

# MAINE STATE LEGISLATURE

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SECOND SPECIAL SESSION

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ONE HUNDRED AND THIRD LEGISLATURE

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**Legislative Document**

**No. 1862**

H. P. 1319

House of Representatives, January 9, 1968

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Benson of Southwest Harbor.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-EIGHT

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**AN ACT to Preserve, Protect and Stimulate Research in the Production and  
Commerical Uses of Irish Moss.**

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., T. 12, Part 6, additional.** Title 12 of the Revised Statutes is amended by adding a new Part 6 to read as follows:

**PART 6**

**IRISH MOSS**

**CHAPTER 423**

**IRISH MOSS**

**§ 4801. Purpose**

Irish moss, as hereinafter defined, constitutes a valuable, naturally renewable, marine resource of the State of Maine, and this chapter is enacted into law in order to preserve and protect Irish moss, to stimulate research with regard to its future preservation, protection and harvesting, to allow the State to lease certain areas to persons, firms, associations, cooperatives or corporations for the proper protection and harvesting of Irish moss under appropriate licensing and conservation regulations, and to stimulate greater research into the production and uses of Irish moss and the products obtainable therefrom, and to promote its commercial utilization within this State, all with the object of promoting the prosperity and welfare of this State and its inhabitants.

**§ 4802. Definitions**

The terms used in this chapter shall be construed as follows, unless a definite meaning is plainly required by the context:

1. **Advisory council.** "Advisory council" means the Irish Moss Advisory Council.

2. **Commissioner.** "Commissioner" means Commissioner of Sea and Shore Fisheries.

3. **Dry ton.** "Dry ton" shall mean Irish moss which has been dried to a 20% moisture content.

4. **Hand-raking harvesting method.** "Hand-raking harvesting method" shall mean the harvesting of Irish moss by the use of a rake consisting of a base with projections of pegs or prongs set traversely at the end of a long handle, which rake shall be operated solely by the physical energy of a human being and shall not have attached to it any mechanical, electrical or other device whatsoever.

5. **Irish moss.** "Irish moss" means the red seaweeds, chondrus, gigartua and furcellaria.

6. **Lease.** "Lease" means a lease granted for the purpose of the cultivation and harvesting of Irish moss.

7. **License.** "License" means a license issued under this chapter or chapter 417.

8. **Mechanical harvesting method.** "Mechanical harvesting method" shall mean the taking of Irish moss by any other method other than the hand-raking method and shall generally mean the taking of Irish moss by mechanical, electrical or other means, even through the mechanical, electrical or other device is operated under the direction and control of a human being.

9. **Permit.** "Permit" means a permit issued under this chapter or chapter 417.

10. **Person.** "Person" means an individual, partnership, association, co-operative or corporation.

11. **Process.** "Process" means to chemically extract Irish moss in a manufacturing plant.

12. **Public harbor.** "Public harbor" shall mean that part of the coastal waters of the State which have been set aside,

A. By the municipal officers of all maritime cities, towns and plantations for the maintenance of convenient channels for the passage of vessels or suitable anchorages for vessels.

B. By the harbor masters of maritime cities, towns and plantations for mooring sites.

C. By the Secretary of the Army of the United States or other federal officials acting pursuant to any Act of Congress with authority to establish harbor lines.

13. Solum. "Solum" means the soil or land lying under the coastal waters of the State from the low-water mark and extending seaward from said low-water mark to the seaward maritime limits of the jurisdiction of the State.

§ 4803. Leasing of Irish moss beds; duration; size

The commissioner, with the prior written approval of the Governor and Council, may lease to any person for a period of not less than 5 nor more than 10 years, the exclusive privilege of harvesting Irish moss in any area or areas of the solum, subject to the following terms and conditions:

1. Leasing sectors. That said leases may only be granted in the following sectors:

A. Sector No. 1: Starting at a point on the shore in latitude  $43^{\circ} 49' 21''$  N., longitude  $69^{\circ} 41' 24''$  W., known as West Southport, thence due south a distance of approximately 5.0 miles to latitude  $43^{\circ} 44' 21''$  N., thence on a true course of  $067^{\circ}$  for a distance of approximately 21.0 miles to latitude  $43^{\circ} 52' 04''$  N., longitude  $69^{\circ} 15' 42''$  W., thence due north a distance of approximately 3.0 miles to a point on the shore in latitude  $43^{\circ} 55' 03''$  N., longitude  $69^{\circ} 15' 42''$  W., known as Marshalls Point.

