

# **MAINE STATE LEGISLATURE**

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1961 CUMULATIVE SUPPLEMENT

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
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## Chapter 37-A.

### Sea and Shore Fisheries.

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#### General Definitions.

**Sec. 1. General definitions.**—Each word or term defined in this section has the meaning indicated in this section for the purposes of this chapter, unless a different meaning is plainly required by the context.

**I. Angling.** “Angling” means fishing with handline or rod with a live or artificially baited hook.

**II. Atlantic salmon.** “Atlantic salmon” means Atlantic sea run salmon.

**III. Can, the verb.** The verb “to can” means in all its moods and tenses to process or preserve food in hermetically sealed containers.

**IV. Coastal waters.** “Coastal waters” means all waters of this state within the rise and fall of the tide and the marine limits of the jurisdiction of the state; but it does not include waters within or above any fishway or dam when that fishway or dam is normally the dividing line between tidewater and fresh water, nor does it include waters above any tidal bound that has been legally established in streams flowing into the sea.

**V. Commissioner.** “Commissioner” means commissioner of sea and shore fisheries.

**VI. Clam.** “Clam” means a marine mollusk or shellfish commonly called a soft-shell clam.

**VII. Closed season.** “Closed season” means the time during which a particular species may not be caught or taken.

**VIII. Crawfish.** “Crawfish” means those species of the family Palinuridae, including the representative genera Panulirus, Jasus and Palenurus which have been sometimes called by such terms as rock lobster, spiny lobster, sea

crawfish, red lobster, thorny lobster, langoust, crayfish, Sidney crawfish, kreef, Cuban rock lobster or African lobster or African crawfish.

**IX. Dealer.** "Dealer" means any person who buys and sells or distributes any marine species.

**X. Department.** "Department" means department of sea and shore fisheries.

**XI. Division.** "Division," when by the context it refers to part of this chapter, means a part of the subparagraph. It is next in importance to a subparagraph. It is designated by a small letter.

**XII. Fish, the verb.** The verb "to fish" in all of its moods and tenses means to take or attempt to take fish or other marine species by any method or means, whether or not the method or means results in their capture.

**XIII. Fresh fish.** "Fresh fish" means any fish which has not been smoked, pickled, cooked, canned or quick frozen.

**XIV. Hard-shell clam.** "Hard-shell clam" means that species of shellfish which is sometimes called a quahog.

**XV. Hermetically sealed.** "Hermetically sealed" means a container which has been made airtight by or as by fusion so that no air, gas or spirits can either enter or escape, whether or not the can is sterilized by heat, but does not include friction cover containers.

**XVI. Lobster car.** "Lobster car" means a box or other contrivance used in coastal waters, whether floating or sunken, which is used for keeping lobsters which are alive.

**XVII. Marine species.** "Marine species" includes all fish which usually inhabit salt water, all shellfish, lobsters, crabs, shrimps and marine worms, but is limited to the number and type of those species indicated by the context of the particular section where it is used.

**XVIII. Marine worms.** "Marine worms" means clam, sand and blood worms.

**XIX. Open season.** "Open season" means that time during which a particular species may lawfully be taken.

**XX. Paragraph.** "Paragraph," when by the context it refers to part of this chapter, means a part of a subsection as defined in this section. It is next in importance to a subsection. It is designated by a capital letter. It includes all subparagraphs, as defined in this section, which are directly under it.

**XXI. Quahog.** "Quahog" means a species of shellfish which is often called a hard-shell clam.

**XXII. Resident and residence.** "Resident and residence" each refer to domicile.

**XXIII. Salmon commission.** "Salmon commission" means Atlantic sea run salmon commission.

**XXIV. Seed clam.** "Seed clam" means a soft-shell clam which is less than 2 inches long in its longest diameter.

**XXV. Seed quahog.** "Seed quahog" means a hard-shell clam which is less than 2 inches long in its longest diameter.

**XXVI. Shellfish.** "Shellfish" means all marine mollusks except lobsters, crabs and shrimps.

**XXVII. Ship, the verb.** The verb "to ship" in any of its moods and tenses means to send by a common carrier.

**XXVIII. Soft-shell clam.** "Soft-shell clam" means that species of shellfish which is often called a clam, and it does not include a quahog.

**XXIX. Subparagraph.** "Subparagraph," when by the context it refers to part of this chapter, means a part of a paragraph as defined in this section.

It is next in importance to a paragraph. It is designated by an Arabic numeral. It includes all divisions, as defined in this section, which are directly under it.

**XXX. Subsection.** "Subsection," when by the context it refers to part of this chapter, means a part of a section. It is next in importance to a section. It is designated by a Roman numeral. It includes all paragraphs, as defined in this section, which are directly under it.

**XXXI. Territorial waters.** "Territorial waters" means coastal waters as defined in this section.

**XXXII. Tidal waters.** "Tidal waters" means coastal waters as defined in this section.

**XXXIII. Transport, the verb.** The verb "to transport" in all its moods and tenses means to move an object from one place to another by any means other than to ship as defined in this section.

**XXXIV. Tuna.** "Tuna" includes all species of fish known as tuna and includes that fish commonly called a horse mackerel.

**XXXV. Warden service.** "Warden service" means coastal warden service which includes all coastal wardens regardless of rank, grade or position. (1959, c. 331, § 1.)

#### **General Rules of Construction.**

**Sec. 2. General construction.**—The following rules of construction apply to this chapter, unless a different construction is plainly required by the context:

**I. Reference to any marine species includes any part of same.** Any reference to the taking or possession of any particular marine species includes the taking or possession of any part of it.

**II. Chapter generally applies only to marine species.** This chapter and the regulations authorized by it apply only to marine species, as distinguished from fresh water species, except where jurisdiction or concurrent jurisdiction over species which migrate between the coastal and inland waters is specifically given, or where jurisdiction over other species is specifically given.

**III. General eligibility for resident licenses.** Any person is eligible for any resident license which the commissioner is authorized to issue under this chapter, providing he has resided in Maine for 6 months next prior to the date of his application, unless a longer residence is specifically provided. (1959, c. 331, § 1.)

#### **General Provisions Relating to the Department.**

**Sec. 3. Department of sea and shore fisheries.**—The following provisions apply to the department of sea and shore fisheries:

**I. Purposes of department.** The department is established for the purpose of conserving marine life, and for the purpose of implementing, administering and enforcing the laws of this state relating to sea and shore fisheries.

**II. Department head.** The department is headed by the commissioner.

**III. Department composition.** The department consists of such offices, bodies and personnel as are provided in this chapter. (1959, c. 331, § 1.)

#### **General Provisions Relating to the Commissioner.**

**Sec. 4. Office of commissioner of sea and shore fisheries.**—The following provisions apply to the office of commissioner of sea and shore fisheries:

**I. Appointment.** The governor, with the advice and consent of the council, shall appoint a commissioner of sea and shore fisheries.

**II. Term.** The commissioner shall serve for 4 years or during the pleasure of the governor and council. He shall serve until his successor is appointed and qualified.

**III. Vacancy.** The governor, with the advice and consent of the council, shall fill any vacancy in office by an appointment for a full 4-year term.

**IV. Salary.** The governor, with the advice and consent of the council, shall fix the compensation received by the commissioner.

**V. Office space, facilities.** The commissioner is entitled to an office in the state capitol and adequate facilities for the transaction of business of his department. (1959, c. 331, § 1.)

**Sec. 5. Commissioner's general powers and duties.**—The commissioner has the following powers and duties:

**I. General supervision.** The commissioner has general supervision of the administration and enforcement of the laws of this chapter, except as otherwise provided.

**II. Biennial report.** The commissioner shall make a report to the governor and council every 2 years.

**A.** The commissioner shall in the report cover the period ending on June 30th of each even numbered year.

**B.** He shall file the report with the governor and council within 6 months of the end of the period which it covers.

**III. Commissioner has powers of coastal warden.** The commissioner has all the powers of a coastal warden under section 13.

**IV. Commissioner to hire employees; employee's duties.** The commissioner shall hire all necessary employees of the department, subject to the provisions of the personnel law.

**A.** All employees shall perform such duties as are prescribed by the commissioner.

**B.** If there is a vacancy in office of the commissioner, the various employees shall continue in office until a new commissioner is appointed. (1959, c. 331, § 1.)

#### **Advisory Council.**

**Sec. 6. Advisory council.**—The following provisions apply to the advisory council:

**I. Appointment; composition.** The governor, with the advice and consent of the council, shall appoint an advisory council consisting of 5 members.

**II. Term.** Each appointment is for a 3-year term and until a successor is appointed and qualified.

**III. Vacancy.** If a vacancy in office occurs, the governor, with the advice and consent of the council, shall appoint a member to serve the unexpired term.

**IV. Compensation.** Members of the council may receive no compensation for their services, but they are entitled to receive actual expenses which do not exceed a total of \$500 for all the members in any one fiscal year. (1959, c. 331, § 1.)

**Sec. 7. Advisory council's general powers and duties.**—The advisory council has the following powers and duties:

**I. Council to inform and advise commissioner.** The council shall give the commissioner information and advice concerning the administration of the department.

**II. Council to hold regular meetings.** The council shall hold regular meetings with the commissioner, or some person appointed by him for that purpose, at the capitol on the first Thursday of June and of December of each year.

**III. Council may hold special meetings.** The council may hold special meetings any time or place within the state.

**IV. Council to elect officers; officers' duties.** The council shall elect one of its members as chairman, one as vice-chairman, and one as secretary, all for a term of one year at the regular June meeting.

- A.** The chairman shall call and preside at all meetings of the council.
- B.** The vice-chairman shall call and preside at all meetings of the council in the chairman's absence.
- C.** The secretary shall cause records to be taken and to be preserved of all meetings of the council.
- D.** The council shall elect one of its members to fill a vacancy in any of the 3 positions for the unexpired term at the next regular or special meeting following the vacancy.

**V.** Repealed by Public Laws 1961, c. 397, § 6. (1959, c. 331, § 1. 1961, c. 397, § 6.)

**Effect of amendment.**—The 1961 amendment repealed subsection V, providing for the appointment of a civil service commission.

#### Civil Service Law.

**Secs. 8-11.** Repealed by Public Laws 1961, c. 397, § 6.

**Editor's note.** — Former §§ 8 to 11 of this chapter, relative to civil service, derived from P. L. 1959, c. 331, § 1.

#### Law Enforcement Officers.

**Sec. 12. Coastal wardens; appointment; tenure; code of operation; compensation; fees; limitations.**—The following provisions apply to coastal wardens:

**I. Appointment.** Coastal wardens are appointed by the commissioner.

- A.** Any person appointed a coastal warden shall first qualify under the written code of operation prepared by the commissioner, and approved by the state personnel board appointed under chapter 63.

**II. Hold office subject to the personnel law.** They shall hold office under chapter 63.

**III. Compensation.** Their compensation is determined under the personnel law.

**IV. Written code of operation.** The commissioner shall prepare a written code covering the operating procedure of the coastal warden service which shall be effective when approved by the state personnel board.

**V. Fees.** Except before trial justice and municipal courts, they shall be allowed the same fees as sheriffs and their deputies for like service.

- A.** All fees allowed are to be paid to the commissioner for use of the state.

**VI. May not hold certain offices.**—They may not hold any other state, county or municipal office for which they receive compensation. (1959, c. 331, § 1. 1961, c. 397, § 7.)

**Effect of amendment.**—The 1961 amendment rewrote paragraph A of subsection I and subsection II, redesignated former subsection IV as present subsection VI and added present subsection IV. Prior to the 1961 amendment the coastal wardens held office under the civil service law provided in former §§ 8 to 11.

**Sec. 13. Coastal warden's general powers and duties.**—Coastal wardens have the following powers and duties:

**I. Wardens to enforce laws, make arrests and prosecute.** They shall

enforce all laws and regulations relating to sea and shore fisheries, except as otherwise provided.

**A.** They shall arrest and prosecute all violators.

**II. Wardens may serve processes.** They may serve all processes pertaining to this chapter or to other sea and shore fisheries laws and regulations, or to the enforcement of any of them.

**III. Wardens have state-wide jurisdiction.** They have jurisdiction and authority in all the counties of the state and in all the waters within the jurisdiction of the state.

**IV. Wardens have power to require aid.** They have the same power as sheriffs to require aid in executing the duties of their office. (1959, c. 331, § 1.)

**Sec. 14. Sheriffs and other police officers have powers of coastal wardens.**—A sheriff, deputy sheriff, police officer, constable and inland fish and game warden, within their respective jurisdictions, are vested with the powers of a coastal warden, except the powers provided in section 73.

**I. Fees, entitlement, disposition.** When an officer acts under this section, the same fees shall be paid for his services as though he had performed them as part of his regular duty.

**A.** The usual recipient of the officer's fee receives the fees provided in this section. (1959, c. 331, § 1.)

#### Current Jurisdiction.

**Sec. 15. Concurrent jurisdiction for salmon, shad, alewives and smelts.**—Sea salmon, shad, alewives and smelts, wherever found, that migrate from the ocean to fresh water are under the concurrent jurisdiction of the commissioner of sea and shore fisheries and the commissioner of inland fisheries and game.

**I. Commissioners to cooperate.** The commissioners shall cooperate in effectively supervising overlapping jurisdiction. (1959, c. 331, § 1.)

#### Regulations of the Commissioner.

**Sec. 16. Closing of contaminated flats; regulations.**—The following provisions apply to contaminated or polluted shores, waters or flats:

**I. Commissioner of sea and shore fisheries to close flats on certificate of commissioner of agriculture.** The commissioner of sea and shore fisheries shall close contaminated or polluted shores, waters or flats in accordance with this section when the commissioner of agriculture certifies to him in writing the following:

**A.** That the commissioner of agriculture has examined certain shores, waters or flats, or has caused them to be examined.

**B.** That pursuant to that examination clams, quahogs, oysters, mussels or other marine mollusks have been found to be contaminated or polluted and are not in conformity with regulations promulgated by the commissioner of agriculture or are not in conformity with the standards recommended by the United States public health service.

**II. Commissioner to pass regulation; procedure.** The commissioner of sea and shore fisheries shall close the shores, waters or flats specified in the certificate to all digging or taking of clams, quahogs, oysters, mussels and other marine mollusks by immediately passing a regulation to that effect without a hearing and subject to the following provisions:

**A.** The commissioner of sea and shore fisheries shall state in the regulation the reason why the flats, waters or shores are closed, and the area which is closed.

**B.** The commissioner of sea and shore fisheries shall file a copy of the regulation, certified by him, with the secretary of state and with the clerk of superior court in each county where the closed shores, waters or flats are located.

**C.** After the commissioner of sea and shore fisheries has complied with paragraph B, he shall cause the regulation to be published once in a newspaper published in the county where the shores, waters or flats to be closed are located, or

1. If the shores, water or flats to be closed are located in more than one county, the regulation may be published once in a newspaper or combination of newspapers having general circulation in each county where the shores, waters or flats are situated.

**D.** The regulation is effective and has the force of law on the day following the newspaper publication.

**III. Possession unlawful.** It is unlawful to possess any clams, quahogs, mussels or other marine mollusks which were taken or dug from any shores, waters or flats which are closed by a regulation of the commissioner.

**IV. Digging unlawful.** It is unlawful to dig or take any clams, quahogs, mussels or other marine mollusks from any shores, waters or flats which are closed by a regulation of the commissioner. (1959, c. 331, § 1. 1961, c. 238, § 1.)

**Effect of amendment.**—The 1961 amendment made this section applicable to waters as well as shores or flats, added subsection IV and made minor changes.

**Sec. 17. Commissioner's authority to adopt regulations when conservation of certain marine species endangered.**—The commissioner shall make regulations to remedy the danger when any existing condition endangers the conservation of fish, shellfish, lobsters, crabs, shrimp or marine worms in any of the coastal waters or flats of the state, subject to the following provisions:

**I. Limitations for regulations.** A regulation may only limit the taking of marine species by one or more of the following methods:

- A. The time taken;
- B. The method by which taken;
- C. The number taken;
- D. The weight taken.

**II. Section grants no authority over salmon.** This section grants no authority to adopt regulations for the conservation of Atlantic salmon.

**III. Procedure of section 18 to be followed.** The commissioner shall follow the procedure of section 18 in adopting a regulation authorized by this section.

**IV. Commissioner may declare emergency.** The commissioner may declare an emergency if it appears to him that immediate action is necessary to remedy the danger.

A. An unusually large concentration of fishermen or diggers in any of the coastal waters or flats in the state which might deplete the supply of any marine species covered by this section is deemed an existing condition endangering the conservation of the particular marine species for the purposes of this subsection. (1959, c. 331, § 1.)

**Sec. 18. Procedure for adoption of regulations authorized in section 17.**—The procedure for the adoption of the regulations authorized in section 17 is as follows:

**I. Commencement of proceedings, declaration of emergency, petition.** The proceedings must commence by one of the following methods:

**A.** If the commissioner declares that an emergency exists, he shall prepare a written declaration of emergency containing the following information:

1. A statement that an emergency exists.
2. The particular marine species affected.
3. The existing condition which endangers conservation, and its general location.

**B.** A majority of the municipal officers of a municipality where an existing condition endangers the conservation of marine life, or 25 citizens of that municipality, or a majority of the county commissioners of a county where such a condition exists may petition the commissioner subject to the following provisions:

1. They shall address the petition to the commissioner.
2. They shall include in the petition the following information:
  - (a) The particular marine species affected.
  - (b) The existing condition which endangers conservation and its general location.
3. They shall file the petition with the commissioner before the first day of September of the year in which it is in order for hearing.

**II. Notice of hearing, contents, publication.** The commissioner shall give notice of the hearing as provided in this subsection:

**A.** He shall cause the notice to contain the time and place of hearing.

1. If the hearing is under a petition, the time of hearing must be in compliance with subsection III, paragraph B.

**B.** The commissioner shall cause the notice to contain all the information required to be in the declaration of emergency, or the petition, whichever is applicable.

