



House of Representatives

File No. 619

General Assembly

February Session, 2004 **(Reprint of File No. 482)**

Substitute House Bill No. 5241
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 16, 2004

**AN ACT CONCERNING SHELLFISHING VIOLATIONS AND THE USE
OF POWER DREDGES TO RESTORE SHELLFISH BEDS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 26-192f of the general statutes, as amended by
2 section 146 of public act 03-6 of the June 30 special session, is repealed
3 and the following is substituted in lieu thereof (*Effective July 1, 2004*):

4 Any person, firm or corporation (1) harvesting or taking shellfish
5 from an area closed and posted by the Department of Agriculture and
6 Consumer Protection against the [taking] removal of shellfish, except
7 as provided in section 26-192h, or an area closed by commercial
8 shellfish transplant license issuance or by order of the local director of
9 health with the approval of the department, (2) misusing any shipping
10 tag or license in violation of section 26-192c, as amended, (3)
11 mislabeling shellfish shipments or deliveries with any false
12 information, (4) failing to identify shellfish shipments or deliveries in
13 accordance with regulations adopted by the department, [or] (5)
14 [failing to surrender a license to the department upon request,]
15 harvesting shellfish from undesignated grounds, or (6) harvesting

16 shellfish from designated grounds not listed on a license issued by the
17 Department of Agriculture and Consumer Protection to such person,
18 firm or corporation shall be fined [not less than fifty dollars nor more
19 than] (A) one thousand dollars, or (B) three times the market value of
20 any shellfish taken, based on the quantity and type [,] involved in the
21 violation if such amount is greater than one thousand dollars, or
22 imprisoned not more than twelve months and shall surrender any
23 such shellfish license to the department upon request. The
24 Commissioner of Agriculture and Consumer Protection may revoke
25 any license issued by said commissioner for ninety days for the first
26 violation of this section, one hundred eighty days for a second
27 violation of this section, one year for a third violation and permanently
28 for a fourth violation. Any person who defaces or removes a sign
29 posted by the Department of Agriculture and Consumer Protection in
30 accordance with the provisions of section 26-192e, as amended, shall
31 be fined not more than five hundred dollars or imprisoned not more
32 than six months. The provisions of this section are in addition to and in
33 no way derogate any other enforcement provisions or penalties
34 contained in any other section of the general statutes.

35 Sec. 2. Section 26-235 of the general statutes, as amended by section
36 146 of public act 03-6 of the June 30 special session, is repealed and the
37 following is substituted in lieu thereof (*Effective July 1, 2004*):

38 (a) No person shall take any long clams less than one and one-half
39 inches in length, provided the Waterford-East Lyme shellfish
40 commission may make such residency requirements for digging or
41 taking clams from the shores or waters of the Niantic River as it deems
42 reasonable and in the best public interest of the Waterford-East Lyme
43 area. Unless otherwise provided by statute, regulation or local
44 ordinance, the recreational harvest limit of clams shall not exceed
45 one-half bushel per person daily. The Commissioner of Agriculture
46 and Consumer Protection may designate by regulations adopted in
47 accordance with the provisions of chapter 54 shores and waters for the
48 exclusive recreational harvesting of clams. For the purposes of this
49 section, recreational harvest of clams means the collection of clams by

50 an individual for [his own or his family's consumption] personal
51 consumption or consumption by such individual's family.

52 (b) The common council of any consolidated town and city and the
53 selectmen of any other town may determine the quantity of clams to be
54 taken therein by a person during one day and may prohibit, for a
55 period not exceeding one year, the taking of clams from any waters or
56 beaches they may designate within the territorial limits of such town, if
57 they deem such prohibition necessary for the protection of the natural
58 clam areas, by posting notices on such designated territorial limits
59 stating that the taking of clams within such areas is prohibited.

60 (c) Any person who violates any provision of subsection (a) or (b) of
61 this section shall have committed an infraction.

62 (d) Any person who takes clams from an area closed and posted
63 against the taking of clams by the Department of Agriculture and
64 Consumer Protection, or from an area closed by license issuance or by
65 order of a local health department shall be fined not less than seventy-
66 five dollars nor more than one thousand dollars or three times the
67 market value of any clams taken, based on the quantity and type
68 involved in the violation, if such amount is greater than one thousand
69 dollars, or imprisoned not more than twelve months.

