

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1790

H. P. 1436

House of Representatives, April 7, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Curtis of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning Shellfish Licenses and Fisheries Inspection.

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

Sec. 1. 12 MRSA §§ 4301, 4301-A, 4301-B, 4302, 4302-B, 4303, 4304, 4305, 4306, 4308, 4309 and 4311, as amended, are repealed.

Sec. 2. 12 MRSA §§ 4312 to 4318 are enacted to read:

§ 4312. Commercial shellfish license

1. License required. It is unlawful for any person to dig or take any clams, quahogs, mussels or oysters from the flats, shores or tidal waters of the State without having a license from the commissioner as provided in this section.

2. Exceptions.

A. Home consumption. Any person may dig or take clams, quahogs, mussels or oysters for consumption by himself, the members of his family or his invited guests, without having a license as provided in this section, provided that the total amount of species dug, taken or possessed in any one day does not exceed $\frac{1}{2}$ bushel.

3. Designation and general scope of license. The license designated as the commercial shellfish license entitles the owner to dig or take any amount of clams, quahogs, mussels or oysters when and where it is otherwise lawful to do so and to transport and sell such shellstock.

4. Unlawful possession. It is unlawful for any person, except the holder of a commercial shellfish license, to possess more than $\frac{1}{2}$ bushel of clams,

quahogs, mussels or oysters in any one day, unless the person has in his or her possession a bill of sale therefor.

A. This subsection does not apply to the holder of a current retail shellfish license authorized under section 4314, or to the holder of a wholesale shellfish license authorized under section 4313.

5. Licensee's authority to take shellfish. The holder of a commercial shellfish license may dig or take clams, quahogs, mussels or oysters in any of the tidal waters or flats of the State except in those areas which are closed to the digging or taking of the same by any section of chapters 401 to 417 or the regulations promulgated thereunder. Such sections include, but are not limited to, sections 3503, 3504, 3701 to 3705, 3721 to 3731 and 4253. The holder may not dig or take any clams, quahogs, mussels or oysters contrary to any ordinance in full force and effect which was passed pursuant to the authority provided in section 4252 and amendments thereto.

6. Residency requirement. A person who has been a resident of the State of Maine for 6 months or more immediately prior to the date of his application may apply for a commercial shellfish license on forms provided by the commissioner.

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

8. Harvesting in closed areas. It is unlawful to harvest shellfish from any area designated as a "closed area" by the Department of Marine Resources.

The commissioner may suspend the commercial shellfish license, and the privilege of obtaining such a license, of any person convicted of harvesting shellfish from a closed area for a period not in excess of one year from the date of suspension.

9. Cross-references.

A. General licensing provisions apply, see sections 3751 through 3755.

B. For a penalty for a violation of this section, see section 3753.

C. For regulatory requirements for license holders under this section, see section 4315.

§ 4313. Wholesale shellfish license

1. License required. It is unlawful for any person to engage in whole or in part within the State of Maine in the wholesale trade in or in the shipment or transportation of or in the processing for sale in the wholesale trade of any clams, quahogs, mussels, oysters, or parts thereof, without holding a wholesale shellfish license from the commissioner as provided in this section.

2. General scope of license. The license entitles the holder, when and where it is otherwise lawful, to buy and sell wholesale and retail, to ship or transport and to process for sale all soft shelled clams, quahogs, mussels and oysters, provided that the licensee also complies with all regulations promulgated under section 4315.

3. **Certification requirement.** No license shall be issued unless the applicant has been certified under the regulations pertaining to this section.

4. **Vehicle inspection.** The application for a license under this section shall provide a clear description of any and all vehicles of transportation to be used regardless of state of origin. The department shall inspect all vehicles so described in the application with regard to State of Maine standards of sanitation and thermal protection for shellfish products and shall issue stickers for vehicles passing inspection which shall be prominently displayed on the vehicle.

5. **Exceptions.** This section does not apply to any person who lawfully possesses clams, quahogs, mussels or oysters solely for consumption by himself, his family or his invited guests, nor does this section apply to clams, quahogs, or mussels that are being transported through this State under the authority of the laws of the United States.