**C.** The commissioner shall cause the notice to be published in a newspaper published in the county where the petition or declaration of emergency alleges the condition exists, or

1. If no newspaper is published there or if the area where the condition is alleged to exist is in more than one county, then notice may be published in a newspaper or combination of newspapers having general circulation in each county where the condition is alleged to exist.

**D.** If a hearing is to be held under a petition, the commissioner shall cause the notice to be published once a week for 2 successive weeks prior to the hearing.

**E.** If a hearing is to be held under a declaration of emergency, the commissioner shall cause the notice to be published once at least 5 days before the hearing.

**III. Hearing; time of; who may conduct; who may be heard; record of; place.** The commissioner shall cause a public hearing to be held at the time and place designated in the notice.

**A.** The commissioner may appoint some member of the department to conduct the hearing.

**B.** The commissioner shall cause the hearing under a petition to be held between September 15th and December 1st next following receipt of the petition by the commissioner, provided the petition is received by the commissioner prior to September 1st of the same year.

1. If the petition is not received by September 1st, it is not in order for hearing until the year next following.

**C.** Any interested person may give relevant evidence at the hearing.

**D.** The commissioner shall cause a record to be kept of all evidence given at the hearing.

**E.** The commissioner shall cause the hearing to be held within a radius of 25 miles of where the alleged condition exists, unless the proceeding is under a declaration of emergency in which case it may be held in the state capitol.

**IV. Commissioner to adopt regulation after hearing; consent of advisory council.** After the hearing the commissioner shall adopt a regulation to remedy the danger caused by the condition proven at the hearing to exist.

**A.** If the hearing is held under a petition, a regulation may not be adopted unless the proposed regulation is first submitted to the advisory council for its advice and consent.

**V. Publication of regulation before it becomes effective.** A regulation must be published in accordance with the provisions of this subsection before it may become effective.

**A.** The commissioner shall cause a copy of the regulation, certified by him, to be filed in all the following places:

1. With the secretary of state.

2. With the clerk of superior court of each county where the regulation is to be in force.

**B.** After the commissioner has complied with provisions of paragraph A he shall publish the regulation once in some newspaper published in the county where the regulation is to be in force, or

1. If no newspaper is published there, or if the regulation is to be in force in more than one county, he may publish the regulation once in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

**VI. When regulations become effective.** The following regulations become effective and have the force of law at the times indicated:

**A.** A regulation adopted under a petition proceeding under this section becomes effective on the first day of January following newspaper publication.

**B.** The commissioner may provide a specific time after newspaper publication when a regulation adopted under a declaration of emergency becomes effective.

1. If no time is provided in the regulation, it becomes effective the day following publication. (1959, c. 331, § 1.)

#### Atlantic Sea Run Salmon Commission and Its Regulations.

**Sec. 19. Atlantic sea run salmon commission; composition; appointment; term; officers.**—The following provisions apply to the Atlantic sea run salmon commission:

**I. Composition; appointment; qualifications; term; vacancy; compensation.** It has 3 members:

**A.** The commissioner of sea and shore fisheries and the commissioner of inland fisheries and game are members ex officio.

**B.** The governor, with the advice and consent of the council, shall appoint a 3rd member for a 4-year term.

1. The 3rd member must be a citizen of Maine.

2. The 3rd member shall serve until his successor is appointed and qualified.

3. The governor, with the advice and consent of the council, shall fill any vacancy by an appointment for a full 4-year term.

4. The 3rd member is entitled to receive \$10 per day and expenses when engaged in the discharge of his official duties.

**II. Commission to elect officers; duties of officers; terms.** The commission shall elect one of its members chairman and one secretary.

**A.** The commission shall determine the terms of those offices.

**B.** The chairman shall call and preside at all meetings of the salmon commission.

**C.** The secretary shall cause a record to be taken and to be preserved of all meetings. (1959, c. 331, § 1.)

**Sec. 20. Salmon commission's authority to adopt regulations when conservation of salmon endangered.**—The salmon commission has sole authority to adopt regulations regarding Atlantic sea run salmon, but its authority is limited to the following provisions:

**I. Duty to make; procedure; limitation of methods; emergency; not to infringe on water improvement jurisdiction.** It shall make regulations to remedy the danger when any existing condition endangers the conservation of Atlantic salmon within the territorial limits of the state, subject to the following provisions:

**A.** The salmon commission shall follow the procedure provided in section 21.

**B.** A regulation may only limit the taking of Atlantic salmon in one or more of the following methods:

- 1.** The time when taken;
- 2.** The method by which taken;
- 3.** The number taken;
- 4.** The weight taken.

**C.** If the danger appears to the commission to require immediate action, it may declare an emergency and proceed under the declaration of emergency provisions of section 21.

**D.** The salmon commission has no authority to pass a regulation based on a condition which is within the jurisdiction of the water improvement commission under chapter 79. (1959, c. 331, § 1. 1961, c. 238, § 2.)

**Effect of amendment.**—The 1961 amendment substituted “taking” for “takings” near the beginning of paragraph B of section I.

**Sec. 21. Procedure for salmon commission to adopt regulations authorized by section 20.**—The procedure for the adoption of regulations authorized by section 20 is as follows:

**I. Commencement of proceedings; declaration of emergency; petition.** The proceedings must commence with one of the following methods:

**A.** If the salmon commission declares that an emergency exists, it shall prepare a written declaration of emergency containing the following information:

- 1.** A statement that an emergency exists.
- 2.** The existing condition which endangers the conservation of Atlantic salmon and its general location.

**B.** A majority of the municipal officers of a municipality where an existing condition endangers the conservation of Atlantic salmon, or 25 citizens of that municipality, or a majority of the county commissioners where such a condition exists may petition the salmon commission, subject to the following provisions:

- 1.** They shall address the petition to the salmon commission.
- 2.** They shall insert the following information in the petition:
  - (a)** The existing condition which endangers the conservation of Atlantic salmon.
  - (b)** The general location of such condition.

**II. Notice of hearing; contents; publication.** The salmon commission shall give notice of the hearing as provided in this subsection.

**A.** The salmon commission shall cause the notice to contain a statement of the time and place of the hearing.

**B.** The salmon commission shall cause the notice to contain all the information required to be in the declaration of emergency, or the petition, whichever is applicable.

**C.** The salmon commission shall cause the notice to be published in a newspaper published in the county where the petition or declaration of emergency alleges the condition exists, or

1. If no newspaper is published there or if the area where the condition is alleged to exist is in more than one county, then the notice may be published in a newspaper or combination of newspapers having general circulation in each such county.

**D.** If the hearing is to be held under a petition, they shall cause the notice to be published once a week for 2 successive weeks prior to the hearing.

**E.** If the hearing is to be held under a declaration of emergency, they shall cause the notice to be published once at least 5 days before the hearing.

**III. Hearing; time of; who may be heard; record of; place of.** The salmon commission shall cause a public hearing to be held at the time and place designated in the notice, and shall appoint one of its members to preside at the hearing.

**A.** Any interested person may give relevant evidence at the hearing.

**B.** The salmon commission shall cause a permanent record to be taken of all evidence given at the hearing.

**C.** The salmon commission shall cause the hearing to be held within a radius of 25 miles of where the alleged condition exists, unless the proceeding is under a declaration of emergency.

**D.** If the proceeding is under a declaration of emergency, the salmon commission may cause the hearing to be held in the capitol.

**IV. Duty to adopt regulation after hearing.** After the hearing the salmon commission shall adopt a regulation to remedy the danger caused by the condition proven at the hearing to exist.

**V. Publication of regulation before its becomes effective.** The salmon commission shall cause the regulation to be published in accordance with the provisions of this subsection before the regulation becomes effective.

**A.** The salmon commission shall cause a copy of the regulation, certified by the commission, to be filed in all the following places:

1. With the secretary of state.

2. With the clerk of superior court of each county where the regulation is to be in force.

**B.** After the salmon commission has complied with the provisions of paragraph A, it shall publish the regulation in some newspaper published in the county where the regulation is to be in force, or

1. If no newspaper is published there or if the regulation is to be in force in more than one county, it may be published in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

**VI. When regulation becomes effective.** A regulation becomes effective at the time indicated in the regulation by the salmon commission, subject to the following provisions:

**A.** The effective date must be at least 10 days after the time of hearing.

- B. The effective date must be at least one day after the newspaper publication provided in subsection V.
- C. If no date is specified in the regulation for it to become effective, it becomes effective immediately after the provisions of paragraphs A and B are met. (1959, c. 331, § 1.)

#### **General Provisions Pertaining to Regulations.**

**Sec. 22. General provisions for all regulations.**—The following provisions apply to all rules and regulations of the commissioner and of the salmon commission in effect immediately prior to the effective date of this revision, to all regulations of the commissioner and of the salmon commission which are adopted under this chapter, and all regulations of the commissioner adopted by legislative directive.

- I. **Have force of law.** They have the force of law.
- II. **Remain in force until changed.** They remain in force until changed by further regulations, or by the legislature.
- III. **Provision for penalties.** Whoever violates any provision of them shall be punished by the penalties provided in section 96, unless a specific penalty is otherwise authorized and provided.
- IV. **Proof of regulation by certificate.** A certified copy of any one of them is admissible in all courts to prove the regulation, subject to the provisions of this subsection, and is *prima facie* evidence that the regulation was adopted in accordance with the provisions of the statute authorizing it.
  - A. A regulation of the commissioner must be certified by him, and must be accompanied by his signed statement that it was in force on the date of the alleged violation.
  - B. A regulation of the salmon commission must be certified by either the commissioner of sea and shore fisheries or by the commissioner of inland fisheries and game, and must be accompanied by the signed statement of either that it was in force on the date of the alleged violation.
  - C. The certified copy is admissible in evidence in any court upon testimony of any coastal warden, or game warden, that he received the certified regulation after requesting the same by telephone, or otherwise, from the office of the commissioner of sea and shore fisheries, or the office of the commissioner of inland fisheries and game if the regulation is one adopted by the salmon commission.
    - 1. No further foundation is necessary for the admission of the certified copy of the regulation in evidence. (1959, c. 331, § 1.)

#### **General Licensing Provisions.**

**Sec. 23. General licensing provisions.**—The following provisions apply to any license or permit issued by the commissioner under the provisions of this chapter unless the law authorizing the license or permit specifically provides to the contrary.

- I. **Licenses and permits not transferable; written application.**
  - A. Any license or permit issued is not transferable.
  - B. The applicant shall make application for any license or permit on blanks furnished by the commissioner.
  - C. The commissioner may not issue any license or permit to any applicant unless all questions in the application are fully answered.
- II. **Licenses and permits issued through error are void; unlawful to make misrepresentation on application.** Any license or permit issued through error, misrepresentation or misstatement is void, and the holder shall surrender it on demand of the commissioner.

**A.** It is unlawful for any person to wilfully make a misstatement or misrepresentation on any application for any license or permit.

**III. Expiration of licenses and permits.** A license or permit expires at midnight on December 31st of the calendar year in which issued.

**IV. One-half fee after September 30th.** The fee for any license or permit issued after September 30th of each calendar year is  $\frac{1}{2}$  the original fee.

**V. Licenses and permits to be exhibited on demand; prima facie evidence.** Any person holding a license or permit shall at all times when engaged in the pursuit so licensed or permitted exhibit the license or permit issued to him upon demand of any coastal warden or any other authorized person.

**A.** Failure to exhibit the license or permit within a reasonable time when requested is prima facie evidence that the person so failing to produce the license or permit is unlicensed and has no permit.

**VI. Lost licenses and permits; fee for duplicate.** The commissioner shall issue a duplicate license or permit to any person who has lost or destroyed any license or permit issued to him. The fee for the duplicate is 25 cents.

**VII. Combination license; fee; suspension.** The commissioner may issue a combination license of any or all licenses to any person making application for a combination license if the person is found to be entitled to all the licenses applied for.

**A.** The fee for the combination license is the total of the fees for the separate licenses enumerated on the combination license.

**B.** The suspension of one license included in the combination license does not suspend the other licenses included therein. (1959, c. 331, § 1.)

#### Size of Foreign Marine Species.

**Sec. 24. General laws apply to foreign marine species in certain instances.**—All general laws of this state fixing or regulating minimum and maximum sizes of fish, shellfish or lobsters, or regulating or prohibiting the sale, transportation or possession of fish, shellfish or lobsters, respectively, apply whether the same are taken from the waters of the state of Maine, or the waters of any other state, country or territory and brought into the state, except as provided in this section.

**I. Exception for wholesale dealer in certain instances; authority for regulations.** This section does not apply to lobsters reconsigned intact in the original crates by a holder of a Maine wholesale sea food dealer's and processor's license to another such dealer if the crates are sealed in accordance with regulations adopted by the commissioner with materials furnished by him at cost.

**A.** The commissioner is authorized to adopt regulations to prescribe the time, manner and method of sealing crates for the effective operation of this subsection. The regulations may also contain provisions for inspection of the crates, contents and seals.

- 1.** The commissioner shall publish the regulation once in the state paper before it becomes effective.
- 2.** The commissioner shall furnish a copy of the regulations on request of the holder of a wholesale sea food dealer's and processor's license.

**II. Exception for certain marine species passing through state.**—The provisions of this section do not apply to fish, shellfish or lobsters passing through the state under the authority of laws of the United States. (1959, c. 331, § 1.)

**Marine Species Culture and Development.**

**Sec. 25. Commissioner may take flats and waters for fish research; limitation.**—The commissioner may take any flats or waters, not exceeding an area of 2 acres in extent in any one location, and may hold the same for a period not exceeding 10 years for use by the commissioner, or by the United States fish and wildlife service, for the purpose of scientific research relative to shellfish or other fish over which the commissioner has jurisdiction, subject to the following provisions:

**I. Written permission from riparian owners required.** Whenever the commissioner deems it necessary in the furtherance of the objectives and purposes of this section to take any flats or waters, he shall obtain written permission from the riparian owners thereof to control the flats or waters.

**II. Public hearing; notice.** After receiving permission provided in subsection I, the commissioner shall hold a public hearing in the municipality where the flats and waters are located.

**A.** The commissioner shall cause notice of the public hearing, containing the character, extent and location of the flats or waters to be taken, and the time for which taken, to be posted in 2 public places in the municipality where the waters or flats are situated. He shall cause the notice to be published once not less than 7 days prior to the date of hearing in a newspaper published in the county where the flats or waters are situated.

**III. The taking; marking of area; public notice.** After the hearing the commissioner may, for the purposes authorized in this section, take the flats or waters.

**A.** The commissioner shall cause the area so taken to be plainly posted and bounded by suitable marks and ranges.

**B.** The commissioner shall cause public notice of the taking of such waters and flats to be given by publishing notice once in a newspaper published in the county where the flats or waters are situated. (1959, c. 331, § 1.)

**Sec. 26. Commissioner may use flats and waters for fish research under written agreement, lease or grant.**—The commissioner may by written agreement, lease or grant, under such terms or conditions as may be agreed upon with the owner, take possession of suitable shellfish grounds, flats, waters and water rights not limited to 2 acres in area, with necessary shore rights, and may use and operate the same for the purposes of section 25.

**I. Recording of agreement, lease or grant.** The commissioner shall record any agreement, lease or grant executed under this section in the registry of deeds in each county where the flats or waters are located.

**II. Public hearing; notice of hearing and taking; marking of area.** The commissioner shall hold the public hearing, give notice of the hearing, publish notice of the taking, and mark the area taken as provided in section 25. (1959, c. 331, § 1.)

**Sec. 27. Provisions for setting apart shores or flats to be used for fish research by private interests.**—Any person or corporation interested in scientific research relating to shellfish, or other fish over which the commissioner has supervision, or in the cultivation and development of the shellfish industry for economic purposes, may apply to the commissioner setting forth the desire to make experiments relative to the cultivation and conservation of particular marine species. Upon receipt of the application by the commissioner, the following procedure must be followed:

**I. Commissioner to be satisfied certain requirements are met before notice of hearing.** The commissioner shall give notice of a hearing on the application if he is satisfied that all the following provisions are met:

- A.** That the application contains sufficient information to show that the applicant is entitled to the certificate provided in this section;
- B.** That information contained in the application is true;
- C.** That the applicant either owns, or has consent, so far as the same can be granted, from the owner of the flats, shore rights or waters where the work is to be undertaken;
- D.** And that the granting of the certificate provided in this section will not unreasonably interfere with navigation.

**II. Notice of hearing; how; contents.** The commissioner shall then give notice of the hearing as follows:

- A.** The commissioner shall cause the notice to be published once a week for 2 consecutive weeks in some newspaper published in the county where the proposed location is situated.
- B.** The commissioner shall state in the notice the time and place of the hearing, the name of the applicant and the general area where the work is to be undertaken.

**III. Commissioner may issue certificate to set area apart upon hearing.** If, upon hearing, the commissioner is satisfied that the interests of the state will be promoted by the experiments, he shall issue a certificate setting apart so much of such shores, flats and water privileges, not exceeding one acre in extent to any one applicant, for such length of time, not exceeding a period of 6 years, as in his judgment may be necessary and proper to accomplish the ends sought.

**IV. Applicant to record certificate.** The applicant shall record the certificate in the registry of deeds of each county where the flats or waters are located.

**V. Applicant to give public notice of certificate.** The applicant shall also cause public notice of the issuance of the certificate by publishing the certificate once in a newspaper published in the county where the area to be used is located, by posting a copy of the certificate in a conspicuous place near that area, and by recording a copy of the certificate with the clerk of the municipality where the area is located.

**VI. Applicant to mark area.** The applicant shall also place stakes or other monuments upon the adjoining upland so as to designate the area set apart as specified by the commissioner in the certificate. (1959, c. 331, § 1.)

**Sec. 28. Unlawful to take marine species from or to interfere with areas used under authority of sections 25, 26 or 27.**—It is unlawful for any person, during the period that any shores, flats or waters are taken or used under sections 25, 26 or 27, to take, dig, fish or in any manner destroy any marine species within the area used or taken, or to interfere with the shores, flats and waters so used or taken.