70 (e) Any person who defaces or removes a sign posted by the
71 Department of Agriculture and Consumer Protection, in accordance
72 with the provisions of section 26-192e, as amended, shall be fined not
73 more than five hundred dollars or imprisoned not more than six
74 months.

75 Sec. 3. Section 26-215 of the general statutes is repealed and the
76 following is substituted in lieu thereof (*Effective June 1, 2004*):

77 (a) There shall not be used on any licensed boat any device operated
78 otherwise than by hand power, for hoisting or operating dredges or
79 other implements for gathering oysters, clams, mussels or other
80 shellfish or oyster shells. No person shall use any dredge or other

81 contrivance weighing more than thirty pounds, exclusive of the net or
82 bag, or with a capacity of more than one and one-half bushels in taking
83 up or dredging for oysters, clams, mussels or other shellfish or oyster
84 shells in any of the waters of the state, except upon private designated
85 grounds. Nothing [herein] in this section shall be construed to prevent
86 the use of power in taking up or dredging for oysters, clams, mussels
87 or other shellfish or shells on private designated grounds by the
88 owners thereof, or to prevent the use of excavators for deepening the
89 water in places where there are no natural oyster or clam beds, or
90 where such beds have not existed within ten years, by digging or
91 removing the material, permission to use excavators being first given
92 by the Commissioner of Agriculture, which permission shall not be
93 given until after a public notice of at least two weeks of the time when
94 and place where he will hear all parties desiring to be heard upon such
95 application, which notice shall be posted in the office of the town clerk
96 of the town where such grounds are located.

97 (b) Notwithstanding the provisions of subsection (a) of this section,
98 the Commissioner of Agriculture, at the request of the director of the
99 Bureau of Aquaculture of the Department of Agriculture, based on the
100 request of a local shellfish commission established pursuant to section
101 26-257a, as amended, may allow limited and supervised use of a
102 power dredge or other contrivance weighing more than thirty pounds,
103 exclusive of the net and bag, with a capacity of not more than three
104 bushels, for the purpose of cultivation, enhancement or restoration of
105 natural shellfish beds located within the jurisdiction of said
106 commission. The use of a power dredge or other contrivance pursuant
107 to this section shall not be extended to the harvesting or removal of
108 oysters.

109 (c) The Commissioner of Agriculture, upon the recommendation of
110 the director of the Bureau of Aquaculture of the Department of
111 Agriculture, shall approve any dredging pursuant to subsection (b) of
112 this section and shall designate cultivation, enhancement and
113 restoration areas, dredging periods and limitations for shellfish
114 commissions operating pursuant to subsection (b) of this section. Such

115 shellfish commissions shall administer such dredging pursuant to
116 section 26-257a, as amended, and shall designate areas for replanting
117 shellfish pursuant to subsection (b) of this section.

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>June 1, 2004</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Department of Agriculture	GF - None	None	None
Resources of the General Fund	GF - Revenue Impact	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

Any revenue gain under the bill due to increased and/or expanded penalties is anticipated to be minimal.

Provisions of the bill concerning dredging have no fiscal impact.

House "A" adds the dredging provisions and has no fiscal impact.

OLR BILL ANALYSIS

sHB 5241 (as amended by House "A")*

AN ACT CONCERNING SHELLFISHING VIOLATIONS**SUMMARY:**

This bill (1) enhances penalties for illegally harvesting shellfish and (2) permits limited use of power dredges with greater capacity to cultivate, enhance, or restore natural shellfish beds in certain areas.

The bill makes it illegal for a person, firm, or corporation to harvest shellfish from shellfish beds for which he or it is not licensed, or which are undesignated. It (1) makes it illegal to harvest, as well as take, shellfish from certain areas closed by order or issuance of a license; (2) increases the penalty for violating various shellfish laws; and (3) specifically applies to recreational clam fishermen (people who take clams for personal or family consumption) certain laws already applicable to commercial shellfishermen.

By law, it is illegal to take shellfish from an area the Department of Agriculture and Consumer Protection (DACP) has closed and posted against such taking. The bill specifies that it is illegal to harvest, as well as take, shellfish from an area posted against the removal, rather than the taking, of shellfish. It exempts commercial shellfish harvesters who remove shellfish for transplanting and similar activities.

By law, it is also illegal to take shellfish from an area closed by the issuance of a transplant license. The bill specifies that it is illegal to harvest, as well as take, shellfish from an area closed only by the issuance of a commercial shellfish transplant license. The department also issues town recreational transplant licenses.