6. **Sales in the wholesale trade.**

A. Any sale to either a wholesale shellfish dealer, or a retail shellfish dealer is a sale in the wholesale trade and is unlawful unless the seller is licensed in accordance with this section.

B. It shall be unlawful to sell on any wholesale market, shellfish which have once been sold into retail trade.

C. **Exception.** A sale to a wholesale shellfish dealer by a holder of a commercial shellfish license is not a sale in the wholesale trade for the purposes of this section.

7. **License fees and supplemental licenses.**

A. The fee for a wholesale shellfish license is \$50.

B. The holder of a wholesale shellfish license must obtain from the commissioner a supplemental license for each place of business and for each "vehicle" used to transport any marine species covered by this section. The fee for each supplemental license is \$10.

8. **Cross-references.**

A. General licensing provisions apply, see sections 3751 and 3753.

B. For penalty for violation of this section, see section 3753.

C. For all regulatory requirements for license holders under this section, see section 4315.

D. For the requirements of the wholesale seafood dealers and processors license, see section 4402-A.

§ 4314. **Retail seafood dealers license.**

1. **License required.** It is unlawful for any person to sell, offer for sale, buy for resale, serve, ship or transport in any manner to the consumer any

clams, quahogs, mussels, oysters, crabs or lobsters, or parts thereof, without having a retail seafood dealer's license from the commissioner as provided in this section.

2. General scope of the license. The license entitles the holder as a retail dealer to buy from certified wholesale shellfish dealers, sell, offer for sale or serve, whether shucked or not, all clams, quahogs, mussels, oysters, or parts thereof, buy from commercial shellfish licensees, sell, offer for sale or serve all such shellstock, and buy, sell, offer for sale or serve crabs or lobsters, or parts thereof, within the limits of the State to the consumers thereof only and to other retail dealers.

3. Exceptions. The licensing provisions of this section do not apply in the following instances:

A. To the transportation of the marine species, or parts thereof, covered by this section, by a person who possesses them for the purpose of consumption by himself and his family;

B. To the transportation or selling by a properly licensed fisherman of the particular marine species which his particular fishing license authorizes him to take or catch;

C. To the shipping or transportation of lobsters and crabs, or parts thereof, covered by this section by a common carrier engaged in carrying freight on a fixed schedule within or without the State, provided as follows:

(1) The lobster and crabs, or parts thereof, are received by the common carrier at one of his regular established places of business on land for receiving general freight; and

(2) The receptacle containing the lobsters and crabs, or parts thereof, is plainly marked in accordance with the law.

4. Section applies to marine species in any form; exception.

A. This section applies to clams, mussels, quahogs, oysters, lobsters, crabs, or parts thereof, in any form whatever, whether or not cooked, or removed from the shell, alive or processed in any manner.

B. Exception. Stores may possess, buy or sell any of the marine species or parts thereof covered by this section which are in hermetically sealed containers without being required to obtain a retail shellfish dealer's license.

5. Application; license fees. A person may apply to the commissioner for a retail seafood dealer's license on forms furnished by the commissioner.

A. The license fee of \$10 shall be submitted with the application.

B. A supplemental license and fee is required for each market, hotel, restaurant, vehicle, store or other place where clams, quahogs, oysters or mussels, or parts thereof, are served or sold in the retail trade.

6. Cross-references.

A. General licensing provisions apply, see sections 3751 and 3755.

B. For penalty for violation of this section, see section 3753.

C. For all regulatory requirements for license holders under this section, including those pertaining to retail license holders operating as roadside vendors, see section 4315.

D. For the requirements of the retail seafood dealer's license, see section 4402-B.

§ 4315. Fisheries inspection regulated

1. Regulations to be promulgated. The commissioner shall, by regulation, establish minimum standards for establishments and for sanitation and quality control of the processing of fish and fishery products. Each set of regulations shall be based upon the particular operational requirements of that species or phase of the industry being regulated and shall conform to the latest federal standards available and be in harmony with the most recently available research data as promptly as is practicable.

