

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1506

S. P. 452

In Senate, March 14, 1973

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Improve the Lobster Fisheries.

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

Sec. 1. R. S., T. 12, c. 408, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 408 to read as follows:

CHAPTER 408

ZONE MANAGEMENT COMMITTEES

§ 3561. Zones; how established

For the purpose of implementing this chapter, the commissioner may make regulations defining the major lobster fishing zones of the State. Said zones shall be defined so as to include the municipalities, unorganized territory and waters located therein, and the lateral seaward boundaries thereof shall be defined by compass courses, distances and monuments to the limit of the State's seaward jurisdiction.

§ 3562. Procedure for adoption of regulations creating zone management committees

Prior to adopting, amending or repealing any regulation authorized by section 3561, the commissioner shall hold a hearing thereon at some place within the proposed zone and shall cause notice of the time and place of such hearing to be published in some newspaper of general circulation within such proposed zone once a week for 2 successive weeks prior to the hearing.

The hearing shall be conducted by the commissioner or such other member of the department as he shall designate. At such hearing, the presiding of-

ficer shall solicit and receive testimony concerning the number of lobster and crab fishing licenses and lobster dealer licenses in force in the proposed zone; the number of pounds of lobsters landed therein during the last calendar year; the major lobster fishing and marketing communities therein; the lobster fishing characteristics of the waters therein and the traditional and customary patterns and usages relative to such fishing; and such other and further information as may assist the commissioner in determining the boundaries of the proposed zone. A complete verbatim record shall be kept of hearings held under this section.

After hearing, the commissioner shall, where he finds from the evidence there presented, that a sufficient community of interest exists, the lobster fishing characteristics of the waters and the traditional and customary patterns and usages relating to lobster fishing so permit and the fisheries will thereby be benefited, promulgate regulations defining the major lobster fishing zones of the State. He shall designate each such zone by a distinctive letter or numeral.

The commissioner shall cause a certified copy of such regulations to be filed with the Secretary of State and to be published once in some newspaper of general circulation within the zone thereby defined. Such regulations shall become effective upon filing with the Secretary of State in manner aforesaid.

§ 3563. Zone management committees; composition

1. Initial appointment. Whenever an initial regulation creating a major lobster fishing zone shall become effective, the commissioner shall appoint a zone management committee consisting of 7 holders of lobster and crab fishing licenses resident within the zone, 3 of whom shall be appointed for a term of 3 years, 2 of whom shall be appointed for a term of 2 years and 2 of whom shall be appointed for a term of one year, and 2 licensed lobster dealers, not representing a common business interest, doing business within the zone, both of whom shall be appointed for a term of 2 years. All appointees shall hold office until their successors are elected.

2. Subsequent election. Not later than one month prior to the expiration of the term of any lobster and crab fishing license holder initially appointed to a zone management committee, the committee shall call and hold an election, at which all holders of lobster and crab fishing licenses within the zone shall be eligible to vote, to choose a successor to such appointee. Not later than one month prior to the expiration of the term of any licensed lobster dealer initially appointed to a zone management committee, the committee shall call and hold an election, at which all licensed lobster dealers doing business within the zone shall be eligible to vote, to choose a successor to such appointee.

The committee may make regulations, in the manner provided by section 3565, relative to the manner of calling and holding elections hereunder and the nomination of persons for the several positions to be filled by elections.

In the event that there are no more than 2 nominees for the same office, the person receiving a majority of the votes cast shall be deemed elected. In the event that there are more than 2 nominees for the same office, the person receiving a plurality of the votes cast shall be deemed elected.

Persons so elected shall serve for a term of 2 years and until their successors are elected. No person may be elected to more than 2 consecutive terms on a committee.

Each zone management committee shall be the judge of the elections and qualifications of its own members.

3. Liaison officer. The commissioner shall, with respect to each zone management committee, from time to time appoint some member of the department to act as liaison officer. Such member shall have the right to notice of and attendance at all meetings of the committee, and to speak thereat, but shall have no vote.