B. Sector No. 2: Starting at a point on the shore in latitude  $44^{\circ} 18' 42''$  N., longitude  $68^{\circ} 49' 42''$  W., known as Cape Rosier, thence southerly on a true course of  $153^{\circ}$  a distance of approximately 15.4 miles to latitude  $44^{\circ} 05' 00''$  N., longitude  $68^{\circ} 40' 00''$  W., thence northeasterly on a true course of  $060^{\circ}$  for a distance of approximately 16.2 miles to a point on the shore in latitude  $44^{\circ} 13' 18''$  N., longitude  $68^{\circ} 21' 18''$  W., known as Bass Harbor Head.

C. Sector No. 3: Starting at a point on the shore in latitude  $44^{\circ} 23' 36''$  N., longitude  $67^{\circ} 54' 00''$  W., known as Petit Manan Point, thence on a true course of  $073^{\circ}$  for a distance of approximately 16.5 miles to latitude  $44^{\circ} 28' 30''$  N., longitude  $67^{\circ} 32' 00''$  W., thence on a true course of  $037^{\circ}$  for a distance of approximately 9.0 miles to a point on the shore in latitude  $44^{\circ} 35' 42''$  N., longitude  $67^{\circ} 24' 30''$  W., known as Point of Maine.

2. Size of a single leased area. A single leased area shall not exceed 25 square miles in area. A person may hold more than one leased area.

3. Exclusion from leased areas. No leased area shall include the land between the high and low-water marks, nor that part of the solum which lies under a public harbor, as defined herein.

4. Rules and regulations. All leases shall be subject to reasonable rules and regulations with respect to the conservation and harvesting practices to be followed by the lessee, or his agents, servants or employees in the leased area.

5. Term of lease, extension renewal. The commissioner, with the prior written approval of the Governor and Council, may from time to time extend or renew the term of a lease for successive periods for terms of not less than 5 nor more than 10 years, after complying with section 4804. If an applicant for renewal of a lease has been granted an original minimum term of 5 years and if said applicant presents proof to the commissioner that he has complied with all of the terms and conditions of his prior lease and all reasonable rules and

regulations applicable thereto, he shall be entitled to a minimum renewal for another 5-year period without complying with section 4804. If said applicant for renewal shall apply for a renewal for a greater period of time than 5 years, then section 4804 shall apply and shall be followed.

6. Lease preference to state industry. The commissioner shall give preference to prospective applicants for leases or for renewal of leases who indicate that they, or other persons with whom they are associated, will process Irish moss at facilities presently in existence or to be constructed within the State. In cases where the applicant indicates that Irish moss is to be processed at facilities to be constructed within the State, the granting of the lease may be conditioned upon the construction of such facilities within a reasonable time and provide for the termination of the lease in the event such facilities are not constructed.

7. Protection of outstanding leases. The commissioner shall not be authorized to lease any area which has been leased to any other person, where said lease is presently outstanding and remains unrevoked, or the revocation of which is under appropriate quasi-judicial or judicial review.

§ 4804. Application for lease; public notice of application; objections; public hearings; appeal to Superior Court.

Any person desiring to obtain an Irish moss harvesting lease shall make an application to the commissioner, designating by appropriate geographical terms and coordinates the particular area or areas from which the person desires to harvest Irish moss. An application form shall be prepared by the commissioner for the use of applicants and it shall contain such information as he shall deem necessary. The application shall be accompanied by a fee of \$100 to cover the cost of processing the application and the public notice required upon said application. In addition, the minimum per square mile fee shall accompany the application. This minimum per square mile fee shall be returned to the applicant if the application is denied or withdrawn. If the lease is granted, it shall be applied as hereinafter provided.

1. Procedure upon application for a lease. Upon receipt of an application for a lease, the commissioner shall cause notice to be given which shall contain at least the following:

A. The name and residence of the applicant.

B. A general description of the area or areas in respect to which the application is made.

C. The commissioner shall cause a notice to be published once a week for 3 consecutive weeks in a newspaper having a general circulation in the county or counties in which the area or areas are contiguous, not more than 40 days after the date of receipt of the application for a lease. The notice shall also state that if any person objects to the issuance of a lease with regard to the area or areas mentioned in the notice, that they shall notify the commissioner in writing of their specific objections and the reasons therefor not more than 14 days after the date of the last publication.

