



General Assembly

February Session, 2004

Amendment

LCO No. 5069

HB0524105069SD0

Offered by:

SEN. WILLIAMS, 29th Dist.

To: Subst. House Bill No. 5241

File No. 619

Cal. No. 461

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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4 section 146 of public act 03-6 of the June 30 special session, is repealed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

6 The Department of Agriculture and Consumer Protection shall be
7 the lead agency on shellfish in Connecticut. The department: (1) Shall
8 coordinate the activities of other state agencies with regard to shellfish;
9 (2) shall act as a liaison on shellfish matters between the state and
10 municipalities, including local shellfish commissions; (3) shall take
11 steps necessary to ensure compliance with federal standards for the
12 shellfish sanitation program and compliance with the National
13 Shellfish Sanitation Program Model Ordinance, as amended from time
14 to time; (4) may, in conjunction with the Department of Public Health,
15 enter into agreements with municipalities to utilize available

16 municipal resources for monitoring and testing; and (5) shall
17 encourage depuration.

18 Sec. 2. Section 26-192b of the general statutes, as amended by section
19 146 of public act 03-6 of the June 30 special session, is repealed and the
20 following is substituted in lieu thereof (*Effective July 1, 2004*):

21 [The Department of Public Health shall recommend to the]
22 Notwithstanding the provisions of subsection (a) of section 19a-29a,
23 the Department of Agriculture and Consumer Protection shall
24 promulgate health standards for shellfish testing and shall approve
25 private laboratories to perform shellfish testing. Such health standards
26 for shellfish testing shall incorporate by reference the provisions of the
27 National Shellfish Sanitation Program Model Ordinance, as amended
28 from time to time.

29 Sec. 3. Subsection (a) of section 26-192c of the general statutes, as
30 amended by section 146 of public act 03-6 of the June 30 special
31 session, is repealed and the following is substituted in lieu thereof
32 (*Effective July 1, 2004*):

33 (a) The Department of Agriculture and Consumer Protection may
34 inspect shellfish beds and areas in this state where shellfish are grown
35 or harvested, all boats, tools and appliances used in the production
36 and preparation of shellfish and all wharves or buildings where
37 shellfish are stored, transferred, opened, packed or prepared for sale or
38 shipment. [It] The Department of Agriculture and Consumer
39 Protection may [prescribe] adopt regulations, in accordance with the
40 provisions of chapter 54, after consultation with the Department of
41 Public Health, for the sanitary growth, production, purification and
42 preparation of shellfish. Such regulations shall incorporate by
43 reference the provisions of the National Shellfish Sanitation Program
44 Model Ordinance, as amended from time to time. Each commercial
45 harvester, producer or shipper of shellfish shall obtain from said
46 department a license on which shall be stated information regarding
47 the identification of the license holder and any conditions pertaining to

48 the character of such licensee's shellfish operations. Said department
49 may establish a fee for each type of shellfish license it issues. The
50 department may require that shellfish shipments be tagged or
51 containers marked to identify the shipper by name and location and
52 the source of the shipment and furnish such other pertinent
53 information as may apply. Any license granted under the authority of
54 this section may be revoked by said department for cause, after
55 notification and hearing. No person, firm or corporation shall make
56 any shipments or deliveries of shellfish after the license of such person,
57 firm or corporation has been suspended or revoked. Any license may
58 be suspended pending revocation proceedings, or amended, if
59 shellfishing operations or harvesting areas are a public health hazard
60 or if the licensee has violated any provision of this section, section 26-
61 192e, as amended, 26-192f, as amended, or 26-192h, as amended, or
62 any applicable department regulation or any section of the Public
63 Health Code concerning shellfishing. The department may refuse to
64 issue a license if the applicant has violated any provision of this
65 section, section 26-192e, as amended, 26-192f, as amended, or 26-192h,
66 as amended, or any applicable department regulation or any section of
67 the public health code concerning shellfish.

68 Sec. 4. Section 26-194 of the general statutes, as amended by section
69 2 of public act 03-263, is repealed and the following is substituted in
70 lieu thereof (*Effective June 1, 2004*):

71 (a) The Commissioner of Agriculture may lease in the name of the
72 state, under such regulations as he may prescribe and for a period not
73 longer than ten years, all shellfish areas that have been conveyed to the
74 state or placed under state jurisdiction by the town of West Haven and
75 any undesignated grounds, within the exclusive jurisdiction of the
76 state, for the purpose of planting and cultivating shellfish. The
77 authority herein conferred shall include the Cornell Reef, Portchester,
78 Great Captain's Island, Field Point and Greenwich Point natural beds
79 as located and described in section 3295 of the general statutes,
80 revision of 1918. Any person desiring to lease grounds for such
81 purpose shall make application in writing to the commissioner and all

