

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1242

S. P. 408

In Senate March 4, 1971

Referred to Committee on Natural Resources. Sent down for concurrence
an ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Bernard of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Encourage Acquaculture in Maine's Marine Waters.

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

Sec. 1. R. S., T. 12, c. 413, repealed. Chapter 413 of Title 12 of the Revised Statutes, as amended, is repealed.

Sec. 2. R. S., T. 12, cc. 414 and 414-A additional. Title 12 of the Revised Statutes is amended by adding 2 new chapters 414 and 414-A, to read as follows:

CHAPTER 414

RESEARCH AND DEVELOPMENT

§ 3711. Findings; purpose

The Legislature finds and declares that the fishing industry has historically been of great importance to the life of the State. The well-being of a large number of Maine citizens is directly dependent upon it. From colonial days the people of Maine have drawn upon the sea and shore fisheries for a substantial part of their income and wealth. Presently, fishery resources and the monetary contribution that fishery resources and other marine resources make to the economy of Maine are being endangered by foreign competition, environmental pollution and the absence or inflexibility of Maine law which restricts the optimum research, development and management of Maine's marine resources.

The Legislature further finds and declares that the preservation and enhancement of Maine's marine resources are a matter of highest urgency and priority. The Legislature intends by this enactment to facilitate research

by the Department of Sea and Shore Fisheries and other private or public person or agencies in enhancing and developing these resources to provide for the utilization of scientific knowledge and to improve the competitive position of Maine's commercial fisheries by the authorization of sound management techniques in the natural or artificial cultivation of these resources.

§ 3712. Commercial fishery resources

The department, under the direction of the commissioner, is authorized to conduct a program or programs for research and development of the commercial fishery resources of the State, including but not limited to the construction of permanent and temporary facilities and including but not limited to market research, in conformity with the requirements of Federal Public Law 88-309 and amendments thereto. The department, under the direction of the commissioner, is authorized to consolidate existing research or development projects and those projects hereafter created as part of said program. The department, under the direction of the commissioner, is authorized to seek and expend matching federal funds for the purposes of this section, and to accept donations from industry and interested corporations and persons for the purposes of this section.

§ 3713. Leasing of cultivation areas

The Department of Sea and Shore Fisheries may acquire and use shore, flats and water areas, consistent with requirements and limitations contained in the Maine Coastal Plan and procedures outlined in sections 3715 and 3718. The Department of Sea and Shore Fisheries may lease areas to other public agencies or private individuals in accordance with procedures set forth in sections 3717, 3719, 3720, 3721 and 3722.

§ 3714. Special research license

The Commissioner of Sea and Shore Fisheries is authorized to issue a special research license exempting the holder from certain laws administered by the department as to the time, place, size, condition, amount and manner of taking fish or shellfish.

1. Requirements. To qualify for such a license an applicant must:

A. Prove to the satisfaction of the commissioner that he will be conducting scientific research; or that he is prepared to engage in the experimental cultivation of marine species which would require management and harvesting techniques not authorized under present statutes;

B. File a description of the proposed project with the commissioner describing the objectives, the location, the estimated time of completion and the section of the fishery laws which need to be suspended to carry out the project;

C. Payment of a filing fee of \$50. The fee may be waived for research activity by institutions or organizations financed in whole or part by state funding.

2. License. The commissioner may grant such a license subject to such conditions as he deems advisable to protect fishery resources and assure com-

pliance with health requirements. Such license may be issued for a year subject to renewal each year for a period of 4 more years without refileing an application providing that the conditions attached to such license have been met.

3. Transportation permit. Any person engaged in the cultivation of fish or shellfish under a special research license may ship, transport or sell such fish provided that, in addition to compliance with state or federal health requirements and regulations, a permit be obtained from the department and that all fish shipped, transported or sold shall be tagged with the name and address of the cultivator and the number of the license under which exemption from the fishery laws was granted. The permit may be renewed annually provided that the applicant has retained his research license.

§ 3715. Acquisition of flats and waters

The commissioner may take any flats or waters, not exceeding 2 acres in any one location, and may hold the same for a period not exceeding 10 years for use by the commissioner or by the National Marine Fisheries Service, for the purpose of scientific research relative to shellfish or other fish over which the commissioner has jurisdiction, subject to the following provisions:

1. Public hearing; notice. The commissioner shall hold a public hearing in the municipality where the flats and waters are located.

