

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

~~within turnpike property will be solely for the use of the authority;~~

See title page for effective date.

CHAPTER 573

S.P. 634 - L.D. 1702

An Act To Provide for Department of Marine Resources Jurisdiction Over Certain Sections of the State's Endangered Species Program

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

Whereas, certain marine resources of the State are in need of protection; and

Whereas, the Department of Marine Resources is uniquely qualified to ensure the protection of marine species; and

Whereas, the Department of Marine Resources needs clear authority over the State's endangered and threatened marine species to obtain federal funding for the protection of those species; 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 c. 631 is enacted to read:

CHAPTER 631

ENDANGERED OR THREATENED MARINE SPECIES

§6971. Commissioner's authority over marine endangered and threatened species

In accordance with section 12801, the commissioner has authority as provided in this chapter to carry out the purpose of that section with regard to marine species.

§6972. Commissioner's programs

The commissioner may establish such programs as are necessary for the protection of marine species listed pursuant to this chapter in order to achieve

compliance with the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

§6973. Designation of marine species as state endangered or state threatened

1. Commissioner's authority. The commissioner may recommend a marine species found in the State for designation as a state endangered or state threatened marine species if that species is listed as an endangered or threatened species by the United States Secretary of the Interior, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

2. Modification to list. The commissioner may recommend that a marine species designated as a state endangered or state threatened species be removed from the list in section 6975 or recommend other changes to that list.

3. Public notice and hearings. Prior to recommending an addition, deletion or other change to the list of state endangered and state threatened marine species in section 6975, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

§6974. Legislative authority

The Legislature has sole authority to designate a marine species as a state endangered or state threatened species or to remove a species or change the designation of a species listed in section 6975.

§6975. List of state endangered and state threatened marine species

The list of state endangered or state threatened marine species by common name, scientific name and status is as follows:

1. Right whale. Right whale, *Eubalaena glacialis*, endangered;

2. Humpback whale. Humpback whale, *Megaptera novaeangliae*, endangered;

3. Finback whale. Finback whale, *Balaenoptera physalus*, endangered;

4. Sperm whale. Sperm whale, *Physeter catodon*, endangered;

5. Sei whale. Sei whale, *Balaenoptera borealis*, endangered;

6. Leatherback turtle. Leatherback turtle, *Dermochelys coriacea*, endangered;

7. Atlantic ridley turtle. Atlantic ridley turtle, *Lepidochelys kempii*, endangered; and

8. Loggerhead turtle. Loggerhead turtle, *Caretta caretta*, threatened.

§6976. Cooperative agreements

The commissioner may enter into agreements with federal agencies, other states, state agencies, political subdivisions of this State or private persons for the establishment and maintenance of programs for the conservation of state endangered or state threatened marine species and may receive all federal funds allocated for obligations to the State pursuant to these agreements. Federal funds received for the conservation of state endangered or state threatened marine species listed pursuant to this chapter must be allocated directly to the department to ensure compliance with any conditions of the listing.

§6977. Annual report

The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over marine resources matters and the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of state endangered or state threatened marine species. The commissioner shall notify the Legislature by January 1st of each year that the report has been delivered.

Sec. 2. 12 MRSA §7751, as enacted by PL 1979, c. 420, §1, is amended to read:

§7751. Declaration of purpose

The Legislature finds that various species of fish or wildlife have been and are in danger of being rendered extinct within the State of Maine, and that these species are of esthetic, ecological, educational, historical, recreational and scientific value to the people of the State. The Legislature, therefore, declares that it is the policy of the State to conserve, by according such protection as is necessary to maintain and enhance their numbers, all species of fish or wildlife found in the State, as well as the ecosystems upon which they depend.

This subchapter and chapter 631 are established to carry out the purposes of this section.

Sec. 3. 12 MRSA §7753, sub-§3, as amended by PL 1997, c. 290, §1, is further amended to read:

3. Legislative authority. The Legislature, as sole authority, shall designate a species as state endangered or state threatened species. The list of state endangered or state threatened species is as follows:

Common Name	Scientific Name	Status
Least Tern	<i>Sterna albifrons</i>	Endangered
Golden Eagle	<i>Aquila chrysaetos</i>	Endangered
Piping Plover	<i>Charadrius melodus</i>	Endangered
Sedge Wren	<i>Cistothorus platenis</i>	Endangered
Grasshopper Sparrow	<i>Ammodramus savannarum</i>	Endangered
Box Turtle	<i>Terrapene carolina</i>	Endangered
Black Racer	<i>Coluber constrictor</i>	Endangered
Roseate Tern	<i>Sterna dougallii</i>	Endangered
Northern Bog Lemming	<i>Synaptomys borealis</i>	Threatened
Loggerhead Turtle	<i>Caretta caretta</i>	Threatened
Blanding's Turtle	<i>Emydoidea blandingii</i>	Endangered
Black Tern	<i>Chlidonias niger</i>	Endangered
American Pipit	<i>Anthus rubescens</i>	Endangered
Peregrine Falcon	<i>Falco peregrinus</i>	Endangered
Flat-headed Mayfly	<i>Epeorus frisoni</i>	Endangered
Ringed Boghaunter	<i>Williamsonia lintneri</i>	Endangered
Clayton's Copper	<i>Lycaena dorcas claytoni</i>	Endangered
Edwards' Hairstreak	<i>Satyrrium edwardsii</i>	Endangered
Hessel's Hairstreak	<i>Mitoura hesseli</i>	Endangered
Katahdin Arctic	<i>Oenis polixenes katahdin</i>	Endangered
Spotted Turtle	<i>Clemmys guttata</i>	Threatened
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Threatened
Razorbill	<i>Alca torda</i>	Threatened
Atlantic Puffin	<i>Fratercula arctica</i>	Threatened
Harlequin Duck	<i>Histrionicus histrionicus</i>	Threatened

