

MAINE STATE LEGISLATURE

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FISH WEIR REGULATION

Report of a Study by the
JOINT STANDING COMMITTEE ON MARINE RESOURCES

to the

111th Maine Legislature

March 1984

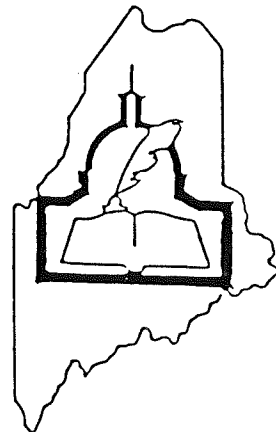
Study Subcommittee:

Sen. Carroll E. Minkowsky (Chair)
Sen. Dennis L. Dutrenble
Sen. Melvin A. Shute
Rep. Nathaniel J. Crowley, Sr. (Chair)
Rep. Harry L. Vose
Rep. Peter J. Manning
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FISH WEIR REGULATION STUDY

JOINT STANDING COMMITTEE ON MARINE RESOURCES

During the First Regular Session of the 111th Legislature, the Joint Standing Committee on Marine Resources considered several bills to revise the laws on fish weirs. After public hearing, the Committee recommended that the subject be studied during the summer of 1983 and that a moratorium on weir licensing be imposed until July 1, 1984. This recommendation was supported by the Legislature in the enactment of LD 1486; Resolve, Prohibiting the Issuance of Fish Weir Licenses for One Year.

The Committee has examined several issues concerning fish weirs. They have held public hearings and consulted with representatives of herring fishing industry and the Department of Marine Resources. The recommended legislation attached to this study addresses the problem of conflicts between fixed and mobile gear herring fishing and the administrative procedures of weir licensing. The Committee's goal has been to provide adequate protection for fixed gear (weir) fishing while guarding against abuse of the protective measures. The Committee recognizes that weir-caught herring are sometimes preferred by packers.

The recommended legislation is drawn up as an emergency measure in order that its provisions be in effect when the one year licensing moratorium expires in July, 1984.

Sections 1 and 2 of the bill reaffirm the 2,000 foot radius protection zone around licensed fish weirs. Within this zone no person, other than the weir owners or their assistants, can set nets or seines. The definition of this zone is refined to limit its protection to the cove within which the weir is located. In instances where no clearly defined cove exists, the Commissioner of Marine Resources is given the

responsibility to designate the boundaries of the cove for the purposes of the protection zone. This section also prohibits the licensing of a weir within 2,000 feet of a licensed weir. An exception is made for situations in which the weirs in question are already licensed and which maintain their licenses according to the provisions of Title 38 MRS.A §§1022 and 1023.

Section 2 also includes a requirement for specific cove boundaries in the license application. This section also increases the bond requirement for a license from \$500 to \$5,000. This reflects the increase in costs of removing a weir.

Section 5 establishes a procedure to ensure that weirs are used for the intended purpose and are not simply used to gain exclusive fishing rights. A 90 day operating period commencing annually on July 15th is established during which a total of 7 days is allowed for cleaning and repair of weir gear. Failure to be operating during the 90 day period can result in termination of the license. Seven day written notice of cleaning and repair (and thus non-operation) is required. The Commissioner of Marine Resources is given the responsibility of checking the operating condition of each weir on an annual basis. Finally, this section requires that an applicant file a copy of his application with the Commissioner of Marine Resources.

Section 6 repeals the licensing moratorium.

ADDENDUM

The Legislature made several important changes in the bill reported by the committee. Because this report has been released after the passage of the bill, the changes are summarized here. A copy of the enacted bill is attached for reference.

1. The restricted fishing zone around licensed weirs is now effective only if the weir is in "operating condition"; ie it is fully dressed with twine.

2. The radius of the restricted fishing zone was increased from 2000 feet to one mile in the case of purse seining for herring in the vicinity of weirs licensed prior to July 25, 1984 (effective date).

3. The ban on purse seining in Washington County was repealed as of July 25, 1984.

4. The requirement for a 90 day "dressed and operating period" was reduced to a 30 day period with an special exception made allowing the removal of gear when adverse weather conditions are anticipated.

APPROVED

APR 10

BY GOVERNOR

CHAPTER

751

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

H.P. 1516 - L.D. 1991

AN ACT to Provide Limitations on Fishing by
Weirs, Purse and Stop Seines and to Provide
Notice for the Location of Weirs and
their Maintenance.

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

Sec. 1. 12 MRSA §6525, as enacted by PL 1977, c. 661, §5, is repealed.

Sec. 2. 12 MRSA §6525-A is enacted to read:

§6525-A. Setting near weirs or stop seines

1. Setting nets or seines near weirs. It is unlawful for any person, other than the weir owner or his crew members, to set or assist in setting any net or seine within 2,000 feet of the mouth of a weir in operating condition whose operator is validly licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

2. Exception. Stop seining is permitted in any cove that does not have a weir even when the seine is less than 2,000 feet from a weir in another cove.

