

MAINE STATE LEGISLATURE

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Chapter 38.

Department of Sea and Shore Fisheries.

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Commissioner. Rules and Regulations.

Sec. 1. Commissioner of sea and shore fisheries; appointment; term; salary; reports.—A commissioner of sea and shore fisheries, as heretofore appointed and hereinafter in this chapter called the "commissioner," shall be appointed by the governor, with the advice and consent of the council, to serve for 4 years or during the pleasure of the governor and council. He shall serve until his successor is appointed and qualified. Any vacancy in the office shall be filled by an appointment for a like term.

The commissioner shall receive such compensation as shall be fixed by the governor and council.

The commissioner shall make a report to the governor and council on or before the 1st day of January for the biennium ending June 30th prior thereto. (R. S. c. 34. 1947, c. 332. 1951, c. 266, § 45.)

Sec. 2. Powers and duties; office; employees.—The commissioner shall have general supervision of the administration and enforcement of the sea and shore fisheries laws under the provisions of this chapter, except as otherwise provided by law. He shall have an office at the state capitol and adequate facilities for the transaction of the business of his department, which shall be known as the department of sea and shore fisheries, as heretofore established and hereinafter in this chapter called the "department."

The commissioner may employ one or more clerks, subject to the provisions of the personnel law. In the event of a vacancy in the office of the commissioner because of death, resignation, removal or other cause, the various clerks shall continue in office and perform such duties as have been prescribed for or assigned to them until said vacancy has been filled by the appointment and qualification of a new commissioner. (R. S. c. 34. 1947, c. 332.)

See c. 16, § 30, re state owned cars; c. 16, § 160, re gasoline tax refund for research.

Sec. 3. Jurisdiction of migratory fish.—All sea salmon, shad, alewives

and smelts, wherever found, that migrate from the ocean into fresh water shall be under the concurrent jurisdiction of the commissioner of sea and shore fisheries and the commissioner of inland fisheries and game.

The said commissioners shall cooperate in effectively supervising overlapping jurisdiction and may jointly deputize wardens to that end. (R. S. c. 34. 1947, c. 332.)

See c. 37, § 64, re jurisdiction with inland fish laws.

Sec. 4. Advisory council; appointment; terms; salary; expenses; meetings.—An advisory council, as heretofore appointed by the governor with the advice and consent of the council, shall consist of 5 members. Appointment shall be for the term of 3 years and until successors are appointed and qualified, provided that the initial appointment of 3 such members shall be for a term of 2 years instead of 3 years. Upon the death, resignation or removal from office of any person so appointed, the governor, with the advice and consent of his council, shall appoint a member to serve for the unexpired term. The members of the advisory council shall receive no compensation for their services, but said council shall be allowed actual expenses not to exceed \$500 for each fiscal year. The advisory council shall render to the commissioner information and advice concerning the administration of the department. The advisory council shall hold regular meetings with the commissioner or his agent at the state capitol on the 1st Thursday of June and December of each year, and special meetings at such other times and places within the state as would seem advisable. At the meeting held on the 1st Thursday of June of each year or at a special meeting thereafter, the advisory council may elect one of its members as chairman and one as vice-chairman. (R. S. c. 34. 1947, c. 332.)

Sec. 5. Rules and regulations.—Whenever any existing conditions endanger the conservation of fish, shellfish, lobsters, crabs, shrimp or marine worms in any coastal waters or flats of the state, the commissioner, with the advice and approval of the advisory council, shall make such rules and regulations as he may deem necessary providing for the times, number, weight and manner in which such fish, shellfish, lobsters, crabs, shrimp or marine worms may be taken from such waters or flats, in the manner hereinafter provided.

Petitions stating the conditions endangering the conservation of such fish, shellfish, lobsters, crabs, shrimp or marine worms, and the regulations which are desired as a remedy, may be addressed to the commissioner by a majority of the municipal officers or 25 citizens of the municipality in which the waters exist, or of any town adjacent to the waters or flats affected; or if the waters or flats are in unorganized territory, by a majority of the county commissioners of the county in which said waters or flats exist. Such petitions shall be filed in the office of the commissioner before the 1st day of September of each year.

After receipt of such a petition, except when in the opinion of the commissioner an emergency exists, hearing shall be held in a place near where the waters or flats lie during the period from September 15th to December 1st, inclusive, of the year in which said petition has been filed, before the commissioner or such subordinate officer of the department as the commissioner may designate, at a date and place to be designated by the commissioner.

Notice of the hearings to be held and the time and place thereof shall be by publication once a week for 2 successive weeks prior to the hearing in a newspaper published in the county where said hearing is to be held, and if no paper is published there, in a newspaper having state-wide circulation.

After hearing pursuant to the petitions filed, the commissioner, with the advice and approval of the advisory council, shall make such regulations as may be deemed remedial of any danger to such conservation proven to exist at the time of said hearing, such regulations to become effective on January 1st of the year

next following the date of the petition. The commissioner shall cause the regulations to be reduced to writing, and publish the same once in a newspaper published in the county where the waters or flats are situated and which are affected thereby, or if no paper is published there, in a newspaper having state-wide circulation, the publication being prior to January 1st, following the date of the petition.

If an unusually large concentration of fishermen or diggers should occur on any of the coastal waters or flats in this state so that the supply of fish, shellfish, lobsters, crabs, shrimp or marine worms on those waters or flats might be depleted, or when for any reason the conservation of these species appears to be endangered, the commissioner may declare an emergency and order a hearing held at a time and place to be designated by him, and shall cause notice thereof to be published at least 5 days prior to the hearing in a newspaper published in the county where the waters or flats are situated, and if no newspaper is published in that county, then the notice shall appear in a newspaper having state-wide circulation. After the hearing, the commissioner may promulgate regulations providing for the times, number, weight and manner in which such fish, shellfish, lobsters, crabs, shrimp or marine worms may be taken from such waters or flats. He shall reduce the regulations to writing and shall cause notice of the same to be published, the regulations to take effect upon the day following the publication thereof.

Whenever the commissioner of agriculture shall certify to the commissioner of sea and shore fisheries that clams, quahogs, or mussels from certain flats or shores are contaminated or polluted and are not in conformity with regulations promulgated by the said commissioner of agriculture and the regulations and standards of purity established by the United States Public Health Service and not acceptable for shipment in interstate commerce, the said commissioner of sea and shore fisheries is authorized to close such flats, without notice or hearing, to all digging of clams, quahogs and mussels.

A certified copy of each rule and regulation issued under the provisions of this chapter shall be filed by the commissioner with the secretary of state and with the clerk of the superior court in the county where the waters or flats are situated and which are affected thereby. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 1. 1951, c. 175, § 1.)

See § 38, re Atlantic sea run salmon; c. 10, § 15, re notices on petition to legislature for special legislation relating to fish.

Sec. 6. Rules and regulations to continue until changed.—All rules and regulations of the commissioner now in effect or hereafter promulgated shall remain in force until changed by further rules and regulations of said commissioner or by the legislature. All rules and regulations promulgated by legislative directive shall be published and filed as hereinbefore provided. All rules and regulations shall have the force of law. Whoever violates any provision of any rule or regulation of the commissioner promulgated by virtue of this chapter shall be punished by the penalties provided in section 141. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 2.)

Sec. 7. Willful defacement of notice of commissioner.—Whoever willfully mutilates, defaces or destroys any notice, rule or regulation of the commissioner, posted in conformity with the provisions of this chapter, shall be punished by a fine of \$50, or by imprisonment for 30 days, or by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332.)

Coastal Wardens.

Cross Reference.—See c. 16, §§ 2, 3, 4, re bonds of state employees.

Sec. 8. Power of commissioner as warden; coastal wardens; ap-

pointment; powers and duties; tenure; service of processes.—The commissioner shall possess all the powers of a coastal warden.

The commissioner shall appoint persons as coastal wardens who shall have qualified under the rules established in the civil service code authorized under the provisions of sections 10 or 15, inclusive, who shall continue to hold office according to the provisions of the civil service code. The compensation of the wardens shall be determined under the provisions of the personnel law.

It shall be the duty of the coastal wardens to enforce all laws relating to sea and shore fisheries and all rules and regulations pertaining thereto; to arrest all violators thereof and to prosecute all offenses against the same.

The coastal wardens may serve all processes pertaining to the enforcement of any provision of this chapter and shall have jurisdiction and authority in all the counties of the state and in all the waters within the jurisdiction of the state.

They shall be allowed the same fees as sheriffs and their deputies for like service, all such fees to be paid to the commissioner; and the coastal wardens shall have the same right as sheriffs to require aid in executing the duties of their office. Coastal wardens appointed under the provisions of this section shall hold no other state, county or town office from which they receive compensation.

Coastal wardens shall have all of the powers of sheriffs and constables in all the counties of the state, and in all the waters within the jurisdiction of the state, for the purpose of arresting and prosecuting persons for the malicious destruction, damage or larceny of fishing gear, fish, shellfish, lobsters, crabs, shrimp and marine worms, and any contrivance that is used for taking, holding or processing marine species. (R. S. c. 34. 1947, c. 332. 1949, c. 349, § 61. 1951, c. 175, § 2. 1953, c. 372, § 3.)

Cross references.—See c. 63, § 11, sub-§ XI, re personnel law; c. 89, § 150, re fees of sheriffs and deputies; c. 135, § 20, re obstructing warden in performance of duty.

Quoted in part in *State v. Hanna*, 99 Me. 224, 58 A. 1061.

Cited in *State Treasurer v. Penobscot County*, 107 Me. 345, 78 A. 454.

Sec. 9. Sheriffs, deputy sheriffs, police officers, constables and inland fish and game wardens to have powers of coastal wardens.—Sheriffs, deputy sheriffs, police officers, constables and inland fish and game wardens, within their respective jurisdiction, are vested with the powers of coastal wardens and shall receive for similar services the same fees as those of coastal wardens. (R. S. c. 34. 1947, c. 332.)

See c. 37, § 26, re powers of inland fish and game wardens.

Civil Service Commission.

Sec. 10. Civil service commission; rules.—The advisory council of the department shall select 3 of its members to act as a civil service commission. The commission shall prepare rules for the effective operation of sections 10 to 15, inclusive, including rules of eligibility of applicants for examination under the provisions of section 11 and rules of conduct of employees, which rules shall become effective when approved in writing by the commissioner. (R. S. c. 34. 1947, c. 332.)

Sec. 11. Code for examination.—The commissioner or his duly authorized agent shall prepare a written code for open and competitive examinations for testing the practical fitness of applicants for permanent employment in the coastal warden service. Such code shall not become operative until reduced to writing and approved by the commissioner. Notice of the time and the place of examination shall be published in a paper having state-wide circulation. (R. S. c. 34. 1947, c. 332.)

Sec. 12. Probationary employment.—No employment shall be considered

permanent until the employee shall have completed a probationary period of sufficient length to demonstrate to the commissioner his ability and fitness to discharge the duties of the service. (R. S. c. 34. 1947, c. 332.)

Sec. 13. Rules modified.—Rules of eligibility of applicants for examination and rules of conduct of employees, adopted by the civil service commission under authority of section 10, may be modified at any time by the said commission but shall not become effective until approved in writing by the commissioner. (R. S. c. 34. 1947, c. 332.)

Sec. 14. Violation of rules.—Any officer in the coastal warden service who violates any civil service rule established by the civil service commission may be subject to dismissal, demotion or such other lesser penalty according to the nature of the offense.

All charges preferred against an officer shall be reduced to writing in the form of a complaint signed by the commissioner and filed with the civil service commission. A copy of said complaint, attested to by the chairman of the civil service commission, shall be served on the accused in person or by registered mail at his last known address, together with a notice requiring him to appear and answer to said complaint at a time and place therein designated, not less than 7 days from the date of service or receipt of said complaint, when and where said accused may appear and be heard thereon.

The civil service commission, acting as a trial board, shall conduct all hearings on complaints involving violation of civil service rules or orders, and may grant continuances for good cause.

In the event an accused officer fails to appear and answer, as hereinbefore provided, or fails or refuses to appear before the trial board on the day assigned for hearing, he shall be defaulted, the complaint taken as true and he shall be forthwith dismissed from the service. All findings of the trial board shall be final.

Pending any hearing on charges as aforesaid, the commissioner may suspend an accused from the service without pay until final determination by the trial board. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 3.)

Sec. 15. Permanent wardens to come under provisions of §§ 10 to 14, inclusive; present permanent employees retained.—The provisions of sections 10 to 14, inclusive, shall apply to all permanent wardens. All present permanent wardens shall be considered as if appointed under the civil service provisions. (R. S. c. 34. 1947, c. 332.)

Definitions.

Sec. 16. Definitions.—In this chapter, the following words shall have the following meanings and the following rules of construction shall apply:

“Angling,” fishing with handline or rod, with naturally or artificially baited hook.

“Canning,” the business or process of preserving foodstuffs in hermetically sealed containers.

“Catch pound,” that part of a weir or trap where fish are captured.

“Clam,” a marine mollusk commonly called the soft-shell clam.

“Closed season,” the time during which a species cannot lawfully be taken.

“Coastal warden,” a coastal warden appointed under the provisions of section 8.

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

“Commissioner,” the commissioner of sea and shore fisheries.

"Crawfish," those species of the family Palinuridae, including the representative genera Panulirus, Jasus and Palinurus which have been sometimes called by such terms as rock lobster, spiny lobster, sea crawfish, red lobster, thorny lobster, langoust, crayfish, Sidney crayfish, kreef, Cuban rock lobster or African lobster or crawfish.

"Dealer," any person who buys and sells or distributes any marine species.

"Department," the department of sea and shore fisheries.

The term "fresh fish" is distinguished from fish that have been smoked, pickled, canned or quick frozen.

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

"Hermetically sealed," made perfectly close or airtight by or as by fusion, so that no air, gas or spirits can enter or escape, whether or not the can is sterilized by heat. This does not include friction cover containers.

"Lobster car," a box or other contrivance in coastal waters, whether floating or sunken, used for keeping lobsters alive.

"Marine species," fish, shellfish, lobsters, crabs, shrimps and marine worms.

"Marine worms," clam, sand and bloodworms.

"Mutilated lobsters,"

I. Any lobster, the shell of which has been broken or cut in any manner that will make accurate measurements as prescribed in this chapter impossible.

II. Any female lobster whose middle flipper has been broken or cut in such manner as to hide or obliterate a V notch that may have been cut in it for identification.

III. The tail section of lobster meat that has been removed from the shell that is not whole and intact.

IV. Any female lobster from which eggs have been artificially removed.

"Open season," the time during which species may lawfully be taken.

"Person," the word person shall include a corporation, partnership and joint association.

"Quahog," a marine mollusk commonly called the hard-shell clam.

"Retail dealer," any person not a wholesale dealer who buys, sells or distributes any marine species.

"Seed clam," a soft-shell clam of a size less than the minimum prescribed in section 92 and usable for planting purposes only.

"Seed quahog," a hard-shell clam of a size less than the minimum prescribed in section 92 and usable for planting purposes only.

"Shellfish," all marine mollusks, but not lobsters, crabs and shrimps.

"Ship," to consign by common carrier.

"Territorial waters," the same as coastal waters.

"Tidal waters," the same as coastal waters.

"Wholesale dealer," any person who buys, sells or distributes any marine species in bulk lots of more than 50 pounds for resale by a dealer.

Whenever the taking of fish or other marine species is authorized, reference is had to taking by lawful means and a lawful manner.

Any reference to the taking or having in possession of a fish, shellfish or other marine species shall include the taking or having in possession of any part or portion thereof.

This chapter and regulations made thereunder, unless otherwise specifically provided, shall apply only to fish in or taken from coastal waters; but this provision shall not be construed so as to limit the authority of the commissioner to protect migratory fish by providing for their passage from the coastal waters to spawning grounds in streams and ponds in inland waters and to have concurrent jurisdiction

with the commissioner of inland fisheries and game to regulate commercial fisheries therein for the taking of such migratory fish.

Any lawful resident of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to permanently reside here, and who has resided in this state during the 6 months next prior to the date an application is filed for any license under the provisions of this chapter, except where a longer residence is specifically provided for. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 4. 1951, c. 175, § 3; c. 266, § 46. 1953, c. 129, § 1.)

