

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

appointment of members to the Shellfish Advisory Council shall designate the first 3 appointments for one-year terms, the next 4 appointments for 2-year terms and any other appointments for 3-year terms. An initial term of one or 2 years may not be considered a full term for purposes of limiting the number of terms for which a member may serve.

PART B

Sec. B-1. Implementation of recommendations. The Department of Marine Resources, working with the federal Food and Drug Administration and interested parties, in consultation with the Shellfish Advisory Council under the Maine Revised Statutes, Title 12, section 6038, shall implement in an orderly fashion all recommendations of the review conducted pursuant to Resolve 2007, chapter 82; except that, for the recommendation of the review requiring additional staff to comply with the National Shellfish Sanitation Program model ordinance requirements, the Department of Marine Resources shall report by January 15, 2009 with a plan for implementing that recommendation to the joint standing committee of the Legislature having jurisdiction over marine resources matters.

Sec. B-2. Water quality test projects. The Department of Marine Resources shall undertake 2 or more projects within 18 months of the effective date of this Act under which a municipality contracts with a private laboratory, certified by the department, to conduct water quality tests. The department shall as part of the certification process request and review the past practices or service record for an entity that seeks to be certified by the department.

Sec. B-3. Report on test projects. The Department of Marine Resources shall submit a report by May 1, 2009 to the joint standing committee of the Legislature having jurisdiction over marine resources matters on the progress of any pilot water quality test project undertaken pursuant to section 2 of this Part. The committee may submit legislation based upon the report to the First Regular Session of the 124th Legislature.

Sec. B-4. Report. On or before February 15, 2009, the Shellfish Advisory Council under the Maine Revised Statutes, Title 12, section 6038 and the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all the activities the council and the department have undertaken pursuant to this Act, including the results of projects and the progress in implementing all of the recommendations made pursuant to Resolve 2007, chapter 82, section 4. In addition the Shellfish Advisory Council shall report on its overall structure and the appropriateness of the appointment process for the council.

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

Effective April 14, 2008.

CHAPTER 607

H.P. 1455 - L.D. 2071

An Act To Amend Maine's Scallop Laws

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

PART A

Sec. A-1. 12 MRSA §6073-B is enacted to read:

§6073-B. Harvester license exemption; scallop aquaculture

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6701, 6702 and 6703 to hold a separate license for the removal, possession, transport or sale of scallops from the leased area or the licensed gear when the final product form is the adductor muscle only. This exemption does not apply to scallops in any other form.

Sec. A-2. 12 MRSA §6702, as amended by PL 2003, c. 20, Pt. WW, §14 and c. 248, §8, is further amended to read:

§6702. Scallop dragging license

1. License required. A person may not use a boat for dragging for scallops unless that ~~boat carries~~ person holds a scallop ~~boat~~ dragging license issued by the commissioner and that boat is identified on the license.

2. Licensed activity. A ~~boat~~ person licensed under this section may ~~be used for dragging~~ use the boat identified on the license to drag 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 identified on the license when engaged in dragging for scallops to undertake these activities, except that the captain and crew members may not fish for or take scallops if the license holder is not aboard that boat except as provided in subsection 2-A.

2-A. Exemptions. Notwithstanding subsection 2, the commissioner may authorize a person to fish for or take scallops from a boat when the person holding a scallop dragging license that contains the name of that boat is not on board if:

A. The holder of the scallop dragging license documents to the commissioner that an illness or disability temporarily prevents the license holder from fishing for or taking scallops from that boat and requests in writing to the commissioner that the commissioner authorize another person to use that boat to fish for or take scallops; or

B. The boat named on the license of a license holder is temporarily inoperable because of an accident or a mechanical failure and the license holder requests in writing to the commissioner that the commissioner authorize the license holder to use another boat to fish for or take scallops.

3. Eligibility. A scallop ~~boat~~ dragging license may be issued only to an individual who is a resident.

4. Personal use exception. In any one day, a person licensed pursuant to section 6703 may take or possess not more than ~~2 bushels~~ one bushel of shell scallops or ~~4 quarts~~ 2 quarts of shucked scallops for personal use without a scallop dragging license under this section.

5. Fee. The fee for a scallop ~~boat~~ dragging license is \$111.

6. 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. A-3. 12 MRSA §6703, sub-§3, as amended by PL 2003, c. 452, Pt. F, §19 and affected by Pt. X, §2, is further amended to read:

3. License limitation; quantity. In any one day, the holder of a noncommercial scallop license may not take or possess more than ~~2 bushels~~ one bushel of shell scallops or ~~4 quarts~~ 2 quarts of shucked scallops.

Sec. A-4. 12 MRSA §6706 is enacted to read:

§6706. Limited entry

1. License eligibility in 2009. The commissioner may not issue a 2009 hand fishing scallop license or a 2009 scallop dragging license to a person unless that person possessed a scallop license issued pursuant to section 6701 or a scallop boat license issued pursuant to section 6702 in either:

A. The 2005, 2006, 2007 or 2008 license year; or

B. The 2008 license year prior to May 1, 2008.

2. License eligibility in subsequent years. Except as provided in subsection 3, the commissioner may not issue a hand fishing scallop license or a scallop dragging license to any person in any year subsequent to 2009 unless that person possessed that license in the previous calendar year.

