

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

G. Contain any statements relative to the financial plan that the Governor-elect or the Governor considers desirable or that may be required by the Legislature; and

Sec. 3. 5 MRSA §1664, sub-§1, ¶H is enacted to read:

H. Include a long-range plan for State Government. The long-range plan must describe the vision of the Governor-elect or the Governor for State Government for the upcoming biennium and the 2 succeeding biennia and how the proposed biennial budget fits into and moves State Government toward this long-range vision.

See title page for effective date.

CHAPTER 614

S.P. 802 - L.D. 2008

An Act To Provide Ongoing Funding for the Historic Preservation Tax Credit

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

Sec. 1. 36 MRSA §5219-R, sub-§4 is enacted to read:

4. Credit fund. Beginning July 1, 2009, the following revenues attributable to historic rehabilitation for which a credit is claimed under this section must be transferred monthly by the State Controller to the historic rehabilitation credit fund that is established in this subsection:

A. Taxes paid under Part 3 on sales or use made for purposes of the construction portion of an eligible historic rehabilitation project; and

B. Taxes paid under chapter 711-A on the transfer of real estate that is included in the project when the transfer occurred no more than one year before the federal certification of an eligible historic rehabilitation project.

By the 15th day of each month, the State Tax Assessor shall notify the State Controller of the amounts to be transferred to the historic rehabilitation credit fund for the previous month. By the end of each fiscal year, the State Tax Assessor shall notify the State Controller of the total value of all credits determined under this section for tax years ending in the preceding calendar year, and the State Controller shall transfer that amount to the General Fund to the extent that resources are available in the fund. The State Tax Assessor shall submit an annual report by January 15th identifying the amounts transferred into and out of the fund under this subsection.

Sec. 2. Report. By January 15, 2009, the State Tax Assessor shall submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters, recommending ways to identify income tax revenues attributable to construction activities related to historic preservation expenditures for which an income tax credit is available under the Maine Revised Statutes, Title 36, section 5219-R. The committee may submit legislation related to the report to the First Regular Session of the 124th Legislature.

See title page for effective date.

CHAPTER 615

S.P. 824 - L.D. 2156

An Act To Amend the Laws Governing Marine Resources

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

Sec. 1. 12 MRSA §6001, sub-§8, as amended by PL 2003, c. 248, §1, is repealed and the following enacted in its place:

8. Common carrier. "Common carrier" means a vehicle that is:

A. Operating under authority granted by either the Federal Government or the carrier's home state; and

B. Transporting goods for hire and the carrier does not own the marine organisms being transported.

Sec. 2. 12 MRSA §6022, sub-§5, as enacted by PL 1977, c. 661, §5, is amended to read:

5. Property. The commissioner may acquire and hold any right or interest in real or personal property on behalf of the State. The commissioner may by sale, lease or otherwise dispose of any such property, or portion of any such property or interest in any such property, subject to the provisions of section 598-A.

Sec. 3. 12 MRSA §6024, sub-§1-A, as amended by PL 2007, c. 176, §1 and c. 240, Pt. QQ, §2, is repealed and the following enacted in its place:

1-A. Appointment; composition; term; compensation. The Marine Resources Advisory Council, established by Title 5, section 12004-G, subsection 27, consists of 16 members. The chair of the Lobster Advisory Council, the chair of the Marine Recreational Fishing Advisory Council, the chair of the Sea Run Fisheries and Habitat Advisory Council and the chair of the Sea Urchin Zone Council are ex officio members of the council. Each other member is appointed by the Governor and is subject to review by the joint standing committee of the Legislature having jurisdiction

tion over marine resources matters and to confirmation by the Legislature. Six members must be persons who are licensed under this Part to engage in commercial harvesting activities. Those 6 members are selected by the Governor from names recommended to the Governor by groups representing commercial harvesting interests. Each member must represent a different commercial harvesting activity, except that none of those 6 members may represent lobster harvesters. The remaining 6 members must include one public member, 4 persons who hold a nonharvesting-related license under this Part and one person representing the aquaculture industry. The Governor shall select the person to represent the aquaculture industry from among the names recommended by the aquaculture industry. The composition of the council must reflect a geographical distribution along the coast. All appointed members are appointed for a term of 3 years, except a vacancy must be filled in the same manner as an original member for the unexpired portion of the term. An appointed member may not serve for more than 2 consecutive terms. Appointed members serve until their successors are appointed. The chair of the Lobster Advisory Council, the chair of the Marine Recreational Fishing Advisory Council, the chair of the Sea Run Fisheries and Habitat Advisory Council and the chair of the Sea Urchin Zone Council shall serve until a new chair of the Lobster Advisory Council, a new chair of the Marine Recreational Fishing Advisory Council, a new chair of the Sea Run Fisheries and Habitat Advisory Council or a new chair of the Sea Urchin Zone Council, respectively, is chosen. Members are compensated as provided in Title 5, chapter 379.