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

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

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

B. The commissioner shall cause public notice of the taking of such waters and flats to be given by publishing notice once in a newspaper published in the county where the flats or waters are situated and record such taking in the registry of deeds of the county in which the flats or waters are located.

§ 3716. Agreements, leases and grants

The commissioner may by written agreement, lease or grant, under such terms or conditions as may be agreed upon with the owner, take possession of suitable shellfish grounds, flats, waters and water rights not limited to 2 acres in area, with necessary shore rights, and may use and operate the same for the purposes of section 3715.

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

2. Public hearing; notice of hearing and taking; marking of area. The commissioner shall hold the public hearing, give notice of the hearing, publish notice of the taking and mark the area taken as provided in section 3715.

§ 3717. Cultivation in areas closed because of contamination

The Commissioner of Sea and Shore Fisheries is authorized to conduct experimentation on shellfish or other fish on shore, waters and flats closed because of contamination under section 3503.

1. Areas below low water mark. The commissioner may take any area below ordinary low water mark for research and experimentation for fish and shellfish provided that there is no conflict with the Maine Coastal Plan, and a hearing held and notice is given as required in section 3715. There is no limitation on the total number of acres which may be utilized by the commissioner but a separate notice and hearing must be held for each 2-acre area. The commissioner may hold any such area for a period of 5 years.

A. The commissioner may conduct experimental cultivation in these polluted waters or authorize others to carry out such research under the strict control and regulations of the department. Sale of fish cultivated in polluted waters is governed by section 3452.

2. Area between high and low tide. The commissioner may take any area between ordinary high and low tide for experimental cultivation of shellfish provided such use is not in conflict with the Maine Coastal Plan and notice is given and a public hearing held as required in section 3715. The taking of any area in excess of 2 acres must be approved by the municipal officers, a shellfish management commission or a joint shellfish management commission authorized under section 4251.

Areas taken in accordance with this section may be used for a period of 5 years. If the area is still closed because of contamination at the end of the 5 years, the department's use of the area may be extended a year at a time for 5 additional years. At the end of the initial term or at the end of any year thereafter, control of the flats under sections 4304 and 4305 shall revert to the municipality or the municipal shellfish commission if the flats are no longer closed because of pollution.

A. The commissioner may conduct experimental cultivation in these contaminated areas or authorize others to carry out such activity under the strict control and regulations of the department. Sale of shellfish cultivated in contaminated waters is governed by section 3452.

§ 3718. Commissioners of Sea and Shore Fisheries and Inland Fisheries and Game authorized to manage and lease certain alewife fishing rights

The Commissioners of Sea and Shore Fisheries and Inland Fisheries and Game are authorized to develop, manage or lease alewife fishing rights in those areas of the State where the Legislature has not granted the rights

to municipalities or others, or where any municipality which has been granted such rights exclusive or otherwise, and fails to use them, all as provided in this section.

1. Loss of alewife rights by municipality. When any municipality has the rights to the taking of alewives, exclusive or otherwise, and fails to take action through its legislative body on those rights prior to April 1st of any calendar year, then that municipality loses its rights to the taking of alewives during that calendar year and for the following calendar year.

2. Commissioners to notify municipality. When the commissioners decide to manage or lease any alewife fishing rights where a municipality has had those rights and has failed to act as provided in subsection 1, they shall so notify the clerk of the municipality in writing.

3. Commissioners may lease rights, conditions of lease, unlawful acts. The commissioners may lease any such rights to any person, persons, firm or firms, corporation or corporations, as they feel to be in the best interest of the State. All such leases are to be in writing, signed by the commissioners and the lessee and must set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices.

A. It is unlawful for any person holding such a lease to violate any of its terms or to cause the same to be done.

B. It is unlawful for any person to molest the fishing equipment of any such lease holder or to interfere with the fishing rights granted by the lease.

4. Migratory Fish Fund; allocation of leasing fees. A fund to be known as the Migratory Fish Fund is established, and all fees received by the commissioners from alewife leasing rights are allocated to that fund.