4. Meetings; officers; vacancies; compensation. Zone management committees shall meet within their zones not less frequently than once each calendar year. At the initial meeting of such committee, it shall organize by electing a chairman, a vice-chairman and a secretary, all to serve for a term of one year and until their successors are elected. The chairman shall call and preside at all meetings of the committee. The vice-chairman shall have the powers of the chairman in the chairman's absence or inability to act. The secretary shall keep a record of the meetings of the committee. The committee may fill vacancies in its membership for the unexpired term from among persons qualified to serve in the position vacated. Members of the committee shall receive their actual expenses incurred in the performance of their official duties.

§ 3564. Zone management committees; powers

Zone management committees are empowered to promulgate regulations, in the manner prescribed by section 3565, which regulations shall not be less stringent than existing law or regulations promulgated by the commissioner, relative to:

1. Limiting the time, method, number, length or weight of lobsters taken within the zone;
2. Limiting the number of traps fished in the zone by holders of lobster and crab fishing licenses;
3. Limiting the areas within the zone in which lobsters may be taken.

§ 3565. Zone management committee regulations; how promulgated

Prior to adopting, amending or repealing any regulation authorized by sections 3563 or 3564, the committee shall hold a hearing thereon at some place within the zone and shall cause notice of the time and place of such hearing, together with a description of the substance of the proposed regulation and the action proposed to be taken thereon, to be published in some newspaper of general circulation within the zone once a week for 2 successive weeks prior to the hearing.

A complete verbatim record shall be kept of hearings held under this section. After hearing if the committee finds from the evidence there presented

that the lobster fisheries within the zone are likely to be benefited by the adoption, amendment or repeal of the proposed regulation, it shall take such action as may be necessary in the premises and within 10 days thereafter shall cause a copy of the regulation, certified as such by its secretary, to be filed with the commissioner and with the Secretary of State. Such regulation shall become effective upon filing with the Secretary of State.

Any holder of a lobster and crab fishing license or any licensed lobster dealer aggrieved by such regulation may, within 30 days of the effective date thereof, appeal therefrom to the commissioner. The appeal shall be limited to the questions of whether the committee acted regularly and within the scope of its authority and whether the regulation is supported by substantial evidence. Upon examination of the transcript of the record of the hearing, the commissioner may affirm, modify or set aside the regulation, and his decision shall be final. Pendency of the appeal shall not operate to suspend the regulation appealed from. Within 10 days of his action on any appeal, the commissioner shall cause a certified copy of such action to be filed with the Secretary of State, and the regulation thereby affected shall be affirmed, modified or set aside accordingly.

Sec. 2. R. S., T. 12, § 3752, sub-§ 1-A, additional. Section 3752 of Title 12 of the Revised Statutes, as amended, is further amended by adding a new subsection 1-A, to read as follows:

1-A. Over-fishing; mandatory suspension. On conviction of a violation of section 4453-B, the commissioner shall suspend the offender's lobster and crab fishing license and his right to obtain such license for a period of one year.

Sec. 3. R. S., T. 12, § 3752, sub-§ 2, amended. The first paragraph of subsection 2 of section 3752 of Title 12 of the Revised Statutes is amended to read as follows:

On conviction of a violation of any provision of chapters 401 to 417, except as provided in ~~subsection~~ subsections 1 and 1-A, or any regulation pertaining to sea and shore fisheries, the commissioner may suspend any and all of the offender's licenses and permits, and his right to obtain any and all such licenses and permits as follows:

Sec. 4. R. S., T. 12, § 4404, sub-§ 5, amended. Subsection 5 of section 4404 of Title 12 of the Revised Statutes is amended to read as follows:

5. License fee. The fee for a lobster and crab fishing license is \$10 which the applicant shall enclose with his application shall be as follows:

- A. For a license to fish not more than 50 lobster traps, \$25;
- B. For a license to fish more than 50 lobster traps, \$100.

The applicant shall designate on his license application the number of lobster traps which he intends to fish thereunder and shall enclose the requisite license fee with his application. The commissioner shall cause licenses to fish not more than 50 lobster traps to be printed on one color of paper and licenses to fish more than 50 lobster traps to be printed on another, distinctive, color of paper.

Sec. 5. R. S., T. 12, § 4404, sub-§ 6, amended. Subsection 6 of section 4404 of Title 12 of the Revised Statutes is amended to read as follows:

6. Lobster Fund. ~~Five dollars of the~~ The license ~~fee fees~~ received from each ~~\$10~~ for lobster and crab fishing licenses shall be allocated to the Lobster Fund, as heretofore established.