General Provisions of Licensing.

Sec. 17. Licenses; not transferable, expiration, prima facie evidence of violation, duplicate.—

I. Licenses and permits shall be issued by the commissioner only on written application and shall not be transferable. Written application for any license or permit provided for in this chapter shall be made on blanks furnished by the commissioner, but no license or permit shall be issued to any class of applicants unless all questions asked in said application are fully answered.

II. Any license issued through error, misrepresentation or misstatement shall be void and shall be surrendered on demand of the commissioner and any person obtaining a license through fraud, misstatement or misrepresentation shall be subject to the penalties set forth in section 141.

III. All licenses and permits issued under the provisions of this chapter shall expire at midnight on December 31st of the calendar year in which the license or permit was issued, unless the license or permit specifically provides otherwise, and shall be renewed annually thereafter.

IV. The fee for any license or permit issued after September 30th of each calendar year shall be $\frac{1}{2}$ of the original fee. (1951, c. 175, § 4)

V. Any person licensed under the provisions of this chapter shall, at all times while engaged in the pursuit so licensed, exhibit upon demand of a coastal warden or any other authorized person, the license issued to him. Failure to produce such license within a reasonable time when requested by any authorized person shall be prima facie evidence of a violation of this section.

VI. The commissioner shall issue a duplicate license to any person who has lost or destroyed any license issued to him under the provisions of this chapter, upon the payment of a fee of 25¢.

VII. The commissioner may issue a combination license of any or all licenses to any person making application for such and if the person is found to be lawfully entitled to such license. The fee for such combination license shall be the total of the fees for the separate licenses enumerated on the combination license. The suspension of one license included in the combination license shall not suspend the other licenses included in the combination license. [1953, c. 129, § 2]. (R. S. c. 34. 1947, c. 332. 1949, c. 349, § 63. 1951, c. 175, § 4. 1953, c. 129, § 2.)

Sec. 18. Application of general laws.—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, shall apply whether the same be taken in the waters of the state of Maine or in waters of any other state, country or territory and brought into this state; except lobsters reconsigned intact in original crates by the holder of a Maine wholesale dealer's license to another such dealer in accordance with

the provisions of section 111; and fish, shellfish or lobsters passing through the state under authority of the laws of the United States, or in crates that are sealed by consignor in accordance with regulations prescribed by the commissioner and with materials furnished by him, at cost, and the fines and penalties prescribed for violation of said laws respectively shall apply to the same extent. (R. S. c. 34. 1947, c. 332. 1949, c. 135. 1953, c. 129, § 3.)

Fish Culture and Development of Fishing Industry.

Sec. 19. Commissioner may take land not to exceed 2 acres in 1 location; proceedings; by lease, etc., may acquire more than 2 acres.—The commissioner may take any flats and waters not exceeding an area of 2 acres in extent at any one location, and hold the same for a period not exceeding 10 years for use by said commissioner or by the United States Fish and Wildlife Service in the prosecution of scientific research relative to shellfish or other fish over which said commissioner has supervision. Whenever said commissioner shall deem it necessary in the furtherance of the objects and purposes of this section to take any such flats and waters, he shall obtain written permission from the riparian owner or owners thereof to control said flats or waters; after receiving such permission said commissioner shall hold a public hearing in the town where the flats and waters are located. Notice of said public hearing, containing the character, extent and location of the flats and waters to be taken and the time for which taken, shall be posted in 2 public places in the town and published not less than 7 days prior to the date of hearing in a newspaper in the county where the flats and waters are situated. After said hearing the commissioner may, for purposes authorized in this section, take such flats and waters and shall cause the area so taken to be plainly posted and bounded by suitable marks and ranges and shall cause public notice of the taking of such waters and flats to be given by publishing in a newspaper in the county where the flats or waters are situated. Said commissioner may, by agreement, lease or grant, and under such terms and conditions as may be agreed upon with the owner thereof, take possession of suitable 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 under the provisions of and for the purposes of this section. Any agreement, lease or grant executed under the provisions of this section shall be recorded in the registry of deeds in the county wherein said flats or waters are located. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 5.)

See c. 37, § 15, et seq., re procedure for setting apart waters for fish culture by commissioner of inland fisheries and game; c. 37, § 62, re cultivation of useful fishes by riparian proprietors.

Sec. 20. Shores and flats set apart for shellfish industry.—The commissioner, upon the application of any person or corporation interested or engaged 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, setting forth their desire to make experiments relative to the cultivation and conservation of shellfish or such other fish over which the commissioner now has supervision shall, after being satisfied of the facts set out in said application and that the applicant either owns or has the consent, so far as the same can be granted, of the owner of the flats, shore rights and waters where such work is to be undertaken, and that the granting of such rights will not unreasonably interfere with navigation, give notice of a hearing on such application, by causing the same to be published at least 2 weeks in some newspaper published in the county where the proposed location is situated, and stating therein the time and place where such hearing will occur; and if, upon such hearing, the commissioner is satisfied that the interests of the state will be promoted by such

experiments, he shall issue a certificate setting apart so much of such shores, flats and water privileges, not exceeding 1 acre in extent to any one of such applicants, and for such length of time, not exceeding the period of 6 years, as in his judgment may be necessary and proper to accomplish the ends sought to be obtained. Such certificate shall be recorded in the registry of deeds of the county or registry district in which the location is situated, and the applicant shall also cause public notice of the issuance of such certificate to be given by publishing the same in a newspaper published in the county where such location is situated, and by posting in a conspicuous place near said location a copy of such certificate, and also by placing stakes or other monuments upon the adjoining upland so as to designate the locations so set apart as the commissioner shall, in his certificate, specify. (R. S. c. 34. 1947, c. 332.)

Sec. 21. All persons forbidden to take fish on shores or flats taken for fish development.—No person shall, during the period that such shores, flats and waters are taken for the purposes of the 2 preceding sections, take, dig, fish or in any manner destroy or interfere with such fish or interfere with the shores, flats and waters so set apart. Whoever violates any of the provisions of this section shall be punished by a fine of not less than \$50 nor more than \$100 for each offense, or by imprisonment for not more than 90 days. (R. S. c. 34. 1947, c. 332.)

Fish Packing.

Sec. 22. Rules governing sale or canning of herring.—Whoever takes, preserves, sells or offers for sale between the 1st day of December and the 15th day of the following April any herring for canning purposes less than 8 inches long, measured from one extreme to the other, or cans herring of any description taken in the coastal waters of Maine between the 1st day of December and the 15th day of the following April forfeits \$20 for every 100 cans so packed or canned and for every 100 herring so taken. All cans shall be decorated, stamped or labeled with packer's name and place of business, or merchant's name for whom the same are packed, except sardines packed in plain cans and shipped for buyers' labels or cartons. Whoever sells or offers for sale any sardines in cans not so decorated or labeled shall forfeit \$1 for every can so sold or offered for sale, to be recovered by complaint, indictment or action of debt. (R. S. c. 34. 1947, c. 42, § 2; c. 248, § 2; c. 332. 1949, c. 293. 1953, c. 171, § 9.)

See c. 16, §§ 260-269, re tax on sardines: lishing minimum wage for women and
c. 30, §§ 133-147, re protecting industry of minors employed therein; c. 32, § 260, re
packing fish and fish products and estab- definition of "sardine".

Sec. 23. Size of smoked herring boxes.—No person, firm or corporation engaged in the state in buying, selling or packing of smoked herring shall sell or offer for sale smoked herring in boxes of less than the following dimensions: 2 inches in depth, 6 inches in width, inside measure, and 12 inches in length, outside measure. Whoever packs, sells or offers for sale smoked herring in boxes in violation of this section shall forfeit 25¢ for each box so packed, sold or offered for sale; but this section does not apply to boxes of boneless herring. (R. S. c. 34. 1947, c. 332.)

Sec. 24. Purchase of herring.—No person, firm or corporation shall purchase or sell herring in their live or raw state for packing purposes other than by some standard method of measurement, such as by the bushel, barrel of 3 bushels, hogshead of 17½ bushels, or fractional part of said standard method of measurement.

All holds of all boats transporting herring for processing purposes shall be measured and sealed by the state sealer of weights and measures, or his duly authorized agent, and the fees for measuring and sealing shall be paid by the

owners of the boats. The measure shall be in 5 hogshead divisions, cut $\frac{3}{8}$ of an inch deep in the hold of the boat. The state sealer of weights and measures shall forthwith certify to the commissioner the name of the owner of each boat, the name of each boat and the capacity of each boat.

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

Any person violating the provisions of this section shall be punished by a fine of not less than \$100, nor more than \$500, for each offense. (R. S. c. 34. 1947, c. 332. 1949, c. 325.)

Fishing Regulations.

Sec. 25. Use of artificial light in taking herring.—No person shall take any herring by use or aid of an artificial light of any kind in any of the coastal waters of this state, except in York county and in so much of Sheepscoot bay as is comprised within the following lines: Beginning at the northerly point of Green island; thence southerly by the coast line to the Cuckolds light station; thence westerly to Pond island light station; thence northeasterly by the coastline to the northerly point of MacMahan island; thence easterly to the point of beginning. (R. S. c. 34. 1947, c. 332.)

Sec. 26. Fishways closed to all fishing.—No person, except as provided in this chapter or by rules or regulations of the commissioner, shall fish in any fishway or within 100 yards of any fishway, dam or millrace in any of the coastal waters of the state.

The foregoing shall not apply to the taking of alewives by the town of Waldo-boro in Medomak river, nor by the town of Woolwich in Nequasset stream, nor by the West Harbor Ice Company in the water below its fishway, nor by the town of Warren in the St. George river nor shall it apply to the taking of smelts in the St. George river from the time the ice goes out in the spring until April 25, both days inclusive, of each year.

The commissioner may prohibit fishing within 500 yards of any fishway, dam or millrace in any coastal waters. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 6.)

Sec. 27. Use of trawls.—The use of either otter or beam trawls within the territorial waters of this state is prohibited for use in taking all fish except flat fish, whiting, herring and shrimp, unless the same are properly provided with net or nets having all meshes thereon measuring not less than $4\frac{3}{4}$ inches mesh by diagonal or stretch measurement, as it is commonly known and called among shore fishermen. The use of either otter or beam trawls within the territorial waters of Washington county is prohibited.

Whoever violates any of the provisions of this section shall be punished by a fine of \$100 for the 1st offense, and in default of payment, by 30 days in jail; and for the 2nd offense, he shall be punished by a fine of \$200, and in default of payment, by 60 days in jail. (R. S. c. 34. 1947, c. 332. 1949, c. 435. 1953, c. 129, § 4.)

Sec. 28. Protection of weirs.—No person shall set or assist in setting any net or seine within 2,000 feet of the mouth of a weir, except that the owner or person in charge of a weir may use nets and seines in such weir or within 2,000 feet of the mouth thereof.

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

Each day that a net or seine is used in violation of this section shall constitute a separate offense. (R. S. c. 34. 1945, c. 107, §§ 1, 2. 1947, c. 332.)

Cross reference. — See c. 98, § 12, re definition of "fish weir." **Quoted** in part in *State v. Giles*, 101 Me. 349, 64 A. 619.

Sec. 29. Use of drags in Bluehill bay.—It shall be unlawful to tow a scallop drag or any other apparatus for the taking of fish or shellfish on the ocean bottom of Bluehill bay, Hancock county, within 500 yards of a line extending from North Point on Swan's island to Lopaus Point in the town of Tremont on Mt. Desert island. Said line shall be plainly marked at regular intervals by buoys in conformance with regulations prescribed by the commissioner of sea and shore fisheries, the U. S. coast guard and the U. S. army engineers. The buoys shall be provided and maintained by the Swan's Island Telephone Company at no expense to the state. Initial setting out of the buoys shall be supervised and carried out by the department of sea and shore fisheries. (1951, c. 127.)

Sec. 30. Closed season for salmon.—From the 16th day of July to the 31st day of the following March, both days inclusive, there shall be a closed season for salmon in all the tidal waters of the state, during which no salmon shall be taken or killed in any manner. Provided, however, that between the 16th day of July and the 15th day of September, both days inclusive, it shall be lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise. Provided, however, salmon may be taken by weirs on the St. Croix river below the breakwater at the ledge between the 15th day of May and the 31st day of August, both days inclusive.

Whoever violates any provision of this section shall be punished as provided in section 141, and in addition thereto \$10 for each salmon involved. (R. S. c. 34. 1947, c. 332.)

Sec. 31. Weekly closed time for salmon, shad, alewives and bass.—Between the 1st day of April and the 15th day of July, both days inclusive, there shall be a weekly closed time of 48 hours from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives or bass shall be taken. During the weekly closed time, all seines, nets and other movable apparatus shall be removed from the water. Every weir shall have, in that part where the fish are usually taken, an opening 3 feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing shall be taken out, carried on shore and there remain during the weekly closed time, to the intent that during said closed time fish may have a free and unobstructed passage through such weir or other structure, and no contrivance which tends to hinder such fish shall be placed in any part thereof. If the inclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir is equivalent to one extending from the bottom to the top. Whoever violates any provision of this section shall be punished by a fine of \$20 for each offense.

This section does not apply to the Kennebec, Androscoggin or Penobscot rivers or their tributaries, or to the St. Croix river below the breakwater at the ledge, or to the Damariscotta river below the bridge at Damariscotta.

This section shall not apply to the taking of salmon or bass by the ordinary mode of angling with single hook and line or artificial flies, and no person shall fish for, take, catch or kill any bass, except that they may be taken in the ordinary mode of angling with single hook and line or artificial flies in numbers not to exceed 6 per person per day. (R. S. c. 34. 1947, c. 332.)

Section enacted for protection of migratory fishes.—The provisions of this section, particularly that requiring an opening through weirs during the weekly close time, were evidently enacted for the pro-

tection of "migratory fishes." *State v. Turnbull*, 78 Me. 392, 6 A. 1.

Locality of acts or omissions essential element of offence. — All the acts and omissions forbidden by this section are

not forbidden in those rivers or parts thereof exempted. They are still lawful or harmless there, however unlawful they might be in other rivers. The locality of such acts or omissions, is therefore an essential element in constituting them an offence against this section and is equally an essential part of the description of the offence, and should be alleged in any process charging the offence. *State v. Turnbull*, 78 Me. 392, 6 A. 1.

This section creates an offence limited by place, as well as time. The act only becomes a crime when done in a particular place. The complaint should charge the act as done in that particular place. *State v. Turnbull*, 78 Me. 392, 6 A. 1.

And to prove that an act or omission prohibited by this section occurred in the Damariscotta river is not enough. They may properly occur in one part of the river. It must be proved that they occurred in the prohibited part, to make them an offence. *State v. Turnbull*, 78 Me. 392, 6 A. 1.

In a prosecution under this section a statement in the complaint that the act took place "in the waters of the Damariscotta river," does not set out any offence *prima facie*. The presumption would be, that the accused acted lawfully, in that part of the river not forbidden to him. *State v. Turnbull*, 78 Me. 392, 6 A. 1.

Sec. 32. Smelts; methods of taking; open season in tidal brooks and streams; daily limit; not to be sold.—Except as otherwise provided in this chapter or by rules and regulations of the commissioner, it shall be unlawful to take smelts in any tidal waters of the state in any manner except by use of the hands or by the ordinary mode of angling with hook and line from April 1 until September 30, both days inclusive, of each year.

Except as hereinafter provided or under rules and regulations of the department, there shall be an open season for smelts in all the tidal brooks and streams in the state that flow directly or indirectly into the ocean from April 1 to May 31, both days inclusive, of each year. That part of the calendar year falling outside of the open season is expressly declared to be a closed season.

During the open season in such waters, except as otherwise provided, smelts may be taken only with bare hands or by the ordinary mode of angling with hook and line. Unless otherwise provided, no person shall take, catch, kill or have in possession in or from any or all of the tidal brooks and streams more than 4 quarts of smelts; and provided further, that smelts so taken shall not be sold.

Nothing in this section shall apply to smelts taken in weirs or traps maintained and operated for the catching of herring.

