

# MAINE STATE LEGISLATURE

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STATE AND MUNICIPAL CLAM MANAGEMENT

Report of a Study by the  
JOINT STANDING COMMITTEE ON MARINE RESOURCES  
to the  
111th Maine Legislature  
March 1984

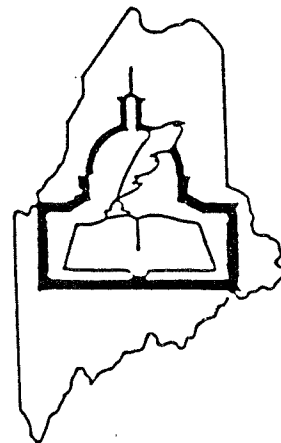
Study Subcommittee:

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Rep. Guy G. Scarpino

Staff:

Tim Glidden, Legislative Assistant

Office of Legislative Assistants  
Room 101 State House--Sta 13  
Augusta, Maine 04333  
(207) 289-2486



## STATE AND MUNICIPAL CLAM MANAGEMENT

### A STUDY BY THE JOINT STANDING COMMITTEE ON MARINE RESOURCES

#### INTRODUCTION AND BACKGROUND

In the first regular session of the 111th Legislature, a bill, L.D. 158, AN ACT to Establish a Minimum 2-inch Size Limit on Soft-shelled Clams, was considered by the Committee on Marine Resources. After extensive public hearings and debate, the Committee decided that the matter deserved more substantial investigation and undertook a study during the subsequent interim. Specifically, the Committee decided to address four general issues:

1. the nature of the clam resource,
2. the status of local clam management efforts,
3. enforcement problems, and
4. clam quality and economic impact.

The committee carried into the study and remains committed to three overall goals for legislative action. These are:

1. to increase long-term production of soft-shelled clams,
2. to improve clam quality and value,
3. to ensure that clam diggers, shuckers and dealers are treated fairly, and
4. to conserve softshell clam stocks which constitute a unique Maine resource.

During the summer of 1983, the Committee undertook a series of 5 public hearings and numerous visits to dealers, shucking houses and other establishments the entire coast of the state. The Committee took testimony

from diggers, shuckers, retailers, wholesalers and restaurant owners. The Committee worked very closely with the Department of Marine Resources to develop a workable legislative proposal that fairly addressed the concerns raised during the course of the study.

The Committee would like to express its thanks to the many individuals, organizations and agencies that volunteered their expertise and time.

### ISSUES

The nature of the clam resource. Throughout the course of the study, the Committee found general agreement that the clam resource is under heavy pressure. The sources of this pressure include high levels of recreational and commercial digging and an increasing incidence of green crab predation. In addition to these influences, water pollution and paralytic shellfish poison (red tide) continue to restrict the supply of clams. Table 1 illustrates the trends of clam harvests, digging pressure and the economic value of the clam harvest. It is clear that while harvest pressures have increased substantially (these figures do not include recreational digging), the quantity of clams harvested has actually declined. The total dollar value of the harvest has increased by a factor of 2.5 in real terms offsetting the decline in harvest. However, annual income per license is approximately the same now as it was in the 1940's.\* While a portion of the decline in harvest can be attributed to predation and pollution, there is a strong belief that overharvest is the primary factor.

Local clam management efforts. Current state law (12 MRSA §6671) authorizes municipalities to adopt clam management ordinances with the approval of the Department of Marine Resources. Forty-two of the 94

\* Dollar figures provided by the DMR have been adjusted to constant dollars with the consumer price index.

