

MAINE STATE LEGISLATURE

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New Draft of H. P. 1321, L. D. 1640
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2166

H. P. 2146

House of Representatives, February 28, 1978

Reported by Mrs. Post from the Committee on Marine Resources and printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Revise the Laws Concerning Marine Resources.

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

Sec. 1. 5 MRSA § 1095, sub-§ 3, as repealed and replaced by PL 1975, c. 622, § 38-B, is amended by adding at the end a new paragraph to read:

A commissioner or a deputy commissioner of the Department of Marine Resources may elect to contribute as a member under subsection 1 rather than this subsection if he files a written copy of the election of that choice with the board of trustees.

Sec. 2. 5 MRSA § 1121, sub-§ 1, ¶ D, as last amended by PL 1975, c. 622, § 45, is further amended by adding at the end a new paragraph to read:

A commissioner or a deputy commissioner of the Department of Marine Resources may retire under this paragraph if he has contributed as a law enforcement officer under section 1095, subsection 3.

Sec. 3. 12 MRSA cc. 401 to 417, as amended, are repealed.

Sec. 4. 12 MRSA Pt. 9 is enacted to read:

PART 9
MARINE RESOURCES
SUBPART I
ADMINISTRATION
CHAPTER 601
GENERAL PROVISIONS

§ 6001. Definitions

For the purposes of this Part, the following words shall have the following meanings, unless a different meaning is required by the context.

1. **Aquaculture.** “Aquaculture” means the culture or husbandry of marine organisms by any person.
2. **Atlantic salmon.** “Atlantic salmon” means the anadromous finfish, commonly called Atlantic sea run salmon.
3. **Bulk pile.** “Bulk pile” means any pile or the contents of any box, barrel or other container.
4. **Buy.** “Buy” means to buy or purchase and includes offering to buy.
5. **Car.** “Car” means a lobster car, crate, box or other contrivance, whether sunken or floating, that may be used in coastal waters to hold live lobsters.
6. **Coastal waters.** “Coastal waters” means all waters of the State within the rise and fall of the tide and within the marine limits of the jurisdiction of the State, but it does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.
7. **Commissioner.** “Commissioner” means Commissioner of Marine Resources.
8. **Common carrier.** “Common carrier” means a vehicle engaged in carrying goods for profit in interstate commerce, which is licensed by the Interstate Commerce Commission.
9. **Conservation.** “Conservation” means providing for the development and wise utilization of the state’s marine resources, protecting the ultimate supply for present and future generations, preventing waste and implementing sound management programs.
10. **Crawfish.** “Crawfish” means all species of the family Palinuridae, including the representative genera Palinurus, Jasus, Galatheas and Palinurus, which have been called by such terms including, but not limited to, rock lobster,

spiny lobster, sea crawfish, red lobster, thorny lobster, langoust, langoustini, langostino, crayfish, Sidney crawfish, kreef, Cuban rock lobster, African lobster or African crawfish.

11. Crew member. "Crew member" means any person assisting in operating or attending gear or operating a boat while fishing.

12. Dealer. "Dealer" means any person who buys, sells or distributes any marine organism.

13. Department. "Department" means the Department of Marine Resources.

14. Establishment. "Establishment" means the premises, building, structures, facilities and equipment, including vehicles, used in the buying, selling or processing of marine organisms.

15. Finfish. "Finfish" means any cold-blooded marine animal having permanent gills and fins.

16. Fish, the noun. The noun "fish" means all finfish, squid and shrimp, or other marine animal, except lobsters, crabs, shellfish, scallops and marine worms.

17. Fish, the verb. The verb "fish" means to take or attempt to take any marine organism by any method or means.

18. Handline. "Handline" means a single line with no more than 5 hooks attached which is hand held.

19. Hermetically sealed. "Hermetically sealed" means a container which has been made airtight by or as by fusion so that no air, gas or spirits can either enter or escape, whether or not the container is sterilized by heat. It does not include friction cover containers.

20. Hook and line. "Hook and line" means a single line with no more than 5 hooks, including the commonly called rod and reel and handline.

21. Intertidal zone. "Intertidal zone" means the shores, flats or other land between high and low water mark.

22. License. "License" means a document issued by the State to a named person authorizing that person to engage in particular activities. License includes a permit, but does not include a certificate or lease.

23. Lobster. "Lobster" means a crustacean of the genus *Homarus americanus*.

24. Lobster trap. "Lobster trap" means a lobster trap, pot or other

stationary contrivance or device that may be set on the ocean bottom and used for taking lobsters or crabs.

25. **Marine mollusk.** “Marine mollusk” means any marine invertebrate animal of the phylum Mollusca, but shall not include squid or octopi.

26. **Marine organism.** “Marine organism” means any animal, plant or other life that usually inhabits salt water.

27. **Marine resources.** “Marine resources” means all renewable marine organisms and the entire ecology and habitat supporting those organisms.

28. **Marine resources’ laws.** “Marine resources’ laws” means chapter 419 and Part 9 or any other statute authorizing the commissioner or department to undertake any activity, and any regulation authorized by these statutes.

29. **Marine species.** “Marine species” means all marine animals except lobster, shellfish and marine worms.

30. **Marine worms.** “Marine worms” means sand, blood and clam worms.

31. **Parlor section.** “Parlor section” means that part of a lobster trap designed or intended to hold or detain lobsters until they are removed by the fisherman.

32. **Permit.** “Permit” means license.

33. **Person.** “Person” means any individual, firm, corporation or agency or political subdivision of government.

34. **Personal use.** “Personal use” means for consumption or use by oneself, by members of the immediate family or by invited guests.

35. **Process, the verb.** The verb “process” means handling, storing, cooking, preparing, producing, manufacturing, preserving, packing or other activity which could change the condition or form.

36. **Registered vessel.** “Registered vessel” means a vessel which is owned or operated by a person licensed under this Part, a vessel which is used to bring a marine organism into the State or its coastal waters, or a vessel which is licensed under chapter 308 et seq. or 46 U.S. Code, chapters 2 and 12 and section 808 and has declared a Maine home port.

37. **Retail.** “Retail” means sale, trade or service directly to the consumer for his personal use.

38. **Scallop.** “Scallop” means sea scallop, *placopecten magellanicus*.

39. **Sell.** “Sell” means to sell, offer to sell or expose for sale.

40. **Serve.** “Serve” means the preparation of a marine organism for retail sale or consumption, but does not include shucking shellfish.

41. **Shellfish.** “Shellfish” means clams, quahogs, oysters and mussels and includes shellstock and shucked shellfish.

42. **Shellstock.** “Shellstock” means shellfish which have not been removed from their shells.

43. **Ship, the verb.** The verb “ship” means to send by a common carrier.

44. **Shucked shellfish.** “Shucked shellfish” means shellfish or parts thereof which have been removed from their shells.

45. **Sunrise.** “Sunrise” means the time given for sunrise as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.

46. **Sunset.** “Sunset” means the time given for sunset as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.

47. **Suspension.** “Suspension” means the revocation of a license, the right to obtain a license and the privilege to undertake the licensed activity, whether the suspension is temporary or permanent.

48. **Take, the verb.** The verb “take” means to remove or attempt to remove a marine organism from its natural habitat.

49. **Transfer.** “Transfer” means to transport by boat on the water.

50. **Transport, the verb.** The verb “transport” means to move an object from one place to another by any means other than to ship.

51. **Tub-trawl.** “Tub-trawl” means a single line, with more than 5 hooks, including the commonly called tub-trawl, line trawl or long line.

52. **Tuna.** “Tuna” means any finfish commonly known as tuna, including the horse mackerel.

53. **Vehicle.** “Vehicle” means any device or machine used for transportation or shipment on land, water or in the air.

§ 6002. Rules of construction

The following rules of construction apply to this Part, unless a different construction is plainly required by the context.

1. **Reference to marine organisms.** Reference to the taking or possession of any marine organism includes the taking and possession of any part of it.

2. **Application to marine organisms.** Marine resources' laws apply only to marine organisms, as distinguished from fresh water organisms, except where jurisdiction over migratory or other organisms is specifically given.

3. **General application.** Marine resources' laws shall apply to all registered vessels and to all persons where their activities occur within the State, within the coastal waters of the State or where the product of those activities are brought into the State or its coastal waters. They shall also apply to all residents of the State wherever those activities are conducted, but not within the jurisdiction of another state. These laws do not apply to marine organisms passing through the State under the authority of the laws of the United States. This subsection does not limit section 6859.

CHAPTER 603 DEPARTMENT ADMINISTRATION

§ 6021. Purpose

The Department of Marine Resources is established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes, as well as the exercise of all authority conferred by this Part.

§ 6022. Commissioner's appointment, duties and powers

1. **Appointment and term.** The commissioner shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Marine resources and to confirmation by the Legislature. His term shall be coterminous with the Governor, but shall continue until his successor is appointed and confirmed.

2. **General powers.** The commissioner shall be responsible for the administration and enforcement of all marine resources' laws and shall have all the powers of a coastal warden. He shall maintain records of all leases, certificates or licenses issued by the commissioner or required to be filed under section 6027.

3. **Organization and personnel.** The commissioner shall organize the department into the administrative units which he decides are necessary to carry out its duties. The commissioner shall hire all necessary employees of the department subject to the Personnel Law and shall prescribe their duties.

4. **Warden code.** The commissioner shall prepare a written code governing the operating procedures of the coastal warden services for submission to the Commissioner of Personnel. The code shall become effective when approved by the Commissioner of Personnel.

5. **Property.** The commissioner may acquire and hold any right or interest in real or personal property on behalf of the State.

6. **Enforcement agreements.** The commissioner may enter into reciprocal enforcement agreements with political subdivisions of the State and with other states, regional authorities and the Federal Government.

7. **Report.** The commissioner shall report to the Governor and Legislature every 2 years. This report shall include a detailed statement of the department's actions and functions and a survey of the present state of the state's fishing industries and their anticipated future, including statistics and data. The report may include those recommendations for amendments to the laws and licensing procedures of the marine resources' laws as may be necessary for the operation of the department. The reports shall cover the period ending June 30th of each even-numbered year and shall be due within 6 months of the end of the period which it covers.

8. **Pamphlet laws.** The commissioners shall publish a pamphlet of the sections of this Part as soon as possible after the adjournment of the first regular session of each Legislature. In addition, the commissioner may publish any other laws or regulations.