A. The commissioners may expend any and all of the money allocated to the Migratory Fish Fund from time to time for the building of fishways for alewives and other migratory fish and for the construction of other facilities for the improved environment of alewives and other migratory fish for the general propagation and conservation of alewives and other migratory fish, and in general to enhance the fishing industry concerned with alewives and other migratory fish through research.

B. Migratory Fish Fund does not lapse. Fees so collected or allocated in any one year may be used in that year or any succeeding year.

§ 3719. Research by private interests

Any person or corporation interested in scientific research relating to shellfish or other fish over which the commissioner has supervision, or in the cultivation and development of the shellfish industry or the seaweeds, including but not limited to Irish moss, may apply to the commissioner setting forth the desire to make experiments relative to the cultivation, conservation and harvesting of particular marine species or seaweed. Upon receipt of the application by the commissioner, the following procedure must be followed:

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

A. That the application contains sufficient information to show that the applicant is entitled to the certificate provided in this section;

B. That information contained in the application is true;

C. That the applicant either owns, or has consent, so far as the same can be granted, from the owner of the flats, shore rights or waters where the work is to be undertaken; and

D. That the granting of the certificate provided in this section will not unreasonably interfere with navigation.

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

A. The commissioner shall cause the notice to be published once a week for 2 consecutive weeks in some newspaper published in the county where the proposed location is situated.

B. The commissioner shall state in the notice the time and place of the hearing, the name of the applicant and the general area where the work is to be undertaken.

3. Commissioner may issue certificate to set area apart upon hearing. If, upon hearing, the commissioner is satisfied that the interests of the State will be promoted by the experiments, he shall issue a certificate setting apart so much of such shores, flats and water privileges, not exceeding one acre in extent to any one applicant, for such length of time, not exceeding a period of 6 years, as in his judgment may be necessary and proper to accomplish the ends sought. The commissioner may set aside areas on the submerged lands or reefs within the jurisdiction of the State, for experiments with the cultivation, conservation and harvesting of seaweeds, including Irish moss. No one applicant shall be entitled to more than 3 such areas and no single area shall exceed more than one square mile, but any areas so set aside shall not be closer to the low water mark on the adjacent shore than 25 feet, and all of said areas for such experiments shall be east of 69° 45' west longitude. The total area set aside for all applicants for experiments with seaweed shall not exceed, at any one time outstanding, 10 square miles; width of any area shall be not less than $\frac{1}{4}$ mile.

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

5. Applicant to give public notice of certificate. The applicant shall cause public notice of the issuance of the certificate by publishing the certificate once in a daily newspaper of general circulation in the county and once in a weekly newspaper of general circulation in the county where the area to be used is located, by posting a copy of the certificate in a conspicuous place near that

area and by recording a copy of the certificate with the clerk of the municipality where the area is located.

6. Applicant to mark area. The applicant shall place stakes or other monuments upon the adjoining upland so as to designate the area set apart as specified by the commissioner in the certificate.

7. Revocation. The commissioner may revoke the certificate so granted, after notice and hearing to the holder thereof, for the following reasons: The holder has not within the year last passed conducted any experiments in said area or the experiments conducted have been injurious to the marine species in said area.

§ 3720. Interference or unlawful taking

It is unlawful for any person, during the period that any shores, flats or waters are taken or used under this chapter, for scientific research relating to shellfish or other fish, to take, dig, fish or in any manner destroy any marine species within the area used or taken, or to interfere with the shores, flats and waters so used or taken.

It shall be unlawful for any person, during the period that any shores, flats or waters are taken or used under this chapter for the cultivation, conservation or harvesting of seaweeds, to take, dig or sever or in any manner destroy any seaweeds, within the area used or taken, but it shall be lawful for any person to take, dig, fish or in other manner take marine species, in said area, provided it is lawful to do so.

1. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$100 for each offense, or by imprisonment for not more than 90 days.