**I. Penalty.** Whoever violates any provision 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 90 days. (1959, c. 331, § 1.)

#### Regulation of Fish.

**Sec. 29. Regulation of herring for canning purposes from December 1st to April 15th.**—From the first day of December to the 15th day of the following April the following provisions are in force:

**I. Unlawful to take, preserve or sell certain herring for canning purposes during period.** During that period it is unlawful for any person, firm or corporation to take, preserve, sell or offer for sale any herring for canning purposes which are less than 8 inches in length measured from one extreme to the other.

**II. Unlawful to can any herring during period.** During that period it is unlawful for any person, firm or corporation to can in hermetically sealed containers herring of any description taken from the coastal waters of Maine.

**III. Penalties.** Whoever violates any provision of this section shall be punished as follows:

- A. By a fine of \$20 for every 100 cans of herring, or fraction thereof, if less than 100 cans;
- B. By a fine of \$20 for every 100 herring if the herring are not canned; or
- C. By imprisonment for not more than 30 days. (1959, c. 331, § 1.)

**Sec. 30. Certain herring to be sold and purchased by standard unit of measure.**—It is unlawful for any person, firm or corporation to purchase or sell herring in their live or raw state for packing purposes other than by some standard unit of measurement, such as by the bushel, barrel of 3 bushels, hogshead of 17½ bushels or by a fractional part of a standard unit of measurement.

**I. Penalty.** Whoever violates any provision of this section shall be punished by the penalties provided in section 33. (1959, c. 331, § 1.)

**Sec. 31. Boats transporting certain herring to be sealed.**—The state sealer of weights and measures, or some person appointed by him for this purpose, shall measure and seal all holds of all boats transporting herring for processing purposes.

**I. Fee; amount; determination of.** The owner of the boat shall pay a fee for the measuring and sealing provided in this section in such amount as the state sealer of weights and measures shall determine.

**A.** The state sealer of weights and measures shall determine the fee for boats based on an equitable hogshead carrying capacity in sufficient sum to cover the estimated costs to the state for carrying out the intent of this section.

**II. Method of measurement.** The measure must be in 5 hogshead divisions, measured by liquid measure from a calibrated prover, to the top of the hatch coaming with the measurement plainly marked and permanently sealed in the hold of the boat, both forward and aft, while the boat is afloat, in the most practical manner as prescribed by the state sealer of weights and measures.

**III. Owner to notify state sealer if any seal broken.** The boat owner shall immediately notify the state sealer of weights and measures of any alteration or the breaking of any seal in any hold of the owner's boat.

**IV. State sealer to certify to commissioner.** The state sealer of weights and measures shall forthwith, after measuring and sealing each boat, certify to the commissioner the name of the owner of each boat, the name of each boat, and the capacity of each boat.

**V. Unlawful to sell herring from unsealed hold.** It is unlawful for any person, firm or corporation to buy, sell, or transport any herring for processing purposes from or in the hold of any boat which has not been measured and sealed as provided in this section.

**VI. Penalty.** Whoever violates any provision of this section shall be punished by the penalties provided in section 33. (1959, c. 331, § 1. 1961, c. 238, § 3.)

**Effect of amendment.**—The 1961 amendment substituted "buy, sell or transport" for "sell" in subsection V and inserted "or

"in" following "from" and before "the hold" in that subsection.

**Sec. 32. Purchaser of herring to give fishermen cash or written acknowledgment.**—Any person, firm or corporation purchasing herring from a fisherman, or his agent, shall either pay cash to the fisherman or his agent at

the time of the purchase, or shall furnish to the fisherman or his agent a written acknowledgment of the purchase.

**I. Contents of acknowledgment.** The buyer shall insert in the written acknowledgment all information necessary for a complete understanding of the transaction, including the price and quantity, and a provision for payment at a time not later than 7 days after delivery of the herring.

**II. Payments to be made in money.** The buyer shall make all payments to the fisherman, or his agent, in money or in money equivalent.

**III. Penalty.** Whoever violates any provision of this section shall be punished by the penalties provided in section 33. (1959, c. 331, § 1.)

**Sec. 33. Penalties for sections 30, 31 and 32.**—Any person, firm or corporation who violates any provision of sections 30, 31 or 32 shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for not more than 60 days. (1959, c. 331, § 1.)

**Sec. 34. Size of herring.**—It is unlawful for any person, firm or corporation to take from the coastal waters of Maine, to sell, to offer for sale, to purchase, to process, to ship, to transport, or to have in possession herring which are less than 4 inches long, overall length measured from one extreme to the other, except as provided in this section.

**I. Tolerance of 25% ; how determined.** Any person, firm or corporation may take, sell, purchase, process, ship, transport or have possession of herring which are less than 4 inches in length when they are mixed with herring of greater length, provided the herring of less than 4 inches in length comprise less than 25% of the entire lot.

**A.** The tolerance of 25% is determined by volume of  $\frac{1}{2}$  bushel of herring for each 30 hogsheads of herring, or fraction thereof, taken at random from various parts of the lot.

**II. Exception for bait purposes.** Any person, firm or corporation may have possession of herring which are less than 4 inches in length, provided the same are possessed for the purpose of bait for fishing.

**III. Commissioners to cooperate in enforcement.** The commissioner of sea and shore fisheries and the commissioner of agriculture shall cooperate in the enforcement of this section.

**IV. Penalty.** Any person, firm or corporation who violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for not more than 60 days. (1959, c. 331, § 1.)

**Sec. 35. Artificial lights illegal in taking herring.**—It is unlawful for any person to take herring by use or aid of an artificial light of any kind in the coastal waters of this state, except as provided in this section:

**I. Exception for York county and part of Sheepscot bay.** The provisions of this section do not apply to York county and so much of Sheepscot bay as is located within the following bounds: Beginning at the northerly point of Green Island; thence southerly by the coastline to the Cuckolds light station; thence westerly to Pond Island light station; thence northeasterly by the coastline to the northerly point of MacMahan Island; thence easterly to the point of beginning.

**II. Exception for Kennebec river and tributaries.** This section does not apply to the taking of alewives and blue blacks in the waters of the Kennebec river and its tributaries, including the Sasanoa river, northerly from a line between Squirrel Point light in the town of Arrowsic and the highway bridge over the outlet of Center pond, so called, in the town of Phippsburg, from April 1st to October 1st of each year. Nothing in this section shall be so con-

strued as to affect in any way the established rights of any town to the ale-wife fishing within its corporate limits. (1959, c. 331, § 1. 1961, c. 144.)

**Effect of amendment.**—The 1961 amendment added subsection II.

**Sec. 36. Otter or beam trawls prohibited in Washington county.**—The use of either otter or beam trawls within the territorial waters of Washington county is prohibited.

**I. Penalties.** Whoever violates the provisions of this section shall be punished by a fine of \$100 for the first offense, and in default of payment by imprisonment for 30 days; and for the second or subsequent offense, he shall be punished by a fine of \$200, and in default of payment by 60 days imprisonment. (1959, c. 331, § 1.)

**Sec. 36-A. Fishing with otter trawls unlawful certain times and places.**—It is unlawful to fish or take fish by otter trawl from the coastal waters within the jurisdiction of this state between 69° 50' west longitude to 70° 20' west longitude from midnight, Friday, to midnight, Saturday, of each week during the months of June, July and August of each year.

**I. Penalty.** Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both. (1961, c. 67.)

**Effective date.** — The 1961 act adding this section became effective on its approval, March 7, 1961.

**Sec. 36-B. Size of trawls limited in Casco bay and adjacent waters; permit to fish from trawl in Casco bay and adjacent waters.**—This section applies to all the coastal waters within the jurisdiction of the state between 69° 50' west longitude and 70° 20' west longitude.

**I. Maximum size of trawls.** It is unlawful to fish with or use an otter trawl or any other trawl within the above area during the months of June, July and August of each year of greater size than as follows:

- A.** The length of the foot rope may not be greater than 70 feet measured from wing tip to wing tip along the bottom of the wings and bosom;
- B.** The length of the head rope may not be greater than 50 feet measured from wing tip to wing tip along the bottom of the wings and bosom;
- C.** The length of each door may not be greater than 6 feet measured from the forward end to the aft end of the door; and
- D.** The width of each door may not be greater than 3 feet 6 inches measured from top to bottom of the door.

**II. Permit.** It is unlawful to fish with or use an otter trawl or any other trawl within the above area, unless the operator of the boat has a current permit from the commissioner.

- A.** The commissioner shall issue such permits to any holder of a current resident or nonresident commercial fishing license, providing that the trawl complies with the size provided in this section.
- B.** The commissioner shall cause the trawl to be inspected for size prior to issuing the permit.
- C.** There is no charge for issuing the permit.
- D.** The permit shall be valid concurrently with the resident or nonresident commercial fishing license.
- E.** Such permit shall be carried on the boat when the boat is used for trawl fishing in said area. Failure to produce the permit when requested by a

coastal warden in uniform is *prima facie* evidence that the operator of the boat does not hold a current permit as provided by this section.

**III. Penalty.** Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both. (1961, c. 75.)

**Effective date.** — The 1961 act adding this section became effective on its approval, March 7, 1961.

**Sec. 36-C. Limitation on fishing in Casco bay and adjacent waters from vessel with register length over 65 feet.** — This section applies to all the coastal waters within the jurisdiction of the state between 69° 50' west longitude and 70° 20' west longitude.

**I. Maximum size of otter trawlers.** It is unlawful for any vessel with a register length in excess of 65 feet to fish with or use an otter trawl, or any other trawl within the above area during the months of June, July and August of each year.

**A.** For the purposes of this section register length shall be as set forth on said vessel's operating document or marine license issued in conformity to Title L "Regulation of Vessels in Domestic Commerce" of the revised statutes of the United States of America.

**II. Penalty.** Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both. (1961, c. 74.)

**Effective date.** — The 1961 act adding this section became effective on its approval, March 7, 1961.

**Sec. 37. Seines or nets not to be set near weirs.** — It is unlawful for any person to set or assist in setting any net or seine within 2,000 feet of the mouth of any weir which is licensed under the provisions of sections 43 or 44 and under the licensing provisions of chapter 98, except as otherwise provided in this section. (1959, c. 280.)

**I. Exception.** The provisions of this section do not apply to the owner nor to the person in charge of the weir.

**II. Penalty.** Whoever violates any provision of this section shall be punished by a fine of \$100 or by imprisonment for 30 days, or by both.

**A.** Each day that a net or seine is used in violation of this section constitutes a separate offense. (1959, c. 280; c. 331, § 1.)

**Editor's note.** — Chapter 280, P. L. 1959, provisions similar to this section, was repealed by P. L. 1959, c. 331, § 7. which amended § 28 of former chapter 38 of the Revised Statutes, containing

**Sec. 38.** Repealed by Public Laws 1961, c. 238, § 4.

**Editor's note.** — Former § 38 of this chapter, making drags illegal in part of Bluehill bay, derived from P. L. 1959, c. 331, § 1.

**Sec. 39. Closed season for salmon.** — From the 16th day of July to the 31st day of the following March of each year is closed season for salmon, in all the tidal waters of the state. During the closed season it is unlawful to take or kill salmon in any manner, except as provided in this section.

**I. Exception for rod and line.** Between the 16th day of July and the 15th day of September of each year, it is lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise.

**II. Exception for weirs on St. Croix river.** Salmon may be taken in weirs on the St. Croix river below the breakwater at the ledge between the 15th day of May and the 31st day of August of each year.

**III. Penalty.** Whoever violates any provision of this section shall be punished as provided in section 96, and also by a fine of \$10 for each salmon taken. (1959, c. 331, § 1.)

**Sec. 40. Closed season on fishing for smelts.** — From March 15th to June 15th of each year it is unlawful to fish or take any smelts from the tidal waters of the state by any means other than by the use of a hand dip-net operated by one man, or by the ordinary mode of angling with hook and line.

**I. Limit on smelts, exceptions for possession.** From March 15th to June 15th of each year it is unlawful to take, catch, kill or have in possession more than 4 quarts of smelts of any description in any one day, regardless of where the smelts were taken, except as otherwise provided in this section.

**A.** A dealer in fish who is licensed under section 63 or 64, or a bait dealer licensed under chapter 37, section 63, is excused from the possession of more than 4 quarts of smelts if the possession occurs in his vehicle or place of business, but no dealer may catch more than 4 quarts of smelts in any one day.

**B.** This subsection does not apply to the possession of more than 4 quarts of smelts in any grocery store or fish market if the same were legally taken.

**II. Certain commercial fishing licensees excused; prima facie evidence.** The holder of a current resident commercial fishing license or a current nonresident commercial fishing license is excused from the provisions of this section to the extent of any smelts which he catches in any licensed weir or trap maintained and operated in tidal waters for catching herring.

**A.** If any such licensee is found with smelts in his possession by a coastal warden or game warden, he shall immediately on request show his resident or nonresident commercial fishing license, and his neglect to do so is prima facie evidence that he is not excused as provided in this subsection.

**III. Exception for localities covered by special legislation; prima facie evidence.** — Any provision of this section that is in conflict with any provision of any special legislation which regulates the taking or possession of smelts in any given locality is superseded by that special legislation.

**A.** If any person, other than as provided in subsection I, paragraphs A and B or in subsection II, is found in possession of more than 4 quarts of smelts in a municipality when and where special legislation does not authorize the possession of more smelts anywhere within that municipality at the time of the possession, it is prima facie evidence that the smelts are possessed in violation of subsection I.

**IV. No right inconsistent with regulations granted.** Nothing in this section grants to any person any right to take smelts from any area in any manner which is contrary to the provisions of any regulation of the commissioner of sea and shore fisheries. (1959, c. 255; c. 331, § 1.)

**Editor's note.** — Chapter 255, P. L. 1959, visions identical with this section, was which rewrote § 32 of former chapter 38 repealed by P. L. 1959, c. 331, § 6. of the Revised Statutes to contain pro-

**Sec. 41. Illegal to dump dead or scaled fish.** — It is unlawful for any person to deposit upon the shores, in the bays, harbors or rivers of this state any dead fish, or parts thereof, or fish smothered or injured so that they will die. It is unlawful for any person to release or dump any fish, whether dead or alive, in the waters within the jurisdiction of the state after the scales have been intentionally removed from the fish.

**I. Penalty.** Whoever 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. (1959, c. 331, § 1.)

**Sec. 42. Use of dynamite and poison illegal.**—It is unlawful for any person to use dynamite or any poisonous or stupefying substance for the purpose of destroying or taking any kind of fish in the tidal waters of this state.

**I. Sale or possession of fish so taken illegal.** It is unlawful for any person to buy, sell or possess for any purpose any fish taken by use of dynamite or any poisonous or stupefying substance.

**II. Carrying of dynamite or poison illegal.** It is unlawful for any person, while engaged in fishing to carry in any fishing boat or vessel any dynamite or other explosives or poisonous or stupefying substance.

**III. Penalty.** Whoever violates any provision of this section shall be punished by a fine of \$100 and by imprisonment for 60 days. (1959, c. 331, § 1.)

**Sec. 43. Resident commercial fishing license.**—It is unlawful for any resident of the state of Maine to operate in the coastal waters of the state any weir, floating fish trap or boat engaged in seining, netting or dragging, unless he has a current written license from the commissioner as provided in this section.

**I. License designation; residence requirements.** The license, designated as a resident commercial fishing license, may be issued by the commissioner to any person who has been a legal resident of the state of Maine for one year next prior to the date of his application.

**II. General scope of license.** The licensee is entitled to take all species of fish from the tidal waters of the state when and where it is otherwise lawful to take them, except shellfish, lobsters, crabs or scallops.

**III. License fees; restrictions.** A resident may obtain resident commercial fishing licenses to operate any number or any combination of the following: A boat engaged in seining, netting or dragging, a weir or a floating fish trap.

**A.** If he does not desire the license to cover any crew, other than a single operator, the fee is \$3 for each boat, weir or fish trap licensed.

1. All licenses issued under paragraph A are restricted to no crew other than a single operator.

**B.** If he desires the license to cover one or more crew members, other than a single operator, who are residents of the state, the fee is \$10 for each boat, weir or fish trap licensed.

1. All licenses issued under paragraph B are unrestricted as to the number of crew members, but are restricted to crew members who are residents of this state.

**C.** If he desires the license to cover one or more crew members who are not residents of this state, the fee is \$10 for each such boat, weir or fish trap and \$25 for each member of the crew who is not a resident of this state.

1. Any and all licenses issued under paragraph C are unrestricted as to the number of resident crew members, but are restricted to the number of nonresident crew members stated in the license.

**IV. Equipment and restrictions to be stated in license.** The commissioner shall set forth in the license the equipment covered by the license and the crew member restrictions.

**V. Persons assisting are crew members; special penalty.** Any person assisting or helping in attending fishing gear or operating the boat is considered a member of the crew.

**A.** If a boat, weir or fish trap so licensed has more crew members than is stated in the license, the operator of the boat, weir or fish trap shall pay a fine of \$25 for each such unauthorized person, or be imprisoned for not more than 30 days.

**VI. General licensing provisions apply.** The provisions of section 23 apply to resident commercial fishing licenses. (1959, c. 331, § 1. 1961, c. 238, § 5.)

**Effect of amendment.**—The 1961 amendment inserted "crabs" in subsection II.

**Sec. 44. Nonresident commercial fishing license.**—It is unlawful for a nonresident of the state of Maine to use or operate in the coastal waters of the state, any weir, floating fish trap or boat engaged in seining, dragging or netting, unless he has a current written license from the commission as provided in this section.

**I. License designation; who may obtain.** The license, designated as a nonresident commercial fishing license, may be issued to any person who is not a resident of the state.

**II. General scope of license.** The licensee is entitled to take all species of fish from the tidal waters of the state when and where it is otherwise lawful to take them, except shellfish, lobsters, crabs or scallops.

