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Legislative Document

No. 1722

S.P. 587

In Senate, December 29, 2011

An Act To Make Technical Changes to Maine's Marine Resources Laws

Submitted by the Department of Marine Resources pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 23, 2011. Referred to the Committee on Marine Resources pursuant to Joint Rule 308.2 and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SNOWE-MELLO of Androscoggin.

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

2 **Sec. 1. 12 MRSA §6001, sub-§1-A**, as enacted by PL 1981, c. 63, is repealed.

3 **Sec. 2. 12 MRSA §6001, sub-§37-B** is enacted to read:

4 **37-B. River herring.** "River herring" means the species *Alosa pseudoharengus*,
5 commonly called alewife, and *Alosa aestivalis*, commonly called blueback herring.

6 **Sec. 3. 12 MRSA §6022, sub-§17**, as enacted by PL 2011, c. 10, §1, is amended
7 to read:

8 **17. Permit banking program.** The commissioner may administer a permit banking
9 program in which the department holds federal limited access fishing permits and
10 distributes the rights associated with those permits to eligible residents of the State with
11 the goal of restoring and preserving access to federally managed fisheries. The
12 commissioner may lease fisheries allocations, as required, to fund the costs associated
13 with the permit banking program and may use funds in excess of those needed to
14 administer the program to provide assistance to groundfish sectors consistent with the
15 goals of the program.

16 **Sec. 4. 12 MRSA §6030, sub-§2**, as amended by PL 2003, c. 520, §1, is repealed.

17 **Sec. 5. 12 MRSA §6032-A** is enacted to read:

18 **§6032-A. Marine Recreation Fishing Conservation and Management Fund**

19 **1. Fund established.** The Marine Recreation Fishing Conservation and
20 Management Fund, referred to in this section as "the fund," is established within the
21 department. The commissioner may receive on behalf of the fund funds from any source.
22 All money received into the fund must be used for the purposes of the fund under
23 subsection 2. Unexpended balances in the fund at the end of the fiscal year do not lapse
24 but must be carried forward to the next fiscal year to be used for the purposes of the fund.
25 Any interest earned on the money in the fund must be credited to the fund.

26 **2. Uses of fund.** The commissioner may authorize the expenditure of money from
27 the fund for research and conservation efforts related to the saltwater recreational fishery.

28 **Sec. 6. 12 MRSA §6072-D, sub-§5**, as enacted by PL 2003, c. 660, Pt. A, §16, is
29 repealed.

30 **Sec. 7. 12 MRSA §6078-A, sub-§5**, as enacted by PL 2003, c. 247, §19, is
31 repealed.

32 **Sec. 8. 12 MRSA §6121, sub-§1**, as repealed and replaced by PL 1983, c. 388,
33 §1, is amended to read:

34 **1. Commissioner's authority.** In order to conserve, develop or restore anadromous
35 fish resources, the commissioner may require a fishway to be erected, maintained,

1 repaired or altered by the owners, lessors or other persons in control of any dam or other
2 artificial obstruction within coastal waters frequented by ~~alewives~~ river herring, shad,
3 salmon, sturgeon or other anadromous fish species.

4 **Sec. 9. 12 MRSA §6131**, as amended by PL 2009, c. 17, §§1 to 4, is further
5 amended to read:

6 **§6131. River herring fishing rights**

7 The commissioner is authorized to develop, manage or lease ~~alewife~~ river herring
8 fishing rights as follows.

9 **1. River herring rights.** The commissioner shall grant the right, exclusive or
10 otherwise, to take ~~alewives~~ river herring to any municipality entitled to those rights on
11 January 1, 1974 and may grant the right to take ~~alewives~~ river herring to any other
12 municipality provided:

13 A. Any municipality that has had the right to take ~~alewives~~ river herring, exclusive
14 or otherwise, or is granted that right by the commissioner, shall take action through
15 its legislative body and file a copy of this action with the commissioner prior to April
16 20th or lose that right for the remaining part of that year;

17 B. Municipal rights that are not exercised for 3 consecutive years lapse;

18 C. At its annual meeting the municipality may determine by vote:

19 (1) Whether ~~alewife~~ river herring fishing will be operated by the municipality
20 through the municipal officers or a committee; and

21 (2) Whether the municipal rights to take ~~alewives~~ river herring will be sold by
22 the municipal officers or committee; and

23 D. Harvesting plans ~~shall~~ must be developed as follows.

24 (1) Any municipality engaged in harvesting ~~alewives~~ river herring shall submit a
25 written harvesting plan to the commissioner prior to April 20th of each calendar
26 year. All harvesting plans ~~shall~~ must set forth in detail the exact conditions under
27 which ~~alewives~~ river herring may be taken, all in accordance with good
28 conservation practices.

