

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 934

S. P. 276

In Senate, March 7, 1975

Referred to 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-FIVE

AN ACT to Clarify the Laws Relating to Marine Resources.

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

Sec. 1. 12 MRSA § 3505, sub-§ 1, ¶C, first sentence, as enacted by PL 1973, c. 513, § 11, is amended to read:

The Commissioner of Marine Resources may investigate or cause to be investigated conditions affecting marine resources in any coastal waters or flats of the State, and may on his own initiative, with the advice and consent of the advisory council, make or amend such regulations as he deems necessary to ~~conserve~~ promote the conservation of marine species or to promote their propagation to the extent provided in section 3504 and in accordance with the procedure provided in this section.

Sec. 2. 12 MRSA § 3752, first ¶, is amended to read:

The commissioner may suspend any and all licenses, certificates and permits issued by him under the authority of chapters 401 to 417, and the right of any person, firm or corporation to obtain any and all such licenses, certificates and permits, subject to this section.

Sec. 3. 12 MRSA § 3752, sub-§ 2, as last amended by PL 1973, c. 513, § 22, is amended to read:

2. **Length of period of suspension.** On conviction of a violation of any provision of chapters 401 to 417, except as provided in subsection 1, or any regulation pertaining to ~~sea and shore fisheries~~ marine resources, or any private and special law enforced by this department, or any provisions under Title 17, sections 2952 and 2953 enforced by this department, the commis-

sioner may suspend any and all of the offender's licenses, certificates and permits, and his right to obtain any and all such licenses, certificates and permits issued by the Commissioner of Marine Resources as follows:

Sec. 4. 12 MRSA § 3752, sub-§ 4, is amended to read:

4. **Suspension for persons adjudged to have committed a juvenile offense.** When a person has been adjudged to have committed a juvenile offense as a result of a violation of any provision of chapters 401 to 417, or of any regulation adopted under authority of chapters 401 to 417, the commissioner may suspend any and all of his licenses, certificates and permits, and his right to obtain them, in the same manner as though he were found guilty of the particular violation instead of having committed a juvenile offense.

Sec. 5. 12 MRSA § 3752, sub-§ 5, first ¶, as last amended by PL 1965, c. 174, § 2, is amended to read:

5. **Hearing may be requested in certain cases.** Any person whose license, certificate, permit or right thereto has been suspended under subsections 2, 3 or 4 may request the commissioner for a hearing.

Sec. 6. 12 MRSA § 3752, sub-§ 5, ¶¶ A and B, are amended to read:

A. At the hearing, the person applying for reinstatement of his license, certificate, permit or right may present any relevant facts concerning the violations.

B. The commissioner may reinstate the license, certificate, permit or right after the hearing, or he may shorten the time of suspension, if he is satisfied that either procedure would be in the interest of justice.

Sec. 7. 12 MRSA § 3752, sub-§ 6, first ¶, as last amended by PL 1969, c. 535, § 1, is amended to read:

6. **Suspension when judgement of guilt appealed.** When an appeal has been taken from any judgement of guilt of any violation of any provisions of chapters 401 to 417, or of any regulation adopted under authority of chapters 401 to 417, the commissioner may suspend, until final court disposition, the license, certificate, permit or right thereto of the respondent to conduct the particular activity in which he was engaged at the time of the alleged violation, and the commissioner may suspend for the same period any and all licenses, certificates and permits held by the respondent, and any and all rights he has to obtain such licenses, certificates or permits.

Sec. 8. 12 MRSA § 3752, sub-§ 6, ¶ A, as enacted by PL 1969, c. 535, § 1, is amended to read:

A. A person, whose license, certificate, permit or right is suspended under this section, is entitled to a hearing upon written request to the commissioner. The commissioner shall set a time and place for said hearing which is to be held within 20 days after receipt by him of the request.

(1) At the hearing the person applying for reinstatement of his license, certificate, permit or right may present any relevant facts concerning the alleged violation.

(2) The commissioner may reinstate the license, certificate, permit or right if he is satisfied to do so would be in the interest of justice.

