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An Act To Encourage Municipalities To Abate Coastal Pollution

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is important that coastal municipalities be allowed to manage their shellfish resources without the threat of losing their investments; and

Whereas, this Act needs to take effect before mud flats are again accessible for the harvest of shellfish in order to ensure coastal municipalities some measure of control over the management and conservation of the shellfish resources within their jurisdictions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §6856, sub-§3, as amended by PL 2003, c. 248, §11, is further amended to read:

3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ensure the public safety. A depuration plant operator shall maintain a generalized management plan on file with the commissioner that sets forth a timeline for harvest, harvest limits and harvester selection. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. ~~To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must consult with a municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.~~

Sec. 2. 12 MRSA §6856, sub-§3-A is enacted to read:

3-A. Municipal consultation and approval; depuration harvesting. Within a municipality that has a municipal shellfish conservation committee established pursuant to section 6671, the following provisions apply to shellfish growing areas that have been downgraded after January 1, 2006 to a restricted classification for water quality as defined in rule.

A. Unless the commissioner obtains the approval of the affected municipality, the commissioner may not open an area downgraded to a restricted classification for depuration harvesting for 2 years from the date of the reclassification to allow the municipality to develop a pollution abatement plan under subsection 3-B.

B. Beginning April 1, 2007, a municipality must notify the commissioner within 8 weeks of the reclassification of an area whether or not it intends to develop a pollution abatement plan. If the municipality does not wish to develop a pollution abatement plan in accordance with subsection 3-B or if it fails to notify the commissioner within the 8-week period, municipal approval is not required.

C. If a municipal shellfish conservation committee has a pollution abatement plan as provided in subsection 3-B on file with the commissioner, the commissioner must obtain the approval of the committee before taking action to open an area within that municipality for depuration digging.

D. If a municipal shellfish conservation committee has a depuration management plan as provided in subsection 3-C approved by the commissioner, the municipality may manage the depuration harvesting over a shellfish growing area within that municipality.

Sec. 3. 12 MRSA §6856, sub-§3-B is enacted to read:

3-B. Municipal pollution abatement plan. A pollution abatement plan must be specific to a particular shellfish growing area and include at least:

A. A shoreline survey as defined by rule;

B. Hydrological and meteorological data pertaining to the area;

C. Pollution source identification;

D. Tasks to be undertaken to remediate the pollution problem; and

E. A timeline for pollution remediation. If the timeline for remediation is longer than 2 years, a scientific resource survey and a standing crop analysis as required by the commissioner must be included in the plan.

Sec. 4. 12 MRSA §6856, sub-§3-C is enacted to read:

3-C. Municipal depuration management plan. A depuration management plan must include but is not limited to:

A. A scientific shellfish survey approved by the commissioner;

B. A standing crop analysis with year classes as required by the commissioner;

C. Historical harvest data; and

D. Established annual harvest limits.

Sec. 5. 12 MRSA §6856, sub-§7, as enacted by PL 1991, c. 831, §2, is amended to read:

7. Resident depuration harvesters. ~~When~~ Except for depuration activities conducted under subsection 3-A, paragraph D, when harvesting soft-shelled clams under a depuration certificate, the person holding the certificate shall, to the extent possible, employ one person who is a resident of the municipality as harvester for every person employed as harvester who is not a resident of that municipality.

Sec. 6. Retroactivity. That section of this Act that enacts Title 12, section 6856, subsection 3-A applies retroactively to January 1, 2006.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

PUBLIC Law, Chapter 15 LD 403, item 1, 123rd Maine State Legislature
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Effective March 22, 2007.