29 (2) The commissioner, after consultation with the appropriate municipal officers,
30 shall approve or modify the harvesting plan as ~~he deems~~ the commissioner
31 determines necessary for the conservation of ~~alewives~~ river herring and other
32 anadromous fish, and shall file a copy of the approved plan with the clerk of the
33 municipality.

34 **2. Limitations.** The following limitations apply to any grant.

35 A. It is unlawful to take ~~alewives~~ river herring from 6 a.m. each Thursday morning
36 until 6 a.m. Sunday morning. Municipalities that make other provisions for escape of
37 spawning ~~alewives, which~~ river herring that are approved by the commissioner, are
38 exempt from this limit.

1 B. It ~~shall be~~ is unlawful for any municipality or purchaser or lessee of the
2 municipal right to take alewives river herring in any manner except as provided in the
3 approved alewife river herring harvesting plan.

4 **3. Closed period in rivers and streams not under lease agreement.** In any river or
5 stream not managed under a lease agreement, there is a 72-hour closed period on the
6 taking of alewives river herring and obstruction of the watercourse to allow the free
7 passage of fish from 6 a.m. on Thursday to 6 a.m. the following Sunday.

8 **4. Violation of harvesting plan.** If the commissioner determines after investigation
9 that the municipality is not following its alewife river herring harvesting plan, ~~he the~~
10 commissioner shall notify the municipality. Any municipality ~~which that~~ fails to take
11 corrective action within 48 hours of notification ~~shall lose~~ loses its alewife river herring
12 fishing privilege for that calendar year. Upon further notification by the commissioner of
13 loss of alewife river herring fishing privileges, the municipality or its agents shall cease
14 all fishing activity and immediately remove all traps, weirs, seines or other alewife river
15 herring fishing gear from their alewife river herring waters.

16 **5. Leasing of rights.** The commissioner:

17 A. When the commissioner decides to manage or lease any alewife river herring
18 fishing rights ~~where~~ when a municipality has had those rights and has failed to act as
19 provided in subsection 1, shall so notify the clerk of the municipality in writing. After
20 the notice, the commissioner may lease any of those rights to any person, as the
21 commissioner determines is in the best interest of the State. All leases must be in
22 writing and signed by the commissioner and the lessee and must set forth in detail the
23 exact conditions under which the alewives river herring may be taken, all in
24 accordance with good conservation practices; and

25 B. May manage or lease alewife river herring fishing rights in any river or stream
26 where a municipality does not have those rights. The commissioner may lease any of
27 those rights to any person, as the commissioner determines is in the best interest of
28 the State. All leases must be in writing and approved and signed by the commissioner
29 and the lessee and must set forth in detail the exact conditions under which the
30 alewives river herring may be taken, all in accordance with good conservation
31 practices.

32 **6. Violation of terms.** It ~~shall be~~ is unlawful for any person holding such a lease to
33 violate any of its terms or to cause the same to be done.

34 **7. Molesting equipment.** It ~~shall be~~ is unlawful to molest the fishing equipment of
35 any lease holder or to interfere with the fishing rights granted by the lease.

36 **8. Migratory Fish Fund.** All fees received by the commissioner from alewife river
37 herring leasing rights are allocated to the Migratory Fish Fund, as established.
38 Expenditures from the Migratory Fish Fund must be made:

39 A. To build fishways for alewives river herring and other migratory fish;

40 B. For construction of other facilities for improving the environment of alewives
41 river herring and other migratory fish;

- 1 C. For general propagation and conservation of ~~alewives~~ river herring and other
2 migratory fish;
- 3 D. For research to enhance the fishing industry based on ~~alewives~~ river herring and
4 other migratory fish; and
- 5 E. For management measures required to maintain or enhance ~~alewife~~ river herring
6 populations or populations of other migratory fish.

7 The Migratory Fish Fund does not lapse.

8 **Sec. 10. 12 MRSA §6134**, as repealed and replaced by PL 2007, c. 587, §1, is
9 amended to read:

10 **§6134. River herring passage; fishways on the St. Croix River**

11 This section governs the passage of ~~alewives~~ river herring on the Woodland Dam and
12 the Grand Falls Dam located on the St. Croix River.

