

# MAINE STATE LEGISLATURE

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OF THE  
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## CHAPTER 34.

### DEPARTMENT OF SEA AND SHORE FISHERIES.

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#### General Provisions

**Sec. 1. Department of sea and shore fisheries; the commissioner, his duties, appointment, salary; cooperation with commissioner of inland fisheries and game.** R. S. c. 125, § 24. 1931, c. 216, Art. I, §§ 1, 4; Art. IV. 1933, c. 2, § 1. 1939, c. 249. The department of sea and shore fisheries, as heretofore established, shall have the powers and duties set forth in this chapter. The work of the department shall be organized by the commissioner of sea and shore fisheries hereafter in this chapter designated as the "commissioner". The commissioner shall be appointed by the governor with the advice and consent of the council to serve for 4 years, or during the pleasure of the governor and council. The commissioner shall receive such compensation as shall be fixed by the governor and council. Any vacancy in the office shall be filled by an appointment for a like term. He and the commissioner of inland fisheries and game shall cooperate in the distribution and joint deputizing of wardens to the end that overlapping jurisdiction may be effectively supervised according to the provisions of the fish and game laws and this chapter.

**Sec. 2. Power and duties of commissioner.** R. S. c. 50, § 2. 1933, c. 2, § 2. The commissioner shall have general supervision of the sea and shore fisheries and shell-fish regulated by this chapter. He shall exercise supervision over all the fisheries and their products taken from the tide-waters within the state, including the proper enforcement of all laws relating to the catching, packing, curing, manufacturing, selling, branding, and transportation of all kinds of pickled, salt, smoked, fresh, canned, or frozen shell or other fish, except as otherwise provided by law.

**Sec. 3. Rules and regulations.** R. S. c. 50, § 2. 1933, c. 2, § 3. It shall be unlawful to take fish, shell-fish, and lobsters from the tide-waters within the state at such times, or in such manner or under such conditions that the conservation of such fish, shell-fish, and lobsters shall be endangered. The commissioner is designated as the agent of the state to determine at what times and in what manner and under what conditions the taking of fish, shell-

fish, and lobsters would endanger their conservation. Upon petition of the municipal officers of any town, adjacent to the waters affected, or upon his own opinion of the existence of danger to the conservation of such fish, shell-fish, and lobsters, he shall give due notice and hold a public hearing, in a place near where the waters lie, on the danger to the conservation of such fish, shell-fish, and lobsters therein. After such hearing, if he is satisfied of the existence of such danger, he shall issue such rules and regulations as will preserve and protect such fish, shell-fish, and lobsters.

The commissioner also shall issue, without notice or hearing, such rules and regulations as the legislature by its resolve shall direct, to take effect at such time and for such time as the legislature directs in the said resolve.

He shall file a copy of each rule and regulation issued in the offices of the town clerks in the locality affected, and publish it 3 weeks successively in a newspaper published or printed in the county, or if no paper is so published or printed, then in the state paper, and if practicable post like notices on the banks of the waters to be affected as nearly as may be; and whenever such regulation applies to any unorganized township a like copy shall be filed with the clerk of courts for that county. He shall also file an attested copy of the regulation with the secretary of state.

The commissioner may modify or repeal such regulations from time to time whenever the conditions that made them advisable have changed. All modifications or repeals shall be published and filed in the same manner as the original regulation.

All such regulations or modifications shall have the force of law, and shall not be inconsistent with the general law of the state.

Whoever violates the rules and regulations so made or the close time so declared shall be liable to the same fines and penalties as are provided in section 116.

See c. 33, § 20, re fishing in fishways.

**Sec. 4. Further powers and duties of commissioner.** R. S. c. 50, § 3. 1931, c. 216, Art. I, § 3. 1933, c. 2, § 4. 1937, c. 221. 1939, c. 299. The commissioner may employ one or more clerks, subject to the provisions of the personnel law, and may also incur a reasonable expense for traveling expenses, office rent, postage, printing, stationery, telephone, and express. In the event of a vacancy in the office of the commissioner because of death, resignation, removal, or other cause, the various clerks shall continue in office and perform such duties as have been prescribed for or assigned to them, until said vacancy has been filled by the appointment and qualification of a new commissioner.

The commissioner shall have and exercise personal supervision of the work of the department and of the enforcement of the laws relating to sea and shore fisheries by the wardens and shall himself possess all the powers of a warden, and shall possess all the powers and perform all the duties hereinafter specified in this chapter. He shall make a detailed biennial report showing the amount of capital invested in, number of persons employed in, value of products of, and any other information that he may be able to obtain relating to the sea and shore fisheries. He shall keep a record of all prosecutions for violations of the laws relating to the sea and shore fisheries, the names of persons or firms prosecuted, the fines imposed and collected in each case and the final disposition of the same, and submit the same in his report, which shall be made to the governor and council, with such additional statement as he may see fit to make.

**Sec. 5. Fish wardens, appointment; salary; powers; bond.** R. S. c. 50, § 4;

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c. 125, § 24. 1933, c. 2, § 5. 1937, c. 221. 1939, c. 307, § 1. 1943, c. 320, § 4. Fish wardens shall be appointed by the commissioner subject to the provisions of the personnel law. They may receive their expenses properly incurred while actually engaged in the performance of their duties. They shall enforce all laws and the rules and regulations relating to sea and shore fisheries; arrest all violators thereof and prosecute all offenses against the same; they shall have the same power to serve criminal processes against such violators as sheriffs. No fish warden shall receive any fee as a complainant or witness, or for making an arrest, or for attendance at court, but shall be reimbursed by the state for his actual costs of arrest and actual expenses of travel and attendance. Whenever any fines or penalties are imposed by any court in which a fish warden is complainant or a witness, said court may tax costs for such complainant or witness in the usual manner. They shall have the same right as sheriffs to require aid in executing the duties of their office. They shall, before being qualified to discharge the duties required by this chapter, give bond as required by law, provided that in case of emergency, under direction of the commissioner, they may discharge their official duties for a period not exceeding 2 weeks after their appointment and before the filing and approval of said bond.

See c. 14, §§ 2, 3, 4, re bonds of state employees; c. 122, § 20, re obstructing fish warden in performance of duty; 107 Me. 349.

**Sec. 6. Authority of commissioner and wardens in enforcing laws relating to sea and shore fisheries; use of search warrants.** R. S. c. 50, § 5. 1933, c. 2, § 6. Fish wardens shall be held to be officers with all the powers of sheriffs within the meaning of that term as used in the general law, and shall have jurisdiction and authority in all the counties of the state, and in all the waters within the jurisdiction of the state. They shall enforce all laws relating to the sea and shore fisheries, and may enforce any provisions of law relating to the lobster industry, either with or without a warrant, but shall obtain a warrant thereafter within 24 hours. The commissioner and fish wardens may, with or without a warrant, arrest any person whom they may have reasonable grounds to believe guilty of violating any of the provisions of this chapter, and may with or without a warrant, but subject to the provisions of section 139, enter upon, open, and search any vessel, boat, building, car, motor vehicle, trap, or other receptacle or place where they have reasonable grounds to believe that fish or lobsters liable to seizure are to be found, and seize and carry away all fish or lobsters liable to seizure found therein, and any lobster car, motor vehicle, trap, net, barrel, box, or package in which the same are found or which are liable to seizure under any of the provisions of this chapter, the fish, lobsters, or other property thus seized to be disposed of according to law; but no dwelling-house or hotel shall be searched without a warrant issued for that purpose, and then only in the daytime. Any magistrate may issue warrants to search within his jurisdiction any dwelling-house in the daytime, or any building, vessel, boat, motor vehicle, or receptacle for fish or lobsters, or any place or places used therefor to the commissioner, or fish warden appointed and qualified as provided in this chapter. Such warrants shall issue subject to the requirements of section 15 of chapter 133.

**Sec. 7. Concurrent jurisdiction with commissioner of inland fisheries and game over migratory fish.** R. S. c. 50, § 6. 1933, c. 2, § 7. All sea salmon, shad, alewives, and smelts that migrate from the ocean into fresh water, wherever found, shall be under the concurrent jurisdiction of the commissioner of sea and shore fisheries and the commissioner of inland fisheries and game.

See c. 33, § 39.

**Sec. 8. Wardens to make monthly report.** R. S. c. 50, § 7. 1933, c. 2, § 8. Each warden shall make a detailed monthly report to the commissioner of all that has come to his knowledge relating to the fisheries within the territory assigned to him, or in any county where he has rendered services, from the 1st day of one month to the 1st day of the following month, in such manner and on such blanks as the commissioner may prescribe and furnish, and shall do such other acts as the commissioner may require for the purpose of gaining information and for the proper enforcement of the law.

### Fish Culture and Development of Fishing Industry

**Sec. 9. Commissioner may take land; not to exceed 2 acres in one location; proceedings; by lease, etc., may acquire more than 2 acres.** R. S. c. 50, § 53. 1933, c. 2, § 9. The commissioner may, for the purposes of this and the following section, take any shore rights, flats, and waters not exceeding an area of 2 acres in extent at any one location, and hold the same for a period not exceeding 10 years; such location when so taken may be used by said commissioner, or by the United States bureau of fisheries, in the prosecution of the work of fish culture and scientific research relative to shell-fish, or other fish over which said commissioner now has supervision; and whenever said commissioner shall deem it necessary in the furtherance of the objects and purposes of this and the following section to take any such shore rights, flats, and waters, he shall proceed in accordance with the provisions of section 9 of chapter 33; and in addition thereto shall cause a copy of so much of the proceedings as will show the character and extent of the shore rights, flats, and waters taken, and also the location thereof, and time for which taken, to be posted near the location, and shall also cause suitable marks or ranges to be set upon the adjacent upland so as to define, as far as practicable, the limits and boundaries of the location to be used in such experiments; and shall cause public notice of the taking of such shore rights, flats, or waters to be given by publishing the fact of such taking once a week for 3 successive weeks in a newspaper published in the county where the shore rights, flats, or waters are situated. Said commissioner may, by agreement, lease, or grant, and under such terms and conditions as may be agreed upon with the owner thereof, take possession of suitable shell-fish grounds, flats, waters, and water-rights, not limited to 2 acres in area, with necessary shore rights, and may use and operate the same under the provisions of and for the purposes of this section.

**Sec. 10. Shores and flats set apart for shell-fish industry; proceedings.** R. S. c. 50, § 54. 1933, c. 2, § 10. The commissioner, upon the application of any person or corporation interested or engaged in scientific research relating to shell-fish, or other fish over which the commissioner has supervision, or in the cultivation and development of the shell-fish industry for economic purposes, setting forth their desire to make experiments relative to the cultivation and conservation of shell-fish, or such other fish over which the commissioner now has supervision, shall, after being satisfied of the facts set out in said application, and that the applicant either owns or has the consent, so far as the same can be granted, of the owner of the flats, shore rights, and waters where such work is to be undertaken, and that the granting of such rights will not unreasonably interfere with navigation, give notice of a hearing on such application, by causing the same to be published at least 2 weeks in some newspaper published in the county where the proposed location is situated, and stating therein the time and place where such hearing will occur; and if, upon such hearing, the

commissioner is satisfied that the interests of the state will be promoted by such experiments, he shall issue a certificate setting apart so much of such shores, flats, and water privileges, not exceeding 1 acre in extent, to any one of such applicants, and for such length of time, not exceeding the period of 6 years, as in his judgment may be necessary and proper to accomplish the ends sought to be obtained. Such certificate shall be recorded in the registry of deeds of the county or registry district in which the location is situated, and the applicant shall also cause public notice of the issuance of such certificate to be given by publishing the same in a newspaper published in the county where such location is situated, and by posting in a conspicuous place near said location a copy of such certificate, and also by placing stakes or other monuments upon the adjoining upland, so as to designate the locations so set apart, as the commissioner shall in his certificate specify.

**Sec. 11. All persons forbidden to take fish on shores or flats taken for fish development; penalty.** R. S. c. 50, § 55. 1933, c. 2, § 11. No person shall, during the period that such shores, flats, and waters are taken for the purposes of the 2 preceding sections, take, dig, fish, or in any manner destroy or interfere with such fish, or interfere with the shores, flats, and waters so set apart. Whoever violates any of the provisions of this section shall be punished by a fine of not less than \$50, nor more than \$100, for each offense, or by imprisonment for not more than 30 days, or by both such fine and imprisonment. All fines and penalties recovered under the provisions of this section, after the damages sustained by the person holding such certificate have been paid, shall be paid to the treasurer of state, and added to and made a part of the appropriation for sea and shore fisheries.

#### Inspection of Fish

**Sec. 12. Appointment of inspectors of fish; term.** R. S. c. 50, § 8. 1933, c. 2, § 12. In each town where pickled fish are cured or packed for exportation, the governor, with the advice and consent of the council, shall, from time to time as occasion requires, appoint one or more persons knowing the quality of the same to be inspectors of fish, who shall hold their office for 5 years, unless sooner removed by the governor and council.

**Sec. 13. Inspectors to give bond.** R. S. c. 50, § 9. 1933, c. 2, § 13. Every such inspector, before entering upon his duties, shall give bond with sufficient sureties to the treasurer of the town for which he is appointed, to the satisfaction of the municipal officers thereof, in the penal sum of not less than \$500, nor more than \$5,000, for the faithful performance of his official duties; and such officers shall, at least once a year, examine the bonds given by said inspectors, and if that of any inspector is not in their opinion sufficient they shall forthwith notify him, and if for 30 days thereafter he neglects to give satisfactory bond, they shall give information thereof to the governor who shall remove him from office.

See Const. of Me. Art. IX, § 1, re oath.