**III. License fees; restrictions.** A person who is not a resident of this state may obtain a nonresident commercial fishing license to operate any number or any combination of the following: A boat engaged in seining, netting or dragging, a weir or a floating fish trap.

**A.** If he does not desire the license to cover more than 2 nonresident crew members, other than the operator, the fee is \$100 for each boat, weir or fish trap licensed.

1. All licenses issued under the provisions of paragraph A are unrestricted as to the number of crew members who are residents of this state, but are restricted to not more than 2 crew members, other than the operator, who are not residents of this state.

**B.** If he desires the license to cover more than 2 nonresident crew members, other than the operator, the fee is \$100 for each boat, weir or fish trap licensed, plus \$25 for each nonresident crew member, other than the operator, beyond the first 2 covered by the license.

1. Any and all licenses issued under the provisions of paragraph B are unrestricted as to the number of resident crew members, but are restricted to the number of nonresident crew members stated in the license.

**IV. Equipment and restrictions to be stated in license.** The commissioner shall set forth in the license the equipment licensed and the restrictions as to crew members.

**V. Persons assisting are crew members; special penalty.** Any person assisting or helping in attending fishing gear or operating the boat is considered a member of the crew.

**A.** If a weir, trap or boat so licensed has more members than is stated in the license, the operator of the weir, trap or boat shall be punished by a fine of \$50 for each unauthorized person, or by imprisonment for not more than 30 days.

**VI. General licensing provisions apply.** The provisions of section 23 apply to nonresident commercial fishing licenses. (1959, c. 331, § 1. 1961, c. 238, § 6.)

**Effect of amendment.**—The 1961 amendment inserted "crabs" in subsection II.

**Sec. 45. Tuna fishing regulated.**—It is unlawful for any person to fish for, take, catch or kill any tuna fish in the tidal waters of the state by any method other than by harpoon or by hook and line, and it is unlawful to possess any tuna fish which was taken, caught or killed in violation of any provision of this section.

**I. Penalty.** Any boat, seine or other contrivance, together with the contents, which is used contrary to any provision of this section is subject to seizure and forfeiture under the procedure of section 89. (1959, c. 331, § 1.)

**Regulation of Shellfish and Marine Worms.**

**Sec. 46. Municipalities may grant licenses for clam, quahog and mussel cultivation; commissioner may for deorganized municipality.—**The municipal officers of any municipality, and the commissioner in the event that the municipality has been deorganized by act of the legislature, are authorized to grant written licenses for the purpose of planting and cultivating clams, quahogs or mussels upon the flats and creeks of their respective jurisdictions, subject to the provisions of this section:

**I. Survey and plan must first be made; filing.** Before granting any license, the municipal officers of a municipality, or the commissioner in the case of a deorganized municipality, shall cause a survey and plan to be made of the territory within which licenses are to be granted.

**A.** The plan is to be kept in the office of the clerk of the municipality, or in the office of the department if the municipality is deorganized.

**II. Total area under cultivation limited.** The total area under licensed cultivation may not exceed  $\frac{1}{4}$  of the total area of all the flats and tidal creeks within the municipality.

**III. Term of license.** The term of the license may not be less than 5 years, nor more than 10 years.

**A.** The municipal officers shall fix the exact term within those limits in event the legislative body of the municipality fails to do so.

**B.** The commissioner shall fix the term within the 5 to 10 year limits for deorganized municipalities.

**IV. Annual license fee.** The licensee shall pay an annual license fee to the municipality, or to the department if the municipality is deorganized.

**A.** The municipal fee may not be less than \$1 nor more than \$5 per acre annually.

**1.** The municipal officers shall fix the exact fee within those limits if the legislative body of the municipality fails to do so.

**B.** The fee for a license in a deorganized municipality is \$5 per acre annually.

**V. Persons qualified for license.** A license may be granted only to a person who has resided in the state for at least one year next preceding the date of his application, or who has been a taxpayer in the municipality for at least one year next preceding the date of his application.

**VI. May not obstruct navigable water.** No license may be granted if the exercise thereof would materially obstruct navigable water.

**VII. Preference given in certain cases.** The granting authority shall give preference to a riparian proprietor of adjacent property when there are 2 or more applicants for the same area, and an adjacent riparian proprietor is one of them.

**VIII. Authority to pass ordinances.** A municipality may enact municipal ordinances, which do not conflict with the provisions of this section and sections 47 and 48, to further regulate the licenses authorized by this section.

**IX. Procedure in section 47 to be followed.** The municipal officers and the commissioner shall follow the procedure provided in section 47 in granting licenses authorized by this section. (1959, c. 331, § 1.)

**Sec. 47. Procedure for licenses authorized by section 46.**—The procedure for granting, assigning and holding the licenses authorized by section 46 is as follows:

**I. License application.** Any person interested in obtaining a license shall apply in writing to the municipal officers of the municipality wherein the flats or creeks to be under license are located, or to the commissioner if the municipality is deorganized.

**A.** The application must state a description of the exact area applied for.

**B.** The application must state that the applicant has resided in the state at least one year next preceding the date of application, or that the applicant has been a taxpayer in the municipality for at least one year next preceding the date of application.

**II. Notice of hearing.** Upon receipt of an application properly completed, the municipal officers, or the commissioner if the municipality is deorganized, shall order notice of a public hearing on the application.

**A.** The notice must state the name of the applicant, the date of the application, a description of the exact area applied for, and the time and place of the hearing.

**B.** The notice must be posted in at least 3 public places in the municipality and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.

**1.** If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in the municipality.

**III. Hearing.** The municipal officers, or the commissioner if the municipality is deorganized, shall hold a public hearing at the time and place designated in the notice.

**A.** Any interested person may give relevant evidence at the hearing.

**IV. Granting license.** After the hearing the municipal officers, or the commissioner if the municipality is deorganized, may grant the license within the area specified in the application, subject to the following provisions:

**A.** All the requirements of section 46 have been fulfilled.

**B.** The applicant pays the license fee for the first year.

**C.** The license specifies the name of the applicant and describes the exact area under license by metes and bounds.

**V. Area licensed to be marked on plan; recording.** Immediately after granting the license the municipal officers, or the commissioner if the municipality is deorganized, shall mark the area licensed on the plan provided for in section 46.

**A.** The municipal officers shall also record any license issued by them with the clerk of the municipality, and shall record the license with the commissioner.

**VI. Duties of licensee; marking area; notice.** Immediately after receiving his license, the licensee has the following duties:

**A.** He shall cause the area covered by his license to be plainly marked by stakes, buoys, ranges or monuments which he shall maintain during the entire term of his license.

**B.** He shall place notices that the area is licensed, on the banks or shores adjacent to the protected area not more than 10 feet nor less than 6 feet above the ground in conspicuous positions. The notices must be painted on wood in black Roman letters not less than 2 inches in height and not less than  $\frac{1}{2}$  inch in breadth so that the letters are plainly legible. He shall maintain the notices during the term of his license.

**VII. License recorded before effective; revocation.** No license becomes effective until the recording provisions of subsection V are fulfilled, and failure to place and maintain the markers and notices provided by subsection VI is sufficient cause for the revocation of the license by the authority granting the license.

**VIII. Licensee to give annual report.** Every person licensed shall submit a written report on oath, on or before the first day of January of each year to the authority who granted his license. The report must state the total number of bushels of each kind of shellfish produced or marketed from the area licensed during the preceding year, and an estimate of the total number of bushels of each kind of shellfish planted or growing on the licensed area at the time of the report.

**IX. Forfeiture if area does not produce.** The granting authority shall determine the market value of all the shellfish reported in the report provided in subsection VIII.

**A.** If the total amount on any one report falls below the market value, as thus determined, of \$25 per acre within the first 2 years of the term of the license, or below the market value, as thus determined, of \$50 per acre for any 3 consecutive years thereafter, then the authority which granted the license may declare it forfeited.

**X. Assignment of license.** A licensee may assign his license to any person who has resided in the state for at least one year next preceding the date of the assignment, or who has been a taxpayer in the municipality where the licensed area is located for at least one year next preceding the date of the assignment, provided the granting authority gives written consent to the assignment.

**A.** Once the license is assigned, and the assignment has been approved by the granting authority, the assignee has all the privileges and duties of the original licensee and is subject to all the provisions of law as though he were the original licensee. (1959, c. 331, § 1.)

**Sec. 48. Specific offenses and penalties concerning shellfish cultivation under municipal license; local enforcement.**—The following provisions apply to areas under the licenses authorized by section 46:

**I. Taking shellfish without consent of licensee; action of tort; penalty.** It is unlawful for any person, except the licensee, his employees, heirs or assignees, to dig or take clams, quahogs or mussels, or clam, quahog or mussel seed from the area licensed. The licensee, his heirs or assignees have exclusive use of the shellfish in the area described in the license during the term of the license.

**A.** The licensee, his heirs or assignees may in a civil action recover treble damages and costs of any person who, without his or their consent, digs or takes, any clams, quahogs, mussels or other shellfish from the area covered by the license.

**B.** Whoever so digs or takes clams, quahogs or other shellfish shall, in addition, be punished by a fine of \$20 for each offense, or by imprisonment for not more than 30 days, or both.

**II. Molesting shellfish without consent of licensee; penalty.** It is unlawful for any person, without the consent of the licensee, his heirs or assigns, to do any of the following acts, and whoever does so shall be punished for the first offense by a fine of not more than \$20 or by imprisonment for not more than one month, and for a subsequent offense by a fine of not more than \$50 or by imprisonment for not more than 6 months:

**A.** To work a dredge, tongs, rake or other implement for the taking of

shellfish of any description, for any purpose whatever, upon or over the area covered by the license;

**B.** To disturb the growth of shellfish upon the area covered by the license in any manner;

**C.** To discharge any substance upon the area covered by the license which may directly or indirectly injure the shellfish thereon.

**III. Molesting markers; action of tort; penalty.** It is unlawful for any person to willfully do any of the following acts, and whoever does so shall be punished by a fine of not more than \$20, or by imprisonment for not more than 30 days, and in addition shall be liable in a civil action to the licensee, his heirs or assigns in treble damages and costs:

**A.** To willfully injure, deface, destroy, move or remove any mark or bound used to define the extent of any area covered by a license;

**B.** To willfully place any unauthorized mark or bound on the area covered by a license;

**C.** To willfully fasten any boat or vessel to any mark or bound used to define the extent of the area covered by the license;

**D.** To willfully injure, deface, destroy, move or remove any notice required by the provisions of section 47.

**IV. Local enforcement.** It is the responsibility of the municipality, or the commissioner if the municipality is deorganized, to enforce all provisions relating to licenses issued under the authority of section 46. (1959, c. 331, § 1. 1961, c. 317, §§ 78, 79.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action of tort” in paragraph A of subsection I and the opening paragraph of subsection III of this section.

**Sec. 49. Permits to transplant seed clams and seed quahogs.**—The commissioner is authorized to issue permits to dig and transplant seed quahogs or seed clams to any person licensed to cultivate shellfish under the authority of section 46, subject to the provisions of this section.

**I. Application for permit.** Any person so qualified shall apply to the commissioner through the municipal officers of the municipality where the seed quahogs or seed clams to be transplanted are located, or directly to the commissioner if the seed quahogs or seed clams to be transplanted are located in a municipality which has been deorganized by act of the legislature.

**A.** The application must state all the following information:

1. A description of the exact area where the seed quahogs or seed clams are to be obtained.
2. A description of the means by which seed quahogs or seed clams are to be harvested for transplanting purposes.
3. The method of transplanting the seed quahogs or seed clams.
4. A description of the area where they will be planted.

**II. Notice of hearing.** Upon receipt of an application properly completed, the municipal officers of the municipality where the seed quahogs or seed clams are to be obtained, or the commissioner if that municipality is deorganized, shall order notice of a public hearing on the application.

**A.** The notice must state the name and address of the applicant, the date of application, a description of the exact area where the seed quahogs or seed clams are to be obtained, and the time and place of the hearing.

**B.** The notice must be posted in at least 3 public places in the municipality, and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.

1. If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in that municipality.

C. Notice of the hearing must also be given the commissioner, unless the municipality from which the seed quahogs or seed clams are to be obtained is deorganized.

**III. Disapproval; appeal; denial.** After the hearing the municipal officers may disapprove the application, in which case the applicant may appeal to the commissioner whose decision is final.

A. If the municipality is deorganized, the commissioner may deny the application and that denial is final.

**IV. Approval of application.** After the hearing the municipal officers may approve the application if all the provisions of this section are met, and the applicant shall then forward a copy of the application and approval to the commissioner.

**V. Granting of permit.** After receipt of the copy of the application and approval, or after the hearing if the seed quahogs or seed clams are located in a deorganized municipality, the commissioner may grant the permit, subject to the following provisions:

A. The commissioner shall appraise himself of the conditions under which the transplanting will take place before issuing a permit.

B. The seed quahogs or seed clams may be planted only in flats located in this state.

C. The permit must contain a specific expiration date, and a specified maximum volume of seed quahogs or seed clams which may be transplanted within the permitted time.

1. The maximum volume of seed quahogs or seed clams to be transplanted under all permits may not exceed 25% of the estimated seed quahog or seed clam population in any given area, and the maximum volume granted to any one permit holder may not exceed 5% of the estimated seed quahog or seed clam population in the area specified in the application.

(a) Research personnel of the department shall determine the seed quahog or seed clam population by utilizing accepted survey methods.

**VI. Rights of permittee.** The holder of a permit may remove seed quahogs or seed clams, whichever is specified in the permit, from the area specified in the permit, transport them to, and transplant them in the area specified in his permit, provided he does not exceed the maximum volume specified in his permit. (1959, c. 331, § 1.)

**Sec. 50. Municipalities may enact ordinances to regulate taking of clams, quahogs and mussels and provide for licenses.**—Any municipality may enact a municipal ordinance fixing the time when clams, quahogs and mussels may be taken from any or all of the coastal waters and flats within the municipality. The ordinance may also provide limitations on the amount of clams, quahogs and mussels which may be taken within the municipality, and may likewise provide that municipal licenses be required for the taking of any such species within the municipality, and may fix the license fees. The ordinance may also provide for the size of soft-shell clams which may be taken from the flats within the municipality.

**I. Filing requirements.** Ordinances adopted under the provisions of this section do not become effective until a certified copy has been filed by the municipal officers with the clerk of that municipality and with the commissioner.

**II. Local enforcement.** Any municipality that enacts any ordinance under authority of this section shall be responsible for the enforcement of the ordinance.

**III. Penalty for ordinances.** Whoever takes clams, quahogs or mussels contrary to a municipal ordinance authorized by this section shall be punished by a fine of not more than \$10 or by imprisonment for not more than 30 days. (1959, c. 331, § 1; c. 354, § 1.)

**Effect of amendment.**—The 1959 amendment added the last sentence to the first paragraph of this section.

**Effective date.** — P. L. 1959, c. 354, amending this section, provided in section 3 thereof as follows: "This act shall be-

come effective March 1, 1960 and remain in effect until January 1, 1962."

P. L. 1961, c. 338, substituted "1964" for "1962" at the end of § 3 of c. 354, P. L. 1959.

**Sec. 51. Method of taking clams or marine worms.**—It is unlawful to take or dig clams or marine worms in the state of Maine contrary to the provisions of this section.

**I. Hand powered devices only.** It is unlawful to take or dig any clams or marine worms, except by devices or instruments operated solely by hand power.

**II. Boats and hydraulic dredges.** It is unlawful for the purpose of taking clams or marine worms to dig, rake, loosen or disturb the flats with the propeller or with any other part of any boat or hydraulic dredge.

**III. Department equipment excepted.** The provisions of this section do not apply to equipment operated by the department of sea and shore fisheries.

**IV. Maryland dredges excepted in Hancock county.** The provisions of this section do not apply to any Maryland type dredge operated solely within the limits of Hancock county, provided permission to operate the dredge is obtained from the municipal officers of the municipality where the dredge is operated, and provided no marine worms taken by these machines may be marketed in any form or manner. (1959, c. 331, § 1.)

**Sec. 52. Shellfish certificate required to ship shellfish out of state.**—It is unlawful for any person, firm or corporation to ship beyond the limits of this state any soft-shell clams, quahogs or mussels, whether the same have been removed from the shell or not, or to sell such shellfish to another for shipment or transportation beyond the limits of the state, or to cause the same to be done, without having a current shellfish certificate from the commissioner of agriculture as provided in this section.

**I. Application.** Any person, firm or corporation may apply for a shellfish certificate on a form provided by the commissioner of agriculture. Each application for a shellfish certificate must contain the following:

- A.** It must be signed by the applicant.
- B.** It must show the names of persons licensed to fish, dig and sell clams, quahogs and mussels, if any, from whom such shellfish in the shell are to be procured by the applicant.
- C.** It must show the name of the persons holding shucking certificates, if any, from whom shucked soft-shell clams, quahogs or mussels are to be procured by the applicant.

**II. Issuance of certificate; contents of certificate.** If the commissioner of agriculture is satisfied that all persons named in the application are properly licensed or certified, he may issue the applicant a certificate. The certificate must contain the following:

- A.** The certificate must bear a number.

**B.** The certificate must designate the persons from whom clams, quahogs and mussels in the shell may be procured for interstate shipment or transportation.

**C.** The certificate must also show from whom soft-shell clams, quahogs and mussels that have been shucked or removed from the shell, may be procured for interstate shipment.

**III. Expiration of certificates.** Shellfish certificates issued under the provisions of this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner suspended, and must be renewed annually thereafter.

**IV. Suspension of certificate.** The commissioner of agriculture may suspend for any period of time any certificate issued by him, or the right to obtain a certificate, whenever it is determined by him that the holder of the certificate has violated any provision of the certificate or any law or regulation pertaining to shellfish.

**V. Unlawful to ship shellfish not procured from persons named in certificate.** It is unlawful for the holder of a shellfish certificate to ship any clams, quahogs or mussels beyond the limits of the state unless they are procured from a person named in the shellfish certificate for that purpose.