13 **1. Woodland Dam.** By May 1, 2008, the commissioner and the Commissioner of
14 Inland Fisheries and Wildlife shall ensure that the fishway on the Woodland Dam is
15 configured or operated in a manner that allows the passage of ~~alewives~~ river herring.

16 **2. Grand Falls Dam.** The commissioner and the Commissioner of Inland Fisheries
17 and Wildlife shall ensure that the fishway on the Grand Falls Dam is configured or
18 operated in a manner that prevents the passage of ~~alewives~~ river herring.

19 **Sec. 11. 12 MRSA §6136, sub-§5**, as enacted by PL 2005, c. 641, §1, is amended
20 to read:

21 **5. Amendment and termination of trust.** The department shall ~~file a report~~ make
22 recommendations as follows.

23 ~~A. The department shall report to the Legislature on a biennial basis concerning the~~
24 ~~activities of the trust.~~

25 B. In the event the department determines that the provisions of the trust should be
26 amended, the department shall make appropriate recommendations to the Legislature
27 ~~in its biennial report.~~

28 C. The department may recommend ~~in its biennial report~~ that the trust be
29 terminated if termination is determined to be appropriate. In the event that the
30 Legislature terminates the trust, the principal and operating funds must be disbursed
31 in a manner consistent with the purpose of the trust.

32 **Sec. 12. 12 MRSA §6141, sub-§5**, as amended by PL 1987, c. 694, §2, is
33 repealed.

34 **Sec. 13. 12 MRSA §6171, sub-§5, ¶B**, as enacted by PL 2007, c. 574, §1, is
35 amended to read:

36 B. If the commissioner determines that for biological reasons a rule adopted under
37 this section must take effect prior to final adoption under paragraph A, the

1 commissioner may adopt the rule as a routine technical rule pursuant to Title 5,
2 chapter 375, subchapter 2-A. A rule adopted under this paragraph is effective until
3 90 days after the adjournment of the next regular session of the Legislature. Rules
4 adopted pursuant to this paragraph must also be submitted to the Legislature under
5 paragraph A. The commissioner may not adopt rules under Title 5, section 8054
6 pursuant to this paragraph.

7 ~~This paragraph is repealed July 31, 2012.~~

8 **Sec. 14. 12 MRSA §6302-A, sub-§1**, as amended by PL 2011, c. 266, Pt. A, §2,
9 is further amended to read:

10 **1. Tribal exemption; commercial harvesting licenses.** A member of the
11 Passamaquoddy Tribe or Penobscot Nation who is a resident of the State is not required
12 to hold a state license or permit issued under section 6421, 6501, 6502-A, 6505-A,
13 6505-C, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D,
14 6751, 6803 ~~or~~, 6804 or 6808 to conduct activities authorized under the state license or
15 permit if that member holds a valid license issued by the tribe or nation to conduct the
16 activities authorized under the state license or permit. A member of the Passamaquoddy
17 Tribe or Penobscot Nation issued a tribal license pursuant to this subsection to conduct
18 activities is subject to all laws and rules applicable to a person who holds a state license
19 or permit to conduct those activities and to all the provisions of chapter 625, except that
20 the member of the tribe or nation:

21 A. May utilize lobster traps tagged with trap tags issued by the tribe or nation in a
22 manner consistent with trap tags issued pursuant to section 6431-B. A member of the
23 tribe or nation is not required to pay trap tag fees under section 6431-B if the tribe or
24 nation issues that member trap tags;

25 B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe or
26 nation in a manner consistent with tags issued pursuant to section 6505-B. A member
27 of the tribe or nation is not required to pay elver fishing gear fees under section
28 6505-B if the tribe or nation issues that member elver fishing gear tags; and

29 C. Is not required to hold a state shellfish license issued under section 6601 to obtain
30 a municipal shellfish license pursuant to section 6671.