**Sec. 14. Inspectors to make reports annually of all fish inspected.** R. S. c. 50, § 10. 1933, c. 2, § 14. Every inspector shall, by the 30th day of November, annually, make a report to the commissioner of all fish by him inspected during the year preceding the said 30th day of November, designating the quantities, kinds, and qualities of pickled fish; and said commissioner shall embody the substance thereof in his next official report.

Sec. 15. Any person injured by neglect of inspector may bring action on bond. R. S. c. 50, § 11. 1933, c. 2, § 15. Any person injured by the neglect or misdoings of an inspector, on tendering to such treasurer a reasonable indemnity against the costs may bring an action on such inspector's bond in the name of the treasurer, for his own use, and may have a copy of the bond therefor; and if judgment is rendered thereon for the plaintiff, execution shall issue for the sum found due to the person for whose use such action is brought, and the sum awarded in damages shall be entered by the clerk of the court on the original bond, to remain in the custody of the treasurer.

Sec. 16. Duty of inspector as to inspection and packing of fish. R. S. c. 50, § 12. 1933, c. 2, § 16. Every inspector who inspects any kind of fish that are split and pickled for packing, shall see that they are, in the first instance, free from taint, rust, or damage, and well struck with salt or pickle; and such of said fish as are in good order and of good quality shall be pickled in barrels, half-barrels, quarter-barrels, and tenths of barrels or kits; each barrel containing 200 pounds, and so on in that proportion; and the same shall be packed in good, clean, coarse salt, sufficient for their preservation; and then each cask shall be headed up and filled with clear strong pickle, and shall be branded by the inspector with the name and quality of the fish therein.

Sec. 17. Mackerel to be branded. R. S. c. 50, § 13. 1933, c. 2, § 17. Mackerel of the best quality, not mutilated, measuring, when split, not less than 13 inches from the extremity of the head to the crotch or fork of the tail, free from taint, rust, or damage, shall be branded "Number 1"; the next best quality, being not less than 11 inches, measuring as aforesaid, free from taint, rust, or damage, shall be branded "Number 2"; those that remain after the above selection, free from taint or damage, and not less than 13 inches, measuring as aforesaid, shall be branded "Number 3 large"; those of the next inferior quality, free from taint or damage, not less than 10 inches, measured as aforesaid, shall be branded "Number 3"; all other mackerel, free from taint or damage, shall be branded "Number 3 small". The inspector shall brand or stencil in plain letters on the head of every such cask, the weight, the initials of his christian name, the whole of his surname, the name of his town, and the letters "Me.," and an abridgment in figures, of the year when packed.

Sec. 18. Quality of casks and how made; dimensions. R. S. c. 50, § 14. 1933, c. 2, § 18. All barrels and casks used for packing pickled fish shall be made of sound, well-seasoned white oak, white ash, spruce, pine, chestnut, or poplar staves with heading of either of such kinds of wood, sound, well-planed and seasoned, and when of pine, free from sap, and the barrels hooped with at least 3 strong hoops on each bilge, and 3 also on each chime; the barrel staves shall be 28 inches in length, and the heads not less than 16½ inches between the chimes and made in workmanlike manner, to hold pickle. The barrels shall contain from 28 to 30 gallons each, and the aliquot part of a barrel in the same proportion.

Sec. 19. Pickled alewives and herring, how prepared and packed. R. S. c. 50, § 15. 1933, c. 2, § 19. Every inspector who inspects pickled alewives or herring, or other small fish, packed whole or round, shall see that they are struck with salt or pickle, and then put in good casks of the size and material aforesaid, packed closely therein, and well salted, and the casks filled with fish and salt, putting no more salt with the fish than is necessary for their preserva-

tion; and the inspector shall brand or stencil all such casks with the name of the inspected fish as aforesaid.

**Sec. 20. Fees for inspection and branding.** R. S. c. 50, § 16. 1933, c. 2, § 20. The fees for inspection and branding, exclusive of cooperage, are for each barrel 7c, and all such fees shall in the first instance be paid by the original owners of the fish, who may recover the amount thereof from the party buying or receiving the same, under the marks and brand aforesaid, and in addition to the price thereof.

**Sec. 21. Penalty for selling or exporting uninspected or damaged fish.** R. S. c. 50, § 17. 1933, c. 2, § 21. Whoever sells in the state, or exports therefrom, any fish in barrels or boxes, not inspected, packed, and branded, as aforesaid, except good and wholesome fish packed in kegs of less than 10 gallons, or pickled, dry, or smoked fish imported into the state from some other state or country lawfully inspected and branded there, and whoever sells or exports unlawfully any fish known by him to be tainted or damaged, unless sold as such, forfeits \$10 for every hundredweight thus sold or exported.

**Sec. 22. Penalty for attempting to export uninspected fish; warrant for seizure; penalty for refusing to aid officer.** R. S. c. 50, § 18. 1933, c. 2, § 22. Whoever ships or receives on board any vessel or other carriage for transportation from the state, any pickled fish in barrels, parts of barrels, or casks, not inspected and branded or stenciled as aforesaid, forfeits not less than \$50 for each offense; and any municipal judge or trial justice may issue his warrant to the proper officer, directing him to seize and secure such prohibited fish, and convey it to any inspector within a convenient distance for inspection; and whoever refuses to give necessary aid in the service of such warrant when required by the officer, forfeits \$5 to the prosecutor in an action of debt; and such inspector shall open, inspect, pack, and brand such fish according to law, and detain the same until all lawful charges of seizure and inspection are paid.

**Sec. 23. Penalty for intermixing inspected fish; for fraud of inspector.** R. S. c. 50, § 19. 1933, c. 2, § 23. If any person takes from a cask or barrel any pickled fish lawfully inspected and branded, and substitutes therefor or fraudulently intermixes other fish; or if any inspector marks any cask or barrel out of his own town, or which he has not inspected, packed, and himself prepared according to law; permits other persons unlawfully to use his brand, or wilfully and fraudulently uses the same himself after the expiration of his commission, he forfeits \$1 for each cask or barrel so dealt with; but an inspector may, after a satisfactory examination, brand such packages, thereby becoming responsible for the quality of the contents as represented by his brand.

### Fish Packing

**Sec. 24. Rules governing sale or packing of herring; penalty; enforcement by commissioner.** R. S. c. 50, § 51. 1933, c. 2, § 24. Whoever takes, preserves, sells, or offers for sale between the 1st day of December and the 15th day of the following April, any herring for canning purposes less than 8 inches long, measured from one extreme to the other, or packs or cans sardines of any description, between the 1st day of December and the 15th day of the following April, forfeits \$20 for every hundred cans so packed or canned, and for every hundred herring so taken. All cans shall be decorated, stamped, or labeled with quality, packer's name and place of business, or merchant's name for whom the

same are packed, except sardines packed in plain cans and shipped for buyers' labels or cartons. Whoever sells or offers for sale any sardines in cans not so decorated or labeled, shall forfeit \$1 for every can so sold or offered for sale, to be recovered by complaint, indictment, or action of debt.

Special note: The 1st sentence of § 24 has been suspended until June 1, 1946. (See 1943, c. 75).

See c. 25, §§ 101-115, re protecting industry of packing fish and fish products and establishing minimum wage for women and minors employed therein; c. 27, § 200, re definition of sardines.

**Sec. 25. Size of smoked herring boxes regulated.** R. S. c. 50, § 52. 1933, c. 2, § 25. No person, firm, or corporation engaged in the state in buying, selling, and packing of smoked herring shall sell or offer for sale smoked herring in boxes of less than the following dimensions, viz.: 2 inches in depth, 6 inches in width, inside measure, and 12 inches in length, outside measure. Whoever packs, sells, or offers for sale smoked herring in boxes in violation of this section shall forfeit 25c for each box so packed, sold, or offered for sale; but this section does not apply to boxes of boneless herring.

**Sec. 26. Purchase of herring, regulated; penalty.** 1935, c. 160. No person, firm, or corporation shall purchase or sell herring in their live or raw state for packing purposes, other than by some standard method of measurement such as by the bushel, barrel of 3 bushels, or by the hogshead of 17½ bushels or fractional part of said standard method of measurement. Such measurement of quantity shall be made on arrival at the packing establishment.

Any person, firm, or corporation purchasing herring from a fisherman or his agent shall either pay cash to said fisherman or his agent at the time of purchase or shall furnish to said fisherman or his agent a written acknowledgment of purchase, containing all information necessary to a complete understanding of the transaction, including the price and an estimate of the quantity, and providing for payment not later than 7 days after receipt of said herring, and all payments shall be made in money or in money equivalent.

Provided, however, that a fisherman may enter into, with a purchaser of his herring, any other and different arrangement relative to the method of determining quantity of herring and the time of payment therefor that is mutually satisfactory to both parties.

Any person violating the provisions of this section shall be punished by a fine of not less than \$100, nor more than \$500, for each offense.

**Sec. 27. Taking of herring, regulated; penalty.** 1939, c. 88, §§ 1, 2. It shall be unlawful for any person to take, preserve, sell, offer for sale, purchase, or have in his possession any herring, for any purpose, less than 4 inches in length, measured from the tip of the nose to the tip of the tail, provided, however, that where herring under the size of 4 inches in length are mixed with larger herring and the herring of prohibited size represent less than 25% by count of the total catch, sale, or purchase, the foregoing provision shall not be applicable. Provided, however, that any person may have in his possession not more than 10 bushels of herring for the purpose of using the same for bait. Whoever violates any of the provisions of this section shall be punished by a fine of \$1 per bushel for each bushel of herring taken, offered for sale, or had in his possession in violation of any of the provisions of this section, or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

### Fishing Regulations

Sec. 28. Use of artificial light in herring fishing forbidden; penalty. R. S. c. 50, § 51. 1933, c. 2, § 26. No person shall use in the herring fishery, in any of the waters of this state, except in so much of Sheepscoot bay as is comprised within the following lines: beginning at the northerly point of Green Island, thence southerly by the coast line to the Cuckolds light station; thence westerly to Pond Island light station, thence northeasterly by the coast line to the northerly point of MacMahan Island, thence easterly to the point of beginning, torches or any artificial light, of any kind, for the purpose of catching herring, under a penalty of \$10 for each offense. The commissioner shall insist upon the strict observance of the provisions of this section and enforce the penalties for violation thereof.

Sec. 29. Regulation of places and times for taking salmon, shad, and alewives in certain waters; penalty. R. S. c. 50, § 72. 1931, c. 145. 1933, c. 2, § 27; c. 66. 1937, c. 69. 1939, c. 32. No salmon, shad, or other migratory fish shall be taken or fished for within 500 yards of any fishway, dam, or mill-race; nor in the Penobscot river between the mouth of the Kenduskeag stream and the waterworks dam at Treat's Falls on said river, nor between the Augusta highway bridge over the Kennebec river and the Augusta dam; nor in Mill river, a tributary of Georges river, in Thomaston, between said Georges river and the old dam at head of tide-waters in said Mill river; nor any salmon 500 feet above Ferry point bridge on the St. Croix river in Calais, between the 1st days of April and November, nor in the tidal area of the Saco river between a line drawn from the easterly point of Stage Island to Sharp's Rocks, and the southerly end of the breakwaters and from said southerly end of the breakwaters to the Laconia Falls and the Lower Falls, so called, except by the ordinary mode of angling with single hook and line or artificial flies; nor shall hook and line or artificial flies be used at any time within 100 yards of any fishway, dam, or mill-race; but this section shall not apply to the taking of alewives by the town of Warren in the Georges river, and by the town of Waldoboro in Medomak river, under the authority granted said towns by a private and special law of Massachusetts passed the 6th day of March, 1802, and amendments thereof passed by the legislature of this state; nor shall it apply to the taking of alewives by the town of Woolwich in Nequasset stream; nor shall it apply to the taking of alewives by the West Harbor Ice Company in the water below its fishway, erected under authority given by chapter 140 of the private and special laws of 1905, nor shall it apply to the taking of eels, alewives, shad, or smelts with dip nets, or live bait as prescribed by chapter 33 of the revised statutes, as revised, in the Saco river. Any person may take any salmon, shad, or alewives in the waters of Orange river in the town of Whiting in the county of Washington, up to 130 yards of the fishway at the lower dam in said river; subject, however, to all the laws of the state, and laws regulating the taking of such fish in said river. Any person may take any salmon, shad, or alewives in the waters of the Kennebec river in the city of Augusta between the Augusta highway bridge and the Augusta dam, by fly-fishing only, from the 1st day of May to the 1st day of October of each year. The penalty for any violation of the provisions of this section is a fine of not less than \$10, nor more than \$50, for each offense and a further fine of \$10 for each salmon and \$1 for each shad, alewife, or other migratory fish so taken.

See rules and regulations of commissioner for special regulations; 78 Me. 394.

**Sec. 30. Use of trawls, regulated.** 1937, c. 34, §§ 1, 2. The use of either otter or beam trawls within the territorial waters of this state is prohibited unless the same are properly provided with net or nets having all meshes thereon measure not less than  $4\frac{3}{4}$  inches mesh by diagonal, or stretch measurement as it is commonly known and called among shore fishermen. Whoever violates any of the provisions of this section shall be punished by a fine of \$100 for the 1st offense, and in default of payment, by 30 days in jail; and for the 2nd offense, he shall be punished by a fine of \$200, and in default of payment, by 60 days in jail.

**Sec. 31. Protection of weirs; penalty.** R. S. c. 50, § 76. 1933, c. 2, § 28. No person shall set any net or seine within 1,000 feet of the mouth of any weir under a penalty of \$50 for each offense.

See c. 86, §§ 7-11, re weirs.

**Sec. 32. Owner may use.** R. S. c. 50, § 77. 1933, c. 2, § 29. The owner or person in charge of any weir is permitted to use nets and seines in such weir.