TABLE 1

## Bushels of Clams Landed Annually

1942 - 1982

## Average Annual Bushels and Income Per License

Year	Thousands of Bushels Landed	Number of Licenses Issued	Average Bu/Lic.	Total Value Thous. (1967 \$)	Average Annual Income/License (1967 \$)
1942	400	1,292	309.6	\$ 963	\$ 744
1943	313	1,260	248.4	1,185	940
1944	227	1,487	152.6	787	529
1945	387	1,501	257.8	1,440	957
1946	653	1,837	355.4	3,102	1,689
1947	527	2,474	213.0	2,238	894
1948	600	3,326	180.3	2,498	752
1949	573	2,823	203.0	1,989	704
1950	460	2,281	201.6	1,624	719
1951	340	2,006	169.5	1,526	761
1952	367	2,394	153.3	2,041	853
1953	280	2,341	119.6	1,725	736
1954	247	2,553	96.7	1,689	662
1955	173	2,239	77.3	1,183	527
1956	167	2,100	79.5	1,102	524
1957	133	1,976	67.3	830	420
1958	107	1,623	65.9	693	450
1959	93	1,554	59.8	573	369
1960	140	1,553	90.1	928	597
1961	120	1,572	76.3	886	852
1962	127	1,505	84.4	987	656
1963	120	1,623	74.0	858	530
1964	120	1,456	82.4	890	611
1965	133	1,613	82.5	1,020	633
1966	200	1,376	145.3	1,427	1,037
1967	213	1,470	144.9	1,479	1,006
1968	227	1,194	190.1	1,367	1,145
1969	280	2,226	125.7	1,596	718
1970	353	2,742	128.7	2,147	783
1971	353	3,175	111.2	2,221	700
1972	407	4,143	98.2	2,960	714
1973	484	5,927	81.7	4,283	723
1974	394	5,493	71.7	3,054	556
1975	436	5,181	84.2	3,531	682
1976	516	4,562	113.1	4,582	1,004
1977	522	5,291	98.7	5,108	965
1978	400	4,287	93.3	3,822	891
1979	346	4,142	86.5	3,453	863
1980	380	3,677	103.3	3,469	943
1981	351	3,448	101.7	3,033	879
1982	293	3,689	79.4	2,315	627

coastal towns have municipal ordinances. Roughly three quarters of the towns with ordinances limit the number licenses issued each year. Several ban commercial digging entirely. Twenty-six of the municipal ordinances establish a 2 inch minimum for all soft shell clam harvests.

Data comparing harvested clam size in towns with and without management ordinances is sparse. Information presented to the Committee for Washington county showed no clear differences between these two groups. Testimony collected from areas with ordinances nonetheless indicated that the municipal ordinance is a vital tool in the long term management, conservation and improvement of the clam resource. A few towns have undertaken reseeded efforts. "Conservation closings" of clam flats have also been implemented in cooperation with the DMR. Testimony was presented to the committee demonstrating the effectiveness of these approaches however limited conclusive data was available. Those presenting testimony generally agreed that while these management efforts were highly desirable, there was not enough state or local financial support to address the problem adequately. The general conclusion can be drawn that, while there are notable exceptions, municipal management activities focus primarily on enforcement of license requirements and polluted flat closings to the exclusion of active management activities. Given this situation, the use of statewide size standards, as employed in the management of other marine organisms, appears to be a workable option.

One of the most controversial aspects of local clam management ordinances is their treatment of non-resident clam diggers. Because of the wide variation in digging conditions along the coast, many commercial diggers work outside of their own towns. Towns with ordinances are authorized by the state to establish residency qualifications and fees for licenses. While no towns have elected to explicitly ban out of town

diggers, all towns have established higher license fees; generally ten times the resident fee. In some cases, the non-resident commercial licenses cost in excess of \$200 with a high of \$400 in Falmouth. In addition to high license fees, some towns have set limits on the number of licenses issued to non-residents.

Towns with ordinances justify the limits on non-residential digging on the basis of the investment local taxpayers make in management activities and the employment of a local clam warden. These towns also argue that some limits on digging are necessary and that local residents should be accorded precedence.

Non-residents argue that the clams are a public resource in the intertidal area. Furthermore, they point out that the state and thus all the state taxpayers have made a financial investment in the resource through water pollution control projects and state management efforts.

The legal aspects of this issue are not entirely clear. There is precedent in the Maine courts for residency requirements when those requirements are based on a resource conservation plan. However, arguments have been advanced that a conservation rationale can only be employed to justify limits on the way clams are dug or on their size. These arguments rely on the notion of public fishery rights and the trustee responsibilities of the state to safeguard public resources for all its citizens.

Sentiment expressed at public hearings before the Committee supported non-resident access to clam flats and also supported a price differential in license fees. A vocal minority advocated the establishment of statewide licenses with state-supervised open digging rights and the abolition of town ordinance mechanism.

Enforcement. While many enforcement issues were investigated during the study, two issues drew most of the attention. First, enforcement of clam size regulations would be greatly assisted by the establishment of a uniform, statewide minimum size. As noted above, 26 towns have implemented 2 inch minimums. However, enforcement of these is virtually impossible under the present ordinances except on the clam flats themselves. Second, the current law authorizes town regulation only of the "taking" of clams, i.e., the actual digging. Enforcement of license requirements, size restrictions and quantity limits is virtually impossible once off the clam flats. There was substantial testimony in support of a change in the enabling statute to permit municipal regulation of clam possession. This change would parallel general practices in the regulation of other marine organisms. It was generally agreed that any statewide limits on clam size would have to incorporate a similar restriction on possession to be enforceable.