**VI. Common carrier and other exceptions.** The provisions of this section do not apply to a common carrier licensed by the interstate commerce commission who is transporting shellfish in containers labelled as provided in section 56, nor do the provisions of this section apply to shellfish which are being shipped through this state under authority of the laws of the United States.

**VII. Lawful for interstate shellfish transportation licensee to transport without certificate; definitions of "to ship" and "to transport."** The holder of a current interstate shellfish transportation license authorized in section 53 may transport, but not ship, shellfish beyond the limits of this state without holding a shellfish certificate as provided in this section, provided he does so in accordance with the provisions of section 53.

**A.** The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or send an object from one place to another by any other means other than to ship as here defined.

**VIII. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$200, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1.)

**Sec. 53. Interstate shellfish transportation license.**—It is unlawful for any person, firm or corporation to ship or transport, or attempt to ship or transport, beyond the limits of this state any soft-shell clams, quahogs or mussels, whether removed from the shell or not, or to cause the same to be done, without having a current license from the commissioner as provided in this section.

**I. Application; designation of license.** A person, firm or corporation may apply for a license, designated as an interstate shellfish transportation license, to the commissioner of sea and shore fisheries on a form provided by him for that purpose. The form or the application must contain the following:

**A.** It must contain a description, sufficient to identify it, of the particular boat, truck, automobile, airplane or other vehicle of transportation to be used.

**B.** It must contain any other information that may be requested by the commissioner of sea and shore fisheries.

**II. License fees.** The fee for the license is \$35 which covers one boat, one truck, one automobile, one airplane or one other type of vehicle. There is an extra fee of \$10 for each vehicle beyond the first to be used as a means of transportation for the shellfish.

**III. Shellfish must be procured from holder of a shellfish certificate.** It is unlawful for any person, firm or corporation to transport or cause to be transported beyond the limits of this state, any clams, quahogs or mussels, except those which have been procured from the holder of a current shellfish certificate.

**A.** But should the holder of a current interstate shellfish transportation license also hold a current shellfish certificate, then he may procure shellfish from the persons named in his certificate for that purpose.

**IV. Exception for the holder of a wholesale seafood dealer's license.** The holder of a current wholesale seafood dealer's and processor's license may ship, but not transport, clams, quahogs and mussels beyond the limits of the state without having an interstate shellfish transportation license, but not without having a shellfish certificate as provided by section 52.

**A.** The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or send an object from one place to another by any other means than to ship as here defined.

**V. Common carrier and other exceptions.** The provisions of this section do not apply to a common carrier licensed by the interstate commerce commission who is transporting clams, quahogs or mussels in containers labelled in accordance with the provisions of section 56, nor to any person who lawfully possesses them for immediate consumption by himself and his family, nor does this section apply to clams, quahogs or mussels that are being transported through this state under authority of the laws of the United States.

**VI. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$100 or more than \$200, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1. 1961, c. 238, § 7.)

**Effect of amendment.**—The 1961 amendment inserted "or attempt to ship or transport" near the beginning of the section.

**Sec. 54. Minimum legal size for quahogs.**—It is unlawful for any person to take or have in his possession quahogs which are less than 2 inches in the longest diameter to the amount of more than 10% of any lot.

**I. Definitions.** A lot, as used in this section, means the total number of quahogs in any bulk pile. Where quahogs are in a box, barrel or other container, the contents of each box, barrel or other container constitute a separate lot.

**II. Method of determining tolerance.** The tolerance of 10% must be determined by numerical count of not less than one peck nor more than 4 pecks, taken at random from various parts of the lot, except that the tolerance must be determined by numerical count of the entire lot when the lot contains less than one peck.

**III. Exception for permittee.** The provisions of this section do not apply to the possession of seed quahogs under authority of a permit, issued by the commissioner, as provided in section 49.

**IV. Penalties.** Whoever violates the provisions of this section shall be punished by the following penalties:

**A.** For the first offense by a fine of not less than \$10 nor more than \$25, or by imprisonment for not more than 30 days.

**B.** For the 2nd offense by a fine of not less than \$20 nor more than \$50, or by imprisonment for not more than 30 days.

**C.** For the 3rd offense by a fine of not less than \$40 and not more than \$100, or by imprisonment of not more than 60 days.

**D.** For the 4th and subsequent offenses by a fine of \$100, or by imprisonment for not more than 60 days. (1959, c. 331, § 1; c. 354, § 2.)

**Effect of amendment.**—The 1959 amendment limited this section to quahogs and deleted the references to clams throughout the section.

**Effective date.**—P. L. 1959, c. 354, amending this section, provided in section 3 thereof as follows:

"Sec. 3. Effective date. This act shall become effective March 1, 1960 and remain in effect until January 1, 1962."

P. L. 1961, c. 338, substituted "1964" for "1962" at the end of § 3 of c. 354, P. L. 1959.

**Sec. 55. Shellfish certificate required to shuck shellfish for interstate shipment.**—It is unlawful for any person, firm or corporation to shuck or remove from the shell any clams, quahogs or mussels for shipment or transportation beyond the limits of the state, or to cause the same to be done, without first having a current certificate for that purpose from the commissioner of agriculture as provided in this section. It is unlawful for any person, firm or corporation to buy, or take from any person any shucked clams, quahogs or mussels for shipment or transportation beyond the limits of the state, or to cause the same to be done, unless the clams, quahogs and mussels were shucked in a shucking house certified by the commissioner of agriculture at the time of the shucking.

**I. Application.** Any person, firm or corporation may make application on blanks furnished by the commissioner of agriculture for a shellfish shucker's certificate giving authority to shuck and remove clams, quahogs and mussels from the shell for shipment or transportation beyond the limits of the state. Each application must contain the following:

**A.** It must be signed by the applicant.

**B.** It must show the exact location of the flats from which the clams, quahogs and mussels are to be dug.

**C.** It must show the exact location within the state of the shucking house where the shellfish will be removed from the shell.

**D.** It must bear all the names of all the persons who will dig the clams, quahogs and mussels that are to be shucked, and shipped by the applicant beyond the limits of the state.

**II. Issuance of certificate.** The commissioner of agriculture may issue this certificate if he is satisfied that the shucking house and premises conform to the sanitary standards recommended by the United States public health service and conform to the laws and regulations of the state of Maine, and if he is also satisfied that the shucked product from the shucking house conforms to the standards of purity and quality recommended by the United States public health service and conforms to the laws and regulations of the state of Maine.

**III. Contents of certificate.** The certificate must bear a number and designate by local name the areas from which clams, quahogs and mussels may be taken, shucked, transported, shipped or sold by the applicant. It must also bear the names of all persons who will dig the shellfish that are to be shucked.

**IV. Authorization of holder.** The certificate entitles the holder to shuck clams, quahogs and mussels for interstate trade at the shucking house specified in the certificate which are dug in the flats specified in the certificate, and are dug by the persons specified in the certificate.

**V. Expiration of certificate.** Shellfish shucking certificates issued under

the provisions of this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner revoked or suspended.

**VI. Suspension of certificate.** The commissioner of agriculture may suspend for any period of time any certificates issued by him, or the right to obtain a certificate, whenever he determines that any of the provisions of law or of regulations governing the shipment or transportation of clams, quahogs or mussels, or the provisions of law or regulations governing establishments where the clams, quahogs or mussels are shucked, have been violated.

**VII. Exceptions.** The provisions of this section do not apply to shellfish shucked for sale in intrastate trade, nor to shellfish shucked in hotels or restaurants for serving on the premises, nor to shucking shellfish at home for home consumption. (1959, c. 331, § 1.)

**Sec. 56. Shellfish containers to be labelled.**—All containers, except hermetically sealed containers, used in the shipment or transportation of clams, quahogs or mussels from a place within the state to a place outside the state must bear a label as provided in this section:

**I. What label must state.** The label must state in plain and distinct letters and figures the following information:

- A.** The name of the consignor, and, if the shellfish have been removed from the shell, the number of the shellfish certificate under which they were shucked.
- B.** The name of the consignee.
- C.** The words "Clams," "Quahogs" or "Mussels," whichever the containers hold.
- D.** The date of shipment.
- E.** The name of the municipality in which the clams, quahogs or mussels were dug.

**II. Illegal to ship or transport unlabelled containers or attempt to do so.** It is unlawful for any person, firm or corporation to ship or transport, or attempt to ship or transport, clams, quahogs and mussels from a place within the state to a place outside the state, or cause the same to be done, unless the containers are marked as provided in this section, or the shellfish are being transported in hermetically sealed containers. (1959, c. 331, § 1. 1961, c. 238, § 8.)

**Effect of amendment.**—The 1961 amendment inserted "or attempt to ship or transport" near the beginning of subsection II.

**Sec. 57. Cultivation of oysters; exclusive rights.**—Any inhabitants of the state, with the consent of the adjacent riparian proprietors, may plant oysters below low water mark in any navigable water in any place where there is no natural oyster bed, subject to the provisions of this section:

**I. Planter's duties.** Any person who wishes to take advantage of this section shall do the following:

**A.** He shall mark the area as follows:

1. He shall enclose the area with stakes extending at least 2 feet above high water mark, but so as not to obstruct the free navigation of the waters.
2. He shall place notices that the area is used for the planting of oysters on the banks of shores adjacent to the protected area, not more than 10 feet nor less than 6 feet above the ground in conspicuous positions. The notices must be painted on wood in black capital Roman letters, not less than 2 inches in height and not less than  $\frac{1}{2}$  inch in breadth, so that the letters are plainly legible. He shall maintain the notices during the time that he wishes to have the advantages of the provisions of this section.

**B.** He shall describe the area by metes and bounds in a written statement which must state that he is using the area for the purposes of this section and must include the written consent of the adjacent riparian proprietors. He shall record this written statement with the town clerk of the municipality where the area is located and with the commissioner.

**II. Permittee has exclusive rights; penalty.** After he has complied with all the provisions of subsection I he is permitted to plant oysters and has the exclusive right to the taking of the oysters within the specified area.

**A.** It is unlawful for any person, without the consent of the permittee, to trespass within the area or to injure the area where the oysters have been planted, and whoever does so, shall be liable to the permittee in a civil action for any damages.

1. And in addition, if any person, without the consent of the permittee, takes any oysters or any shellfish from within the area, he shall be punished by a fine of not less than \$20 or not more than \$50, or by imprisonment for not more than 3 months. (1959, c. 331, § 1. 1961, c. 317, § 80.)

**Effect of amendment.**—The 1961 amendment substituted “a civil action” for “an action of trespass” in paragraph A of subsection II of this section.

**Sec. 58. Closed season for scallops.**—It is unlawful for any person to fish for or take scallops from the coastal waters of the state from the first day of April until the 31st day of the following October of each year, except as provided in this section:

**I. Exception.** It is lawful to fish for and take scallops at any time in those waters which are outside the limits of, and southeasterly of a line formed by the following points: Beginning at Petit Manan Island Light, thence running in a straight line to the southerly tip of Schoodic Island; thence in a straight line to the southeasterly tip of Little Cranberry Island; thence in a straight line to the northwesterly end of Little Duck Island; thence in a straight line to the southeasterly tip of Long Island Head on Long Island; thence in a straight line to the whistle buoy off Johns Island; thence in a straight line to the southeasterly tip of Eastern Ear Isle au Haut; thence in a straight line to Roaring Bull Ledge; thence in a straight line to Saddleback Ledge Light; thence in a straight line to Green Island Light at Vinalhaven; thence in a straight line to Twobush Light; thence in a straight line to the southerly tip of Burnt Island.

**II. Possession unlawful.** It is unlawful for any person to have in his possession any scallops taken in violation of the provisions of this section.

**III. Penalty.** Whoever violates any of the provisions of this section shall be subject to the penalties provided in section 96, and in addition shall pay a fine of \$5 for every 100 scallops so taken or possessed, whether they are in the shell or shelled. (1959, c. 331, § 1.)

**Sec. 59. Scallop fishing license.**—It is unlawful for any person to operate in the coastal waters of the state any boat or drag engaged in the taking of scallops unless he has a current written license from the commissioner as provided in this section.

**I. Exception for home consumption.** Any person may operate a boat engaged in taking scallops for his own or his family's consumption without having a license as provided in this section, provided he does not take or possess more than 2 bushels of scallops in the shell in any one day, nor more than 4 quarts of shucked scallops.

**II. License designation; resident requirements.** The license, designated as a scallop fishing license, may be issued by the commissioner to any person who has been a legal resident of the state of Maine for one year next prior to the date of his application.

**III. General scope of license.** The licensee is entitled to take scallops from the tidal waters of the state when and where it is otherwise lawful to take them.

**IV. Any number of boats may be licensed; fee; number of crew members unlimited.** A resident may obtain scallop fishing licenses for any number of boats engaged in taking scallops, with or without a drag.

**A.** The fee is \$10 for each boat licensed.

**B.** The licensee may have any number of crew members, provided they are residents of this state.

**V. General licensing provisions apply.** The provisions of section 23 apply to scallop fishing licenses. (1959, c. 331, § 1.)

**Sec. 60. Minimum legal size for scallops.**—It is unlawful for any person to take or have in his possession scallops which are less than 3 inches in the longest diameter to the amount of more than 10% of any lot.

**I. Scallop definition.** Scallops, as used in this section, means scallops which are in the shell.

**II. Lot definition.** A lot, as used in this section, means the total number of scallops in any bulk pile. When the scallops are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

**III. Method of determining tolerance.** The tolerance of 10% must be determined by numerical count of not less than one peck nor more than 4 pecks, taken at random from various parts of the lot, or by numerical count of the entire lot if it contains less than one peck. (1959, c. 331, § 1.)

**Sec. 61. Commercial shellfish and marine worm license.**—It is unlawful for any person to dig or take any clams, quahogs, oysters, mussels or marine worms from the flats, shores or coastal waters of the state without having a current written license from the commissioner as provided in this section.

**I. Exception for home consumption.** Any person may, however, dig or take clams, quahogs, oysters or mussels for consumption by himself or by the members of his family without having a license as provided in this section, provided that the total amount of each species of shellfish dug, taken or possessed in any one day does not exceed  $\frac{1}{2}$  bushel.

**II. Exception for marine worms.** Any person may also take marine worms without having a license as provided in this section, provided that he does not dig, take or possess more than 30 in any one day.

**III. Exception for bait purposes.** The holder of a commercial fishing license or a lobster and crab fishing license may take any species of shellfish for bait purposes only, without having the license provided in this section.

**IV. License designation; general scope.** The license, designated as a commercial shellfish and marine worm license, entitles the holder to dig or take any amount of clams, quahogs, mussels or oysters, when and where it is otherwise lawful to do so, to transport and sell the same within the state, and to dig, take, buy, transport and sell any number of marine worms.

**V. Resident requirement; fee.** A person who has been a resident of the state of Maine for 6 months or more, next prior to the date of his application, may make application to the commissioner for a commercial shellfish and marine worm license on forms provided by the commissioner.

**A.** The fee for the license is \$3 which the applicant shall submit with his application.

**VI. Unlawful possession.** It is unlawful for any person, except the holder of a current commercial shellfish and marine worm license, to possess more

than  $\frac{1}{2}$  bushel of clams, quahogs, oysters or mussels in any one day, or to so possess more than 30 marine worms in any one day.

**A.** The provisions of this subsection do not apply to the possession of shellfish for bait purposes as provided in subsection III.

**B.** The provisions of this subsection do not apply to the holder of a current retail sea food dealer's license authorized under section 63, nor to the holder of a current wholesale sea food dealer's and processor's license, authorized under section 64.

**VII. Licensee's authority to take worms.** The holder of a current commercial shellfish and marine worm license may dig or take marine worms, clamworms, bloodworms or sandworms in any of the tidal waters or flats of the state, except in those areas which are closed to the digging or taking of such worms for conservation purposes by regulation passed under the provisions of section 17.

**A.** The holder of a current commercial shellfish license may also buy or sell any of the above described worms.

**VIII. General licensing provisions apply.** The provisions of section 23 apply to commercial shellfish and marine worm licenses. (1959, c. 331, § 1.)

**Sec. 62. Shellfish fund; source of money.**—All the license fees received from commercial shellfish and marine worm licenses and from interstate shellfish transportation licenses, and 10% of all the license fees received from wholesale seafood dealer's and processor's licenses are allocated to the shellfish fund.

**I. Purposes for which fund may be used.** The commissioner may expend any and all of the money in the shellfish fund from time to time for the purpose of restoration, development and conservation of clams, quahogs, oysters, mussels and marine worms in the shores, flats or coastal waters of the state, and for the establishment and maintenance of permanent and temporary facilities used for such purposes.

**II. Fund does not lapse.** The shellfish fund does not lapse. Fees so collected or allocated in any one year may be used in the same or any succeeding year.

**A.** All funds which were in the shellfish fund as provided in chapter 38, section 109 immediately prior to the time that this section became law, are in the shellfish fund as authorized in this section in all respects as though they were originally allocated under the provisions of this section. (1959, c. 331, § 1.)

#### Dealers' Licenses.

**Sec. 63. Retail dealer's license.**—It is unlawful for any person, firm or corporation to buy, sell, offer for sale, serve, ship or transport in any manner any clams, quahogs, crabs, lobsters, or parts thereof, without having a current written license from the commissioner as provided in this section.

**I. Exceptions.** The licensing provisions of this section do not, however, apply in the following instances:

**A.** To the transportation of the marine species, or parts thereof, covered by this section, by a person who possesses them for the purpose of consumption by himself and his family.

**B.** To the transportation or selling by a properly licensed fisherman of the particular marine species which his particular fishing license authorizes him to take or catch.

**C.** To the shipping or transportation of the marine species, or parts thereof, covered by this section by a common carrier engaged in carrying freight on a fixed schedule within or without the state, provided as follows:

1. The particular marine species, or parts thereof, are received by the common carrier at one of his regular established places of business on land for receiving general freight; and
  2. The receptacle containing the particular marine species, or parts thereof, is plainly marked in accordance with the law.
- D.** To the shipping, transporting, buying or selling of the marine species, or parts thereof, covered by this section by a properly licensed wholesale sea food dealer or processor under section 64.