**Sec. 33. Close time for salmon; penalty.** R. S. c. 50, § 78. 1933, c. 2, § 30. From the 15th day of July to the 1st day of April following, there shall be a close time for salmon in the tide-waters of the state during which no salmon shall be taken or killed in any manner, under a penalty of not less than \$10, nor more than \$50, and a further penalty of \$10 for each salmon so taken or killed. Provided, however, that between the 15th days of July and September it is lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise. Provided, however, any person may take salmon by weirs on the St. Croix river below the breakwater at the ledge between the 15th day of May and the 1st day of September.

**Sec. 34. Weekly close time for salmon, shad, alewives, and bass; how observed; penalty; exceptions.** R. S. c. 50, § 79. 1933, c. 2, § 31. 1939, c. 31, § 1. Between the 1st day of April and the 15th day of July, there shall be a weekly close time of 48 hours from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives, or bass, shall be taken. During the weekly close time all seines, nets, and other movable apparatus shall be removed from the water. Every weir shall have, in that part where the fish are usually taken, an opening 3 feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing shall be taken out, carried on shore and there remain during the weekly close time, to the intent that during said close time the fish may have a free and unobstructed passage through such weir or other structure, and no contrivance which tends to hinder such fish shall be placed in any part thereof. If the enclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir is equivalent to one extending from the bottom to the top. The penalty for the violation of the provisions of this section is \$20 for each offense. This section does not apply to the Kennebec, Androscoggin, or Penobscot rivers or their tributaries, or to the St. Croix river below the breakwater at the ledge, or to the Damariscotta river below the bridge at Damariscotta.

This section shall not apply to the taking of salmon or bass by the ordinary mode of angling with single hook and line or artificial flies, and no person shall fish for, take, catch, or kill any bass except that they may be taken in the ordinary mode of angling with single hook and line or artificial flies, in numbers not to exceed 6 per person per day.

See rules and regulations of commissioner for special regulations.

Sec. 35. Regulation of smelt fishing; penalty. R. S. c. 50, § 80. 1933, c. 2, § 32. 1941, c. 248. No smelts shall be taken or fished for in any of the tidal waters of the state not otherwise provided for by private or special laws between the 1st day of April and the 1st day of October of each year except by hook and line and it shall be lawful to take smelts in the York river and Smelt brook and their tributaries in the towns of York and Eliot with hook and line only. Any one violating any provision of this section shall be punished by a fine of \$100 for each offense. Nothing in this section shall apply to smelts taken in fish weirs or traps maintained and operated for the catching of sardines or herring.

See rules and regulations of commissioner for special regulations.

Sec. 36. Stationary contrivances regulated; penalty; exceptions. R. S. c. 50, § 81. 1933, c. 2, § 33. No weir, hedge, set-net, or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than 2 feet of water at ordinary low water, under a penalty of not less than \$50, nor more than \$100, and forfeiture of all apparatus and material so unlawfully used. This provision applies to any seine or drift-net which is at any time attached to a stationary object, but not to fykes or bag-nets used in the winter fishery for smelts and tomcods, nor to any implements lawfully used above the flow of tide, nor to any portion of Penobscot river, bay, or tributaries, nor to the St. Croix river 500 feet above Ferry's point, in Calais.

124 Me. 365.

Sec. 37. Depth of weirs, how measured; standard for low water on the Kennebec river. R. S. c. 50, § 82. 1933, c. 2, § 34. The limit of depth prescribed for weirs in the preceding section shall be measured at the entrance of the weir, provided that no part of the weir known as the leader, is in more than 2 feet of water at low-water mark. Weirs may exceed the limit of 2 feet in depth, measured as aforesaid, under the following conditions:

I. The distance from the before mentioned 2 feet limit to the entrance of such weir shall not exceed 100 feet;

II. No such weir shall obstruct more than  $\frac{1}{8}$  of the channel, except that in the Cathance, Abbagadasset, and Eastern rivers, such weirs may extend 25 feet beyond the  $\frac{1}{8}$  aforesaid, provided such extension shall not exceed  $\frac{1}{4}$  of the width of the channel in the Abbagadasset and Eastern rivers;

III. Every such weir shall be stripped so as to render it incapable of taking fish between the 15th day of June and the 15th day of August of each year; but these conditions apply only to weirs that exceed the aforesaid limit of depth.

The standard for low-water mark on the Kennebec river is in all cases the nearest benchmark of the United States coast survey, allowance being made at the various points for the difference in time. The provisions of this and the preceding sections do not apply to weirs built for the purpose of taking herring, or other salt-water fish.

Sec. 38. Forfeitures. R. S. c. 50, § 83. 1933, c. 2, § 35. All boats, implements, and materials used and all fish taken in violation of the provisions of the two preceding sections are liable to forfeiture.

Sec. 39. Dead or injured fish not to be cast on shore nor released in harbors; penalty. R. S. c. 50, § 86. 1933, c. 2, § 36. No person shall cast or deposit upon the shores, or release and deposit in the bays, harbors, or rivers of this state any dead fish, or fish that have been smothered or injured so that they will die. Whoever wilfully violates the provisions of this section, or aids therein, shall

be punished by a fine of \$100, or by imprisonment for not more than 30 days, or by both such fine and imprisonment.

**Sec. 40. Use of dynamite or poisonous substance for destroying fish prohibited; sale of fish so taken, and carrying such dynamite or substance in fishing-boat prohibited; penalty.** R. S. c. 50, § 88. 1933, c. 2, § 37. No person shall use dynamite or any poisonous or stupefying substance whatever for the purpose of destroying or taking any kind of fish in tidal waters. No person shall buy, sell, give away, or expose for sale, or possess for any purpose, any fish taken by use of dynamite or any poisonous or stupefying substance; and no person while engaged in fishing shall carry in his fishing-boat or vessel, any dynamite or other explosives, or any poisonous or stupefying substance. Whoever violates any provision of this section shall be punished by a fine of \$100 and costs, and by imprisonment for 60 days.

**Sec. 41. Persons deriving special benefit from protected waters to post notices of such protection.** R. S. c. 50, § 89. 1933, c. 2, § 38. All persons who derive special benefits from legislation for the protection of fish in any waters of this state, in excess of what is or may be derived by others, shall publish such protection by posting and maintaining notices substantially as hereinafter provided. Said notices shall be placed on the banks or shores of such protected waters not more than 10 feet nor less than 6 feet above the ground, in a conspicuous position; and if on running water such notices shall not be more than  $\frac{1}{2}$  mile apart on the banks of such waters; and if on a pond or lake, not more than 1 mile apart on the shores of such pond or lake.

**Sec. 42. Form of notices; no liability unless notices posted.** R. S. c. 50, § 90. 1933, c. 2, § 39. Notices shall be painted on wood in black Roman letters not less than 2 inches in length and not less than  $\frac{1}{2}$  inch in breadth, so that such letters shall be plainly legible, and such notices shall state the number of the act and the date of the same giving the said protection to such waters. In case no notices as herein provided are posted and maintained on waters that are protected by any special law, no one violating such law shall be liable thereunder to any penalties therein set forth.

**Sec. 43. Mutilation of such notices prohibited; penalty.** R. S. c. 50, § 91; c. 135, § 33. 1933, c. 2, § 40. Anyone mutilating or destroying such notices shall be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

**Sec. 44. Application of §§ 41-43.** R. S. c. 50, § 92. 1933, c. 2, § 41. The provisions of the 3 preceding sections shall not apply to towns which by special act have acquired vested rights in any fishery in said towns.

**Sec. 45. License provided for.** 1937, c. 33. Any person qualified to apply for a license to catch ground fish for commercial purposes in the tidal or coastal waters of the state must apply to the commissioner for such license and state in his application as nearly as may be, on a blank furnished by the department, the estimated value of his boat and equipment separately, the gross value of his previous year's catch and any other statistical information that may be required for the use of the department.

If any fisherman holds a lobster license he shall keep a separate account of his catches of all ground fish caught for commercial purposes in addition to the

information sought of him by virtue of the requirements of his lobster license, but he need not procure a separate license.

Any legal resident of the state intending to engage in the catching of ground fish in the tidal or coastal waters of the state for commercial purposes must procure a license therefor from the commissioner and failure to procure such license shall be punished by a fine of \$25. No license fee shall be required of such applicant but he shall be required to furnish the information required of him by the blanks in his application and his refusal or failure to promise to furnish such information may be deemed sufficient cause for refusing the granting of such license, or a neglect or refusal to furnish such information after the issuance of it shall be cause for the revocation of such license.

**Sec. 46. Fishing by non-residents for commercial purposes; penalty. 1941, c. 320.** The taking or fishing for, by a non-resident of this state, for commercial purposes, any kind of fish except herring, by hook, line, trawl, or in any other manner, within the territorial salt waters of the state between the 1st day of April and 1st day of November in each year is prohibited.

No person whose residence under the provisions of this section may be in question shall be permitted to make application for a license to so fish unless and until he shall have established to the satisfaction of the commissioner a continuous bona fide residence in the state for 3 years next preceding the date of his application.

Whoever violates any of the provisions of this section shall, upon conviction, be punished by a fine of not less than \$500, nor more than \$1,000, or by imprisonment for not less than 2 months, nor more than 6 months, or by both such fine and imprisonment. Any person convicted of any subsequent offense shall be punished by a fine of not less than \$1,000, nor more than \$2,000, or by imprisonment for not less than 6 months, nor more than 11 months, or by both such fine and imprisonment.

**Sec. 47. Vessels owned by non-residents liable for unlawful fishing. R. S. c. 50, § 93. 1933, c. 2, § 42.** All vessels, boats, or craft owned and officered by non-residents, and apparatus of every kind, employed in unlawful fishing, or having on board any fish unlawfully taken, are liable for all fines and costs herein provided for; and any officer may seize and detain said property not exceeding 24 hours, in order that it may be attached and taken by due process of law to satisfy any judgment that may be recovered, but it shall at any time be released on payment, by the owner or master, of the fine, costs, and reasonable expenses.

#### Regulation of Shell-fish Industry

**Sec. 48. Towns may grant licenses for propagation and cultivation of clams, quahaugs, and mussels; license may be assigned. R. S. c. 50, § 56. 1933, c. 2, § 43; c. 167.** Upon application in writing, the mayor and aldermen of a city or the selectmen of a town shall grant a written license to any person who has resided in the state or who has been a taxpayer in the city or town for not less than 1 year preceding the date of his application, for the purposes of planting and cultivating clams, quahaugs, or mussels upon and in not exceeding  $\frac{1}{4}$  of the flats and creeks of their respective cities and towns and within the limits to be specified in the license, for a term of not less than 5 years, nor more than 10 years; all such licenses shall be subject to such rules and regulations as are

approved by the city council of the city, or by the voters of the town at an annual or special town meeting, and may be assigned by the licensee to any person who has been a resident of the state or a taxpayer in the city or town for not less than 1 year preceding the date of the assignment, but shall not be assigned or transferred without the written consent of the mayor and aldermen of such city or the selectmen of such town.

**Sec. 49. Proceedings before licenses shall be granted; preference to be given to riparian owner of adjacent property.** R. S. c. 50, § 57. 1933, c. 2, § 44. No license shall be granted if the exercise thereof would materially obstruct navigable water, nor until after a public hearing, due notice of which has been posted in three or more public places, and published in a newspaper, if there be any, published in the city or town in which the premises are situated, at least 10 days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area, and description of the grounds applied for. In granting said licenses preference shall be given to the riparian proprietors of the adjacent property, when there are two or more applicants for the same territory and the adjacent riparian proprietor is one of them.

**Sec. 50. Survey and plan of territory covered by license to be made; territory to be marked.** R. S. c. 50, § 58. 1933, c. 2, § 45. Before granting any license, the mayor and aldermen of a city or the selectmen of a town shall cause a survey and plan of the territory within which licenses are to be granted, to be made, and shall cause the territory covered by any license issued by them to be marked upon a copy of such plan to be kept in the office of the city or town clerk. The licensee upon receiving his license shall cause the territory covered thereby to be plainly marked out by stakes, buoys, ranges, or monuments which shall be maintained by him during the term of the license. Failure to place or maintain the same shall be sufficient cause for revocation of the license by the authority granting the same.

**Sec. 51. License to describe territory covered; to be recorded; records open to public inspection.** R. S. c. 50, § 59. 1933, c. 2, § 46. A license granted hereunder shall describe by metes and bounds the waters, flats, and creeks to which the license is applicable, and shall have no force until it is recorded with the clerk of the city or town granting the same, in a book to be kept for the purpose in the office of the clerk of the city or town, and such books shall be open to public inspection; the licensee shall pay annually to the city or town a fee of not less than \$1, nor more than \$5, per acre for the license, as the mayor and aldermen of the city and the selectmen of the town may determine. Forms for licenses and for assignments shall be provided by the mayor and aldermen of a city or the selectmen of a town at the expense of the city or town.

**Sec. 52. Taking of clams, quahaugs, or mussels, or their seed, on licensed territory except by licensee prohibited; licensee to have exclusive use of territory covered by license; penalty.** R. S. c. 50, § 60. 1933, c. 2, § 47; c. 167. No person, except the licensee or his agents or assignees, shall dig or take clams, quahaugs, or mussels, or clam, quahaug, or mussel seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees, shall for the purposes described in the license have the exclusive use of the territory described therein during the term of the license and may in an action of tort recover treble damages of any person

who, without his or their consent, digs or takes clams, quahaugs, mussels, or other shell-fish in the territory covered by the license or removes the same therefrom. Whoever so digs, takes, or removes clams, quahaugs, mussels, or other shell-fish shall, in addition, be punished by a fine of \$20 for each offense.

