

# Bill as Introduced

HB 1331 - AS INTRODUCED

2010 SESSION

10-2223

10/01

HOUSE BILL **1331**

AN ACT relative to extending the days for recreational taking of clams following an emergency closing.

SPONSORS: Rep. A. Perkins, Rock 14; Rep. L. Perkins, Rock 14; Rep. Weare, Rock 14

COMMITTEE: Fish and Game and Marine Resources

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ANALYSIS

This bill requires the executive director to extend or add to the number of days persons may take clams for recreational purposes for each day of an emergency closing of a clamming area.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT                   relative to extending the days for recreational taking of clams following an emergency closing.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Fish and Game; Taking of Bivalves; Closing; Extension. Amend RSA 211:63-a to read as  
2 follows:

3           211:63-a Emergency Closing.

4           ***I.*** Any rules adopted under the authority of RSA 211:62 may be suspended and the taking of  
5 bivalves may be prohibited in any area when the department of environmental services shall  
6 determine that accidental pollution exists in the area. The emergency closing shall be ordered by the  
7 executive director without a hearing. ***The executive director shall, for each day of such closing***  
8 ***of a clamming area, extend the number of days in the calendar year or add additional days***  
9 ***during the current season, in which a person licensed under RSA 211:64-b may take clams***  
10 ***for recreational purposes.***

11           ***II.*** The executive director after a hearing shall have authority to order a partial closing of  
12 clam, oyster, and other bivalve areas for the purpose of management of the areas by rotation. When  
13 such management closing is ordered the order shall be effective immediately without a waiting  
14 period.

15           2 Effective Date. This act shall take effect 60 days after its passage.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

PUBLIC HEARING ON HB 1331

**BILL TITLE:** relative to extending the days for recreational taking of clams following an emergency closing.

**DATE:** January 14, 2010

**LOB ROOM:** 307      **Time Public Hearing Called to Order:** 10:00 a.m.

**Time Adjourned:** 11:20 a.m.

(please circle if present)

**Committee Members:** Reps. ~~Abbott, Porter, Henson, Marshall, M. Preston, Rogers, Carr, Farley, J. Russel, K. Ward, Watters, L. Heureux, McKinney, Reed, Bulis, Hopper, Sanders, M. McCarthy~~ and Roberts.

**Bill Sponsors:** Rep. A. Perkins, Rock 14; Rep. L. Perkins, Rock 14; Rep. Weare, Rock 14

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Amy Perkins** - Prime sponsor of the bill. Not extending the days following a closure but replacing the days lost. 11/1 – 5/31 flats open. Not a emergency like a hurricane but closures due to pollution. Clam population may effect number of days for clam digging season. Doesn't want to endanger number of days for clam digging season. Doesn't want to endanger numbers . Currently there are 39 days to use license but sometime license holders lose 2 months – actual days 2009 only 14 days. If closed on a Saturday would like to open next week on Saturday and Sunday. Massachusetts can clam 5 days a week.

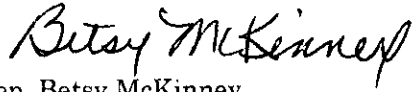
**Rep. L. Perkins** - Co-sponsor of the bill. Supports the bill. Understands population issue but some harvesting methods and green crab are more of a threat to population. If selling licenses should have the opportunity to dig.

**Rep. E. Weare** - Co-sponsor of the bill. Supports the bill. People buying licenses find they are no longer able to use them. Rain of more than one inch will close the flats.

**Chris Nash, NH Department of Environmental Services** - Open or close due to pollution concerns number of days up to Fish and Game for resource management. DES does water quality tests. Heavy rain and seasonal bacteria problems in this area.

**Doug Grout, NH Fish and Game Department** - Opposes the bill. 900 – 1300 licenses being sold. Remained pretty consistent. Least number of days have been 14.

Respectfully submitted,

A handwritten signature in cursive script that reads "Betsy McKinney".