A. The commissioner may expand any and all of the money in the Lobster Fund from time to time for the purpose of propagation of lobsters, for research, protection and management of the lobster fisheries and for purchasing seed lobsters from Maine lobster pounds and female lobsters from Maine wholesale lobster dealers and liberating said lobsters in Maine coastal waters.

B. The Lobster Fund does not lapse. Fee so collected or allocated in any one year may be used in the same or any succeeding year.

Sec. 6. R. S., T. 12, § 4404, sub-§ 9, additional. Section 4404 of Title 12 of the Revised Statutes, as amended by section 2 of chapter 67 of the public laws of 1967, is further amended by adding a new subsection 9 to read as follows:

9. License moratorium. No such license, except renewals of licenses then in force and effect or licenses under suspension later terminated, shall be issued after January 1, 1974 and prior to January 1, 1976.

A. Hardship exception. Any person who demonstrates to the satisfaction of the commissioner that deprivation of such license will work a meaningful economic hardship may be issued a license, if otherwise eligible and upon payment of the requisite fees.

Sec. 7. R. S., T. 12, § 4406, additional. Title 12 of the Revised Statutes is amended by adding a new section 4406 to read as follows:

§ 4406. Applicants to designate fishing zones

After the commissioner adopts regulations pursuant to sections 3561 and 3562, every applicant for a lobster and crab fishing license shall designate on his application the zone in which he intends to fish by the distinctive letter or number assigned to such zone by the commissioner. No applicant may designate more than one such zone. The commissioner shall imprint on all lobster and crab fishing licenses issued after his promulgation of regulations pursuant to sections 3561 and 3562, the zone for which such license is issued.

Should a licensee desire to change the zone in which his license renders him eligible to fish, he shall so notify the department on a form furnished by the department for that purpose. Upon receipt of such form and the sum of \$2, the commissioner shall issue a new license rendering the applicant eligible to fish in the zone of his choice.

Sec. 8. R. S., T. 12, § 4407, additional. Title 12 of the Revised Statutes is amended by adding a new section 4407, to read as follows:

§ 4407. Short lobsters; special permit for research purposes

Any person desiring to take lobsters, less than the legal length prescribed by section 4451, for research, development or scientific purposes may apply

to the commissioner for license to do so, describing with particularity the results intended to be accomplished thereby, the estimated number of short lobsters to be taken, the area from which to be taken and their ultimate disposition. Upon receipt of such application, if the commissioner satisfies himself from the face of the application and if deemed necessary, by conference with the applicant, that the applicant's intentions are oriented toward scientific research and that the lobster fisheries of the State will not thereby be adversely affected and that the applicant has the requisite financial and technical ability to accomplish the results described in the application, he shall issue the license prayed for upon receipt of the sum of \$250, to be credited to the Lobster Fund.

Such license shall be good for a period of one year from the date of issuance and may be renewed thereafter, upon the same terms and conditions, upon submission by the licensee to the commissioner of a complete written report of the licensee's doings thereunder, which report shall be kept confidential if the licensee so requests, and payment of the sum of \$50, to be credited to the Lobster Fund.

Such licensee shall be exempt, during the period of validity of his license, from prosecution for violation of section 4451.

Sec. 9. R. S., T. 12, § 4451, amended. The first and 2nd sentences of section 4451 of Title 12 of the Revised Statutes are amended to read as follows:

The commissioner shall provide a measure, designated as the state ~~double gauge~~ lobster measure, for determining the legal length of lobsters. The commissioner shall cause ~~one gauge on~~ the measure to be ~~3 3/16~~ $3\frac{3}{4}$ inches in length ~~and the other 5 inches in length.~~

Sec. 10. R. S., T. 12, § 4451, sub-§ 1, amended. The first sentence of subsection 1 of section 4451 of Title 12 of the Revised Statutes, as amended by section 5 of chapter 408 of the public laws of 1969, is further amended to read as follows:

It is unlawful for any person to buy, sell, expose for sale, give away, transport, ship or have in possession any lobster, alive or dead, cooked or uncooked, which is less than ~~3 3/16~~ $3\frac{3}{4}$ inches in length as determined by the state ~~double gauge~~ lobster measure by measuring from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

Sec. 11. R. S., T. 12, § 4451, sub-§ 2, repealed. Subsection 2 of section 4451 of Title 12 of the Revised Statutes, as amended by section 5 of chapter 408 of the public laws of 1969, is repealed.