It shall be lawful to fish for and take smelts from the tidewaters of the East Machias river within the town limits of Machiasport between the 1st day of October and the 15th day of May. Any fish so taken from said waters may be offered for sale and sold within the state or shipped to such places out of the state as the owner may designate.

No smelts shall be taken or fished for in any of the tidal waters of Casco bay between the 1st day of April and the 15th day of September except by hook and line.

It shall be lawful to fish for and take smelts from the tidewaters of the Penobscot river between the 1st day of October and the 15th day of May; however, during the last 15 days of said open time, such fishing and taking shall be restricted to the use of gill and dip nets only. It shall be lawful to fish for and take smelts from the tributaries of the Penobscot river between the 1st day of October and the 1st day of May. Any fish so taken from said waters may be offered for sale and sold within the state or shipped to such places out of the state as the owner may designate. Whoever violates any of the provisions of this paragraph shall be punished by a fine of not less than \$10 nor more than \$100. (R. S. c. 34, 1947, cc. 251, 310, 332, 1949, c. 296, § 1.)

Sec. 33. Dead or injured fish not cast on shore nor released in harbors.—No person shall cast or deposit upon the shores, or release and deposit in the bays, harbors or rivers of this state any dead fish or parts thereof or fish that have been smothered or injured so that they will die. No person shall re-

lease 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 said fish. 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 such fine and imprisonment. (R. S. c. 34. 1947, c. 332. 1951, c. 117. 1953, c. 129, § 5.)

Sec. 34. Use of dynamite or poisonous substances for destroying fish; sale of fish so taken; carrying such dynamite or substance in fishing boat.—No person shall use dynamite or any poisonous or stupefying substance whatever for the purpose of destroying or taking any kind of fish in tidal waters. No person shall buy, sell, give away or expose for sale or possess for any purpose any fish taken by use of dynamite or any poisonous or stupefying substance; and no person, while engaging in fishing, shall carry in his fishing boat or vessel any dynamite or other explosives, or any poisonous or stupefying substance. Whoever violates any provision of this section shall be punished by a fine of \$100 and costs, and by imprisonment for 60 days. (R. S. c. 34. 1947, c. 332.)

See c. 37, § 52, re use of dynamite, other substance for purpose of destroying or explosives or any poisonous or stupefying taking fish, prohibited.

Sec. 35. Persons deriving special benefit from protected waters to post notices; no liability unless notices posted; mutilation of such notices.—All persons, who derive special benefits from legislation for the protection of fish in any waters of this state in excess of what is or may be derived by others, shall publish such protection by posting and maintaining notices substantially as hereinafter provided. Said notices shall be placed on the banks or shores of such protected waters not more than 10 feet nor less than 6 feet above the ground, in a conspicuous position; and if on running water, such notices shall not be more than $\frac{1}{2}$ mile apart on the banks of such waters; and if on a pond or lake, not more than 1 mile apart on the shores of such pond or lake.

Notices shall be painted on wood in black Roman letters not less than 2 inches in length and not less than $\frac{1}{2}$ inch in breadth, so that such letters shall be plainly legible, and such notices shall state the number of the act or resolve giving said protection to such waters and the date of the same. In case no notices as herein provided are posted and maintained on waters that are protected by any special law, no one violating such law shall be liable thereunder to any penalties therein set forth.

The provisions of this section shall not apply to towns which by special act have acquired vested rights in any fishery in said towns.

Anyone mutilating or destroying such notices shall be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332.)

Sec. 36. Resident commercial fishing license.—No resident, as owner or operator, shall operate in coastal waters any weir, floating fish trap or boat engaged in seining, netting or dragging until he has procured from the commissioner a written license therefor.

Such license, designated as a resident commercial fishing license, may be issued to persons who have been for 1 year prior to the date of their application, legal residents of the state. The license fee for operating a weir, floating fish trap or boat engaged in seining, netting or dragging in coastal waters shall be \$10 for each such weir, floating fish trap or boat and shall entitle the holder to take all species of fish, except shellfish, scallops and lobsters. Provided, however, that the fee for operating a boat with 1 man or any weir, trap or catch pound which is not more than 80 feet in outside perimeter, or any seine of not more than 40 fathoms in length, shall be \$3, and provided further, that if the crew of a weir, trap or boat exceeds 3 men, including the operator, the fee for this license shall be \$10

for each such weir, trap or boat, and \$3 for each resident or \$25 for each non-resident member of the crew in excess of 3 men.

All personnel assisting or helping in attending fishing gear or operating the boat shall be considered a member of the crew, and if a weir, trap or boat so licensed is found on inspection to have more crew members than stated in the license, the operator of the weir, trap or boat shall be liable for a fine of \$25 for each such unauthorized person or by imprisonment for not more than 30 days. (R. S. c. 34, 1947, c. 332, 1949, c. 122; c. 415, § 8, 1951, c. 175, § 5; c. 266, § 47, 1953, c. 129, § 6.)

Sec. 37. Nonresident license to operate weir, floating fish trap or boat engaged in seining, dragging or netting.—No nonresident, as owner or operator, shall use or operate in coastal waters any weir, floating fish trap or boat engaged in seining, dragging or netting until he has procured from the commissioner a written license therefor.

The license fee for operating a weir, floating fish trap or boat engaged in seining, dragging or netting, in coastal waters, shall be \$100 for each such weir, floating fish trap or boat and shall entitle the holder to take all species of fish except shellfish, lobsters and scallops.

Provided that if the crew of a weir, trap or boat exceeds 3 men, including the operator, the fee for this license shall be \$100 for each such weir, trap or boat, and \$25 for each nonresident or \$3 for each resident member of the crew in excess of 3 men.

All personnel assisting or helping in attending fishing gear or operating the boat shall be considered a member of the crew and if a weir, trap or boat so licensed is found on inspection to have more crew 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. (R. S. c. 34, 1947, c. 332, 1951, cc. 152, 362, 1953, c. 129, § 7.)

Atlantic Sea Run Salmon Commission.

Sec. 38. Commission; compensation; powers and duties.—The Atlantic sea run salmon commission, as heretofore established, shall consist of 3 persons as follows: the commissioner of inland fisheries and game and the commissioner of sea and shore fisheries as ex officio members, and a 3rd member who shall be a citizen of Maine and who shall be appointed by the governor and council for a term of 4 years. The member appointed by the governor and council shall receive \$10 per day and expenses as compensation when engaged in the discharge of his official duties.

The Atlantic sea run salmon commission, hereinafter in this section designated as "the commission," shall have authority to promulgate rules and regulations providing for the times, number and manner in which Atlantic sea run salmon may be taken in all waters of the state.

Whenever any existing conditions, except those which are or may be or become within the jurisdiction of the water improvement commission under the provisions of chapter 79, adversely affect Atlantic sea run salmon within the territorial limits of the state, the commission, after notice and hearing, shall make such regulations as may be deemed remedial of any such adverse conditions in the manner hereinafter provided.

Petitions, stating the conditions affecting the fish and the regulations which are desired as a remedy, may be addressed to the commission by a majority of the municipal officers or 25 citizens of any municipality in which the waters exist; or if the waters are in an unorganized territory, by a majority of the county commissioners of the county in which said waters exist; or the commission may declare an emergency and designate the time and place of hearing.

Notice of the hearings to be held and the time and place thereof shall be pub-

lished once a week for 2 successive weeks prior to the hearing in a newspaper published in the county where said hearing is to be held, and if no paper is published there, in the Daily Kennebec Journal, a newspaper printed at Augusta; except when an emergency has been declared, notice shall be published at least 5 days before the date of the hearing instead of 2 weeks.

After hearing pursuant to the petition or emergency declared, the commission shall make such regulations as may be deemed remedial of any adverse conditions proven to exist at the time of said hearing and shall establish the effective date of such regulations, which shall be at least 10 days after the date of hearing. The commission shall cause the regulations to be reduced to writing and shall publish the same once in a newspaper published in the county where the waters are situated and which are affected thereby, or if no paper is published there, in the Daily Kennebec Journal, a newspaper printed at Augusta. The commission shall file a certified copy of said regulations with the secretary of state and with the clerk of the superior court of the county in which the waters affected thereby are situated.

Notwithstanding the provisions of section 9 of chapter 37, as revised, and section 5 of this chapter, as revised, all petitions in regard to Atlantic sea run salmon shall be addressed to the commission, which shall have sole jurisdiction to promulgate rules and regulations affecting Atlantic sea run salmon.

All rules and regulations promulgated under authority of this section shall be enforced by coastal wardens and inland fish and game wardens, each of whom shall have jurisdiction in either the coastal or inland waters.

Whoever violates any provision of this section or any rule and regulation promulgated hereunder shall be punished by a fine of not less than \$10, nor more than \$30 for each offense. (1947, c. 399, § 1. 1949, c. 224.)

Regulation of Shellfish Industry.

Sec. 39. Towns may grant licenses for propagation and cultivation of clams, quahogs and mussels.—Upon application in writing, the mayor and aldermen of a city or the selectmen of a town shall grant a written license to any person who has resided in the state or who has been a taxpayer in the city or town for not less than 1 year preceding the date of his application, for the purposes of planting and cultivating clams, quahogs or mussels upon and in not exceeding $\frac{1}{4}$ of the flats and creeks of their respective cities and towns and within the limits to be specified in the license, for a term of not less than 5 years nor more than 10 years. All such licenses shall be subject to such rules and regulations as are approved by the city government of the city, or by the voters of the town at an annual or special town meeting, and may be assigned by the licensee to any person who has been a resident of the state or a taxpayer in the city or town for not less than 1 year preceding the date of the assignment; but shall not be assigned or transferred without the written consent of the mayor and aldermen of such city or the selectmen of such town. (R. S. c. 34. 1947, c. 332.)

Stated in Rogers v. Brown, 135 Me. 117, 190 A. 632.

Sec. 40. Deorganized towns; commissioner may grant licenses for propagation and cultivation of clams, quahogs and mussels.—Whenever the organization of any town or plantation has been terminated by act of the legislature, the commissioner shall thereupon be authorized to issue licenses for the propagation and cultivation of clams, quahogs and mussels in such deorganized town in the same manner and to the same extent as municipal officers may in organized towns under the provisions of sections 39 to 47, inclusive. (1951, c. 27, § 1.)

Sec. 41. Proceedings before licenses granted; preference to riparian owner of adjacent property.—No license shall be granted if the exercise

thereof would materially obstruct navigable water, nor until after a public hearing due notice of which has been posted in 3 or more public places and published in a newspaper, if there be any, published in the city or town in which the premises are situated, at least 10 days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application and the location, area and description of the grounds applied for. In granting said licenses, preference shall be given to the riparian proprietors of the adjacent property, when there are 2 or more applicants for the same territory and the adjacent riparian proprietor is one of them. (R. S. c. 34. 1947, c. 332.)

By this section, there is no grant to any riparian owner, either of license or of absolute right to license. What the legislature has laid down comes to this: That on establishing the fact of ownership, holders of contiguous high lands shall have some advantage over other applicants. *Rogers v. Brown*, 135 Me. 117, 190 A. 632.

that one in occupancy of land abutting the seashore may have the power of choosing a clam fishery location, but that, as to his shore front, he should rate before any other applicant. Had legislative intent been an outright license, there would be no occasion for application, no need for notice, no reason for hearing. *Rogers v. Brown*, 135 Me. 117, 190 A. 632.

And this section does not contemplate

Sec. 42. Survey and plan of territory covered by license.—Before granting any license, the municipal officers of a town or city, or in the case of deorganized towns, the commissioner shall cause a survey and plan to be made of the territory within which licenses are to be granted, and shall cause the territory covered by any license issued by them to be marked upon a copy of such plan, to be kept in the office of the city or town clerk or the department of sea and shore fisheries when a town has become deorganized. The licensee, upon receiving his license, shall cause the territory covered thereby to be plainly marked out by stakes, buoys, ranges or monuments which shall be maintained by him during the term of the license. Failure to place or maintain the same shall be sufficient cause for revocation of the license by the authority granting the same. (R. S. c. 34. 1947, c. 332. 1951, c. 27, § 2.)

Sec. 43. Molesting marks or bounds on licensed areas.—Whoever willfully injures, defaces, destroys or removes any mark or bound used to define the extent of any shellfish license or grant, or places any unauthorized mark thereon, or ties or fastens any boat or vessel thereto shall be punished by a fine of not more than \$20 and shall be liable in tort for double damages and costs to the licensee injured by such act. (R. S. c. 34. 1947, c. 332.)

Sec. 44. License to describe territory covered; recorded.—A license granted hereunder shall describe by metes and bounds the waters, flats and creeks to which the license is applicable and shall have no force until it is recorded with the clerk of the city or town granting the same and the commissioner of sea and shore fisheries.

The licensee shall pay annually to the city or town a fee of not less than \$1 nor more than \$5 per acre for the license, as the municipal officers of the city or town may determine. The licensee in a deorganized town shall pay the department of sea and shore fisheries a fee of \$5 per acre for the license. (R. S. c. 34. 1947, c. 332. 1951, c. 27, § 3. 1953, c. 129, § 9.)

Sec. 45. Molesting shellfish beds covered by license.—Whoever works a dredge, tongs, rake or any other implement for the taking of shellfish of any description upon any shellfish grounds or beds covered by a license granted under the provisions of section 39, or in any way disturbs the growth of the shellfish thereon, or whoever discharges any substances which may directly or indirectly injure the shellfish upon any such grounds or beds without the consent of the licensee or transferee, as the case may be, or whoever, while upon or sailing over any such grounds or beds casts, hauls or has overboard any such dredge, tongs,

rake or other implement for the taking of shellfish of any description, under any pretense or for any purpose whatever, without the consent of the licensee, shall for the 1st offense be punished by a fine of not more than \$20, or by imprisonment for not more than 1 month, and for a subsequent offense by a fine of not more than \$50, or by imprisonment for not more than 6 months. (R. S. c. 34. 1947, c. 332.)

Sec. 46. Taking of clams, quahogs or mussels or their seed on licensed territory; licensee to have exclusive use of territory covered by license.—No person, except the licensee or his agents or assignees, shall dig or take clams, quahogs or mussels, or clam, quahog or mussel seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees shall for the purposes described in the license have the exclusive use of the territory described therein during the term of the license and may in an action of tort recover treble damages of any person who, without his or their consent, digs or takes clams, quahogs, mussels or other shellfish in the territory covered by the license or removes the same therefrom. Whoever so digs, takes or removes clams, quahogs, mussels 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 by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332. 1953, c. 129, § 10.)

Sec. 47. Licensee to submit report; license subject to forfeiture.—Any person licensed under the provisions of sections 39 and 40 shall submit on oath, on or before January 1st in each year, to the municipal officers of the city or town, or to the commissioner in the case of deorganized towns, wherein the territory covered by the license is situated, a report of the total number of bushels of each kind of shellfish planted, produced or marketed during the preceding year upon or from such territory, and an estimate of the total number of bushels of each kind of shellfish at the time of such report planted or growing thereon; and if the total amount thereon falls below the market value of \$25 per acre within the first 2 years of the term of said license, or below the market value of \$50 per acre for any 3 consecutive years thereafter, said value to be determined by the granting authority, they may declare the license to be forfeited. (R. S. c. 34. 1947, c. 332. 1951, c. 27, § 4.)

Sec. 48. Enforcement of §§ 39-47.—It shall be the responsibility of the municipality issuing licenses or grants under authority of sections 39 to 47, inclusive, or the commissioner in the case of deorganized towns to enforce all provisions pertaining thereto. (1951, c. 72.)

Sec. 49. Towns authorized to regulate taking of clams, quahogs and mussels and provide for municipal licenses.—Any town may, by vote at an annual town meeting, provide for regulations fixing the times and amounts in which clams, quahogs and mussels may be taken from any or all of the coastal waters and flats within the town and may likewise provide that municipal licenses be required for the taking of any or all of such species therein and fix the fees therefor.

Regulations adopted under the provisions of this section shall not become effective until a certified copy of each has been filed, by municipal officers of the town to which they apply, with the clerk of said town and with the commissioner.