3. Cove name and designation. The commissioner shall prepare a map of areas of the State, where weirs are used as a method of fishing, which fixes the location of each weir and designates the boundaries of each cove in which those weirs are located. The map shall be provided to municipalities by the

commissioner. Owners of licensed weirs and applicants for a license shall receive a map at cost. When an applicant for a license finds no designation on the map of cove boundaries for the cove where he wants to construct a weir, the municipal officers from the city or town within which the weir will be located shall notify the commissioner of the intended location of the weir on the map. The commissioner shall designate boundaries for the cove.

4. Limitation on location of weirs. Weirs shall be licensed according to the following.

A. After the effective date of this Act, no weir may be licensed for construction which is less than 2,000 feet from an existing weir.

B. Weirs which were licensed in 1983 and preceding years may continue to be licensed even when they are located less than 2,000 feet from an existing weir.

C. Any weir licensed in 1983 and preceding years for which the license expired as provided in section 1023 shall be required to be licensed as a new weir as provided in paragraph A.

5. Limitation on purse seining. No person may purse seine within 2,000 feet of a licensed weir in operating condition, except that no person may purse seine for herring within one mile of a weir in operating condition that is licensed prior to the effective date of this section.

Sec. 3. 12 MRSA §6571, sub-§2, as amended by PL 1983, c. 108, is repealed.

Sec. 4. 38 MRSA §1022, first ¶ is amended to read:

Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, may apply in writing to the municipal officers thereof, stating the location of the weir, the boundaries of the cove in which the weir will be constructed as identified on a map prepared by the commissioner, limits and boundaries, as

nearly as may be, of such intended erection or extension, and asking license therefor. Upon receiving such application, said the officers shall give at least 3 days' public notice thereof in a newspaper, published in the town, or, if there is no newspaper published in the town, in a newspaper published within the county, and shall therein designate a day and time on which they will meet on or near the premises described, to examine the same and hear all parties interested. If, upon such examination and hearing of all parties interested, said the officers decide that such erection or extension would not be an obstruction to navigation or injury to the rights of others, and determine to allow the same, they shall issue a license under their hands to the applicant, authorizing him to make such an erection or extension, and to maintain the same within the limits mentioned in such license. The applicant for license to build or extend a fish weir or trap shall first give bond to the town, with sureties, in the sum of ~~\$500~~ \$5,000, conditioned that upon the termination of such license he shall remove all stakes and brush from the location therein described. Said The municipal officers shall, within 10 days after the date of hearing, give written notice by registered mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the Superior Court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of said the court shall be communicated within 10 days after the date of hearing to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located. This decision shall be binding on said the municipal officers, who shall issue a license, if so directed by the decision of said the court, within 3 days after said the decision has been communicated to them. If said the appeal is sustained by said the court in whole or in part, the appellant shall have his costs against the appellee. If the appeal is not so sustained, the appellee shall have his costs against the appellant. If any owner to whom a license has been issued, or his heirs or assigns, fails to remove all stakes and brush within a

period of one year after the termination of the license, as provided in section 1023, any person can remove the same without charge against said the owner, his heirs or assigns.

Sec. 5. 38 MRSA §§1023 and 1025 are amended to read:

§1023. Expiration of license

The license for the building or extension of a fish weir or trap issued under section 1022 or any right or privilege granted by the Legislature for the building or extension of any such fish weir or trap shall terminate and become void unless such weir or trap shall be built within one year from the date of the license or the granting of such right or privilege, and maintained and operated in good faith for some part not less than 30 days from July 15th of each year thereafter. A weir that is not under active construction by July 15th in any year shall not be considered a weir for the remainder of the year. Written notice to the municipality and the commissioner shall be made by the licensee 7 days prior to when the fish weir is being cleaned or repaired, during the 30-day period stating the dates totaling no more than 7 days, that the weir is not maintained and operated. The weir may be removed from operating condition at any time due to adverse weather conditions. The commissioner shall, by July 25th each year, report to the municipality the name of the licensed owner and location of each weir and whether the weir was in operating condition on July 15th of that year.

§1025. Recording of documents; compensation to officers

The application provided for in section 1022, with the notice and proceedings thereon and the license granted, shall be recorded in said the town and a copy provided to the commissioner by the applicant. Reasonable compensation shall be paid by said the applicant to the municipal officers for their services and expenses and to the clerk for recording, and if license is granted, \$5 additional shall be paid therefor by said the applicant to said the town.

Sec. 6. Resolves 1983, c. 26 is repealed.

In House of Representatives, 1984

Read twice and passed to be enacted.

..... Speaker

In Senate, 1984

Read twice and passed to be enacted.

..... President

Approved 1984

..... Governor