

MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

June 20, 1980

Senator Richard Pierce
Chairman
Legislative Council
State House
Augusta, Maine 04333

Dear Senator Pierce:

In accordance with the directive of the Legislative Council, directing the Committee on Marine Resources to study Soft Shell Clam Resources of the State, we enclose herein the final report of the Committee.

Melvin Shute

Senator Melvin A. Shute

(JFH)

Gary Fowlie

Representative Gary W. Fowlie

(JFH)

Soft Shell Clam
Research in Maine

Final Report
of the
Joint Standing Committee
on
Marine Resources

May 20, 1980

INTRODUCTION

Soft-shell clams are a vital resource to Maine, representing the second highest value in landed values of Maine's marine resources. It forms the basis of a large segment of the Marine related industry in the State, and also provides a major source of recreational activities.

Clams are distributed along the entire Maine coast, mainly in the intertidal zone. Though the statistics indicate that the majority of the commercial catch is taken in the eastern part of the State, Hancock and Washington Counties; the potential growing area is rather evenly distributed along the entire coast. The difference between potential and actual commercial catch is primarily accounted for by differences in pollution, variations in growth rates and economic conditions, and amount of suitable growing areas in each county. In particular, much of the growing area in the Western part of the coast is closed due to pollution of the flats: 98% of York, 26% of Cumberland, 61% of Sagadahoc, 33% of Lincoln and 60% of Waldo County are closed for this reason at the present time. A total of almost 1/4 of all the potential growing area is closed to harvesting because of pollution.

The size of the commercial catch in Maine fluctuates widely from year-to-year; and though it has been increasing from a low point in the late 1950's, it is giving indications of an upcoming decrease. Nonetheless, the value of the landings has steadily increased during the 1970's, primarily because of large increases in value that have offset the fluctuations in landings. For the past few years the total value of commercially landed

clams has exceeded \$7 million, with a high of over \$9 million in 1977.

Management of the clam resource is a combined state and local effort. There are several statutes governing the licensing for and method of taking clams (generally limited to hand implements), closing polluted flats, and the scope of local authority. The basic management mechanism is the local ordinance adopted under the state's delegated authority (12 MRSA §6671). This authority allows municipalities to establish clam ordinances in the context of conservation programs, with the approval of the Commissioner of Marine Resources.

REPORT

Because of the importance of the clam resource to Maine's economy and because of the increasing discussion of management techniques for clams, the Committee focused on the information available to assist the state and towns to formulate management policies. After reviewing with the Department of Marine Resources the available information, it reached the conclusion that very little information was available, and what was available was virtually useless to provide a basis for sound management decisions, either on the state or local levels.

The Department has been conducting some clam research and data gathering for decades. Much of this effort is focused on statistical data, primarily on landed weights and values. In addition, some research has been conducted over the years on clam biology and the effects and locations of pollutants in clam flats. However, the bulk of the research information has

apparently been developed in a poorly organized and haphazard fashion. The research results presented to the Committee indicated that no systematic review of the research has occurred in many years. Scattered data from many years of research has never been fully developed and correlated, nor has there been an effective effort to plan future research to meet the needs of the industry or the Legislature to develop management policies. As a result, there is presently totally inadequate information available to allow either intelligent discussion or resolution of the many controversies relating to clam management.

The Department's failure to present an adequate review of the clam resource was not a failure in presentation, but a reflection of a long-term failure in the research program. The clam research, as much of the other marine research of the Department, has suffered for many years from neglect and poor organization and policy direction. The Committee and Legislature attempted to meet this basic problem in the Study Report during the last Session on the Five Year Research Program. The Legislature gave the Department a large increase in research funds to meet this new emphasis on reorganizing and reviving the research necessary for applied resource management. Part of this project was intended to allow the compilation of the extensive clam data that is apparently in files and boxes in the Research Laboratory; as well to allow the development of planned research to resolve the issues remaining.