3. Scallop license limited entry system. Notwithstanding subsection 2, the commissioner shall

establish by rule a limited entry system under which a person who did not hold a hand fishing scallop license or a scallop dragging license in the previous calendar year may become eligible to obtain that license. The rules for a limited entry system must include provisions for the method and administration of the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Repeal. This section is repealed July 1, 2012.

Sec. A-5. 12 MRSA §6721-A, sub-§2, as re-allocated by PL 2003, c. 520, §8, is amended to read:

2. Prima facie evidence. It is prima facie evidence of possession of illegal scallops if a vessel contains scallops less than the minimum shell size set by this section or the minimum shell size set by rules adopted pursuant to this section while a scallop ~~boat~~ dragging license holder or crew member is shucking scallops.

Sec. A-6. 12 MRSA §6721-A, sub-§5, ¶B, as reallocated by PL 2003, c. 520, §8, is amended to read:

B. For the 2nd and each subsequent offense, a fine of \$250 is imposed, all scallops on board may be seized and the scallop ~~boat~~ dragging license may be suspended for one year.

Sec. A-7. 12 MRSA §6723, as amended by PL 1981, c. 91, is repealed and the following enacted in its place:

§6723. Drag limits in Blue Hill Bay

1. Drag limit. Except as provided by rule pursuant to section 6727-A, subsection 2, a person may not fish for or take scallops with any one combination of scallop drags in excess of 8 feet, 6 inches in width, measured from the extreme outside edge of the mouth of the drag or drags, in Blue Hill Bay above or north of a line drawn from Bass Harbor Head in the Town of Tremont westerly to Pond Island and thence to Naskeag Point in the Town of Brooklin.

2. Violation. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. A-8. 12 MRSA §6726, sub-§1, as amended by PL 2001, c. 272, §15, is further amended to read:

1. Minimum size. ~~It is unlawful to utilize~~ The minimum ring size is 3 1/2 inches except as provided by rule. The commissioner shall establish by rule a minimum ring size that may not be smaller than 4 inches in diameter. A person may not use a drag to fish for or take scallops in the territorial waters with rings that measure less than: the ring size provided pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

~~B. From December 1, 1999 to April 15, 2000, 3 1/4 inches in diameter; and~~

~~C. On December 1, 2000 and thereafter, 3 1/2 inches in diameter.~~

Sec. A-9. 12 MRSA §6727, as amended by PL 2001, c. 272, §16, is repealed.

Sec. A-10. 12 MRSA §6728, sub-§3, as enacted by PL 2001, c. 192, §1, is repealed.

Sec. A-11. 12 MRSA §6728, sub-§3-A is enacted to read:

3-A. Violation. A person who violates this section commits a civil violation. The following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized; and

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized and the scallop dragging license may be suspended for one year. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. A-12. 12 MRSA §6729, sub-§1, as enacted by PL 2003, c. 319, §2, is amended to read:

1. License surcharges. The following surcharges are assessed on licenses issued by the department:

A. For a hand fishing scallop license, \$100;

B. For a scallop draggers license, \$100; ~~and~~

C. For a scallop diving tender license, \$50-; ~~and~~

D. For a noncommercial scallop license, \$40.

Sec. A-13. 12 MRSA §6729-A, sub-§1, as enacted by PL 2003, c. 319, §2, is amended to read:

1. Uses of fund. The commissioner shall use the fund for research directly related to scallop fishery management information needs, for implementation of scallop management measures and for reporting to licensed scallop harvesters on the results of research and the use of fund revenues. The commissioner may authorize the expenditure of money in the fund for research and development programs that address the restoration, development or conservation of scallop resources. The commissioner shall consult with the Scallop Advisory Council under section 6729-B before deciding upon research projects and awarding grants from the fund. The fund may also be used for support of the Scallop Advisory Council, including reimbursement for travel expenses.

Sec. A-14. Development of a strategic plan to rebuild and manage Maine's scallop resource. The Scallop Advisory Council, referred to in this section as "the council," and the Department of Marine Resources, referred to in this section as "the department," shall develop a comprehensive strategic plan that will rebuild Maine's scallop resource and create a sustainable scallop fishery. Maine's scallop stocks are in sharp decline, and the plan must propose steps that are commensurate with the dire status of the fishery. The plan must provide short-term and long-term bench marks for measuring progress in rebuilding the scallop stock over the entire coastline of the state. The council and the department shall use the following as a guide for discussion in the development of the strategic plan:

1. Entry restrictions to reduce fishing efforts, including, but not limited to, limited entry or a moratorium on the issuance of scallop licenses;

2. Management options for consideration, including, but not limited to:

A. The complete closure of the scallop fishery to allow the resource to recover;

B. Closure of the scallop fishery except for Cobscook Bay to allow for resource recovery outside of Cobscook Bay with measures to protect scallops in Cobscook Bay from overfishing;