This section shall not be construed to effect the repeal of any special privileges enjoyed by the inhabitants of certain towns by virtue of any public or private and special law in force on August 6, 1949; but any town to which any such law applies may in addition have all the advantages of this section if such town shall so vote. Any town that adopts any regulation under authority of this section shall be responsible for enforcement of the same.

Whoever takes clams, quahogs or mussels contrary to municipal regulations

authorized by this section shall, for each offense, be punished by a fine of not more than \$10, or by imprisonment for not more than 30 days. (R. S. c. 34, 1947, c. 332, 1949, c. 349, § 64; c. 393, 1953, c. 152.)

Section strictly construed.—This section relates to the delegation of a power which is primarily vested in the legislature, that of controlling the subject of seashore fisheries, and should be strictly construed. *State v. Wallace*, 102 Me. 229, 66 A. 476.

And its operation not to be extended.—This section is a penal statute and its operation cannot be extended by implication so as to embrace cases which are not plainly included in the express terms and obvious import of the language of the enactment. *State v. Peabody*, 103 Me. 327, 69 A. 273.

Officers cannot act under this section prior to town meeting.—A strict construction of the language of this section as well as a reasonable interpretation of the words does not indicate a legislative intent to delegate to the municipal officers authority to reverse the will of the inhabitants of the town, but only an intention to give the municipal officers power to act after the town has exercised its option. It follows, therefore, that the officers have no authority to act under this section until after an annual meeting of the town. *State v. Wallace*, 102 Me. 229, 66 A. 476.

The power of regulating clam digging within their respective limits was remitted to the towns by this section. The towns are to vote, and the municipal officers are to grant permits. *State v. Leavitt*, 105 Me. 76, 72 A. 875.

But town not authorized to prohibit

Sec. 50. Digging of clams in Cranberry Isles.—It shall be unlawful for any person not a resident of or riparian owner in the town of Cranberry Isles, in the county of Hancock, to dig clams within the limits of said town.

Any person residing therein or the riparian owner of any clam flats may take therefrom not exceeding 5 bushels of clams in 1 day.

Any person taking clams contrary to the provisions of this section shall be punished for each offense by a fine of not more than \$25, or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (1949, c. 349, § 65.)

Sec. 51. Certain clam flats in Lubec closed.—No clams shall be taken from the flats of Lubec, Washington county, from November 1, 1951 to October 31, 1952, both days inclusive, within the following limits: Magnetic North from a red painted post driven in the northernmost point of northernmost bank of Robinson Head, so called, to low-water mark; thence in a general northerly direction to the northernmost point of Seward Neck, thence in a general southerly direction along low-water mark to a line 55 degrees magnetic from a red painted post driven in the bank on the easterly end of Hannah Miller point, so called. It is intended to include all the clam flats bordering on Seward Neck, the Canal Area, so called, and that part of Johnson's bay lying north of the line from Hannah Miller point, so called, mentioned above, in the town of Lubec.

non-resident from taking clams.—The language of this section contains no prohibition against a person taking clams within the limits of a town of which he is not resident, nor does it authorize the inhabitants of a town to adopt any by-law or regulation prohibiting a non-resident taking clams within the limits of their town. *State v. Bunker*, 98 Me. 387, 57 A. 95; *State v. Peabody*, 103 Me. 327, 69 A. 273.

The vote of a town "not to issue licenses to non-residents" is not authorized by this section. *State v. Peabody*, 103 Me. 327, 69 A. 273.

And regulation containing such prohibition is invalid.—A regulation adopted under authority of this section, the purpose of which is to prohibit non-residents from taking clams in the town by depriving them of the privilege of applying for a license and thus subjecting them to the statutory penalty for digging clams without a permit from the town, is invalid. *State v. Peabody*, 103 Me. 327, 69 A. 273.

Right to take clams without permit under former wording of section.—For a case under this section at a time when the section provided that, unless the town regulates the matter of taking clams by vote, residents of the town may take clams without written permit, see *State v. Gross*, 89 Me. 542, 36 A. 1003.

History of section.—See *State v. Leavitt*, 105 Me. 76, 72 A. 875.

All other flats within the limits of the town of Lubec shall be open to the digging of clams to and including October 31, 1952.

The flats described in the 1st paragraph shall be open to dig clams November 1, 1952 and the flats described in the 2nd paragraph shall be closed November 1, 1952. Both described flats shall be opened and closed alternately from year to year. It is not intended to interfere with clam flats already closed by law, within the limits of the town of Lubec.

Whoever violates the provisions of this section shall for each offense be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 60 days, or by both such fine and imprisonment. (1951, c. 119.)

Sec. 52. Digging of clams on flats of York river.—It shall be lawful to dig clams on any of the flats in the York river, in the county of York, provided said clams are not used for any purposes except as bait for fishing. (R. S. c. 34. 1947, c. 332.)

Sec. 53. Licenses required to dig or take clams, etc., in Scarborough.—No person shall, in the town of Scarborough in the county of Cumberland, dig or take clams, clamworms or bloodworms unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident from digging and taking clams for food for himself and family without license, or shall prohibit a riparian owner of shores or flats in said town from digging and taking from his own shores or flats clams for food for himself and family. For the purposes of sections 53 to 55, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Scarborough for at least 3 consecutive months prior to receiving a license. (R. S. c. 34. 1947, c. 332. 1949, c. 271.)

Sec. 54. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Scarborough unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 53 to 55, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 55. Licenses; revocation; appeal.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 56. Penalty.—Whoever violates any of the provisions of sections 53 to 55, inclusive, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 30 days. (R. S. c. 34. 1947, c. 332.)

Sec. 57. License required to dig or take clams, etc., in Kennebunkport.—No person shall, in the town of Kennebunkport in the county of York, dig or take clams, clamworms or bloodworms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or

a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 57 to 59, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Kennebunkport for at least 3 consecutive months prior to receiving a license. (R. S. c. 34. 1947, c. 332.)

Sec. 58. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Kennebunkport unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 57 to 59, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 59. Licenses; revocation; appeal.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term or vacation, who may order the issuances or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 60. Penalty.—Whoever violates any of the provisions of sections 57 to 59, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. (R. S. c. 34. 1947, c. 332.)

Sec. 61. License required to take or dig clams, etc., in Kennebunk.—No person shall, in the town of Kennebunk in the county of York, dig or take clams, clamworms or bloodworms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 61 to 63, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Kennebunk for at least 3 consecutive months prior to receiving a license. (R. S. c. 34. 1947, c. 332.)

Sec. 62. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Kennebunk unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 61 to 63, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 63. Licenses; revocation; appeal.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraud-

ulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 64. Penalty.—Whoever violates any of the provisions of sections 61 to 63, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. (R. S. c. 34. 1947, c. 332.)

Sec. 65. Digging of clams in the town of Wells.—It shall be unlawful for nonresidents of the town of Wells, in the county of York, to dig during 1 day more than 1 peck of clams within the limits of said town. It shall be unlawful for the nonresidents of said town to dig any clams for any use whatsoever, except home consumption; provided that this law shall not supersede any law relating to the taking by fishermen of shellfish for bait.

It shall be unlawful for any person to dig clams within said town other than with a clam hoe.

Whoever violates any of the provisions hereof shall be punished for each offense by a fine of not more than \$25, or by imprisonment for not more than 30 days. (1951, c. 114.)

Sec. 66. License required to dig or take clams, etc., in Cape Elizabeth.—No person shall, in the town of Cape Elizabeth in the county of Cumberland, dig or take clams, clamworms or bloodworms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. For the purposes of sections 66 to 68, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Cape Elizabeth for at least 3 consecutive months prior to receiving a license. (R. S. c. 34. 1947, c. 332.)

Sec. 67. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Cape Elizabeth unless license has been granted to him by the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 66 to 68, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 68. Licenses; revocation; appeal.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the licenses provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 69. Taking of shellfish and worms in Yarmouth, North Yarmouth, Falmouth and Cumberland.—No clams, clamworms, bloodworms, mussels or quahogs shall be taken from any flats within the limits of any of the towns of Yarmouth, North Yarmouth, Falmouth or Cumberland, in Cumberland county, except by such written permit as the municipal officers of said town may issue, provided that without such permit, any inhabitant within said town, or any person temporarily resident therein or the riparian owner of any such flats, may

take therefrom for the immediate use of himself or his family not exceeding 1 bushel of clams at 1 tide. (R. S. c. 34. 1947, c. 332.)

Sec. 70. Penalty.—Whoever violates any of the provisions of sections 66 to 69, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. (R. S. c. 34. 1947, c. 332.)

Sec. 71. License required to dig or take clams, etc., in town of Westport.—No person, firm or corporation shall, within the limits of the town of Westport in the county of Lincoln, dig or take any clams, clamworms, sandworms or bloodworms without having first obtained a license from the municipal officers of said town of Westport, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Westport. Nothing herein shall prohibit a riparian owner of shores or flats in said town of Westport from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 71 to 74, inclusive, the term “a resident” shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive months and in the town of Westport for at least 3 consecutive months prior to making application for license. (1951, c. 150.)

Sec. 72. Dealers’ licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Westport without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purpose of sections 71 to 74, inclusive, the term “dealer” herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (1951, c. 150.)

Sec. 73. Licenses; revocation; appeals.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (1951, c. 150.)

Sec. 74. Penalty.—Whoever violates any of the provisions of the 3 preceding sections shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (1951, c. 150.)

Sec. 75. License required to dig or take clams, etc., in Georgetown.—No person, firm or corporation shall, within the limits of the town of Georgetown in the county of Sagadahoc, dig or take any clams, clamworms, sandworms or bloodworms without having first obtained a license from the municipal officers of said town of Georgetown, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Georgetown. Provided, however, that for the taking or digging of marine worms a license may be granted or issued to any person, firm or corporation not a resident of said town of Georgetown. Nothing herein shall prohibit a riparian owner of shores or flats in said town of Georgetown from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 75 to 77, inclusive, the term “a resident”

shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive months and in the town of Georgetown for at least 3 consecutive months prior to making application for license. (R. S. c. 34. 1947, c. 332. 1953, c. 173.)

Sec. 76. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Georgetown without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 75 to 77, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 77. Licenses; revocation; appeals.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 78. Penalty.—Whoever violates any of the provisions of sections 75 to 77, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (R. S. c. 34. 1947, c. 332.)

Sec. 79. License required to dig or take clams, etc., in Woolwich.—No person, firm or corporation shall, within the limits of the town of Woolwich in the county of Sagadahoc, dig or take any clams, clamworms, sandworms or bloodworms, without having first obtained a license from the municipal officers of said town of Woolwich, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Woolwich. Nothing herein shall prohibit a riparian owner of shores or flats in said town of Woolwich from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 79 to 81, inclusive, the term "a resident" shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive months and in the town of Woolwich for at least 3 consecutive months prior to making application for license. (R. S. c. 34. 1947, c. 332.)

Section constitutional.—This state, unless it has parted with title, owns the bed of all tidal waters within its jurisdiction as well as such waters themselves so far as they are capable of ownership, and has full power to regulate and control fishing therein for the benefit of all people. The legislature has the right to authorize the selectmen of each town within the state to

make a regulation forbidding the taking of clams without a permit and to provide that permits shall be granted only to the inhabitants of the town. Such a regulation is not in violation of the Fourteenth Amendment of the Constitution of the United States. *State v. Lemar*, 147 Me. 405, 87 A. (2d) 886.

Sec. 80. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Woolwich without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 79 to 81, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (R. S. c. 34. 1947, c. 332.)

Sec. 81. Licenses; revocation; appeal.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (R. S. c. 34. 1947, c. 332.)

Sec. 82. Penalty.—Whoever violates any of the provisions of sections 79 to 81, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (R. S. c. 34. 1947, c. 332.)

Sec. 83. License required to dig or take clams, etc., in town of Boothbay.—No person, firm or corporation shall, within the limits of the town of Boothbay in the county of Lincoln, dig or take any clams, clamworms, sandworms or bloodworms without having first obtained a license from the municipal officers of said town of Boothbay, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Boothbay. Nothing herein shall prohibit a riparian owner of shores or flats in said town of Boothbay from digging and taking clams therefrom for food for himself and family without license. For the purposes of sections 83 to 86, inclusive, the term “a resident” shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive months and in the town of Boothbay for at least 3 consecutive months prior to making application for license. (1951, c. 149.)

Sec. 84. Dealers' licenses.—No person shall be a dealer in clams, clamworms or bloodworms in the town of Boothbay without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purpose of sections 83 to 86, inclusive, the term “dealer” herein used shall mean any person, firm or corporation buying clams, clamworms or bloodworms for resale. (1951, c. 149.)

Sec. 85. Licenses; revocation; appeals.—The municipal officers may revoke any license issued by them under the provisions of the 2 preceding sections, upon evidence satisfactory to them that the person taking or selling clams, clamworms or bloodworms has violated any of the laws of the state regulating the taking and sale of clams, clamworms or bloodworms. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (1951, c. 149.)

Sec. 86. Penalty.—Whoever violates any of the provisions of sections 83 to 85, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (1951, c. 149.)

Sec. 87. License required to dig or take clams, etc., in town of Brunswick.—No person, firm or corporation shall, within the limits of the town of

Brunswick, in the county of Cumberland, dig or take any clams, quahogs, clamworms, sandworms or bloodworms without having first obtained a license from the municipal officers of said town of Brunswick, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Brunswick. Nothing herein shall prohibit a riparian owner of shores or flats in said town of Brunswick from digging and taking clams and quahogs therefrom for food for himself and family without license. For the purposes of sections 87 to 90, inclusive, the term "a resident" shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive months and in the town of Brunswick for at least 3 consecutive months prior to making application for license. (1951, c. 177.)

Sec. 88. Dealers' licenses.—No person shall be a dealer in clams, quahogs, clamworms or bloodworms in the town of Brunswick without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 87 to 90, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams, quahogs, clamworms or bloodworms for resale. (1951, c. 177.)

Sec. 89. Licenses; revocation; appeals.—The municipal officers may revoke any license issued by them under the provisions of the preceding section, upon evidence satisfactory to them that the person digging or taking clams, quahogs, clamworms, bloodworms or sandworms has violated any of the laws of the state regulating the digging or taking of clams, quahogs, clamworms, bloodworms or sandworms. If the municipal officers refuse to issue the license provided for in said section or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (1951, c. 177.)

Sec. 90. Penalty.—Whoever violates any of the provisions of sections 87 to 89, inclusive, shall be punished by a fine of not less than \$10, nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (1951, c. 177.)

Sec. 91. Certificate and license required for interstate transportation of shellfish; interstate transportation of soft-shell clams in the shell.—No person, firm or corporation, as principal or by an agent or servant, shall ship or transport or attempt to ship or transport, in any manner beyond the limits of this state, any soft-shell clams in the shell; except that holders of licenses under the provisions of this section and section 111 may ship or transport, by common carrier licensed by the interstate commerce commission, such clams in hermetically sealed cans containing no more than 3 dozen of such clams or in individual lots of not more than $\frac{1}{2}$ bushel of such clams to any 1 customer in any 1 day.

No person, firm or corporation, as principal or by an agent or servant, shall ship or transport in any manner, beyond the limits of this state, any quahogs or mussels in the shell, or any soft-shell clams, quahogs or mussels that have been shucked or removed from the shell, without first having procured therefor a shellfish certificate from the commissioner of agriculture and a license from the commissioner of sea and shore fisheries.

Application for a shellfish certificate shall be made on a form provided by the commissioner of agriculture. Each application for a shellfish certificate must be signed by the applicant and must show the names of persons licensed to dig and sell clams, quahogs and mussels, from whom quahogs and mussels in the shell

are to be procured and the names of persons holding shucking certificates from whom shucked soft-shell clams, quahogs and mussels are to be procured. If the commissioner of agriculture is satisfied that all such persons named in the application are properly licensed or certified, he may issue the applicant a certificate. Such certificate shall bear a number and shall designate the persons from whom quahogs and mussels in the shell and soft-shell clams, quahogs and mussels that have been shucked or removed from the shell may be procured for interstate transportation.