Sec. 12. R. S., T. 12, § 4451, sub-§ 3, amended. Subsection 3 of section 4451 of Title 12 of the Revised Statutes is amended to read as follows:

3. Exception if lobster immediately liberated alive when caught. If any lobster which is shorter than ~~3 3/16~~ $3\frac{3}{4}$ inches in length, ~~or longer than 5 inches in length~~ as determined by the method of measuring provided in ~~sub-sections subsection 1 and 2~~ or is mutilated in such a manner as to make accurate measurement impossible, is immediately liberated when caught, the

person who so liberates the lobster is excused from the unlawful possession of that lobster.

Sec. 13. R. S., T. 12, § 4453, sub-§ 2, amended. Subsection 2 of section 4453 of Title 12 of the Revised Statutes is amended to read as follows:

2. **Definition.** A "lobster trap or pot" for the purposes of this ~~section~~ **Article** shall be held to mean a stationary device set on the ocean bottom and commonly used along the Maine coast for catching lobsters.

Sec. 14. R. S., T. 12, § 4453-A, additional. Title 12 of the Revised Statutes is amended by adding a new section 4453-A, to read as follows:

§ 4453-A. Lobster traps or pots; design

Any lobster trap or pot offered for sale, exposed for sale or in possession shall be of a design approved by the commissioner to permit the escape of lobsters less than the minimum legal length established by section 4451.

Sec. 15. R. S., T. 12, § 4453-B, additional. Title 12 of the Revised Statutes is amended by adding a new section 4453-B, to read as follows:

§ 4453-B. Graduated maximum lobster trap limitation; penalties

On and after December 31, 1973 and prior to December 31, 1974 it shall be unlawful, for any person holding a lobster and crab fishing license, to fish more than 600 lobster traps or pots. On and after January 1, 1974 and prior to December 31, 1975 it shall be unlawful, for any person holding a lobster and crab fishing license, to fish more than 450 lobster traps or pots. On and after January 1, 1975 it shall be unlawful, for any person holding a lobster and crab fishing license, to fish more than 300 lobster traps or pots.

Whoever violates this section shall be punished by a fine of not less than \$200 plus \$20 for each trap fished in excess of the maximum number allowable, but not more than \$1,000, or by imprisonment for not more than 90 days.

Sec. 16. R. S., T. 12, § 4453-C, additional. Title 12 of the Revised Statutes is amended by adding a new section 4453-C, to read as follows:

§ 4453-C. Fishing outside of zone

It is unlawful for any holder of a lobster and crab fishing license to fish for or catch lobsters from any portion of the coastal waters of the State other than that portion within the zone designated on his license.

Sec. 17. R. S., T. 12, § 4453-D, additional. Title 12 of the Revised Statutes is amended by adding a new section 4453-D, to read as follows:

§ 4453-D. Fishing in excess of license limitations on traps; penalty

It is unlawful for any person holding a license to fish not more than 50 lobster traps, to fish more than 50 of such traps at any one time.

Sec. 18. Trap inspection program. It is the intent of the Legislature that the Commissioner of Sea and Shore Fisheries develop, after consultation with the holders of lobster and crab fishing licenses, a system of annual onshore

inspection by the Department of Sea and Shore Fisheries of the traps of all such license holders, in order to determine compliance with section 14 of this Act, and with the trap limitations enacted by sections 4 and 15 of this Act. It is the further intent of the Legislature that the commissioner develop legislation whereby the issuance of a lobster and crab fishing license shall be deemed an implied consent by the licensee to such inspection. The commissioner is directed to develop such a program and such appropriate legislation as may be necessary to implement the same, and present the same to the next special session of the 106th Legislature, or if none, to the regular session of the 107th Legislature, for its consideration.

STATEMENT OF FACT

This bill implements the findings and recommendations of the Special Sea and Shore Fisheries Interim Study Committee. The report of this committee, dated February 8, 1973, has been distributed to the members of the Legislature.