9. **Federal expenditures.** The commissioner may accept federal funds for use in department programs and to do such acts as are consistent with the powers of the commissioner and as are necessary to carry out federal laws pursuant to which those funds are provided. The commissioner may accept any other funds as may be available to carry out the purposes of the department.

10. **Ecological impact.** The commissioner shall advise the United States Army Corps of Engineers, the Maine Department of Transportation and appropriate state agencies on the ecological effects of dredging, filling and depositing of soil or otherwise altering coastal wetlands.

11. **Interagency cooperation.** The commissioner shall consult with, offer advice to and cooperate with the State Planning Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Conservation in carrying out his duties, and these agencies shall do the same in carrying out their duties. Cooperation shall include the exchange of information and the filing of copies of any application, petition, request, report or similar document which may bear upon the responsibilities of

any of these departments. Details of those exchanges shall be worked out by the heads of the departments.

12. Regulations. The commissioner may make regulations as authorized by marine resources' laws.

§ 6023. Deputy commissioner

The deputy commissioner is responsible, under the direction of the commissioner, for the administration and enforcement of the marine resources' laws and shall have all the powers of a coastal warden. He shall serve as the commissioner in the commissioner's absence or disability or if the office of the commissioner becomes vacant. The commissioner may appoint an appropriate administrative officer in the department to perform the functions of the commissioner if both the commissioner and deputy commissioner are disabled or absent.

§ 6024. Advisory council

1. Appointment; composition; term; compensation. The Governor shall appoint an advisory council consisting of 9 members. The members shall be selected from persons directly engaged in commercial activities or industries based on marine resources. The composition of the council shall adequately represent the commercial fisheries' activities over which the department has jurisdiction and shall also reflect a geographical distribution along the coast. All members shall be appointed for a term of 3 years, except a vacancy shall be filled by the Governor, for the unexpired portion of the term. Members shall serve until their successors are appointed. Members shall be compensated at \$25 for each day spent at a regular or special council meeting and may be reimbursed for actual expenses. The total compensation and expenses of the council shall not exceed \$5,000 in any year.

2. Powers and duties; meetings; officers. The council shall give the commissioner information and advice concerning the administration of the department and carry out other duties specifically delegated by marine resources' laws. The council shall hold regular quarterly meetings with the commissioner, or his designee, and may hold special meetings at any time. The council shall elect one of its members as chairman, one as vice-chairman and one as secretary, all for a term of one year, at the first regular meeting in each year. The officers shall have the following duties.

A. The chairman shall call and preside at all meetings of the council.

B. The vice-chairman shall call and preside at all meetings of the council in the chairman's absence.

C. The secretary shall cause records to be taken and to be preserved of all meetings of the council.

3. Quorum. A quorum is a majority of the current members of the council.

4. Council actions. An affirmative vote of a majority of the members present at a meeting or polled shall be required for any action. No action may be considered unless a quorum is present or, if there is no meeting, a quorum responds to a written poll.

§ 6025. Coastal wardens

1. Appointment. Applicants for the position of a coastal warden who qualify under the warden's code and pass the examination administered by the Department of Personnel, may be appointed by the commissioner to hold office under Title 5, chapters 51 to 61 and under the warden's code.

2. Fees and other offices. Except before the District Court, wardens shall be allowed the same fees as sheriffs and their deputies for like service which shall be paid to the commissioner for use of the State. Wardens may not hold any other state, county or municipal office for which they receive compensation.

3. Powers and duties. Wardens shall enforce all marine resources' laws and may arrest and prosecute all violators. They may serve all process pertaining to marine resources' laws. They shall have jurisdiction and authority in all areas where the laws for which they have responsibility apply. In addition to their specified powers and duties, the coastal wardens are vested with the authority to enforce all laws of the State and may arrest for violations of any criminal laws. Any warden may require suitable aid in the execution of the duties of his office.

4. Search powers. Any coastal warden, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken contrary to law is concealed thereon or therein.

5. Sheriff and police powers as wardens. A sheriff, deputy, sheriff, police officer, constable or inland fisheries and wildlife warden, within their respective jurisdiction, are vested with the powers of a coastal warden, except the powers provided in sections 6306 and 6434. When an officer acts under this section, the same fees shall be paid for his services to the usual recipient of the officer's fees.

§ 6026. False personation

Impersonation of a coastal warden shall be a violation of Title 17-A, section 457.

§ 6027. Other governmental units to file documents

Every state department, government agency or official and municipal or

political subdivision shall file with the commissioner copies of all leases, permits, grants or licenses issued to carry on activities in the coastal waters.

CHAPTER 605

GENERAL DEPARTMENT ACTIVITIES

SUBCHAPTER I

GENERAL ACTIVITIES

§ 6051. General department activities

The department, under the direction of the commissioner, may conduct or sponsor programs for research and development of commercial fishery resources and other marine resources of the State which may include biological, chemical, technological, hydrological, processing, depuration, marketing, financial, economic and promotional research and development. The department may carry out these programs within the department, in cooperation with other state agencies, and federal, regional and local governmental entities, or with private institutions or persons.

§ 6052. Specific department activities

The department, under the direction of the commissioner, may also:

1. Extension. Serve as the primary state agency to assist members of the fishing industries by providing technical and managerial assistance, including development of gear and techniques of fishing, within departmental capability;
2. Education. Conduct educational programs on all educational levels, including the training of teachers, conducting workshops and instructional programs, and developing curriculum, courses and texts for elementary and secondary students; provide access to and information on department facilities for any student; and develop and distribute information concerning marine resources and departmental programs and facilities;
3. Marketing. Serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assisting in marketing seafood, stimulating of consumer interest in and consumption of seafood, increasing the sales of seafood domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species; and
4. Research. Engage in all aspects of marine research, including developing information on the biological and environmental requirements of marine organisms, providing information on stock levels and environments of commercially valuable marine organisms, providing monitoring of potential

environmental hazards, providing information and solutions to particular problems that relate to the state's commercial fishing industries and providing technical and scientific information and support for all department activities and activities of other governmental and private institutions.

SUBCHAPTER II

LEASES AND SPECIAL LICENSES

§ 6071. Importing of live marine organisms

1. Live importing prohibited. It shall be unlawful for any person to introduce or import for introduction into any coastal waters any live marine organism or to possess any of those introduced or imported organisms without a permit issued by the commissioner.

2. Permits and regulations on importing. The commissioner may grant permits to possess, import and introduce an organism if those actions will not endanger the indigenous marine life or its environment. Prior to granting a permit to introduce a nonindigenous organism, which has not been previously introduced under a permit, the commissioner shall hold a hearing. The commissioner may adopt or amend regulations governing the importing and introduction of organisms and the issuing of permits, to the extent required to prevent the introduction of bacteria, fungus, virus or any other infectious or contagious disease or parasites, predators or other organisms that might be dangerous to indigenous marine life or its environment.

§ 6072. Research and aquaculture leases

1. Authority. The commissioner may lease areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section shall be exclusive.

2. Limitations of lease. The commissioner shall determine the provisions of each lease, provided:

- A. A lease shall not exceed a term of 10 years;
- B. A lease shall not exceed an area of 5 acres;
- C. No applicant shall be permitted to lease more than 200 acres; and
- D. A lease shall not be transferable to any other person.

3. Municipal approval. In any municipality with a shellfish conservation

program under section 6671, the commissioner may not lease more than 2 acres of the intertidal zone within the municipality without the consent of the municipal officers.

4. Applications. The application shall:

- A. Be written on forms supplied by the commissioner;**
- B. Describe the location of the proposed lease tract by coordinates or metes and bounds;**
- C. Identify the species to be cultivated;**
- D. Describe the impact of the project on existing or potential uses of the area;**
- E. Describe the degree of exclusive use required by the project;**
- F. Include written permission of every riparian owner whose land to the low water mark will be actually used; and**
- G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners.**

5. Application review. The commissioner shall review the application and set a hearing date if he is satisfied that the written application is complete and the application indicates that the lease could be granted.

6. Hearing procedure. Prior to granting a lease, the commissioner shall hold a hearing. The hearing shall be an adjudicatory proceeding and shall be held in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV and the specific procedures of this section.

- A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing shall be required to be given only to the lessee and the known riparian owners.**
- B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public.**

7. Decision. The commissioner may grant the lease, with the advise and consent of the advisory council, if he is satisfied that the proposed project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area and is not in conflict with applicable coastal zoning statutes or ordinances. The commissioner may establish conditions that govern the use of the leased area and the limitations on the aquaculture activities. These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.

8. **Preference.** If more than one person applies to lease an area, preference shall be given as follows:

- A. First, to the department;
- B. Second, to the riparian owner of the intertidal zone within the leased area;
- C. Third, to fishermen who have traditionally fished in or near the proposed lease area; and
- D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

9. **Rents.** After consulting with the Director of the Bureau of Public Lands, the commissioner shall determine the rent which shall be paid under each lease. The rent shall represent a fair value based upon the use of the leased area.

10. **Lessee's actions.** After being granted a lease, each lessee shall:

- A. Record the lease in the registry of deeds of each county in which the leased area is located;
- B. Publish a notice in the newspaper in which the commissioner published notice or would have published notice of any public hearing. The notice shall describe the area leased and enumerate any restrictions in the leased area; and
- C. Mark the leased area in a manner prescribed by the commissioner.

11. **Revocation.** If substantially no research or aquaculture has been conducted within the preceding year, or if it has been conducted in a manner substantially injurious to marine organisms, or if any other condition of the lease has been violated, the commissioner may revoke the lease. A lease revocation shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A hearing with public notice shall be held prior to revoking any lease.

12. **Renewal.** The commissioner shall grant a lease renewal unless the prior lessee has not complied with the lease agreement during its term, substantially no research or aquaculture has been conducted, or the commissioner finds that it is not in the best interest of the State to renew the lease. Renewals may be granted if applied for no later than 30 days after the lapse of the prior lease. A lease renewal shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Public notice shall be given as required under subsection 6 of this section and a hearing shall be held if it is requested by an interested person.

13. **Regulations.** The commissioner may adopt or amend regulations governing the procedures for issuing, renewing or revoking leases and notices and

hearings to the extent those procedures are not established by this section or the Maine Administrative Procedure Act.

14. **Conflicts.** Whenever a project described in a pending aquaculture lease conflicts or could conflict with a project described in a pending submerged lands act lease, the commissioner and the Commissioner of Conservation shall determine which project is in the best interests of the State.