Rep. Betsy McKinney  
Clerk



HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

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**Bill Sponsors:** Rep. A. Perkins, Rock 14; Rep. L. Perkins, Rock 14; Rep. Weare, Rock 14

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Amy Perkins, sponsor - not extending the days following a closure but replacing the days lost, 11/1 - 5/31 flats open.

Not a emergency like a hurricane but closures due to pollution. Clam populations may effect number of days for clam digging season. Doesn't want to endanger numbers

39 days to use lic. but sometimes lic holders lose

2 months - actual days 2009 only 14 days.

If closed on a Sat would like to open next week on Sat + Sun. Mass. can clam 5 days a week.

Rep. L. Perkins, sponsor - understands population issue but some harvesting methods and green crab are more of a threat to population. If selling licenses should have the opportunity to dig.

Currently there are

Rep. Weare supporting - people buying licenses find they are no longer ~~being used~~ able to use them. Rain of more than 1/2 inch will close the flats.

Chris Nash - DES open or @ close due to pollution concerns. Number of days up to F+G for resource management. DES ~~they~~ do water quality tests. Heavy rain and seasonal bacteria problems in this area.

\* Doug Grout - F+G - opposed.

900 - 1300 licenses being sold - remained ~~fairly~~ pretty constant, least # of days have been 14

Closed 11:20

# Testimony



# New Hampshire Fish and Game Department

FILE

Region 3

225 Main Street, Durham, NH 03824-4732  
(603) 868-1095  
Headquarters: 11 Hazen Drive, Concord, NH 03301  
(603) 271-3421

Fax (603) 868-3305  
TDD Access: Relay NH 1-800-735-2964  
Web site: <http://www.wildlife.state.nh.us>

Glenn Normandeau  
Executive Director

## **New Hampshire Fish and Game Department Testimony in Opposition of HB 1331**

### **House Fish and Game and Marine Resources Committee January 14, 2010**

Thank you Mr. Chairman and members of the Committee. For the record, my name is Doug Grout, Chief of Marine Fisheries for the Fish and Game Department. The Fish and Game Commission voted to oppose HB 1331 relative to extending the days for recreational taking of clams following an emergency closing.

Our concerns with this legislation are two fold: the negative impact increased clamming effort, resulting from additional harvest days, could have on the current clam abundance levels and some logistical concerns with implementing the legislation as written.

Currently, harvest of soft shell clams in New Hampshire is limited to recreational harvesters only and permitted one day per week on Saturdays between the day after Labor Day through May 31. Additionally, the clam flats in Hampton-Seabrook Harbor are closed during September and October and when ever rainfall in the previous week exceeds one inch to address public health concerns from sewage pollution. The flats are also closed during blooms of red tide.

Prior to 2003, harvest had been allowed two days per week on Fridays and Saturdays. That year, the Department reduced the number of harvest days per week to one in order to reduce fishing effort following several years of declining clam abundance in Hampton-Seabrook clam flats. You can see this decline in the bottom graph provided in your handout labeled "adults". Since we took this management action we have seen an increase in clam abundance with current levels being roughly half those observed during the peaks experienced during the 1980's and 1990's. This increase occurred despite having only a small increase in the recruitment of young clams that you can see in the graph labeled "yearling".

When we implemented the change in harvest days in 2003, we knew that, due to public health closures, the actual number of harvest days would be less than half the total Possible Open Days based on previous year's experience. If you look at Table 1 in your hand out, you will notice that between 2000 and 2002 when harvest was allowed 2 days per week, the actual number of open days ranged from 23 to 31 days per year which was less than 40% of the total Possible Open Days. Keep in mind that clam abundance was declining during this period with this many fishing days per year.