The bill eliminates a penalty for failing to surrender a shellfish license upon request, but it authorizes DACP to request such a surrender as part of the penalty for illegally taking shellfish worth more than \$1,000.

The bill allows enhanced dredging of natural shellfish beds in certain areas and under certain conditions. Current law prohibits anyone

from using dredges or other devices that weigh more than 30 pounds or have a capacity of more than one and one-half bushels in taking up or dredging for oysters, clams, mussels, or other shellfish. The bill allows limited and supervised use of power dredges or other devices (1) weighing more than 30 pounds (not including the net or bag) and (2) with a capacity of three bushels or less for dredging for the purposes of cultivating, enhancing, or restoring natural shellfish beds. A local shellfish commission must administer the dredging and first get permission from the Bureau of Aquaculture director and agriculture commissioner. It is unclear who may perform the limited and supervised dredging.

The bill specifies that a power dredge cannot be used to harvest or remove oysters. But it does not appear possible for someone to avoid the removal or harvesting of oysters during the enhanced dredging (to cultivate, enhance, or restore the natural shellfish beds) the bill authorizes.

The bill also makes a technical change.

*House Amendment "A" adds the expanded dredging capacity.

EFFECTIVE DATE: June 1, 2004 for dredging and July 1, 2004 for unlicensed harvesting.

INCREASED PENALTIES FOR VIOLATING COMMERCIAL SHELLFISHING LAWS

By law, any person, firm, or corporation that violates various shellfish laws can be fined between \$50 and \$1,000. Anyone that illegally takes shellfish worth more than \$1,000 may be fined between \$50 and three times their market value or sentenced to up to 12 months in prison. The bill increases the minimum fine for violating any of the shellfish laws listed below to \$1,000 and requires those who illegally take shellfish worth more than \$1,000 to surrender their shellfish license at DACP's request, in addition to the penalties under existing law. It authorizes the commissioner to revoke the license of anyone who violates any of the laws below for 90 days upon a first violation, 180 days for a second violation, one year for a third, and permanently for a fourth. The bill specifies that these penalties are in addition to other penalties the law authorizes.

The increased penalties apply to any person, firm, or corporation that:

1. harvests or takes shellfish from an area (a) DACP closed and posted against the removal of shellfish, except for commercial shellfishermen harvesting shellfish for transplanting, (b) closed by the issuance of a commercial shellfish transplant license, or (c) closed by a DACP-approved order of the local health director;
2. misuses any shipping tag or license;
3. mislabels shellfish shipments or deliveries with false information;
4. fails to identify shellfish shipments or deliveries according to regulation;
5. harvests shellfish from undesignated grounds; or
6. harvests shellfish from designated grounds not listed on the person's, firm's, or corporation's license.

VIOLATIONS BY RECREATIONAL SHELLFISHERMEN

The bill specifically applies to recreational shellfishermen laws making it illegal to (1) take clams from a DACP-posted and closed area and (2) deface or remove DACP signs.

The bill makes it illegal to take clams for personal or family consumption from an area (1) DACP has closed and posted against the taking of clams or (2) closed by the issuance of a license or local public health department order. Violators may be fined from \$75 to \$1,000 if the clams' value is \$1,000 or less. If the clams' value is more than \$1,000, violators may be fined three times their market value, based on their quantity and type, or imprisoned up to 12 months.

The bill subjects any person who defaces or removes a DACP sign closing any coastal waters, shores, or tidal flats to shellfishing to a fine of up to \$500 or six months in prison.

ENHANCED DREDGING

The commissioner must approve enhanced dredging and designate:

1. cultivation, enhancement, and restoration areas;
2. dredging periods; and
3. limitations.

The bill requires local shellfish commissions to administer the dredging under the conditions set by the agriculture commissioner and to designate areas for replanting shellfish in enhanced dredging areas.

BACKGROUND

Department of Agriculture and Consumer Protection (DACP)

PA 03-6, June 30 Special Session merges the departments of Agriculture and Consumer Protection as of July 1, 2004, the effective date of the bill's violation sections. Until that date, the two departments exist as separate entities.

Related Bill

sSB 550 (File 363), which the Environment; Planning and Development; and Finance, Revenue and Bonding committees favorably reported on March 15, April 7, and April 15 respectively, contains similar provisions on enhanced dredging.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 42 Nay 0