The overall adequacy of enforcement was also a subject of discussion in several of the public hearings. While it was acknowledged that the state marine patrol officers may have assignments over too large an area to effectively enforce clam management laws, several people pointed out that the municipal clam wardens could be developed into a more effective and coordinated force. Several people pointed out the municipal wardens are severely limited in their ability to conduct searches and to seize evidence of violations. This limitation could undermine effective enforcement of a statewide size limitation.

Clam quality and economic impact. Testimony presented at public hearings indicated that a minimum clam standard would improve overall quality of the commercial clam market and would provide better overall economic returns in the long term. It was evident, however, that such a



minimum size would have a negative, short term economic impact, particularly in the mid-coast region.

Minimum size regulation should reduce waste in the processing of harvested clams. Currently, shuckers and dealers often discard small clams because of the economic return is insufficient (higher handling and processing costs). The dealers cannot sell the small clams except as steamers in Maine and elsewhere. Thus, much of the clam harvest is wasted.

The restrictions on non-residential access to clam flats, discussed earlier, has clear economic implications for commercial diggers and high license fees can severely limit these diggers even where non-residential access is provided.

A statewide minimum clam size will also assist the clam industry in its interstate marketing. This could be particularly important with Massachusetts which has a 2 inch minimum size and which absorbs up to 50% of Maine's wholesale clam trade.

### Recommendations

On the basis of the testimony and evidence gathered during the study, the Committee drafted legislation focussed on the issues of resource conservation, enforcement, and reasonable access to digging.

Section 1 of the bill expands the Shellfish Fund and authorizes its use for management and enforcement activities. This is to be accomplished by dedicating 75% of clam-related license revenues to the Shellfish Fund; an increase from the current 25% dedication. License fees are not increased.

Section 2 and 3 revise the enabling language for municipal shellfish ordinances. Enforcement powers are enhanced by allowing the regulation of "possession" rather than simply "taking" of shellfish. These sections also

stipulate that at least 10% of municipal shellfish licenses be made available to non-residents at a fee not to exceed ten times the resident license fee. Notice procedures for licensing are established.

Section 4 authorizes the joint enforcement of municipal ordinances by state, county and local officers. In addition, a state-run training and certification program for municipal shellfish wardens is established. This will improve the consistency of enforcement efforts and will extend enforcement capabilities at minimal cost to the state.

Section 5 establishes fines for violation of municipal ordinances.

Section 6 establishes a state-wide uniform 2 inch minimum size for soft shelled clams. Tolerance standards are set with a phased schedule. In 1985, possession of up to 20% substandard clams is allowed. In 1986, the tolerance is reduced to 10%. The minimum size standard would go into effect on January 1, 1985. Sunset review for the minimum size standard is set for March, 1988.

Section 7 allocates \$54,900 from the Shellfish Fund for enforcement and training activities.

## ADDENDUM

The original study bill was amended by the committee and on the floor in several important ways. Because this report has been issued after the passage of the bill, these changes are summarized here.

1. The increase in the portion of the shellfish license fees dedicated to the Shellfish Fund was reduced from 75% to 53% by the Appropriations Committee. An increase in the dedicated portion was substituted of 28%; from the original 25% to 53%.

2. Floor amendments removed the 10% setaside for non-resident municipal shellfish licenses and established a ceiling of \$150.00 on municipal shellfish licenses.

3. The legislature also made clear its intent (through a statement read into the Senate record) not to extend municipal licensing authority to the licensing of wholesale and retail shellfish establishments.

4. The joint enforcement provisions for municipal ordinances were removed by floor amendment.

5. An additional tolerance allowance of 30% was added for the period July 25, 1984 (effective date) to December 31, 1984.

6. The allocation from the Shellfish Fund was reduced from \$54,900 to \$30,000.

A copy of the enacted bill is attached for reference.

STATE OF MAINE

APPROVED

APPROVED

BY GOVERNOR

APPROVED

APPROVED

PUBLIC LAW

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

H.P. 1501 - L.D. 1975

AN ACT to Permit Possession of Soft-shell  
Clam Stocks 2 Inches or Greater in the  
Largest Diameter.

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

Sec. 1. 12 MRSA §6651, sub-§§1 and 2, as enacted by PL 1977, c. 661, §5, are amended to read:

1. Fees to be paid into fund. Twenty-five Fifty-three percent of all fees from shellfish licenses, shellfish transportation licenses and wholesale seafood licenses shall be paid into the Shellfish Fund.

2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for management, enforcement, restoration, development and conservation of shellfish in the intertidal zone or coastal waters.