CHAPTER 414-A

PRIVATE CULTIVATION AND HARVESTING OF

MARINE RESOURCES

§ 3721. Lease of subaqueous land or marine water areas for cultivation of fishery resources

The Commissioner of Sea and Shore Fisheries, in accordance with the Maine Coastal Plan, may agree to lease in the name of the State, by public auction or otherwise, to any suitable person or corporation any land below mean low tide and any Maine water area for the purpose of planting or cultivating fish or shellfish. The commissioner may grant a lease upon such terms and conditions as he may deem proper, but not for a longer term than 10 years or a shorter term than 5 years. No more than 5 acres may be leased at a time in one parcel or lot and no one person or corporation shall be entitled to a total of more than 200 acres.

1. Application for lease. A person or corporation desiring to obtain a lease of an area of subaqueous land or of a Maine water area below mean low tide must make application in writing to the Commissioner of Sea and Shore Fisheries describing the area in metes and bounds and coordinates and

stipulating the nature of cultivation or planting that is purposed for the leased area. Upon receipt of the application by the commissioner the following procedure must be followed.

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

- A. That the application contains sufficient information to show that the applicant is entitled to the lease provided in this section;
- B. That information contained in the application is true;
- C. That approval by a municipality has been obtained for the lease of any area within 200 feet of an adjacent municipality;
- D. That the granting of the lease will not unreasonably interfere with the egress or ingress of the adjacent riparian owner;
- E. That the granting of the lease will not unreasonably interfere with navigation;
- F. That the granting of the lease is consistent with the Maine Coastal Plan.

3. Notice of hearing; how; contents. The commissioner shall then give notice of the bearing as follows.

A. The commissioner shall cause the notice to be published once a week for 2 consecutive weeks in some newspaper of general circulation in the county where the proposed location is situated and notice posted in 2 public places in the municipality where the water or flats are situated or to which they are adjacent.

B. The commissioner shall state in the notice, the time and place of hearing, the name of the applicant or applicants, and the general area where work is to be undertaken.

4. Lease. The commissioner may grant the lease if he is satisfied that all conditions are met and that the interests of the State will be promoted by cultivation or planting in the requested area. In the case of more than one applicant for the lease of a given area, preference shall be given to the adjacent riparian proprietor.

5. To record lease. The applicant shall record the lease in the registry of deeds of each county where the flats, the subaqueous land or water areas are located. The applicant shall cause public notice of the issuance of the lease, a description of the area and an enumeration of all restrictions of activity in the area, by publishing information as to the location and nature of the lease once in a daily newspaper of general circulation in the county and once in a weekly newspaper of general circulation in the county where the area to be used is located.

6 Applicant to mark area. The applicant shall mark the leased area in a manner prescribed by the commissioner.

7. Revocation of lease. The commissioner may revoke any lease so granted, after notice and hearing to the holder thereof, if no planting or cultivation is carried out within the year last past or such cultivation has been injurious to marine species in the area, or that conditions stipulated in the lease have not been met.

In the event that the lessee, under this section or section 3719 or licensee under section 3714, violates any of the provisions of this chapter or chapter 414 or any conditions incorporated into the lease, license or rules and regulations of the Department of Sea and Shore Fisheries, the department shall notify such lessee or licensee of such alleged violation and of the nature of such alleged violation, by sending such notice by registered mail to him at his last known address. If such violation is not remedied within 30 days after the date of mailing such notice, the lease or license in existence at the time of such violation shall be liable to forfeiture. For cause, the department may extend such further time for compliance as it may determine. No forfeiture shall be valid until a 2nd notice in writing shall have been served upon the person, firm or corporation holding the lease or license, setting forth the alleged violation of law, conditions or rules and regulations, 30 days prior to the date set for hearing. The hearing shall be held before the Administrative Hearing Commissioner as designated in Title 5, chapters 301 to 307. An appropriate entry shall be made on the records in the registry of deeds, after the time for appeal has expired or the appeal is finally determined.

8. Grievance procedure. Any person aggrieved by a decision of the Commissioner of Sea and Shore Fisheries upon an application for a cultivation lease under this section may petition directly to the Superior Court for a reversal or modification of such a decision provided that:

- A. The objections were raised at the hearing required by this section; and
- B. That evidence of law or facts to substantiate such objections were presented at such hearing.

Decisions made by the commissioner pertaining to enforcement of health regulations or a determination that cultivation of a particular species would be detrimental to marine fishery resources are not appealable.