If the commissioner receives written objections with regard to the issuance of a lease, the commissioner shall hold a public hearing at a time and place to be determined by him, and shall notify the applicant and the person or persons who have entered their objections of the time and place of said public hearing by registered or certified mail, said notice to be mailed at least 7 days prior to the date set for the public hearing.

If no written objections are filed or if after public notice is given, no objectors who have filed written objections appear, and the applicant is otherwise qualified and has complied with all the terms and conditions of this chapter and the reasonable rules and regulations issued hereunder, the application shall be granted.

If a public hearing is held, and objectors appear who have filed written objections to the granting of a lease, the commissioner shall hear the applicant and the objectors and shall allow both to appear by counsel, if they so desire, and shall keep a written transcript of the proceedings.

The commissioner shall attempt to resolve at the public hearing the objections which may be entered by the objectors, if possible, to the satisfaction of both the applicant and the objectors. If it is not possible to resolve the differences between the applicant and the objectors, the commissioner shall, within 30 days of the receipt by him of the transcript of the evidence presented at the public hearing, make his written determination with regard to granting the lease to the applicant or his refusal to do so and he shall, in his determination, deal specifically with the objections raised by the objectors who have filed their objections in writing. If the commissioner determines that the applicant shall not receive a lease of all or any part of the area to be acquired, he shall so state and shall assign his reasons for said denial. Copies of the commissioner's decision shall be mailed to all parties who are in interest. The commissioner may in his discretion grant a lease to the applicant but may impose such conditions therein as he shall determine to be necessary to satisfy the specific objections which may have been presented to him. Both the applicant and any objector, as provided herein, may appeal the decision of the commissioner as hereinafter provided. The determination by the commissioner to grant a lease is subject to the approval of the Governor and Council.

If any applicant for a lease or any objector who has filed written objections with the commissioner is aggrieved by the decision of the commissioner resulting from the hearing, he may within 30 days after the date of the commissioner's decision appeal to the Superior Court in the County of Kennebec by filing a complaint therefor. The court shall forthwith fix a time and place for immediate hearing and cause notice thereof to be given to the commissioner and any other party in interest; and after hearing, which hearing shall be held as soon as the court's calendar will permit, the court may affirm, modify or reverse the decision of the commissioner and the decision of the court shall be final. During the pendency of all proceedings under this section, no person shall be authorized to file an application to lease the area which is the subject matter of the pending application on appeal.

The court's review shall be limited to the actions of the commissioner and said final decision of the court shall stand as if made by the commissioner, and all

decisions to grant a lease shall be subject to the ultimate decision of the Governor and Council, whose decision shall not be reviewable and shall be final.

§ 4805. Execution of lease; specific conditions

Upon approval of the application by the commissioner and the approval of the Governor and Council, the commissioner shall execute a lease in the name of the State of Maine running to the person making the application, which lease shall be in such form and shall contain such terms as the commissioner shall deem necessary, but in any event said lease shall include the following provisions:

1. Terms of payment. The payment by the lessee of not less than \$12.50 per dry ton for all Irish moss harvested by the mechanical harvesting method from the leased bed or beds and shall provide for the payment of a minimum of \$5 per square mile per year for the leased bed or beds, to be credited upon the per dry ton payments payable by the lessee under the lease during the year.

2. Forfeiture. Appropriate provisions for a forfeiture of the lease if the minimum is not paid annually in advance, or the lessee violates any specific terms and conditions of the lease or any terms and conditions of any reasonable rules and regulations which the commissioner may prescribe.

3. Assignment, subleases, consolidation and merger. Shall provide that it may not, without the prior written approval of the commissioner, be assigned in whole or in part by the lessee either voluntarily or by operation of law except to effect a consolidation or merger and that no subleases or other rights may be granted by the lessee without the aforesaid permission, except the right to harvest Irish moss by independent contractors, and shall provide for a forfeiture of the lease in the event of the violation of such provision.

4. Proof of harvesting. That the lessee actually intends to harvest Irish moss from the beds described in the lease and will file such reports with the commissioner as shall be deemed necessary to prove actual harvesting thereon. The lease shall provide that a minimum amount of Irish moss shall be harvested annually and set the amount thereof, and that the failure to so harvest, without reasonable excuse, shall be a cause for revocation.