**II. License designation; general scope.** The license, designated as a retail sea food dealer's license, entitles the holder, as a retail dealer only, to buy, sell, offer for sale, serve, ship and transport clams, quahogs, crabs and lobsters, or parts thereof, within the limits of the state.

**A.** "Retail dealer" as used in this section means a dealer who sells, serves, ships or transports marine species directly to the consumer.

**III. Application; license fees.** A person, firm or corporation may make application to the commissioner for retail sea food dealer's licenses on forms furnished by the commissioner.

**A.** The license fee is \$2 for each license which the applicant shall submit with his application.

**B.** A separate license is required for each market, hotel, restaurant, store or other place where clams, quahogs, crabs, lobsters, or parts thereof, are served or sold in the retail trade, and for each boat, or vehicle used to transport such marine species.

**IV. Section applies to marine species in any form; exception.**—This section applies to clams, quahogs, crabs, lobsters, or parts thereof, in any form whatever, whether the same are cooked or uncooked, are in or out of the shell, are alive or canned, or frozen or preserved in any manner.

**A.** Except that stores may possess, buy or sell any of the marine species, or parts thereof, covered by this section which are in hermetically sealed containers without being required to obtain a retail sea food dealer's license. (1959, c. 331, § 1.)

**Sec. 64. Wholesale sea food dealer's and processor's license.**—It is unlawful for any person, firm or corporation to engage in the wholesale trade in any fish, shellfish, lobsters, crabs, or parts thereof, or to process, preserve or can them in any manner for sale in the wholesale trade without holding a current written license from the commissioner as provided in this section.

**I. Exception for smoked herring and alewives.** This section does not apply to the smoking of alewives or herring as smoked herring or bloater, nor to the sale of same.

**II. License designation; general scope.** The license, designated as a wholesale sea food dealer's and processor's license entitles the holder when and where it is otherwise lawful, to buy and sell, both wholesale and retail, to serve, process, preserve, pickle, cook, freeze, smoke or can for sale, all species of fish, shellfish, lobsters and crabs, subject to the following provisions:

**A.** The licensee must in addition have a permit as provided by section 69 if he removes lobster meat from the shell.

**B.** The licensee must also have a shellfish shucking certificate as provided by section 55 if he removes clams, quahogs or mussels from the shell for shipment beyond the limits of the state.

**III. Scope of license for shipment and transportation.** The following provisions apply to the licensee's authority to ship and transport marine species:

**A.** The licensee may ship and transport all species of fish, except lobsters and shellfish, within and without the limits of the state.

**B.** The licensee may ship and transport lobsters and shellfish within the limits of the state.

**C.** The licensee may ship, but not transport, lobsters beyond the limits of the state.

**D.** The licensee may ship, but not transport, shellfish beyond the limits of the state, provided he holds a current shellfish certificate from the commissioner of agriculture.

**IV. Definitions of "to ship" and "to transport."** The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or to send by any method other than to ship as defined in this subsection.

**V. Sale to dealer is a sale in wholesale trade.** Any sale to either a wholesale sea food dealer or processor or to a retail sea food dealer is a sale in the wholesale trade and is unlawful unless the seller is licensed in accordance with the provisions of this section.

**VI. License fees; supplemental licenses.** The fee for a wholesale sea food dealer's and processor's license is \$35.

**A.** In addition the holder of a wholesale sea food dealer's and processor's license must obtain from the commissioner a supplemental license for each place of business, other than his principal place of business, and for each vehicle, airplane or boat, used to transport any marine species covered by this section.

1. The fee for each supplemental license is \$10.

**VII. General licensing provisions apply.** The provisions of section 23 apply to a wholesale sea food dealer's and processor's licenses. (1959, c. 331, § 1.)

#### **Regulation of Lobsters, Crabs and Crawfish.**

**Sec. 65. Sale of crawfish; imitation lobster unlawful.**—It is unlawful for any person to sell, offer for sale or possess for sale within the state, crawfish, so-called, in any form. It is unlawful to serve in public eating places, to label or advertise as lobster or imitation lobster any species of fish in either a canned, frozen or fresh state, whether removed from the shell or not, except the species of lobster commonly known as *Homarus americanus*.

**I. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1.)

**Sec. 66. Lobster and crab fishing license.**—It is unlawful for any person to fish for, take or catch any lobsters or crabs in any manner without having a current written license as provided in this section.

**I. Exception for crabs for home consumption.** This section does not apply to the taking or catching of crabs with bare hands, or with hook and line, that may be found along the shore, under rocks, or in pools left by the receding tides, provided they are used for home consumption by the taker, and are not sold.

**II. License designation; general scope.** The license, designated as a lobster and crab fishing license, entitles the holder to take lobsters and crabs when and where it is otherwise lawful to take them.

**III. Scope of license for transportation; license to be exhibited.** The license entitles the holder to transport lobsters and crabs within the limits of the state, provided he keeps his license upon his person while so transporting

lobsters or crabs, and provided he exhibits the license while so engaged on request of a coastal warden.

**IV. Residence requirements.** A person who has been a legal resident of the state for at least 3 years next prior to the date of his application may apply to the commissioner for a lobster and crab fishing license.

**A.** Any person who was previously a legal resident of this state and has reestablished his legal residence here for a period of one year next preceding his application may count the time of his nonresidence as part of his 3-year period.

**B.** A veteran of World War II or the Korean War who is honorably discharged, honorably separated or retired from active service in the armed forces may apply for a license if he has been a legal resident of this state for at least one year at any time prior to the date of his application, and is a legal resident of this state at the time of his application.

**V. License fee.** The fee for a lobster and crab fishing license is \$10 which the applicant shall enclose with his application.

**V-A. Lobster fund.** Five dollars of the license fee received from each \$10 for lobster and crab fishing licenses shall be allocated to the lobster fund.

**A.** The commissioner may expend any and all of the money in the lobster fund from time to time for the purpose of propagation of lobsters, and for purchasing seed lobsters from Maine lobster pounds and female lobsters from Maine wholesale lobster dealers and liberating said lobsters in Maine coastal waters.

**B.** The lobster fund does not lapse. Fees so collected or allocated in any one year may be used in the same or any succeeding year.

**VI. Certain persons considered as fishing.** Any person, assisting or helping another in lobster or crab fishing either by operating the boat or in attending to lobster or crab traps or pots, is considered as fishing and must have a current license under this section.

**VII. General licensing provisions apply.** The general licensing provisions of section 23 apply to lobster and crab fishing licenses. (1959, c. 331, § 1, 1961, c. 168, §§ 1, 2; c. 238, § 9.)

**Effect of amendments.** — Chapter 168, P. L. 1961, increased the fee in subsection V from \$5 to \$10 and added subsection V-A. Chapter 238, P. L. 1961, added "and is

a legal resident of this state at the time of his application" at the end of paragraph B of subsection IV.

**Sec. 67. Interstate lobster transportation license.** — It is unlawful for any person, firm or corporation to transport, or attempt to transport, in any manner any lobsters, or parts thereof, beyond the limits of the state, or to cause the same to be done, without having a current license from the commissioner as provided in this section.

**I. Exception for common carrier.** This section does not apply to a common carrier.

**II. License designation; application.** Any person may apply for a license, designated as an interstate lobster transportation license, to the commissioner on forms furnished by the commissioner. The application must contain the following:

**A.** A description of each boat, truck, automobile, airplane or other vehicle to be used in the transportation sufficient to identify it.

**B.** The name and address of the owner of each boat, truck, automobile, airplane or other vehicle to be used in the transportation.

**III. License fees.** The license fee is \$50 plus \$5 for each boat, truck, auto-

mobile, airplane, or other vehicle, beyond the first, to be used by the licensee in the transportation.

**A.** The license fee is, however, only \$25 plus \$5 for each vehicle, beyond the first, for the holder of a current wholesale sea food dealer's and processor's license.

**IV. Only vehicles listed in license may be used.** It is unlawful for any person, firm or corporation to use any boat, truck, automobile, airplane, or other vehicle for the transportation unless it is described in the license.

**V. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 90 days, or by both.

**VI. General licensing provisions apply.** The general licensing provisions of section 23 apply to interstate lobster transportation licenses. (1959, c. 331, § 1.)

**Sec. 68. Legal length of lobsters; double gauge measure.**—The commissioner shall provide a measure, designated as the state double gauge lobster measure, for determining the legal length of lobsters. The commissioner shall cause one gauge on the measure to be 3 3/16 inches in length and the other 5 inches in length. No evidence concerning the legal length of any lobster is admissible in any court in the state in any manner unless the legal length of the lobster has been determined by such a measure. The commissioner shall sell the measures at cost on request of any person who is the holder of a lobster and crab fishing license or who is licensed to handle or process lobsters in any manner.

**I. Short lobsters illegal; method of measurement; penalty.** It is unlawful for any person to buy, sell, expose for sale, give away, transport or have in possession any lobster, alive or dead, cooked or uncooked, which is less than 3 3/16 inches in length as determined by the state double gauge lobster measure by measuring 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.

**A.** And whoever does so shall be punished by a fine of \$10 and in addition by a fine of \$5 for each such lobster involved, or by imprisonment for not more than 90 days, or by both.

**II. Long lobsters illegal; method of measurement; penalty.** It is unlawful for any person to buy, sell, expose for sale, give away, transport or possess any lobster, alive or dead, cooked or uncooked, which is more than 5 inches in length as determined by the state double gauge lobster measure by measuring 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.

**A.** And whoever does so shall be punished by a fine of \$10 and in addition by a fine of \$25 for each such lobster involved, or by imprisonment for not more than 90 days, or by both.

**III. Exception if lobster immediately liberated alive when caught.** If any lobster which is shorter than 3 3/16 inches in length, or longer than 5 inches in length, as determined by the method of measuring provided in subsections I and II, or is mutilated in such a manner as to make accurate measurement impossible, is immediately liberated when caught, the person who so liberates the lobster is excused from the unlawful possession of that lobster.

**IV. Mutilated lobsters illegal; penalty.** It is unlawful to possess any lobster, or part thereof, alive or dead, cooked or uncooked, which is mutilated in such a manner as to make accurate measurement impossible.

**A.** And whoever does so shall be punished by a fine of \$25 for each such lobster involved, or by a fine of not more than \$100 if the number of lobsters

cannot be determined, or by imprisonment: for 90 days, or by both. (1959, c. 331, § 1. 1961, c. 238, § 10.)

**Effect of amendment.**—Prior to the 1961 amendment this section provided that the maximum legal length of lobsters should

be 5-3/16 inches until January 1, 1960, when it became five inches.

**Sec. 68-A. Catching lobsters by other than conventional method of lobster traps or pots illegal.**—It is unlawful to fish for or catch lobsters from the coastal waters of the state by any method other than the conventional method of lobster traps or pots.

**I. Exception if lobster immediately liberated alive when caught.** If any lobster so caught or taken is immediately liberated alive into coastal waters, then the person so liberating the lobster is excused from the unlawful taking or catching of it.

**II. Definition.** A “lobster trap or pot” for the purposes of this section shall be held to mean a stationary device set on the ocean bottom and commonly used along the Maine coast for catching lobsters. (1961, c. 204.)

**Sec. 69. Permit to remove lobster meat from shell.**—It is unlawful for any person, firm or corporation to remove lobster meat from the shell for sale without a current permit issued by the commissioner, except as provided in this section:

**I. Dealer may obtain permit; fee.** Any person, firm or corporation licensed as a dealer under sections 63 or 64 may be granted a permit to remove lobster meat from the shell upon written application to the commissioner and the payment of a fee of \$10.

**II. Permittee may remove meat from shell with limitations.** The permit entitles the holder to remove lobster meat from the shell subject to the following provisions:

**A.** It is unlawful to remove the meat from the shell at any place other than the permittee's place of business as stated in the permit.

**B.** The meat must come from legal sized lobsters.

**C.** Tail sections of lobster meat must be removed from the shell whole and intact.

**III. Permittee may sell, transport, ship, possess meat with limitations.** The permit entitles the holder to sell, to transport within the state, to ship anywhere, or to have in his possession lobster meat, when and where it is otherwise lawful to do so, subject to the following provisions:

**A.** The meat must come from legal sized lobsters.

**B.** The meat must conform to the provisions of section 71.

**C.** The meat must be kept in marked containers as provided in section 70.

**IV. Unlawful to ship, transport or possess lobster meat not removed under permit; exceptions.** It is unlawful for any person, firm or corporation to ship, transport or possess any lobster meat which has been removed from the shell for sale, unless the meat was removed from the shell by the holder of a permit provided in this section.

**A.** This subsection does not apply to a common carrier, nor to meat passing through this state under the authority of laws of the United States.

**V. Exception for hotels and restaurants.** No permit is required to remove lobster meat for serving in hotels and restaurants, provided the meat is removed on the premises, and lobster meat which has been removed from the shell in a hotel or restaurant for serving on the premises may be legally possessed by the hotel or restaurant.

**VI. Prima facie evidence meat removed for sale.** If any lobster meat

which has been removed from the shell is found on the premises of any place of business which is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it is *prima facie* evidence that the meat was removed for sale. (1959, c. 331, § 1.)

**Sec. 70. Lobster meat containers to be labelled.**—All barrels, boxes or other containers containing lobster meat which has been removed from the shell for sale must be plainly labelled with the name of the permittee and with the words "Lobster Meat Removed Under Permit Number," followed by the number of the permit under which the lobster meat was removed.

**I. Shipping, transporting or possession of unmarked containers illegal.** It is unlawful for any person, firm or corporation, except as provided in this section, to possess, ship or transport any lobster meat removed from the shell for sale unless the container is labelled as provided in this section.

**II. Prima facie evidence meat removed for sale.** If more than 10 pounds of lobster meat which has been removed from the shell is found in any motor vehicle or in any boat or airplane, or if any amount of lobster meat which has been removed from the shell is found in any place of business which is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it is *prima facie* evidence that the lobster meat was removed for sale.

**III. Exception for hotels and restaurants.** Lobster meat which has been removed from the shell in a hotel or restaurant immediately prior to and for the purpose of consumption on the premises need not be labelled as provided in this section, and the same may be legally possessed at the hotel or restaurant.

**IV. Exception for meat passing through state.** This section does not apply to lobster meat passing through this state under laws of the United States.

**V. Exception for some foreign canned meat.** This section does not apply to lobster meat which has been canned beyond the limits of this state in hermetically sealed containers which do not require refrigeration.

**VI. Exception for holder of wholesale sea food dealer's and processor's license.** The holder of a wholesale sea food dealer's and processor's license may possess lobster meat from other states and countries in containers which have not been marked as provided in this section if he meets all the requirements of section 72, subsection II. (1959, c. 331, § 1.)

**Sec. 71. Possession of certain lobster meat unlawful.**—It is unlawful to possess any tail section of lobster meat removed from the shell unless it conforms to the provisions of this section.

**I. Unlawful to possess tail section which is shorter than 4 $\frac{1}{4}$  inches; penalty.** It is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is less than 4 $\frac{1}{4}$  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 section.

**A.** Whoever possesses any such tail section of lobster meat shall be punished by a fine of \$10 and in addition by a fine of \$5 for each such tail section of lobster meat possessed, or by imprisonment for not more than 90 days, or both.

**II. Unlawful to possess tail section which is longer than 6 $\frac{1}{2}$  inches, penalty.** It is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is 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 section.

**A.** Whoever possesses any such tail section shall be punished by a fine of

\$10 and in addition by a fine of \$25 for each tail section of lobster meat possessed, or by imprisonment for not more than 90 days, or by both.

**III. Removal or possession of tail sections not whole unlawful.** It is unlawful to remove any tail section of lobster meat from the shell of a lobster unless it is removed whole and intact, and it is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is not whole and intact.

**IV. Hotels and restaurants may cut up tail sections for serving; prima facie evidence.** Hotels and restaurants may cut up tail sections of lobster meat on the premises immediately prior to and for the purpose of serving it to customers.

**A.** If cut up tail sections of lobster meat are found under refrigeration in a hotel or restaurant and they are unmixed with any other food, it is prima facie evidence that the tail sections were not immediately to be served to customers as provided in this subsection.

**V. Exception for wholesale dealer.** The holder of a wholesale sea food dealer's and processor's license in this state may at his regular place of business cut up lobster tail sections immediately prior to and for the purpose of preserving, canning or freezing them.

**VI. Exception for home consumption; prima facie evidence.** Any person who possesses lobster meat for the purpose of consumption by himself and his family, may cut up tail sections of lobster at his home immediately prior to and for the purpose of serving it to himself and his family.

**A.** If cut up tail sections of lobster meat are found at a place of business which is engaged in selling, processing or transporting food in any manner for human consumption, it is prima facie evidence that the same were not cut up immediately prior to and for the purpose of serving them to the respondent or his family.

**VII. Exception for common carrier.** The provisions of this section relating to the possession of cut up tail sections of lobster meat, or the possession of tail sections of lobster meat of illegal size, do not apply to a common carrier who possesses them for transportation if the containers are labelled as provided in section 77.

**A.** The meat may, nevertheless, be confiscated, and the person who shipped it is still responsible.

**VIII. Exception for meat passing through state.** The provisions of this section relating to the possession of cut up tail sections of lobster meat, or the possession of tail sections of lobster meat of illegal size, do not apply to lobster meat passing through this state under the authority of laws of the United States.

**IX. Exception for some canned lobster meat.** This section does not apply to lobster meat which has been canned in hermetically sealed containers which do not require refrigeration. (1959, c. 331, § 1.)

**Sec. 72. Possession of foreign lobster meat by wholesale dealer.—**  
The following provisions apply to foreign lobster meat which has been removed from the shell.

**I. Definition of foreign lobster meat.** "Foreign lobster meat" as used in this section means lobster meat which came from any other state or country.

