

# 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.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2006**

**§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 This section is repealed July 1, 2009.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.

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**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

geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure.

If a local code enforcement officer, state-licensed professional engineer or state-certified geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property owner may proceed as if the local code enforcement officer, state-licensed professional engineer or state-certified geologist had determined that the integrity of the structure was destroyed or threatened.

**4. Replacement after emergency action under permit by rule.** Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:

A. During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible. Dune vegetation includes, but is not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife.

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification. The replaced seawall may not be significantly different in construction from the one that previously existed.

~~If a local code enforcement officer fails to determine whether the integrity of a structure is destroyed or threatened within 12 hours of initial contact by the property owner, the property owner may proceed as if the code enforcement officer had determined that the integrity of the structure was destroyed or threatened.~~

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 6, 2006.

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## CHAPTER 549

H.P. 1383 - L.D. 1975

### An Act To Ensure Adequate Funding for Cleanup of Hazardous Waste, Biomedical Waste and Waste Oil

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

**Sec. 1. 38 MRSA §1319-I, sub-§1, ¶A**, as repealed and replaced by PL 1987, c. 491, §25, is amended to read:

A. For hazardous waste ~~which~~ that is disposed of on the site of generation in a licensed hazardous waste disposal facility, ~~2.0¢~~ 3¢ a pound; and

**Sec. 2. 38 MRSA §1319-I, sub-§2, ¶A**, as amended by PL 1997, c. 258, §1, is further amended to read:

A. For hazardous waste that is transported off the site to a licensed hazardous waste disposal facility for disposal, ~~2.0¢~~ 3¢ a pound; and

**Sec. 3. 38 MRSA §1319-I, sub-§2, ¶B**, as amended by PL 1997, c. 258, §1, is further amended to read:

B. For hazardous waste that is transported off the site to a licensed hazardous waste treatment facility for treatment, storage facility for storage or other licensed facility for handling, including beneficial reuse, reclamation or recycling, ~~4.5¢~~ 3¢ a pound.

**Sec. 4. 38 MRSA §1319-I, sub-§3**, as amended by PL 1987, c. 787, §19, is further amended to read:

**3. Fee for transportation into Maine from out of state.** If hazardous waste or waste oil is transported into Maine from out of state, the person who first transports the hazardous waste or waste oil into Maine shall pay a the fee equal to twice the amount indicated by the schedules outlined in subsection 2 for hazardous waste or subsection 4-A for waste oil, as if that person were the waste oil dealer.

~~The commissioner may waive up to 50% of the fee imposed under this subsection if the state from which the hazardous waste or waste oil is transported to~~