

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
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

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

Penmor Lithographers
Lewiston, Maine
2004

meet to the extent necessary to fulfill its duties, including but not limited to work on pilot projects, in different regions of the State expressly for the purpose of receiving public comment and testimony on its work.

Sec. B-7. Reports. The interagency staff work group with the assistance of the project steering committee shall submit reports and updates on its work to the council as determined by the council. The council shall submit an interim report to the joint standing committee of the Legislature having jurisdiction over marine resources matters no later than January 15, 2006 updating the committee on the status and progress of the council's work. The council shall submit its final report and recommendations to the joint standing committee of the Legislature having jurisdiction over marine resources matters no later than January 15, 2007.

Sec. B-8. Funding. The Director of the State Planning Office shall use funds from the State Planning Office's existing resources and other outside sources for the costs incurred in carrying out the purposes of this Part.

PART C

Sec. C-1. Vision and principles for Maine aquaculture. The Legislature acknowledges that aquaculture is an important and compatible element of Maine's diverse coastal economy. Aquaculture contributes to satisfying global market demands and can benefit local communities and the public interest by producing high-quality products and providing economic opportunities and by operating in an environmentally sustainable fashion. The Legislature also recognizes that the State's planning and regulatory processes should be adaptive, inclusive and fair and should support the growth of the industry in an economically competitive and environmentally sustainable way. The following are guiding principles for aquaculture in Maine.

1. A working waterfront is critical to Maine's coastal future. Marine aquaculture can be a part of Maine's working waterfront.
2. Aquaculture is one of many uses of Maine's coastal environment that can be made compatible with other activities such as commercial fishing and in harmony with natural resources.
3. Marine aquaculture can be practiced in an environmentally sustainable fashion and need not cause permanent ecological damage.
4. Maine's aquaculture leasing program should practice integrity in all aspects of its operation.

5. Maine should encourage local participation in aquaculture permitting decisions.

6. Maine's aquaculture laws and regulations should provide flexibility to address change while recognizing both the need for regulatory stability and for stability in the use of the public resource.

7. Maine's aquaculture leasing process should provide for open communication among stakeholders.

8. Maine's aquaculture monitoring program should feature state-of-the-art environmental monitoring.

9. Marine aquaculture may flourish only with high water quality.

10. Marine aquaculture offers the potential to bring substantial economic value and diversity to the State and its communities.

11. Maine should create a welcoming environment for a range of investments in marine aquaculture.

12. Maine should encourage the development of locally owned and Maine-based operations.

13. Maine should provide and encourage incentives for innovation in marine aquaculture.

Sec. C-2. Appropriations and allocations. The following appropriations and allocations are made.

MARINE RESOURCES, DEPARTMENT OF

Bureau of Resource Management 0027

Initiative: Deallocates funds to reflect changes in the functioning of the Aquaculture Monitoring, Research and Development Fund.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$0	(\$229,730)
Other Special Revenue		
Funds Total	\$0	(\$229,730)

See title page for effective date.

CHAPTER 661

H.P. 1402 - L.D. 1892

An Act To Protect Public Health and the Environment by Providing for a System of Shared Responsibility for the Safe Collection and Recycling of Electronic Waste

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

Sec. 1. 38 MRSA §1310-B, sub-§2, as amended by PL 2001, c. 373, §1, is further amended to read:

2. Hazardous waste information and information on mercury-added products and electronic devices. Information relating to hazardous waste submitted to the department under this subchapter or information relating to mercury-added products submitted to the department under chapter 16-B or information relating to electronic devices submitted to the department under section 1609, subsection 6, paragraph B may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and employees of the municipality in which the hazardous waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to insure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret, production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection must be confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Sec. 2. 38 MRSA §1609 is enacted to read:

§1609. Electronic waste

1. Findings; purpose. The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, consolidation facilities, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet.

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a recycling and dismantling facility with a minimum 40-foot trailer used to collect covered electronic devices at municipal collection sites in this State.

C. "Covered electronic device" means a computer central processing unit, a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act.

D. "Manufacturer" means a person who manufactures and sells, by any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, a covered electronic device under its own brand or sells a covered electronic device produced by other suppliers under its own brand and label.

E. "Municipal collection site" means a municipally owned solid waste transfer station or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services.

F. "Office" means the Executive Department, State Planning Office.

G. "Orphan waste" means a covered electronic device, the manufacturer of which can not be identified or is no longer in business and has no successor in interest.