Sec. 4. 12 MRSA §6029-A, sub-§2, as corrected by RR 2003, c. 2, §17, is amended to read:

2. Memorandum of agreement. Prior to engaging in the activities authorized under this section, the Bureau of Marine Patrol must enter into a memorandum of agreement with the United States Coast Guard that establishes the appropriate procedures and protocols for enforcement activities authorized under this section. Any funds received from the Federal Government for reimbursement to the State for activities authorized under this section must be deposited in the ~~watercraft fund pursuant to section 10202, subsection 1, paragraph D~~ Bureau of Marine Patrol federal programs account.

Sec. 5. 12 MRSA §6038 is enacted to read:

§6038. Watercraft Fund

The Watercraft Fund, referred to in this section as "the fund," is established within the department.

1. Sources. The fund is capitalized by money collected from boat registrations pursuant to section 10206, subsection 3 and fines. In addition to those revenues, the commissioner may accept and deposit

into the fund money from any other source, public or private.

2. Purposes. The commissioner shall use the fund primarily for the purpose of funding vessel operations and maintenance and safety and enforcement programs.

3. Interest and balances credited to fund. Any interest earned on the money in the fund must be credited to the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year and credited to the fund.

Sec. 6. 12 MRSA §6039 is enacted to read:

§6039. Halibut Fund

The Halibut Fund, referred to in this section as "the fund," is established within the department.

1. Sources. The fund is capitalized by fees received through the sale of halibut tags. In addition to those revenues, the commissioner may accept and deposit into the fund money from any other source, public or private. All money in the fund must be used for the purposes set forth in this section.

2. Purposes. The commissioner shall use the fund for halibut research and for the implementation of management measures needed for the halibut fishery.

3. Interest and balances credited to fund. Any interest earned on the money in the fund must be credited to the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year and credited to the fund.

Sec. 7. 12 MRSA §6140, sub-§4, as enacted by PL 2007, c. 240, Pt. QQ, §7, is amended to read:

4. Atlantic salmon; possession, buying or selling. A person may not possess, buy or sell Atlantic salmon unless each fish is clearly identified by one of the following methods:

A. Tagged with a New Brunswick, Quebec, Nova Scotia, Prince Edward Island or Newfoundland-Labrador Atlantic salmon tag if imported from those Canadian provinces;

B. Identified by a sales receipt less than 24 hours old; ~~or~~

C. For wholesale and retail seafood dealers, identified by a bill of sale indicating numbers of fish purchased, dates of purchase and point of origin of all fish purchased; ~~or~~

D. Tagged with a tag that conforms to rules adopted by the commissioner and identifies the fish as having been legally obtained from a private fee pond licensed pursuant to section 12508. Fish obtained in this manner may not be resold.

Sec. 8. 12 MRSA §6404-F is enacted to read:

§6404-F. Suspension based on 3 or more convictions of possessing oversize sea urchins

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of a 3rd or subsequent offense of possessing sea urchins larger than the maximum size established pursuant to rule. The suspension must be for at least one year but not more than 3 years from the date of conviction. Any conviction occurring more than 5 years before the last conviction may not be counted in determining the suspension.

Sec. 9. 12 MRSA §6421, sub-§7-A, ¶I, as enacted by PL 2007, c. 201, §11, is amended to read:

I. ~~Two thousand forty seven dollars and twenty five cents~~ Five hundred dollars for a nonresident lobster and crab landing permit.

Sec. 10. 12 MRSA §6447, sub-§5-D, as enacted by PL 2007, c. 204, §3, is amended to read:

5-D. Council authority; under 18 waiting list. Notwithstanding any other provision in this subchapter and upon approval in a referendum under subsection 6, a lobster management policy council in a limited-entry zone may propose to the commissioner that the limitation described in this subsection be placed on entry by individuals into that zone in accordance with rules adopted by the department.

