



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1084

S.P. 317

In Senate, March 15, 2011

### **An Act To Amend Certain Provisions of Maine Fish and Wildlife Laws**

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Submitted by the Department of Inland Fisheries and Wildlife pursuant to Joint Rule 204.  
Reference to the Committee on Inland Fisheries and Wildlife suggested and ordered  
printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator MARTIN of Kennebec.  
Cosponsored by Representatives: BRIGGS of Mexico, CRAFTS of Lisbon, DAVIS of  
Sangerville, ESPLING of New Gloucester, GUERIN of Glenburn.

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

2 **Sec. 1. 12 MRSA §10052**, as amended by PL 2009, c. 340, §2, is further amended  
3 to read:

4 **§10052. Division of Licensing and Registration**

5 The Division of Licensing, and Registration ~~and Engineering~~ is established within the  
6 Department of Inland Fisheries and Wildlife. The division is equal in organizational level  
7 and status with other major organizational units within the department or its successors.  
8 The division is administered by a director who is immediately responsible to the deputy  
9 commissioner. The director possesses full authority and responsibility for administering  
10 all the powers and duties of the division, subject to the direction of the commissioner and  
11 except as otherwise provided by statute. The responsibilities of the division include, but  
12 are not limited to:

13 **3. Licensing and registration.** The administration and issuance of department  
14 licenses, stamps and permits and the registration of snowmobiles, watercraft and all-  
15 terrain vehicles; ~~and,~~

16 ~~**4. Engineering.** The design, maintenance and repair of department-owned facilities,~~  
17 ~~including the preparation of a capital improvement plan to be printed in the budget~~  
18 ~~document.~~

19 **Sec. 2. 12 MRSA §10052-A** is enacted to read:

20 **§10052-A. Division of Engineering**

21 The Division of Engineering is established within the Department of Inland Fisheries  
22 and Wildlife. The division is administered by a director. The responsibilities of the  
23 division include:

24 **1. Engineering.** The design, maintenance and repair of department-owned facilities,  
25 including the preparation of a capital improvement plan to be printed in the budget  
26 document.

27 **Sec. 3. 12 MRSA §10502, sub-§1**, as amended by PL 2003, c. 592, §1 and  
28 affected by §5; c. 614, §9; and c. 655, Pt. C, §§5 and 6, is further amended to read:

29 **1. Seizure; filing libel.** All fish or wildlife hunted, trapped, fished, bought, sold,  
30 carried, transported or found in possession of any person in violation of this Part, and all  
31 currency and equipment, including but not limited to firearms, possessed or used in  
32 violation of this Part are contraband and subject to seizure by any officer authorized to  
33 enforce this Part. Except for property exempted from libel under subsection 2, an officer  
34 making such a seizure shall file, within a reasonable time, with the court a libel against  
35 that property. The libel must describe the property seized and the date and place of that  
36 seizure, cite the provision of law that is alleged to have been violated and request a decree  
37 of forfeiture. The libel proceedings and disposal of property are governed by section  
38 10503.

1           **Sec. 4. 12 MRSA §10503, sub-§1**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
2 affected by c. 614, §9, is amended to read:

3           **1. Notice and hearing of libel.** The judge shall fix a time for the hearing of the libel  
4 and issue a notice of the libel to all persons interested, citing them to appear at the time  
5 and place appointed and show cause why the fish, wildlife, currency or equipment  
6 possessed should not be declared forfeited. A true and attested copy of the libel and  
7 notice must be posted in 2 conspicuous places in the town or place where the fish,  
8 wildlife, currency or equipment possessed was seized, or in such place or places as is  
9 ordered by the court, at least 10 days before the day on which the libel is returnable.  
10 Copies must be served on common carriers;

11           **Sec. 5. 12 MRSA §10503, sub-§5**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
12 affected by c. 614, §9, is amended to read:

13           **5. Return of articles or proceeds to claimant.** If the court is, upon the hearing,  
14 satisfied that the fish, wildlife, currency or equipment possessed was not possessed in  
15 violation of this Part and that the claimant is entitled to the custody of any part of the  
16 articles, the court shall give the claimant an order in writing, directed to the officer having  
17 the articles in custody, commanding delivery to the claimant of the articles or proceeds  
18 derived from the sale of the articles, to which the claimant is found to be entitled, within  
19 48 hours after demand;

20           **Sec. 6. 12 MRSA §10652, sub-§1, ¶B**, as affected by PL 2003, c. 614, §9 and  
21 repealed and replaced by c. 655, Pt. B, §68 and affected by §422, is amended to read:

22           B. A person may not while hunting any wild animal or wild bird:

23                   (1) Damage or destroy a tree on another person's land by inserting into that tree  
24 any metallic or ceramic object to be used as, or as part of, a ladder or observation  
25 stand unless the person has the permission of the landowner;

26                   (2) Except as provided in this paragraph, erect or use either a portable or  
27 permanent ~~tree~~ ladder or observation stand ~~attached to a tree~~ on the land of  
28 another person unless:

29                           (a) That person has obtained oral or written authorization to erect and use a  
30 ~~tree~~ ladder or observation stand from the landowner or the landowner's  
31 representative; and

32                           (b) The ~~tree~~ ladder or observation stand is plainly labeled with a 2-inch by  
33 4-inch tag identifying the name and address of the person or persons  
34 authorized by the landowner to use the ~~tree~~ stand or observation ladder.

35                   This subparagraph does not apply to a portable ~~tree~~ ladder or observation stand  
36 that is located on land within the jurisdiction of the Maine Land Use Regulation  
37 Commission and attended by the person who owns the ladder or observation  
38 stand;

39                   (3) Tear down or destroy any fence or wall on another person's land;

40                   (4) Leave open any gate or bars on another person's land; or

1 (5) Trample or destroy any crop on another person's land.

2 **Sec. 7. 12 MRSA §10703, sub-§11**, as amended by PL 2009, c. 447, §15, is  
3 further amended to read:

4 **11. Fatalities.** Notwithstanding any other provision of this section, any person  
5 hunting wild animals or wild birds who is involved in a hunting accident or any operator  
6 of a watercraft, snowmobile or ATV who is involved in a watercraft, snowmobile or ATV  
7 accident that ~~results~~ has resulted or could result in the death of any person must submit to  
8 and complete chemical tests to determine that person's alcohol level or other chemical use  
9 by analysis of blood, breath or urine. A law enforcement officer may determine which  
10 types of tests will be administered. The results of tests taken pursuant to this subsection  
11 are not admissible at trial unless the court is satisfied that probable cause exists,  
12 independent of the test results, to believe that the hunter or operator was under the  
13 influence of intoxicating liquor or drugs or had an excessive alcohol level.

14 **Sec. 8. 12 MRSA §10751, sub-§4**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
15 affected by c. 614, §9, is repealed.

16 **Sec. 9. 12 MRSA §10757**, as enacted by PL 2003, c. 414, Pt. A, §2 and affected  
17 by c. 614, §9, is amended to read:

18 **§10757. Fraudulently obtaining or possessing license or permit**

19 A person may not obtain or possess a license or permit authorized in this Part through  
20 fraud, misstatement or misrepresentation. A person who violates this section commits a  
21 Class E crime.

22 **Sec. 10. 12 MRSA §10801, sub-§6, ¶C**, as enacted by PL 2003, c. 414, Pt. A, §2  
23 and affected by c. 614, §9, is amended to read:

24 C. If an agent is delinquent for more than 150 days or is delinquent 3 or more times  
25 in one ~~calendar~~ year, the commissioner shall:

- 26 (1) Terminate the agency for the balance of the year; and  
27 (2) Order that the agency not be renewed for the next year.