§ 6073. **Exclusivity; prohibition or interference**

1. **Exclusivity.** Each lease for aquaculture shall be exclusive for the species and to the extent provided by the commissioner in the lease.

2. **Prohibition on interference.** It shall be unlawful for any person to interfere with the rights provided in a lease.

§ 6074. **Special license**

The commissioner may, with the advice and consent of the advisory council, issue a special license for research or aquaculture, which exempts the holder from one or more marine resources' laws as to the time, place, length, condition, amount and manner of taking or possessing any marine organism.

1. **Exception.** A special license shall not permit the holder to sell or, beyond the state limits, to ship or transport any marine organism that is less than the minimum size established by statute. This subsection shall not apply to:

A. **Coho salmon.**

2. **Application.** The application shall include a description of the proposed project including the objectives, the location and the estimated time of completion of the project. The application shall also include a list of the sections of law or regulation for which exemptions are required, and the specific reasons for each requested exemption.

3. **Filing fee.** Each application shall include a nonrefundable filing fee of \$50. The fee may be waived for research activity by institutions or organizations financed in whole or part by state funding. No filing fee shall be required for applying for a special license for raising and selling coho salmon.

4. **Limitation.** The special license shall authorize only the individual named in the license to undertake the licensed activities. Any individual engaged in handling or harvesting marine organisms in the licensed project shall be listed on the license or supplemental license.

5. **Fees.** The annual fee for a special license shall be \$25. An annual fee of \$10 shall be paid for each individual after the first individual. No license fee shall be required for a special license for raising and selling coho salmon.

6. **Transportation permit.** A transportation permit shall be required for a special license holder to ship, transport or sell any marine organism raised or harvested under a special license. The commissioner may place conditions or limitations on the activities authorized by this permit to the extent necessary to provide proper controls and to comply with federal or state health or sanitation standards.

SUBCHAPTER III INSPECTION AND QUALITY CONTROL

§ 6101. Voluntary Fish Products Inspection Program

1. **Purpose.** The purpose of this section shall be to increase the availability of fish product inspection services to Maine processors and packers in order to improve the marketing of fish products.

2. **Program.** The department shall be the state agency which shall be responsible for cooperating with the Federal Government in developing and administering a voluntary fish product inspection program.

3. **Regulations.** The commissioner may adopt or amend regulations not inconsistent with National Marine Fisheries Services regulations for the voluntary inspection of fishery products.

4. **Sardines.** The program shall exclude sardines and other fish inspected by the Maine Sardine Council.

5. **Labeling.** All products inspected under this section shall be accurately labeled to provide the public with information about the contents and quality of the fishery product. The commissioner may adopt regulations to insure proper and complete labeling.

6. **Misleading labeling prohibited.** No article inspected under this section, shall be sold under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size. Established trade names approved by the commissioner are permitted. An article not inspected under this section shall not be sold, under any name or other marking or labeling which is false and misleading and intending to represent the contents as having been inspected and graded.

7. **Preventing misleading labeling.** If the commissioner has reason to believe that a violation of subsection 6 is occurring, he may order the withholding of an inspection or grading label or mark.

8. **Procedure.** The commissioner shall give notice of his withholding order and may give an opportunity for a hearing on the order. The order shall be effective on service or receipt of the notice. The notice shall contain a statement

of the violation, the order and any opportunity for a hearing, and shall be personally served on or mailed to the violator. Any hearing shall be requested in writing within 10 days, unless a longer period is mutually agreed to in writing. Notice of the hearing shall be given immediately to the violator.

If a hearing is held, it shall be conducted in the Augusta area. At the hearing, the violator shall be entitled to present any evidence concerning the violation and surrounding circumstances. All decisions of the commissioner shall be in writing. All decisions of the commissioner under this section may be reviewed in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

§ 6102. Mandatory quality control program

The commissioner may, in accordance with the most modern public health and food protection practices, establish and maintain effective surveillance and inspection of all segments of the state's fishing industries. He may establish a program to carry out this responsibility. The program may include provisions similar to those of section 6856, shellfish sanitation and certificate, and section 6101, voluntary fish products inspection program, including any additional inspection, licensing and certification requirements that are necessary to insure proper sanitation and quality control. The commissioner may adopt or amend regulations prescribing the minimum standards for establishments and for sanitation and quality control of the processing of any marine organism or its products. Each set of regulations shall be based on the particular operational requirements of the species or phase of industry being regulated, and shall conform to the latest state or federal sanitation standards.

SUBCHAPTER IV

FISHWAYS

§ 6121. Fishways in existing dams or artificial obstructions

1. Commissioner's authority. For the purpose of conserving, developing and restoring anadromous fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered in any existing dams or other artificial obstruction within the coastal waters, in any waterways historically or presently frequented by alewives, shad, salmon, sturgeon and other anadromous fish species.

2. Examination of dams. The commissioner shall examine all dams and other artificial obstructions to fish passage within the coastal waters to determine whether fishways are sufficient and suitable for the passage of anadromous fish.

3. Proposals for change. If the commissioner determines that changes for

improvement, repair or construction are necessary in existing dams or obstructions, he shall prescribe by a preliminary written order, in reasonable detail, specific plans and a description of the fishway he proposes and the conditions of its use, including when, how and where the fishway shall be constructed or changed and at what times it shall be kept open.

4. Procedure for notice and hearing. Prior to issuing a final written order, the commissioner shall give notice to the owner and the public and an opportunity for a hearing. At the request of any interested person, a hearing shall be held in the manner required for an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. After the notice or hearing, the commissioner may issue a final written order establishing the specific plans and description of the fishway, the conditions of its use, and the time for carrying out its requirements.

5. Noncompliance. If the owner refuses to comply with the final written order, the commissioner may construct or alter the fishway with funds appropriated to the department for that purpose.

6. Entry. The commissioner may enter any lands to reach the dam or artificial obstruction effected by his final written order. The commissioner shall notify the owner of land he will enter of the time required to complete the construction or alterations provided in his final written order. The commissioner shall make every effort to preserve land entered and the land shall be restored to the grade and condition existing prior to the entry, as near as practicable.

§ 6122. Fishways in new construction

1. Notice required. Before building a new dam or other obstruction in the coastal waters, the owner shall provide written notice to the commissioner of the plans and proposed location and date of construction of the obstruction.

2. Preliminary finding. Within 30 days of receipt of the construction notice, the commissioner shall state whether he will require a fishway to be included in the construction plans.

3. Plans. Within 60 days of receipt of the construction notice, the commissioner shall specify to the person building the dam or artificial obstruction how and where the fishway shall be constructed and conditions on its use.

§ 6123. Obstructing fishways

It shall be unlawful to tamper, damage, destroy, close to fish migration or introduce foreign objects into any fishway without the authority of the commissioner.

SUBCHAPTER V

MISCELLANEOUS ACTIVITIES

§ 6131. Alewife fishing rights

The commissioner is authorized to develop, manage or lease alewife fishing rights as follows.

1. Alewife rights. The commissioner shall grant the right, exclusive or otherwise, to take alewives to any municipality entitled to those rights on January 1, 1974 and may grant the right to take alewives to any other municipality provided:

A. Any municipality that has had the right to the taking of alewives, exclusive or otherwise, or is granted that right by the commissioner, shall take action through its legislative body and file a copy of this action with the commissioner prior to April 20th or lose that right for the remaining part of that year;

B. Municipal rights in existence on January 1, 1974 which are not exercised for 3 consecutive years shall lapse;

C. At its annual meeting that municipality may determine by vote:

(1) Whether alewife fishing will be operated by the municipality through the municipal officers or a committee; and

(2) Whether the municipal rights to take alewives will be sold by the municipal officers or committee; and

D. Harvesting plans shall be developed as follows.

(1) Any municipality engaged in harvesting alewives shall submit a written harvesting plan to the commissioner prior to April 20th of each calendar year. All harvesting plans shall set forth in detail the exact conditions under which alewives may be taken, all in accordance with good conservation practices.

(2) The commissioner, after consultation with the appropriate municipal officers, shall approve or modify the harvesting plan as he deems necessary for the conservation of alewives and other anadromous fish, and shall file a copy of the approved plan with the clerk of the municipality.

2. Limitations. The following limitations apply to any grant.

A. It shall be unlawful to take alewives from sunrise each Saturday morning until sunrise Sunday morning. Municipalities which make other provisions for escape of spawning alewives, which are approved by the commissioner, shall be exempt from this limit.

B. It shall be unlawful for any municipality or purchaser or lessee of the

municipal right to take alewives in any manner except as provided in the approved alewife harvesting plan.

3. Absence of lease. If any municipality fails to obtain the right to take alewives, alewives may be taken as provided in general laws and regulations which shall be enforced by the municipality.

4. Violation of harvesting plan. If the commissioner determines after investigation that the municipality is not following its alewife harvesting plan, he shall notify the municipality. Any municipality which fails to take corrective action within 48 hours of notification shall lose its alewife fishing privilege for that calendar year. Upon further notification by the commissioner of loss of alewife fishing privileges, the municipality or its agents shall cease all fishing activity and immediately remove all traps, weirs, seines or other alewife fishing gear from their alewife waters.

5. Leasing of rights. When the commissioner decides to manage or lease any alewife fishing rights where a municipality has had those rights and has failed to act as provided in subsection 1, he shall so notify the clerk of the municipality in writing. After the notice, the commissioner may lease any of those rights to any person, as he feels to be in the best interest of the State. All leases shall be in writing, signed by the commissioner and the lessee and shall set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices.

6. Violation of terms. It shall be unlawful for any person holding such a lease to violate any of its terms or to cause the same to be done.

7. Molesting equipment. It shall be unlawful for any person to molest the fishing equipment of any lease holder or to interfere with the fishing rights granted by the lease.

8. Migratory Fish Fund. As all fees received by the commissioner from alewife leasing rights shall be allocated to the Migratory Fish Fund, as established. Expenditures from the Migratory Fish Fund shall be made:

- A. To build fishways for alewives and other migratory fish;**
- B. For construction of other facilities for improving the environment of alewives and other migratory fish;**
- C. For general propagation and conservation of alewives and other migratory fish; and**
- D. For research to enhance the fishing industry based on alewives and other migratory fish.**

The Migratory Fish Fund shall not lapse.