Since we reduced clamming to one day per week in 2003, the number of Actual Open Days per year has ranged between 14 and 23 days and the abundance of adult clams have increased. Under the proposed legislation, we would be required to have makeup

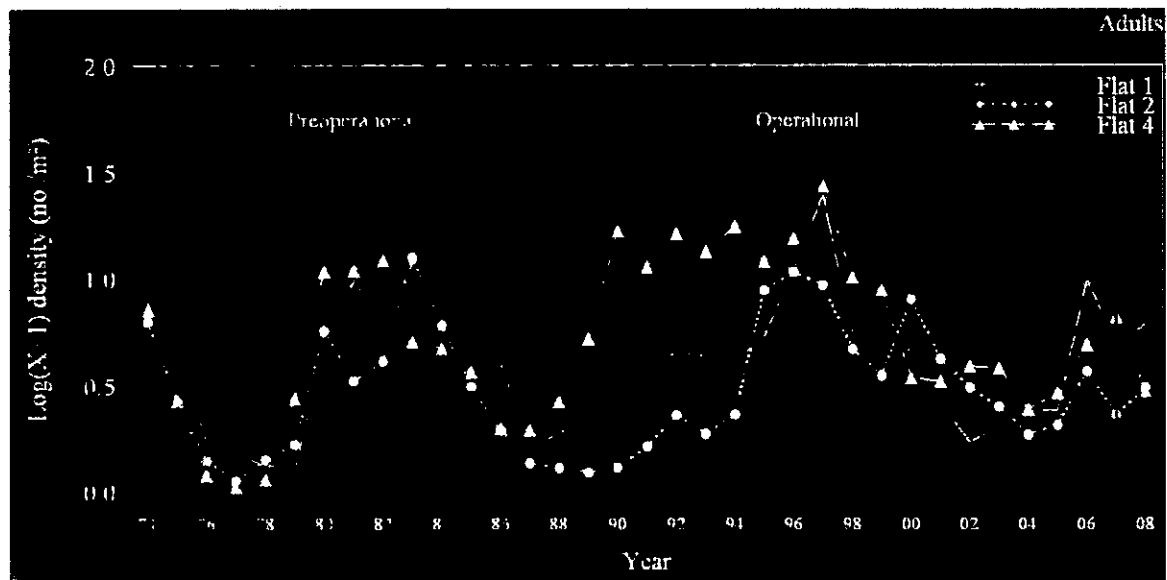
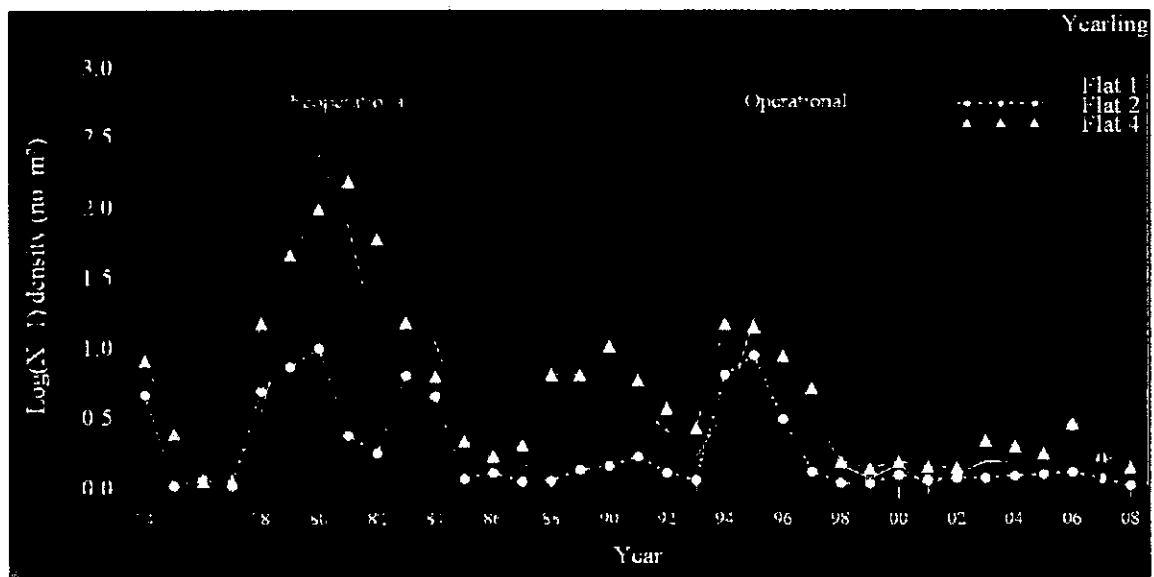
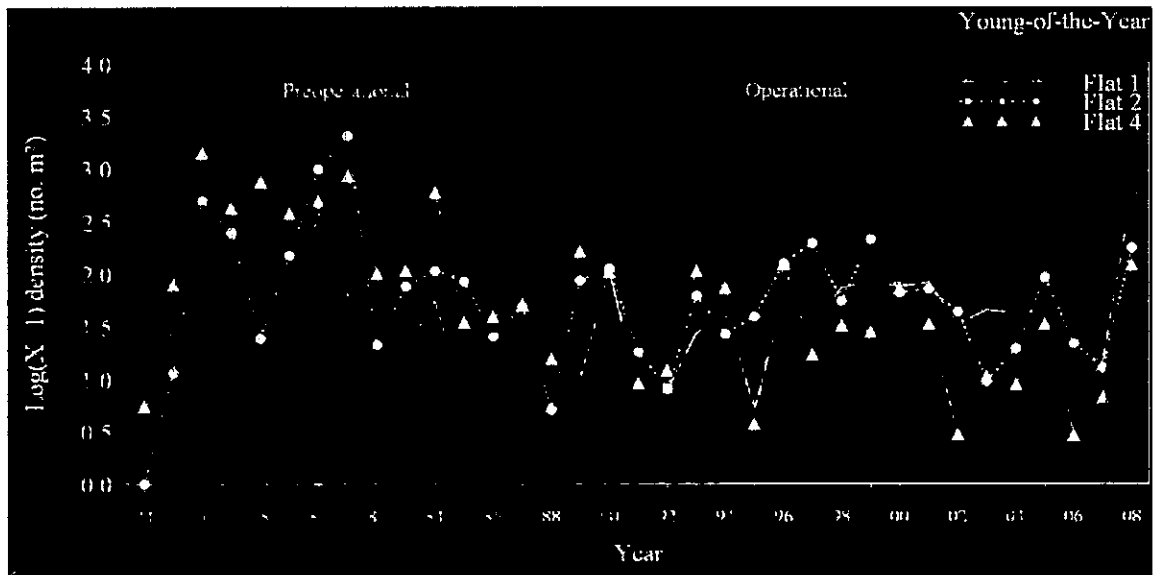
days for any of the days closed due to public health concerns which would result in 38 to 40 clam harvest days per year. Not only is this more than a doubling of the number of fishing days in recent years but is at least 25% greater than the number of Actual Fishing Days that occurred from 2000 to 2002 when abundance was declining.

