

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1765

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H. P. 1339

House of Representatives, April 2, 1975

On motion of Mr. Greenlaw of Stonington, referred to the Committee on Marine Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owls Head.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT Relating to the Statutes Concerning Clams, Mussels, Quahogs  
and Marine Worms.

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

12 MRSA §§ 4319 to 4324, are enacted to read:

§ 4319. Cultivation of clams and mussels

The municipal officers of any municipality, 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.

1. Survey and plan must first be made; filing. Before granting any license, the municipal officers of a municipality, 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 in the office of the department if the municipality is deorganized.

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 the municipality.

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

A. The municipal officers shall fix the exact term within those limits in event the legislative body of the municipality fails to do so.

B. The commissioner shall fix the term within the 5 to 10-year limit for deorganized municipalities.

4. Annual license fee. The licensee shall pay an annual license fee to the municipality, or to the department if the municipality is deorganized.

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

(1) The municipal officers shall fix the exact fee within those limits if the legislative body of the municipality fails to do so.

B. The fee for a license in a deorganized municipality 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, or who has been a taxpayer in the municipality 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 of 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. Authority to pass ordinances. A municipality may enact municipal ordinances, which do not conflict with this section and sections 4320 and 4351, to further regulate the licenses authorized by this section.

9. Procedure in § 4320 to be followed. The municipal officers and the commissioner shall follow the procedure provided in section 4320 in granting licenses authorized by this section.

§ 4320. Procedure for licenses authorized by section 4319

The procedure for granting, assigning and holding the licenses authorized by section 4319 is as follows.

1. License application. Any person interested in obtaining a license shall apply in writing to the municipal officers of the municipality wherein the flats or creeks to be under license are located, or to the commissioner if the municipality is deorganized.

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, or that the applicant has been a taxpayer in the municipality for at least one year next preceding the date of application.

2. Notice of hearing. Upon receipt of an application properly completed, the municipal officers, or the commissioner if the municipality is deorganized, 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 posted in at least 3 public places in the municipality and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.
- (1) If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in the municipality.
3. Hearing. The municipal officers, or the commissioner if the municipality is deorganized, 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 municipal officers, or the commissioner if the municipality is deorganized, may grant the license within the area specified in the application, subject to the following provisions.
- A. All the requirements of section 4319 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 municipal officers, or the commissioner if the municipality is deorganized, shall mark the area licensed on the plan provided for in section 4319.
- A. The municipal officers shall record any license issued by them with the clerk of the municipality, 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 of 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, or who has been a taxpayer in the municipality where the licensed area is located 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.

#### § 432I. Transplanting of seed clams and quahogs

The commissioner is 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 4319, subject to this section.

1. Application for permit. Any person so qualified shall apply to the commissioner through the municipal officers of the municipality where the seed quahogs or seed clams to be transplanted are located, or directly to the commissioner if the seed quahogs or seed clams to be transplanted are located in a municipality which has been deorganized by Act of the Legislature.

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 municipal officers of the municipality where the seed quahogs or seed clams are to be obtained, or the commissioner if that municipality is deorganized, 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 posted in at least 3 public places in the municipality, and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.

(1) If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in that municipality.

C. Notice of the hearing must be given the commissioner, unless the municipality from which the seed quahogs or seed clams are to be obtained is deorganized.

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

A. If the municipality is deorganized, the commissioner may deny the application and that denial is final.

4. Approval of application. After the hearing the municipal officers 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, or after the hearing if the seed quahogs or seed clams are located in a deorganized municipality, 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.

#### § 4322. Marine worm digger's license required

It is unlawful for any person to dig or take any marine worms from the flats, shores or coastal waters of the State without having a current written license therefor as provided in this section.

1. Exception. Any person may dig or take marine worms without having a current license, provided he does not dig, take or have in his possession more than 125 marine worms in any one day.

2. License, designation; general scope. The license, designated as a marine worm digger's license, entitles the holder to dig or take from the shores, flats or waters of the State any amount of marine worms where it is otherwise lawful to do so. He may transport and sell at retail within the State any amount of the worms he has so dug or taken. He may not buy or take marine worms from any other person, unless he also holds a current marine worm dealer's license provided in section 4323.