82 grounds leased by authority of the provisions of this section shall be
83 leased to the highest responsible bidder, for a minimum fee of [two]
84 four dollars per acre. Such lease or lease renewal shall require the
85 lessee to make a good faith effort to cultivate and harvest shellfish
86 from the leased area. Such lease or lease renewal shall prohibit the
87 lessee from entering a contract whereby the lessee agrees not to
88 cultivate and harvest shellfish for any period of time. No lessee may
89 enter an agreement with a third party that will prevent the lessee from
90 carrying out the lessee's obligations under the lease unless the
91 Department of Agriculture and the Attorney General have approved
92 such agreement. The form of such application and lease shall be
93 approved by the Attorney General, and all such leases shall be
94 recorded in the records of the commissioner. No lease shall be granted
95 to a resident of a state which does not lease shellfish grounds to
96 residents of this state, except that any nonresident who was granted a
97 lease on or before October 1, 1985, may, upon the expiration of such
98 lease, apply for a renewal or further lease as provided in this section.
99 The commissioner shall grant any such lease to nonresidents upon the
100 same terms and conditions as to residents of this state. Any lessee or
101 holder of [oyster ground] shellfish grounds, on the expiration of any
102 lease thereof which has been or which may be granted, having fulfilled
103 all of such lessee's or holder's obligations under the lease shall, upon
104 application to the commissioner, have [the] preference in the reletting
105 of such ground for a like term to that granted in the original lease,
106 [unless such applicant, at the time for granting such application, is]
107 excluding the rental fee, which shall not be less than the minimum fee
108 per acre as provided in this subsection. A lease renewal shall not be
109 granted if the applicant is in arrears for rent on the original lease of
110 such [ground] grounds. Such application for such renewal or further
111 lease shall be granted without notice or advertisement of the pendency
112 thereof; provided no renewal or further lease of such ground shall be
113 granted when the commissioner, for cause, ceases to lease such ground
114 for [oyster] shellfish culture. All assignments or transfers of leases shall
115 be subject to the approval of the commissioner and shall be recorded in
116 his records. Any person who interferes with, annoys or molests

117 another in the enjoyment of any lease authorized by the provisions of
118 this section shall be subject to the penalties provided in section 26-237.
119 The provisions of sections 26-212, as amended, 26-215, as amended,
120 and 26-232, as amended, shall not apply to any shellfish grounds
121 leased pursuant to the provisions of this section.

122 (b) Upon request of a lessee, the commissioner may divide or
123 consolidate shellfish grounds leased by such lessee, if the
124 commissioner determines such division or consolidation to be in the
125 best interests of the state. The minimum fee per acre shall apply to
126 shellfish grounds divided or consolidated pursuant to this subsection.

127 [(b)] (c) Notwithstanding the provisions of subsection (a) of this
128 section, any owner of a utility line or public use structure that impacts
129 on a leased area shall pay to the lessee the costs of removing or
130 relocating any shellfish. Nothing in this subsection shall be construed
131 to prohibit the state or any lessee from recovering damages incurred
132 by the state or the lessee caused by the installation, construction or
133 presence of such utility line or public use structure.

134 [(c)] (d) The commissioner may designate an agent within the
135 department to exercise the authority of said commissioner under this
136 section.

137 Sec. 5. (*Effective from passage*) The Director of the Bureau of
138 Aquaculture of the Department of Agriculture shall study the effects of
139 disease, pollution, siltation and storm damage on oyster populations.
140 The director shall report, pursuant to the provisions of section 11-4a of
141 the general statutes, the results of such study to the joint standing
142 committee of the General Assembly having cognizance of matters
143 relating to the environment, not later than January 1, 2006.

144 Sec. 6. Section 26-192f of the general statutes, as amended by section
145 146 of public act 03-6 of the June 30 special session, is repealed and the
146 following is substituted in lieu thereof (*Effective July 1, 2004*):

