harvester who is not a resident of that municipality.

8. Payments to municipalities. A person holding a depuration certificate shall pay each municipality an amount equal to 50¢ for each bushel of soft-shelled clams taken in that municipality under that depuration certificate. When submitting payment to a municipality under this subsection, the depuration certificate holder shall include a copy of the applicable record and report of takings submitted to the department pursuant to rules adopted under subsection 4.

See title page for effective date.

CHAPTER 249

S.P. 522 - L.D. 1553

An Act To Permit Special Purpose Reinsurance Vehicles