31 **Sec. 15. 12 MRSA §6374, sub-§2**, as enacted by PL 2011, c. 311, §4, is amended
32 to read:

33 **2. Hearing.** A hearing requested under subsection 1 must be held within ~~40~~ 30
34 business days after receipt by the commissioner of a request for hearing except that a
35 hearing may be held more than ~~40~~ 30 business days after the request if the delay is
36 requested by the person requesting the hearing. The hearing must be held in accordance
37 with the Maine Administrative Procedure Act, except that:

38 A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether
39 the person requesting the hearing had a license and whether that person committed a
40 violation of marine resources law; and

1 B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under
2 Title 5, section 9062 must be made not more than 10 business days after completion
3 of the hearing.

4 **Sec. 16. 12 MRSA §6501, sub-§6**, as amended by PL 2011, c. 266, Pt. A, §16, is
5 further amended to read:

6 **6. Definition.** For the purposes of this chapter, "fish" means all marine finfish
7 except Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, ~~alewife~~ river herring,
8 Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and
9 shad. For the purposes of this chapter, "fish" also means all other marine organisms,
10 except lobsters, crabs, sea urchins, shellfish, scallops, marine worms, elvers, sea
11 cucumbers, eels, shrimp or seaweed.

12 **Sec. 17. 12 MRSA §6502-A, sub-§1**, as enacted by PL 2009, c. 527, §2, is
13 amended to read:

14 **1. Definition.** As used in this section, "pelagic or anadromous fish" means Atlantic
15 herring, Atlantic menhaden, whiting, spiny dogfish, ~~alewife~~ river herring, Atlantic
16 mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad.

17 **Sec. 18. 12 MRSA §6502-A, sub-§4**, as enacted by PL 2009, c. 527, §2, is
18 amended to read:

19 **4. Exemption.** The licensing requirement under subsection 2 does not apply to a
20 person who fishes for, takes, possesses or transports any pelagic or anadromous fish that
21 have been taken by speargun, harpoon, minnow trap, hand dip net or hook and line and
22 are only for personal use.

23 **Sec. 19. 12 MRSA §6553-A**, as enacted by PL 1983, c. 830, is amended to read:

24 **§6553-A. Implements and devices in Washington County waters**

25 Between May 1st and December 1st of each year, it ~~shall be~~ is unlawful to set or use
26 any device, such as fish spawn, grapnel, spear, trawl, weir, gaff, seine, gill net, trap or set
27 line on the waters of the Pleasant River and its tributaries in Columbia Falls and Addison,
28 in Washington County, above Maine River Bridge, so-called, in Addison, and during that
29 closed period ~~no~~ a person may not have in ~~his~~ that person's possession any grapnel, trawl,
30 weir, seine, gill net, trap or set line on the waters of the Pleasant River or its tributaries
31 within those boundaries. This section does not apply to the taking of eels by spear from
32 those waters during the month of November annually. This section does not apply to the
33 taking of ~~alewives~~ river herring from those waters as authorized by the general law or by
34 vote of the Town of Columbia Falls. Any equipment used in violation of this section
35 ~~shall~~ must be confiscated by the commissioner, after final adjudication of any charge
36 brought under this section.

37 **Sec. 20. 12 MRSA §6575-C, sub-§2**, as amended by PL 2003, c. 452, Pt. F, §13
38 and affected by Pt. X, §2, is further amended to read:

1 **2. River herring traps.** A person may not fish for or take elvers within 50 feet of a
2 licensed ~~alewife~~ river herring trap.

3 **Sec. 21. 12 MRSA §6672**, as enacted by PL 1977, c. 661, §5, is repealed.

4 **Sec. 22. 12 MRSA §6731-A, sub-§6**, as enacted by PL 2003, c. 593, §2, is
5 amended to read:

6 **6. Stock assessment.** The department shall conduct stock assessments of the
7 mahogany quahog resource beginning no later than January 1, 2005. ~~The department~~
8 ~~shall report biennially to the joint standing committee of the Legislature having~~
9 ~~jurisdiction over marine resources matters on the progress of the stock assessment and the~~
10 ~~status of the Mahogany Quahog Monitoring Fund starting on January 1, 2006.~~

11 **Sec. 23. 12 MRSA §6749-N, last ¶**, as amended by PL 2001, c. 327, §10, is
12 repealed.