Until we observe an increase in the number of yearling clams and/or adult clams to levels approaching the peak abundance levels observed in the 1980's and 1990's, we do not feel it would be prudent to increase the number of harvest days for soft shell clam as it would very likely result in a decline in current abundance level.

In addition, we have logistical concerns with implementing the proposed legislation. Since the clam flats need to be closed when ever we have an inch or more of rain, and we can't control the weather, we could find ourselves in a position to have to close on make up days toward the end of the season. If there wasn't additional time left in a year to implement additional make up days, the Department could find itself in a position where it would be impossible to comply with the law.

We appreciate Representative Perkins desire to increase recreational opportunities for New Hampshire clam diggers. The Department shares that desire as long as resource levels are sufficient to handle the additional clamming activity. We will continue to monitor the clam population with the hope that we will be able to increase the number of clamming days in the near future.

The Fish and Game Department urges the Committee to vote HB 1331 'inexpedient to legislate'. Thank you for the opportunity to testify and I will be happy to take any questions.



**Figure 1.** Relative abundance of young of the year, yearling and adult soft-shell clam abundance in Hampton-Seabrook Estuary, 1974-2008 (NAI 2008).

Table 1

Hampton/Seabrook Clam Flats				
Year	Conditionally Approved Acres	Possible Open Days	Actual Open Days	Comment
2000	386.91	79	23	harvesting allowed on Friday and Saturday
2001	386.91	76	31	none
2002	386.91	77	29	effective end of May, and additional 45.37 acres were open for harvest. This acreage was open for 10 days during the year (after end of May)
2003	473.79	39	14	harvesting now allowed on Saturday only; possible open days are Saturdays in Jan-May and Sept-Dec
2004	473.79	39	16	none
2005	480.77	40	15	increase in acreage due to GIS update (better resolution)
2006	480.77	38	17	none
2007	755	38	23	area reclassified; approximately 250 additional acres open for harvest. Rainfall closure threshold raised from 0.25" to 1"
2008	755	39	14	none
2009	755	39	21	assumed boat discharge rate reduced from 50% to 35%; seasonal closure delayed until end of May as a result



## Coastal Conservation Association Of New Hampshire

Post Office Box 4372 • Portsmouth, NH 03802  
Phone: (603) 731-2669 • E-mail - [ccanh@worldpath.net](mailto:ccanh@worldpath.net)  
Web Address - [ccanh.org](http://ccanh.org)

Representative Dennis Abbott, Chairman  
Fish & Game and Marine Resources Committee  
Concord, NH 03301

January 13, 2010

### State Board of Directors

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[jjbarnum@comcast.net](mailto:jjbarnum@comcast.net)

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Thomas Browning

Matt McCarthy

Dr. Mitchell Kalter  
Ellen Goethel

Dear Chairman Abbott and Committee Members,

The Coastal Conservation Association of New Hampshire wishes to provide public comment in opposition to HB 1331 during the Committee's deliberation of this legislation.

As we understand it, this legislation would allow for additional clamming days to compensate for each day that the clam beds are closed for public health reasons such as sewage pollution or red tide. Since closures for public health reasons have occurred since the 1990's, we believe that this bill would effectively result in a substantial increase in harvest effort on the clam flats to a level that likely will have a negative effect on the clam populations in New Hampshire.

Monitoring data for soft-shell clams from the Hampton-Seabrook Estuary provided to us by the NH Fish and Game Department, shows only a modest increase in clam abundance following the change from two to one day per week for clamming in 2003 which was instituted in response to sharp declines in the clam population. However, current population levels appear to be roughly half the peak levels observed in the 1980's and 1990's. We are concerned that the increase in the number of harvest days that would result from passage of this bill would result in an increased harvest that the current clam populations cannot sustain. Thus, while increasing the opportunity to harvest clams, it will probably result in the further decline of a recovering stock.

While we appreciate the bills intent to increase opportunities for recreational harvest of clams, we do not believe the current clam population in New Hampshire can sustain increased harvest levels at this time and hope that you will vote this bill inexpedient to legislate.

Sincerely,

J. Jeffrey Barnum  
President CCA NH  
603 770 3201

### DEDICATED TO CONSERVING NEW HAMPSHIRE'S MARINE RESOURCES

*The Coastal Conservation Association of NH ("CCA NH") is an unincorporated state chapter of the Coastal Conservation Association ("CCA"), which currently has over 96,000 members in seventeen states. CCA is a nonprofit, public charity corporation that is qualified under IRC §501(c)(3).*

*Donations to CCA NH are tax deductible under IRC §170.*



HB 1331

# Has the number of adult clams in Hampton-Seabrook Harbor changed over time?

**YES. THE CURRENT NUMBER OF ADULT CLAMS IS 64 PERCENT OF THE AVERAGE NUMBER FROM 1971 TO 2000.**

## PREP GOAL

Maintain or exceed the 1971 to 2000 average standing stock of 8,500 bushels of adult clams (>50 mm) in Hampton-Seabrook Harbor flats.