§ 3722. Rights

A holder of a lease under section 3721 shall have the exclusive right to cultivate and harvest the species stipulated in his lease. Holders of leases for shellfish cultivation on flats or subaqueous land are entitled to take all shellfish in the leased areas.

§ 3723. Renewal of lease

Any holder of a lease granted under section 3721 shall, upon expiration of the lease, have preference in the relating of said subaqueous land or water area for a like term to that granted in the original lease unless the applicant shall be in arrears for rent. An application for renewal shall be granted without notice or public hearing provided that no renewal shall be granted when

the Commissioner of Sea and Shore Fisheries shall for cause cease to lease said area.

§ 3724. Interference of unlawful taking

Any person who interferes with, annoys or molests another in the enjoyment of any lease authorized by this chapter shall be subject to the penalties provided in section 3720.

§ 3725. Licensing of floating devices for cultivation

The Commissioner of Sea and Shore Fisheries is authorized to grant licenses for the utilization of rafts for the culture of oysters, floating fish cages or other floating equipment used for the cultivation of marine resources. Lobster buoys, cars or crates, and other containers used for the temporary storage of lobsters, do not require a license under this section.

1. Fees. A license shall be granted for a period of one year subject to the payment of \$5 per oyster raft, \$5 per floating cage and \$5 for all other types of floating equipment, except experimental equipment authorized under section 3714, provided that the commissioner finds the licensing of the equipment will not unreasonably interfere with navigation, that use of the equipment will not interfere with any lease granted under this chapter or chapter 414 and that such use is in conformity with the Maine Coastal Plan.

2. Description. The license shall contain a description of the area in which such device is to be used.

3. Cooperation. The Commissioner of Sea and Shore Fisheries shall cooperate with federal agencies concerned with authorizing the use of such devices in navigable waters.

§ 3726. Exclusive right of ownership and control of fish of riparian owners of ponds; cultivation rights

The proprietors of lands upon which a pond is created and maintained by excavating and enclosing the same and by the artificial flowing of same with coastal waters, for the purpose of cultivating and maintaining fish thereon, shall have the exclusive right to cultivate, and the exclusive ownership and control of, all fish thereon or therein, whether artificially or naturally propagated, provided that no fish determined by the commissioner to be injurious may be cultivated or maintained thereon or therein, and that before any such excavation shall be made plans for any artificially flowage of the same with coastal waters shall be approved by the Wet Lands Control Board, the Environmental Improvement Commission and the Department of Sea and Shore Fisheries.

§ 3727. Procedure to dam creek or inlet

When the owner of any land in which there is any salt water creek or inlet desires to dam, gate or lock the same for the cultivation of any fish or shellfish, he may make application therefor to municipal officers of the municipality where such creek or inlet is located, who shall visit and examine it. If, in their opinion, to dam it will not injure navigation or deprive the public of any

rights or privileges, they shall mark off, or set bounds, where a dam may be built, and report their opinion to any meeting of such municipality; and if the meeting ratifies the opinion of such municipal officers, subject to the approval of the Environmental Improvement Commission and the Department of Sea and Shore Fisheries, the owner may construct and maintain such dam, gate or lock, for such purpose, during the pleasure of the Legislature.

Sec. 3. R. S., T. 12, § 4251, amended. Section 4251 of Title 12 of the Revised Statutes, as amended by section 4 of chapter 33 of the public laws of 1965, is further amended by adding a new subsection 2 to read as follows:

2. Enter into joint agreement. Any municipality may enter into a joint agreement with one or more municipalities for the allocation and licensing of areas for the cultivation of shellfish and may raise and appropriate money for that joint purpose.

Sec. 4. R. S., T. 12, § 4253, repealed. Section 4253 of Title 12 of the Revised Statutes is repealed.

Sec. 5. R. S., T. 12, § 4304, amended. The first sentence of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

The municipal officers of any municipality or a joint shellfish commission composed of 2 or more municipalities, and the commissioner, in the event that the municipality has been deorganized by Act of the Legislature, are authorized to grant written licenses for the purpose of planting and cultivating clams, quahogs or mussels upon the flats and creeks of their respective jurisdictions, subject to this section and the Maine Coastal Plan:

Sec. 6. R. S., T. 12, § 4304, sub-§ 1, amended. Subsection 1 of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

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

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

Sec. 7. R. S., T. 12, § 4304, sub-§ 2, repealed. Subsection 2 of section 4304 of Title 12 of the Revised Statutes is repealed.