13 **Sec. 24. 12 MRSA §6851, sub-§2, ¶A**, as amended by PL 1999, c. 491, §6 and
14 affected by §9, is further amended to read:

15 A. Within or beyond the state limits, buy, sell, process, ship or transport any marine
16 species or their parts, except lobsters; and sea urchins and shrimp purchased directly
17 from harvesters;

18 **Sec. 25. 12 MRSA §6851, sub-§2-D**, as amended by PL 2009, c. 561, §31, is
19 further amended to read:

20 **2-D. Wholesale seafood license with shrimp permit.** At the request of the
21 applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit.
22 A person holding a wholesale seafood license with a shrimp permit may engage in all of
23 the activities in subsection 2 ~~and~~, may buy; shrimp from harvesters and may sell, process,
24 ship or transport shrimp.

25 **Sec. 26. 12 MRSA §6851, sub-§3**, as amended by PL 1991, c. 523, §3, is further
26 amended to read:

27 **3. Exceptions.** This section does not apply to smoked herring or ~~alewives~~ river
28 herring.

29 **Sec. 27. 12 MRSA §6955**, as enacted by PL 1985, c. 211, is amended to read:

30 **§6955. Fishing in waters of Union River Bay and the lower Union River**

31 It is unlawful to fish with any type of net, fish trap or weir from April 15th to August
32 1st in the tidal waters of Union River Bay and the lower Union River north of a line
33 drawn from the southernmost tip of Newbury Neck in the Town of Surry and extended
34 eastward to the southernmost tip of Oak Point in the Town of Trenton. The closed area
35 ~~shall extend~~ extends northward to the downstream side of the Bangor Hydropower
36 Company dam in the City of Ellsworth. Fishing for eels or smelts by means of hand dip
37 nets, fyke nets or baited eel traps ~~shall be~~ is exempt from this section. The taking of

1 ~~alewives river herring~~ under the provisions of section 6131, subsection 5, ~~shall be is~~
2 exempt from this section.

3 **Sec. 28. 12 MRSA §6977**, as enacted by PL 2003, c. 573, §1, is repealed.

4 **SUMMARY**

5 This bill eliminates the definition of "alewives," which included both alewives and
6 blueback herring, in the marine resources laws and provides instead a definition of "river
7 herring," which includes both alewives and blueback herring. It replaces the term
8 "alewife" with "river herring" throughout the marine resources laws.

9 It expands the allowable uses of the funds collected through the leasing of fisheries
10 allocations held in the permit banking program beyond the administration of the program
11 to include providing assistance to the groundfishing industry, consistent with the goals of
12 the program.

13 It eliminates a number of reports to the Legislature, including:

- 14 1. A financial report on the Department of Marine Resources Educational Fund;
- 15 2. A financial report on the Aquaculture Management Fund;
- 16 3. A financial report on the Aquaculture Monitoring, Research and Development
17 Fund;
- 18 4. A report on the activities of the Maine Coast Environmental Trust Fund;
- 19 5. A report on the lobster research program within the Department of Marine
20 Resources, Bureau of Resource Management;
- 21 6. A report on the stock status of mahogany quahogs and a financial report on the
22 status of the Mahogany Quahog Monitoring Fund;
- 23 7. A report on the quantity and type of sea urchin licenses sold in each zone in each
24 year; and
- 25 8. A report on the status of all current and planned programs, activities and rules of
26 the department pertaining to the conservation or management of state endangered or state
27 threatened marine species.

28 It eliminates the repeal of a provision that allows the Department of Marine
29 Resources to adopt certain rules as routine technical rules, rather than as major
30 substantive rules.

31 It provides that a member of the Passamaquoddy Tribe or Penobscot Nation who is a
32 resident of this State is not required to hold a state license to use a boat for dragging for
33 the harvesting of surf clams or fish for or take green crabs or possess, ship or sell green
34 crabs if that member holds a valid license issued by the tribe or nation to conduct those
35 activities.

1 It lengthens the time frame by which a hearing requested under the administrative
2 suspension process must be provided from 10 days to 30 days.

3 It adds taking by hand dip net to the allowable methods of taking for which an
4 individual does not need to obtain a commercial pelagic and anadromous fish license, as
5 long as the fish taken are for personal use.

6 It eliminates the green crab fencing program.

7 It establishes the Marine Recreation Fishing Conservation and Management Fund to
8 be used for research and conservation efforts related to the saltwater recreational fishery.

9 Currently, the holder of a wholesale seafood license is not allowed to buy, sell, ship
10 or transport shrimp unless that person also holds a shrimp permit. This bill allows a
11 holder of a wholesale seafood license to buy, sell, ship or transport shrimp, except for
12 shrimp purchased directly from a harvester, unless the person also holds a shrimp permit.