This limitation would require that the number of individuals who are authorized to be issued a lobster and crab fishing license that identifies a limited-entry zone as the declared lobster zone without meeting the requirements of section 6448, subsection 4, in accordance with section 6448, subsection 8, paragraph A, be limited to the number of new zone entrants who enter that zone in accordance with section 6448, subsection 7. This limitation may not be applied to a person who is under 18 years of age and lives on a year-round basis on an island within the coastal waters that is not connected to the mainland by any artificial structure.

The commissioner shall maintain a waiting list of individuals who have identified the limited-entry zone as their declared lobster zone in accordance with section 6448, subsection 8, paragraph A. For the purposes of this subsection, an individual on a waiting list maintained by the commissioner does not need to meet the eligibility requirements of section 6421, subsection 5-A in order to purchase a student license.

The commissioner may establish by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 12 MRSA §6448, sub-§8, ¶A-1, as enacted by PL 2007, c. 204, §8, is repealed.

Sec. 12. 12 MRSA §6451, sub-§1, as amended by PL 2005, c. 354, §3, is further amended to read:

1. Allocation of license fees. Ten dollars of each \$113.75 fee, \$10 of each \$114 fee, ~~\$20 of each \$170 fee~~, \$20 of each \$228.50 fee, \$30 of each \$341.25 fee, \$30 of each \$336 fee, \$60 of each \$682.75 fee, \$120 of each \$1,371.50 fee, \$180 of each \$2,047.25 fee ~~and~~, \$5 of each \$56 fee ~~and \$5 of each \$57 fee~~ for each lobster and crab fishing license must be allocated to the Lobster Fund, which must be used for the purposes of lobster biology research, of propagation of lobsters by liberating seed lobsters and female lobsters in Maine coastal waters and of establishing and supporting lobster hatcheries.

Sec. 13. 12 MRSA §6455, sub-§5, ¶F, as enacted by PL 2007, c. 201, §19, is amended to read:

F. Nonresident lobster and crab landing permits, ~~\$93.75~~ \$250.

Sec. 14. 12 MRSA §6474, sub-§7, as enacted by PL 1997, c. 574, §4, is amended to read:

7. Periods of registration. Monhegan Lobster Conservation Area ~~trap-tag~~ registrations are valid as follows.

A. A person registered under subsection 3 is registered for the entire period from the effective date of this section until July 31, 1999, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

B. A person registered under subsection 4, paragraph A or B is registered for the entire period from August 1st of the year of registration until the following July 31st.

C. A person registered under subsection 4, paragraph C is registered for the entire period from the date of registration until the following July 31st.

D. A person registered under section 5 through the reinstatement of a suspended license is registered for the entire period from the date of license reinstatement until the following July 31st.

Sec. 15. 12 MRSA §6505-A, sub-§2, as amended by PL 2005, c. 533, §1, is further amended to read:

2. Eligibility. An elver fishing license may be issued only to an individual who:

C. Possessed an elver fishing license in the previous calendar year; ~~or~~

E. Did not possess an elver fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

Sec. 16. 12 MRSA §6521, sub-§1, as amended by PL 1999, c. 771, Pt. B, §4 and affected by Pt. D, §§1 and 2, is repealed and the following enacted in its place:

1. Deposition of dead marine animals; exception. A person may not deposit or discard, in intertidal zones or in harbors or rivers below the dividing line between tidewater and fresh water, any dead marine animal or its parts, except that:

A. A person may deposit oyster shell cultch in those waters solely to promote growth of oysters with the written permission of the commissioner and under any conditions the commissioner determines appropriate; and

B. The commissioner may grant an exception to this subsection within federal requirements for the purpose of conducting research on dead marine animals.

Sec. 17. 12 MRSA §6746-A is enacted to read:

§6746-A. Night prohibition

A person may not fish for or take mussels pursuant to section 6746 between sunset and sunrise within the territorial waters except that the commissioner may authorize the harvest of seed mussels during those times.

