

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1143

H. P. 856

House of Representatives, February 23, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Lewis of Bristol.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Research, Development and Cultivation of Marine
Species.

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

Sec. 1. R. S., T. 12, § 3401, sub-§§ 8-A and 28-A, additional. Section 3401 of Title 12 of the Revised Statutes is amended by adding 2 new subsections, 8-A and 28-A, to read as follows:

8-A. Cultivation. "Cultivation" means artificial control or manipulation by man of any marine species at some stage of its life history for the purpose of increasing yield or improving quality.

28-A. Species. "Species" means, as used in the laws and regulations administered by the Department of Sea and Shore Fisheries, the scientific name used in the classification of marine organisms.

Sec. 2. R. S., T. 12, § 3701, amended. The first paragraph of subsection 1 of section 3701 of Title 12 of the Revised Statutes are repealed and the following enacted in place thereof:

The commissioner, after notice and hearings pursuant to this section and with the consent of the advisory council, may set apart for a period not exceeding 10 years any coastal waters or any flats in any location for the use of the State or the National Marine Fisheries Service for scientific research or experimental cultivation on marine species. In the water areas and flats so set apart, the commissioner, and persons acting under his authority in their respective research, may take species at any time, in any manner, condition, amount, size, weight or length under regulations established by the commissioner.

1. Number of acres; permission.

A. Not more than 2 acres of flats may be taken in any one municipality without the consent of the municipal officers.

B. The commissioner is authorized to use land above high water mark or private rights-of-way and to exercise any riparian rights on the flats provided that he has written permission, lease or grant from the riparian owner. The commissioner may obtain such written permission or enter into a lease or grant upon such terms and conditions that may be agreeable to the riparian owner.

Sec. 3. R. S., T. 12, § 3701, sub-§ 3, ¶ C, additional. Subsection 3 of section 3701 of Title 12 of the Revised Statutes is amended by adding a new paragraph C to read as follows:

C. The commissioner shall record any order setting apart such water areas or flats and any agreement, lease or grant executed under this section in the registry of deeds in each county where the flats or waters are located.

Sec. 4. R. S., T. 12, § 3702, repealed and replaced. Section 3702 of Title 12 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 3702. Department experimentation and cultivation in areas closed because of contamination

The commissioner of Sea and Shore Fisheries is authorized to conduct experimentation on shellfish and other marine species on shores, waters and flats closed because of contamination under section 3503.

1. Areas below ordinary low water mark. The commissioner, with the consent of the advisory council, may take any area below ordinary low water mark for research and experimentation on shellfish and other marine species provided that there is no conflict with the Maine Coastal Plan or other pre-existing uses, and notice is given and a public hearing is held as required by section 3701. The commissioner may hold any such area for a period of 5 years.

2. Areas between ordinary high and ordinary low tide. The commissioner, with the consent of the advisory council, may take any area between ordinary high and ordinary low tide for research and experimentation on shellfish and other marine species, provided such use is not in conflict with the Maine Coastal Plan and notice is given and a public hearing held as required by section 3701.

A. The taking of any area in excess of 2 acres in any one location must be approved by the municipality in which the flats are located.

B. The commissioner is authorized to use land above high water mark or private rights-of-way and to exercise any riparian rights on the flats provided that he has written permission, lease or grant from the riparian owner. The commissioner may obtain such written permission or enter into a

lease or grant upon such terms and conditions that may be agreeable to the riparian owner.

C. Areas closed because of contamination under section 3503 and taken under this subsection for research or cultivation shall be closed for the taking of all species except by the commissioner or persons acting under his authority.

D. Areas taken in accordance with this subsection 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 shall revert to the municipalities under sections 4251, 4252, 4304 and 4305.

3. Experimentation or cultivation. The commissioner is authorized to conduct experimental or commercial cultivation in these polluted waters and flats, or authorize others to carry out such experimentation or cultivation, under the strict control and regulation of the department. Sale of shellfish cultivated in polluted waters is governed by section 3452.

Sec. 5. R. S., T. 12, § 3703-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 3703-A to read as follows:

§ 3703-A. Special license

The Commissioner of Sea and Shore Fisheries is authorized to issue special licenses 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 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 or sections of the fishery laws that 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 in part by state funding.

2. Special licenses granted. The commissioner may grant such a license subject to such conditions as he deems advisable to protect fishery resources and assure compliance with health requirements. Such license may be issued for a year subject to renewal for a period of 4 more years without refileing an application providing that conditions attached to such license have been met.

A. Any person that is engaged in handling or harvesting fish in any research or cultivation project sanctioned by a special license must be registered with the department and listed in the license.

B. The fee for a special license is \$15 for the applicant and \$10 for each additional person who is registered with the department and listed on the license as authorized to work on the project.

3. Transportation permit. Any person engaged in the cultivation of fish or shellfish under a special 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 the exemption from the fishery laws was granted. The permit may be renewed annually provided that the applicant has retained his special license.

Sec. 6. R. S., T. 12, § 3705, repealed and replaced. Section 3705 of Title 12 of the Revised Statutes, as enacted by chapter 60 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 3705. Marine resources research

The department, under the direction of the commissioner, is authorized to conduct, or sponsor, a program or programs for research and development of commercial fishery resources and other marine resources of the State which may include, but not be limited to, biological, chemical, technological, hydrological processing, marketing, financial, economic and promotional research and development. The department may carry out such a program or programs within the department or in cooperation with other state agencies, and federal, regional and local governmental entities.

The department is authorized to receive funding and undertake programs in conformity with Federal Public Law 88-309 and other federal programs concerned with marine resources and public health programs associated with marine resources; to seek and expend matching federal funds for the purposes of this section; and to seek and receive funding or accept donations from other public or private sources for the purpose of this section.

STATEMENT OF FACT

The Department of Sea and Shore Fisheries is charged by the Legislature with research and development of the fishery resources of Maine in order to protect, conserve and enhance the supply of commercial species, and to advance the economic interests of the fisherman and the fishing industry. Prediction of supply, optimum conditions for growth, eradication of disease and predators, harvesting technology, management of the resource, discovery of new methods of processing utilization—these are but a few of the areas that must be investigated. Such a task calls for the greatest degree of flexibility in the authority of the department in carrying out its assigned tasks. The following changes in Chapter 413 of Title 12 are designed to give the Department of Sea and Shore Fisheries basically the same powers to set aside areas for research and cultivation and exemption from absolute adherence to statutes relating to the taking and possession of fish that have been given by the Legislature to the Department of Inland Fisheries and Game for fresh water species.