He may sell at wholesale any amount of marine worms he has dug or taken from the shores, flats or waters of the State to the holder of a current marine worm dealer's license, but to no other person.

3. Prima facie evidence. The sale of more than 125 marine worms to any one person in any one day is prima facie evidence of a wholesale sale.

4. Residence requirement; fee. A person who has been a resident of this State for 6 months or more next prior to the date of his application may make application to the commissioner for a marine worm digger's license.

A. The fee for the license is \$10 which the applicant shall submit with his application.

5. Possession unlawful. It is unlawful for any person, except the holder of a current marine worm digger's license or the holder of a current marine worm dealer's license provided in section 4323 to possess more than 125 marine worms in any one day.

6. General licensing provisions apply. The general licensing provisions of section 3751 apply to a marine worm digger's license.

7. Penalty. The penalties provided in section 4323 apply to any violation of this section.

#### § 4323. Marine worm dealer's license

It is unlawful for any person, firm or corporation to buy, sell, take, transport or ship marine worms without having a current written license from the commissioner as provided in this section.

1. Exception for marine worm digger's licensees, certain consumers and common carriers. The holder of a current marine worm digger's license provided in section 4322 may transport within the State the worms he has dug or taken from the flats, shores and waters of the State. He may sell at retail any amount of the worms he has so taken or dug and he may sell at wholesale any amount of the worms he has so taken or dug to the holder of a current marine worm dealer's license.

The transportation provisions of this section do not apply to a common carrier engaged in carrying freight on a fixed schedule within or without the State.

Any person may buy or take marine worms without having a current license as provided in this section, provided he does not take or buy, more than 125 marine worms in any one day, and takes or buys them for his own personal use.

2. License designation; scope. The license, designated as a marine worm dealer's license, entitles the holder to buy, sell, take, possess, transport and ship any amount of marine worms.

3. Residence requirement; supplemental licenses; fees. Any person who has been a resident of the State of Maine for at least 12 months next prior to the date of application may make application to the commissioner for a marine worm dealer's license. A partnership may also make application for such a license, provided all members of the partnership have been residents of the State of Maine for at least 12 months next prior to the date of application. A corporation created and existing under the laws of this State may likewise make application for such a license, provided all the corporate officers and its manager have been residents of this State for at least 12 months next prior to the date of application.

A. Partnership and corporate licenses are valid only for the one person therein named, but the holder or applicant for the license may apply for and be issued as many supplemental licenses as he desires, each one being valid for the one particular person therein named, provided that the person so named is an employee of the holder or applicant, or is a copartner of the partnership holder or applicant, or is a corporate officer of a corporate holder or applicant.

(1) When any person so named on a supplemental license ceases to be an employee, copartner or corporate officer of the holder, that particular supplemental license becomes void and shall be surrendered on demand of the commissioner. The holder of the license shall immediately notify the commissioner in writing of any change in status of any person named in any of his supplemental licenses.

B. The fee for a marine worm dealer's license is \$25, which shall be submitted with the application. The fee for each supplemental license is \$1, which must also accompany the application.

4. General licensing provisions apply. Section 3571 applies to a marine worm dealer's license.



5. Penalty. Whoever violates any provision of this section or section 4322 shall be punished by a fine of not less than \$20 nor more than \$300, or by imprisonment for not more than 90 days, or by both.

§ 4324. Marine Worm Fund

All license fees received from licenses issued under sections 4322 and 4323 are allocated to the Marine Worm Fund established by this section.

1. Purpose for which fund may be used. The commissioner may expend any and all of the money in the fund from time to time for research related to marine worms or the marine worm industry or for the restoration, development or conservation of marine worms and the marine worm industry, including but not limited to the construction and maintenance of permanent or temporary facilities for any such purposes. He may also seek and expend any federal matching funds which may be available for any such purposes.

2. Fund does not lapse. The fund does not lapse and fees collected or allocated in any year may be used in that year or any other year.

#### STATEMENT OF FACT

This enacts provisions concerning the cultivation of clams and mussels, licensing for the taking of clams and mussels, transplanting of seed clams and quahogs, marine worm digger's licenses, marine worm dealer's licenses and the Marine Worm Fund.