CHAPTER 607
REGULATIONS
SUBCHAPTER I
REGULATION POWERS

§ 6171. Conservation and propagation of marine organisms

1. **Commissioner's powers.** The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms.

2. **Limitations.** This section grants no authority to adopt regulations for the conservation of Atlantic salmon. A regulation authorized under this section may only limit the taking of marine organisms by one or more of the following:

- A. Time;
- B. Method;
- C. Number;
- D. Weight;
- E. Length; or
- F. Location.

3. **Emergency regulations.** The commissioner may adopt or amend regulations under the emergency procedures, if immediate action is necessary to protect or conserve any marine organism from unusual damage or imminent depletion. An unusually large concentration of fishermen which might deplete the supply of any marine organism shall justify adopting emergency regulations.

4. **Procedure.** The procedures of subchapter II shall be used in adopting or amending regulations authorized by this section.

§ 6172. Contaminated or polluted flats

1. **Commissioner's powers.** The commissioner may examine the coastal waters and the intertidal zone in order to determine if any marine mollusks are or may become contaminated or polluted. The commissioner may, with the advice and consent of the advisory council, adopt or amend regulations as he deems necessary to close contaminated or polluted areas in the intertidal zone or waters not in conformity with federal standards, to the taking of marine mollusks.

2. **Emergency regulations.** The commissioner may adopt or amend

regulations under the emergency procedures, if immediate action is necessary to prevent the taking of polluted or contaminated marine mollusks.

3. **Repeal.** The commissioner shall repeal a regulation closing an area or waters when the marine mollusks are no longer contaminated or polluted and when the waters meet the sanitary standards recommended by the authorized federal agency.

4. **Procedure.** The procedures of subchapter II shall be used in adopting or amending regulations authorized by this section.

§ 6173. Information gathering

The commissioner may, with the advice and consent of the advisory council, adopt or amend regulations to require the reporting of information and data on the fishing industry that is necessary for proper management and conservation of marine resources. The information and data may include catch statistics or landings, but shall not be maintained or disclosed in a manner or form that permits identification of any person or vessel.

§ 6174. Regulations as law; proof of regulations; penalty

1. **Regulations as law.** All regulations of the commissioner shall have the force of law.

2. **Proof of regulations.** A certified copy of a regulation shall be admissible in court to prove the regulation and shall be prima facie evidence that the regulation was properly adopted. A regulation shall be personally certified by the commissioner, deputy commissioner or chief coastal warden and shall be accompanied by his signed statement that it was in force on the date of the alleged violation. The certified copy shall be admissible in evidence on the testimony of a warden that he received the certified regulation after requesting it by telephone or otherwise from the department. No further foundation shall be necessary for the admission of the certified copy.

3. **Penalty.** Whoever violates a regulation shall be punished by the penalties under section 6204, unless a specific penalty is otherwise authorized and provided.

SUBCHAPTER II

REGULATION PROCEDURE

§ 6191. Regulation making

1. **Procedures.** In adopting or amending any regulation, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act, Title 5, chapter 375, and the additional requirements of this subchapter.

2. Other requirements.

- A. A public hearing may be held but is not required unless it is requested by an interested person.**
- B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.**
- C. No regulation shall be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.**

§ 6192. Emergency regulation making

1. Procedures. In an emergency adoption or amendment, the commissioner may modify the procedures required under the Maine Administrative Procedure Act and section 6191 in the following manner.

A. In an emergency adoption or amendment of regulations relating to the public health and safety, including regulations authorized under section 6172, prior public notice and hearing shall not be required.

B. In an emergency adoption or amendment of regulations relating to the general welfare, including regulations authorized under section 6171, a prior public hearing shall be held if requested, but notice may be published only once, not less than 5 days prior to the hearing.

2. Advisory council. The advice and consent of the advisory council is not required prior to an emergency adoption or amendment.

3. Effective period. Any emergency regulation shall be effective only for 90 days, or any lesser period of time specified in the emergency regulation. After the expiration of the emergency period, the regulation shall not thereafter be adopted except in the manner provided by section 6191. This subsection shall not apply to emergency regulations authorized under section 6172, which shall be effective until repealed.

4. Effective date. Any emergency regulation shall become effective immediately upon publication in a newspaper of general circulation in the area of the State affected, provided it is submitted to the Attorney General and filed with the Secretary of State as required under the Maine Administrative Procedure Act, within the next business day following publication.

5. Repeal. Emergency regulations may be repealed in the same manner as they are adopted.

§ 6193. Exception for publication requirements

Emergency regulations authorized under section 6172 shall be exempted from

the requirement that they be supplied to persons that have requested them, as required under Title 5, section 8055, subsection 1.

CHAPTER 609
ENFORCEMENT

§ 6201. Prosecution by district attorney

Each district attorney shall prosecute all violations of marine resources' laws occurring within his county when requested by the commissioner, a coastal warden or other person authorized to enforce any provision of marine resources' laws.

§ 6202. Jurisdiction

The District Court shall have concurrent original jurisdiction with the Superior Court in all prosecutions under the marine resources' laws.

§ 6203. Court procedure

The provisions of Titles 14 and 15 relating to court procedure shall apply in all prosecutions under the marine resources' laws.

§ 6204. General penalty

A violation of any provision of marine resources' laws or any regulation authorized thereunder or adopted by legislative directive, shall be a Class D crime, unless another penalty has been expressly provided.

§ 6205. Certificate as evidence

A certificate of the commissioner, deputy commissioner or chief coastal warden stating what the records of the department show, shall be admissible as evidence in all courts as proof of the department records. A certificate stating that the records do not show that a person held a license shall be prima facie evidence that the person did not hold the license on the date specified in the certificate. The certified copy shall be admissible in evidence on the testimony of a warden that he received the certificate after requesting it by telephone or otherwise from the department. No further foundation shall be necessary for the admission of the certificate.

§ 6206. Fees and forms for libel proceedings

This section applies to the libel proceedings authorized in section 6207.

1. Fees. The fees to be taxed on the libel proceedings shall be as follows:

A. For the libel and order of notice, \$5;

- B. For the entry of the libel, \$2;
- C. For the hearing, \$5;
- D. For posting the notices, and the officer's return of service, \$10;
- E. For the delivery or restoration of the items, \$10; and
- F. For all the officer's travel in connection with the entire proceeding, as provided under Title 5, section 8.

2. Forms. These forms, with such changes as adapt them to the particular court, locality and circumstances of the case, shall be sufficient in law:

- A. Form of libel:

STATE OF MAINE

County of..... SS

To the Honorable

Clerk

....., Judge

of

Complaint Justice

Court.

Your libelant, of, Maine, a warden,

states that on the day of, 19..., at

in this county, he seized certain fish, shellfish, lobsters, or other marine species, or parts thereof, or certain equipment, described as follows:

.....

.....

.....

That the items seized and described were either taken, bought, sold, shipped, transported, possessed or used in violation of a provision of the Maine Revised Statutes, Title 12, chapters 601 to 627, or in violation of a regulation authorized by those chapters. The specific violation of statute or regulation is

.....

.....

Wherefore he prays for a decree of forfeiture of these items in accordance with the provisions of the Maine Revised Statutes, Title 12, section 6207.

Signed at,

in this county, this day of, 19...

(Signed).....
Warden

B. Form for order of notice:

STATE OF MAINE

(L. S.)

County of SS

To all persons interested in the libel of made part of this order of notice:

You are hereby notified to appear before me at the time and place appointed for the hearing in this order of notice, and show cause, why the items described in the libel should not be declared forfeited to the State.

It is ordered that the hearing be held on, 19..., at (a.m., p.m.) at in the of (county).

It is further ordered that a true copy of this libel and this order of notice, attested by a warden, be posted in two conspicuous places in the of (county), the municipality where said items were seized, at least 10 days before the day of hearing.

Ordered this day of, 19... by me, Judge of the Court.

.....
Judge

C. Form for officer's return of service:

STATE OF MAINE

..... SS

....., 19...

I have this day made service of the within libel and order of notice, by posting a true copy of each, attested by me, in two conspicuous places in said, as follows: one at, and one at, in accordance with said order of notice.

The fees which may be taxed for my services, if any, are as follows:

Posting notices and return of service, \$10.00

Travel

Total \$.....

.....
Date

(Signed)
Warden

D. Form for order of forfeiture:

(LS) STATE OF MAINE

..... SS

To, a warden or any warden:

Whereas it appears that the libel and notice were properly made, which libel and order of notice are made a part of this order of forfeiture,

And whereas it appears that service was properly made,

And whereas hearing was held at the time and place, fixed in the order of notice,

And whereas one of did appear and claim the by filing a written claim and after a full hearing it appeared to me that the claimant was not therefore entitled to any item claimed, judgement is rendered against the claimant and for the State. The state's cost are taxed as dollars and cents.

(Or in substitute of the above paragraph the following paragraph if it is applicable:)

(And whereas no person appeared at said hearing or filed a written claim;)

It is therefore ordered by me, that all items described in the libel be forfeited to the State.

You are hereby ordered to turn the forfeited items over to the Commissioner of Marine Resources.

Dated, this day of A.D. 19.....

(Signed)
Judge

§ 6207. Seizure and disposition of equipment and organisms

Any marine organism, which is taken, bought, sold, shipped, transported or

found in the possession of any person in violation of any provision of marine resources' laws, shall be contraband and shall be subject to forfeiture in accordance with this section and section 6202. All equipment used or possessed in violation of any provision of marine resources' laws, shall also be contraband and subject to forfeiture.

1. May be seized without warrant; warden's duty to libel; contents of libel. Whenever a warden seizes any organism or equipment and does not return them to the owner, he shall within a reasonable time file a libel with a judge. He shall insert the following information in the libel:

- A. The description of the items seized by him;
- B. A statement of the date and place of seizure;
- C. A statement of the violation that causes the seizure; and
- D. A prayer for a decree of forfeiture of those items.

2. Items which need not be libeled. The following items need not be libeled:

A. If the aggregate value of all items seized is less than \$75, unless there is reasonable doubt as to their ownership; and

B. All marine organisms of illegal size, shellfish taken from polluted areas, female egg-bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, female lobsters which have had the eggs removed by other means than natural hatching, and any other marine organism, the possession of which is unlawful throughout the State.