## WHY THIS IS IMPORTANT

Soft-shell clams are an important economic, recreational, cultural, and natural resource for the Seacoast region. Recreational shellfishing in Hampton-Seabrook Harbor is estimated to contribute more than \$3 million a year to New Hampshire's economy (PREP, 2000).

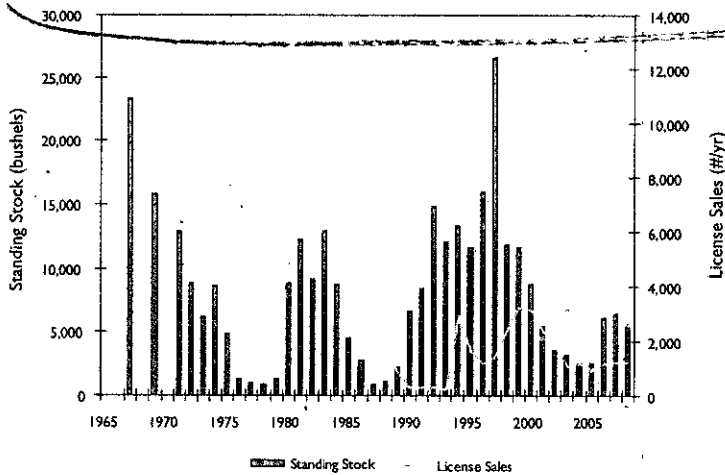
## EXPLANATION

The number of adult clams (>50 mm) in Hampton-Seabrook Harbor, also known as standing stock, has been monitored by Seabrook Station over the past 38 years (Figure 19). The standing stock has undergone several 12-15 year cycles of growth and decline. Peak standing stocks of approximately 23,000, 13,000, and 27,000 bushels occurred in 1967, 1983, and 1997, respectively. Between the peaks, there have been crashes of the fishery in 1978 and 1987, with standing stock less than 1,000 bushels. From 1997 to 2004, the standing stock dropped once again to 2,600 bushels. In the last three years, however, the population has rebounded to 5,432 bushels (64 percent of the goal).

A PREP-funded study in 2001-2002 concluded that predation of juvenile clams by green crabs and strong currents in the harbor were potential factors limiting soft-shell clam populations (Beal, 2002). Recreational harvest is another possible factor. Clam harvest license sales are a good indication of harvest pressure. The oscillations in license sales generally follow similar patterns as the clam standing stock (Figure 19). This relationship indicates that recreational clam harvesting pressure can get high enough to limit clam populations. For example; the number of license sales reached peak values of greater than 9,000 before the two major crashes of the fishery in the late 1970s and late 1980s. Clam populations rebounded during the period from 1989 to 1994 when harvest was prohibited because of water quality concerns. Clam standing stock has grown under the current level of harvest pressure. The number of license sales in 2003-2008 has stabilized at approximately 1,100. Harvest is further limited by restrictions enacted in 2003 by the New Hampshire Fish and Game Department which only allow clam harvesting on Saturdays.

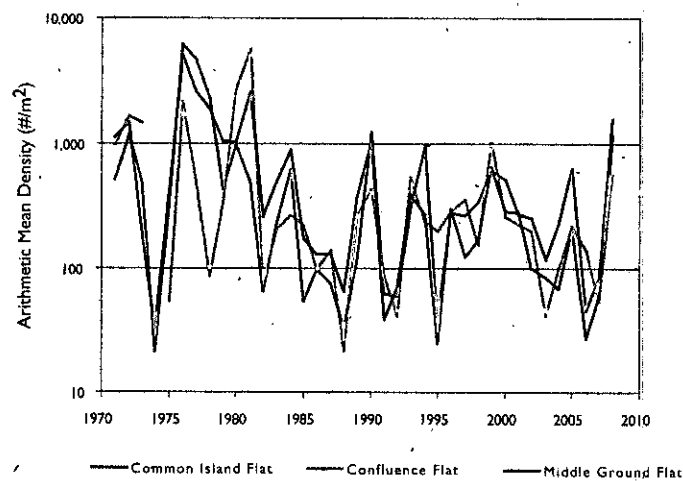
"Clam spatfall" refers to the event when clam larvae settle out of the water column to the sediments. It is critical to have good spatfalls on a clam flat in order to recruit new clams which can then grow into adults. Figure 20 illustrates that clam spatfall in Hampton-Seabrook Harbor has fluctuated on approximately four year intervals over the past 30 years. Very large spatfalls occurred in the late 1970s and early 1980s. After an unusually low spatfall in 2006, the spatfall in 2008 rebounded to one of the highest on record.