**II. Wholesale dealer may possess under certain conditions.** The holder of a wholesale sea food dealer's and processor's license may possess foreign lobster meat which is removed from the shell, subject to the following provisions:

- A.** The shipping containers may not be opened until immediately prior to processing the meat.
- B.** The meat must be possessed for the purpose of canning or freezing it for resale as processed stews, newburgs, chowders or pies in the retail trade.
- C.** The meat may not be resold unless it is so processed.
- D.** The tail sections of such meat must not be cut up until immediately before processing, must be of legal length, and must not have been removed from lobsters of illegal size.
- E.** The dealer who purchases such meat is required to file a monthly statement of shipments received with the commissioner on forms furnished by the commissioner. (1959, c. 331, § 1.)

**Sec. 73. Only certain persons may raise, possess or molest a lobster trap or other contrivance.**—It is unlawful for any person, except a Maine coastal warden, the rightful owner, or a person having written permission from the rightful owner, to raise, lift, transfer or in any manner to molest any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, regardless who sets the pot, trap, car or other contrivance. It is also unlawful for any person, except a Maine coastal warden, the rightful owner, or a person having written permission from the rightful owner, to take, remove or carry away from the beach or shore, or have in his possession any pot, trap, car or other contrivance normally used for the taking or holding of lobsters or crabs, or any warp or buoy.

**I. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment of not more than 90 days, or by both.

**II. Suspension of lobster and crab fishing license for violation of this section; juveniles included.** In addition any person who is convicted of a violation of any provision of this section is ineligible to hold a lobster and crab fishing license for a period of 3 years from the date of final conviction.

**A.** The commissioner shall immediately after final conviction suspend the offender's lobster and crab fishing license, if any he holds, and shall suspend his right to obtain such a license during the 3-year period, both without a hearing.

**B.** If a person is adjudged to have committed a juvenile offense resulting from a violation of a provision of this section, the commissioner shall suspend his lobster and crab fishing license, and his right to obtain one, as though he had been convicted of a violation of this section instead of having committed a juvenile offense. (1959, c. 331, § 1; c. 378, § 32. 1961, c. 238, § 11.)

**Effect of amendments.** — The 1959 amendment, effective on its approval, January 29, 1960, substituted "adjudged to have committed a juvenile offense" for "convicted of juvenile delinquency" near the beginning of paragraph B of subsection

II and substituted "having committed a juvenile offense" for "juvenile delinquency" at the end of that paragraph.

The 1961 amendment added all of the first sentence following "crabs".

**Sec. 74. Hauling lobster pots, etc., at night unlawful.** — From June 1st to October 31st of each year, it is unlawful for any person to raise, haul or transfer from the tidal waters of this state any pot, trap or other contrivance that is set for the taking of lobsters or crabs during the period  $\frac{1}{2}$  hour after sunset until  $\frac{1}{2}$  hour before sunrise of the following morning.

**I. Definition of sunset and sunrise.** For the purpose of this subsection sunset and sunrise is that time given for sunset or sunrise in the Maine Farmer's Almanac for the particular day involved converted to the legal standard of time in force in this state on that day.

**II. Catching lobsters and crabs from tidal waters at night by any method unlawful.** From June 1st to October 31st of each year, it is unlawful for any person to catch any lobsters or crabs from the tidal waters of the state by any method during the period  $\frac{1}{2}$  hour after sunset until  $\frac{1}{2}$  hour before sunrise of the following morning. (1959, c. 331, § 1. 1961, c. 54.)

**Effect of amendment.**—The 1961 amendment added subsection II.

**Sec. 74-A. Lobster traps on trawls in York county.**—It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in any of the tidal waters of York county. (1961, c. 121.)

**Sec. 74-B. Lobster traps on trawls in Saco bay, Cumberland county.**—It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in that part of Saco bay west of a line running  $150^{\circ}$  true from the center of Spurwink river in Scarborough. (1961, c. 337.)

**Sec. 74-C. Lobster traps on trawls in certain tidal waters.**—It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in that part of the tidal waters of the state easterly from a line running true south from Pemaquid Point Light, Lincoln county, to a line true south from Owl's Head Light, Knox county. (1961, c. 337.)

**Sec. 75. Possession of egg bearing lobsters unlawful.** It is unlawful for any person to take, sell or have in his possession any lobster which is bearing eggs.

**I. Exception for egg bearing lobsters immediately liberated alive.** If any person who takes a lobster which is bearing eggs immediately liberates it alive when caught to the waters from which it was taken, he is excused from the unlawful possession of that lobster.

**II. Penalty.** Whoever violates any provision of this section shall be punished by a fine of \$10 for each lobster involved, or by imprisonment for not more than 90 days, or by both.

**III. Exception for permittee.** This section does not apply to any person who takes or holds them under authority of a permit from the commissioner as provided in section 76.

**IV. Exception for pounds; prima facie evidence.** This section does not apply to lobsters spawning in pounds if they are upon discovery in the pound immediately liberated alive in the coastal waters.

**A.** If an egg bearing lobster is found in a pound by a coastal warden, or other officer who is authorized to enforce the provisions of this chapter, it is prima facie evidence that the egg bearing lobster was previously discovered, and that the lobster is possessed in violation of this section. (1959, c. 331, § 1.)

**Sec. 76. Purchase of egg bearing lobsters; permit; regulations; V-notch lobsters.**—The commissioner may authorize the taking, holding and delivery to the custody of the department any egg bearing lobsters by any person holding any license connected with lobsters which is issued under the authority of any provision of this chapter.

**I. Regulations.** The commissioner may adopt regulations for the effective operation of this section, provided no regulation is inconsistent with any provision of this section.

**II. Written permit to possess, etc.** Any person authorized to take, hold and deliver such lobsters must have a written permit from the commissioner setting forth the name of the permittee, the date of the expiration of the per-

mit, and the conditions and limitations under which such lobsters may be taken, held and delivered by the permittee.

**III. Payment.** The commissioner shall pay the permittee for egg bearing lobsters to the extent of the appropriation authorized by the legislature for that purpose, but at a rate not above the current wholesale price of other lobsters in the state.

**IV. Commissioner shall mark and liberate lobsters; possession of V-notched lobsters and mutilated lobsters unlawful.** The commissioner shall cause the female lobsters bearing eggs to be liberated in the coastal waters of the state, as the commissioner may deem for the best interests of the state.

**A.** The commissioner shall cause such egg bearing lobsters, before being liberated, to be marked by cutting a V-notch in the middle flipper of their tails.

**B.** It is unlawful for any person to have in his possession any female lobster marked with a V-notch in the middle flipper of its tail, and any female lobster which is mutilated in such a manner to hide or obliterate such mark.

**1.** If any person catching any female lobster so marked or mutilated immediately after catching it returns it alive to the waters from which it was taken, he is excused from the illegal possession of that lobster.

**V. Penalty for the taking, holding or possession of female lobsters.** Whoever takes, holds, transports, ships or has in his possession any female lobsters in violation of any provision of this section shall be punished by a fine of not less than \$25, and in addition by a fine of \$10 for each such female lobster involved, or by imprisonment of not more than 90 days, or by both.

**VI. Prima facie evidence.** The fact that a lobster has a V-notch in the middle flipper of its tail, or has a mutilated middle flipper of its tail, is prima facie evidence that the lobster is a female lobster. (1959, c. 331, § 1.)

**Sec. 77. Lobster shipping containers must be marked.**—It is unlawful for any person, firm or corporation to ship, or offer for shipment, any lobsters, or any parts thereof, or cause the same to be done, except in barrels, boxes or other containers that are plainly marked on the outside with the word "LOBSTERS" in capital letters at least one inch in height, together with the full name of the shipper.

**I. Unlawful to transport lobsters unless containers marked.** It is unlawful for any common carrier, or any person, to accept lobsters for transportation, or to transport any lobsters, or parts thereof, unless they are packed and marked in accordance with this section.

**II. Penalty.** Whoever violates any provisions of this section shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment of not more than 90 days, or by both. (1959, c. 331, § 1.)

**Sec. 78. Lobster and crab pots and traps to be marked.**—It is unlawful for any person to set, raise or haul in or from the tidal waters of this state any pot or trap for any lobster or crab, or to cause the same to be done, without having it and the buoy attached thereto plainly carved or branded with his lobster and crab fishing license number.

**I. Lobster cars to be marked.** It is unlawful for any person, firm or corporation to use or set in tidal waters of this state any car or other contrivance for the holding or keeping of lobsters, or to cause the same to be done, without having it plainly carved or branded with the owner's lobster and crab fishing license number, retail sea food dealer's license number or wholesale sea food dealer's and processor's license number.

**II. Penalty.** Whoever violates any provision of this section shall be subject to the penalties provided in section 96 and in addition shall forfeit to the state,

the pot, trap, buoy, car or other contrivance not so marked, and any lobsters or crabs found therein. (1959, c. 331, § 1.)

**Sec. 79. Unlawful to set lobster traps near weir.**—It is unlawful for any person to set any lobster trap within 300 feet of the mouth of any fish weir which is licensed under section 43 or 44.

**I. Penalty.** Whoever violates any provision of this section shall be punished by a fine of \$10, or by imprisonment for not more than 30 days. (1959, c. 331, § 1.)

#### Regulation of Miscellaneous Marine Species.

**Sec. 80. Sea moss license, resident and nonresident.**—It is unlawful for any person to take sea moss from any of the coastal shores, or within the tidal waters of the state, unless he has a current written license from the commissioner as provided in this section:

**I. Resident license; designation; resident requirement; fee.** A license, designated as a resident sea moss license, may be issued to any person who has been a legal resident of the state for 6 months or more next prior to the date of his application.

**A.** The license fee for a resident sea moss license is \$2 which must accompany the application to the commissioner.

**II. Nonresident license; designation; fee.** A license, designated as a nonresident sea moss license, may be issued to any nonresident upon application to the commissioner.

**A.** The license fee for a nonresident sea moss license is \$15 which must accompany the application.

**III. Penalty.** 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. (1959, c. 331, § 1.)

#### License and Permit Suspension.

**Sec. 81. Suspension of licenses, permits and rights.** — The commissioner may suspend any and all licenses and permits issued by him under the authority of this chapter, and the right of any person, firm or corporation to obtain any and all such licenses and permits, subject to the provisions of this section:

**I. Exception.** This section does not apply to the suspension of a lobster and crab fishing license, nor to the suspension of the right to obtain such, because of a violation of section 73.

**II. Length of period of suspension.** On conviction of a violation of any provision of this chapter, except as provided in subsection I, or any regulation pertaining to sea and shore fisheries, the commissioner may suspend any and all of the offender's licenses and permits, and his right to obtain any and all such licenses and permits as follows:

**A.** On the first conviction the suspension may not exceed a period of 6 months from the date of final conviction.

**B.** On the 2nd conviction the suspension may not exceed a period of 9 months from the date of final conviction.

**C.** On the 3rd or subsequent conviction the suspension may not exceed a period of one year from the date of final conviction.

**III. Rules of construction for subsection II.** The following rules of construction apply to subsection II of this section:

**A.** The provisions of subsection II apply whether or not the number of convictions is alleged in the criminal complaint.

**B.** Any conviction which happened 7 years or more prior to the last conviction is not counted in determining the number of convictions for the purposes of subsection II.

**C.** Any conviction of a violation of the Revised Statutes, chapter 38, is considered a conviction for determining the number of convictions for the purposes of subsection II, subject to paragraph B of this subsection. Likewise any conviction of a violation of a rule or regulation authorized by chapter 38 is considered a conviction.

**IV. Suspension for persons adjudged to have committed a juvenile offense.** When a person has been adjudged to have committed a juvenile offense as a result of a violation of any provision of this chapter, or of any regulation adopted under authority of this chapter, the commissioner may suspend any and all of his licenses and permits, and his right to obtain them, in the same manner as though he were found guilty of the particular violation instead of having committed a juvenile offense.

**V. Hearing may be requested in certain cases.** Any person whose license, permit or right thereto has been suspended under subsections II, III or IV may request the commissioner for a hearing.

**A.** At the hearing the person applying for reinstatement of his license, permit or right may present any relevant facts concerning the violations.

**B.** The commissioner may reinstate the license, permit or right after the hearing, or he may shorten the time of suspension if he is satisfied that either procedure would be in the interest of justice.

**VI. Suspension when conviction appealed.** When an appeal has been taken from any conviction of any violation of any provisions of this chapter, or of any regulation adopted under authority of this chapter, the commissioner may suspend, until final court disposition, the license, permit or right thereto of the respondent to conduct the particular activity in which he was engaged at the time of the alleged violation, and the commissioner may also suspend for the same period any and all licenses and permits held by the respondent, and any and all rights he has to obtain such licenses or permits.

**VII. Duty to remove traps, etc., after lobster and crab fishing license suspended.** Any person whose lobster and crab fishing license has been suspended shall within 5 days thereafter remove from the water all his pots, traps, cars or other devices used, or usable, in the catching and holding of crabs or lobsters.

**VIII. Specific violations; penalties.** Whoever engages in any pursuit while his license or permit therefor, or his right to obtain such, is under suspension, or whoever possesses any marine species while his license or permit therefor, or his right to obtain such, is under suspension, shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1; c. 378, § 33.)

**Effect of amendment.**—P. L. 1959, c. 378, effective on its approval, January 29, 1960, substituted “adjudged to have committed a juvenile offense” for “found guilty of juvenile delinquency” near the beginning of subsection IV and substituted “having committed a juvenile offense” for “juvenile delinquency” at the end of that subsection.

#### **Evidence, Procedure, County Attorney.**

**Sec. 82. Certificate of commissioner or chief warden admissible in evidence.**—A certificate of the commissioner, or of the chief coastal warden, signed by either, stating what the records of the commissioner's office show on any given matter are admissible as evidence in all courts to prove what the records of the commissioner's office are on that matter.

**I. Certificate prima facie evidence person not the holder of a license**

**or permit.** A certificate of the commissioner, or of the chief coastal warden, signed by either, stating that the records of the commissioner's office do not show that a particular person, firm or corporation, on a given date, held any certain license or licenses, or permit or permits, which the commissioner is authorized to issue under the provisions of this chapter, is prima facie evidence that the person, firm or corporation named in the certificate did not hold such a license or permit on the date specified in the certificate.

**II. Certificate prima facie evidence of license, permit or right suspension.** A certificate of the commissioner, or of the chief coastal warden, signed by either, stating that the records of the office of the commissioner show that on a given date a particular person's, firm's or corporation's license or licenses, or permit or permits, or rights thereto, all as described in subsection I, were under suspension, is prima facie evidence of such suspension.

**III. Necessary foundation to admit certificate in evidence.** Any certificate provided for in this section is admissible in evidence, without further foundation, in any court after testimony by any coastal warden that he recognizes the exhibit, and that it is a certificate which he received after requesting the same from the office of the commissioner by telephone or otherwise.

**IV. Section does not apply to proof of regulations.** This section does not apply to the proof of regulations adopted by the commissioner under the authority of section 16 or 17, nor to the proof of regulations adopted by the salmon commission. Certificates for the proof of those regulations are provided in section 22. (1959, c. 331, § 1. 1961, c. 238, § 12.)

**Effect of amendment.**—The 1961 amendment added the last sentence of subsection IV.

**Sec. 83. Proceedings in case of violation by corporation.**—In case of violation of any provision of this chapter, or of any regulation authorized by this chapter, by a corporation, the warrant may be served by giving in hand to the president, secretary, clerk or manager of the corporation a true attested copy of the complaint and warrant.

**I. Service on foreign corporations.** If the corporation is a foreign corporation, it may be served on the corporation's attorney appointed under chapter 53, section 127. If the corporation has not appointed such an attorney, it may be served on the secretary of state, provided another attested copy of the complaint and warrant is sent by registered mail, return receipt requested, to the corporation's home office. For service on the secretary of state the returned receipt and the officer's return of service showing compliance with this section constitute sufficient service regardless of the provisions of chapter 53, section 127.

**II. Corporation deemed in court after service.** The corporation is deemed in court and subject to the court's jurisdiction upon return to the court of a warrant served as provided in this section.

**III. Forfeiture for failure to appear; forfeiture deemed conviction.** If the corporation fails to appear in court within 10 days of service of the warrant, court holidays not counted, the court may order any sum of money not exceeding the maximum fine for the alleged violation to be forfeited by the corporation to the use of the state.

**A.** In addition, such a forfeiture is deemed a conviction of a provision of this chapter for the purposes of suspension of licenses, permits or rights thereto.

**IV. Fines and forfeitures collected by execution.** Any fine or forfeiture imposed by the court may be collected by an execution issued by the court against the property of the corporation as in civil actions.

**V. Section does not exempt agents, etc.** This section does not exempt any agent, officer or employee of the corporation from prosecution. (1959, c. 331, § 1.)

**Sec. 84. County attorney to prosecute.** — Each county attorney shall prosecute all violations of this chapter occurring within his county when requested by the commissioner, a coastal warden, or other person authorized to enforce any provision of this chapter. (1959, c. 331, § 1.)

**Sec. 85. Witness compelled to testify.** — In any prosecution for a violation of any provision of this chapter, or for a violation of any regulation authorized by this chapter, any person, whether a participant or not, when requested by the county attorney, the commissioner or the person conducting the prosecution, may be compelled to testify as a witness against any other person charged with any such violation.

**I. Evidence may not be used against witness.** If the witness, after his refusal to answer the question on the grounds of self-incrimination, is compelled to answer, the evidence so given may not be used against him in any criminal prosecution. (1959, c. 331, § 1.)

#### Impersonating Warden.

**Sec. 86. Unlawful to impersonate coastal warden.** — It is unlawful for any person to impersonate a coastal warden, or to falsely represent himself to another person as a coastal warden. (1959, c. 331, § 1.)

#### Jurisdiction, Search, Seizure, Stopping Persons.

**Sec. 87. Jurisdiction of courts.** — Trial justices and municipal courts within their counties have concurrent original jurisdiction with the superior court in all prosecutions under this chapter. (1959, c. 331, § 1.)

