

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION

July 29, 2005

SECOND REGULAR SESSION

January 4, 2006 to May 24, 2006

**THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006**

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

**Penmor Lithographers
Lewiston, Maine
2006**

mills; fence pole and piling making operations; pulp and paper mills; wafer board, particle board and plywood mills; whole tree chippers; commercial fuel wood processors; custom wood processing mills; and log yards established to accumulate logs awaiting shipment to these facilities.

C. "Harvest operation" means the harvest of forest products on land in a single municipality or township. Land harvested need not be contiguous, and more than one harvester may work a harvest operation.

2. Payment required within 45 days. Absent a written contract that indicates different payment terms between the landowner and the person conducting a harvest operation, the person conducting the harvest operation shall provide to the landowner full payment for each truckload of harvested forest products transported to a handling or processing facility within 45 days of delivery to the handling or processing facility. In accordance with Title 10, section 2364-A, subsection 2, paragraph G, the person conducting the harvest operation shall provide to the landowner a copy of the measurement tally sheet or stumpage sheet for each truckload of forest products transported to a handling or processing facility when the person conducting the harvest operation pays the landowner.

3. Penalties. The following penalties apply.

A. A person who violates subsection 2 commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

B. A person who violates subsection 2 after having been adjudicated as having violated subsection 2 within the previous 5 years commits a civil violation for which a fine of not more than \$2,000 may be adjudged.

C. A person who violates subsection 2 after having been adjudicated as having committed 2 or more civil violations under subsection 2 within the previous 5 years commits a Class E crime. Violation of this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

D. In addition to any other penalties imposed in this subsection, the court may order a person adjudicated as having violated this section to provide upon request to any forest ranger of the Department of Conservation, Bureau of Forestry copies of measurement tally sheets for subsequent harvest operations being conducted by the violator for a period not to exceed one year.

4. Restitution. In addition to any penalties imposed pursuant to subsection 3 and, when appropriate,

in accordance with the requirements of Title 17-A, chapter 54, the court shall order restitution to the landowner on the basis of an adequate factual foundation. The amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood.

Any restitution ordered and paid must be deducted from the amount of any restitution awarded in a civil action brought by the owner or the State against the offender based on the same facts.

5. Exemptions. The following are exempt from this section:

A. The Department of Transportation in the performance of activities under Title 23, section 701;

B. Public utilities in maintaining adequate facilities in emergencies in compliance with Title 35-A, section 301; and

C. Municipal employees, persons contracting with a municipality or other legitimate agents of a municipality acting within the course and scope of their employment or performing volunteer work for the municipality removing street trees or fallen trees or in emergencies.

Sec. 2. Report from Department of Conservation. By March 1, 2008, the Commissioner of Conservation shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of cases prosecuted and the results of those cases under the Maine Revised Statutes, Title 17, section 2512 and the impact of the new penalties in deterring timber theft.

See title page for effective date.

CHAPTER 547

H.P. 1253 - L.D. 1813

An Act To Allow Smelt Dipping in Mud Brook in Aroostook County

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

Sec. 1. 12 MRSA §12460-A is enacted to read:

§12460-A. Smelt fishing in Mud Brook in Arostook County

Notwithstanding section 12456, a person may fish for smelt by use of a dip net in Mud Brook, a tributary of Long Lake within Township 17, Range 3, Arostook County. A person may not:

1. Exceed daily bag limit. Exceed the daily bag limit of 2 quarts per person. A person who violates this subsection commits a Class E crime; or

2. Harvest for commercial purposes. Harvest smelt for commercial purposes. A person who violates this subsection commits a Class D crime for which a fine of not less than \$1,000 may be adjudged.

3. Repeal. This section is repealed July 1, 2009.

See title page for effective date.

CHAPTER 548

H.P. 1300 - L.D. 1860

An Act Concerning Certain Provisions Regarding Protection of Natural Resources Related to Activities in Coastal Areas

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

Whereas, provisionally adopted coastal sand dune rules of the Department of Environmental Protection are expected to be finally adopted by July 15, 2006; and

Whereas, the changes to those rules and the amendments proposed in this Act are interrelated, and it is necessary for the rule and statutory changes to become effective as close in time as possible; 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. 38 MRSA §480-E, sub-§9, as enacted by PL 1999, c. 298, §1, is repealed.

Sec. 2. 38 MRSA §480-W, as enacted by PL 1995, c. 230, §1, is amended to read:

§480-W. Emergency actions to protect threatened property

~~Notwithstanding section 480-C, if the local code enforcement officer or a state-certified geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead or similar structure may, without obtaining a permit under this article:~~

~~1. Protective materials. Place riprap, sandbags or other heavy nonhazardous material to shore up the threatened structure and replace, repair or leave the materials in place until a project designed to alleviate the threat is certified by the department and by the local code enforcement officer, and that project requires removal of the material; and~~

~~2. Strengthening of structure. Take such actions as are necessary to strengthen the seawall, retaining wall or other structure, including widening the footings and securing the structure to the sand with bolts.~~

3. Emergency action exemption. Notwithstanding section 480-C, if the local code enforcement officer, a state-licensed professional engineer or a state-certified geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead, retaining wall or similar structure may perform or cause to be performed the following activities without obtaining a permit under this article:

A. Place riprap, sandbags or other heavy non-hazardous material to shore up the threatened structure and leave the material in place until a project designed to repair or replace the structure is permitted by the department. After such emergency action is taken and within 5 working days after the imminent threat, the property owner must provide written notice to the department of the date the emergency action was taken and a description of the emergency action taken. Within 6 months following placement of any material pursuant to this paragraph, the property owner must submit to the department an application to repair or replace the structure. The material placed pursuant to this paragraph must be removed within 18 months from the date a permit is issued by the department; or

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A state-certified