**Sec. 53. Proceedings if licensee fails to occupy and use territory covered by license.** R. S. c. 50, § 61. 1933, c. 2, § 48. Whenever it appears to the mayor and aldermen of a city or selectmen of a town who have granted such a license, that the licensee or his assignee does not actually occupy and use in good faith for the purposes specified in sections 48 and 49, the territory covered by the license, they shall petition the superior court to appoint a commission to investigate and report to the court, as to the use and occupancy of such territory; the court shall appoint a commission of one or more persons who, after 12 days' notice to the petitioners and the respondent, shall hear the petitioners and respondent and shall transmit their findings to the court. If it shall appear to the court that the said territory is not used and occupied in good faith for the purposes stated in the license, the court may order that use of the territory shall revert to the city or town and that all stakes or buoys and other appliances marking the same shall be removed. Costs upon said petition may be recovered in the discretion of the court.

122 Me. 450.

**Sec. 54. Towns to regulate taking of clams, quahaugs, and mussels; penalty for taking contrary to municipal regulations.** R. S. c. 50, § 62. 1933, c. 2, § 49; c. 167. Any town may at its annual meeting fix the times in which clams, quahaugs, and mussels may be taken within its limits, and the prices for which its municipal officers shall grant permits therefor; and unless so regulated by vote, residents of the town may take clams, quahaugs, and mussels without written permit; but without permit, any inhabitant within his own town, or transient persons therein, may take clams, quahaugs, and mussels for consumption by himself and family. This section does not apply to hotel keepers taking clams, quahaugs, and mussels for the use of their hotels, nor does it interfere with any law relating to the taking of shell-fish for bait by fishermen. Whoever takes clams, quahaugs, or mussels contrary to municipal regulations authorized by this section shall, for each offense, be punished by a fine of not more than \$10, or by imprisonment for not more than 30 days. This section shall not be construed to effect the repeal of any special privileges enjoyed by the inhabitants of certain towns by virtue of any public or private and special law in force at the date of adoption of these statutes; but any town to which any such law applied may in addition have all the advantages of this section if such town shall so vote.

See rules and regulations of commissioner for special regulations; 89 Me. 543; 98 Me. 388; 102 Me. 231; 103 Me. 329; \*105 Me. 81.

**Sec. 55. Digging of clams on flats of York river.** 1941, c. 130. It shall be lawful to dig clams on any of the flats in the York river in the county of York, provided said clams are not used for any other purposes except as bait for fishing.

**Sec. 56. License required to dig or take clams, etc., in Scarborough; definition.** 1941, c. 239, § 1. No person shall, in the town of Scarborough, in the county of Cumberland, dig or take clams, clam-worms, or blood-worms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing

herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 56 to 58, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Scarborough for at least 3 consecutive months prior to receiving a license.

**Sec. 57. Dealers' licenses required; definition.** 1941, c. 239, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Scarborough unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 56 to 58, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 58. Licenses; revocation; appeal.** 1941, c. 239, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or blood-worms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 59. Penalty.** 1941, c. 239, § 4. Whoever violates any of the provisions of sections 56 to 58, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days.

**Sec. 60. License required to dig or take clams, etc., in Kennebunkport; definition.** 1941, c. 240, § 1. No person shall, in the town of Kennebunkport, in the county of York, dig or take clams, clam-worms, or blood-worms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 60 to 62, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Kennebunkport for at least 3 consecutive months prior to receiving a license.

**Sec. 61. Dealers' licenses required; definition.** 1941, c. 240, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Kennebunkport unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 60 to 62, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 62. Licenses; revocation; appeal.** 1941, c. 240, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or

selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or blood-worms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 63. Penalty.** 1941, c. 240, § 4. Whoever violates any of the provisions of sections 60 to 62, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days.

**Sec. 64. License required to take or dig clams, etc., in Kennebunk; definition.** 1941, c. 241, § 1. No person shall, in the town of Kennebunk, in the county of York, dig or take clams, clam-worms, or blood-worms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 64 to 66, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Kennebunk for at least 3 consecutive months prior to receiving a license.

**Sec. 65. Dealers' licenses required; definition.** 1941, c. 241, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Kennebunk unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 64 to 66, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 66. Licenses; revocation; appeal.** 1941, c. 241, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or bloodworms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 67. Penalty.** 1941, c. 241, § 4. Whoever violates any of the provisions of sections 64 to 66, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days.

**Sec. 68. License required to dig or take clams, etc., in Cape Elizabeth; definition.** 1941, c. 249, § 1. No person shall, in the town of Cape Elizabeth, in the county of Cumberland, dig or take clams, clam-worms, or blood-worms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town.

Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 68 to 71, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Cape Elizabeth for at least 3 consecutive months prior to receiving a license.

**Sec. 69. Dealers' licenses required; definition.** 1941, c. 249, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Cape Elizabeth unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 68 to 71, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 70. Licenses; revocation; appeal.** 1941, c. 249, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or blood-worms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 71. Taking of shell-fish and worms in Yarmouth, North Yarmouth, Falmouth, and Cumberland, regulated.** 1941, c. 249, § 4. No clams, clam-worms, blood-worms, mussels, or quahaugs shall be taken from any flats within the limits of either of the towns of Yarmouth, North Yarmouth, Falmouth, or Cumberland, in Cumberland county, except by such written permit as the municipal officers of said town may issue, provided that without such permit, any inhabitant within said town, or any person temporarily resident therein, or the riparian owner of any such flats may take therefrom for the immediate use of himself or his family not exceeding 1 bushel of clams at 1 tide.

**Sec. 72. Penalty.** 1941, c. 249, § 5. Whoever violates any of the provisions of sections 68 to 71, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days.

**Sec. 73. License required to dig or take clams, etc., in Georgetown; definition.** 1941, c. 264, § 1. No person, firm, or corporation shall, within the limits of the town of Georgetown, in the county of Sagadahoc, dig or take any clams, clam-worms, sandworms, or blood-worms without having first obtained a license from the municipal officers of said town of Georgetown, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm, or corporation unless such person, firm, or corporation is a resident of said town of Georgetown. However, nothing herein shall prohibit a riparian owner of shores or flats in said town of Georgetown from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 73 to 75, inclusive, the term "a resident" shall mean a person, firm, or corporation who has resided in this

state for a term of at least 6 consecutive months, and in the town of Georgetown for at least 3 consecutive months prior to making application for license.

**Sec. 74. Dealers' licenses required; definition.** 1941, c. 264, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Georgetown, without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 73 to 75, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 75. Licenses; revocation; appeal.** 1941, c. 264, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or blood-worms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 76. Penalty.** 1941, c. 264, § 4. Whoever violates any of the provisions of sections 73 to 75, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof.

**Sec. 77. License required to dig or take clams, etc., in Woolwich; definition.** 1941, c. 266, § 1. No person, firm, or corporation shall, within the limits of the town of Woolwich, in the county of Sagadahoc, dig or take any clams, clam-worms, sandworms, or blood-worms, without having first obtained a license from the municipal officers of said town of Woolwich, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm, or corporation unless such person, firm, or corporation is a resident of said town of Woolwich. However, nothing herein shall prohibit a riparian owner of shores or flats in said town of Woolwich from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 77 to 79, inclusive, the term "a resident" shall mean a person, firm, or corporation who has resided in this state for a term of at least 6 consecutive months, and in the town of Woolwich for at least 3 consecutive months prior to making application for license.

**Sec. 78. Dealers' licenses required; definition.** 1941, c. 266, § 2. No person shall be a dealer in clams, clam-worms, or blood-worms in the town of Woolwich, without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 77 to 79, inclusive, the term "dealer" herein used shall mean any person, firm, or corporation buying clams, clam-worms, or blood-worms for resale.

**Sec. 79. Licenses; revocation; appeal.** 1941, c. 266, § 3. The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or

selling clams, clam-worms, or blood-worms has violated any of the laws of the state regulating the taking and sale of clams, clam-worms, or blood-worms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts.

**Sec. 80. Penalty.** 1941, c. 266, § 4. Whoever violates any of the provisions of sections 77 to 79, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof.

**Sec. 81. Size of bait barrels; penalty.** R. S. c. 50, § 63. 1933, c. 2, § 50; c. 167. In all contracts relating to the sale of clam, quahaug, or mussel bait, fresh or salt, by the barrel, and clam, quahaug, or mussel bait barrels, such barrel shall be  $25\frac{1}{4}$  inches long and  $15\frac{1}{2}$  inches head diameter, outside measure. Whoever violates this provision shall be punished by a fine of not more than \$50 for each offense.

**Sec. 82. Close time for clams, quahaugs, and mussels for canning; penalty.** R. S. c. 50, § 64. 1933, c. 2, § 51; c. 167. 1937, c. 240. The canning of clams, quahaugs, and mussels, either fresh or in salt, and the digging of clams, quahaugs, and mussels for the purpose of canning, between the 15th day of May and the 1st day of October following, is prohibited under a penalty of \$1 a bushel in the shell; but this section shall not apply to the barrelling of clams, quahaugs, and mussels in the shell for consumption in this state.

**Sec. 83. Taking of soft-shelled clams and quahaugs, regulated; penalty.** 1935, c. 120. 1937, c. 109. 1943, c. 168, §§ 1, 2. No person, firm, or corporation shall dig or have in possession, or offer, or expose for sale soft-shelled clams or quahaugs less than 2 inches in the longest diameter, to the amount of more than 15% of any batch in whole or in part. This tolerance of 15% to be determined by numerical count, or by measure of not more than 4 pecks, taken at random from various parts of said lot or batch. Provided, however, that the commissioner of sea and shore fisheries in his discretion may, however, issue permits to persons who wish to take clam seed for the purpose of propagating clams.

Any person, firm, or corporation who takes or has in his possession or offers for sale soft-shelled clams or quahaugs in violation of any of the provisions herein stated, or who neglects to comply with the regulations shall be punished by a fine of not less than \$10, nor more than \$100, for the first offense, and by a fine of not less than \$10, nor more than \$50, for each subsequent offense.

See §§ 98-107, re propagation of quahaugs.

**Sec. 84. Clam, quahaug, and mussel flats may be closed to digging on certain conditions; signs to be posted.** 1931, c. 197, § 1. 1933, c. 2, § 52; c. 167. The commissioner of sea and shore fisheries and the commissioner of agriculture, or either of them, are authorized and directed to use all lawful methods for the investigation and inspection of clam, quahaug, and mussel flats on the coast of Maine. The commissioner of sea and shore fisheries and the commissioner of agriculture, or either of them, are empowered to prohibit the digging of clams, quahaugs, or mussels for any purpose in certain flats

and on certain shores whenever they find by examination that such flats and shores are contaminated or polluted; and when clams, quahaugs, or mussels dug from such contaminated areas are not in conformity with regulations promulgated by the commissioner of sea and shore fisheries and the commissioner of agriculture, or either of them, and the regulations and standards of purity established by the United States public health service, and not acceptable for shipment in interstate commerce. When the digging of clams, quahaugs, or mussels in any area is forbidden by the commissioner of sea and shore fisheries and the commissioner of agriculture, or either of them, they shall cause plain and distinct signs to be posted on the area within which the digging of clams, quahaugs, or mussels is forbidden.

**Sec. 85. Penalty; revocation of license; prima facie case.** 1931, c. 197, § 2. 1933, c. 2, § 53; c. 167. Any person, firm, or corporation who digs clams, quahaugs, or mussels for any purpose, or sells or buys clams, quahaugs, or mussels from an area that has been closed and posted by the commissioner of sea and shore fisheries and the commissioner of agriculture, or either of them, shall be punished by a fine of not less than \$10, nor more than \$100. Whenever a person violates any of the provisions of sections 84 to 86, inclusive, his license shall be revoked. In any prosecution for a violation of the provision of this section prohibiting the digging or taking of clams, quahaugs, or mussels from areas determined to be contaminated, possession, except by common carrier, of clams, quahaugs, or mussels apparently so dug shall be prima facie evidence of a violation of this provision.

**Sec. 86. How enforced.** 1931, c. 197, § 3. 1933, c. 2, § 54. The provisions of sections 84 to 86, inclusive, shall be enforced by the commissioner of sea and shore fisheries and by all wardens and deputy wardens authorized by said commissioner, and by the commissioner of agriculture and all deputies authorized by said commissioner; and by all officers authorized to make arrests.

**Sec. 87. Shipping of clams, quahaugs, and mussels regulated; close season; penalty; how enforced; jurisdiction.** 1933, c. 167. 1937, c. 230, §§ 1, 2, 3. 1941, c. 283. No person, firm, or corporation shall between the 15th day of May and the 1st day of October following, ship, transport, offer for shipment or transportation either directly or indirectly any clams, quahaugs, or mussels either in the shell or shucked taken from the clam flats of Washington, Hancock, Knox, and Waldo counties beyond the limits of the state, and/or to the counties of Sagadahoc, Cumberland, Lincoln, and York; provided, however, that an exception shall be made to clams, quahaugs, or mussels which have been canned, packed, or barreled between the 1st day of October and the 15th day of May. Any person, firm, or corporation who ships, transports, offers for shipment or transportation or who attempts to ship or transport clams, quahaugs, or mussels beyond the limits of the state in violation of any of the provisions herein shall be punished by a fine of not less than \$10, nor more than \$100, for the first offense, and by a fine of not less than \$50, nor more than \$200, for each subsequent offense. Possession of clams, quahaugs, or mussels in packages not properly marked as required by license provisions by any person, firm, or corporation, their servants or agents, when such clams in packages are in process of transportation or failure of the person, firm, or corporation, their servants or agents, transporting the said clams, quahaugs, or mussels to produce a valid license permitting shipment shall be prima facie evidence of a violation of this provision. All automobiles, trucks, wagons, boats, airplanes, vessels, and vehicles of every kind, not common carriers, containing clams, quahaugs, or

mussels shipped or transported contrary to the provisions hereof shall be seized by any officer seizing the clams, quahaugs, or mussels so shipped or transported, and shall be libeled.