3. Order of notice; contents. The judge to whom the libel is directed shall fix a time for the hearing of the libel. He shall issue an order of notice to all persons interested, in which order of notice he shall insert the following:

A. A citation to all persons interested to appear at the time and place appointed for the hearing and show cause, if any, why the items described in the libel should not be declared forfeited to the State;

B. The time and the place fixed for the hearing; and

C. An order that a true copy of the libel and the order of the notice, attested by the warden, be posted in 2 conspicuous places in the municipality, or place where the items were seized, at least 10 days before the day set for the hearing.

4. Sale or other disposition prior to hearing. If, after receipt of the libel and before the hearing, the judge finds that the items seized will be unsuitable for food or other use, at the day of hearing, he shall order the officer who made the seizure to dispose of them.

- A. The officer may then dispose of the items at public or private sale or otherwise.
 - B. The officer shall hold any proceeds of a sale subject to the decision of the court as to their final disposition.
5. Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines. If no claimant appears at the time of the hearing on the libel, on return of service of the officer in compliance with the order of notice, the judge shall declare the items forfeited to the State.
- A. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds over to the judge who shall dispose of them in the same manner that he disposes of fines collected under marine resources' laws.
6. Duty of claimant to file written claim on or before hearing day; contents. Any person who claims title or the right to possession of any item listed in the libel shall file a written claim with the judge on or before the day set for hearing. The claim shall contain the following:
- A. A statement of his claimed title or right and its foundation;
 - B. A statement of the specific items claimed;
 - C. A statement of the date and place of the seizure, and the name of the officer by whom they were seized;
 - D. A statement that the items claimed were not held in possession or use, with his knowledge or consent, in violation of any provision of marine resources' laws;
 - E. He shall state his business and his place of residence; and
 - F. He shall sign and make oath to the claim before the judge.
7. Claimant admitted as party; hearing. If any person makes claim as provided in subsection 6, the judge shall admit him as a party to the process, shall proceed to determine the truth of the allegations in the claim and libel and shall hear any relevant evidence offered by the libelant or the claimant.
8. Court order if claimant found entitled to any item claimed. If the judge upon hearing is satisfied that any item listed in the claimant's claim was not, with the claimant's knowledge or consent, used or possessed in violation of any provision of marine resources' laws, and that the claimant has title or is entitled to possession of that item, he shall give the claimant an order in writing. The judge shall direct the order to the libelant commanding him to deliver the item to the claimant, or, if the item has been sold, to deliver the proceeds of the sale to the claimant, within 48 hours after the demand.

9. Forfeiture; executions for cost; appeal; recognizance. If the judge finds that the claimant is not entitled to any item claimed, the judge shall render judgment against the claimant for the State for costs to be taxed as in civil cases before the judge. The judge shall issue an execution for the costs as in civil cases. The judge shall declare the articles forfeited to the State. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds of the sale over to the judge who shall dispose of them in the same manner he disposes of fines collected under marine resources' laws.

A. The claimant may appeal to the Superior Court next to be held within the county where the judge's court is located, and, if he appeals, the judge may order the claimant to recognize with sureties as on appeals in civil cases.

B. The judge may order that the items or proceeds of sale remain in the custody of the officer pending the appeal.

10. Disposition of forfeited items. The officer shall turn over any articles declared forfeited to the commissioner who shall dispose of them.

11. Report to commissioner. The warden making any seizure under this section shall, within 10 days thereafter, report to the commissioner all the particulars of the seizure, the sale or other disposition, the court action taken and all expenses involved.

CHAPTER 611 SALMON COMMISSION

§ 6251. Commission; members; compensation; chairman

1. Commission; members. The Atlantic Sea Run Salmon Commission shall have the following members:

A. The Commissioner of Marine Resources and the Commissioner of Inland Fisheries and Wildlife; and

B. A 3rd member, who shall be appointed by the Governor. The appointment shall be for 4 years or thereafter until his successor is appointed and qualified. He shall be a Maine citizen. Any vacancy shall be appointed for a full term.

2. Compensation. The appointed member shall receive \$10 a day and expenses when engaged in the discharge of his official duties.

3. Chairman. The Commissioner of Inland Fisheries and Wildlife shall act as permanent chairman and shall have sole authority over any administration and financial matters of the commission.

§ 6252. Purchase of lands and rights; dams and other structures

The commission may purchase or lease within the State, lands, dams and other

structures to acquire flowage rights, mill privileges and rights-of-way and to build dams and other structures for the purpose of conservation of Atlantic salmon, provided prior rights of municipalities are not affected thereby.

§ 6253. Conservation regulations

1. **Regulations.** The commission may adopt or amend regulations to conserve the Atlantic salmon in the same manner and with the same limits as provided for the conservation of marine organisms under section 6171. The advice and consent of the advisory council shall not be required.

2. **Sole authority.** Only the commission may adopt or amend regulations to conserve the Atlantic salmon.

3. **Limit or jurisdiction.** The commission shall not adopt or amend a regulation based on a condition which is within the jurisdiction of the Board of Environmental Protection under Title 38.

4. **Effect and proof of regulations.** The regulations of the commission have the same effect and may be proved in the same manner as regulations of the Commissioner of Marine Resources under section 6174. Either the Commissioner of Marine Resources or the Commissioner of Inland Fisheries and Wildlife may complete the required certificate and statement.

§ 6254. Head of tide; Union River

Notwithstanding any other provisions of law, for the purposes of this chapter, head of tide on the Union River, Hancock County, shall be designated as that point on the downstream side where the highway bridge on U. S. Route 1 crosses the river in the City of Ellsworth.

**SUBPART II
LICENSING
CHAPTER 615**

GENERAL LICENSE PROVISIONS

§ 6301. General provisions

1. **Resident license.** Any person who has been domiciled in Maine for the 6 months preceding the date of his application is eligible for a resident license. A corporation shall be eligible for a resident license if it has been created and exists under the laws of Maine, and it has existed in Maine during the 6 months preceding the date of application. A firm or partnership shall be eligible if all of its officers or partners have been domiciled in Maine for the 6 months preceding the date of application.

2. **Expiration.** A license or certificate expires on December 31st of the year in which it is issued.

3. Nontransferable. A license or certificate is not transferable.

4. Supplemental license. A supplemental license may only be issued for an establishment or vehicle which is owned, leased or rented by the license holder.

5. Information. When application information concerning any person, establishment or vehicle named in a license or certificate changes, the holder shall immediately notify the commissioner in writing within 3 business days or the license or certificate shall become void.

§ 6302. General exceptions

Notwithstanding any licensing provision, no license or certificate is required to:

1. Personal use. Possess or transport any marine organism which has been lawfully acquired and is for personal use. A receipt or bill of sale is required for lawful acquisition;

2. Common carrier. Carry any marine organism by a common carrier; or

3. Hermetically sealed containers. Buy, sell, ship or transport within or beyond the state limits or possess any marine organism which is in a hermetically sealed container.

§ 6303. Application

1. Forms. Application shall be made on forms furnished by the commissioner.

2. Misrepresentation or error. Any license issued through misrepresentation or misstatement is void. Any license issued through error is void after notice to the holder.

3. Satisfactory answers. Failure or refusal to satisfactorily answer any question on or about the application shall be a basis for denying the application.

§ 6304. Fees

1. One-half fee after September 30th. The fee for any license issued after September 30th is ½ the original fee.

2. Duplication. Licenses which have been lost or destroyed shall be reissued at a cost of \$1.

§ 6305. Possession of license

1. Exhibit on demand. When any person is engaged in an activity which is licensed under marine resources' laws, he shall, on the request of a coastal warden or other authorized person, exhibit his license.

2. **Prima facie evidence.** A failure to exhibit a license within a reasonable time, when requested, is prima facie evidence that the person is not licensed.

3. **Crew members.** If crew members are included in the license for any operation, any bona fide crew member may carry out that operation if the license is in his possession.

§ 6306. Consent to inspection; violation

1. **Consent to inspection.** Signing an application for a license or accepting an issued license shall constitute consent to search and inspection by a coastal warden in uniform of any equipment, watercraft, vehicles and establishment used in connection with the licensed activity and to seizure of evidence of a violation of marine resources' laws or contraband found therein. No dwelling house may be searched without a search warrant.

2. **Refusal.** Refusal to permit inspection or seizure shall be a basis for suspension of any or all licenses under chapter 617, subchapter II.

§ 6307. Misstatement or misrepresentation

It is unlawful for any person to willfully make a misstatement or misrepresentation on an application for a license or certificate.

**CHAPTER 617
LICENSE SUSPENSION**

**SUBCHAPTER I
SUSPENSION PROCEEDINGS**

**ARTICLE 1
SUSPENSION ON CONVICTION**

§ 6351. Suspension based on conviction

Any conviction for a violation of a marine resources' law shall be grounds for suspension of any licenses or certificates issued under this Part. In order to suspend a license or certificate because of a conviction, the commissioner shall follow the procedures of this Article.

§ 6352. Notice

The commissioner shall give notice of a suspension and may give an opportunity for a hearing to the holder.

1. **Time of notice.** The suspension shall be effective on service or receipt of the suspension notice. Notice shall be given within 30 days of the conviction.

2. **Nature of notice.** The notice shall contain a statement of the conviction,

the suspension and any opportunity for a hearing, and shall be personally served or mailed to the holder at the address provided in his application.

3. **Hearing.** A hearing shall be requested in writing within 10 days of receipt of a notice. If it is requested, then it shall be held within 10 days of the request, unless a longer period is mutually agreed to in writing. Notice of the hearing shall be given immediately to the holder.

§ 6353. **Hearing**

1. **Place of hearing.** If a hearing is held, it shall be conducted in the Augusta area.

2. **Evidence.** At the hearing, the holder may present any evidence concerning the violation which might justify reinstatement of his license or certificate, or reduction of the suspension period.

3. **Decisions.** Decisions of the commissioner shall be in writing. The commissioner may reinstate the license or certificate or reduce the suspension period if he is satisfied that to do so would be in the best interests of justice.

ARTICLE 2
SUSPENSION WITHOUT CONVICTION

§ 6371. **Suspension without a conviction**

1. **Suspension for refusal to allow inspection.** Refusal to allow inspection or seizure under section 6306 shall be grounds for suspension of any and all licenses issued under marine resources' laws. In order to suspend a license because of a refusal to allow inspection or seizure, the commissioner shall follow the procedures of section 6372.

2. **Suspension for refusal to allow a shellfish inspection or for violation of shellfish sanitation provisions.** Refusal to allow a shellfish inspection under section 6856 or violation of shellfish sanitation regulations adopted under section 6856 shall be grounds for suspension of any and all licenses or certificates issued under marine resources' laws. In order to suspend a license or certificate for these reasons, the commissioner shall follow the procedures of section 6373.

3. **Suspension for violations.** Violation of any section of marine resources' laws shall be grounds for suspension of any and all licenses or certificates issued under this Part. In order to suspend a license or certificate for a violation, the commissioner shall follow the procedures for license suspension or revocation in the Administrative Court, as provided under Title 4, chapter 25.

§ 6372. **Procedure for suspending on refusal to allow inspection**

Notwithstanding the Maine Administrative Procedure Act, the procedure for

suspending a license or refusal to allow inspection or seizure under section 6306 shall be as follows.

1. **Initiation and suspension.** A coastal warden may deliver to the commissioner a written statement under oath that a person has refused to allow inspection or seizure under section 6306. The commissioner, on receipt of the affidavit, shall immediately notify the person in writing that his license has been suspended.

2. **Notice.** The notice shall state that there is an opportunity for a hearing, if it is requested in writing within 10 days of the notice.

3. **Hearing.** Any hearing shall be held within 3 business days after receipt of the request for the hearing. A hearing may be held more than 3 business days after the request if the request states in writing that the delay was voluntarily requested by the license holder. The hearing shall be held in accordance with the following provisions of the Maine Administrative Procedure Act, Title 5, chapter 375:

A. Evidence, Title 5, section 9057, except the issues shall be limited to whether the licensee had a license and whether he refused inspection;

B. Notice, Title 5, section 9058;

C. Record, Title 5, section 9059;

D. Decisions, Title 5, section 9061, except the decision shall be made not more than one business day after completion of the hearing; and

E. Presiding officer, Title 5, section 9062, subsections 3 and 4, except the presiding officer shall be the commissioner or deputy commissioner.

4. **Stay.** Upon written request, the commission may delay the suspension pending the determination of the original hearing or the appeal, if he finds that suspension will cause undue hardship.

5. **Appeal.** The decision of the commissioner may be appealed to the Superior Court, if it is filed with the court within 30 days of the decision.

§ 6373. Procedure for suspending for violation of a shellfish provision

In order to suspend a license or certificate for refusal to allow a shellfish inspection or for violation of shellfish sanitation regulations, the commissioner shall follow the procedures for license suspension or revocation in the Administrative Court, as provided under Title 4, chapter 25. The suspension for these reasons shall be a summary action necessary to prevent an immediate threat to the public health, safety and welfare and shall be an emergency proceeding under Title 4, section 1153.

Nothing in this section shall limit the commissioner's powers to embargo or condemn under section 6207.

SUBCHAPTER II SUSPENSION PENALTIES

§ 6401. Suspension based on conviction

1. Violation of marine resources' laws. The commissioner may suspend any and all licenses or certificates issued under this Part if a person is convicted in court of violating any part of the marine resources' laws.

2. Length of suspension. The suspension of a license or certificate may not exceed the following:

- A. Six months from the date of the first conviction;
- B. Nine months from the date of the 2nd conviction; and
- C. One year from the date of the 3rd or subsequent conviction.

3. Applicable standards. Any conviction occurring more than 7 years before the last conviction shall not be counted in determining lengths of suspension.

§ 6402. Suspension based on conviction of molesting

The commissioner shall suspend the lobster and crab fishing license of any license holder convicted in court of violating section 6434. This suspension shall be for 3 years from date of conviction.

§ 6403. Suspension based on refusing inspection or seizure

The commissioner may suspend any and all licenses issued under this Part if the license holder refuses to allow inspection or seizure under section 6306. This suspension may not exceed one year.

§ 6404. Suspension based on conviction of scrubbing lobsters

The commissioner shall suspend the lobster and crab fishing license, wholesale seafood license and the commercial fishing license of any license holder convicted in court of violating section 6437. The suspension shall be for one year from the date of conviction.

§ 6405. Trap removal

Any person whose lobster and crab fishing license has been suspended shall, within 5 days of suspension, remove from the water all of his lobster traps or cars, except cars numbered with another valid license number.

§ 6406. Engaging in activities while under suspension

It shall be unlawful for any person to engage in any licensed activity while his

license is under suspension. Violation of this section shall be a Class D crime, except that the court shall impose a fine of not less than \$100 nor more than \$1,000.

§ 6407. Conviction; juvenile offense; failure to appear

Under this chapter:

1. Conviction. A judgment of guilt shall be considered a conviction during the pendency of appeal;
2. Juvenile offense. A conviction as a juvenile offense shall be considered a conviction; and
3. Failure to appear. Failure to appear in court when properly summoned shall be considered a conviction.

**CHAPTER 619
LOBSTER AND CRAB FISHING
LICENSES**

**SUBCHAPTER I
LICENSES**

§ 6421. Lobster and crab fishing licenses

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current lobster and crab fishing license or other license issued under this Part authorizing the activities.
2. Licensed activity. The holder of a lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs he has taken. The license shall not authorize the holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.
3. License limitation. A license shall only authorize these activities by an individual who is named in the license. An individual assisting or helping a license holder in these activities shall also be licensed.
4. Exception. No licensee shall be required to take or catch crabs with bare hands or hook and line.
5. Eligibility. A lobster and crab fishing license shall be a resident license.
6. Buoy colors. Each applicant shall describe, on the application, the color design of his buoys.
7. Fee. The fee for the license shall be \$20 for applicants 17 years of age or older and \$10 for those under 17.

**SUBCHAPTER II
LIMITS ON FISHING AND PROHIBITED ACTS**

§ 6431. Lobster measurement

1. **Minimum and maximum length.** It shall be unlawful for any person to buy, sell, give away, transport, ship or possess any lobster which is less than $3 \frac{3}{16}$ inches or more than 5 inches in length, as determined by the State double gauge lobster measure.

2. **Method of measurement.** Measurement shall be made 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.

3. **Double gauge measure; evidentiary value.** The department shall provide the state double gauge lobster measure for sale at actual cost. The measure shall have one gauge of $3 \frac{3}{16}$ inches and another 5 inches in length. No measurement, other than by the state's double gauge lobster measure, shall be admissible in any court in the State.

4. **Mutilation.** It shall be unlawful to possess any lobster, or part thereof, which is mutilated in a manner which makes accurate measurement impossible.

5. **Exception for immediate liberation.** No violation of this section shall occur if the illegal lobster is immediately liberated alive into the coastal waters when taken.

6. **Exception for wholesale dealer in certain instances; authority for regulations.** This section shall not apply to lobsters reconsigned intact in the original crates by a holder of a wholesale seafood license to another license holder if the crates are sealed in accordance with regulations adopted by the commissioner. The commissioner may adopt or amend regulations to prescribe the time, manner and method of sealing crates for the effective operation of this subsection. The regulations may contain provisions for inspection of the crates, contents and seals.

7. **Penalty.** Possession of lobsters in violation of this section shall be a Class D crime, except that the court shall impose a fine of \$25 for each violation and, in addition, a fine of \$10 for each lobster involved, up to and including the first 5, and a fine of \$30 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not more than \$1,000.

§ 6432. Methods of fishing

1. **Conventional traps.** It shall be unlawful to fish for or take lobster by any method other than conventional lobster traps.

2. **Marking.** It shall be unlawful to set, raise, lift or transfer any lobster trap or

buoy unless it is clearly marked with the owner's lobster and crab fishing license number.

3. **Color design.** It shall be unlawful to set, raise, lift or transfer any lobster trap unless the color design of the attached buoy is the same as the color design that is on file with the license application and is displayed on the boat, or unless the person is duly licensed and possesses written permission from the rightful owner of the lobster trap or buoy. Prior notification of changes in buoy color design shall be provided to the commissioner.

4. **Design display.** The buoy color design shall be displayed on the boat as follows:

A. On both sides of the hull or on a panel painted on both sides and attached to the boat's forward topside in a manner so as to be clearly visible on both sides of the boat. Each color shall appear as a solid color strip 4 inches high and 18 inches long abutting another color on its longest side to form a rectangle with a one-inch black border on all sides; or

B. A buoy of at least 12 inches long, mounted in a manner so that the color design is clearly visible on both sides of the boat.

§ 6433. **Escape vents**

1. **Vent required.** It shall be unlawful to fish for or take lobsters by use of a lobster trap unless the trap is equipped with:

A. A rectangular or oblong escape vent not less than 1 3/4 inches (44.5 mm) by 6 inches (152.5 mm);

B. Two circular escape vents not less than 2 1/4 inches (57.2mm) in diameter;

C. A gap caused by raising both ends of a bottom lath in the parlor section by 1 3/4 inches;

D. A gap caused by separating both ends of 2 vertical laths on the end of the parlor section by 1 3/4 inches; or

E. A gap created by cutting wires in a wire trap in such a manner as to meet the minimum size and number of vents required under paragraphs A and B,

that will allow sublegal lobsters to escape. The escape vents or gaps shall be installed or made in the parlor sections of the trap on the side or end next to the sill or on the top of the parlor section or, with the vertical gap, in the end of the parlor sections.

2. **Action prohibited.** It shall be unlawful to set, raise, haul or transfer any lobster trap unless the trap is equipped with an escape vent as required in this section or has been exempted under subsection 3.

3. **Exemption.** The commissioner may exempt specific trap designs from the escape vent requirements of this section if it is proved to his satisfaction that the specific trap design will only take crabs and is incapable of taking lobsters.

4. **Termination.** This section shall expire on December 31, 1980.

§ 6434. **Molesting gear**

It shall be unlawful for any person, except a coastal warden, the licensed owner or a person having written permission from the licensed owner, to raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car.

§ 6435. **Setting near weirs**

It shall be unlawful for any person to set any lobster trap within 300 feet of the mouth of any fish weir when the weir owner or operator is licensed under section 6501.

§ 6436. **Egg-bearing lobsters; v-notched lobsters**

1. **Egg-bearing and v-notched lobsters.** It shall be unlawful for any person to take, transport, sell or possess any lobster which is bearing eggs or any female lobster marked with a v-notch in the right flipper next to the middle flipper or any female lobster which is mutilated in a manner which could hide or obliterate that mark. The right flipper shall be determined when the underside of the lobster is down and its tail is toward the person making the determination.