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

The commissioner of agriculture shall have the power to revoke or suspend any certificate thus issued by him, whenever it has been determined that the holder of such a certificate has violated any provision of said certificate or any law or rule and regulation pertaining to shellfish.

Application for a license, designated as an interstate shellfish transportation license, shall be made to the commissioner of sea and shore fisheries on a form provided by him for such purpose and it shall contain a description, sufficient to identify it, of the boat, truck, automobile, airplane or other means of transportation to be used, and any other information that may be requested.

Such license may be procured by a legal resident of Maine upon payment of a fee of \$35, provided that an extra fee of \$10 shall be required for each additional boat, truck, automobile or other means of transportation to be used.

Such license may be procured by a nonresident of Maine upon payment of a fee of \$85, provided that an extra fee of \$20 shall be required for each additional boat, truck, automobile or other means of transportation to be used.

An applicant for an interstate shellfish transportation license must present a shellfish certificate issued by the commissioner of agriculture before such license shall be issued.

No person shall ship or transport beyond the limits of this state any clams, quahogs or mussels, except those procured from the persons named in said shellfish certificate.

The foregoing provisions shall not apply to a common carrier, licensed by the interstate commerce commission, transporting clams, quahogs or mussels in accordance with the provisions of section 96, nor by any person who lawfully possesses the same for immediate consumption by himself and his family, nor shall it apply to clams, quahogs or mussels that are being transported through the state under the authority of the laws of the United States.

Whoever violates any provision of this section shall be punished by a fine of not less than \$200, nor more than \$500, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

It is the intent of the legislature that the provisions of this section are enacted for the purpose of conservation of soft-shell clam resources. (R. S. c. 34. 1947, c. 137, § 3; c. 332. 1949, c. 247; c. 415, §§ 10, 11; c. 442. 1951, c. 175, § 8; c. 187. 1953, c. 129, § 11.)

Sec. 92. Taking of clams and quahogs.—Whoever takes or has in his possession quahogs or soft-shell clams less than 2 inches in the longest diameter, hereinafter referred to as seed quahogs or seed clams, to the amount of more than 10% of any batch or lot shall be punished by a fine of not less than \$10, nor more than \$25, for the 1st offense; by a fine of not less than \$20, nor more than \$50, for the 2nd offense; by a fine of not less than \$40, nor more than \$100, for the 3rd offense; and by a fine of \$100 for the 4th and all subsequent offenses. On the 2nd conviction thereof the commissioner may in his discretion suspend the offender's commercial shellfish and marine worm license issued under the provisions of this chapter for a period not to exceed 1 month; on the 3rd conviction for a period not to exceed 3 months; and on the 4th and subsequent convic-

tion for a period not to exceed 1 year. Provided, however, it shall not be unlawful to take seed quahogs or seed clams or have the same in possession under authority of a permit therefor, which the commissioner is authorized to grant, for replanting in waters or flats within the state or any other purpose. The tolerance of 10% shall be determined by numerical count, or by measure of not less than 1 peck nor more than 4 pecks, taken at random from various parts of said batch or lot; provided, however, that such tolerance shall be determined by numerical count of the entire batch or lot when said batch or lot is less than 1 peck.

A batch or lot, as used in this section, shall mean the total number of quahogs or soft-shell clams in any bulk pile, provided that when quahogs or soft-shell clams are in a box, barrel or other container, the contents of each such box, barrel or other container shall constitute a separate batch or lot.

Whenever clams, quahogs or mussels are bought or sold in units of 1 bushel, measurement shall be determined by a container having a capacity of a standard bushel, (2150.42 cu. inches). (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 12. 1951, c. 32. 1953, c. 129, § 12.)

Sec. 93. Size of bait barrels.—In all contracts relating to the sale of clam, quahog or mussel bait, fresh or salt, by the barrel and clam, quahog or mussel bait barrels, such barrels shall be $25\frac{1}{4}$ inches long and $15\frac{1}{2}$ inches head diameter, outside measure.

Whoever violates any provision of this section shall be punished by a fine of not more than \$50 for each offense. (R. S. c. 34. 1947, c. 332.)

Sec. 94. Clam, quahog and mussel flats closed; signs posted.—The commissioner of sea and shore fisheries and the commissioner of agriculture shall cooperate in the investigation and inspection of clam, quahog and mussel flats in this state.

Whenever it is found by examination that any flats and shores are contaminated or polluted and that clams, quahogs or mussels dug from such contaminated or polluted areas are not in conformity with regulations promulgated by the commissioner of agriculture and the regulations and standards of purity established by the United States public health service and not acceptable for shipment in interstate commerce, the commissioner of agriculture shall file a certified copy of such findings with the commissioner of sea and shore fisheries and at the same time shall recommend that said flats or shores be immediately closed to all digging of clams, quahogs and mussels, whereupon the commissioner shall immediately promulgate rules and regulations closing said flats to all digging of clams, quahogs and mussels.

When digging of clams, quahogs or mussels in any area is prohibited by the commissioner because of contamination or pollution, he shall cause plain and distinct signs to be posted on or adjacent to the area within which said digging is prohibited. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 13.)

Sec. 95. Certain facts furnished commissioner of agriculture on request.—When requested by the commissioner of agriculture, the commissioner of sea and shore fisheries shall furnish the commissioner of agriculture with a list of names of all persons granted licenses to buy and sell clams, quahogs or mussels, giving the license numbers, the location of the shucking houses and the exact locality of the source of clams, quahogs or mussels that the licensees are offering for sale and shipment. The commissioner of sea and shore fisheries and the commissioner of agriculture shall cooperate in the enforcement of all the provisions of this chapter relating to shellfish, and they shall make uniform rates and regulations prescribing the conditions under which clams, quahogs or mussels intended for sale shall be handled in order to prevent their contamination, spoilage or adulteration. They may also fix standards of quality and purity for clams, quahogs or mussels, and such regulations shall apply with equal force both to clams,

quahogs or mussels intended for consumption within the state and to meet the requirements of the United States public health service governing clams, quahogs or mussels shipped in interstate commerce.

No person, firm or corporation, by their servant or agent, shall shuck or remove from the shell, any clams, quahogs or mussels for sale and shipment beyond the limits of the state, without first having procured therefor, a certificate from the commissioner of agriculture; nor shall any person, firm or corporation, by their servant or agent, buy or take from any person any shucked clams, quahogs or mussels for sale and shipment beyond the limits of the state, unless such clams, quahogs and mussels have been shucked in a shucking house certified by the commissioner of agriculture.

Application for a shellfish certificate giving authority to shuck and remove from the shell, clams, quahogs and mussels for sale and shipment beyond the limits of the state shall be made on blanks furnished by the commissioner of agriculture. Each application for a shellfish shucker's certificate must be signed by the applicant and must show the exact locality of the flats from which the clams, quahogs and mussels are to be dug and the location within the state of the shucking house described in the application. The application shall also bear the names of all persons digging clams, quahogs and mussels that are to be shucked, sold and shipped by the applicant beyond the limits of the state. If the commissioner of agriculture is satisfied that the shucking house and premises conform to the regulations and standards of purity and quality established by the U. S. public health service and the laws and regulations of the state of Maine, he may issue the applicant a certificate. This certificate shall entitle the holder of said certificate to shuck clams, quahogs and mussels for interstate trade. Such certificate shall bear a number and shall designate, by local name, the areas from which clams, quahogs and mussels can be taken, shucked and sold by the applicant.

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

The commissioner of agriculture shall have the power to revoke or suspend any certificate thus issued by him whenever it is determined by himself or any of his deputies that any of the provisions of law or any of the regulations governing the shipment of clams, quahogs or mussels, or the provisions or regulations governing such establishment where clams, quahogs or mussels are shucked, have been violated.

Provided, however, that the provisions for issuing, obtaining and holding a shellfish shucking house certificate shall not apply to clams, quahogs and mussels shucked in homes or fish markets for sale in intrastate trade, or clams, quahogs and mussels shucked in hotels and restaurants for serving on the premises, nor shall it prohibit individuals from shucking clams, quahogs and mussels at home for consumption for themselves and families. (R. S. c. 34, 1947, c. 332, 1949, c. 105, § 1.)

Sec. 96. Containers of clams, quahogs or mussels labeled.—All containers used in the shipment and transportation of clams, quahogs or mussels from a place within the state to a place without the state shall bear a label which in plain and distinct letters and figures shall state the name and license number of the consignor and the name of the consignee, the words "Clams," "Quahogs" or "Mussels," the date of shipment and the name of the town in which the clams, quahogs or mussels were dug. This provision shall not apply in any way to clams, quahogs or mussels in hermetically sealed containers. (R. S. c. 34, 1947, c. 332.)

Sec. 97. General provisions; license.—Upon application in writing, the commissioner may grant a written license to any owner of tide flats, other than

those used as public bathing beaches, for the purpose of cultivating and propagating quahogs upon not more than 5 acres or clams and mussels upon not more than $\frac{1}{2}$ acre of said flats between high- and low-water mark within the limits to be specified in the license for a term of 10 years. All such licenses shall be subject to such rules and regulations as are approved by the commissioner. The same may not be assigned, except as hereinafter provided. (R. S. c. 34. 1947, c. 332.)

Sec. 98. Notice of hearing for granting license.—No license shall be granted if the exercise thereof would materially obstruct navigable water. No license shall be granted until after a public hearing held in the town where said flats are located, due notice of which has been posted in 3 or more public places and published in a newspaper, if there be any newspaper published in the city or town in which the premises are situated, by the commissioner at least 10 days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area and description of the flats where the cultivation and propagation of quahogs is to be carried on. (R. S. c. 34. 1947, c. 332.)

Sec. 99. Establishment and maintenance of metes and bounds for territory under license.—The licensee under the provisions of section 97 upon receiving his license shall cause the area so designated in the license granted to be plainly marked either by stakes, ranges or monuments, which shall be maintained by him during the time of the license. Failure to place or maintain the same shall be sufficient cause for revocation of the license by the commissioner. Any person who moves, destroys, mutilates or changes the position of stakes, ranges or monuments, when the same have been properly placed and maintained in accordance with the license and in designation of the area described in the license, without the consent of the licensee, shall be punished for the 1st offense by a fine of not more than \$100, and for a 2nd offense by a fine of not more than \$200. (R. S. c. 34. 1947, c. 332.)

Sec. 100. Cost of license and disposal of fees.—A license granted under the provisions of section 97 shall describe by metes and bounds the flats to which the license is applicable, and shall have no force until it is recorded with the clerk of the city or town in which said flats are located, which record shall be open to public inspection. The licensee shall pay, annually, to the commissioner a fee of \$2 per acre for the license granted. All fees received under the provisions of sections 97 to 102, inclusive, by the commissioner and all money received by him under the provisions of said sections shall be paid by him to the treasurer of state for deposit in the general fund. (R. S. c. 34. 1947, c. 332.)

Sec. 101. Trespassing on licensed territory.—No person, except the licensee or his agents, shall dig or take quahogs or quahog seed within the territory covered by a license granted under the provisions of section 97 or remove the same from said territory. The licensee, his heirs or assignees shall, for the purpose described in the license, have the exclusive use of the territory described therein during the term of the license, and may during said term take any shellfish or worms therefrom. Any person, who without the consent of the licensee digs, takes or removes any quahogs or quahog seeds or other shellfish or worms from or within the territory covered by the license, shall be liable in an action of tort to pay to the licensee treble damages. Any person, except the licensee or his agents, who takes, digs, destroys or removes quahogs, quahog seed, other shellfish or worms from territory covered by a license, as above described, shall in addition be punished by a fine of \$20 for each offense. (R. S. c. 34. 1947, c. 332.)

Sec. 102. Revocation of license.—The commissioner shall have the power to revoke or suspend any license issued under the provisions of sections 97 to 102,

inclusive, whenever it is determined by him that the licensee is not actually occupying and using in good faith the territory covered by the license for the purpose of cultivating and propagating quahogs in said territory. (R. S. c. 34. 1947, c. 332.)

Sec. 103. Planting of oysters and quahogs by inhabitants of state; exclusive rights; trespassing.—Any inhabitants of the state, with consent of the adjacent riparian proprietors, may plant oysters and quahogs below low-water mark in any navigable waters, in places where there is no natural oyster or quahog bed; enclose such ground with stakes set at suitable distances, extending at least 2 feet above high-water mark, but so as not to obstruct the free navigation of such waters; and have the exclusive right of taking such oysters and quahogs. Whoever trespasses on such enclosure or injures such beds where oysters or quahogs have been planted is liable in an action of trespass for all damages; and if he takes any oysters, quahogs or any shellfish therein, without the consent of the owner, he shall be punished by a fine of not less than \$20, nor more than \$50, or by imprisonment for not more than 3 months. (R. S. c. 34. 1947, c. 332. 1953, c. 129, § 13.)

Quoted in part in *State v. Giles*, 101 Me. 349, 64 A. 619.

Sec. 104. Closed season on scallops.—There shall be a closed season on scallops in all the coastal waters of the state from the 1st day of April until the 31st day of the following October, both days inclusive, except that there shall be a closed season on scallops in the waters of the Bagaduce river to a point at the mouth of said river marked by a line and bound extending from Dice's Head in Castine, through the southernmost point of Nautilus island to the Brooksville shore, from the 1st day of April until the 31st day of the following December.

Whoever takes or has in his possession any scallops in violation of the provisions of this section shall be subject to the penalties provided in section 141 and an additional penalty of \$5 for every 100 scallops or part thereof involved, whether they be in the shell or shelled.

Provided, however, that there shall be a perpetual open season for scallops in those waters outside the limits of, and southeasterly of a line formed by the following points: Beginning at Petit Manan Bar, to Schoodic Point, to little Cranberry island, to Duck island, to Long island, to whistle buoy at Johns island, to Eastern Ear Isle au Haut to Saddle Back light, to Green island, Vinalhaven, to Twobush light, to Burnt island light. (R. S. c. 34. 1947, cc. 270, 332.)

See c. 137, § 13, re swelling of scallop meats by artificial means prohibited.

Sec. 105. Dragging for scallops in Harrington river and bay and Pleasant river, Washington county.—No person shall drag for scallops in Harrington river and bay and in Pleasant river, Washington county, from the 1st day of April to the 1st day of January, both days inclusive, of each year.

Such dragging shall be limited to:

Harrington river and bay: All the waters that lie northerly of a line beginning at the southern extremity of Foster's island and running easterly to the most northerly end of Strout's island; and thence from said Strout's island to the most southerly extremity of Ripley's Neck in the town of Harrington.

Pleasant river: All the waters that lie northerly of a line beginning at the most southerly end of Guard Point in the town of Harrington and extending in an easterly direction therefrom to the most southerly end of Gibbs' island in the town of Addison.

Whoever violates any of the provisions of this section shall be punished by a fine of not less than \$50 nor more than \$100 for each offense. (1951, c. 134. 1953, c. 48.)

Sec. 106. Scallop fishing license.—No person, as owner or operator, shall

operate in coastal waters any boat or drag engaged in the taking of scallops for commercial purposes until he has procured from the commissioner a written license therefor.

Such a license, designated as a scallop fishing license, may be issued to a person who has been 1 year prior to the date of his application a resident of the state and shall entitle the holder to take scallops for commercial purposes at times and in places permitted by law.

The fee for such scallop fishing license shall be \$10 for each such boat, provided that if the crew of the boat exceeds 3 men, including the operator, the fee for this license shall be \$10 for each such boat and \$3 for each resident member of the crew in excess of 3 men.

All persons assisting or helping in attending fishing gear or operating the boat shall be considered members of the crew, and if such boat so licensed is found on inspection to have more crew members than is stated in the license, the operator of the boat shall be punished by a fine of \$25 for each such unauthorized person, or by imprisonment for not more than 30 days. (R. S. c. 34, 1947, c. 332, 1949, c. 415, § 15, 1951, c. 151, 1953, c. 129, § 14.)

Sec. 107. Crawfish; sale of.—No person shall sell, offer for sale or have in possession for sale within the state, crawfish, so called, in any form. Any person who violates any of the provisions of this section shall be punished by a fine of not less than \$50, nor more than \$1,000, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 34, 1947, c. 332, 1953, c. 129, § 15.)

