

Testimony of David Trahan, Executive Director, Sportsman's Alliance of Maine

Testimony in Support

LD 1747, An Act to Prohibit Municipalities from Imposing Fees on Ice Fishing Shacks
Before the Joint Standing Committee on Inland Fisheries and Wildlife
Presented by David Trahan, Executive Director, Sportsman's Alliance of Maine
February 8, 2012.

In 1992, the town of Randolph Maine passed a town ordinance that stated, "Article X, Section 1, Owner of ice fishing shack shall be required to register with the town office." Section 2, further claimed, "An annual fee may be levied by the town of Randolph." Since 1992, the town of Randolph has not enforced the ordinance and it was repealed in 2004, but in March of 2010, two selectmen reinstated the ordinance and set the fee at \$15 per shack.

Commercial smelt camp owners, recreational fishermen and those that care about small business are rightly outraged. In December of this year, Mike Shaw, D-Standish, on SAM's behalf introduced LD 1747, An Act to Prohibit Municipalities from Imposing Fees on Ice Fishing Shacks. The bill would prohibit municipalities from imposing a tax on shacks in saltwater, (it is already illegal in fresh water); more importantly, would clear up an issue destined to end up in a costly court battle. It is SAM's opinion that this attempt to tax recreational fisherman is a municipal over reach at best. I will explain.

Under state law, Title 1, Chapter 1, subsection 2, it states, "The state of Maine declares that it owns and shall control the harvesting of the living resources of the seas adjoining the coastline for a distance of 200 miles." The state also claims ownership and control of the submerged lands under the water. Given the states claim to control of the land and water where smelt camps are placed, many are confused as to how a town could legally charge a fee on shacks without first seeking approval and passage of a law. The answer appeared in a Kennebec Journal article titled, "Legislation would ban local fees." Eric Conrad, spokesman for the Maine Municipal Association said, "his organizations policy committee voted unanimously to oppose Rep. Shaw's bill." They went on, "It is purely a home rule decision" and, "they felt a community should have the right to take action if doing so to protect important resources."

SAM agrees with protecting water resources, except that is not why the town passed the ordinance. In the minutes of the July 5, 2011, Randolph selectmen's meeting, the Chair of selectmen, Ed Gorman, in response to Mr. Worthing, who asked "what is this tax for?" responded, "it was simply a fee to raise revenue for the Town." Again on October 6th, 2011, in the Kennebec Journal article titled, "Smelt shack fee debate spurs legality questions" town selectmen Peter Hanley, one of two selectmen that voted to re-instate the fee, reinforced the Chair's position when he said the aim of the ordinance was to, "raise revenue for the town."

It is true, smelt camps can, if run improperly become an environmental problems, but two agencies now have jurisdiction over camp operators: the Department of Environmental Protection and Department of Marine Resources. Camp owners are responsible for clean-up of all shacks and associated debris and if there is a problem towns call those two enforcement agencies and when necessary there will be a fine. If a town like Randolph has problems with drinking, loud noise etc. it is the sheriff or local police that responds to complaints.

Given money is the real motive for this new town ordinance, SAM and all sportsmen should be chilled by this new attempt to tax outdoor recreational activities by the town of Randolph. The precedent, if not addressed by the legislature could mean towns across the coast would be empowered to establish fees for all sorts of outdoor activities under the guise of "protecting resources." If all towns along our saltwater rivers decided to create such fees on recreational activities the confusion and related mayhem for individuals accessing our natural resources would be to drive them out of the rivers we all own.

In addition to the above concerns SAM believes no town could, by ordinance charge a fee on boats passing through a town's border because the town does not own the water. Conversely, we don't understand where the town thinks they get the authority to charge a fee on a temporary structure resting on frozen water, the form of the water is irrelevant.

A shack is as much a vessel to fish a recreational fishery as a boat. It is not attached to the bottom like a mooring and in all cases are temporary structures. A fisherman can buy all sorts of collapsible shacks at the local sporting shop or build a shack that can be set up and taken down in one day. What is the difference?

Thank you and I urge your support of this legislation.