Sec. 9. 12 MRSA § 3752, sub-§ 8 is amended to read:

8. **Specific violations; penalties.** Whoever engages in any pursuit while his license, certificate or permit therefor, or his right to obtain such, is under suspension, or whoever possesses any marine species while his license, certificate or permit therefor, or his right to obtain such, is under suspension, shall be punished by a fine of not less than \$50 nor more than ~~\$300~~ \$500, or by imprisonment for not more than 90 days, or by both.

Sec. 10. 12 MRSA § 4252, sub-§ 3 is repealed and the following enacted in place thereof:

3. **Penalty for ordinances.** Whoever violates any provision of a municipal ordinance authorized by this section shall be punished by a fine as provided by section 4504.

Sec. 11. 12 MRSA § 4302-B, sub-§ 3, as enacted by PL 1971, c. 248, § 2, is amended to read:

3. **Licenses; certificates, permits, authorizations.** After the effective date of any regulation adopted under authority of this section, no person, firm or corporation shall process in or for either interstate or intrastate commerce any fish or fishery product in any establishment, governed by that regulation, unless there is in effect for such establishment an annual, valid, current license, certificate, permit or authorization issued by the commissioner.

Sec. 12. 12 MRSA § 4302-B, sub-§§ 8 and 9, as enacted by PL 1971, c. 248, § 2, are amended to read:

8. **Suspension, revocation, denial of licenses, certificates, permits, authorizations.** The commissioner may suspend, revoke or deny for any period of time any license, certificate, permit or authorization issued by him, or the right to obtain one, whenever he determines that any of the provisions of law or regulation governing the processing of fish or fishery products and establishments or laws of the State of Maine have been violated.

9. **Right of hearing.** Any person, firm or corporation denied a license, certificate, permit or authorization under this section may request a hearing with the commissioner, to show cause why the particular license, certificate, permit or authorization should not be denied.

Any person, firm or corporation found to be in violation of any of the provisions of this section or any regulation adopted under authority of this section or who continues to violate any portion shall be requested to appear at a hearing with the commissioner at such time and place as he shall designate, to show cause, if any, why the particular license, certificate, permit or authorization should not be suspended.

Sec. 13. 12 MRSA § 4302-B, sub-§ 9, ¶¶ B and C, as enacted by PL 1971, c. 248, § 2, are amended to read:

B. After the hearing, the commissioner may suspend or revoke the particular **license**, certificate, permit or authorization, if he is satisfied that the facts and conclusions justify such action.

C. Should the person, firm or corporation fail to appear at the hearing, as designated by the commissioner, the commissioner may act immediately to suspend or revoke the particular **license**, certificate, permit or authorization or the right to obtain any.

Sec. 14. 12 MRSA § 4302-B, sub-§§ 10 and 11, as enacted by PL 1971, c. 248, § 2, are amended to read:

10. Right of entry. The commissioner or his agent, whenever fish or fishery products are being processed at any establishment to which a **license**, certificate, permit or authorization has been issued under this section, shall have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access shall be ground for suspension or revocation of any **license**, certificate, permit or authorization.

11. Reports. The holder of any **license**, certificate, permit or authorization issued under this section shall make a record of all purchases and sales of fish and fishery products covered by this section and shall file those records with the department as required by the regulations governing the processing of fish or fishery products.

Sec. 15. 12 MRSA § 4302-B, sub-§ 12, as last amended by PL 1973, c. 657, § 2, is amended to read:

12. Penalty. Whoever violates or continues to violate any provision of this section or regulation thereof after being denied a **license**, certificate, permit or authorization to process fish or fishery products, or whoever, after having had such **license**, certificate, permit or authorization revoked or suspended, continues to process any fish or fishery products, shall be punished in accordance with section 4504.

Whoever processes any fish or fishery product in any establishment, in violation of any effective law or regulations, without first obtaining a **license**, certificate, permit or authorization for that purpose, shall be punished in accordance with section ~~4504~~ 3752, subsection 8.

Sec. 16. 12 MRSA § 4401, sub-§ 5 is amended to read:

5. Penalty for the taking, holding or possession of female lobsters. Whoever takes, holds, transports, ships or has in his possession any female lobsters in violation of any provision of this section shall be punished by a fine of not less than ~~\$25~~ \$10, and in addition by a fine of ~~\$10~~ \$25 for each such female lobster involved, or by imprisonment for not more than 90 days, or by both.