2. Public hearing.

A. The commissioner shall adopt such regulations after public hearing. Notice of the public hearing must be published once, at least 30 days before the hearing, in the state paper and in other newspapers of general circulation as the commissioner determines adequate to provide sufficient notice to the public affected thereby. The regulations adopted after the hearing must be published in the state paper once, at least 14 days before they become effective. They may be amended or repealed at any time by the commissioner after like notice, hearing and publication of the portions affected thereby.

B. Notwithstanding the foregoing, whenever the commissioner determines that the safety of the public health or welfare is threatened, he may issue regulations without a hearing, provided that thereafter he holds a public hearing as soon as is practicable as provided in this section.

3. Savings clause. Regulations adopted by the commissioner under section 4302-B, which is being repealed, remain in full force and effect until repealed as provided in subsection 2.

4. Inspection of fishing industry. The commissioner shall, in accordance with the most modern public health and food protection practices, establish and maintain effective surveillance and inspection of all segments of the industry for which there is any regulation adopted under authority of this section.

5. Department cooperation with other agencies. The commissioner shall cooperate with other state or federal department heads or agencies to develop memorandums of understanding detailing duties and obligations of each, so that duplication, confusion and waste will not occur. He may enter into cooperative agreements with any state or federal agency and accept funds whenever he determines that it would effectuate the purpose of this section.

6. Processing must be in accordance with the regulations. After the effective date of any regulation adopted under the authority of this section, it shall be unlawful for any person to process any fish or fishery product in any establishment governed by that regulation except in accordance with its requirements.

7. Right of entry. Whenever fish or fishery products are being processed at any establishment governed in any respect by the requirements of chapters 401 to 417 and this section, the commissioner or his agents shall have access to any establishment or part thereof for the purposes of inspection or collection of samples. Denial of access shall be grounds for suspension or revocation of the license, certificate, permit or other authorization involved.

8. Reports. The holder of any license, certificate, permit or other authorization issued under chapters 401 to 417 or 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 regulations issued under this section.

9. Judicial notice of regulations. Judicial notice shall be taken of any certified copy of regulations currently enforced and promulgated under this section.

10. Cross-reference. General licensing provisions apply, see sections 3751 to 3755.

§ 4317. Products embargoed or condemned; administration action

1. Procedure of embargo or condemnation. Whenever the commissioner or his agent finds after careful investigation that the product poses a threat to public health because it is of unsound quality, contains any filthy, decomposed or putrid substance, may be poisonous or deleterious to health or is otherwise unsafe, he shall indefinitely embargo, condemn or order to be destroyed any fish or fishery product in any establishment. The commissioner and his deputy will cooperate with those state and federal agencies having similar responsibility in the protection of public health, in enforcing the order to embargo, condemn or destroy.

2. Notification regarding embargo or condemnation. In the event that any fish or fishery product in any establishment is embargoed, condemned, or ordered destroyed, the commissioner or his agent shall as soon thereafter as practical, notify the owner in writing of the amount and kind of fish or fishery product embargoed, condemned or destroyed.

§ 4318. Disposition of license fees

All the license fees received from shellfish licenses shall be allocated to the Shellfish Fund, as heretofore established.

1. Purposes for which fund may be used. The commissioner may expend any and all of the money in the Shellfish Fund from time to time for the purpose of restoration, development and conservation of clams, quahogs, oysters

and mussels in the shores, flats or coastal waters of the State, for the establishment and maintenance of permanent and temporary facilities used for such purposes and for the shellfish inspection program.

2. Fund does not lapse. The Shellfish Fund does not lapse. Fees so 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 as provided in the Revised Statutes, 1954, chapter 38, section 109 immediately prior to September 12, 1959, are in the Shellfish Fund as authorized in this section in all respects as though they were originally allocated under this section.

STATEMENT OF FACT

This bill enacts provisions in the Marine Resources statutes concerning commercial shellfish licenses, wholesale shellfish licenses, retail seafood dealers' licenses and fisheries inspection.