Sec. 8. R. S., T. 12, § 4304, sub-§ 3, amended. Subsection 3 of section 4304 of Title 12 of the Revised Statutes is amended by adding after the first sentence a new sentence to read as follows:

A lease may be renewed by the granting authority for a period similar to the original lease.

Sec. 9. R. S., T. 12, § 4304, sub-§ 3, ¶ C, additional. Subsection 3 of section 4304 of Title 12 of the Revised Statutes is amended by adding a new paragraph C to read as follows:

C. The joint shellfish commission shall fix the term in areas covered by a joint shellfish commission.

Sec. 10. R. S., T. 12, § 4304, sub-§ 4, amended. The first sentence of subsection 4 of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

The licensee shall pay an annual license fee to the municipality, the joint shellfish commission, or to the department if the municipality is deorganized.

Sec. 11. R. S., T. 12, § 4304, sub-§ 4, ¶ A, amended. The first sentence of paragraph A of subsection 4 of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

The municipal or shellfish commission fee may not be less than \$1 nor more than \$5 per acre annually.

Sec. 12. R. S., T. 12, § 4304, sub-§ 5, amended. The first sentence of subsection 5 of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

A license may be granted only to a person who has resided in the State for at least one year next preceding the date of his application, or who has been a taxpayer in the municipality or a municipality in the joint shellfish commission for at least one year next preceding the date of his application.

Sec. 13. R. S., T. 12, § 4304, sub-§ 9, amended. The first sentence of subsection 9 of section 4304 of Title 12 of the Revised Statutes is amended to read as follows:

The municipal officers, the joint shellfish commission, and the commissioner shall follow the procedure provided in section 4305 in granting licenses authorized by this section.

Sec. 14. R. S., T. 12, § 4304-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 4304-A to read as follows:

§ 4304-A. Violations regarding shellfish cultivation; local enforcement

The following provisions apply to areas under the licenses authorized by section 4304.

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

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

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

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

A. To work a dredge, tongs, rake or other implement for the taking of shellfish of any description, for any purpose whatever, upon or over the area covered by the license;

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

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

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

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

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

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

D. To willfully injure, deface, destroy, move or remove any notice required by section 4305.

4. Local enforcement. It is the responsibility of the municipality, the joint shellfish commission, or the commissioner if the municipality is deorganized, to enforce all provisions relating to licenses issued under the authority of section 4304.

Sec. 15. R. S., T. 12, § 4305, sub-§ 1, amended. The first sentence of subsection 1 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

Any person interested in obtaining a license shall apply in writing to the municipal officers of the municipality, or the joint shellfish commission, where the flats or creeks to be under license are located, or to the commissioner if the municipality is deorganized.

Sec. 16. R. S., T. 12, § 4305, sub-§ 1, ¶ B, amended. Paragraph B of subsection 1 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

B. The application must state that the applicant has resided in the State at least one year next preceding the date of application, or that the appli-

cant has been a taxpayer in the municipality or the **joint shellfish commission jurisdiction** for at least one year next preceding the date of application.

Sec. 17. R. S., T. 12, § 4305, sub-§ 2, amended. The first sentence of subsection 2 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 18. R. S., T. 12, § 4305, sub-§ 2, ¶ B, amended. The first sentence of paragraph B of subsection 2 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 19. R. S., T. 12, § 4305, sub-§ 3, amended. The first sentence of subsection 3 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 20. R. S., T. 12, § 4305, sub-§ 4, amended. The first sentence of subsection 4 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

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

Sec. 21. R. S., T. 12, § 4305, sub-§ 5, amended. The first sentence of subsection 5 of section 4305 of Title 12 of the Revised Statutes is amended to read as follows:

Immediately after granting the license the municipal officers, the **joint shellfish commission**, or the commissioner if the municipality is deorganized, shall mark the area licensed on the plan provided for in section 4304.

Sec. 22. R. S., T. 12, § 4351, repealed. Section 4351 of Title 12 of the Revised Statutes is repealed.

STATEMENT OF FACT

The purpose of this bill is reflected in section 3711.