H. "Recycling" means the use of materials contained in previously manufactured goods as feedstock for new products, but not for energy

recovery or energy generation by means of combustion.

I. "Recycling and dismantling facility" means a business that processes covered electronic devices for reuse and recycling.

J. "Retailer" means a person who sells a covered electronic device in the State to a consumer. "Retailer" includes, but is not limited to, a manufacturer of a covered electronic device who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including wholesale transactions with a distributor or other retailer.

K. "Television" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to receive video programming via broadcast, cable or satellite transmission or video from surveillance or other similar cameras.

3. Sales prohibition. Beginning January 1, 2006 the following sales prohibitions apply to manufacturers and retailers.

A. A manufacturer not in compliance with this section is prohibited from offering a covered electronic device for sale in this State. A manufacturer not in compliance with this section shall provide the necessary support to retailers to ensure the manufacturer's covered electronic devices are not offered for sale in this State.

B. A retailer may not offer for sale in this State a covered electronic device of a manufacturer that is not in compliance with this section.

4. Manufacturer label required. Beginning January 1, 2005, a manufacturer may not offer for sale in this State a covered electronic device unless a visible, permanent label clearly identifying the manufacturer of that device is affixed to it.

5. Responsibility for recycling. Municipalities, consolidation facilities, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that computer monitors and televisions generated as waste from households within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by

contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system.

B. A consolidation facility is subject to the requirements of this paragraph.

(1) Beginning January 1, 2006, a consolidation facility shall identify the manufacturer of each waste computer monitor and waste television delivered to the facility and identified as generated by a household in this State and shall maintain an accounting of the number of waste household computer monitors and waste household televisions by manufacturer. By March 1st each year beginning in 2007, a consolidation facility shall provide this accounting by manufacturer to the department.

(2) A consolidation facility may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and accounting service with the recycling and dismantling facility to which the waste is shipped.

(3) A consolidation facility shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system. At a minimum, a consolidation facility shall invoice the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A consolidation facility shall transport waste computer monitors and waste televisions to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A consolidation facility shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the consolidation facility and shall provide the department with a copy of these records within 24 hours of request by the department.

C. A recycling and dismantling facility shall provide to a consolidation facility a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department.

D. Computer monitor manufacturers and television manufacturers are subject to the requirements of this paragraph.

(1) Beginning January 1, 2006, each computer monitor manufacturer and each television manufacturer is individually responsible for handling and recycling all computer monitors and televisions that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by households in this State and that are received at consolidation facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each television manufacturer is responsible for a pro rata share of orphan waste televisions generated as waste by households in this State and received at consolidation facilities in this State. The manufacturers shall pay the reasonable operational costs of the consolidation facility attributable to the handling of all computer monitors and televisions generated as waste by households in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. The manufacturers shall ensure that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A that identify the criteria that consolidation facilities must use to determine reasonable operational costs attributable to the handling of computer monitors and televisions.

(2) Each computer monitor manufacturer and television manufacturer shall work cooperatively with consolidation facilities to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidation facility for allowable costs incurred by that consolidation facility.

E. Annually, beginning January 1, 2007, the department shall provide manufacturers and consolidation facilities with a listing of each manufacturer's pro rata share of orphan waste computer monitors and televisions. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data

from electronic waste collection programs in other jurisdictions within the United States.

6. Manufacturer plan and reporting requirements. A manufacturer shall develop a plan and submit a report as required in this subsection.

A. A manufacturer shall develop a plan for the collection and recycling or reuse of computer monitors and televisions as follows.

(1) By March 1, 2005, a manufacturer of computer monitors and a manufacturer of televisions shall develop and submit to the department a plan for the collection and recycling or reuse of computer monitors and televisions produced by the manufacturer and generated as waste by households in this State. This plan must be based on the manufacturer's taking responsibility for its products upon receipt at consolidation facilities in the State.

(2) By January 1, 2006, a manufacturer of computer monitors and a manufacturer of televisions shall implement and finance the implementation of this plan for the collection and recycling or reuse of computer monitors and televisions produced by the manufacturer and generated as waste by households in this State.

(3) Notwithstanding subparagraphs (1) and (2), a manufacturer may satisfy the plan requirements of this paragraph by agreeing to participate in a collective recovery plan with other manufacturers. The collective recovery plan must meet the same standards and requirements of the plans submitted by individual manufacturers.