**Clam standing stock in Hampton-Seabrook Harbor and harvest license sales in New Hampshire (Figure 19)**



Data Source: NextEra Energy Seabrook Station and NH Fish and Game Department

**Average clam spat density in Hampton-Seabrook Harbor (Figure 20)**



Data Source: NextEra Energy Seabrook Station

**CLAM NEOPLASIA**

Another factor affecting clam populations may be Sarcomatous neoplasia (neoplasia), which is a form of leukemia in soft-shell clams. The disease is normally fatal in clams, although some lightly infected clams can recover. It is harmless to humans and other creatures that consume infected clams. Within a clam, the disease causes an increased number of malformed blood cells that, in turn, increases its need for oxygen. During warmer months when oxygen in the water is at its lowest levels, diseased clams can suffocate in the mud. Clammers cannot tell if a clam has neoplasia simply by looking at it. Sometimes, but not always, an infected clam will be lethargic and slow to withdraw into its shell when handled. For a definitive diagnosis, a clam blood sample must be analyzed in a laboratory.

In 1986, neoplasia was first discovered in clams from Hampton-Seabrook Harbor. Monitoring conducted by Seabrook Station indicated that by 1989, 80 percent of the clams from one of the major flats had neoplastic cells. Between 2002 and 2008, the prevalence of any neoplasia infection typically ranged from 50 to 75 percent of clams.

Researchers at the University of New Hampshire currently are examining the prevalence of neoplasia throughout the region's estuaries. They are collecting and testing hundreds of clams from numerous areas in New Hampshire and Maine with the goal of understanding the extent of the disease and to see if there is a correlation between the disease and contaminated sediments.

PREP



*Digging clams in the*

# Voting Sheets

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

EXECUTIVE SESSION on HB 1331

**BILL TITLE:** relative to extending the days for recreational taking of clams following an emergency closing.

**DATE:** January 19, 2010

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Bulis

Seconded by Rep. Hopper

Vote: 13-0 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: 13-0**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Betsy McKinney, Clerk

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

EXECUTIVE SESSION on HB 1331

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Moved by Rep. Bulis

Seconded by Rep. Hopper

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

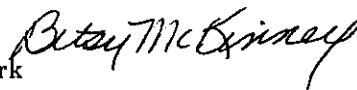
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,  
Rep. Betsy McKinney, Clerk



FISH AND GAME AND MARINE RESOURCES

Bill #: 1331 Title: extending days for recreational taking of clams

PH Date: 1/14/10

Exec Session Date: 1/19/10

Motion: LTL

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Abbott, Dennis F, Chairman	✓	
Porter, Margaret E, V Chairman	✓	
Henson, John W	✓	
Marshall, Seth C	✓	
Preston, Mark F		
Rogers, Rose Marie	✓	
Carr, Daniel P		
Farley, Michael J		
Russell, Joseph A		
Ward, Kenneth J	✓	
Watters, David H	✓	
L'Heureux, Robert J	✓	
McKinney, Betsy, Clerk	✓	
Reed, Dennis		
Bulis, Lyle E	✓	
Hopper, Gary S	✓	
Sanders, Elisabeth N	✓	
McCarthy, Michael J	✓	
Roberts, John E		
	13 - 0	
TOTAL VOTE:		
Printed: 12/18/2009		

# Committee Report

**CONSENT CALENDAR**

**January 20, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on FISH AND GAME AND MARINE  
RESOURCES to which was referred HB1331,**