28 **Sec. 11. 12 MRSA §10851, sub-§1, ¶D**, as amended by PL 2007, c. 651, §9, is  
29 further amended to read:

30 D. For a resident 70 years of age or older. A person who holds a valid senior  
31 lifetime license under this section ~~upon turning at any time during the calendar year~~  
32 that person turns 70 years of age ~~may obtain at no cost~~ is entitled to all hunting  
33 permits and licenses authorized in this Part and may renew at no cost a guide license  
34 under section 12853. A person who is 70 years of age or older may purchase a senior  
35 lifetime license that entitles the holder to all the privileges described in this paragraph  
36 for a one-time \$8 fee.

37 **Sec. 12. 12 MRSA §10902, sub-§5**, as enacted by PL 2003, c. 414, Pt. A, §2 and  
38 affected by c. 614, §9, is amended to read:

1           **5. Hunting license revocation or suspension for endangerment or harm to**  
2 **another.** The commissioner may bring a complaint in the District Court seeking to  
3 revoke or suspend the current hunting license or the privilege to obtain a hunting license  
4 of any person, regardless of residency, whom the commissioner reasonably believes to  
5 have killed, wounded or recklessly endangered the safety of another human being while  
6 hunting. The District Court shall revoke or suspend the person's license or privilege for a  
7 period of at least 5 years if the court finds that the person, while hunting, has killed,  
8 wounded or recklessly endangered the safety of another human being and the public  
9 safety will be endangered by the person's retention of that license or privilege. For the  
10 purpose of this subsection, "recklessly" has the same meaning as that set out in Title  
11 17-A, section 35, subsection 3.

12           A. A person whose hunting license has been revoked or suspended or whose right  
13 to hunt or the right to obtain a hunting license has been denied under this subsection,  
14 may, after the expiration of one year from the date of the revocation or suspension,  
15 petition the commissioner for restoration of the person's privilege to procure such a  
16 license.

17           B. The commissioner, after hearing, may restore the petitioner's privilege if the  
18 commissioner determines that the public safety will not be endangered by restoring  
19 that privilege.

20           C. If the commissioner disallows the petition and thereby refuses to grant the  
21 restoration of the privilege, the petitioner may appeal to the commissioner's advisory  
22 council, which, after hearing on the petition, may allow it and restore the privilege.

23           **Sec. 13. 12 MRSA §10902, sub-§6, ¶C**, as affected by PL 2003, c. 614, §9 and  
24 amended by c. 655, Pt. B, §99 and affected by §422, is further amended to read:

25           C. Night hunting, in violation of section ~~11206-A~~ 11206;

26           **Sec. 14. 12 MRSA §10902, sub-§6, ¶E**, as enacted by PL 2003, c. 414, Pt. A, §2  
27 and affected by c. 614, §9, is amended to read:

28           E. Buying or selling bear, hunting or trapping bear after having killed one or  
29 exceeding the bag limit on bear, in violation of section 11217 ~~or~~, 11351 or 12260;

30           **Sec. 15. 12 MRSA §10902, sub-§6, ¶G**, as affected by PL 2003, c. 614, §9 and  
31 amended by c. 655, Pt. B, §99 and affected by §422, is further amended to read:

32           G. Buying or selling moose, unlawfully hunting moose or unlawfully possessing  
33 moose, in violation of section 11154, 11217, 11601, 11651-A, 11652, 12302-A,  
34 12304-A, 12305 or 12403; or

35           **Sec. 16. 12 MRSA §10902, sub-§10, ¶E**, as enacted by PL 2005, c. 626, §2, is  
36 amended to read:

37           E. Failure or refusal to stop an ATV or attempting to elude an officer, as prohibited  
38 under section 10651, subsection 1, paragraphs ~~C and D~~ and E.

39           **Sec. 17. 12 MRSA §11152, sub-§1-A**, as enacted by PL 2007, c. 463, §4, is  
40 amended to read:

1           **1-A. Antlerless deer in wildlife management districts with no permits issued.**  
2 Except as otherwise provided in this Part, a person may not hunt or possess an antlerless  
3 deer in ~~Washington County~~ a wildlife management district that does not have permits  
4 issued. A person may possess in one of those districts an antlerless deer ~~in Washington~~  
5 ~~County~~ that has been lawfully registered in another ~~county~~ district where permits have  
6 been issued.