(4) The plan developed by the manufacturer must include, at a minimum:

(a) A description of the collection system, including the methods of convenient collection;

(b) A public education element to inform the public about the collection system, including details about meeting all consumer notification and labeling requirements;

(c) Details for implementing and financing the handling of computer monitors and televisions produced by the manufacturer and orphan waste computer monitors and televisions that are generated as waste by house-

holds in this State and received by consolidation facilities in this State;

(d) Details for the method of reimbursing consolidation facilities for the costs of handling and recycling the household computer monitors and televisions;

(e) Documentation of the willingness of all necessary parties to implement the plan, including the parties that will participate in the consolidation, treatment, recovery, reuse and recycling of the computer monitors and televisions;

(f) Assurances that the plan and all necessary parties will operate in compliance with local, state and federal waste management laws, rules and regulations;

(g) Descriptions of the performance measures that will be used and reported by the manufacturer to report recovery and recycling rates for computer monitors and televisions at the end of life of those computer monitors and televisions;

(h) Descriptions of additional or alternative actions that will be taken to improve recovery and recycling rates, if needed; and

(i) Annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the 5 years preceding the filing of the plan.

(5) A manufacturer is responsible for all costs associated with the development and implementation of the plan. If the costs are passed on to consumers, the costs must be imposed at the time of purchase and not with a fee imposed at the end of life of the computer monitor or television.

B. Beginning July 1, 2007, and annually thereafter, a manufacturer that offers a computer monitor or television for sale in this State shall submit a report to the department that includes the following: a description of the collection, consolidation and recycling services utilized to recover the manufacturer's products; substantiated estimates, on an annual basis for the preceding calendar year, of the quantities of covered electronic devices marketed in this State and collected for recovery in this State; the capture

rate for electronics based on sales in this State; substantiated estimates of the percentage of collected materials that are reused and recycled from its products; the identification of end markets for the collected waste; and any systems implemented by the manufacturer to ensure environmentally sound management of its products. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B.

7. Enforcement. The department must enforce this section in accordance with the provisions of sections 347-A and 349.

8. Reports to Legislature. The department shall submit a report on the recycling of electronic waste in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2008 and every 2 years thereafter until January 15, 2014. The report must include an evaluation of the recycling rates in the State for covered electronic devices, a discussion of compliance and enforcement related to the requirements of this section and recommendations for any changes to the system of collection and recycling of electronic devices in the State.

9. State procurement. All vendors of electronic devices to the State shall provide take-back and management services for their products at the end of life of those products and must be in compliance with all the requirements of this section. Vendors shall provide assurances that all take-back and management services will operate in compliance with all applicable environmental laws. Purchasing preference must be given to electronic devices that incorporate design for the preservation of the environment.

Sec. 3. Management guidelines. By December 31, 2004, the Department of Environmental Protection shall publish management guidelines for the environmentally sound handling, processing, refurbishment and recycling of covered electronic devices as required by the Maine Revised Statutes, Title 38, section 1609, subsection 5, paragraph C.

Sec. 4. Report on abandoned waste. By March 30, 2005, the Department of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on whether the handling and recycling costs attributable to abandoned waste should be included in the reasonable operational costs of consolidation facilities. For purposes of this section, "abandoned waste" means a covered electronic device that is not orphan waste and for which a manufacturer does not pay the consolidation facilities handling and

recycling costs within 90 days of the 3rd monthly billing.

See title page for effective date.

CHAPTER 662

S.P. 768 - L.D. 1932

An Act To Establish Family Fishing Days

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

Whereas, this legislation needs to take effect before the expiration of the 90-day period; 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 §7035, sub-§11-B, as amended by PL 1997, c. 562, Pt. D, §2 and affected by §11, is repealed and the following enacted in its place:

11-B. Free fishing days; limitations. The following 2 free fishing periods are established. No more than 2 free fishing periods may be established under this subsection.

A. Except when Memorial Day falls on a Friday, the Saturday and the Sunday immediately following Memorial Day are designated "Family Fishing Days." If Memorial Day falls on a Friday, the Saturday and the Sunday subsequent to Memorial Day weekend are designated "Family Fishing Days." The days designated "Family Fishing Days" are free fishing days.

B. The Saturday and the Sunday immediately preceding Presidents' Day are free fishing days.

Notwithstanding sections 7151 and 7371, it is lawful during a free fishing day established under this subsection for a person to fish without a license in inland waters, except that this subsection does not apply to a person whose license to fish is under suspension or revocation. All other provisions of chapters 701 to 721 relating to fishing apply during a free fishing day.

Sec. 2. 12 MRSA §12503, sub-§3, as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt.