

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1076

H. P. 753

House of Representatives, February 20, 1973

Referred to Committee on Marine Resources. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Emery of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

**AN ACT to Promote the Conservation and Management of Maine's
Shellfish Resources.**

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

Sec. 1. R. S., T. 12, § 3504, amended. The first paragraph of section 3504 of Title 12 of the Revised Statutes is amended to read as follows:

The commissioner shall make regulations to remedy the danger when any existing condition endangers the conservation of fish, ~~shellfish~~ lobsters, crabs, shrimp or marine worms in any of the coastal waters or flats of the State, subject to the following provisions:

Sec. 2. R. S., T. 12, § 3504-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 3504-A to read as follows:

**§ 3504-A. Conservation of shellfish by establishment of
shellfish conservation and management districts**

The commissioner shall make regulations to promote the conservation and management of shellfish in any of the flats, shores or coastal waters of the State by dividing all the flats, shores and coastal waters of the State into several shellfish conservation and management districts, each of which he shall place under the administration of a shellfish district manager. In forming such shellfish conservation and management districts, the commissioner shall take into consideration all factors relevant to promoting the optimal use of the State's shellfish resources, including biological, economic, social and political factors. The commissioner may later alter such districts by regulation from time to time to promote conservation.

1. Procedure of section 3505-A to be followed. The commissioner shall follow the procedure of section 3505-A in adopting or amending a regulation authorized by this section.

2. Effective date of districts. Regulations to accomplish the original division of all the flats, shores and coastal waters of the State into shellfish conservation and management districts shall be promulgated by and take effect no later than September 1, 1974.

Sec. 3. R. S., T. 12, § 3505-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 3505-A to read as follows:

§ 3505-A. Procedure for adoption or amendment of regulations delineating shellfish conservation and management districts

The procedure for the adoption or amendment of regulations delineating shellfish conservation and management districts as authorized in section 3504-A is as follows:

1. Notice of hearing; contents; publication. The commissioner shall give notice of a hearing as provided in this subsection.

A. The notice shall contain the date, time and place of hearing.

B. The notice shall contain a statement of the proposed regulation.

C. The notice shall be published in a newspaper or combination of newspapers having general circulation in any and every county to which the proposed regulation pertains.

D. Notice of hearing shall be published once a week for 2 successive weeks prior to the hearing.

2. Hearing; time of; who may conduct; who may be heard; record of; place. A public hearing shall be held at the time and place designated in the notice.

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

B. Any interested person may present relevant evidence at the hearing.

C. The commissioner shall cause a record to be taken of all evidence presented at the hearing.

3. Commissioner to adopt regulation after hearing. After the hearing, the commissioner shall adopt a regulation establishing or altering the boundaries of such number of shellfish conservation and management districts as he has determined to be necessary to promote shellfish conservation and management.

4. Publication of regulation before it becomes effective. A regulation must be published in accordance with this subsection before it may become effective.

A. A copy of the regulation, certified by the commissioner, shall be filed in all the following places:

(1) With the Secretary of State ;

(2) With the clerk of the Superior Court of each county where the regulation is to be in force.

B. Subsequent to compliance with paragraph A, the regulation shall be published once in a newspaper or combination of newspapers having general circulation in any and every county where it is to be in force.

5. When regulations become effective. Regulations delineating the original shellfish conservation and management districts take effect as provided in section 3504-A. Any subsequent regulation altering the boundaries of any shellfish conservation and management district shall become effective on the day following publication or at such other time as the commissioner may provide and include in the filed and published notice containing the regulation.

Sec. 4. R. S., T. 12, c. 406, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 406 to read as follows :

CHAPTER 406

SHELLFISH DISTRICT MANAGERS

§ 3507. Appointment ; compensation

1. Appointment. The commissioner shall appoint the shellfish district manager for each shellfish conservation and management district established under sections 3504-A and 3505-A.

2. Hold office subject to Personnel Law. They shall hold office under Title 5, chapters 51 to 61.

3. Compensation. The commissioner shall set their compensation under the Personnel Law.

§ 3508. Powers and duties

Each shellfish district manager shall, subject to the supervision of the commissioner, have the following powers and duties :

1. Tests and surveys. Conduct or compile, on a regular basis, such inventories, tests, surveys and experiments as he may deem necessary to conserve and manage claims, quahogs, mussels or other marine mollusks in the flats, shores or coastal waters of his shellfish conservation and management district ;

2. Records. Keep records of such tests and surveys and of their results, including a record of shellfish production within the district ;

3. Reports. Make an annual report to the commissioner and such other reports as the commissioner may request, concerning the shellfish conservation and management district and other information relevant to shellfish conservation in his shellfish conservation and management district, which the commissioner may from time to time require ;

4. Regulations. A shellfish district manager may, with the advice of the district advisory council, as that term is used in section 3510, propose regula-

tions to the commissioner whenever, in his judgment, a need for such conservation measure exists, subject to the following provisions:

A. A proposed regulation may only limit the taking of shellfish by one or more of the following methods:

- (1) The time taken;
- (2) The methods by which taken;
- (3) The size of the shellfish taken;
- (4) The amount taken;
- (5) The place taken;
- (6) The number of persons permitted to hold commercial shellfish licenses and junior shellfish licenses, as those terms are used in section 4301, applicable to that district.

5. Comprehensive district plan; advice of district advisory council. On or before January 1, 1975, the shellfish district manager shall, with the advisory council for his district, prepare a comprehensive district plan setting forth conservation and management objectives and the respective priorities to be assigned among them, for the conservation and management of shellfish within the waters of that district and submit this plan to the commissioner for his approval.

Subject to the approval of the commissioner, this plan may be amended from time to time by the shellfish district manager, with the advice of the district advisory council.

6. Budget.

A. The shellfish district manager shall with the advice of the district advisory council for his shellfish conservation and management district, prepare a proposed annual budget for each year for submission to the commissioner;

B. Thereafter, the shellfish district manager, with the advice of the district advisory council for his shellfish conservation and management district, shall allocate, consistently as practicable with its proposed budget, that part of the shellfish fund set aside by the commissioner for use in the district conservation and management program of that shellfish conservation and management district.

7. Coastal warden powers. Each shellfish district manager shall have the powers conferred upon a coastal warden by section 3652.

§ 3509. Procedure for adoption of shellfish conservation regulations

1. Commencement of proceedings. If, based on the proposal of the shellfish district manager with the advice of the district advisory council, or on his own initiative, the commissioner determines that a need for a conservation or management regulation exists, he shall prepare a written declaration of necessity, containing the following information:

- A. A statement that a need exists ;
- B. The particular type of shellfish affected.

2. Notice of proposed regulation, contents, publication. The commissioner shall give notice of a proposed regulation as provided in this subsection.

A. The notice shall contain all the information required to be in the declaration of necessity.

B. The notice shall contain a statement of the proposed regulation.

C. The notice shall contain an invitation to any interested person to submit written comments, suggestions or criticisms of the proposed regulation within 30 days of the last publication of notice and the address to which such written submissions are to be directed.

D. The notice shall be published in a newspaper having general circulation in the county or counties in which it is proposed that the regulation take effect, or

(1) If the area where it is proposed that the regulation take effect is in more than one county, then notice shall be published in a newspaper or combination of newspapers having general circulation in each county in which it is proposed that the regulation take effect.

E. The notice shall be published once a week for 2 successive weeks.

3. Written submissions; who may submit; time of; form. Any interested person may submit written comments, suggestions or criticisms relevant to the proposed regulation.

A. All written submissions under this subsection must be received by the commissioner within 30 days following the last required publication of notice of the proposed regulation.

B. Written submissions may be in letter form, addressed to the commissioner at the address stated in the notice. Submissions may contain any pertinent information or argument and shall be signed by the person making the submission. A person making a written submission on behalf of an organization or group shall so state.

4. Duty to adopt regulation after consideration. After consideration of all written submissions and any other information or expert opinions available to him, the commissioner shall adopt a regulation to meet the need for conservation in the areas affected by the proposed regulation which has been shown to exist by the information available to him, provided, in his judgment, he determines that the regulation promotes the conservation and management of shellfish and is in the best interest of the State.

5. Publication of regulation before it becomes effective. A regulation must be published in accordance with this subsection before it may become effective.

A. A copy of the regulation, certified by the commissioner, shall be filed in all of the following places;

- (1) With the Secretary of State;
- (2) With the clerk of the Superior Court of each county where the regulation is to be in force.

B. After the regulation has been filed in compliance with paragraph A, it shall be published once in some newspaper having general circulation in the county where the regulation is to be in force, or

- (1) If the regulation is to be in force in more than one county, the regulation shall be published once in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

6. When regulation becomes effective. A regulation adopted under this section shall be effective the day following newspaper publication or at such other time as the commissioner shall designate and indicate in the filed and published notice containing the regulation.

Sec. 5. R. S., T. 12, c. 406-A, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 406-A to read as follows:

CHAPTER 406-A

DISTRICT ADVISORY COUNCILS

§ 3510. Appointment; composition; term; vacancy; compensation

1. Establishment. There shall be established district advisory councils composed of 3 representatives from each municipality within the shellfish conservation and management district. The municipal selectmen or town or city council of each such municipality shall be entitled to appoint 3 representatives, with one person designated to represent each of the following groups:

- A. Town officials;
- B. Wholesale shellfish dealers;
- C. Commercial shellfish diggers.

2. Term. The municipal selectmen or town or city council shall allocate among their original 3 representatives terms of one, 2 or 3 years. Thereafter, when the term of any representative expires, his successor shall be appointed for a term of 3 years.

3. Vacancy. If a vacancy occurs in the district advisory council, the municipality whose representative created such vacancy shall appoint a member to represent the group in which the vacancy occurred for the unexpired term.

4. Compensation. Members of the district advisory council shall receive no compensation for their services.

§ 3511. Powers and duties

Each district advisory council has the following powers and duties.

1. **Inform and advise district shellfish manager.** The district advisory council shall give the district shellfish manager information and advice concerning shellfish conservation and management in the shellfish conservation and management district.

2. **Meetings.** The district advisory council shall meet within the shellfish conservation district quarterly, or when a meeting is called by the chairman of the district advisory council.

3. **Chairman.** The members of the district advisory council shall elect a chairman at the first quarterly meeting held each year to serve a term of one year.

Sec. 6. R. S., T. 12, § 4251, repealed. Section 4251 of Title 12 of the Revised Statutes, as amended by section 4 of chapter 33 of the public laws of 1965, is repealed.

Sec. 7. R. S., T. 12, § 4252, repealed and replaced. Section 4252 of Title 12 of the Revised Statutes, as amended by sections 5, 6, 7 and 8 of chapter 33 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 4252. Municipal licensing ordinances; fees; residency requirements; limitations

1. **Ordinance.** Each municipality within a shellfish conservation and management district shall enact a municipal ordinance establishing a licensing scheme permitting the digging of up to one peck of clams, quahogs and mussels in any single day and setting reasonable fees for such licenses, subject to the following provisions:

A. Fees set by any municipality pursuant to this section shall be within the following limits:

(1) The fee for town residents for a license valid for one year shall not exceed \$2;

(2) The fees for a Maine resident, as that term is defined in section 3401, subsection 22, shall not exceed \$5 for a license valid for 3 months, \$3 for a license valid for 7 days or \$1 for a license valid for one day;

(3) The fee for nonresidents shall not exceed \$15 for a license valid for 3 months, \$9 for a license valid for 7 days or \$3 for a license valid for one day.

B. Any such ordinance shall permit residents of the enacting municipality licensed by that municipality to dig or take shellfish pursuant to this section in any waters within the municipality which are open to digging.

C. Any such ordinance may provide that nonresidents of the enacting municipality licensed by that municipality may dig or take shellfish pur-

suant to this section only in areas within the municipality which have been limited, or may be limited from time to time by the regulation of the commissioner, to one peck of shellfish per person during any 12-hour period.

D. No such municipal ordinance shall impose any fee, licensing requirement or other limitation on any holder of a commercial shellfish license.

2. Filing requirements. A certified copy of the ordinance shall be filed with the commissioner within 7 days after its adoption.

3. Local enforcement. Any municipality that enacts an ordinance under authority of this subsection 1 shall be responsible for the enforcement of the ordinance.

4. Penalty for ordinances. Whoever takes clams, quahogs or mussels contrary to a municipal ordinance authorized by subsection 1 shall be punished by a fine of not more than \$10 or imprisonment for not more than 30 days.

5. Municipality defined. For purposes of subsection 1, municipality includes a village corporation.

6. Ordinances may grant privileges to municipalities having licensing agreements. Any ordinance adopted under subsection 1 may grant shellfish digging license privileges to the residents of any municipality which has a joint shellfish licensing agreement with the municipality enacting the ordinance.

Any ordinance which has been enacted by authority of the repealed section 4252 is hereby declared void and without effect as of September 1, 1974.

Sec. 8. R. S., T. 12, § 4301, repealed and replaced. Section 4301 of Title 12 of the Revised Statutes, as amended by sections 2 and 5 of chapter 59 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 4301. Licensed required

It is unlawful for any person to dig or take any clams, quahogs, oysters or mussels in excess of one peck during any 12-hour period from the flats, shores or coastal waters of any shellfish conservation and management district of the State without having a current written license from the commissioner for use in that district.

1. License designation; general scope. The license, designated as a commercial shellfish license or a junior shellfish license, entitles the holder to dig or take any amount of clams, quahogs, mussels or oysters, when and where it is otherwise lawful to do so within the shellfish conservation and management district for which it applies, and to transport and sell the same within the State.

2. Application. Any resident may make application to the commissioner for a commercial shellfish or junior shellfish license or licenses for any shellfish conservation and management district or districts on forms provided by the commissioner.

A. Exceptions for Hancock County and Washington County.

(1) Applicants for licenses applicable to any district located in whole or in part in Hancock County or Washington County shall be limited to residents of such district until September 1, 1977.

(2) From September 1, 1977, until August 31, 1980, applicants for licenses applicable to any district located in whole or in part in Hancock County or Washington County shall be limited to residents of Hancock County or Washington County.

(3) As of September 1, 1980, any person eligible for a commercial shellfish license or a junior shellfish license may apply for a license or licenses applicable to any district or districts in Hancock County and Washington County.

3. Fee. The annual fee for the license for each shellfish conservation and management district shall be \$25, except that a junior shellfish license or licenses may be issued to a person who is between 10 and 14 years of age for a fee of \$12.50 for each district. The applicant shall submit the fee with his application and shall designate the shellfish conservation and management district or districts in which he wishes to be licensed. An applicant may receive licenses for all the shellfish conservation and management districts for which he is eligible under this section upon proper application and payment of a fee of \$100. The holder of a commercial shellfish license for any shellfish conservation and management district or districts may, at any time, receive a license or licenses for any other district or districts for which he is eligible under this section for the remainder of that year upon application and payment of a fee of \$3 per month per district for the number of months remaining in the year.

4. Exception for holders of special municipal license. The holder of a special municipal license authorized under section 4252 may dig or take up to one peck of clams, quahogs, oysters or mussels in the flats, shores or coastal waters of the municipality by which he is licensed subject to the provisions of that section.

A. It is unlawful to sell shellfish taken by authority of a special municipal license.

5. Unlawful possession. It is unlawful for any person to possess any quantity of clams, quahogs, oysters or mussels which he knows to have been taken by any person who is not licensed under this section or licensed under section 4252.

6. Licensee's authority to take shellfish. The holder of a current commercial shellfish license or the holder of a junior shellfish license may dig or take shellfish in any of the tidal waters or flats of the shellfish conservation and management district or districts for which he is licensed, except in those areas which are closed to the digging and taking of shellfish by regulation of the commissioner and except in those areas under municipal shellfish cultiva-

tion authorized in section 3404. Such holder may not dig or take any shellfish contrary to any restrictions established by regulation of the commissioner.

7. General licensing provisions apply. Section 3751 applies to commercial shellfish licenses and junior shellfish licenses except insofar as this section varies the provisions thereof.

Sec. 9. Effective date. Section 8 shall become effective January 1, 1974.

Sec. 10. R. S., T. 12, § 4304, repealed and replaced. Section 4304 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 4304. Cultivation of clams and mussels

The shellfish district managers of all shellfish conservation and management districts 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.

1. Survey and plan must first be made; filing. Before granting any license, the shellfish district manager 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 department.

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

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

A. The shellfish district manager shall fix the exact term within those limits.

4. Annual license fee. The licensee shall pay an annual license fee to the department.

A. The fee for a license is \$5 per acre annually.

5. Persons qualified for license. A license may be granted only to a person who has resided in the State for at least one year next preceding the date of his application.

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

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

8. Procedure in § 4305 to be followed. The shellfish district manager shall follow the procedure provided in section 4305 in granting licenses authorized by this section.

Sec. 11. R. S., T. 12, § 4305, repealed and replaced. Section 4305 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 4305. Procedure for licenses authorized by section 4304

The procedure for granting, assigning and holding the licenses authorized by section 4304 is as follows:

1. License application. Any person interested in obtaining a license shall apply in writing to the shellfish district manager of the district wherein the flats or creeks to be under license are located.

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

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

2. Notice of hearing. Upon receipt of an application properly completed, the shellfish district manager shall order notice of a public hearing on the application.

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

B. The notice must be published once in a newspaper having general circulation in the district at least 10 days before the date of hearing.

3. Hearing. The shellfish district manager shall hold a public hearing at the time and place designated in the notice.

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

4. Granting license. After the hearing, the shellfish district manager may grant the license within the area specified in the application, subject to the following provisions:

A. All the requirements of section 4304 have been fulfilled;

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

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

5. Area licensed to be marked on plan; recording. Immediately after granting the license, the shellfish district manager shall mark the area licensed on the plan provided for in section 4304.

A. The shellfish district manager shall record any license issued by him with the clerk of the municipality in which the area is located, and shall record the license with the commissioner.

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

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

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

7. License recorded before effective; revocation. No license becomes effective until the recording provisions of subsection 5 are fulfilled, and failure to place and maintain the markers and notices provided by subsection 6 is sufficient cause for the revocation of the license by the authority granting the license.

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

9. Forfeiture if area does not produce. The granting authority shall determine the market value of all the shellfish reported in the report provided in subsection 8.

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

10. Assignment of license. A licensee may assign his license to any person who has resided in the State for at least one year next preceding the date of the assignment, provided the granting authority gives written consent to the assignment.

A. Once the license is assigned, and the assignment has been approved by the granting authority, the assignee has all the privileges and duties of the original licensee and is subject to all the provisions of law as though he were the original licensee.

Sec. 12. R. S., T. 12, § 4308, repealed and replaced. Section 4308 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 4308. Transplanting of seed clams and quahogs

The shellfish district managers of all the shellfish conservation and management districts are authorized to issue permits to dig and transplant seed quahogs or seed clams to any person licensed to cultivate shellfish under the authority of section 4304, subject to this section.

1. Application for permit. Any person so qualified shall apply to the shellfish district manager of the district where the seed quahogs or seed clams to be transplanted are located.

A. The application must state all the following information:

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

2. Notice of hearing. Upon receipt of an application properly completed, the shellfish district manager shall order notice of a public hearing on the application.

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

B. The notice must be published once in a newspaper having general circulation in the district at least 10 days before the date of hearing.

3. Disapproval; appeal; denial. After the hearing, the shellfish district manager may disapprove the application, in which case the applicant may appeal to the commissioner whose decision is final.

4. Approval of application. After the hearing, the shellfish district manager may approve the application if all the provisions of this section are met and the applicant shall then forward a copy of the application and approval to the commissioner.

5. Granting of permit. After receipt of the copy of the application and approval, the commissioner may grant the permit, subject to the following provisions:

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

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

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

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

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

6. Rights of permittee. The holder of a permit may remove seed quahogs or seed clams, whichever is specified in the permit, from the area specified in the permit, transport them to and transplant them in the area specified in his permit, provided he does not exceed the maximum volume specified in his permit.

Sec. 13. R. S., T. 12, § 4311, repealed and replaced. Section 4311 of Title 12 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 4311. Disposition of license fees

All the license fees received from shellfish licenses and from interstate shellfish transportation licenses and 10% of all the license fees received from wholesale seafood dealers' and processors' licenses and all of the funds collected pursuant to the shellfish tax imposed by Title 36, sections 4631 to 4638 are allocated to the Shellfish Fund, as heretofore established.

1. Purposes for which fund may be used. The commissioner may allocate any and all of the money in the Shellfish Fund from time to time among the shellfish conservation and management districts for the purposes of restoration, development and conservation of clams, quahogs, oysters and mussels in the shores, flats or coastal waters of the shellfish conservation and management districts of the State and for the establishment, operation and maintenance of permanent and temporary facilities for such purposes. Allocation by the commissioner shall be based on a determination of the needs of the districts, as demonstrated in their annual budget proposals under section 3508, subsection 6, in the light of available funds and probable needs and availability.

2. Fund does not lapse. The Shellfish Fund does not lapse. Moneys collected or allocated in any one year may be used in the same or any succeeding year.

A. All funds which were in the Shellfish Fund immediately prior to the effective date of this amended section are in the Shellfish Fund as authorized in this section in all respects as though they were originally allocated under this section.

Sec. 14. R. S., T. 12, § 4351, repealed. Section 4351 of Title 12 of the Revised Statutes is repealed.

Sec. 15. R. S., T. 12, § 4352, sub-§ 4, amended. Subsection 4 of section 4352 of Title 12 of the Revised Statutes is amended to read as follows:

4. **Maryland dredges excepted in Hancock County.** This section does not apply to any Maryland type dredge operated solely within the limits of Hancock County, provided permission to operate the dredge is obtained from the ~~municipal officers of the municipality~~ **shellfish district manager of the district or districts** where the dredge is operated, and provided no marine worms taken by these machines may be marketed in any form or manner.

Sec. 16. R. S., T. 12, § 4352, sub-§ 5, repealed and replaced. Subsection 5 of section 4352 of Title 12 of the Revised Statutes, as enacted by chapter 105 of the public laws of 1965, is repealed and the following enacted in place thereof:

5. **Hydraulic or mechanical dredges excepted in the Town of Phippsburg.** This section does not apply to any hydraulic or mechanical dredge operated solely within the Town of Phippsburg, provided that permission to operate the dredge is obtained from the shellfish district manager of the shellfish conservation and management district in which the town is located.

Sec. 17. Effective date. Sections 10, 11, 12, 14, 15 and 16 shall become effective September 1, 1974.

Sec. 18. R. S., T. 36, § 4631, amended. Section 4631 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4631. Purpose

The ~~quahogs~~ **shellfish** in Maine constitute a renewable natural resource of great value to the Casco Bay coastal region and the State, and this chapter is enacted into law in order that funds may be available to the Research Division of the Sea and Shore Fisheries Department to cooperate with the coastal communities in paying for the purchase, maintenance and operation of boats and equipment to transplant seed ~~quahogs~~ **shellfish** from heavy concentrations to commercially depleted shellfish areas, and carry on other management and scientific work deemed necessary for the financial benefit of the industry.

Sec. 19. R. S., T. 36, § 4632, sub-§§ 1 and 2, amended. Subsections 1 and 2 of section 4632 of Title 36 of the Revised Statutes are amended to read as follows:

1. **Landed value.** "Landed value" shall mean the price payable to the primary producer by the shellfish dealer for ~~quahogs~~ **shellfish** dug or taken from the coastal waters.

2. **Primary producer.** "Primary producer" shall mean any person who digs or takes ~~quahogs~~ **shellfish** from the flats or waters of the coast of Maine for commercial purposes.

Sec. 20. R. S., T. 36, § 4632, sub-§ 4, repealed and replaced. Subsection 4 of section 4632 of Title 36 of the Revised Statutes is repealed and the following enacted in place thereof:

4. **Shellfish dealer.** "Shellfish dealer" shall mean any person, partnership, association, firm or entity holding a current, valid, interstate certificate or intrastate permit as issued pursuant to Title 12, section 4302-B.

Sec. 20. R. S., T. 36, § 4632, sub-§§ 5 - 7, additional. Section 4632 of Title 36 of the Revised Statutes is amended by adding 3 new subsections, 5, 6 and 7, to read as follows:

5. **Clam.** "Clam" shall mean a marine mollusk or shellfish (*mya arenaria*) commonly called a soft-shell clam.

6. **Mussel.** "Mussel" shall mean a marine mollusk or shellfish (genus *mytilus*).

7. **Shellfish.** "Shellfish" shall mean all marine mollusks.

Sec. 21. R. S., T. 36, § 4633, amended. Section 4633 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4633. Rate of tax

There is levied and imposed a tax at the rate of ~~5%~~ 3% on the landed value of all ~~quahog~~ shellfish purchased from the primary producers by shellfish dealers.

Sec. 22. R. S., T. 36, § 4634, amended. The last paragraph of section 4634 of Title 36 of the Revised Statutes is amended to read as follows:

In any action or proceeding for the collection of the ~~quahog~~ shellfish tax, the assessment by the State Tax Assessor of the tax due to the State shall constitute prima facie evidence of the claim of the State and the burden of proof shall be upon the shellfish dealer to show the assessment was incorrect.

Sec. 23. R. S., T. 36, § 4635, amended. Section 4635 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4635. Reports; due date for tax

Every shellfish dealer buying ~~quahog~~ shellfish shall keep as a part of his permanent records a record of all purchases, sales and shipments of ~~quahog~~ shellfish and said records shall be open for inspection at all times and every shellfish dealer on or before the 10th of each month shall render a report to the State Tax Assessor stating the quantity of ~~quahog~~ shellfish bought by him, during the preceding calendar month, on forms to be furnished by the State Tax Assessor, and at the same time shall pay to the State Tax Assessor the tax of ~~5%~~ 3% of the landed value of all ~~quahog~~ shellfish purchased from primary producers for the preceding calendar month.

Sec. 24. R. S., T. 36, § 4636, amended. Section 4636 of Title 36 of the Revised Statutes is amended to read as follows:

§ 4636. Inspections

The State Tax Assessor or his duly authorized agent shall have authority to enter any place of business of a shellfish dealer, or any car, boat, truck or other conveyance in which ~~quahog~~ shellfish are to be transported, and duly inspect any books or records of any shellfish dealer for the purpose of determining the truth or falsity of any statement or return made by any shellfish dealer, and he shall have authority to delegate such powers to the Commissioner of Sea and Shore Fisheries, his agents or employees.

Sec. 25. R. S., T. 36, § 4637, sub-§ 2, ¶¶ A and B, amended. Paragraphs A and B of subsection 2 of section 4637 of Title 36 of the Revised Statutes are amended to read as follows:

A. For the purpose of buying, maintaining and operating boats and equipment to transplant seed ~~quahog~~ shellfish to flats and waters of the State.

B. To carry on scientific and management work deemed necessary for the benefit of the ~~quahog~~ shellfish industry.

Sec. 26. R. S., T. 36, § 4638, amended. The first sentence of section 4638 of Title 36 of the Revised Statutes is amended to read as follows:

Any shellfish dealer who shall make any false or fraudulent report or return required by sections 4633 and 4635, or who shall evade or violate any of the provisions of said sections shall be punished by a fine of not more than \$500, and his wholesale seafood dealer's and processor's license and his resident or nonresident interstate shellfish transportation license shall be suspended by the Commissioner of Sea and Shore Fisheries until such fine and all payments due the State on the aforesaid ~~quahog~~ shellfish tax are paid in full.

STATEMENT OF FACT

The purpose of this bill is to promote the conservation and management of Maine's shellfish resources so that they may be utilized to the benefit of all citizens. These responsibilities presently rest with the coastal towns. While some of these towns have enacted municipal shellfish regulations, these ordinances generally have operated to the detriment of nonresidents of the town. Moreover, because the ecological factors that affect shellfish do not respect town lines, dividing and managing growing areas by political boundaries is contrary to sound conservation and management.

The bill proposes to cure these shortcomings in the present system by placing the responsibilities of conserving and managing the State's shellfish resources with shellfish conservation and management districts, which will carry out these functions on a systematic, uniform and effective basis. These districts would be managed by shellfish district managers who will be professionals trained in shellfish management and conservation and serving under the Department of Sea and Shore Fisheries, which will be charged with the overall operation of the district management plan. The districts will be drawn and administered to accomplish both long and short range conservation and management goals. Major decisions will be undertaken upon consultation with local advisory councils with representatives of towns and other affected groups. Conservation and management regulations will be adopted only after an opportunity for comment by the general public. Appropriate reporting and information-gathering procedures will permit informed decisions which will promote the state-wide interest in shellfish conservation and development.

Towns will have licensing schemes to enable their residents to dig for their own use, and may permit nonresident digging on a more restricted basis. The

towns, however, will not be permitted to exclude digging by persons licensed by the State for purposes of commercial digging in their districts.

Subject to some provisions for delayed effective dates attributable to special conditions in Hancock and Washington Counties, commercial licensees will be able to secure licenses for any number of districts at \$25 per district or \$12.50 per district for junior licenses available to 10-14 year olds. An adult license for all districts would be available for a \$100 fee.

Other management and conservation duties now performed by municipalities such as setting aside areas for cultivation for permitting transplanting, would be transferred to the district shellfish managers or the Department of Sea and Shore Fisheries.

The present tax on quahog dealers would be expanded to apply to certain shellfish dealers. The funds collected thereby would supplement the existing shellfish fund which the Commissioner of Sea and Shore Fisheries would allot among the districts for conservation and management purposes.

To sum up, the legislation is designed to promote conservation by creating a coordinated state-wide system planning and administration employing the knowledge of experts in the relevant areas.