Sec. 108. Commercial shellfish and marine worm license.—No person, except the holder of a commercial shellfish and marine worm license, shall sell any clams, quahogs, mussels or marine worms that he has dug or taken from the flats, shores or coastal waters of the state.

No nonresident of the state shall dig or take more than $\frac{1}{2}$ bushel of clams, quahogs or mussels nor more than 30 marine worms during any 1 day from the flats, shores or coastal waters of the state.

No resident of the state shall dig or take more than $\frac{1}{2}$ bushel of clams, quahogs or mussels nor more than 30 marine worms during any 1 day from the flats, shores or coastal waters of the state without first having procured from the commissioner a written license therefor; except that a holder of a lobster and crab fishing license or a holder of a commercial fishing license may dig or take more than $\frac{1}{2}$ bushel of clams, quahogs or mussels for bait purposes only without obtaining a commercial shellfish and marine worm license.

A license, designated as a commercial shellfish and marine worm license, may be issued to residents of the state who shall make application for the same.

The fee shall be \$3 and it shall entitle the holder to dig or take clams, quahogs or mussels in quantities greater than $\frac{1}{2}$ bushel during any 1 day and to transport and sell the same in the shell within the state; and to dig, take, buy or sell marine worms.

No person, except the holder of a commercial shellfish and marine worm license as provided for in this section or a dealer duly licensed under the provisions of this chapter or as provided in the 3rd paragraph of this section, shall have in his possession more than $\frac{1}{2}$ bushel of clams, quahogs or mussels, nor more than 30 marine worms. (1947, c. 286, 1949, c. 415, § 16, 1953, c. 129, § 16.)

Sec. 109. Disposition of funds from sale of licenses.—The funds received from sale of certain licenses, namely, "commercial shellfish and marine worm licenses," "interstate shellfish transportation licenses" and 10% of the revenue from the sale of licenses under the provisions of section 111 shall constitute a shellfish fund, so called, to be expended under the direction of the commissioner for the sole purpose of restoration, development and conservation of clams,

quahogs, mussels and marine worms in the coastal waters of the state and for establishment and maintenance of facilities therefor.

Said funds shall not lapse, but funds so collected in any one year may be used in that or any succeeding year for said purpose. (1947, c. 286. 1951, c. 175, § 9; c. 266, § 49. 1953, c. 129, § 17.)

Dealers' Licenses.

Sec. 110. Retail dealer's license required to sell, serve, ship or transport soft-shelled clams, quahogs, crabs or lobsters, or parts thereof.—No person, except as provided in this chapter, shall buy, sell, serve, ship or transport in any manner any soft-shelled clams, quahogs, crabs or lobsters, or parts thereof, without first having procured from the commissioner a written license therefor.

A license, designated as a retail sea food dealer's license, shall entitle the holder, as a retail dealer, to buy, sell, serve, ship and transport soft-shelled clams, quahogs, crabs or lobsters, or parts thereof, within the limits of the state.

The fee for such license shall be \$2, provided that a separate license shall be required for each market, hotel, restaurant, store or other facility where soft-shelled clams, quahogs, crabs or lobsters are served or sold in retail trade.

A retail sea food dealer's license shall not be required of a person to transport soft-shelled clams, quahogs, crabs or lobsters, or parts thereof, that are possessed by him for immediate consumption by himself and his family, nor of a properly licensed fisherman who, by virtue of his fishing license, may transport and sell within the state any species that has been lawfully taken by him, nor of a common carrier engaged in carrying freight on a fixed schedule within or without the state, provided that such soft-shelled clams, quahogs, crabs or lobsters, or parts thereof, are received by said common carrier at one of his regular established places on land for receiving general freight and the receptacle containing the same is plainly marked in accordance with law. (R. S. c. 34. 1947, c. 332. 1949, c. 365. 1953, c. 129, § 18.)

See § 16, re definition of "fresh fish."

Sec. 111. Wholesale sea food dealer's and processor's license.—No person, firm or corporation shall engage in the wholesale trade in fish, shellfish, lobsters, crabs, or parts thereof, nor process, preserve by pickling, cooking, freezing or smoking, or can for sale any fish, shellfish, lobsters, crabs, or parts thereof, in wholesale trade without first having procured from the commissioner a written license therefor.

The fee for a license, designated as a wholesale sea food dealer's and processor's license, shall be \$35 and shall entitle the holder in wholesale trade to buy, sell, serve, process, preserve, pickle, cook, freeze, smoke or can for sale all species of fish, shellfish, lobsters and crabs; provided also, that such licensee shall be permitted to transport all fish except shellfish and lobsters in wholesale and retail trade within and outside the state, and to ship all species of fish, shellfish and lobsters within and outside the state with the exceptions of the provisions covering soft-shell clams as set forth in section 91.

Provided that in addition to such license a shellfish certificate issued by the commissioner of agriculture, as provided for in section 91, shall be required for shipment beyond the limits of the state of any clams, quahogs or mussels, either in the shell or shucked; and provided, further, that by virtue of this license, clams may be shipped only by common carrier licensed by the interstate commerce commission.

Any person, firm or corporation licensed under the provisions of this section, that maintains any facility for the buying, selling, processing, preserving by cooking, freezing, smoking or canning of fish, shellfish, lobsters or crabs other than his or their principal place of business, shall procure from the commissioner for

each such facility a supplemental license and the fee therefor shall be \$10. Provided further that anyone engaged in smoking of alewives or herring, as smoked herring or bloaters, shall be exempt from the licensing provisions of this section.

A dealer licensed under this section, who receives crates of lobsters from a point beyond the limits of the state and immediately reconsigns them with contents intact to another such dealer within the state, shall not be responsible for the size of lobsters contained therein, provided each such crate is labeled in the manner prescribed by the commissioner and with materials furnished at cost by said commissioner. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 18. 1951, c. 175, § 10; c. 266, § 50. 1953, c. 129, § 21.)

See c. 137, § 16, re re-use of barrels for parking fresh fish.

Regulation of Lobster Industry.

Sec. 112. Lobster and crab fishing license.—No person shall fish for, take or catch lobsters or crabs in any manner without having first procured from the commissioner a written license therefor, which shall be kept upon the person while fishing or transporting such lobsters or crabs and which shall be exhibited to any coastal warden upon request.

Any person, assisting or helping another in lobster fishing or in attending to lobster traps or pots, shall be considered a lobster fisherman and must procure a license therefor.

Such license shall be issued only to persons who have been, for 3 years immediately prior to the date of the application, legal residents of this state; provided, however, that any person who has previously been a legal resident of this state and has re-established a legal residence here for a period of 1 year next preceding his application shall be entitled to have his nonresidence taken as part of said 3 years, and the fee for such license shall be \$5; and provided further, that a veteran of World War II, or the Korean campaign, who is honorably discharged, honorably separated or retired from active service in the armed forces shall be granted such license if he has been a resident of Maine for at least 1 year prior to the date of the application.

The holder of a lobster fishing license shall not be required to procure a resident commercial fishing license, but shall be entitled to all privileges of the same by virtue of such lobster fishing license. (R. S. c. 34. 1947, c. 332. 1949, cc. 106, 121, 274. 1951, c. 257. 1953, c. 129, § 22.)

Cited in *State v. Cote*, 122 Me. 450, 120 A. 538.

Sec. 113. Interstate transportation of lobsters.—No person, firm or corporation, as principal or by an agent or servant, except a common carrier, shall transport or attempt to transport in any manner any lobsters, or parts thereof, beyond the limits of the state without first having procured from the commissioner a written license therefor.

The application of this license shall contain a description of the boat, truck, automobile, airplane or other means of transportation sufficient to identify it and the name and address of the owner.

The fee for such license shall be \$50 with an extra fee of \$5 for each additional boat, truck, automobile, airplane or other means of transportation to be used; provided that any person licensed as a wholesale sea food dealer and processor under the provisions of section 111 may procure this license upon payment of \$25.

The license shall give no authority to transport lobsters, or parts thereof, in any boat, truck, automobile, airplane or other means of transportation, except that named and described in the license.

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 such fine and imprisonment. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 20. 1953, c. 129, § 21.)

Requirement of license not violative of constitution. — The provision in this section relating to the necessity of obtaining a license to transport lobster beyond the limits of the state is a valid and reasonable provision and in accordance with the Constitution of Maine and the Constitution of the United States. *State v. Dodge*, 117 Me. 269, 104 A. 5.

And license fee not burden on interstate commerce. — The imposition of a license fee for vessels engaged in the lobster fisheries on waters within the jurisdiction of the state, and moving in interstate commerce is reasonable and is not a burden on

interstate commerce. *State v. Dodge*, 117 Me. 269, 104 A. 5.

In regard to the transportation of lobsters beyond the limits of the state, the right to legislate is given even if interstate commerce is indirectly involved, until Congress exercises its authority over the subject. *State v. Dodge*, 117 Me. 269, 104 A. 5.

Case under former statute.—For a case under the former wording of this section concerning the criminal liability of a license for failing to stop his boat for an inspecting officer, see *State v. LeBlanc*, 115 Me. 142, 98 A. 119. As to present duty to stop, see § 138.

Sec. 114. Legal length of lobsters; double gauge measure; method of measurement.—The commissioner shall provide a measure, designated as the state double gauge lobster measure, for determining the legal length of lobsters. One gauge shall be $3\frac{1}{8}$ inches in length, the other shall be 5 inches in length, and no evidence shall be admissible in any court in the state in any manner in which the length of a lobster is in question, unless such length has been determined by such a measure. This measure shall be sold by the commissioner at cost.

No person shall buy, sell, expose for sale, give away, transport or have in possession any lobster except that which is of legal length as determined by the state measure. Any lobster not of legal length when caught shall immediately be liberated alive.

An illegal lobster is one of less than $3\frac{1}{8}$ inches in length or more than 5 inches in length, alive or dead, cooked or uncooked, when measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

The possession of lobsters, or parts thereof, alive or dead, cooked or uncooked, mutilated in such manner as to make accurate measurements as prescribed in this section impossible, shall be prima facie evidence that they are not of the required legal length.

Whoever violates any provision of this section relating to lobsters of less than the minimum legal length shall be punished by a fine of \$5 for each such lobster involved, or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

Whoever violates any provisions of this section relating to lobsters of a length greater than the maximum legal length shall be punished by a fine of \$25 for each such lobster involved, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332. 1951, c. 175, § 11.)

I. General Consideration.

II. Elements of Offense and Proof Necessary for Conviction.

III. Liberation of Lobsters Alive.

IV. Penalty.

I. GENERAL CONSIDERATION.

History of section.—See *State v. Chadwick*, 118 Me. 233, 107 A. 129.

Object of section.—The object and purpose of this section is to prevent the destruction of lobsters to such a degree as materially to diminish the supply and to preserve a necessary and valuable source

of food. *State v. Craig*, 80 Me. 85, 13 A. 129; *State v. Lube*, 93 Me. 418, 45 A. 520.

The intent of this section is to protect lobsters and prevent their unreasonable destruction. *State v. Craig*, 80 Me. 85, 13 A. 129.

The object of this section is to prevent the taking of small lobsters out of the sea.

It requires a restoration into the sea when innocently taken out. In order to carry the primary design more effectually into execution, it is declared to be an offense to have in possession any lobster under the legal length. *Thompson v. Smith*, 79 Me. 160, 8 A. 687.

This section is one of a series of enactments passed by the legislature for the protection of one branch of seashore fisheries. *State v. Lube*, 93 Me. 418, 45 A. 520.

Indictment held not bad for duplicity.—In a prosecution for violation of this section, an allegation that the accused did "catch and have in his possession" the lobsters named does not render the indictment amendable to the objection of duplicity. The operation of catching lobsters necessarily involves at least a momentary possession. *State v. Dunning*, 83 Me. 178, 22 A. 109.

An indictment charging possession of live lobsters and cooked lobsters, each less than the legal length, does not charge two offenses. *State v. Brewer*, 102 Me. 293, 66 A. 642, modified on another point in *State v. Chadwick*, 118 Me. 233, 107 A. 129.

Testimony concerning weight properly excluded.—Since the legislature has furnished the method of determining the legal size of lobsters, which method is by measurement of the body shell, it is not error to exclude testimony as to the weight of lobsters in determining their legal size. *State v. Morton*, 125 Me. 9, 130 A. 352.

The legislature, in explicit language, has furnished the method of determining the legal size of lobsters, which method is by measurement of the body shell and not by weight. To admit testimony as to weight would be an invasion of legislative standards, to dispute direct evidence of length by doubtful evidence of heaviness. *State v. Morton*, 125 Me. 9, 130 A. 352.

Applied in *State v. Sinnott*, 89 Me. 41, 35 A. 1007; *State v. Giles*, 101 Me. 349, 64 A. 619; *State v. Damerest*, 118 Me. 86, 105 A. 858.

Cited in *Staples v. Peabody*, 83 Me. 207, 22 A. 113; *State v. Hanna*, 99 Me. 224, 58 A. 1061.

II. ELEMENTS OF OFFENSE AND PROOF NECESSARY FOR CONVICTION.

In a prosecution under this section the issue of the case is whether the accused, at the time charged in the complaint, had in his possession lobsters of illegal length as defined by the section. *State v. Chadwick*, 119 Me. 45, 109 A. 372.

Intent not element of offense under this section.—The question of intent does not enter into an offense charged against the accused under this section. The axiom "actus non facit reum, nisi mens sit rea" does not always apply to crimes created by statute, and therefore if a criminal intent is not an essential element of a statutory crime it is not necessary to prove any intent in order to justify a conviction. *State v. Chadwick*, 119 Me. 45, 109 A. 372.

A criminal intent is not an essential element of the crime provided by this section and it is not necessary to prove any intent in order to justify a conviction. *State v. Morton*, 125 Me. 9, 130 A. 352.

The illegal possession of lobsters constitutes the crime under this section and the normal turpitude or the purity of the motive by which it was prompted, as well as knowledge or ignorance of its character, are immaterial circumstances on the question of guilt. The intent with which it was done is alike immaterial. The only fact to be determined in such cases is whether the defendant did the act. *State v. Chadwick*, 119 Me. 45, 109 A. 372; *State v. Morton*, 125 Me. 9, 130 A. 352.

Nor is degree of care with which act done.—The degree of care with which an act in violation of this section may have been done, or the intent with which it was done, are alike immaterial. *State v. Chadwick*, 119 Me. 45, 109 A. 372.

But carrier's knowledge that lobsters are "short" essential to conviction.—A common carrier who in the course of his business has short lobsters, which were packed in barrels, in his possession for the purpose of transporting them to market, without knowing or having reasonable cause for believing that they are short lobsters, is not liable to the penalty ordinarily attaching to the having possession of short lobsters; and no duty rests on him, not having such knowledge or reasonable belief, to inspect or examine such packages in order to see whether they contain short lobsters or not. *State v. Swett*, 87 Me. 99, 32 A. 806.

Length at time of seizure controlling.—It matters not what the measurement of the lobsters might have been when caught; the section speaks in the present tense, viz: The length at time of seizure, not at some previous time. *State v. Chadwick*, 119 Me. 45, 109 A. 372.

Place of taking lobsters immaterial.—This section prohibits the destruction of certain lobsters. It is immaterial where the lobsters were taken if the defendant possessed them within the jurisdiction of the court for the purpose of not liberating

them alive, or for destroying them. *State v. Craig*, 80 Me. 85, 13 A. 129.

And, under this section, it is immaterial whether the lobsters were alive or dead when found in the possession of the accused. *State v. Dunning*, 83 Me. 178, 22 A. 109.

Jury need not find definite number of short lobsters in possession of accused.—In a prosecution for violation of this section, the finding by the jury of a definite number of short lobsters in the possession of the accused is not necessary. A finding of any number will justify a verdict of guilty. The number justified by the evidence fixes the penalty which the court must impose. *State v. Morton*, 125 Me. 9, 130 A. 352.

III. LIBERATION OF LOBSTERS ALIVE.

This section requires immediate liberation, alive, of short lobsters. Liberation at the convenience of the fisherman does not satisfy the demand of the section. *State v. Morton*, 125 Me. 9, 130 A. 352.