2. **Exceptions.** No violation of this section shall occur if:

A. The lobster is immediately liberated alive into the coastal waters when taken or discovered in a pound; or

B. The lobster is possessed and sold to the department by a lobster pound owner who has a permit to do so as provided in this section.

3. **Permitted possession; regulations.** The commissioner may issue a permit for the holding and delivery of egg-bearing lobsters to the department by a lobster pound owner who holds a current wholesale seafood license. The commissioner may adopt regulations governing the issuing of permits and the conditions and limitations under which these lobsters may be held and delivered.

4. **Prima facie evidence.**

A. Discovery of an egg-bearing lobster by a coastal warden in a pound not included in a permit under section 3 shall be prima facie evidence of a violation.

B. Any lobster whose right flipper is v-notched or mutilated in a manner which could hide or obliterate such a mark shall be prima facie evidence that the lobster is a v-notched female lobster.

§ 6437. Scrubbing lobsters

1. **Prohibition.** It shall be unlawful for any person to remove extruded eggs from any female lobster.

2. **Penalty.** A violation of this section shall be a Class D crime, except that the court shall impose a fine of \$100 for each lobster.

§ 6438. Scrubbed lobsters

1. **Prohibition.** It shall be unlawful for any person to take, buy, sell, possess, transport or ship any female lobster from which extruded eggs have been removed by any means other than natural hatching.

2. **Penalty.** A violation of this section shall be a Class D crime, except that the court shall impose a fine of \$100 for each lobster.

§ 6439. Areas of limited lobster fishing

It shall be unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in any of the coastal waters in the following areas:

1. **West of Cape Elizabeth.** Westerly of a line drawn from the active lighthouse at Two Lights in Cape Elizabeth to the Hue and Cry Buoy;

2. **Between Pemaquid and Robinson's Points.** Between the following lines:

A. Beginning at a point 48 miles true north of the lighthouse on Pemaquid Point, Lincoln County; thence true south through the lighthouse to a point where that line intersects the southeasterly boundary of the coastal waters within the jurisdiction of the State; and

B. Beginning at a point 40 miles true north from the lighthouse at Robinson's Point, Isle au Haut, Knox County; thence true south through the lighthouse to a point where that line intersects the southeasterly boundary of the coastal waters within the jurisdiction of the State; and

3. **Off Hancock County.** Within the following radio direction-finder LORAN A bearings: Beginning at Schoodic Point, Hancock County; thence running along the line marked by LORAN A bearing 1H3-1990 in a southerly direction to a point where that line intersects with the line marked by LORAN A bearing 1H7-1185; thence running along the line marked by LORAN A bearing 1H7-1185 in a westerly direction, to and through Mt. Desert Rock, to a point where that line intersects with the line marked by LORAN A bearing 1H3-2100; thence running along the line marked by LORAN A bearing 1H3-2100 in a northerly direction to a point where that line intersects with the line marked by LORAN A bearing 1H7-1160; thence running along the line marked by LORAN A bearing 1H7-1160 in a westerly direction to a point where that line intersects with the line described in subsection 2, paragraph B, if it is extended to that line.

§ 6440. Closed periods

It shall be unlawful to raise, haul or transfer any lobster trap from the coastal waters:

1. **Summer.** During the period $\frac{1}{2}$ hour after sunset until $\frac{1}{2}$ hour before sunrise from June 1st to October 31st, both days inclusive; and
2. **Weekends.** During the period from 4 p.m., Eastern Daylight Savings Time, Saturday, to $\frac{1}{2}$ hour before sunrise the following Monday morning from June 1st to August 31st, both days inclusive.

**SUBCHAPTER III
LOBSTER FUND****§ 6451. Lobster Fund**

1. **Allocation of license fees.** Five dollars of each lobster and crab fishing license fee shall be allocated to the Lobster Fund, which shall be used for the purpose of propagation of lobsters by liberating seed and female lobsters in Maine coastal waters.

2. **Purchases; liberation.** The commissioner may authorize the expenditure of the money in the Lobster Fund for the purpose of purchasing seed lobsters from Maine lobster pound owners and female lobsters from wholesale seafood license holders. The commissioner shall establish the purchase price for seed and female lobsters after consultation with the industry. The commissioner shall give priority to purchasing seed lobsters.

3. **Liberation and v-notching.** The commissioner shall liberate these lobsters in the coastal waters after v-notching them in the right flipper. The right flipper shall be determined as established under section 6436, subsection 1.

4. **Tagging program.** The commissioner may undertake a tagging program to determine the migratory patterns of lobsters purchased and liberated under this section. The commissioner may authorize the expenditure of up to \$5,000 annually from the Lobster Fund for this tagging program.

5. **Nonlapsing fund.** The Lobster Fund shall not lapse.

**CHAPTER 621
Finfish Licenses****SUBCHAPTER I
LICENSES****§ 6501. Commercial fishing license**

1. **License required.** It shall be unlawful for any person to engage in the

activities authorized by this license under this section without a current commercial fishing license or other license under this Part authorizing the activities.

2. **Licensed activity.** The holder of a commercial fishing license may fish for or take fish or possess, ship, transport or sell fish which he has taken. The license shall also authorize crew members aboard the licensee's boat when it is engaged in commercial fishing to undertake these activities, if the license provides for crew members.

3. **Exemptions.** The following shall be exempted from this licensing requirement.

A. Any person may fish for, take, possess or transport any species of fish if they have been taken by speargun, harpoon, hand dip net or hook and line and are only for personal use.

B. Any person may fish for, take, possess or transport halibut if they have been taken by tub trawl and are only for personal use.

C. Any person may fish for, take, possess, ship, transport, or sell smelts if they have been taken by hook and line through the ice.

4. **Fees.** Fees for commercial fishing licenses shall be:

A. \$10 for resident operator;

B. \$25 for resident operator and all crew members; and

C. \$200 for nonresident operator and all crew members.

5. **Definition.** For the purposes of this chapter, "fish shall mean all marine finfish, squid and shrimp or other marine animals, except lobsters, crabs, shellfish, scallops or marine worms.

§ 6502. Nonresident special tuna permit

A nonresident may fish for, take, possess, ship, transport or sell tuna which he has taken, without a commercial fishing license, if he has a current special tuna permit.

1. **Eligibility.** A special tuna permit may be issued to a nonresident who is a registered participant in a tuna tournament which is sponsored and operated by a nonprofit association or corporation that has existed for at least one year prior to the tournament. No person shall be issued more than one permit in any one calendar year.

2. **Authorized activity.** A special tuna permittee may fish for, take for sale and sell only one tuna in any one calendar year. The permit shall be valid for the

length of the tournament plus one day or for 7 days from the date of issue, whichever is shorter.

3. **Fee.** The permit fee shall be \$50, which may be credited against the license fee for a commercial fishing license, if it is issued to the permittee within 30 days of the issuing of the permit.

SUBCHAPTER II LIMITS ON FISHING AND PROHIBITED ACTS

ARTICLE 1 GENERAL PROHIBITIONS

§ 6521. Dumping of dead marine animals or scaled finfish

1. **Public nuisance.** It shall be unlawful for any person to deposit or discard, in intertidal zone or in harbors or rivers below the dividing line between tidewater and fresh water, any dead marine animal or its parts.

2. **Scaled finfish.** It shall be unlawful for any person to deposit, release or dump into the coastal waters any dead or alive finfish from which the scales have been removed.

§ 6522. Monofilament nets

It shall be unlawful for any person to discard or abandon into any waters any net made of monofilament or of other material which is not biodegradable.

§ 6523. Marking ice fishing shacks

It shall be unlawful to place any shack or temporary structure used for ice fishing on the frozen coastal waters or to use the shack or structure, unless the owner's name and address are painted or otherwise clearly marked on the outside with 2-inch letters. The fine or penalty for conviction of violating this section shall include the costs incurred in removing any structure.

§ 6524. Dragging in charted cable areas

It shall be unlawful to use any drag or otter trawl along the seabed in any waters that are identified or marked as underwater cable or pipeline areas on the most recently published United States Government nautical chart.

§ 6525. Setting near weirs or stop seines

1. **Setting nets or seines near weirs.** It shall be unlawful for any person, other than the weir owner or his crew members, to set or assist in setting any net or seine within 2,000 feet of the mouth of a weir whose operator is validly licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

2. Setting purse seines near stop seines. It shall be unlawful to set or assist in setting any purse seine:

A. Within 2,000 feet of any boat containing a crew and stop seine capable of fishing the cove or arc of a beach;

B. From sunrise to sunset, within 2,000 feet of any stop seine when it is set across the mouth of a cove or arc of a beach or when a pocket is set for holding fish and is marked by at least 4 floating kegs or similar devices; or

C. From sunset to sunrise, within 2,000 feet of any stop seine set across the mouth of a cove or arc of a beach when a boat and crew capable of fishing the cove or beach is present.

3. Exception. The operator of the stop seine may use a purse seine inside the pocket of the stop seine to remove the fish caught and shall not violate this section by doing so.

ARTICLE 2 HERRING LIMITATIONS

§ 6541. Artificial lights in herring fishing

It shall be unlawful to take herring by use of or aid of any artificial light in the coastal waters, except as provided in this section.

The commissioner may adopt or amend regulations that set aside specific areas where artificial light may be used in the taking of herring, provided the herring are to be taken for bait and the activity will not unreasonably interfere with commercial herring fishing.

§ 6542. Size of herring

It shall be unlawful for any person to take, buy, sell, process, ship, transport or possess herring which are less than 4½ inches in length, except:

1. Bait. Any person may take, buy, sell, ship, transport or possess herring of any size for use as bait for fishing; or

2. Tolerance of 25%. Any person may take, buy, sell, process, ship, transport or possess herring that are less than 4½ inches, if they comprise less than 25% by volume of an entire lot. The 25% tolerance by volume shall be determined by examination of ½ bushel chosen at random from each 30 hogsheads of herring or fraction thereof.

§ 6543. Standard unit of herring measure

It shall be unlawful for any person to purchase or sell herring in their live or raw state for packing, other than by a standard unit of measure or by a fractional part

of a standard unit of measure. The standard units of measure shall be the bushel, barrel of 3 bushels or the hogshead of 17½ bushels.

§ 6544. Sealing of herring boats

It shall be unlawful for any person to buy, sell or transport any herring for processing, from or in the hold of any boat, which has not been measured and sealed as provided in this section.

1. **Sealing of boats.** The holds of all boats transporting herring for processing purposes shall be measured and sealed by the State Sealer of Weights and Measures or his designee.