**AN ACT relative to extending the days for recreational  
taking of clams following an emergency closing. Having  
considered the same, report the same with the following  
Resolution: RESOLVED, That it is INEXPEDIENT TO  
LEGISLATE.**

**Rep. Lyle E Bulis**

**FOR THE COMMITTEE**



## COMMITTEE REPORT

Committee:	<b>FISH AND GAME AND MARINE RESOURCES</b>
Bill Number:	<b>HB1331</b>
Title:	<b>relative to extending the days for recreational taking of clams following an emergency closing.</b>
Date:	<b>January 20, 2010</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

This natural resource is threatened by the potential of overharvesting and water pollution because of heavy rains, treatment plant mishaps and "red tide." The Fish and Game Department sets a season knowing full well from historic evidence that not all the days will be available for clamming due to clam flat closures for public health protection by the Department of Environmental Services. The current long standing management methodology including a DES phone number for "clammers" to call for clam flat status is known by all and continues to work very well.

Vote 13-0.

Rep. Lyle E Bulis  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## **CONSENT CALENDAR**

### **FISH AND GAME AND MARINE RESOURCES**

**HB1331**, relative to extending the days for recreational taking of clams following an emergency closing. **INEXPEDIENT TO LEGISLATE.**

Rep. Lyle E Bulis for FISH AND GAME AND MARINE RESOURCES. This natural resource is threatened by the potential of overharvesting and water pollution because of heavy rains, treatment plant mishaps and "red tide." The Fish and Game Department sets a season knowing full well from historic evidence that not all the days will be available for clamming due to clam flat closures for public health protection by the Department of Environmental Services. The current long standing management methodology including a DES phone number for "clammers" to call for clam flat status is known by all and continues to work very well. **Vote 13-0.**

Original: House Clerk  
Cc: Committee Bill File

HB 1331

ITL

This natural resource is threatened by the potential of overharvesting and water pollution because of heavy rains, treatment plant mishaps and "red tide." The Fish and Game Department sets a season knowing full well from historic evidence that not all the days will be available for clamming due to clam flat closures for public health protection by the Department of Environmental Services. The current long standing management methodology including a DES phone number for "clammers" to call for clam flat status is known by all and continues to work very well.

Lyle E. Bulis

13-0

*PA Bulis*  
*1/20/10*

HB 1331

ITL

This natural resource is threatened by the potential for over harvesting and water pollution because of heavy rains, treatment plant mishaps and "red tide." The Fish and Game ~~and Marine Resource~~ Department sets a ~~maximum number of clam harvesting days~~ <sup>SEASONS</sup> knowing full well from historic evidence that not all ~~of those~~ <sup>THE</sup> days will be available for clamming due to clam flat closure for public health protection by the Department of Environmental Services. The current long standing management methodology including a DES phone number for "clammers" to call for clam flat status is known by all and continues to work very well. <sup>OF</sup>

Lyle E. Bulis

13-0

# COMMITTEE REPORT

COMMITTEE: Fish and Game and Marine Res  
BILL NUMBER: HB 1331  
TITLE: extending day for recreational taking of clams  
DATE: 1/19/10 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS  
 OUGHT TO PASS W/ AMENDMENT  
 INEXPEDIENT TO LEGISLATE  
 RE-REFER  
 INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.

## STATEMENT OF INTENT:

This natural resource is threatened by the potential for over-harvesting and water pollution because of heavy rains, treatment plant mishaps and "red tide". The Fish and Game and Marine Resources Department sets a maximum number of clam harvesting days knowing full well from historic evidence that not all of those days will be available for clamming due to clam flat closure for public health protection by the Department of Environmental Services. The current long standing <sup>management</sup> methodology including a DES phone number for "clam<sup>M</sup>" to call for clam flat status is known by all and continues to work very well.

COMMITTEE VOTE: 13/0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED

Rep. [Signature]  
[Signature]  
For the Committee