It is not unlawful to catch "short lobsters", but this section does enjoin upon every person catching them the immediate liberation of them alive, and imposes a penalty for every lobster "so caught", that is caught and not immediately liberated. *State v. Chadwick*, 118 Me. 233, 107 A. 129.

And duty to liberate not affected by weather, wind, etc.—The duty of fishermen to liberate short lobsters alive is not affected by wind, weather, or season of the year. Hence, it is not error to exclude questions relating to wind, weather, or season of the year, as affecting the duty of the fisherman to liberate short lobsters alive, as required by this section. *State v. Morton*, 125 Me. 9, 130 A. 352.

Failure to liberate lobsters is not basis of offense.—Under this section, the failure to liberate is not the basis of the offense, but the offense is to have lobsters of less than lawful length in possession or to deal in them in any way, without regard to whether they should have been liberated or not, hence it matters not what their measurement may have been when alive or when caught. *State v. Chadwick*, 118 Me. 233, 107 A. 129.

The unlawfulness of buying, selling, exposing for sale, or having in possession does not, under this section, arise from the fact that they were not liberated alive, but entirely from the fact that they were of less than lawful length whether dead or alive, cooked or uncooked. *State v. Chad-*

wick, 118 Me. 233, 107 A. 129.

And such failure need not be alleged in prosecution for buying, giving away, etc.—Under this section, in the case of a charge of buying, selling, giving away, or exposing for sale, it is sufficient to allege simply that the lobsters were of less than the prescribed length measured according to the section, without alleging they were not immediately liberated alive, or whether they were alive or dead. That they were not immediately liberated alive is not an essential element of the offense, and in any event follows by necessary intendment in case of a charge of buying, selling, or exposing for sale. *State v. Chadwick*, 118 Me. 233, 107 A. 129.

But must be alleged in prosecution for possession of short lobsters.—In case of a charge of having in possession "short lobsters," it is necessary to allege that they were not immediately liberated alive at the risk and cost of the party taking them, in order to negative the lawful possession that is incident to catching by the present methods prior to liberation in accordance with this section. *State v. Chadwick*, 118 Me. 233, 107 A. 129, modifying *State v. Brewer*, 102 Me. 293, 66 A. 642, which case held that the fact that lobsters were liberated alive by the person having them in possession could be shown in defense, but that it was not necessary to allege in the indictment that they were not so liberated alive.

IV. PENALTY.

Penalty not excessive.—The penalty imposed by this section is neither excessive nor severe. *State v. Craig*, 80 Me. 85, 13 A. 129.

The provision of this section imposing a penalty of five dollars for each lobster less than the legal length found in the possession of any person, is not repugnant to § 9, Article 1 of the Constitution of Maine, which prohibits the imposition of excessive fines and penalties. *Campbell v. Burns*, 94 Me. 127, 46 A. 812; *State v. Lube*, 93 Me. 418, 45 A. 520.

The penalties imposed for a violation of this section cannot be said to be excessive or disproportionate to the offence created by it. *State v. Craig*, 80 Me. 85, 13 A. 129.

And question of excessiveness not dependent on value of lobsters.—Whether or not the fine imposed by this section is excessive does not depend upon the value of the lobsters found in the unlawful possession of a party. *State v. Lube*, 93 Me. 418, 45 A. 520.

Sec. 115. Lobster pots, traps and cars to be marked.—No person shall set any pot or trap for any lobster or crab without having the pot or trap and

buoy attached thereto plainly carved or branded with his lobster fishing license number; and he shall forfeit to the state any pot or trap not so marked and any lobsters or crabs found therein.

No person, firm or corporation shall use or set in tidal waters, any car or other contrivance for holding or keeping lobsters without having the car or other contrivance plainly carved or branded with the proper lobster license number.

Whoever violates any provision of this section shall be subject to the penalties provided in section 141. (R. S. c. 34. 1947, c. 332.)

Sec. 116. Sale of lobster meat.—A permit to remove lobster meat from the shell for sale may be granted to any person licensed as a dealer under the provisions of sections 110 or 111 upon written application to the commissioner and the payment of a fee of \$10.

No person shall remove lobster meat from the shell for sale without a permit therefor, nor shall any person possess, sell, offer or expose for sale, give away, ship or transport any lobster meat after the same has been removed from the shell, except meat which has been removed by the holder of a permit as described above and except as hereinafter provided.

Such permit shall entitle the holder to remove lobster meat from the shell of legal size lobsters at his regular place of business and to sell, deliver, transport or ship or have in his possession the same under such regulations as the commissioner may prescribe, provided that the tail section of all lobster meat shall be removed from the shell whole and intact and shall be not less than $4\frac{1}{4}$, nor more than $6\frac{1}{2}$ inches in length when laid out straight and measured from end to end, not including the small part that is on the body end of said tail section.

It shall be unlawful to possess, sell, offer for sale, deliver, ship or transport any tail section of lobster meat that is not whole and intact as removed from the shell, except that hotels and restaurants may cut up such lobster meat immediately prior to and for the purpose of serving it to customers on the premises, and except further that the holder of a wholesale sea food dealer's and processor's license in the state may at his regular place of business cut up such lobster meat immediately prior to and for the purpose of preserving, canning or freezing.

It shall be lawful for holders of a wholesale sea food dealer's and processor's license to receive meat from other states and countries providing such meat is immediately processed and hermetically sealed in all metal or metal and glass containers for resale as processed stews, newburgs or chowders, in the retail trade. Such meat shall not be resold unless processed as above and it must conform to legal standards of the states or countries from which it originates. The purchaser of such meat is required to file a monthly statement of such shipments received with the commissioner on forms furnished by the commissioner and the shipping containers cannot be opened until immediately prior to processing of the meat.

All barrels, boxes or other containers containing lobster meat that has been removed from the shell, before being transported or offered for sale or offered for transportation, shall be plainly labeled with the name of the permittee, together with the words, "Lobster Meat Removed under Permit Number _____," followed by the number of the permit under which such lobster meat was removed.

No specie of shellfish, either in a canned, frozen or fresh state, with the meat removed from the shell or otherwise, shall be sold, served in public eating places, labeled or advertised as lobster or imitation lobster in the state of Maine, except the specie of lobster commonly known as *Americanus Homarus*.

No permit shall be required for the resale of such meat so long as it remains in the original package, provided that such package is plainly labeled with the name of the permittee, together with the words "Lobster Meat Removed under Permit Number _____," followed by the number of the permit under which said lobster meat was removed.

The foregoing provisions of this section shall not apply to such lobster meat in possession of a common carrier for transportation, and which is marked as pro-

vided in this section; nor shall they apply to lobster meat passing through the state under authority of laws of the United States, nor shall any permit be required of a person to possess or transport lobster meat that is lawfully possessed by him for immediate consumption by himself and family; nor shall a permit be required to remove lobster meat for serving in hotels or restaurants, provided said meat is removed on the premises where it is served.

Whoever violates any provision of this section shall be subject to the penalty provided for in section 141, and in addition, \$5 for each illegal lobster or part thereof involved. (R. S. c. 34. 1947, c. 332. 1949, c. 415, § 21. 1951, c. 394. 1953, c. 129, § 23.)

Sec. 117. Only owner or authorized person may examine or tend traps, pots or cars set for catching or holding lobsters or crabs.—No person, except the owner or an officer authorized to enforce the sea and shore fisheries laws, shall raise, lift or in any manner molest any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs without the written permission of the owner thereof.

Whoever violates any provision of this section shall, upon conviction, 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 such fine and imprisonment.

Any person convicted of violation of any provision of this section shall be ineligible to hold a lobster fishing license for a period of 3 years from the date of such conviction. (R. S. c. 34. 1947, c. 332.)

Sec. 118. Closed time on egg-bearing lobsters.—Whoever takes, sells or has in possession any female lobster bearing eggs shall be punished by a fine of \$10 for each such female lobster involved, or by imprisonment for not more than 90 days, or by both such fine and imprisonment; but a person who takes any such lobster and immediately returns it alive to the waters from which it was taken shall not be subject to such penalty.

This section shall not apply to lobsters spawning in cars or pounds if they are, upon discovery, immediately liberated alive in the coastal waters, nor to the taking, sale or possession of lobsters as provided in section 119. (R. S. c. 34. 1947, c. 332.)

Sec. 119. Purchase of egg-bearing lobsters.—The commissioner may authorize the taking, holding and delivery of egg-bearing lobsters by any person licensed under the provisions of this chapter under such regulations as he may prescribe.

Persons taking or holding such egg-bearing lobsters under such authority shall be paid by the commissioner to the extent of the appropriation or appropriations therefor, but at a rate not above the wholesale price of other lobsters.

All egg-bearing lobsters purchased by the commissioner shall be taken to a plant for the propagation of lobsters maintained for rearing them from the time of hatching to the bottom crawling stage, or shall be liberated in coastal waters of the state, as the commissioner may deem for the best interests of the state. Before any such egg-bearing lobster is so liberated, however, it shall be marked by the commissioner or his authorized agent by cutting a V notch in the middle flipper of its tail. No person shall have in possession any such lobster so marked or any lobster mutilated in such manner as to hide or obliterate such mark; but any person catching any such lobster so marked or mutilated and immediately returning the same to the waters from which it was taken shall not be deemed to have violated the foregoing provisions of this section.

Lobsters from which eggs have been so hatched and the young lobsters so reared shall be liberated, as nearly as possible, equally in all coastal counties.

Nothing in this section shall be so construed as to prevent the commissioner from otherwise disposing of female lobsters purchased under the provisions of

this section or young lobsters so reared, when in the opinion of the commissioner by so doing depleted or nonproductive areas may be benefited.

Whoever takes, holds, transports or has in possession any female lobsters in violation of the provisions of this section shall be punished by a fine of not less than \$25, and in addition thereto, \$10 for each such female lobster involved, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332. 1951, c. 175, § 13.)

Sec. 120. Lobster shipping containers; how marked. — No person, firm or corporation shall ship or offer for shipment any lobsters, or parts thereof, except in barrels, boxes or other containers that are plainly marked on the outside with the word LOBSTERS in capital letters at least 1 inch in length, together with the full name of the shipper; and no common carrier or other person shall accept for transportation or shall transport any lobsters, or parts thereof, unless they are packed and marked in accordance with the foregoing provisions.

Whoever violates any provision of this section, upon conviction, 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 such fine and imprisonment. (R. S. c. 34. 1947, c. 332.)

Cited in *Staples v. Peabody*, 83 Me. 207,
22 A. 113.

Sec. 121. Traps not to be set near fish weir.—No person shall set any lobster trap within 300 feet of the mouth or outer end of the leaders of any fish weir under a penalty of \$10 for each offense. (R. S. c. 34. 1947, c. 332.)

Tuna. Seals. Sea Moss.

Sec. 122. Fishing for tuna regulated. — It shall be unlawful to take, catch, kill or have in possession any tuna or horse mackerel, so called, taken by any method other than harpoon or single hook and line within the territorial waters of this state.

All boats, seines or other contrivances, together with the contents thereof, used contrary to the provisions of this section shall be subject to seizure and confiscation. (R. S. c. 34. 1947, c. 332.)

Sec. 123. Shooting seals in Casco bay regulated.—No person shall, during the months of June, July and August, destroy seals in the water of Casco bay, and in the water between Branch river, in the town of Kennebunk, and the easterly end of Goose Rock beach, in the town of Kennebunkport, by shooting with rifle or other long-range weapon which might endanger human life, under a penalty of \$50 for each offense. (R. S. c. 34. 1947, c. 332. 1951, c. 26.)

Sec. 124. Control of seals.—The commissioner may authorize the killing and disposal of seals in any of the coastal waters of the state whenever such seals are causing damage to property.

The provisions of this section shall not affect or modify the provisions of section 123. (R. S. c. 34. 1945, c. 340, § 1. 1947, c. 332.)

Sec. 125. Hunting seals near Green Island, forbidden. — It shall be unlawful, between May 15th and October 15th, both days inclusive, for any person to hunt, shoot at or kill any seal within 2 miles of any part of Green island in Western bay in the county of Hancock. (1947, c. 249.)

Sec. 126. Taking of sea moss for commercial purposes.—No person shall take sea moss from any of the shores of the state or within the tidal waters of the state for commercial purposes except under the following conditions:

I. A license shall be issued to a resident upon payment of a fee of \$2.

II. Any nonresident of the state may procure a commercial sea moss license upon payment of a fee of \$15.

Whoever violates any provision of this section shall be punished by a fine of not more than \$100, or by imprisonment for not more than 60 days, or by both such fine and imprisonment. (R. S. c. 34, 1947, c. 332.)

Revocation and Suspension of Licenses. Court Procedure.

Sec. 127. Licenses, revocation and suspension. — On conviction of any person holding a license or licenses issued under the provisions of this chapter for the violation of any of the sections of this chapter, excepting sections 92 and 117, or of any rule and regulation of the commissioner, the commissioner may revoke or suspend any such license or licenses or right thereto, for any period not exceeding 6 months from the date of final conviction; and on conviction of a second violation of any provisions of this chapter, excepting sections 92 and 117, or of any rule and regulation of the commissioner, the commissioner may revoke or suspend any such license or licenses or right thereto, for any period not exceeding 9 months from the date of final conviction.

Any person whose license or licenses have been revoked under the provisions of the 1st paragraph of this section may request a hearing by the commissioner, at which hearing all the facts concerning the violation shall be presented and the license or licenses may be reinstated.

When an appeal has been taken by any person from a sentence imposed for an alleged violation of the provisions of this chapter, or of any rules and regulations adopted by the commissioner pursuant thereto, the commissioner shall suspend, until final disposition by the court, the license of such person to conduct the particular activity in which he was engaged at the time of the alleged violation, and may suspend for the same period all licenses held by him that have been issued under authority of this chapter.

If, at the time of committing a violation of any of the provisions of this chapter or of any rules and regulations of the commissioner, the offender shall not be the holder of a license to conduct the particular activity in which he was engaged at the time of such violation, the commissioner shall not issue such a license to said person until 15 days have elapsed from the date of final determination of any complaint or legal proceedings instituted as a result of the violation.

On conviction of a 3rd or subsequent violation of any provisions of this chapter, excepting sections 92 and 117, or of any rule and regulation of the commissioner, the commissioner shall revoke or suspend any such license or licenses or right thereto, for a period of 1 year from the date of the final conviction.

Provided, however, if at the time of any conviction there has been an interval of at least 7 consecutive years from the date of the last previous conviction, the current violation shall be deemed a first violation for the purposes of this section.

Any person whose license has been suspended or revoked for violation of any provision of this chapter relating to lobsters shall remove from the water, within 5 days of such suspension or revocation, all his pots, traps, cars or other devices used or usable in the catching or holding of lobsters or crabs. (R. S. c. 34, 1947, c. 332, 1949, c. 415, § 23, 1951, c. 28, §§ 1, 2, 3, 4, 5.)

Provisions of section part of license. — The provision for suspension and revocation reads itself into and becomes a part of a license issued under this chapter. State v. Cote, 122 Me. 450, 120 A. 538.

And licensee consents to provisions imposed by this section.—By accepting and acting under a license issued under this chapter, the licensee consents to all conditions imposed thereby including provi-

sions for its revocation contained in this section. State v. Cote, 122 Me. 450, 120 A. 538.

Constitutionality of former provision.—For the constitutionality of a former provision of this section that “the director of sea and shore fisheries in his discretion may before conviction suspend the license of any person, firm or corporation whenever he has evidence that such person has

violated any of the laws relating to lob- for notice and hearing, see *State v. Cote*,
sters," which provision failed to provide 122 Me. 450, 120 A. 538.

Sec. 128. Certificate of commissioner admissible in evidence. — Any certificate of the commissioner in regard to the records of his office shall be admissible in evidence in all prosecutions under the provisions of this chapter. (R. S. c. 34. 1947, c. 332.)

Sec. 129. Proceedings in case of violation by corporation.—In case of violation of any provision of this chapter by a corporation, the warrant may be served by an attested copy on the president, secretary, manager or any general agent thereof in the county where the action is pending, and upon return of such warrant so served, the corporation shall be deemed in court and subject to the jurisdiction thereof, and any fine imposed may be collected by execution against the property of such corporation; but this section shall not be deemed to exempt any agent or employee from prosecution. (R. S. c. 34. 1947, c. 332.)