Sec. 18. 12 MRSA §6749-O, sub-§2-A, as amended by PL 2001, c. 327, §11, is repealed and the following enacted in its place:

2-A. License eligibility. The commissioner may not issue a handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license to any person unless that person:

A. Possessed that license in the previous calendar year;

B. Becomes eligible to obtain that license pursuant to a limited entry system under subsection 2-B; or

C. Did not possess a sea urchin license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

Sec. 19. 12 MRSA §6749-Q, sub-§3, as enacted by PL 1993, c. 740, §3, is amended to read:

3. Sea urchin and scallop diving tender license. Thirty-five dollars on a sea urchin ~~boat tender's~~ and scallop diving tender license;

Sec. 20. 12 MRSA §6749-Q, last ¶, as enacted by PL 1995, c. 392, §8 and c. 462, Pt. A, §32, is amended to read:

The commissioner shall deposit all surcharges assessed in this section in the Sea Urchin Research Fund established in section 6749-R, except that fees collected under subsection 3 must be evenly split between the Sea Urchin Research Fund and the Scallop Research Fund established in section 6729-A.

Sec. 21. 12 MRSA §6851, sub-§2-A, as amended by PL 2005, c. 239, §8, is further amended to read:

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2 and may buy, sell, process, or ship or transport lobster or properly permitted or lawfully imported lobster meat or parts. A person holding a wholesale seafood license with a lobster permit may transport lobster or properly permitted or lawfully imported lobster meat or parts anywhere within the state limits. A license under this subsection does not authorize a person to possess or transport lobster that person has taken unless that person is in possession of a license issued under section 6421, subsection 3-A, paragraph A, B, C or E. A license under this subsection does not authorize a person to remove lobster meat from the shell unless a permit under section 6857 is held.

Sec. 22. 12 MRSA §6957, sub-§1, as amended by PL 1995, c. 169, §2, is further amended to read:

1. Prohibition. A person may not operate a vessel using drags, otter trawls, pair trawls, beam trawls, scottish seines or midwater trawls to fish for or take finfish, shellfish, sea urchins or any other marine organisms within 300 feet of any suspended culture floating cages, tray racks or other floating equipment authorized in a lease issued by the commissioner under section 6072, 6072-A or 6072-B, or a license issued under section 6072-C, if the equipment is marked in accordance with subsection 1-A.

Sec. 23. Appropriations and allocations. The following appropriations and allocations are made.

**MARINE RESOURCES, DEPARTMENT OF
Bureau of Resource Management 0027**

Initiative: Establishes the Halibut Fund and allocates funds for halibut research and implementation of management measures needed for the halibut fishery.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
All Other	\$0	\$10,763

OTHER SPECIAL	\$0	\$10,763
REVENUE FUNDS TOTAL		

See title page for effective date.

CHAPTER 616

H.P. 1430 - L.D. 2046

An Act Concerning Certain Excavations

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

Sec. 1. 38 MRSA §480-GG is enacted to read:

§480-GG. High and moderate value inland waterfowl and wading bird habitat and excavations and quarries authorized pursuant to article 6, 7 or 8-A

1. Excavation authorized before June 8, 2006. Unless a permit is required due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to obtain a permit pursuant to this article for excavation within the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

If a permit is required pursuant to this article due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to meet standards associated solely with the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

2. Permits not authorized. The department may not issue a permit pursuant to this article for an excavation or quarry authorized pursuant to article 6, 7 or 8-A and located in, on or over the wetland portion of a high and moderate value inland waterfowl and wading bird habitat.

The department may not issue a permit pursuant to this article for an excavation or quarry requiring authorization pursuant to article 6, 7 or 8-A after June 8, 2006 and located in the upland portion of a high and moderate value waterfowl and wading bird habitat.

Sec. 2. 38 MRSA §488, sub-§24 is enacted to read:

24. Nonmetallic mining accessory uses and facilities. Accessory uses and facilities within an excavation or quarry operating under the performance

standards in article 7 or 8-A are exempt from this article if the performance standards in article 7 or 8-A or the rules implementing those articles are at a minimum as restrictive as the standards imposed under this article. For the purposes of this subsection, "accessory uses and facilities" means uses and facilities associated with the processing of material pursuant to article 7 or 8-A such as screening and the crushing, loading and manufacture of ready-mix concrete and bituminous concrete and associated products and weight scales, scale sheds and maintenance garages. This subsection does not apply to a development constructed during or after reclamation.

Sec. 3. 38 MRSA §490-D, sub-§1, as amended by PL 2007, c. 290, §11, is further amended to read:

1. Significant wildlife habitat and other protected areas. Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur in, on or over a significant wildlife habitat or other type of protected natural resource provided a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

Sec. 4. 38 MRSA §490-D, sub-§5-A, as amended by PL 2007, c. 364, §2, is further amended to read:

5-A. Protected natural resource buffers. A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal ~~high-water~~ high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, coastal wetland or significant wild-