C. Rotational management in which a significant portion of the coast is closed on a 3-year or 4-year rotation until a biological target is achieved;

D. Management of the scallop and urchin fishery, together with potential for using the current sea urchin assessment zones;

E. Creation of scallop seed conservation areas to allow scallops to mature and spawn for the benefit of the entire coast, taking into consideration all cable areas and the size of the areas needed to be effective and enforceable;

F. Size restrictions, including a maximum and minimum shell size that will enhance fecundity rates; and

G. Gear restrictions that include but are not limited to changes in drag configuration to minimize impacts on habitat and damage to undersized and oversized scallops, reduction in drag cable size and ring size and larger minimum mesh size for the upper bag; and

3. Other options for consideration, including, but not limited to, adjustments to the scallop fishing season, a ban on Sunday fishing or weekend fishing and daily catch and possession limits for commercial and noncommercial fisheries.

The council and department shall jointly report the strategic plan, including findings, recommendations and necessary implementing legislation and rules to be adopted to implement the plan, to the joint standing committee of the Legislature having jurisdiction over marine resources matters no later than January 5, 2009. The joint standing committee may submit legislation to the First Regular Session of the 124th Legislature relating to the report and strategic plan.

PART B

Sec. B-1. 12 MRSA §6701, sub-§6, as enacted by PL 2001, c. 421, Pt. B, §40 and affected by Pt. C, §1, is amended to read:

6. Violation. A person who violates this section commits a civil violation for which ~~a forfeiture of not less than \$100 nor more than \$500 may be adjudged.~~ the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-2. 12 MRSA §6702, sub-§6, as enacted by PL 2001, c. 421, Pt. B, §41 and affected by Pt. C, §1, is amended to read:

6. Violation. A person who violates this section commits a civil violation for which ~~a forfeiture of not less than \$100 nor more than \$500 may be adjudged.~~ the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-3. 12 MRSA §6703, sub-§5, as enacted by PL 1999, c. 771, Pt. B, §9 and affected by Pt. D, §§1 and 2, is amended to read:

5. Penalty. A person who violates this section commits a civil violation for which ~~a forfeiture of not less than \$100 and not more than \$500 may be adjudged.~~ the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-4. 12 MRSA §6721-A, sub-§5, as reallocated by PL 2003, c. 520, §8, is amended to read:

5. Violation. A person who violates this section commits a civil violation. ~~The~~ for which the following penalties apply:

A. For the first offense, a mandatory fine of \$250 \$500 is imposed and all scallops on board may be seized;

B. For the 2nd and each subsequent offense, a mandatory fine of \$250 \$750 is imposed; and all scallops on board may be seized and the scallop boat license may be suspended for one year; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-5. 12 MRSA §6722, as amended by PL 2001, c. 272, §14, is repealed and the following enacted in its place:

§6722. Scallop season

1. Scallop fishing season. Unless modified by regulation adopted under section 6171-A, a person may not fish for or take scallops in the territorial waters from April 16th to November 30th.

2. Violations. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-6. 12 MRSA §6724, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

§6724. Otter trawl in Penobscot River

1. Prohibition. A person may not fish for or take scallops by use of an otter trawl inside and upriver of a line drawn from the lighthouse on Dice Head, Castine to Turtle Head on Islesboro and thence to the town wharf at Bayside, Northport.

2. Violations. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-7. 12 MRSA §6725, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

§6725. Possession of illegal scallops

1. Prohibition. A person may not possess, ship, transport, buy or sell scallops taken in violation of this subchapter.

2. Violations. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

Sec. B-8. 12 MRSA §6728-B is enacted to read:

§6728-B. Habitual violations

The commissioner shall suspend the hand fishing scallop license or other license issued under this Part authorizing the taking of scallops of any license holder adjudicated or convicted in court of a 3rd or subsequent violation of this subchapter. The suspension must be for at least one year from the date of conviction and may be for up to 3 years.

See title page for effective date.

CHAPTER 608

H.P. 1381 - L.D. 1945

An Act To Update the Regional Greenhouse Gas Initiative

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

Sec. 1. 35-A MRSA §10008, sub-§4, as enacted by PL 2007, c. 317, §15, is amended to read:

4. Money invested. Any revenue received from the sale of carbon dioxide allowances, pursuant to Title 38, section 580-B, and any forward capacity market payments administered by the regional transmission organization or other capacity payments that may be attributable to projects funded by the trust are the property of the trust and must be deposited in the trust fund. Money in the trust fund not currently needed to meet obligations under Title 38, section 580-B or for the purposes of this section must be deposited with the Treasurer of State to the credit of the trust fund and may be invested as provided by law. Interest on these investments must be credited to the trust fund. The State may not assess any indirect charges on any revenue received from the sale of carbon dioxide allowances pursuant to this section.

Sec. 2. 35-A MRSA §10008, sub-§6, ¶G, as enacted by PL 2007, c. 317, §15, is amended to read:

G. No more than 5% of trust fund receipts in any one year may be used for the total administrative costs:

(1) Of the trust related to this section;