The provisions of this section shall be enforced by the commissioner of sea and shore fisheries and by all wardens and deputy wardens authorized by said commissioner, and by all officers of the department of agriculture. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of actions brought for the recovery of penalties imposed by this section and of prosecutions for violation hereof.

**Sec. 88. Sellers, buyers, and shippers of clams, quahaugs, and mussels to be licensed.** 1931, c. 199, § 1. 1933, c. 2, § 56; cc. 167, 208. 1935, c. 119, § 1. No person, firm, or corporation who is engaged in shipping or transporting clams, quahaugs, or mussels in interstate trade, either by themselves as principals or by their servants or agents, shall buy, sell, transport, or ship clams, quahaugs, or mussels either shucked or in the shell without first obtaining a license from the commissioner of sea and shore fisheries, and a certificate from the commissioner of agriculture attesting to the character and condition of the flats and beds from which said clams, quahaugs, or mussels are to be taken and so bought, sold, transported, or shipped, and approving the conditions and surroundings of the shucking houses where such clams, quahaugs, or mussels are prepared for interstate shipment. Nothing in the provisions of sections 88 to 97, inclusive, shall be held to require that persons engaged in digging clams, quahaugs, or mussels for their own use or persons digging clams, quahaugs, or mussels for sale in intrastate trade or for sale to neighbors or to peddlers engaged in intrastate trade shall be required to obtain a license from the commissioner of sea and shore fisheries.

**Sec. 89. Licenses and certificates, how issued; application for; fee for.** 1931, c. 199, § 2. 1933, c. 2, § 57; cc. 167, 208. 1935, c. 119, § 2. 1937, c. 241. Application for license shall be made by applicants on blanks furnished by the commissioner of sea and shore fisheries. Each application for license must be signed by the applicant, and must show the exact name of the locality from which clams, quahaugs, or mussels are to be dug or taken, the location of the shucking house or principal place of business of the person, firm, or corporation making the application. The license fee shall be \$5 for each license or renewal thereof. If the commissioner of sea and shore fisheries approves the application, he may issue to the applicant a license; such license shall be numbered, and shall state the name, the address, the principal place of business of the person, firm, or corporation to whom the license is issued, and also the area, designated by local name, and number, from which clams, quahaugs, or mussels can be dug or taken and sold as covered by the license granted. The license relating to the taking and shipping of clams, quahaugs, and mussels from the counties of Sagadahoc, Cumberland, Lincoln, and York shall run for the current year until the 1st day of June following date of application on which date it shall terminate, unless sooner revoked as herein provided, and it shall be renewed annually thereafter. The license relating to the taking and shipping of clams, quahaugs, and mussels from Washington, Hancock, Waldo, and Knox counties shall run from the 1st day of October until the 15th day of the following May, on which date it shall terminate unless sooner revoked as herein provided, and it shall be renewed annually thereafter.

Application for certificate shall be made by applicants on blanks furnished by the commissioner of agriculture. Each application for certificate must be signed

by the applicant and must show the exact name of the locality from which clams, quahaugs, or mussels are to be dug or taken, the location of the shucking house if one is maintained and the principal place of business within the state of the person, firm, or corporation making the application, and the names of all persons digging clams, quahaugs, and mussels for the applicant. If the commissioner of agriculture approves the application he may issue the applicant a certificate. Such certificate shall bear the same number as the license of the commissioner of sea and shore fisheries, and shall designate by local name the area from which the clams, quahaugs, or mussels can be dug and sold. The certificate relating to the taking and shipping of clams, quahaugs, and mussels in the counties of Sagadahoc, Cumberland, and York shall run for the current year until the 1st day of June following date of application, on which date it shall terminate, unless sooner revoked as herein provided, and it shall be renewed annually thereafter. The certificate relating to the taking and shipping of clams, quahaugs, and mussels from Washington, Hancock, Waldo, and Knox counties shall run from the 1st day of October until the 15th day of the following May, on which date it shall terminate unless sooner revoked as herein provided, and it shall be renewed annually thereafter.

**Sec. 90. Bond.** 1931, c. 199, § 3. 1933, c. 2, § 58; cc. 167, 208. 1935, c. 119, § 3. Before a license for selling clams, quahaugs, or mussels for delivery outside the state is granted, the applicant shall furnish to the commissioner of sea and shore fisheries a copy of the certificate issued to the applicant by the commissioner of agriculture, and the applicant shall also file a bond to run concurrent with the license, with surety approved by the commissioner of sea and shore fisheries, in the penal sum of \$500, conditioned that such sum shall be forfeited to the state, upon breach of any of the conditions of application and license.

**Sec. 91. Revocation of license.** 1931, c. 199, § 4. 1933, c. 2, § 59; cc. 167, 208. 1935, c. 119, § 4. No license shall be issued to a person, firm, or corporation convicted of any violation of the law relating to clams, quahaugs, or mussels until 1 year after date of conviction. If any person, firm, or corporation, their servants or agents, licensed as provided in sections 88 to 97, inclusive, shall be adjudged guilty of violation of any law relating to clams, quahaugs, or mussels, the commissioner of sea and shore fisheries shall revoke the license of such person, firm, or corporation so adjudged guilty and upon such revocation all rights under the license so revoked shall cease, and no such person, firm, or corporation so adjudged guilty shall be entitled of right to receive a license for the period of 1 year, and the license shall be suspended from the date of complaint or indictment until a final determination by the court. In event a bond has been given, conviction shall make the full penal sum of the bond due to the state. Whenever the commissioner of agriculture submits evidence to the commissioner of sea and shore fisheries that a licensee is not complying with the laws and the regulations governing the sale and shipment of clams, quahaugs, or mussels, the commissioner of sea and shore fisheries shall revoke the license of the licensee.

**Sec. 92. Restoration of revoked licenses.** 1931, c. 199, § 5. 1933, c. 2, § 60; c. 208. The commissioner of sea and shore fisheries may in his discretion restore any license revoked by him, and if he refuses to do so, the license may be restored by any justice of the superior court; provided said justice finds that said commissioner acted corruptly or fraudulently or erred in his conclusion of facts, and further provided that application is made to said justice within 10 days after the refusal of said commissioner to restore said license.

**Sec. 93. Certain facts to be furnished commissioner of agriculture on request.** 1931, c. 199, § 6. 1933, c. 2, § 61; cc. 167, 208. When requested by the commissioner of agriculture, the commissioner of sea and shore fisheries shall furnish the commissioner of agriculture, or his deputies, with a list of names of all persons granted licenses to buy and sell clams, quahaugs, or mussels, giving the license numbers, the location of the shucking house, and the exact locality of the source of clams, quahaugs, or mussels that the licensees are offering for sale and shipment. The commissioner of sea and shore fisheries and the commissioner of agriculture shall diligently enforce all the provisions of sections 88 to 97, inclusive, and they shall make uniform rules and regulations prescribing the conditions under which clams, quahaugs, or mussels intended for sale shall be handled in order to prevent their contamination, spoilage, or adulteration. They may also fix standards of quality and purity for clams, quahaugs, or mussels and such regulations shall apply with equal force both to clams, quahaugs, or mussels intended for consumption within the state and to meet the requirements of the United States public health service governing clams, quahaugs, or mussels shipped in interstate commerce.

**Sec. 94. Packages of clams, quahaugs, or mussels to be labeled.** 1931, c. 199, § 7. 1933, c. 2, § 62; cc. 167, 208. All packages used in the shipment and transportation of clams, quahaugs, or mussels from a place within the state to a place without the state shall bear a label which in plain and distinct letters and figures shall state the name and license number of the consignor and the name of the consignee, the word "clams", "quahaugs", or "mussels", the date of shipment, and the name of the town in which the clams, quahaugs, or mussels were dug. This provision shall not apply in any way to clams, quahaugs, or mussels in hermetically sealed packages.

**Sec. 95. Right of search.** 1931, c. 199, § 8. 1933, c. 2, § 63; cc. 167, 208. For the purpose of enforcing the provisions relating to the buying and selling of clams, quahaugs, or mussels, the commissioner and his wardens may search at any time in suspected places, including buildings of every description, and any vessel or vehicle that they may believe is used in taking, holding, or transporting clams, quahaugs, or mussels, and may seize and remove all clams, quahaugs, or mussels taken, held, or offered for sale in violation of the provisions of any law relating to the buying, selling, or transporting of clams, quahaugs, or mussels, but nothing herein shall be held to confer the right to search a dwelling-house without a warrant therefor.

**Sec. 96. Violations of laws regarding buying, selling, or transporting clams, quahaugs, or mussels; penalty.** 1931, c. 199, § 10. 1933, c. 2, § 65; cc. 167, 208. Any person, firm, or corporation who being licensed as above provided violates any of the laws or regulations of the state regarding buying, selling, or transporting clams, quahaugs, or mussels shall be punished by a fine of not less than \$50, nor more than \$500, and have his license revoked.

**Sec. 97. Buying or selling clams, quahaugs, or mussels without a license; penalty.** 1931, c. 199, § 9. 1933, c. 2, § 64; cc. 167, 208. Any person, firm, or corporation, either by themselves as principals or by their servants or agents, who buys or sells clams, quahaugs, or mussels not having obtained the license provided for herein, or who buys clams, quahaugs, or mussels taken from areas declared by the commissioner of agriculture to be contaminated shall be punished by a fine of not less than \$10, nor more than \$100.

**Sec. 98. General provisions.** 1933, c. 242, § 1. Upon application in writing, the commissioner shall grant a written license to any owner of tide flats, other than those used as public bathing beaches, for the purpose of cultivating and propagating quahaugs upon not more than 5 acres of said flats between high and low-water mark within the limits to be specified in the license for a term of 10 years. All such licenses shall be subject to such rules and regulations as are approved by the commissioner. The same may not be assigned, except as hereinafter provided.

**Sec. 99. Notice of hearing for granting license.** 1933, c. 242, § 2. No license shall be granted if the exercise thereof would materially obstruct navigable water. No license shall be granted until after a public hearing held in the town where said flats are located, due notice of which has been posted in three or more public places and published in a newspaper, if there be any newspaper published in the city or town in which the premises are situated, by the commissioner, at least 10 days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area, and description of the flats where the cultivation and propagation of quahaugs is to be carried on.

**Sec. 100. Establishment and maintenance of metes and bounds for territory under license; penalty for removal or destruction of bounds.** 1933, c. 242, § 3. The licensee under the provisions of section 98 upon receiving his license shall cause the area so designated in the license granted to be plainly marked either by stakes, ranges, or monuments, which shall be maintained by him during the time of the license. Failure to place or maintain the same shall be sufficient cause for revocation of license by the commissioner. Any person who moves, destroys, mutilates, or changes the position of stakes, ranges, or monuments, when the same have been properly placed and maintained in accord with the license and in designation of the area described in the license, without the consent of the licensee, shall be punished for the 1st offense by a fine of not more than \$100, and for a 2nd offense by a fine of not more than \$200.

**Sec. 101. Cost of license and disposal of fees.** 1933, c. 242, § 4. A license granted hereunder shall describe by metes and bounds the flats to which the license is applicable, and shall have no force until it is recorded with the clerk of the city or town in which said flats are located, which record shall be open to public inspection. The licensee shall pay, annually, to the commissioner, a fee of \$2 per acre for the license granted. All fees received under the provisions of section 98 to 103 by the commissioner and all money received by him under the provisions of said sections shall be paid by him to the treasurer of state and the same is appropriated for carrying out the provisions of said sections.

**Sec. 102. Penalty for trespassing on licensed territory.** 1933, c. 242, § 5. No person except the licensee or his agents shall dig or take quahaugs or quahaug seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees, shall, for the purpose described in the license, have the exclusive use of the territory described therein, during the term of the license, and may during said term take any shell-fish or worms therefrom. Any person who without the consent of the licensee digs, takes, or removes any quahaugs or quahaug seeds or other shell-fish or worms from or within the territory covered by the license shall be liable in an action of tort to pay to the licensee treble damages. Any person, except

the licensee or his agents, who takes, digs, destroys, or removes quahaugs, quahaug seed, other shell-fish, or worms from such a territory covered by a license, as above described, shall in addition be punished by a fine of \$20 for each offense.

**Sec. 103. Provision for revocation of license.** 1933, c. 242, § 6. The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 98 to 103 whenever it is determined by him that the licensee is not actually occupying and using in good faith the territory covered by the license for the purpose of cultivating and propagating quahaugs in said territory. Before revoking or suspending any license the commissioner shall give written notice to the licensee affected, stating that he contemplates the revocation or suspension of the same and giving his reasons therefor. Such notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of the hearing the licensee may by himself or counsel present such evidence to the said commissioner as he deems fit and after hearing all the testimony the said commissioner shall decide the question in such manner as appears to him just and right. The hearing shall be held in the town where the territory under consideration is located. Any licensee who feels aggrieved or dissatisfied with the decision of the said commissioner may appeal from said decision within 10 days to the superior court in the county where the licensee resides.

**Sec. 104. Planting of oysters and quahaugs by inhabitants of state; exclusive rights; penalty for trespassing.** R. S. c. 50, § 66. 1933, c. 2, § 67; c. 242, § 7. Any inhabitant of the state, with consent of the adjacent riparian proprietors, may plant oysters and quahaugs below low-water mark in any navigable waters, in places where there is no natural oyster-bed; enclose such ground with stakes, set at suitable distances, extending at least 2 feet above high-water mark, but so as not to obstruct the free navigation of such waters; and have the exclusive right of taking such oysters and quahaugs. Whoever trespasses on such enclosure or injures such oyster-beds where oysters or quahaugs have been planted is liable in an action of trespass for all damages; and if he takes any oysters, quahaugs, or any shell-fish therein, without the consent of the owner, he shall forfeit not less than \$20, nor more than \$50, or be imprisoned not exceeding 3 months.