However, the Five Year Research Plan and its promise of sufficient research and information to provide the basis of

sound management policy seems to be in ruins. The radical change in Department policy, as indicated by the personnel and budget changes in the last year, means that this information will not be forthcoming. This seems particularly regrettable in relation to the clam industry, where so little knowledge is presently available. Though some municipalities seem to be attempting to develop basic information about their own resources, this seems to concentrate on population and distribution statistics within the town. Without a broad state-led effort to understand the basic resource and the factors affecting it, and without a state-wide data base, neither the municipalities nor the state can develop appropriate management policies.

Though the need for a basic restructuring of the state's research effort on clams seems obvious, in the face of the failure of last year's initiative on research improvements, the Committee cannot recommend legislative or policy changes at this time.

MINORITY REPORT

Though we concur in the Committee Report, we would like to add one recommendation for legislative action, relating to municipal management of clams. Under 12 MRSA §6671, the power to regulate the local shellfish resources is delegated to the municipalities. This delegation focuses on the conservation efforts of the municipality and authorizes it to regulate the taking of shellfish to conserve the stocks. The primary focus of the regulations is based on a conservation principle. However, it appears that some municipalities have abused this delegated authority by using the "conservation" purpose to exclude clam diggers from other municipalities.

In order to prevent these isolated abuses, a minority of the Committee recommends that the statute be amended to specifically establish certain requirements for conservation efforts and to reduce the likelihood of abuse. Those changes are attached to this report.

Minority Report Members:

Rep. Bonnie Post

Rep. William Blodgett

Rep. Laurence Kiesman

DRAFT LEGISLATION

AN ACT to Strengthen the Conservation Purpose of Local Shellfish Programs and Ordinances.

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

Sec. 1.

12 M.R.S.A. §6671 is repealed and replaced to read:

§6671 Municipal Shellfish Conservation Programs and Ordinances.

1. Municipal funds. A municipality may, by vote of its legislative body, raise and appropriate money for the implementation of a shellfish conservation program.
2. Municipal program and ordinance. A municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation program and a shellfish conservation ordinance regulating the taking of shellfish in any area in the intertidal zone or coastal waters of the municipality as provided by this section.
3. Shellfish conservation commission. A shellfish conservation commission shall consist of at least 3 municipal residents, appointed or elected, and shall have general responsibility for the implementation of the shellfish conservation program.
4. Shellfish conservation program. A shellfish conservation program shall be in writing and shall include provisions for regular assessment of municipal stocks, estimation of the number of diggers and their potential harvest, and enforcement. The program shall be designed to protect and preserve the potential for a sustained yield of shellfish from the municipal intertidal zone and coastal waters, or to restore the shellfish population in depleted areas. The program shall also include the duties of the shellfish conservation commission. The program may include provisions for a green crab fencing program.

5. Shellfish conservation ordinance. A shellfish conservation ordinance shall be based on a shellfish conservation program. Within any area in the intertidal zone or coastal waters in the municipality, the ordinance may regulate or prohibit the taking of shellfish; may fix the times when shellfish may be taken; may fix the amount of shellfish that may be taken; may limit the size of soft shell clams; may fix the qualifications for a license, including municipal residency; and may fix license fees. The ordinance may authorize the municipal officers to entirely close areas of the intertidal zone, if the closing is necessary to conserve the shellfish from imminent depletion, and to open those areas after the threat is passed. The opening or closing of flats under this authority shall require the recommendation of the municipal shellfish conservation commission and the approval of the commissioner. The ordinance may also provide for enforcement and protection of a green crab fencing program.

6. Limitations on programs and ordinances. No program or ordinance shall regulate areas closed by regulation of the commissioner. No program or ordinance shall regulate the method, time, amount or size, of taking shellfish on the basis of the digger's residence. The commercial digging licenses may be limited to municipal residents only if the municipality can show that the restriction is necessary to conserve the municipal shellfish resource and prevent its undue depletion, based on a current assessment of stocks, the potential harvest and the estimated production under the proposed licensing system.