147 Any person, firm or corporation (1) harvesting or taking shellfish

148 from an area closed and posted by the Department of Agriculture and
149 Consumer Protection against the [taking] removal of shellfish, except
150 as provided in section 26-192h, or an area closed by commercial
151 shellfish transplant license issuance or by order of the local director of
152 health with the approval of the department, (2) misusing any shipping
153 tag or license in violation of section 26-192c, as amended, (3)
154 mislabeling shellfish shipments or deliveries with any false
155 information, (4) failing to identify shellfish shipments or deliveries in
156 accordance with regulations adopted by the department, [or] (5)
157 [failing to surrender a license to the department upon request,]
158 harvesting shellfish from undesignated grounds, or (6) harvesting
159 shellfish from designated grounds not listed on a license issued by the
160 Department of Agriculture and Consumer Protection to such person,
161 firm or corporation shall be fined [not less than fifty dollars nor more
162 than] (A) one thousand dollars, or (B) three times the market value of
163 any shellfish taken, based on the quantity and type [,] involved in the
164 violation if such amount is greater than one thousand dollars, or
165 imprisoned not more than twelve months. The Commissioner of
166 Agriculture and Consumer Protection may revoke any license issued
167 by said commissioner for up to sixty days for the second violation of
168 this section within six months and up to ninety days for a third
169 violation of this section within nine months. Any person who defaces
170 or removes a sign posted by the Department of Agriculture and
171 Consumer Protection in accordance with the provisions of section 26-
172 192e, as amended, shall be fined not more than five hundred dollars or
173 imprisoned not more than six months. The provisions of this section
174 are in addition to and in no way derogate any other enforcement
175 provisions or penalties contained in any other section of the general
176 statutes.

177 Sec. 7. Section 26-235 of the general statutes, as amended by section
178 146 of public act 03-6 of the June 30 special session, is repealed and the
179 following is substituted in lieu thereof (*Effective July 1, 2004*):

180 (a) No person shall take any long clams less than one and one-half
181 inches in length, provided the Waterford-East Lyme shellfish

182 commission may make such residency requirements for digging or
183 taking clams from the shores or waters of the Niantic River as it deems
184 reasonable and in the best public interest of the Waterford-East Lyme
185 area. Unless otherwise provided by statute, regulation or local
186 ordinance, the recreational harvest limit of clams shall not exceed
187 one-half bushel per person daily. The Commissioner of Agriculture
188 and Consumer Protection may designate by regulations adopted in
189 accordance with the provisions of chapter 54 shores and waters for the
190 exclusive recreational harvesting of clams. For the purposes of this
191 section, recreational harvest of clams means the collection of clams by
192 an individual for [his own or his family's consumption] personal
193 consumption or consumption by such individual's family.

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

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

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

212 (e) Any person who defaces or removes a sign posted by the
213 Department of Agriculture and Consumer Protection, in accordance

214 with the provisions of section 26-192e, as amended, shall be fined not
215 more than five hundred dollars or imprisoned not more than six
216 months.

217 Sec. 8. Section 26-215 of the general statutes is repealed and the
218 following is substituted in lieu thereof (*Effective June 1, 2004*):

219 (a) There shall not be used on any licensed boat any device operated
220 otherwise than by hand power, for hoisting or operating dredges or
221 other implements for gathering oysters, clams, mussels or other
222 shellfish or oyster shells. [No] Except as provided in subsection (b) of
223 this section, no person shall use any dredge or other contrivance
224 weighing more than thirty pounds, exclusive of the net or bag, or with
225 a capacity of more than one and one-half bushels in taking up or
226 dredging for oysters, clams, mussels or other shellfish or oyster shells
227 in any of the waters of the state, except upon private designated
228 grounds. Nothing [herein] in this section shall be construed to prevent
229 the use of power in taking up or dredging for oysters, clams, mussels
230 or other shellfish or shells on private designated grounds by the
231 owners thereof, or to prevent the use of excavators for deepening the
232 water in places where there are no natural oyster or clam beds, or
233 where such beds have not existed within ten years, by digging or
234 removing the material, permission to use excavators being first given
235 by the Commissioner of Agriculture, which permission shall not be
236 given until after a public notice of at least two weeks of the time when
237 and place where he will hear all parties desiring to be heard upon such
238 application, which notice shall be posted in the office of the town clerk
239 of the town where such grounds are located.

240 (b) A local shellfish commission established pursuant to section 26-
241 257a, as amended, may allow limited and supervised use of a power
242 dredge or other contrivance with a capacity of not more than three
243 bushels, for the purpose of cultivation, enhancement or restoration of
244 natural shellfish beds located within the jurisdiction of said
245 commission. The use of a power dredge or other contrivance pursuant
246 to this subsection shall not be extended to the harvesting or removal of

247 oysters. Such shellfish commission shall administer such dredging
248 pursuant to section 26-257a, as amended.

249 Sec. 9. (*Effective from passage*) Section 22-26h of the general statutes is
250 repealed."

This act shall take effect as follows:	
Section 1	<i>July 1, 2004</i>
Sec. 2	<i>July 1, 2004</i>
Sec. 3	<i>July 1, 2004</i>
Sec. 4	<i>June 1, 2004</i>
Sec. 5	<i>from passage</i>
Sec. 6	<i>July 1, 2004</i>
Sec. 7	<i>July 1, 2004</i>
Sec. 8	<i>June 1, 2004</i>
Sec. 9	<i>from passage</i>