7 A person that violates this subsection commits a Class D crime for which a minimum fine  
8 of \$1,000 must be imposed, and the court shall impose a sentencing alternative involving  
9 a term of imprisonment of at least 3 days, none of which may be suspended.

10           **Sec. 18. 12 MRSA §11301**, as affected by PL 2003, c.614, §9 and amended by c.  
11 655, Pt. B, §§156 and 157 and affected by §422, is further amended to read:

12           **§11301. Placing of bear bait**

13           **1. Bear baiting.** A person may not ~~use~~ place bait to entice, hunt or trap black bear,  
14 unless:

15           A. The bait is placed at least 50 yards from a travel way that is accessible by a  
16 conventional 2-wheel-drive or 4-wheel-drive vehicle;

17           B. The stand, blind or bait area is plainly labeled with a 2-inch-by-4-inch tag with  
18 the name and address of the baiter;

19           C. The bait is placed more than 500 yards from a site permitted or licensed for the  
20 disposal of solid waste or a campground;

21           D. The bait is placed more than 500 yards from an occupied dwelling, unless  
22 written permission is granted by the owner or lessee;

23           E. The bait is placed not more than 30 days before the opening day of the season  
24 and not after October 31st;

25           F. The bait areas will be cleaned up by November 10th, as defined by the state litter  
26 laws; and

27           G. The person hunting from a stand or blind of another person has permission of the  
28 owner of that stand or blind.

29           **2. Penalty.** A person who violates this section commits a Class E crime.

30           **Sec. 19. 12 MRSA §11605** is enacted to read:

31           **§11605. Baiting moose**

32           **1. Prohibitions.** A person may not, during open hunting season on moose:

33           A. Place salt or any other bait or food in a place to entice moose to that place; or

34           B. Hunt from an observation stand or blind overlooking salt, grain, fruit, nuts or  
35 other foods known to be attractive to moose. This prohibition does not apply to  
36 hunting from an observation stand or blind overlooking;

- 1                   (1) Standing crops;
- 2                   (2) Foods that are left as a result of normal agricultural operations or as a result
- 3                   of a natural occurrence; or
- 4                   (3) Bear bait that is placed at a bear hunting stand or blind in accordance with
- 5                   section 11301, subsection 1.

6                   **2. Penalty.** A person who violates subsection 1 commits a Class E crime.

7                   **Sec. 20. 12 MRSA §11751-A, sub-§2,** as enacted by PL 2003, c. 552, §11 and

8 affected by §15 and c. 655, Pt. C, §§2 and 6, is amended to read:

9                   **2. Exceeding bag limit.** A Except as otherwise provided in section 11155,

10 subsection 1-B, a person may not possess more than one wild turkey during any open

11 season, except a person may keep more than one legally obtained wild turkey in that

12 person's home at any time or as otherwise provided in law or rule. A person who holds a

13 2nd spring wild turkey permit may take only one turkey per day.

14                   **Sec. 21. 12 MRSA §12051, sub-§1, ¶A,** as enacted by PL 2003, c. 414, Pt. A, §2

15 and affected by c. 614, §9, is amended to read:

16                   A. A person may train dogs on foxes, ~~rabbits~~ snowshoe hare and raccoons from July

17 1st through the following March 31st, including Sundays.

18                   **Sec. 22. 12 MRSA §12051, sub-§3,** as affected by PL 2003, c. 614, §9 and

19 repealed and replaced by c. 655, Pt. B, §191 and affected by §422, is amended to read:

20                   **3. Possessing firearm while training dogs.** A person may not possess a firearm

21 while training a dog outside of the open training season on foxes, ~~rabbits~~ snowshoe hare

22 and raccoons as set out in subsection 1.

23                   A. A person who violates this subsection commits a civil violation for which a fine

24 of not less than \$100 nor more than \$500 may be adjudged.