7. Recreational digging. No program or ordinance, except an ordinance prohibiting all persons from taking any shellfish, shall restrict or regulate any person who takes one peck or less of shellfish in any one day for consumption by himself or his family, provided that an ordinance or program may require licenses for that activity at a nominal fee. The licenses for recreational digging may be limited to municipal residents for not more than 3 months if the municipality can show this restriction is necessary to prevent undue depletion of the shellfish stock during periods of potentially great recreational digging. The number of recreational digging licenses to be issued shall only be restricted for conservation purposes.

8. Fees. Fees for licenses shall be reasonable and shall reflect the actual costs of the program. Expenditures of general tax revenues by the municipality may be considered in providing different fees for residents and nonresidents.

9. Adoption requirements. Prior to adopting an ordinance under this section, the municipality shall:

- A. Raise or appropriate the money required to implement the conservation, assessment and estimation requirements of a shellfish conservation program; and
- B. Receive the written approval of the commissioner for the proposed program and ordinance.

10. Approval. The commissioner may approve a shellfish conservation program and shellfish conservation ordinance if he finds that they comply with this section, and that any restrictions or limitations are valid, appropriate and reasonable

conservation methods. The commissioner may only approve a program and ordinance that limits commercial digging to municipal residents or uses municipal residency as a qualification for digging in certain areas, if:

A. He has reviewed the current municipal assessment of stocks, the estimation of the actual and potential harvests, and estimated production and has found them valid and accurate;

B. He has reviewed the number of licenses to be issued to commercial diggers and has found that that number of diggers may reasonably be expected to take the entire potential harvest;

C. He has reviewed any area or location limitations using municipal residency as a qualification and has found them necessary to limit the effort and thus to conserve the stock in unproductive flats; and

D. He therefore finds that the residency restriction is necessary to protect the municipal shellfish stocks from undue depletion.

All findings and approvals of the commissioner shall be in writing.

11. Commissioner's duty. The commissioner shall provide technical assistance to municipalities in the development and implementation of their programs and ordinances. The commissioner shall annually review all municipal programs and ordinances to insure that the municipality continues to comply with this section, and that it is carrying out the program in good faith. If the commissioner finds, at any time after approval, that the municipal

funds raised or appropriated for the program are not being expended, or that the municipal program is not being carried out, and that the municipality is not acting in good faith, he shall revoke his approval of the program and ordinance. The revocation shall immediately terminate the ordinance and the ordinance shall have no further force or effect until readopted under this section.

12. Period of ordinance. Ordinances adopted under this section shall remain in effect for 2 years unless sooner terminated or repealed. A certified copy of the ordinance shall be filed with the commissioner within 20 days of its adoption.

13. Municipality defined. For the purposes of this section, "municipality" includes a village corporation and the combined towns of Yarmouth and North Yarmouth as one municipality.

14. Joint programs; reciprocal privileges. Municipalities may enter into joint conservation agreements with other municipalities and adopt joint programs. The agreements and the programs and ordinances adopted under them shall be subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a joint agreement may be extended to the residents of other municipalities in the agreement.

15. Local enforcement. A municipality that enacts an ordinance under this section shall be responsible to enforce it. The commissioner may assist the municipalities in their enforcement programs.

16. Penalty. Notwithstanding the provisions of Title 17-A, section 4-A, whoever takes or possesses shellfish contrary to a municipal ordinance authorized by this section shall be guilty of a crime punishable by a fine of not more than \$1,000.

Sec. 2. Transition. All ordinances adopted under Title 12, section 6671 prior to the effective date of this Act, shall terminate on December 31, 1982, unless they are repealed or terminate under their own terms prior to that date.