**Sec. 105. Authorized selection of proper locations for experiments in propagation of shell-fish.** R. S. c. 50, § 67. 1933, c. 2, § 68; c. 167. The commissioner may, from time to time, as his judgment may determine, select proper locations below low-water mark on the coast of Maine for the propagation of oysters and quahaugs, and between high and low-water mark for the propagation of clams, quahaugs, and mussels, cause the same to be properly stocked with oysters, quahaugs, mussels, and clams, and erect proper and sufficient marks or bounds to indicate the locations thus made; but this section shall not be construed to authorize the taking of flats, which by the colonial ordinance of 1641 are possessed by the adjacent upland owners, without the consent of such owners and the payment of proper damages to such owners for such taking.

**Sec. 106. Locations protected for 3 years.** R. S. c. 50, § 68. 1933, c. 2, § 69; c. 167. No person shall dig, fish for, take, or carry away any oysters, quahaugs, mussels, or clams within any location so selected, for a period of 3 years

after such location was stocked as aforesaid, without the permission in writing of the commissioner; nor shall any person wilfully injure, deface, destroy, or remove any such bounds or marks, nor tie or fasten any boat or vessel thereto.

**Sec. 107. Penalty for violating §§ 105, 106. R. S. c. 50, § 69. 1933, c. 2, § 70.** Whoever violates any provision of the 2 preceding sections shall be punished by a fine of not more than \$100, or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

**Sec. 108. Close time on scallops; penalty; boat and equipment may be seized and detained; prima facie evidence of violation; scallops taken outside waters of state excepted. R. S. c. 50, § 70. 1933, c. 2, § 71. 1939, c. 98.** No person shall catch, buy, or sell, expose for sale, give away, or have in his possession for any purpose, any scallops, shelled or in the shell, between the 15th day of April and the 1st day of December of each year; or in the waters of Bagaduce river to a point at the mouth of said river marked by a line and bound, extending from Dice's Head in Castine through the southernmost point of Nautilus Island to the Brooksville shore, between the 15th day of April and the 1st day of January next following of each year. It shall be unlawful to ship scallops so taken out of the state. Whoever violates the provisions of this section shall be liable to a penalty of \$50, and in addition shall pay a penalty of \$5 for each and every gallon or part thereof of shelled scallops so bought, sold, exposed for sale, given away, or in his possession; and shall pay a penalty of \$5 for each 100 scallops or any part thereof, in the shell, so bought, sold, exposed for sale, given away, or in his possession; and any boat with its equipment engaged and used in such unlawful catching or selling of scallops may be seized and detained by an officer or warden, not exceeding 24 hours, in order that it may be attached or taken by due process of law, to satisfy any judgment that may be recovered; but said boat and equipment shall be released at any time on payment of penalty and costs legally due. Scallop gear found on board any boat in close time shall be prima facie evidence of a violation of the provisions of this section. So much of this section as relates to buying or selling or exposing for sale or the possession of scallops shall not apply to scallops taken outside of the waters of this state.

See c. 124, § 14, re swelling of scallop meats by artificial means forbidden.

#### Regulation of Taking of Crabs

**Sec. 109. License must be obtained. 1937, c. 180, § 1.** No person, firm, or corporation shall, either by themselves, their agents, servants, or by any other agency, directly or indirectly, at any time, catch, take, or hold any crabs taken from the waters of this state, except for the immediate consumption by himself and family, without first obtaining a license therefor as hereinafter provided; nor shall such person, firm, or corporation, either by agency or otherwise, set, keep, maintain, or use or cause or permit to be used any pot, trap, trawl, or any other contrivance owned or controlled by him in whole or in part, designed or adapted for the catching or taking of crabs, without such license.

**Sec. 110. Fee. 1937, c. 180, § 3.** The commissioner shall grant and issue licenses for the catching of crabs to such persons, except as herein otherwise provided, who may make written application therefor on blanks furnished by said commissioner, but no license shall be issued to any applicant unless all questions asked or information sought or called for in said application shall have been completed to the satisfaction of the commissioner.

**Sec. 111. Marking of contrivances used for catching crabs.** 1937, c. 180, § 4. The provisions of section 130, so far as the same apply to the manner of marking any contrivance for the catching of lobsters, shall also apply to the taking of crabs under the provisions of sections 109 to 113, inclusive; and the penalties and forfeitures for the violation of any of the provisions of said sections shall be the same as provided under said section 130.

**Sec. 112. Establishment of residence.** 1937, c. 180, § 5. No license shall be granted for the catching of crabs to any person whose residence in this state for a period of 10 years, as provided in section 118, is not first established to the satisfaction of the commissioner.

**Sec. 113. Exception.** 1937, c. 180, § 6. No person holding a license for the catching of lobsters shall be required to comply with the provisions of sections 109 to 113, inclusive.

**Sec. 114. Penalty.** 1937, c. 180, § 2. Any person, firm, or corporation who shall violate the provisions of sections 109 to 113, inclusive, shall be punished as provided in section 116.

#### African Crawfish

**Sec. 115. African crawfish, regulation of sale of.** 1941, c. 260, § 4. No person, firm, or corporation shall sell or transport for sale within the state African crawfish, so called, in any form. Any person, firm, or corporation who violates any of the provisions of this section shall be punished by a fine of not less than \$50, nor more than \$1,000.

#### Regulation of Lobster Industry

**Sec. 116. Lobster fishing, transportation, and sale without license prohibited; exceptions; penalty.** R. S. c. 50, § 20. 1931, c. 178, § 1. 1933, c. 2, § 72. No person, firm, or corporation, either by themselves as principal or by their servants or agents, shall, at any time, catch, take, hold, buy, ship, transport, carry, give away, remove, sell, or expose for sale, or have in his or its possession, except for immediate consumption by himself and family, any lobster; or place, set, keep, maintain, supervise, lift, raise, or draw in or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in any pot, trap, trawl, car, automobile, boat, smack, vessel, or other contrivance designed or adapted for the catching, taking, holding, or for removal or transportation of lobsters unless licensed to do so as hereinafter provided; except that common carriers engaged in carrying general freight on fixed schedules may without license, transport within or without the state lobsters legally caught; provided that said lobsters are received by said common carriers at one of their regular established places of business upon land for receiving freight, and provided the receptacle containing said lobsters is plainly marked showing the contents to be lobsters, together with full and correct name and address of both consignor and consignee. Any person who makes the catching of lobsters his occupation shall have the right to market such lobsters caught by him without taking out additional license for that purpose. Every person, firm, or corporation who shall violate any of the preceding provisions of this section, or aid in doing so, upon conviction, shall be punished by a fine of \$25 for the 1st offense; for the 2nd offense, \$50; and for any subsequent offense, \$50, and shall be sentenced to imprisonment for 30 days, in addition to said fine. All lobster fishermen shall make a return within

1 week after the 1st of July of each year, to the commissioner of the estimated total number of pounds of lobsters caught by them during the year preceding such July 1st, together with a statement of their receipts during such year from the sale of such lobsters, and a statement of their estimated expenditures incurred during such period in their business, on blanks to be furnished by the said commissioner.

**Sec. 117. Records of sales of lobsters.** 1939, c. 86. Any dealer licensed to sell lobsters who buys lobsters in excess of 50 pounds at one time shall record the license number of the seller and shall keep such record for 1 year, which record shall be available for the inspection of any warden of the department.

**Sec. 118. Licenses; fees; report by commissioner.** R. S. c. 50, § 21. 1933, c. 2, § 73; c. 199. 1937, c. 200. 1939, c. 53. 1941, c. 256. The commissioner shall grant and issue licenses in the lobster industry to such persons, except as is herein otherwise provided, who may make written application therefor on blanks furnished by said commissioner, but no such license shall be issued to any class of applicants unless all questions asked or information sought or called for in said application shall have been completed to the satisfaction of said commissioner. Such licenses shall be divided into 4 classes, namely: 1st class, fishermen's licenses; 2nd class, selling licenses; 3rd class, shipping licenses; 4th class, smackmen's licenses. Licenses of the 1st class, fishermen's licenses, shall be issued only to such persons as have been, for 10 years prior to the date of application, a resident of this state, and provided further, that no such license issued shall entitle the holder thereof to use any pots, traps, boats, trawls, or other contrivances used for the catching or taking of lobsters within the waters adjacent to the county of York, unless the commissioner is satisfied that the applicant therefor has the bona fide intention of becoming a legal resident of said county of York, except that any person who has heretofore been a resident of this state, but for a time resident elsewhere, and returns to this state for the purpose of establishing and maintaining a bona fide residence therein may, if otherwise entitled, receive such license in which case such non-residence may be taken as a part of said 10 years, provided, however, that such person who satisfies the commissioner of his residence in good faith in the state for the period of 3 years next preceding his application, may receive such license. Licenses of the 2nd class, selling licenses, shall be issued only to persons, firms, or corporations conducting hotels, restaurants, or boarding-houses, or to persons, firms, or corporations engaged in the business of buying and selling lobsters. Licenses of the 3rd class, shippers' licenses, shall be issued only to persons, firms, or corporations engaged in the lobster business in this state or other states to buy, sell, and ship lobsters. Licenses of the 4th class, smackmen's or truckmen's licenses, shall be issued only to smackmen, or truckmen, to buy, sell, and transport lobsters by smack, boat, automobile, or truck. Applications for licenses shall be made upon special forms provided by the commissioner as above set forth. Violations of the agreements of the application shall render the license thereon void.

Dumping, destroying, or removing any bag, box, or other receptacle, or failing to stop after command of the commissioner or his wardens, or when pursued by the commissioner, or his wardens, shall be evidence of violation of the agreement of his application and the license of such person shall be revoked, after public hearing before the commissioner. The said commissioner shall keep the clerks of various cities, towns, and plantations bordering on the seashore and other clerks who request them supplied with blank applications; said clerks

shall keep a supply of them on hand and furnish them to applicants. All applications when filled out shall be forwarded to the office of said commissioner together with fees for same, which fee shall be \$1 for any license or for any renewal thereof. All licenses shall expire annually on the last day of June unless sooner revoked as provided in section 124. The commissioner, in his biennial report, shall state the number of licenses granted. He shall issue to each person, firm, or corporation licensed as aforesaid a certificate, stating the name of the person, firm, or corporation to whom such license shall be granted, the number of said license, and the date of the expiration thereof.

See § 112.

**Sec. 119. Transportation of lobsters; licenses of smacks and vessels; bonds; regulations; forfeitures.** R. S. c. 50, § 33. 1933, c. 2, § 74. 1941, c. 260, § 1. No person, firm, or corporation by itself, its servants, or agents, save common carriers as provided in section 116, shall transport or cause to be transported lobsters beyond the limits of this state, and no person shall act as master or captain of any smack, vessel, boat, or as a driver of any automobile or truck, or other means of transportation engaged in transporting lobsters without the state, unless licensed and having given bond as herein provided. The owner or owners and master or captain of any smack, vessel, boat, or as a driver of any automobile or truck, or other means of transportation shall make written application for license to the commissioner who is authorized to grant licenses to purchase and transport lobsters within and beyond the limits of this state. The applications shall state the name of the smack, vessel, boat, automobile, or truck or other means of transportation together with a description sufficient to identify it, the name and address of the owner or owners, the name and address of the master or captain, or driver, and the port of enrolment or registry. The application shall further contain agreements by the applicant therein: to load the smack, vessel, boat, automobile, or truck, or other means of transportation in the waters over which this state has jurisdiction or territory over which this state has jurisdiction, and there only between sunrise and sunset, to allow without let or hindrance, inspection and search of such smack, vessel, boat, automobile, or truck, or other means of transportation by the commissioner or his wardens, to stop when underway and return to harbor, or state territories, on command of the commissioner or his wardens, to return to the waters or territories of the state, when so ordered by the commissioner or his wardens, to abide by all the laws of this state relating to lobsters. The application shall further contain an agreement that the full penal sum of the bond herein provided for shall be forfeited to the state on breach of any term in said application. The license issued on said application shall state the terms on which the license is issued and that it is issued in consideration of the agreements of the application. Before said license is issued, the applicant shall file with the commissioner a bond with surety approved by the commissioner in the penal sum of \$5,000 in the case of an owner or owners, and of \$500 in the case of a master, captain, or driver, conditioned that said sum shall be forfeited to the state upon breach of any agreement in the application and license. The fee for issuing said license shall be \$5 and a record shall be kept of the same, similar to that provided for other licenses in section 118. In addition to the statement of the terms on which the license is issued, the license shall bear the date of the taking effect and the termination thereof, which last named date shall be the last day of November next after it becomes effective. The license shall give no authority to purchase or transport in any smack, vessel, or other means of transportation except that named in the license but the name of the smack, vessel, boat, automobile, or

truck, or other means of transportation may be changed by the licensee upon application to said commissioner within the license period without further charge. Conviction of the licensee of violation of any statute relating to lobsters or breach of any agreement of application and license shall render the license void and make the full penal sum of the bond due to the state.

115 Me. 142; 117 Me. 269.

**Sec. 120. Penalty for violation of § 119 by one not licensed.** R. S. c. 50, § 34. 1933, c. 2, § 75. 1941, c. 260, § 2. Whoever, as master, driver, or owner, transports lobsters without the state, not having obtained the license provided in the preceding section shall be punished by a fine of not less than \$50, nor more than \$500, and the owner, the master, and driver shall become indebted to and pay to the state the sum of \$5,000, which sum shall be a lien upon said smack, vessel, boat, automobile, or truck, or other contrivance, the lien to be enforced in the name of the state by appropriate process.