**Sec. 88. Arrest without warrant.** — Any officer authorized to enforce the sea and shore fisheries laws may, without a warrant, arrest any violator of those laws.

**I. Respondent to be taken to nearest court.** The arresting officer shall, with reasonable diligence cause the violator to be taken, for a warrant and trial, before the municipal court in the same county where the alleged offense was committed which is nearest to where the alleged offense was committed.

**A.** If a trial justice court is in the same county, and nearer than the municipal court to where the alleged offense was committed, the violator may be taken before that trial justice. (1959, c. 331, § 1.)

**Sec. 89. Seizure and disposition of equipment and marine species for law violation.** — All fish, shellfish, lobsters and other marine species, and parts thereof, which are taken, caught, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of this chapter, or in violation of any regulation authorized by this chapter, is contraband and is subject to forfeiture to the state in accordance with the provisions of this section and section 90. All equipment used or possessed in violation of any provision of this chapter, or in violation of any regulation authorized by this chapter, is likewise contraband and so subject to forfeiture.

**I. May be seized without warrant; warden's duty to libel; contents of libel.** Whenever a coastal warden may find any of the above items, he may seize the same without a warrant and keep them for a reasonable time. If he does seize them and does not return them to the owner, except as provided in subsection II, he shall within a reasonable time file a libel with a magistrate. He shall insert the following information in the libel:

- A. The description of the items seized by him.
- B. A statement that they were seized by him on a certain day in a certain municipality.
- C. A statement that the items seized were either taken, caught, bought, sold, shipped, transported, possessed or used in violation of a provision of this chapter, or a regulation authorized by this chapter, whichever is applicable.
- D. A prayer for a decree of forfeiture of those items.

**II. Items which need not be libeled.** The following items need not be libeled:

- A. If the aggregate value of all items seized is less than \$10, unless there is reasonable doubt as to their ownership.
- B. All marine species of illegal size, shellfish taken from polluted areas, female egg bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, and any other marine species, the possession of which is unlawful throughout the state.

**III. Order of notice; contents.** The magistrate to whom the libel is directed shall fix a time for the hearing of the libel. He shall issue an order of notice to all persons interested, in which order of notice he shall insert the following:

- A. A citation to all persons interested to appear at the time and place appointed for the hearing and show cause, if any they have, why the items described in the libel should not be declared forfeited to the state.
- B. The time and the place fixed for the hearing.
- C. An order that a true copy of the libel and the order of the notice, attested by a coastal warden, be posted in 2 conspicuous places in the municipality, or place where the items were seized, at least 10 days before the day set for the hearing.
- D. In event that the items were seized from the possession of a common carrier, he shall order the common carrier served with a true copy of the libel and the order of court, attested by a coastal warden, by leaving the same at his place of business nearest to the place where the items were seized, at least 10 days before the day set for hearing.

**IV. Sale or other disposition prior to hearing.** If after receipt of the libel and before the hearing, the magistrate finds that the items seized will be unsuitable for food, or other use, at the day of hearing, he shall order the officer who made the seizure to dispose of the same.

- A. The officer may then dispose of the items at public or private sale, or otherwise dispose of such property.
- B. If the items are disposed of by sale, the officer shall hold the proceeds of the sale subject to the decision of the court as to final disposition of them.

**V. Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines.** If no claimant appears at the hearing on the libel at the time specified in the order of notice, on return of service of the officer in compliance with the order of notice, the magistrate shall declare the items forfeited to the state.

- A. If the items have been sold in accordance with subsection IV, the officer shall turn the proceeds over to the magistrate who shall dispose of them in the same manner that he disposes of fines collected under this chapter.

**VI. Duty of claimant to file written claim on or before hearing day; contents.** If any person appears at the time of the hearing on the libel as specified in the order of notice, and claims title to any item listed in the libel, or claims the right to possession of any item, he shall file a written claim with

the magistrate on or before the day set for hearing. The claim must contain the following:

- A. A statement of his title or right so claimed and the foundation thereof.
- B. A statement of the specific items claimed.
- C. A statement of the time and the place of the seizure, and the name of the officer by whom they were seized.
- D. A statement that the items claimed were not held in possession or use, with his knowledge or consent, in violation of any provision of this chapter, or in violation of any regulation authorized by this chapter.
- E. He shall state his business and his place of residence.
- F. He shall also sign and make oath to the claim before the magistrate.

**VII. Claimant admitted as party; hearing.** If any person, firm or corporation makes a written claim as provided in subsection VI, the magistrate shall admit him as a party to the process, shall proceed to determine the truth of the allegations in the claim and libel, and shall hear any relevant evidence offered by the libellant or the claimant.

**VIII. Court order if claimant found entitled to any item claimed.** If the magistrate upon hearing is satisfied that any item listed in the claimant's claim was not, with the claimant's knowledge or consent, used or possessed in violation of any provision of this chapter or any regulation authorized by this chapter, and that the claimant has title or is entitled to possession of that item; he shall give the claimant an order in writing. The magistrate shall direct the order to the libellant commanding him to deliver that item to the claimant; or, if the item has been sold, to deliver the proceeds of the sale to the claimant within 48 hours after the demand.

**IX. Forfeiture; executions for cost; appeal; recognizance.** If the magistrate finds that the claimant is not entitled to any item claimed, the magistrate shall render judgment against the claimant for the state for costs to be taxed as in civil cases before the magistrate. The magistrate shall also issue an execution for the costs as in civil cases. The magistrate shall also declare the articles forfeited to the state. If the items have been sold in accordance with subsection IV, the officer shall turn the proceeds of the sale over to the magistrate who shall dispose of them in the same manner he disposes of fines collected under this chapter.

- A. The claimant may appeal to the superior court next to be held within the county where the magistrate's court is located; and, if he appeals, the magistrate may order the claimant to recognize with sureties as on appeals in civil cases from the magistrate.
- B. The magistrate may order that the items or proceeds of sale remain in the custody of the officer pending the appeal.

**X. Disposition of forfeited items.** The officer shall turn over any articles declared forfeited to the commissioner who shall dispose of the same. (1959, c. 331, § 1.)

**Sec. 90. Fees and forms for libel proceedings.**—This section applies to the libel proceedings authorized in section 89.

- I. Fees.** The fees to be taxed on the libel proceedings are as follows:
  - A. For the libel and order of notice, \$3.
  - B. For the entry of the libel, \$1.
  - C. For the hearing, \$1.
  - D. For posting the notices, and the officer's return of service, \$4.
  - E. For the delivery or restoration of the items, \$4.

**F.** For all the officer's travel in connection with the entire proceeding, 10¢ per mile.

**II. Forms.** The forms set forth in this subsection, with such changes as adapt them to the particular court, locality and circumstances of the case, are sufficient in law:

**A. Form of libel:**

STATE OF MAINE

County of ..... SS To the Honorable .....  
....., a trial justice, judge or recorder of ..... court, in and for said county:

Your libellant, ..... of ....., Maine, a coastal warden for the state of Maine, states that on the ..... day of ....., 19 ...., at .... in said county, he seized certain fish, shellfish, lobsters, or other marine species, or parts thereof, or certain equipment, described as follows:

.....  
That the items were (were not) seized in the possession of a common carrier, to wit: one .....

.....  
That the items seized and above described were either taken, caught, bought, sold, shipped, transported, possessed or used in violation of a provision of the Revised Statutes of Maine of 1954, chapter 37-A, as revised, or in violation of a regulation authorized by that chapter; to wit: that they were ..... in violation of the following section of chapter 37-A, or the following regulation: .....

.....  
Wherefore he prays for a decree of forfeiture of said items in accordance with the provisions of the Revised Statutes of Maine, chapter 37-A, section 89, and amendments thereto.

Signed at ....., in said County, this  
day of ....., A.D. 19....

(Signed) .....  
Coastal Warden

**B. Form for order of notice:**

STATE OF MAINE

(L. S.)

County of ..... SS

To all persons interested in the libel of ..... hereunto annexed and made part of this order of notice:

You are hereby notified to appear before me at the time and place appointed for the hearing in this order of notice, and show cause, if any you have, why the items described in said libel should not be declared forfeited to the state.

It is hereby ordered that the hearing be held on the ..... day of ..... A.D. 19.... at ..... of the clock in the ..... noon, at ..... in the ..... of ..... in said county.

It is further ordered that a true copy of said libel and this order of notice, attested by a coastal warden, be posted in two conspicuous places in the ..... of ..... in said county, the municipality where said items were seized, at least 10 days before the day of hearing.

(If the items were seized while in the possession of a common carrier, insert the order in the following paragraph, otherwise strike it out.)

It is further ordered that a true copy of said libel and this order of notice, attested by a coastal warden, be served on the common carrier in whose possession they were seized, to wit: one ..... by leaving the same at his place of business nearest to where they were seized, at least 10 days before the day of hearing.

Ordered this ..... day of ..... A.D. 19.... by me ..... trial justice, recorder or judge of the ..... Court.

..... Said Trial Justice, Recorder or Judge.

**C. Form for officer's return of service:**

## STATE OF MAINE

..... SS ..... A.D. 19.... I have this day made service of the within libel and order of notice, by posting a true copy of each, attested by me, in two conspicuous places in said ..... to wit: one at ..... and one at ..... in accordance with said order of notice.

(If the items were seized in possession of a common carrier, the officer's return should contain the following paragraph, otherwise it should be stricken out.)

And on the ..... day of ..... A.D. 19.... I served a true copy of the libel and the order of notice, attested by me, on the common carrier in whose possession said items were seized, by leaving the same at his place of business nearest to where they were seized, to wit: at ..... in the ..... of ..... and county of .....

The fees which may be taxed for my services, if any, are as follows:

Posting notices and return of service .....	\$4.00.
Travel .....	.....
	Total \$

..... (Signed) .....

Coastal Warden

**D. Form for order of forfeiture:**

## STATE OF MAINE

(LS)

..... SS

To ..... a coastal warden of the state of Maine, or any such coastal warden:

Whereas it appears that the within libel and notice were made in accordance with the statute in such case made and provided, which libel and order of notice are made a part of this order of forfeiture,

And whereas from the coastal warden's return it appears that service was made in accordance with said order of notice,

And whereas hearing was held at the time and place fixed in said order of notice,

And whereas one ..... of ..... did appear and claim said ..... by filing a written claim as provided in the Revised Statutes of 1954, chapter 37-A, section 89, as amended, and after a full hearing on the part of the claimant and the libellant it appeared to me that said claimant was not entitled to any item claimed, and judgment is therefore rendered against the said claimant for the state for costs which are taxed at ..... dollars ..... and ..... cents.

(Or in substitute of the above paragraph the following paragraph if it is applicable:)

And whereas no person appeared at said hearing and filed a written claim as provided in the Revised Statutes of 1954, chapter 37-A, section 89, and amendments thereto.

It is therefore ordered by me, said trial justice, judge or recorder that all said items described in said libel be forfeited to the state.

You are hereby ordered to turn said forfeited items over to the commissioner of sea and shore fisheries.

Ordered by me, said trial justice, judge or recorder, this ..... day of ..... A.D. 19.....

(Signed) .....

Said Trial Justice, Judge, Recorder

(1959, c. 331, § 1.)

**Sec. 91. Coastal wardens to report to commissioner.** — The coastal warden making any seizure under section 89 shall within 10 days thereafter report all the particulars of the seizure, the sale or other disposition, the court action taken, and all expenses involved to the commissioner. (1959, c. 331, § 1.)

**Sec. 92. Search warrants and authority to search without one.** — The commissioner or any coastal warden may, with or without a search warrant, open, enter and examine all buildings, camps, vessels, boats, airplanes, motor vehicles, all other vehicles and all other places if he has reason to believe that fish, shellfish or lobsters, other marine species or parts of any of them are to be found in the place searched, and if he has reason to believe those marine species were taken or possessed in violation of any provision of this chapter or in violation of any regulation authorized by this chapter. He may likewise open and examine all boxes, barrels, packages or other containers. He may seize any such marine species found.

**I. Dwelling may be searched only with warrant and only in the daytime, sealed railroad car only with warrant.** No dwelling house may, however, be searched without a search warrant, and then only in the daytime, and no sealed railroad car may be searched without a warrant.

**II. Authority to issue search warrants; contents.** Any magistrate may issue warrants to search any place within his jurisdiction for the purposes set forth in this section upon complaint under oath of the commissioner or a coastal warden.

**A.** The complaint must contain the following:

1. The particular marine species sought.
2. The particular dwelling house, railroad car or other place to be searched.
3. A statement that the complainant has reason to believe the particular marine species are now held or concealed in the particular dwelling house, railroad car or other place.
4. A statement that the complainant has reason to believe that the particular marine species were taken or possessed in violation of a provision of this chapter, or in violation of a regulation authorized by this chapter.
5. A request that a search warrant be issued.

**B.** The search warrant must contain the following:

1. Reference to the complaint annexed as part of the warrant, or all the information required in the complaint.
2. An order for the search of the particular place described in the complaint for the particular marine species described in the complaint.

(1959, c. 331, § 1.)

**Sec. 93. Boats, vehicles and persons to stop on request of coastal warden in uniform.**—It is unlawful for the operator of any boat, motor vehicle, other vehicle or conveyance of any kind to fail or refuse to stop on signal or request of a coastal warden in uniform. It is unlawful for any other person to fail or refuse to stop on signal or request of any coastal warden in uniform.

**I. Unlawful to fail to remain stopped.** It is unlawful for that operator or other person, after he has so stopped, to fail to remain stopped until the coastal warden reaches his immediate vicinity and makes known to that operator or other person the reason for the request or signal.

**II. Unlawful to fail to standby for inspection.** It is unlawful for any person to fail or refuse to standby for inspection on request of any coastal warden in uniform.

**III. Unlawful to dump lobsters, containers, etc., in water after signal to stop.** It is also unlawful for any person, who has been requested or signalled to stop by a coastal warden in uniform, to throw or dump into any water any lobster, or any pail, bag, barrel or other container of any type, or the contents thereof, before the coastal warden has inspected the same.

**IV. Penalty.** Whoever violates any provision of this section shall be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1.)

#### Penalties, Disposition of Fines, Costs of Imprisonment.

**Sec. 94. Recovery of fines, fees and forfeitures; disposition.**—This section applies to all fines, fees, forfeitures and penalties authorized by this chapter, except those authorized for municipal ordinances.

**I. Methods of recovery.** Any of them may be recovered by complaint, indictment or civil action brought in the county where the offense was committed. The civil action must be brought in the name of the state.

**A.** The provisions of this subsection do not prevent any other remedy or means of recovery of any fine, fee or forfeiture which may otherwise be authorized in this chapter.

**II. Disposition of fines, fees and forfeitures; commissioner's records.** All of them, except where otherwise expressly provided in this chapter, accrue to the commissioner, and he shall pay them to the treasurer of state.

**A.** The commissioner shall also make, and keep in his office an itemized record of the amount of each fine, fee, forfeiture, penalty and collection with the name of the payer of each. (1959, c. 331, § 1. 1961, c. 317, § 81.)

**Effect of amendment.**—The 1961 amendment substituted "a civil action" for "an action of debt" in both sentences of the opening paragraph of subsection I of this section.

**Sec. 95. State to pay costs of imprisonment.**—The state shall pay to the county involved the costs of imprisonment in the county jail for violation of any provision of this chapter or any regulation authorized by this chapter. The costs for any single imprisonment may not, however, exceed the average amount paid for board of federal prisoners. (1959, c. 331, § 1.)

**Sec. 96. General penalty where other penalty not provided.** — Whoever violates any provision of this chapter, or any regulation authorized by this chapter, or any rule and regulation authorized by the Revised Statutes of 1954, chapter 38, or any regulation adopted by the commissioner by legislative directive, excepting only those violations for which specific penalties are provided, shall be punished by a fine of not less than \$10 nor more than \$300, or by imprisonment for not more than 90 days, or by both. (1959, c. 331, § 1.)

### Biennial Pamphlet of Laws.

**Sec. 97. Commissioner to publish biennial pamphlet of sea and shore fisheries laws.**—As soon as possible after adjournment of each legislature, the commissioner shall publish in pamphlet form all the laws of this chapter as amended.

**I. May include related laws.** The commissioner may include in the pamphlet regulations adopted pursuant to the Revised Statutes, chapter 38, regulations adopted pursuant to this chapter, regulations adopted pursuant to legislative directive, private and special laws concerning sea and shore fisheries, and any other related laws, regulations or ordinances which the commissioner feels necessary or helpful to inform the public.

**II. Size, printing and distribution of pamphlet.** The commissioner shall determine the size of the pamphlet, the manner of printing it, and the distribution of it, as he feels necessary or helpful to carry out the intent of this section. (1959, c. 331, § 1.)

### General Savings Clause.

**Sec. 98. General savings clause.**—The commissioner, the members of the advisory council, the members of the civil service commission, the members of the Atlantic sea run salmon commission, the members of the coastal warden service, and all personnel and employees of the department who were appointed or hired under the Revised Statutes of 1954, chapter 38, and who up to the effective date of this revision still retained their respective positions, are still in office or employed until the end of their normal terms as set forth in the law under which they were appointed or hired, but in all other respects they are subject to this chapter as though appointed or hired under it.

**I. Licenses and permits.** All licenses and permits issued under the Revised Statutes of 1954, chapter 38, which were still in force up to the effective date of this revision, continue in force until their normal expiration date as set forth in the law under which they were issued, but in all other respects they are considered subject to this chapter as though they were issued under it. (1959, c. 331, § 1.)

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## Chapter 37-B.

### Atlantic States Marine Fisheries Compact.

**Sec. 1. Governor to execute compact with other states.**—The governor of this state is authorized and directed to execute a compact on behalf of the state of Maine with any one or more of the states of New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

#### Atlantic States Marine Fisheries Compact

The contracting states solemnly agree:

##### Article I.

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the