Statement of Fact

This bill is a result of a study by the Marine Resources Committee during the Second Regular Session of the 109th Legislature. The purpose of this bill is to strengthen the conservation purpose of municipal shellfish ordinances, and thus to avoid the isolated instances of abuse of the statutory delegation of the State, powers to regulate shellfish.



House of Representatives

State House Augusta 04333

289-2866

Patrick T. Jackson, Jr.

District 28 House Seat 81

MINORITY REPORT

I cannot accept the majority report. I don't think it accurately describes the Department's activities and it does not address the issues set out in the study order.

The present shellfish policy of the State of Maine is reflected in a dual management system. The first level is the State's responsibility for the public health as seen in its concern about polluted clam flats and red tide pollution. This is a responsibility of the Marine Resources Department, requiring a state-wide management and enforcement ability. The State also has a concern in the shellfish marketing area to aid private enterprise in the promotion and encouragement of the clam industry.

The second level of shellfish policy is the local level which deals with the day to day management of Maine's clam flats. Coastal Maine communities have been responsible for husbanding the local flats using such traditional methods as local licensing. This second level of shellfish control ought to stay essentially a local concern, but the State does have a responsibility to keep fair access to the clam flats. Specifically the State must insure that local ordinances do not use conservation as a weapon to unreasonably exclude non-resident diggers from the flats. The Department of Maine Resources ought to expand its review of local conservation ordinances. The Department must be able to require towns to provide all data necessary to support their local ordinance restrictions. At the present time the Department reviews local clam ordinances prior to enactment or renewal. This review seeks to keep local conservation truly that and not devices to keep the non-residents out.

The State's clam resource is a limited one and the pressure on it will continue to grow. As this pressure gets greater there will be more and more demand to open flats to all diggers regardless of their residency. The



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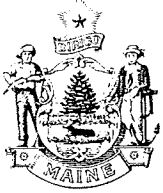
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only way to preserve the State's clam resource is through valid local conservation efforts. The State has neither the money nor the interest in managing its clam flats. Coastal towns have a direct economic interest, a traditional concern and are adjacent to the flats. This combination of factors makes local management an effective and inexpensive way to aid the Maine clam resources.

The Marine Resources Committee in the course of its study received extensive information from the Department of Marine Resources. The Department supplied data and information on the status of the State's clam resource. The Department's data came from its own research and from research done by coastal communities for their conservation programs. Because of the variety of research sources, techniques and reporting methods much of the Department's data was hard to compare. This lack of a uniform data base is a problem that ought to be addressed by the Department in its future study of the clam resources of the State.

Though I do not presently recommend specific legislative actions, I would urge the following measures be taken by the Department and the Committee:

1. The Department should continue and expand its present research on "red tide" and polluted flats. This research should include more basic research under contract that is focused on short term solutions to these problems, and more extensive monitoring of polluted areas.
2. The Department should carefully review its present data on the State's clam resources; and should develop and implement standard techniques, methods and forms for doing and reporting research and surveys by both the Department and municipalities.
3. The Department should initiate a general review of the State's shellfish industry. This review should focus on the best methods and programs to promote long



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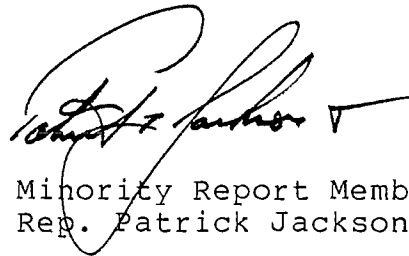
Patrick T. Jackson, Jr.

District 28 House Seat 81

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term growth and economic improvement of the shellfish industry. This Committee should become involved in that general review and in the development of the State policies. This review should be completed by July 1, 1981.

4. The Legislature, with the advice of the Department and municipalities, should carefully consider the legislation proposed in the other Minority Report. Though I cannot totally agree with all the details in the draft I do agree on the need to further define the scope of conservation in municipal ordinances.



Minority Report Member
Rep. Patrick Jackson