115 Me. 142.

**Sec. 121. Penalty for violation of § 119 by one having license.** R. S. c. 50, § 35. 1933, c. 2, § 76. 1941, c. 260, § 3. Any owner, master, or driver, licensed to transport lobsters without the state as provided in section 119 who shall either load said smack, vessel, boat, automobile, or truck, or other contrivance between sunset and sunrise or hinder or obstruct the commissioner or his wardens either directly or by refusal to stop and commit search, or violate any of the state laws relating to lobsters, shall be punished by a fine of not less than \$50, nor more than \$500. Loading said smack, vessel, boat, automobile, or truck, or other contrivance outside the waters over which the state has jurisdiction or refusal to return to the jurisdictional waters, or territories, of the state on the order of the commissioner or his wardens shall be deemed a violation of the terms of the bond provided in section 119 and evidence of violation of the laws of the state relating to lobsters.

**Sec. 122. Proceedings when service cannot be made on respondent.** R. S. c. 50, § 37. 1933, c. 2, § 77. In case any warrant is issued or indictment found against any licensee under the provisions of section 119, and any officer qualified to serve said warrant or indictment shall certify to the court from which it is issued that he has made diligent search and has been unable to locate the respondent, the court shall cause a written notice to be sent to the respondent at the address given in the application for license setting forth the fact that said warrant or indictment has been issued against him and naming a time and place for hearing on the same, which shall not be less than 14 days nor more than 30 days from the date of mailing said notice; and the notice shall state that, in the event of his failure to appear, his bond given to the state shall be forfeited. If he appears, the court will proceed under the warrant or indictment as though he had been apprehended. In the event that he does not appear, the court shall order his bond forfeited; but the order of the court forfeiting said bond shall not otherwise affect the warrant or indictment. Parties defendant, however, have the same right of appeal from the sentences of said inferior courts as is now provided by law in other criminal cases.

118 Me. 86.

**Sec. 123. Agent of person licensed; employment of person whose license has been revoked; penalty.** R. S. c. 50, § 22. 1933, c. 2, § 78. 1941, c. 259. If any person, firm, or corporation to whom such license shall be granted shall be

incapacitated for any reason, except for the violation of the laws of the state relating to the lobster industry, from using said license, said person, firm, or corporation shall forthwith notify the commissioner of the nature or extent of his or its incapacity, and said commissioner, upon being satisfied that an incapacity requiring temporary relief exists, may permit said person, firm, or corporation to engage a servant or agent, if a citizen of this state, to perform such duties under the license as may be necessary during the period of his or its incapacity; provided that said agent or employee shall, when performing said duties so licensed, exhibit upon demand of any authorized person the certificate issued to his superior as provided in section 118. No person whose license has been revoked or suspended shall accompany any licensed lobster fisherman nor assist him in any way while he is engaged in catching lobsters. Every person who shall violate the provisions of this section shall upon conviction be subject to the fines and penalties provided in section 116.

**Sec. 124. Revocation and suspension of licenses.** R. S. c. 50, § 23. 1933, c. 2, § 79. If a complaint or indictment for the violation of any law relating to lobsters shall issue against any person, firm, or corporation, their servants or agents, licensed as provided in this chapter, their license shall stand suspended from the date of such complaint or indictment until the final determination of the cause by the court; and if they shall be adjudged guilty of any such violation, the court shall take up their license and send it forthwith with a report on the case to the commissioner. The said commissioner may revoke or suspend the license of such person, firm, or corporation so adjudged guilty. Upon revocation all rights under the license so revoked shall cease. No person, firm, or corporation whose license has been revoked or suspended by the said commissioner under the provisions of this chapter upon a 1st conviction shall be entitled to its return or to a new license until after the lapse of 6 months from the date of its suspension by the court; and upon a 2nd conviction, until after the lapse of 1 year; and upon a 3rd conviction, until after the lapse of 3 years. The preceding provisions of this section shall not apply to cases where definite contradictory provisions of law are now or hereafter made. The commissioner may, in his discretion, before a conviction, suspend the license of any person, firm, or corporation whenever he has evidence that such person has violated any of the laws relating to lobsters. Upon the suspension of license all traps, cars, gear, and all devices used in connection with catching lobsters shall be taken from the water within 5 days after suspension and placed upon the land. Any person with traps, cars, or any other device remaining in the water, after the expiration of the 5 days, shall be punished by a fine of \$5 per day for each trap, car, or other device remaining in the water, and any car, smack, vehicle, or other device used in the holding, carrying, or transporting lobsters by any person whose license has been revoked or suspended, shall be forfeited and become the property of the state.

122 Me. 450.

**Sec. 125. Commissioner may restore licenses; on refusal, application to court.** R. S. c. 50, § 24. 1933, c. 2, § 80. The commissioner may, in his discretion, on sufficient evidence, restore a license suspended by him, or issue a new license to replace a license previously revoked, and, if he refuses to do so, the license may be restored by any justice of the superior court; provided the said justice finds that said commissioner erred in his conclusion of facts, and application is made to the said justice within 10 days after the refusal of the said commissioner to restore said license.

**Sec. 126. Licenses revoked to be surrendered; licenses issued through fraud or error void; penalty for fraud.** R. S. c. 50, § 25. 1933, c. 2, § 81. Any license issued to any party through error or because of fraud shall be void, and shall be surrendered on demand of any officer authorized to enforce the provisions of this chapter, and any party who fraudulently obtains a license under the provisions of this chapter shall be punished by a fine of \$100 and by imprisonment for 60 days for each offense.

**Sec. 127. Penalty for refusing to show certificate.** R. S. c. 50, § 26. 1933, c. 2, § 82. Each person, firm, or corporation licensed under the provisions of section 118, shall, at all times while engaged in the pursuit so licensed, exhibit, upon demand of any authorized person, the certificate issued to him or them, as provided in said section. Every person, firm, or corporation violating the provisions of this section shall, for each offense, be punished by a fine of \$25.

**Sec. 128. Only owner or authorized person to interfere with contrivances; penalty.** R. S. c. 50, §§ 30, 48. 1933, c. 2, § 83. 1943, c. 218. No person, except the commissioner and his wardens or other officers qualified to enforce the laws of the state governing the lobster industry, shall lift or raise or in any way knowingly and wilfully interfere with any pot or trap, car, trawl, or other contrivance used in the lobster industry belonging to any person, firm, or corporation licensed under the provisions of section 118, and set for catching or taking and holding lobsters, except with the permission of the owners thereof. Whoever violates any provision of this section shall be punished by a fine of not more than \$300, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. The license of any person convicted of violating the provisions of this section shall be revoked immediately by the commissioner on receipt of an attested copy of the court records, without further hearing; and such person shall not be licensed again under the provisions of this chapter for a period of 3 years. Provided, however, that no action, complaint, or indictment shall be maintained under the provisions of this section unless the name of the owner of all such traps shall be carved or branded in legible letters, not less than  $\frac{3}{4}$  of an inch in length, on all the buoys connected with such traps.

**Sec. 129. Traps on trawls; permission to be obtained; penalty.** R. S. c. 50, § 28. 1933, c. 2, § 84. When pots or traps are set on trawls, when conditions make it impossible to set otherwise, buoys plainly marked, as provided in the laws of this state governing the lobster industry, shall be set at both ends of the trawls; but permission for setting such trawls must be obtained from the commissioner and so stated on the licenses issued under the provisions of section 118. Whoever violates the provisions of this section shall be punished by a fine of not more than \$25 and costs.

**Sec. 130. Method of marking pots, traps, boats, and other contrivances; penalty.** R. S. c. 50, § 29. 1933, c. 2, § 85. No person, firm, or corporation licensed under the provisions of section 118 or section 119 shall use any pots, traps, boats, trawls, or other contrivances used for the catching or taking of lobsters, or cars or other contrivances used for holding or keeping lobsters before transporting or selling, unless the same and the buoys attached thereto are plainly marked, as provided by the laws of the state governing the lobster industry, with the name or names of the owners thereof, or the person or persons using the same. In each instance the surname with initials shall be marked together with the license number or numbers of such party or parties. Every person, firm, or corporation violating the provisions of this section shall be

punished by a fine of \$20, or by imprisonment for not more than 30 days. All pots, traps, cars, buoys, trawls, and other contrivances, together with the contents thereof, used contrary to the provisions of the laws of this state governing the lobster industry, shall be seized by any officer engaged in the enforcement of said laws and disposed of as provided by law.

See § 111.

**Sec. 131. Right of search and seizure; licensees may be appointed wardens, without pay.** R. S. c. 50, § 31. 1933, c. 2, § 86. For the purpose of enforcing the provisions relating to the protection of lobsters, as provided by the laws of the state relating to the lobster industry, the commissioner and his wardens may search at any time in suspected places, including buildings of every description, or any pot, trap, trawl, car, boat, smack, vessel, or other vehicle that they may believe is used in the catching, taking, holding, or transporting of lobsters, according to the provisions of section 6, and may seize and remove lobsters taken, held, or offered for sale in violation of the provisions of any law of the state relating to the lobster industry. Nothing herein shall be held to confer the right to search a dwelling-house without a warrant. The commissioner may appoint as many persons as he wishes, who hold licenses under the provisions of section 118, as wardens but so long as they hold licenses they shall serve without pay.

**Sec. 132. Lobsters bought for shipment out of state must conform to law.** R. S. c. 50, § 32. 1933, c. 2, § 87. No person shall acquire any property in lobsters for the purpose of shipping the same beyond the limits of this state, unless such lobsters conform to the law, and are shipped in accordance with the provisions of this chapter.

**Sec. 133. Close time on female lobsters; purchase of lobsters with eggs attached; penalties.** R. S. c. 50, §§ 39, 40. 1933, c. 2, § 88. No person shall destroy, catch, buy, sell, expose for sale, or possess any female lobsters in spawn or with eggs attached at any season of the year, under a penalty of \$10 for each lobster so destroyed, caught, bought, sold, exposed for sale, or possessed, provided, however, that lobsters with eggs attached caught in the waters of this state may be safely stored in lobster cars or traps used for that purpose only, until the commissioner or some person or persons designated by him can gather and pay for them. The commissioner may purchase at the rate of 15% above market price, such lobsters with eggs attached, caught in the waters of this state. The commissioner or his agent shall liberate any lobsters so purchased in the vicinity where they were caught, after having marked such lobsters by punching a hole in the middle flipper. Such lobsters shall be deemed the property of the state and, if again caught, shall immediately be returned to the waters by the person catching them. The possession of any such marked lobster or mutilated lobster shall be deemed prima facie evidence of violation of the above provisions. Any person violating the said above provisions of this section shall be punished by a fine of \$50.

**Sec. 134. Legal size of lobsters and method of measurement; penalty; prohibitions; penalties.** R. S. c. 50, § 38. 1933, c. 2, § 89; cc. 247, 294. 1935, c. 176. 1941, c. 319. No person shall buy, sell, give away, or expose for sale, or possess for any purpose any lobsters less than  $3\frac{1}{8}$  inches nor more than 5 inches in length, alive or dead, cooked or uncooked, measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell; and any lobster shorter than  $3\frac{1}{8}$  inches when caught shall be immediately liberated alive at the risk and cost of the parties taking it, under

a penalty of \$5 for each lobster so caught, bought, sold, given away, exposed for sale, or in possession, and any lobster longer than 5 inches when caught shall be immediately liberated alive at the risk and cost of the parties taking it, under a penalty of \$25 for each lobster so caught, bought, sold, given away, exposed for sale, or in possession. The possession of mutilated lobsters, cooked or uncooked, shall be prima facie evidence that they are not of the required length. Measures for determining the legal length of lobsters shall be provided by the state and may be obtained from the commissioner at cost. No evidence shall be received in any of the courts of the state in any manner in which the length of a lobster is in question unless such length has been determined by such a measure. Whoever ships, transports, carries, buys, gives away, sells, or exposes for sale lobster meat after the same shall have been taken from the shell, without the tail meat being whole and intact, and not less than  $4\frac{1}{4}$  inches nor more than  $6\frac{1}{2}$  inches in length, when laid out straight and measured from end to end, not including the small part that is on the body end of the tail meat, shall be liable to a penalty of \$10 for each pound of meat so shipped, transported, carried, bought, given away, sold, or exposed for sale. Any person or corporation in the business of common carrier of merchandise who shall knowingly carry or transport from place to place lobster meat after the same shall have been taken from the shell, without the tail meat being whole and intact and not less than  $4\frac{1}{4}$  inches nor more than  $6\frac{1}{2}$  inches in length when laid out straight and measured as above provided, shall be liable to a penalty of \$50 upon each conviction thereof. All lobster meat so illegally shipped, carried, bought, given away, sold, or exposed for sale shall be liable to seizure and may be confiscated.

The commissioner may, in his discretion, issue permits to dealers who request them, on payment of \$10, whenever said commissioner is satisfied that said applicant for permit will take meat only from legal lobsters. Persons, firms, or corporations holding permits are required to put on each package of meat the name and number of their license, place of business, date meat was taken from shell, and number of pounds in package or other container and the purchaser shall be required to hold all data referring to lobster meat until the meat is sold. Any person violating the terms of his permit shall be punished by the fines and penalties provided in section 116.

118 Me. 233, 487; 119 Me. 45; 125 Me. 9.

**Sec. 135. Canning of short lobsters prohibited; penalty.** R. S. c. 50, § 41. 1933, c. 2, § 90. 1941, c. 319. No person shall can lobsters less than  $3\frac{1}{8}$  inches in length, alive or dead, measured in accordance with the provisions of section 134; and for every lobster canned contrary to the provisions of this section, every person, firm, association, or corporation so canning shall be punished by a fine of \$5 for every lobster so canned, and a further penalty of \$300 for every day on which such unlawful canning is carried on.