5. Rules and regulations for conservation and harvesting. That conservation and harvesting of Irish moss shall be conducted under such reasonable rules and regulations as the commissioner shall from time to time prescribe.

6. Other terms and conditions. Such other terms and conditions as the commissioner shall require pursuant to the granting of a lease on terms and conditions to satisfy objectors as provided in section 4804.

7. Revocation, authority and procedure. That the commissioner shall have the authority to commence proceedings for the revocation of the lease which shall be commenced by appropriate notice of the specific violation charged and the Administrative Hearing Commissioner, after appropriate notice and hearing, as provided in the Administrative Code, Title 5, section 230, et seq., shall have authority to revoke the lease upon proof of a violation of any terms or conditions thereof, the violation of any reasonable rules and regulations issued by the com-

missioner under this chapter or any violation of any specific provision of this chapter.

8. Recognition of related rights. That the lessee recognizes that the granting of the lease shall not interfere with the rights of others, properly licensed, to take fish or shellfish from the area so leased, or from the waters above said area.

9. Propriety of right to physically attached, free or cast Irish moss. That the exclusive rights granted under the lease shall include the Irish moss that is physically attached to the solum and the right to harvest the same, but shall not include any rights to any free or cast Irish moss, so called, which has been separated from the solum by other than mechanical means.

10. Hand-raking. That the lessee recognizes that the granting of the lease shall not prohibit the taking of Irish moss by the hand-raking harvesting method from the leased area by persons properly licensed by the State of Maine to so harvest, and that such right exists in said persons without any prior permission from said lessee.

#### § 4806. Rules and regulations

The commissioner, with the approval of the Irish Moss Advisory Council, may make reasonable rules and regulations for the effective carrying out of this chapter and, without restricting the generality of the foregoing, may make regulations with respect to the following matters:

1. Harvesting for agricultural or scientific purposes. Exempting from the application of this chapter certain classes of persons who harvest Irish moss for agricultural or scientific purposes, and not for processing or sale.

2. Conservation and preservation. Providing for the specific method or methods by which Irish moss shall be harvested and prohibiting such method or methods of harvesting as shall be deemed improper or inconsistent with proper conservation and preservation.

3. Methods of conservation and preservation. Providing for proper methods of preservation and conservation of Irish moss.

4. Establishing procedures. Providing for the form of notice, application, license or permit and providing for hearings and notice of public hearings and the procedure to be followed at such public hearings.

5. Form of license and permits. Providing for the form of licenses and permits.

#### § 4807. Appointment; compensation

The following provisions apply to the Irish Moss Advisory Council as established herein:

1. Appointment; composition. The Governor, with the advice and consent of the Council, shall appoint an Irish Moss Advisory Council consisting of 5 members. One member shall be a person who is actively engaged in the harvesting of Irish moss by the mechanical harvesting method; one member shall be



actively engaged in the business of processing Irish moss and one member shall be a person who is actively engaged in research on the growth, cultivation and harvesting of Irish moss. The other 2 members shall be persons who are actively engaged in the harvesting of Irish moss by the hand-raking harvesting method.

2. Term of office. The term of each appointment shall be for a 3-year term and until a successor is appointed and qualified. The initial appointments to said advisory council shall be as follows: One for a one-year term, 2 for a 2-year term and 2 for a 3-year term, and all reappointments thereafter shall be for 3-year periods.

3. Vacancy. If a vacancy in office occurs, the Governor with the advice and consent of the Council, shall appoint a member to serve the unexpired portion of the term.

4. Compensation. Members of the Irish Moss Advisory Council shall receive no compensation for their services, but they shall be entitled to receive actual expenses in the performance of their duties.

#### § 4808. Powers and duties

The Irish Moss Advisory Council has the following powers and duties:

1. Council to inform and advise commissioner. The council shall give the commissioner information and advice concerning the administration of this chapter and may suggest to the commissioner such reasonable rules and regulations with regard to appropriate methods of conservation, preservation and harvesting of Irish moss with a view to utilizing and preserving this valuable natural resource.

2. Council to hold regular meetings. The council shall hold regular meetings with the commissioner or some person appointed by him for that purpose, at the State Capitol on the first Wednesday of June and December of each year.