Sec. 130. County attorneys to prosecute violations. — Each county attorney shall prosecute all violations of this chapter occurring within his county when such cases may come to his knowledge or when he may be so requested by the commissioner or any officer charged with its enforcement. (R. S. c. 34, 1947, c. 332.)

Sec. 131. Participant in violation compelled to testify. — In any prosecution under the provisions of this chapter, any participant in a violation thereof, when so requested by the county attorney, commissioner or other officer instituting the prosecution, may be compelled to testify as a witness against any other person charged with violating the same, but his evidence so given shall not be used against himself in any prosecution for such violation. (R. S. c. 34. 1947, c. 332.)

Sec. 132. Result of court cases reported to commissioner.—Every magistrate or the clerk of the court before whom any prosecution under the provisions of this chapter is commenced or shall go on appeal shall report in writing to the commissioner, within 20 days after the trial or dismissal thereof, the result thereof and the amount of fines collected, if any, and the disposition thereof. (R. S. c. 34. 1947, c. 332.)

Jurisdiction of Offenses. Search and Seizure. Stopping of Vehicles.

Sec. 133. Jurisdiction.—Trial justices and municipal courts within their counties shall have original and concurrent jurisdiction with the superior court in all prosecutions under the provisions of this chapter. (R. S. c. 34. 1947, c. 332.)

Cross reference.—See § 139 and note thereto.

Offences need not be considered by grand jury.—The offences of which this section gives jurisdiction are neither capital nor infamous crimes, and need not be considered by a grand jury. *State v. Craig*, 80 Me. 85, 13 A. 129.

Municipal court may render final judgment. — Under this section, it must be held that a municipal court has jurisdic-

tion to render final judgment of conviction and sentence in prosecutions for violation of the provisions of this chapter, subject to appeal. *State v. Sinnott*, 89 Me. 41, 35 A. 1007.

Jurisdiction under former provisions of section.—For a case concerning jurisdiction when this section applied only to certain sections and not to the entire chapter, see *State v. Damerest*, 118 Me. 86, 105 A. 858.

Sec. 134. Officers may arrest without process; jurisdiction; impersonating coastal wardens. — Any officer authorized to enforce the sea and shore fisheries laws may, without process, arrest any violator of said laws and shall with reasonable diligence cause him to be taken before the municipal court

nearest to where the offense is alleged to have been committed for a warrant and trial, and in such case, jurisdiction is granted to all municipal courts in adjoining counties to be exercised in the same manner as if the offense had been committed in that county. Provided, however, that if a trial justice, whose usual place of holding court in the county where the offense is alleged to have been committed, is nearer to where the offense is alleged to have been committed than is any municipal court, such violator may be taken before such trial justice for warrant and trial. Any coastal warden may arrest with or without warrant any person who impersonates or represents himself as being a coastal warden. (R. S. c. 34. 1947, c. 332.)

Cited in *State v. Damerest*, 118 Me. 86, 105 A. 858.

Sec. 135. Seizure and disposition of fish, shellfish, lobsters or other marine species and equipment for violation of law. — All fish, shellfish, lobsters or other marine species, or parts thereof, taken, caught, bought, sold, carried, transported or found in possession of any person in violation of the provisions of this chapter shall be contraband and shall be forfeited to the state. In all cases where a coastal warden may find fish, shellfish, lobsters or other marine species, or parts thereof, or equipment possessed in violation of the provisions of this chapter, he may seize the same without a warrant and keep them for a reasonable time. The officer who made such seizure may within a reasonable time file with a magistrate a libel against such fish, shellfish, lobsters or other marine species, or parts thereof, or any equipment possessed in violation of the provisions of this chapter, setting forth their seizure by him, describing such fish, shellfish, lobsters or other marine species, or parts thereof, or equipment and that they were taken, caught, bought, sold, carried, transported or had in possession in violation of the provisions of this chapter, and pray for a decree of forfeiture thereof, except that articles of less than \$10 in value shall not be libeled unless reasonable doubt exists as to the ownership thereof. Such magistrate shall thereupon fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed and show cause why said fish, shellfish, lobsters or other marine species, or parts thereof, or equipment possessed should not be declared forfeited, by causing a true and attested copy of said libel and monition to be posted in 2 conspicuous places in the town or place where such fish, shellfish, lobsters or other marine species, or parts thereof, or equipment possessed were seized, or in such place or places as is ordered by the magistrate, 10 days at least before the day to which said libel is returnable. Copies shall be served on common carriers.

In case the magistrate finds that the fish, shellfish, lobsters or other marine species, or any parts thereof, seized, will be unsuitable for food or other use at the day to which said libel is returnable, he shall order the officer making the seizure to dispose of the same. The officer disposing of the same shall, in case of sale, hold the proceeds of said sale subject to order of the court for decision as to the right of the claimant, if any appear, to said fish, shellfish, lobsters or other marine species, or parts thereof. If the magistrate finds the claimant, if any appear, is not entitled to said fish, shellfish, lobsters or other marine species, or parts thereof, the officer making such seizure shall turn over to the magistrate proceeds of such sale and such magistrate shall forward the proceeds thereof to the commissioner in the same manner as is provided by section 139.

If no claimant appears, such magistrate shall, on proof of notice as aforesaid declare the same forfeited to the state. If any person appears and claims such articles, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed and the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer by whom the same were seized; and in it must declare that they were not had in possession

in violation of the provisions of this chapter with his knowledge or consent, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process and the magistrate shall proceed to determine the truth of the allegations in said claim and libel and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon the hearing, satisfied that said fish, shellfish, lobsters or other marine species, or parts thereof, or any equipment possessed were not had in possession in violation of the provisions of this chapter, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer having the same in custody commanding him to deliver to said claimant the articles, or proceeds derived from the sale of the same, to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said articles so seized, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said articles forfeited to the state. The claimant may appeal and shall recognize with sureties as on appeals in civil causes from a magistrate.

The commissioner shall dispose of such articles as are declared forfeited.

The forms herein set forth, with such changes as adapt them for use in cities, towns and plantations, are sufficient in law for all cases arising under the foregoing provisions to which they purport to be adapted; and the costs to be taxed and allowed for the libel shall be 50c; for entering the same, 30c; for trying the same, \$1; for a monition, 50c; for posting notices and return, \$1; for order to restore or deliver, 25c; for executing the order, 50c; and 10c per mile for all necessary travel.

FORM OF LIBEL

State of Maine

County of ss. To
 a trial justice, judge or recorder of a municipal court, in and for said County:

The libel of of
 shows that he has seized certain fish, shellfish or lobsters, or parts thereof, or equipment possessed in violation of the provisions of chapter 38 of the revised statutes, as revised, described as follows:

.....

 because the same were bought, sold, carried, transported or had in possession in violation of the provisions of said chapter, as follows:

.....
 which said articles were possessed at in said county of
 Wherefore he prays for decree of forfeiture of said articles, according to the provisions of law in such case made and provided.

Dated at, in said county, this day of, in the year of our Lord nineteen hundred

(Signed)
 Coastal Warden

FORM OF MONITION AND NOTICE

State of Maine

L. S.

County of, ss.

To all persons interested in

The libel of hereunto annexed, this day filed with me, esquire, a trial justice, judge or recorder of a municipal court, in and for said county, shows that he has seized said articles because and prays for a decree of forfeiture of the same according to the provisions of law in such case made and provided.

You are, therefore, hereby notified thereof, that you may appear before me, the said justice, judge, or recorder, at in in said county, on the day of A. D. 19.... at o'clock in the noon and then and there show cause why said articles should not be forfeited, and that notice hereof be given to all persons interested by causing a true and attested copy of this libel and monition to be posted in and two conspicuous places in the town of at least ten days before the return day hereof.

Witness, esquire on the day of 19....

Trial Justice, Judge or Recorder

A true copy. Attest:

..... Coastal Warden

STATE OF MAINE

..... ss. A. D. 19.... I have this day made service of the within libel and monition, by posting up true and attested copies of the same, in two conspicuous places to wit: one and one in Posting notice \$1.00

..... Coastal Warden

Travel Miles Total \$

STATE OF MAINE

(L. S.)

..... ss. To one of the of the

WHEREAS it appears that due notice was given to all parties interested in the fish, shellfish or lobsters, or parts thereof, or equipment described in the within libel of to appear before esquire, a trial justice, judge of the municipal court, within and for the county of at in on the day of A. D. 19.... at o'clock in the noon, and

show cause why said should not be declared forfeited. And no person appearing to claim the same said are declared forfeited.

And of did appear and claim said and after hearing all the evidence I ordered said returned to said claimant. The same are declared forfeited and you are hereby ordered to turn the same over to the Commissioner of Sea and Shore Fisheries.

Witness,, esquire, said trial justice, judge of the municipal court of in the county of this day of A. D. 19.....

..... Trial Justice
Judge of Municipal Court
..... ss. A. D. 19....

Pursuant to the above order to me directed, I have turned over the within described to the Commissioner of Sea and Shore Fisheries.

.....
Coastal Warden

(R. S. c. 34. 1945, c. 297, § 16. 1947, c. 332. 1949, c. 415, § 24.)

Stated in part in Campbell v. Burns, 94 Me. 127, 46 A. 812.

Sec. 136. Officer seizing fish, shellfish or lobsters to report to commissioner within 10 days.—In all cases, the officer making any seizure or sale of fish, shellfish or lobsters, or parts thereof, shall within 10 days thereafter report all particulars thereof and an itemized statement of the proceeds, expenses and fees, and the disposition thereof to the commissioner. The failure of any person or officer to perform any act, duty or obligation enjoined upon him by this chapter shall be deemed a violation thereof. (R. S. c. 34. 1947, c. 332.)

Sec. 137. Commissioner or coastal wardens may make arrest or search buildings, camps, boats, etc., with or without warrants; commissioner to notify transportation companies of the names of wardens so empowered.—The commissioner or any coastal warden may arrest, with or without a warrant, any person whom he has reason to believe guilty of a violation of any provision of this chapter, and with or without a warrant may open, enter and examine all buildings, camps, vessels, boats, wagons, cars, motor vehicles, airplanes, stages, tents and other places and examine all boxes, barrels, packages and other receptacles where he has reason to believe that fish, shellfish or lobsters, or parts thereof, taken or held in violation of the provisions of this chapter, are to be found, and seize such fish, shellfish or lobsters, or parts thereof, if any be found therein; but no dwelling house shall be searched for the above purposes without a warrant, and then only in the daytime, and no sealed railroad car shall be entered for the above purposes without such warrant. Any magistrate may issue warrants to search within his jurisdiction any dwelling house or premises for the purposes above set forth; provided, however, that the commissioner shall, on or before the 1st day of October of each year, in writing, notify the superintendents of all transportation companies doing business within the state of the names of the coastal wardens by him designated to exercise the right of search of railroad cars as herein provided, and no other except those so designated shall be authorized to exercise the powers herein mentioned as to search of railroad cars. (R. S. c. 34. 1947, c. 332.)

Quoted in part in Campbell v. Burns, 94 Me. 127, 46 A. 812.

Sec. 138. Vehicles required to stop on signal.—It shall be unlawful for the operator of a boat, motor vehicle or other vehicle or conveyance of any kind

to fail to refuse to stop any such boat, motor vehicle or other vehicle or conveyance of any kind and stand by for inspection upon request or signal of a coastal warden in uniform.

It shall also be unlawful for any person who has been requested or signaled by a coastal warden in uniform to stop and stand by for inspection to throw or dump into any water any lobsters or any pail, bag, barrel or other receptacle of any kind or the contents thereof before inspection of same has been made by said coastal warden. (R. S. c. 34. 1947, c. 332.)

For case concerning liability for failure to stop under former provisions of § 113, see *State v. LeBlanc*, 115 Me. 142, 98 A. 119.

Fines, Fees, Forfeitures and Penalties. Jail Costs.

Sec. 139. Fines, fees, forfeitures and penalties; how recovered; commissioner to report to treasurer of state.—All fines, fees, forfeitures and penalties under the provisions of this chapter may be recovered by complaint, indictment or action of debt made or brought in the county where the offense was committed. The action of debt shall be brought in the name of the state. All fines, fees, forfeitures, penalties and collections under the provisions of this chapter, except when otherwise expressly provided, shall accrue to the commissioner and by him the same shall be paid to the treasurer of state for deposit in the general fund. The commissioner shall report to the treasurer of state the amount of each fine, fee, forfeiture, penalty and collection itemized and the name of the party paying the same, which shall be kept on record in the office of the treasurer. (R. S. c. 34. 1945, c. 297, §§ 13, 14, 15, 17. 1947, c. 332.)

Prosecutions may be commenced and finished upon complaint. — It is evident from this section that the will of the legislature is that prosecutions under the fish and game laws may be begun and finished upon complaint. *State v. Sinnott*, 89 Me. 41, 35 A. 1007.

This section and § 133 make it sufficiently clear that a conviction under fish statutes may be had upon a complaint and in a municipal court. The power of the legislature to provide for such a conviction for such an offense is indisputable. *State v. Sinnott*, 89 Me. 41, 35 A. 1007.

Action to recover penalty not barred by criminal proceeding.—An action to recover penalties for infractions of the lobster law is not barred by previous criminal proceedings for the same offense before a trial justice. The trial justice had plenary jurisdiction to try the complaint himself (§ 133), and the proceedings were a nullity, and cannot operate to discharge an action brought for the same offense. *Thompson v. Smith*, 79 Me. 160, 8 A. 687.

Complaint may be made by unofficial

persons.—The legislature never intended to confer upon the commissioner and his deputies or the fish wardens the exclusive rights to make complaints for violations of the provisions of this chapter or to oust the court of its jurisdiction of such complaints when made and preferred by private or unofficial persons. *State v. Giles*, 101 Me. 349, 64 A. 619.

Express provision of the statute is not required to authorize unofficial persons to make a complaint for violation of this chapter. *State v. Giles*, 101 Me. 349, 64 A. 619.

Right of commissioner to settle under former provision of section.—For a case dealing with the right of the commissioner, under former provisions of this section, to settle with a person accused of an offense under this chapter, see *State v. Hanna*, 99 Me. 224, 58 A. 1061.

History of section.—See *State v. Sinnott*, 89 Me. 41, 35 A. 1007; *State v. Giles*, 101 Me. 349, 64 A. 619.

Applied in *Donnell v. Joy*, 85 Me. 118, 26 A. 1017.

Sec. 140. Jail costs.—The costs for imprisonment in a county jail for the violation of any provision of this chapter or rules and regulations promulgated thereunder shall be paid by the state to the county involved. Such costs shall not exceed the average amount paid for board of federal prisoners. (1949, c. 234, § 2.)

Sec. 141. Penalties. — Whoever violates any of the provisions of this chapter or rules and regulations promulgated thereunder, or rules and regulations

heretofore promulgated and still in force and effect, excepting only those for the violation of which specific penalties have been provided, shall be punished by a fine of not less than \$10, nor more than \$300, and costs, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 34. 1947, c. 332.)

See c. 124, §§ 12-15, re trespass on islands in salt water for purposes of hunting thereon.

Biennial Revision.

Sec. 142. Biennial revision of "sea and shore fisheries" laws.—As soon as practicable after the adjournment of the legislature, the director of legislative research, with the assistance of the commissioner, shall issue a revision of all the public laws relating to sea and shore fisheries. This revision shall take the place of chapter 38 of the revised statutes of 1954 and all acts or parts of acts amending said chapter. It may be cited as "Chapter 38 of the revised statutes," and each revision shall replace the previous revision. The revision shall be printed in a pamphlet of the same sized pages as the laws of the state, and the printing and distribution thereof shall be the same as in the case of the biennial laws; except that the commissioner may issue as many extra copies of the said chapter 38, in whatever size pamphlet seems best to him, together with the rules and regulations promulgated under the provisions of this chapter, as he deems necessary or helpful to inform the people as to the sea and shore fisheries laws. (R. S. c. 34. 1947, c. 332. 1949, c. 349, § 67.)