Sec. 2. 12 MRSA §6671, sub-§2, as enacted by PL 1977, c. 661, §5, is amended to read:

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance regulating the taking possession of shellfish in any areas in the intertidal zone or coastal waters area of the municipality as provided by this section.

Sec. 3. 12 MRSA §6671, sub-§3, as amended by PL 1979, c. 608, §1, is further amended to read:

3. Shellfish conservation ordinance. Within any area in of the intertidal zone or coastal waters in the municipality, a shellfish conservation ordinance may regulate or prohibit the taking possession of shellfish; may fix the amount of shellfish that may be taken; may shall limit the size of soft shell soft-shell clams in accordance with subchapter I, Article 5; may fix the qualifications for a license, including municipal residency; may fix license fees; and may authorize the municipal officers to open and close flats under specified conditions. No A program or ordinance shall not regulate areas closed by regulation of the commissioner. An ordinance may also provide for enforcement, protection and evaluation of a green crab fencing program. No municipal commercial license may be issued unless the applicant has a current shellfish license, as provided in section 6601. The fee for a nonresident license shall be not more than 10 times the fee for a resident license, provided that in no case may the fee for a nonresident license exceed \$150. Notice of the number and the procedure for application shall be published in a trade or industry publication which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance and shall be posted in the municipal offices until the period concludes. Subsequent to that period, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

Sec. 4. 12 MRSA §6671, sub-§8, as enacted by PL 1977, c. 661, §5, is repealed and the following enacted in its place:

8. Local enforcement. The following provisions shall apply to enforcement.

A. A municipality that enacts an ordinance under this section shall be responsible for enforcing it.

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this Article shall, within one year of appointment, be certified by the commissioner. The commissioner shall establish a program to

provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The commissioner may establish by rule procedures for certification, recertification and for revocation of certification. A certificate may be revoked for failure of the warden to comply with the performance standards established by the commissioner.

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing him and may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden shall also have, within his jurisdiction, the powers of a marine patrol officer provided in section 6025, subsection 4. All of the powers conferred in this subsection shall be limited to the enforcement of a municipal shellfish conservation ordinance.

Sec. 5. 12 MRSA §6671, sub-§9, as enacted by PL 1977, c. 661, §5, is amended to read:

9. 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 less than \$100 nor more than \$1,000, except that fines for violation of subchapter I, Article 5, shall be as provided in section 6681.

Sec. 6. 12 MRSA c. 623, sub-c. I, Art. 5 is enacted to read:

#### ARTICLE 5

##### SOFT-SHELL CLAM MANAGEMENT

##### §6681. Soft-shell clam management

1. Purpose. The Legislature finds that the conservation and wise use of the State's shellfish resource may be enhanced by a 2-inch minimum size limit on possession of soft-shell clam shell stock in com-

ination with other management programs.

The Legislature further finds that management programs should be designed to meet local circumstances as appropriate, but also finds that a minimum size limit to be beneficial must be a uniform standard statewide.

The Legislature intends by this Article to enhance the value of the State's shellfish resource by the institution of uniform standards which can be implemented and enforced statewide.

2. Definition. For the purposes of this subchapter, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shelled clam shell stock.

3. Minimum size. It is unlawful to possess soft-shelled clam shell stock whose shells are less than 2 inches in the largest diameter.

4. Tolerance. Any person may possess soft-shelled clams that are less than 2 inches if, beginning on the effective date of this Article, they comprise less than 30% of any bulk pile; beginning in calendar year 1985, they comprise less than 20% of any bulk pile; and beginning in calendar year 1986, they comprise less than 10% of any bulk pile. The tolerance shall be determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

5. Enforcement. State, county and municipal wardens and enforcement officers shall enforce this subchapter.

6. Penalty. A minimum fine of \$100 and not more than \$1,000 shall be imposed for conviction of violation of this Article.

7. Sunset. This section shall be reviewed by the joint standing committee of the Legislature having jurisdiction over marine resources in the Second Regular Session of the 113th Legislature. That com-

mittee shall report its findings no later than March 1, 1988.

Sec. 7. Allocation. The following funds are allocated from the Shellfish Fund to carry out the purposes of the Revised Statutes, Title 12, section 6671, subsection 8, paragraph B.

1984-85

MARINE RESOURCES,  
DEPARTMENT OF

Positions	(1)
Personal Services	\$26,077
All Other	<u>3,923</u>
Total	\$30,000

Provides funding for one marine patrol sergeant.



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In House of Representatives, ..... 1984

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 1984

Read twice and passed to be enacted.

..... President

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Approved ..... 1984

..... Governor