Arctic Tern	Sterna paradisaea	Threatened
Upland Sandpiper	Bartramia longicauda	Threatened
Swamp Darter	Etheostoma fusiforme	Threatened
Tidewater Mucket	Leptodea ochracea	Threatened
Yellow Lampmussel	Lampsilis cariosa	Threatened
Tomah Mayfly	Siphonisca aerodromia	Threatened
Pygmy Snaketail	Ophiogomphus howei	Threatened
Twilight Moth	Lycia rachelae	Threatened
Pine Barrens Zancloagnatha	Zancloagnatha martha	Threatened

Sec. 4. 12 MRSA §7754, sub-§4, as enacted by PL 1997, c. 290, §2, is amended to read:

4. Annual report. The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters and the joint standing committee of the Legislature having jurisdiction over marine resources matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of endangered or threatened species. When appropriate, this report may be combined with any transplantation report required under subsection 1, paragraph D. The commissioner shall notify the Legislature by January 1st of each year that the report has been delivered.

Sec. 5. 12 MRSA §12801, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read:

§12801. Declaration of purpose

The Legislature finds that various species of fish or wildlife have been and are in danger of being rendered extinct within the State of Maine, and that these species are of esthetic, ecological, educational, historical, recreational and scientific value to the people of the State. The Legislature, therefore, declares that it is the policy of the State to conserve, by according such protection as is necessary to maintain and enhance their numbers, all species of fish or wildlife found in the State, as well as the ecosystems upon which they depend.

This subchapter and chapter 631 are established to carry out the purposes of this section.

Sec. 6. 12 MRSA §12803, sub-§3, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is repealed and the following enacted in its place:

3. Legislative authority. The Legislature, as sole authority, shall designate a species as a state endangered or state threatened species. The list of state endangered or state threatened species by common name, scientific name and status is as follows:

A. Least tern, *Sterna albifrons*, endangered;

B. Golden eagle, *Aquila chrysaetos*, endangered;

C. Piping plover, *Charadrius melodus*, endangered;

D. Sedge wren, *Cistothorus platensis*, endangered;

E. Grasshopper sparrow, *Ammodramus sava-narum*, endangered;

F. Box turtle, *Terrapene carolina*, endangered;

G. Black racer, *Coluber constrictor*, endangered;

H. Roseate tern, *Sterna dougallii*, endangered;

I. Northern bog lemming, *Synaptomys borealis*, threatened;

J. Blanding's turtle, *Emydoidea blandingii*, endangered;

K. Black tern, *Chlidonias niger*, endangered;

L. American pipit, *Anthus rubescens*, endangered;

M. Peregrine falcon, *Falco peregrinus*, endangered;

N. Flat-headed mayfly, *Epeorus frisoni*, endangered;

O. Ringed boghaunter, *Williamsonia lintneri*, endangered;

P. Clayton's copper, *Lycaena dorcas claytoni*, endangered;

Q. Edwards' hairstreak, *Satyrium edwardsii*, endangered;

R. Hessel's hairstreak, *Mitoura hesseli*, endangered;

S. Katahdin arctic, *Oenis polixenes katahdin*, endangered;

T. Spotted turtle, *Clemmys guttata*, threatened;

U. Bald eagle, *Haliaeetus leucocephalus*, threatened;

V. Razorbill, *Alca torda*, threatened;

W. Atlantic puffin, *Fratercula arctica*, threatened;

X. Harlequin duck, *Histrionicus histrionicus*, threatened;

Y. Arctic tern, *Sterna paradisaea*, threatened;

Z. Upland sandpiper, *Bartramia longicauda*, threatened;

AA. Swamp darter, *Etheostoma fusiforme*, threatened;

BB. Tidewater mucket, *Leptodea ochracea*, threatened;

CC. Yellow lampmussel, *Lampsilis cariosa*, threatened;

DD. Tomah mayfly, *Siphonisca aerodromia*, threatened;

EE. Pygmy snaketail, *Ophiogomphus howei*, threatened;

FF. Twilight moth, *Lycia rachelae*, threatened; and

GG. Pine barrens zanclognatha, *Zanclognatha martha*, threatened.

Sec. 7. 12 MRSA §12804, sub-§4, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7, is amended to read:

4. Annual report. The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters and the joint standing committee of the Legislature having jurisdiction over marine resources matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of endangered or threatened species. When appropriate, this report may be combined with any transplantation report required under subsection 1, paragraph D. The commissioner shall notify the Legislature by January 1st of each year that the report has been delivered.

Sec. 8. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 12, sections 12801 and 12803 take effect 90 days after the adjournment of the Second Regular Session of the 121st Legislature.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise provided.

Effective March 24, 2004, unless otherwise indicated.

CHAPTER 574

H.P. 1358 - L.D. 1833

An Act To Amend Water Quality Laws To Aid in Wild Atlantic Salmon Restoration

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

Sec. 1. 38 MRSA §465, sub-§1, ¶C, as amended by PL 1999, c. 243, §8, is repealed and the following enacted in its place:

C. Except as provided in this paragraph, there may be no direct discharge of pollutants to Class AA waters.

(1) Storm water discharges that are in compliance with state and local requirements are allowed.

(2) A discharge to Class AA waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, is allowed if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(a) The department may issue no more than a total of 3 discharge licenses pursuant to this subparagraph and subsection 2, paragraph C, subparagraph (2).

(b) A discharge license issued pursuant to this subparagraph may not be effective for more than 5 years from the date of issuance.