**Sec. 136. Shipment of lobsters regulated; notice to commissioner of location.** R. S. c. 50, § 42. 1933, c. 2, § 91. Every person, firm, association, or corporation that hereafter opens a place of business in this state for shipping lobsters, or that changes said place of business after once it is established, shall 30 days before shipping any lobsters therefrom notify the commissioner of such location from which lobsters are to be shipped, or change of location, together with the information as to where and how said lobsters are to be kept before packing, by what carrier the shipments are to be made, and the customary hours of said shipments.

**Sec. 137. Arrangement for inspection; lobsters subject to inspection in transit.** R. S. c. 50, § 43. 1933, c. 2, § 92. Whenever the commissioner shall receive from any person, firm, association, or corporation that now has or hereafter may open such place of business, or that changes said place of business after once it is established, the notice referred to in the preceding section, he shall, if in his judgment it is practicable to do so, arrange with said person, firm, association, or corporation for the suitable inspection of lobsters before shipment from said place of business, and cause such lobsters to be inspected; but unless such arrangements are made all lobsters shall be subject to examination in transit.

**Sec. 138. Lobster shipping cases, how marked.** R. S. c. 50, § 44. 1933, c. 2, § 93. All lobsters to be shipped shall be packed in barrels, boxes, or packages marked with the word "Lobsters" in capital letters at least 1 inch in length, together with the full name of the shipper, and said marking shall be placed in a plain and legible manner on the outside of said barrels, boxes, or other packages.

**Sec. 139. Inspected packages to bear mark prescribed by commissioner; if so marked, not to be opened for inspection in transit without consent of shipper.** R. S. c. 50, § 45. 1933, c. 2, § 94. All lobsters so packed shall be open to the inspection of the commissioner or his wardens, at or before the time of the packing thereof, and if inspected each barrel, box, or package containing lobsters so inspected shall bear some mark to be prescribed by the commissioner indicative of such inspection; but after the same are packed and marked, as required by the preceding section, if bearing the mark indicative of inspection prescribed by the commissioner and by the shipper delivered to the transportation company the said barrels, boxes, or packages shall not be opened for inspection by anyone without the consent of the shipper; and in case of seizure by any duly authorized officer, of any barrels, boxes, or other packages in transit, containing lobsters which are not so marked as required by the provisions of the preceding section, or in case of seizure by such officer, of barrels, boxes, or other packages, containing lobsters, other than the prescribed length, such lobsters as are alive and other than the prescribed length shall be liberated, and all such lobsters as are of the prescribed length, found in such barrels, boxes, or packages shall be forfeited and disposed of under the provisions of section 142.

**Sec. 140. Penalty for shipping lobsters not properly marked; penalty on common carriers.** R. S. c. 50, § 46. 1933, c. 2, § 95. Every person, firm, association, or corporation who ships lobsters without having the barrels, boxes, or other packages in which the same are contained, marked as prescribed in section 138, shall upon conviction be punished by a fine of \$25, and upon subsequent conviction thereof, by a fine of \$50; and any person or corporation in the business of a common carrier of merchandise, who shall carry or transport from place to place lobsters in barrels, boxes, or other packages not so marked, shall be punished by a fine of \$50 upon each conviction thereof.

**Sec. 141. Traps not to be set near fish weir; penalty.** R. S. c. 50, § 47. 1933, c. 2, § 96. No person shall set any lobster trap within 300 feet of the mouth or outer end of the leaders of any fish weir, under a penalty of \$10 for each offense.

**Sec. 142. Lobsters, seizure; disposal; libel, contents; procedure; disposal of proceeds; appeal; fees and costs.** R. S. c. 50, § 49. 1933, c. 2, § 97. When

any lobsters are seized by virtue of the provisions of this chapter, the officer making such seizure shall cause such lobsters, so seized, as he is not required by law to liberate, to be appraised within 24 hours after the time of such seizure by 3 disinterested men residing in the county where such seizure is made, to be selected by him, and the lobsters so seized and appraised shall thereupon be sold by the officer making the seizure thereof, at such time and in such manner as shall by him be deemed proper. The officer making such seizure and sale shall within 10 days after the time of such seizure file a libel in behalf of the state before a trial justice, or a judge of a municipal court of the county in which such seizure was made, setting forth the fact of such seizure, appraisal, and sale, the time and place of the seizure, the number of lobsters so seized and sold and the amount of the proceeds of such sale; and such trial justice or judge shall appoint a time and place for the hearing on such libel, and shall issue a notice of the same to all persons interested to appear at the time and place appointed, and show cause why the lobsters so seized and sold, and the proceeds of such sale, should not be declared forfeited, which notice shall be served upon the owner, if known, and by causing an attested copy of such libel and notice to be posted in 2 public and conspicuous places in the town in which the seizure was made, 7 days at least before the time of hearing. If any person appears at the time and place of hearing and claims that the lobsters so seized and sold were not liable to forfeiture at the time of seizure, and that he was entitled thereto, the trial justice or judge shall hear and determine the cause, and if he shall decide that such lobsters at the time of seizure were not liable to forfeiture and that the claimant was entitled thereto, he shall order the proceeds of such sale to be paid to the claimant; if no claimant shall appear, or if such trial justice or judge shall decide that such lobsters, at the time of seizure, were liable to forfeiture, or that the claimant was not entitled thereto, he shall decree a forfeiture of such lobsters and of the proceeds of sale, and shall order the proceeds of sale, after deducting all lawful charges, to be paid to the treasurer of state to be used as directed in section 151, and shall render judgment against the claimant for costs to be taxed as in civil suits, and issue execution therefor against him in favor of the state, which costs, when collected, shall be paid to the treasurer of state to be added to and made a part of the appropriation for sea and shore fisheries. The claimant shall have the right of appeal to the next superior court upon recognizing as in criminal cases. The fees and costs of seizure, appraisal, and sale, and of all other proceedings in the case, shall be as provided by law in criminal cases, and, in case a forfeiture shall be declared, shall be paid out of the proceeds of the sale, otherwise shall be paid by the county, as in criminal cases.

See rules and regulations of commissioner for special regulations.

### Seals

Sec. 143. Shooting seals in Casco bay regulated; penalty. R. S. c. 50, § 87. 1933, c. 2, § 99. No person shall during the months of June, July, and August destroy seals in the waters of Casco bay by shooting with rifle or other long-range weapon, which might endanger human life, under a penalty of \$50 for each offense.

See § 145.

Sec. 144. Hunting seals near Green Island, forbidden. 1939, c. 307, § 2. It shall be unlawful for any person to hunt, shoot at, or kill any seal within 2 miles of any part of Green Island in Western Bay in the county of Hancock.

**Sec. 145. Bounty on seals.** 1937, c. 137. 1939, c. 288. A bounty of \$1 for each seal killed in the waters of any of the coastal counties of the state, except the county of York, shall be paid to the person killing it by the treasurer of the town in which such person resides; provided, however, that no person shall collect said bounty unless he is a resident of this state. No bounty shall be paid unless the claimant, within 2 days after he has killed such animal or has returned from the trip on which he killed it, exhibits to such town treasurer the nose of such animal in as perfect state as when killed, and signs and makes oath to a certificate in which he shall state that he killed such animal and the time and place of such killing, showing it to be within the said waters of this state; the treasurer shall thereupon entirely destroy said nose and shall pay the bounty and take the claimant's receipt therefor, upon the same paper with such certificate. The said treasurer shall report to the treasurer of state in a similar manner as is required by section 79 of chapter 33.

The provisions of this section shall in no wise affect or modify the provisions of section 143.

### Tuna

**Sec. 146. Fishing for tuna.** 1939, c. 34. It shall be unlawful to take, catch, kill, or have in possession any tuna or horse mackerel, so called, taken by any method other than harpoon or single hook and line, within the territorial waters of this state.

All boats, seines, or other contrivances together with the contents thereof, used contrary to the provisions of this section shall be seized by any officer engaged in the enforcement thereof and disposed of as provided by law.

### Taking of Sea Moss

**Sec. 147. Taking of sea moss for commercial purposes, regulated.** 1943, c. 171. No person shall take sea moss from any of the shores of the state or within the tide waters of the state for commercial purposes except under the following conditions:

I. Unless the person shall have been a resident of the state for at least 5 years; and

II. Unless such person shall have a license duly issued by the commissioner, for which license a fee of 50c per year shall be charged.

Whoever violates any provision of this section shall be punished by a fine of not more than \$100, or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

### Libels

**Sec. 148. Forfeiture of gear, or vehicle transporting illegally caught lobsters, etc.; seizure; libel; procedure; appeal; costs.** R. S. c. 50, § 50. 1933, c. 2, § 98. Any trap, car, gear, or any other device used in connection with the illegal catching of lobsters, together with the contents thereof, and any car, smack, vehicle, or other device used in the illegal holding, carrying, or transporting of lobsters shall be forfeited to the state when seized by an officer on an appropriate warrant therefor for violation of the lobster law.

Upon such seizure, or any seizure of property declared liable to forfeiture by any provision of this chapter, said officer shall immediately file with the magis-

trate before whom such warrant is returnable a libel against such trap, car, gear, or other device used in connection with such violation of law and against any car, smack, vehicle, or other device used in violation of the provisions of this chapter, setting forth the seizure by him, describing such articles so seized, the place of seizure, and that the same were then used by persons in violation of the provisions of this chapter whose license therefor had been suspended or revoked, and pray for a decree of forfeiture thereof. Such magistrate shall thereupon fix a time for a hearing upon said libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed and show cause why said articles named in said monition should not be forfeited to the state, by causing a true and attested copy of said libel and monition to be posted in two public and conspicuous places in such town where such articles were seized, 10 days at least before the day to which said libel is returnable. The magistrate may also cause notice to be given to any other party he may think entitled thereto at least 7 days before the time to which said libel is returnable.

If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare same forfeited to the state. If any person appears and claims said articles or any part thereof, as having right to possession thereof at the time same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed and the foundation thereof, the articles so claimed, the time and place of seizure, the name of the officer by whom the same were seized and in it shall declare that said articles were not kept or used for violation of any law on account of which they were seized as alleged in said libel and monition; such claimant shall also state his residence and place of business and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon the hearing, satisfied that said articles or any part thereof so seized by virtue of said warrant, were not used or kept in violation of said law as alleged in the complaint on which said warrant was issued and that said claimant is entitled to all or any part thereof, he shall give him an order in writing directed to the officer having the same in custody, commanding him to deliver to said claimant the articles in said libel to which he is so entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to none of said articles he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said articles forfeited to the state. The claimant may appeal and shall recognize with sureties as on appeals in civil cases from a magistrate.

The department shall dispose of such articles as are declared forfeited in such manner as will benefit the department.

### Jurisdiction of Offenses

Sec. 149. Jurisdiction of offenses. R. S. c. 50, § 94. 1931, c. 197, § 4; c. 199, § 11. 1933, c. 2, § 100; c. 208, § 11. In all prosecutions under the provisions of this chapter, trial justices within their county shall have by complaint jurisdiction concurrent with municipal courts and the superior court. Any warrant issued shall cover offenses in the county where said court is established or any adjoining county, but no party shall be tried in an adjoining county unless

the court in such adjoining county is nearer the place where the crime was committed than the court of the county where the offense is alleged to have been committed.

**Sec. 150. Certificate of commissioner admissible in evidence.** R. S. c. 50, § 27. 1933, c. 2, § 101. Any certificate of the commissioner in regard to the records of his office shall be admissible in evidence in all prosecutions under the provisions of this chapter.

#### Recovery of Fines and Penalties

**Sec. 151. Fines and penalties, how recovered; settlement of offenses; commissioner to report to treasurer of state.** R. S. c. 50, §§ 36, 95. 1933, c. 2, § 102. 1943, c. 269, § 7. All fines and penalties under the provisions of this chapter may be recovered by complaint, indictment, or action of debt made or brought in the county where the offense was committed. The action of debt shall be brought in the name of the state. All fines, penalties, and collections under the provisions of this chapter, except when otherwise expressly provided, shall accrue to the commissioner and by him the same shall be paid to the treasurer of state to be added to and made a part of the appropriation for sea and shore fisheries. The commissioner shall report to the treasurer of state the amount of each fine, penalty, and collection itemized, and the name of the party paying the same, which shall be kept on record in the office of the treasurer.

See § 11; c. 9, § 15, re notices on petition to legislature for special legislation relating to fish; c. 33, § 9, re cultivation of fish for purposes of science by commissioner of inland fisheries and game; c. 33, § 28, re use of dynamite or other explosives or any poisonous or stupefying substance, for purpose of destroying or taking fish forbidden; c. 33, § 37, re cultivation of useful fishes by riparian proprietors; c. 111, § 12-15, re trespass on islands in salt water for purposes of hunting thereon. 1919, c. 183, re sea food protective commission.

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## CHAPTER 35.

### MAINE DEVELOPMENT COMMISSION.

**Sec. 1. Maine development commission; how constituted.** 1933, c. 209, § 1. 1935, c. 190, § 1. 1937, c. 174, § 1. 1943, c. 338, § 1. The Maine development commission, as heretofore established, shall consist of 10 members. Said commission shall be constituted as follows: the commissioner of agriculture, the commissioner of inland fisheries and game, the commissioner of sea and shore fisheries, and 7 other citizens of the state to be appointed by the governor and confirmed by the council. Said official members shall hold office during their respective terms. The other appointments shall be for a term of 3 years.

The commission shall choose one of its members to act as chairman.

**Sec. 2. Appropriations; duties of commission.** 1933, c. 209, § 2. 1935, c. 190, § 1. 1937, c. 174, § 2. 1943, c. 338, § 2. The sum of \$161,000 is annually appropriated for the purpose of advertising and publicly setting forth and displaying agricultural, industrial, and recreational resources, activities, and attractions of the state. Twenty-five per cent of the total appropriation shall be expended in equal proportions for the purpose of advertising and promoting