25                   B. A person who violates this subsection after having been adjudicated as having

26 committed 3 or more civil violations under this Part within the previous 5-year period

27 commits a Class E crime.

28                   **Sec. 23. 12 MRSA §12159,** as affected by PL 2003, c. 614, §9 and amended by c.

29 655, Pt. B, §§207 and 208 and affected by §422, is further amended to read:

30                   **§12159. Taking reptiles and amphibians from the wild**

31                   **1. Prohibition; penalties.** Except as provided in this section, a person may not take

32 and possess ~~snakes or turtles~~ reptiles or amphibians from the wild for export, sale or

33 commercial purposes.

34                   A. A person who violates this subsection commits a civil violation for which a fine

35 of not less than \$100 nor more than \$500 may be adjudged.

1 B. A person who violates this subsection after having been adjudicated as having  
2 committed 3 or more civil violations under this Part within the previous 5-year period  
3 commits a Class E crime.

4 **2. Commercial amphibian permit.** Persons harvesting ~~snapping turtles~~ amphibians  
5 for purposes of resale are required to obtain a permit from the commissioner.

6 **3. Rules.** The commissioner shall adopt rules pertaining to harvest methods,  
7 confinement and disposal of ~~snapping turtles~~ amphibians. The commissioner may by  
8 rule:

- 9 A. Require reporting of ~~commercial~~ harvest activities;
- 10 B. Establish a season, including daily and season possession limits;
- 11 C. Establish ~~size limits~~ requirements for humane harvest, confinement and disposal  
12 methods; and
- 13 D. Establish a fee schedule to implement a permit system under this section.

14 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
15 chapter 375, subchapter 2-A.

16 **Sec. 24. 12 MRSA §12160** is enacted to read:

17 **§12160. Taking of certain nonmarine invertebrates from the wild for commercial**  
18 **purposes**

19 **1. Prohibition; penalties.** Except as provided in this section, a person may not take  
20 and possess certain nonmarine invertebrates, specifically freshwater mussels, butterflies,  
21 moths, dragonflies or beetles, from the wild for export, sale or commercial purposes.

22 A. A person who violates this subsection commits a civil violation for which a fine  
23 of not less than \$100 nor more than \$500 may be adjudged.

24 B. A person who violates this subsection after having been adjudicated as having  
25 committed 3 or more civil violations under this Part within the previous 5-year period  
26 commits a Class E crime.

27 **2. Commercial nonmarine invertebrate permit.** Persons harvesting freshwater  
28 mussels, butterflies, moths, dragonflies or beetles for purposes of resale are required to  
29 obtain a permit from the commissioner.

30 **3. Rules.** The commissioner may by rule:

- 31 A. Require reporting of commercial harvest activities, including at a minimum dates,  
32 locations, and numbers collected by species;
- 33 B. Establish daily and season possession limits;
- 34 C. Establish a fee schedule to implement a permit system under this section; and
- 35 D. Require humane harvest, confinement and disposal methods.



1 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
2 chapter 375, subchapter 2-A.

3 **Sec. 25. 12 MRSA §12259, sub-§3**, as affected by PL 2003, c. 614, §9 and  
4 amended by c. 655, Pt. B, §221 and affected by §422, is further amended to read:

5 **3. Nonresident trapping beaver.** A Except as authorized in specific wildlife  
6 management districts as determined by the commissioner, a nonresident may not trap  
7 beaver in this State.

8 A person who violates this subsection commits a Class E crime.

9 **Sec. 26. 12 MRSA §12501, sub-§4, ¶B**, as enacted by PL 2003, c. 414, Pt. A, §2  
10 and affected by c. 614, §9, is amended to read:

11 B. A nonresident who possesses a 15-day nonresident fishing license may exchange  
12 it for an annual nonresident license upon the ~~additional~~ payment of ~~\$12~~, the  
13 difference between the fee for the 15-day license and the fee for the annual license,  
14 and \$2 to the clerk or issuing agent.