Sec. 17. 12 MRSA § 4455, sub-§ 1, ¶ A, as last amended by PL 1965, c. 30, § 2, is further amended to read:

A. Whoever possesses any such tail section of lobster meat shall be punished by a fine of ~~\$25~~ and in addition by a fine of ~~\$5~~ for each such tail sec-

tion of lobster meat possessed, \$10 and in addition by a fine of \$5 for each such tail section involved, up to and including the first 5, and by a fine of \$25 for each such tail section in excess of 5, or by imprisonment for not more than 90 days, or by both.

Sec. 18. 12 MRSA § 446I is amended to read:

§ 446I. Unmarked lobster and crab pots and traps

It is unlawful for any person to set, raise or haul in or from the tidal waters of this State any pot or trap for any lobster or crab, or to cause the same to be done, without having it and the buoy attached thereto ~~plainly carved or branded~~ clearly marked with his lobster and crab fishing license number.

1. **Lobster cars to be marked.** It is unlawful for any person, firm or corporation to use or set in tidal waters of this State any car or other contrivance for the holding or keeping of lobsters, or to cause the same to be done, without having it ~~plainly carved or branded~~ clearly marked with the owner's lobster and crab fishing license number, retail seafood dealer's license number or wholesale seafood dealer's and processor's license number.

2. **Penalty.** Whoever violates any provision of this section shall be subject to the penalties provided in section 4504 and in addition ~~shall~~ may forfeit to the State the pot, trap, buoy, car or other contrivance not so marked, and any lobsters or crabs found therein.

FISCAL NOTE

No additional cost. Possible increase in fine revenue.

STATEMENT OF FACT

Sec. 1. There is a grey area in 12 MRSA, section 3505 sub-§ 1, ¶ C, (Conserve) which limits the commissioner in carrying out the intended responsibilities under this statute.

The change to **promote the conservation of**, we feel, would eliminate this problem.

Sec. 2. 12 MRSA, section 3752 is the section which gives the commissioner the authority to suspend any or all licenses and permits issued by him. The commissioner also issues certificates under the shellfish certification program carried on in cooperation with the U. S. Public Health Service. He should have the same right to suspend certificates as licenses and permits. The same applies to sections 3, 4, 5, 6, 7, 8, and 9 of this L. D.

Sec. 10. 12 MRSA, section 4252, sub-§ 3 is a set penalty for a violation of a municipal shellfish ordinance and specifies "not more than \$10.00." As a

result, no more than \$10.00 can be assessed by a judge regardless of the number of violations.

Changing this penalty to section 4504 would place this in the General Penalty provision (\$25 to \$500) and would give the courts discretion.

Sec. 11. 12 MRSA, section 4302-B, leaves an impression that a certificate, permit or some other authorization is all that is required to operate a fish processing establishment, but in fact, a **license** is required and should be inserted into this section.

Sec. 12. 12 MRSA, section 4302-B, sub-§§ 8 and 9. These subsections, because of health hazards and in keeping with provisions of the U. S. Public Health Service Shellfish Regulations, give the commissioner the authority to revoke, suspend or deny any certificate, permit or authorization which governs the processing of fish or fishery products and establishments. These changes would add licenses to the list which are issued by the commissioner on the same person or establishment. The above statement also applies to sections 13, 14 and 15.

Sec. 16. 12 MRSA, section 4401, sub-§ 5, is a penalty for the taking, holding or possession of female lobsters. This is an old penalty and has not been changed as many of our other penalty provisions have. This would place a \$10 penalty for the issuance of any complaint which is presently in effect for our short and oversized lobster statutes, and would increase the penalty for possession of any egg or marked female lobsters.

Sec. 17. 12 MRSA, section 4455, sub-§ 1, ¶ A. This penalty was not changed when the short lobster penalty was changed. This would put this in line.

Sec. 18. 12 MRSA, section 4461. This will allow fishermen to mark their traps by any method instead of being restricted to **carved** or **branding**.

The penalty change makes the forfeiture of traps, etc., discretionary rather than mandatory.