3. Council may hold special meetings. The council may hold special meetings at any time or place within the State.

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

A. The chair shall call and preside at all meetings of the council.

B. The vice-chairman shall call and preside at all meetings of the council in the chairman's absence.

C. The secretary shall cause records to be taken and to be preserved of all meetings of the council.

D. The council shall elect one of its members to fill a vacancy in any of the 3 positions for the unexpired term at the next regular or special meeting following the vacancy.

### § 4809. Revocation of lease

Whenever the commissioner has evidence that any lessee holding a lease granted under this chapter has violated any of the terms or conditions thereof, or violated any of the reasonable rules and regulations issued by the commissioner under this chapter, or has violated any of the specific provisions of this chapter, he may file a complaint setting for the specific violation charged with the Administrative Hearing Commissioner. The Administrative Hearing Commissioner, after appropriate notice and hearing, as provided in the Administrative Code, Title 5, chapters 301 to 307, shall have authority to revoke the lease or award such other penalty as the circumstances may warrant, including, but not limited to, the assessment of a monetary penalty upon an adjudication that said licensee has been guilty of the violation as set forth in the complaint.

### § 4810. Recording of lease

When an exclusive privilege to harvest Irish moss has been granted, a copy of the lease granted by the commissioner shall be filed for recording in the office of the register of deeds of the county in which the Irish moss bed or beds or parts thereof are located, and said commissioner shall also keep a record of each lease granted under this chapter at his office at the State Capitol, which records shall be open at all reasonable times to public inspection.

### § 4811. Violations

Any person who violates any provision of this chapter or any reasonable rule and regulation promulgated under this chapter, or who shall knowingly harvest Irish moss from any area leased to another under this chapter by the mechanical harvesting method, without the consent of the holder of said leasehold interest, shall be liable upon conviction for a penalty of not more than \$100, or by imprisonment for 90 days, or by both.

### § 4812. Protection of leasehold interest; injunction; damages

In addition to any other remedy provided by this chapter, or by law, any lessee who holds a lease under this chapter shall have the right to protect his leasehold interest by filing a complaint in the Superior Court of the county in which the leased Irish moss bed or beds or parts thereof are located, setting forth the nature of the alleged violation, and the court, upon appropriate proof and without the necessity of proof of the irreparable injury, shall have the right to enjoin any further violations of said leasehold interest and shall also have the authority to determine such damages as may have been incurred, and grant such further and necessary relief as the circumstances shall warrant.

### § 4813. License; resident and nonresident

It shall be unlawful for any person to take Irish moss from any of the coastal shores, or within the tidal waters of the State, unless he has a current written license from the commissioner as provided in section 4051.

### § 4814. Appropriation of moneys received

Moneys received through this chapter by the Treasurer of State shall be appropriated and used for the following purposes:

1. **Collection and enforcement.** For the collection of the fees and charges provided for in this chapter, and the enforcement of this chapter, and the actual expenses of the advisory council.

2. **Balance of funds.** The remainder for the purpose of conducting scientific research in the proper methods of preserving, harvesting and protection of Irish moss and to further expand the uses of Irish moss in such manner and amounts as the Commissioner of Sea and Shore Fisheries, in conjunction with the Irish Moss Advisory Council, shall determine. Any unexpended balance from the above apportionment shall not lapse but shall be carried forward to the same fund for the next fiscal year.

§ 4815. **Payments by lessee exclusive**

The payment of the appropriate fees and charges required to be paid under authority of this chapter by any lessee shall discharge the obligation of said lessee to the State of Maine, and no other form of fees, charges or taxes of any nature or description levied under the authority of the laws of this State shall be assessed or charged the lessee's interests.

**Sec. 2. Amendments.** Wherever in the following sections of Title 12 a reference to "section 417" appears, it shall be changed to read "section 423": Section 3401, first paragraph; subsection 11 of section 3401; subsection 20 of section 3401; subsection 29 of section 3401; subsection 30 of section 3401; subsections 2 and 3 of section 3402; section 3404; subsection 1 of section 3506; subsection 2 of section 3652; section 3751; section 3752, first paragraph; subsections 2, 4 and 6 of section 3752; section 4501; section 4502; section 4504; section 4505, first paragraph; paragraph A of subsection 3 of section 4505; subsection 1 of section 4506; section 4507; section 4508; paragraph A of subsection 1 of section 4508; subsection 2 of section 4508; section 4509; section 4510; and section 4552, first paragraph and paragraph C of subsection 1.

*H. P. H. 1-1-15 1911*