15 **Sec. 27. 12 MRSA §12506, sub-§5-A, ¶A**, as amended by PL 2007, c. 463, §6  
16 and affected by §9, is further amended to read:

17 A. A person may fish for alewives by use of a dip net or single hook and line for  
18 consumption by that person or members of that person's family, ~~provided that~~ as long  
19 as the person takes or possesses no more than ~~one bushel~~ 25 fish in any day and  
20 ~~provided also that~~ as long as the alewives are taken downstream from any location  
21 where a municipality or other person has been granted exclusive rights under section  
22 6131; and

23 **Sec. 28. 12 MRSA §12661, sub-§2**, as affected by PL 2003, c. 614, §9 and  
24 repealed and replaced by c. 655, Pt. B, §284 and affected by §422, is repealed.

25 **Sec. 29. 12 MRSA §12661, sub-§3**, as amended by PL 2005, c. 397, Pt. A, §9, is  
26 further amended to read:

27 **3. Removal of abandoned ice fishing shacks.** A person may not leave a structure  
28 on another person's land without permission from the landowner. Notwithstanding the  
29 provisions of Title 33, chapter 41, a landowner on whose property an ice fishing shack is  
30 left in violation of this section and Title 17, section 2263-A may remove or destroy the  
31 shack. The landowner may recover any costs of removing or destroying the shack from  
32 the owner of the shack in a civil action.

33 **Sec. 30. 12 MRSA §12661, sub-§4** is enacted to read:

34 **4. Penalty.** The following penalties apply to violations of this section.

35 A. A person who violates this section commits a civil violation for which a fine of  
36 not less than \$100 nor more than \$500 may be adjudged.



1 It also prohibits leaving an ice fishing shack on a landowner's shorefront without  
2 permission and allows that landowner to remove the shack after April 1st.

3 It also broadens to residents of other states the Commissioner of Inland Fisheries and  
4 Wildlife's authority to revoke, suspend or refuse to issue a license to a person who has  
5 killed, wounded or recklessly endangered the safety of another human being while  
6 hunting.

7 It no longer requires that whenever a license or permit to hunt is in the form of a  
8 stamp, the licensee has to affix the stamp on the license and sign it.

9 It clarifies that a person may not obtain or possess a license or permit through fraud,  
10 misstatement or misrepresentation.

11 It clarifies that a person who is 70 years of age and holds a valid senior lifetime  
12 license at any time during the calendar year that the person turns 70 years of age is  
13 entitled to all hunting permits and licenses.

14 It modifies the current tree stand laws to include all types of stands that people use  
15 for hunting, such as freestanding tripods, rather than just stands that are attached to trees.

16 It enables the enforcement of the laws regarding the placement of bear bait.  
17 Currently a person can claim that the person did not place the bait and therefore is not in  
18 violation of any laws.

19 It also requires persons operating ATVs who are required to have completed a  
20 training course to provide proof of having completed that course upon request by a law  
21 enforcement officer.

22 It also changes the laws regarding submitting to chemical tests when involved in an  
23 accident while hunting or on a recreational vehicle to mirror similar laws in the Maine  
24 Revised Statutes, Title 29-A.

25 It also includes currency in the items that must be forfeited by violators of fish and  
26 wildlife laws.

27 The Atlantic State Marine Fisheries Commission is reducing the alewife harvest  
28 along the entire eastern seaboard. The bill establishes a daily bag limit of 25 alewives;  
29 this change keeps the limit consistent with the department rules.

30 It reduces the fee a nonresident must pay to exchange a 15-day nonresident fishing  
31 license for an annual license to the difference between the 15-day license and the annual  
32 license and \$2 to the clerk or issuing agent.

33 It also authorizes the commissioner to allow nonresidents to trap beaver in designated  
34 wildlife management districts where a higher harvest is necessary.

35 It clarifies that reptiles cannot be taken for commercial purposes.

36 It also prohibits baiting moose.

1           It clarifies that a person who holds a 2nd spring wild turkey permit may take only one  
2 turkey per day.

3           It changes the term "rabbits" to "snowshoe hare" in the provisions regarding the  
4 training of dogs on game.