2. **Fee.** The owner of the boat shall pay a fee for the measuring and sealing as determined by the State Sealer of Weights and Measures, based on the carrying capacity of the boat.

3. **Method of measuring and sealing.** The measure shall be in 5 hogshead divisions measured by liquid measure from a calibrated prover to the top of the hatch coaming. The measurement shall be marked and permanently sealed, both forward and aft, in the hold, in the most practicable manner, while the boat is afloat.

4. **Notification of broken seals.** The boat owner shall immediately notify the State Sealer of Weights and Measures of any alteration or the breaking of any seal.

5. **Certification to commissioner.** After measuring and sealing each boat, the State Sealer of Weights and Measures shall certify to the commissioner the name of the owner and the name and capacity of each boat.

§ 6545. Enforcement cooperation

The Commissioner of Marine Resources and the Commissioner of Agriculture shall cooperate in the enforcement of sections 6542 and 6543.

ARTICLE 3

MISCELLANEOUS SPECIES

§ 6551. Tuna; method of taking

It shall be unlawful for any person to fish for or take any tuna by any method other than harpoons or by hook and line or to possess any tuna which was taken in an unlawful manner.

§ 6552. Smelts; method and amount

1. **Method and amount.** From March 15th to June 15th, both days inclusive, it

shall be unlawful for any person to fish for or take smelts from the coastal waters by any means other than a hand dip net operated by one man or by angling with a hook and line or to take or possess more than 4 quarts of smelts in one day.

2. Exception. This section shall not apply to:

A. Any licensed wholesale seafood or retail seafood dealer licensed under sections 6851 or 6852, bait dealer licensed under section 2558 or grocery, restaurant or fish store, who may possess more than 4 quarts in his place of business; or

B. The holder of a current commercial fishing license to the extent he takes smelts in a licensed weir or herring trap. The failure to exhibit the commercial fishing license immediately upon request of a coastal or game warden shall be prima facie evidence that the person possessing smelts is not excepted under this paragraph.

§ 6553. Atlantic salmon; method of taking; limits; closed season

1. Minimum length. It shall be unlawful to take or possess Atlantic salmon which are less than 14 inches in length.

2. Method of taking. From July 16th to October 15th, both days inclusive, it shall be unlawful to take Atlantic salmon from the coastal waters by means other than hook and line with a single hook.

3. Closed season. From October 16th to March 31st, both days inclusive, it shall be unlawful to take Atlantic salmon from the coastal waters by any means.

4. Exception on the St. Croix River. Except from May 15th to August 31st, both days inclusive, Atlantic salmon may be taken in weirs on the St. Croix River below the breakwater at the ledge.

§ 6554. Coho salmon; method of taking; limits

1. Minimum length. It shall be unlawful to take coho salmon which are less than 14 inches in length or to possess those taken illegally.

2. Method of taking. It shall be unlawful to fish or take coho salmon from the coastal waters by any means other than hook and line with a single hook.

3. Limits. No more than 2 coho salmon may be taken in any one day.

§ 6555. Striped bass; method of taking

It shall be unlawful to fish for or take striped bass in the coastal waters, except by hook and line or, between sunrise and sunset, by use of a spear.

**ARTICLE 4
CERTAIN AREA LIMITATIONS**

§ 6571. Washington County

Within the coastal waters of Washington County:

1. Otter or beam trawls prohibited. From May 1st to December 15th, both days inclusive, it shall be unlawful to use either otter or beam trawls, except in the St. Croix River above or north of Quoddy Head lighthouse; and

2. Purse seines prohibited. From April 10th to October 15th, both days inclusive, it shall be unlawful to use a purse seine. This subsection shall not prohibit the seining of mackeral.

**CHAPTER 623
SHELLFISH, SCALLOPS, WORMS AND
MISCELLANEOUS LICENSES**

**SUBCHAPTER I
SHELLFISH**

**ARTICLE 1
LICENSES**

§ 6601. Shellfish license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a shellfish license may fish for or take shellfish or possess, ship or transport within the state limits or sell shellstock he has taken. The holder may also shuck shellfish he has taken and sell those shucked shellfish from his home in the retail trade.

3. Eligibility. A shellfish license shall be a resident license.

4. Personal use exception. Any person may take or possess no more than $\frac{1}{2}$ bushel of shellfish for personal use in one day without a license, unless municipal ordinances further limit the taking of shellfish.

5. Fee. The fee for a shellfish license shall be \$10.

6. Definition. For the purposes of this chapter, "shellfish" means clams, quahogs, oysters and mussels and includes shellstock and shucked shellfish.

**ARTICLE 2
LIMITS ON FISHING**

§ 6621. Closed areas

1. Taking from closed areas. It shall be unlawful for any person to fish for or

take shellfish from any area closed by regulation or to possess, ship, transport or sell shellfish so taken.

2. **Washing or holding in closed areas.** It shall be unlawful for any person to wash, hold or keep shellfish in any area closed by regulation or to possess, ship, transport or sell shellfish so washed, held or kept.

3. **Exception.** This section shall not apply to the taking of shellfish under the authority of section 6856 or to shellfish kept or washed in waters sterilized with a system which has been approved in writing by the commissioner, provided the waters are also approved for that use.

§ 6622. Municipal programs

It shall be unlawful for any person to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671 or to possess, ship, transport or sell shellfish so taken. Municipal authorities shall be responsible for enforcing this section

§ 6623. Quahogs; minimum size

1. **Minimum size.** It shall be unlawful for any person to take, possess, ship, transport, buy or sell quahogs which are less than 2 inches in the longest diameter.

2. **Tolerance of 10%.** Any person may possess, ship, transport, buy or sell quahogs that are less than 2 inches if they comprise less than 10% of any bulk pile. The 10% tolerance shall be determined by a numerical count of not less than one peck nor more than 5 pecks chosen at random from various parts of the bulk pile. If the lot is less than one peck, the entire lot shall be counted.

§ 6624. Method of taking soft shell clams

1. **Hand implement only.** It shall be unlawful for any person to fish for or take soft shell clams, except by implements operated solely by hand, except as provided in this section.

2. **Special license for dredging.** The commissioner may issue a special license to operate a hydraulic or mechanical soft shell clam dredge, provided the dredge design is approved by the commissioner. It is to be operated below low water, the operation shall not substantially interfere with commercial digging and the operation is not to be used for taking any marine worms, lobsters or other crustaceans.

§ 6625. Quahog tax

1. **Definitions.** For the purposes of this section, the following words shall have the following meanings, unless a different meaning is required by the context.

A. "Dealer" means a person who holds a wholesale seafood license, a shellfish transportation license or a shellfish certificate and who buys quahogs from the harvester and deals in quahogs in the wholesale trade.

B. "Harvester" means a person who takes quahogs from the intertidal zone for commercial purposes.

C. "Landed value" means the price paid to the harvester by the dealer for quahogs taken from the intertidal zone.

D. "Quahogs" means a marine mollusk, *venus mercenaria*, commonly called hard shelled clams.

2. Tax. Each dealer shall pay a tax of 5% of the landed value of all quahogs purchased from a harvester.

3. Tax allocation and Quahog Fund. All taxes received under this section shall be paid into the Quahog Fund. The Quahog Fund shall be maintained by the commissioner and it shall not lapse. The commissioner may expend the money in the fund for research related to quahogs or the quahog industry for the restoration, development and conservation of the quahog industry, including buying, maintaining and operating boats and equipment for transplanting seed quahogs or for enforcing this section.

4. Inspection. The commissioner or his duly authorized agents shall have free access, ingress and egress at all reasonable hours to any establishment where quahogs are held or to any records required to make a proper inspection.

5. Regulations. The commissioner may adopt or amend regulations necessary to implement this section, including regulations governing the records and reports of purchases, sales and shipments of quahogs and the payment dates for the tax.

ARTICLE 3

SHELLFISH FUND

§ 6651. Shellfish Fund

1. Fees to be paid into fund. Twenty-five percent of all fees from shellfish licenses, shellfish transportation licenses and wholesale seafood licenses shall be paid into the Shellfish Fund.

2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for restoration, development and conservation of shellfish in the shores, flats or coastal waters.

3. Nonlapsing fund. The Shellfish Fund shall not lapse.

ARTICLE 4

MUNICIPAL CONSERVATION PROGRAMS

§ 6670. Municipal funds for conservation

Any municipality by vote of its legislative body may raise and appropriate money for any shellfish conservation program which has been approved by the commissioner.

1. **Joint municipal programs and funds authorized.** Any municipality by vote of its legislative body may authorize its municipal officers to enter into an agreement with any number of other municipalities for any joint shellfish conservation program approved by the commissioner and may raise and appropriate money for that joint program.

§ 6671. Municipal ordinances for regulation and licensing.

Any municipality which has raised or appropriated money within 2 years next prior to acting under this section for a shellfish conservation program approved by the commissioner may enact a municipal ordinance fixing the time when clams, quahogs and mussels may be taken from any or all of the coastal waters and flats within the municipality, except for those areas closed by regulation of the commissioner under section 6172. The ordinance shall have the written approval of the commissioner before adoption and that approval shall be filed with the municipal clerk prior to adoption. The ordinance may provide limitations of the amount of clams, quahogs and mussels which may be taken within the municipality and may provide that municipal licenses be required for the taking of any such species within the municipality and may determine the qualifications for the license, including residence requirements, and may fix the license fees. The ordinance may provide for the size of soft shell clams which may be taken from the flats within the municipality. The ordinance may provide for enforcement, protection and evaluation of a green crab fencing program.

1. **Filing requirements.** Ordinances adopted under this section shall remain in full force and effect for a period of 3 years, unless sooner terminated by the terms of the ordinance or by repeal by the municipal legislative body. A certified copy of the ordinance shall be filed with the commissioner within 7 days after its adoption.

2. **Local enforcement.** Any Municipality that enacts any ordinance under authority of this section shall be responsible for the enforcement of the ordinance.

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 6204.

4. **Municipality defined.** For the purposes of this section and section 6670, municipality includes a village corporation and the combined territory of the Towns of Yarmouth and North Yarmouth as one municipality.

5. **Ordinances may grant privileges to municipalities having conservation agreements.** Any ordinance adopted under this section may grant shellfish digging license privileges to the residents of any municipality which has a joint shellfish conservation agreement with the municipality enacting the ordinance.

§ 6672. Green crab fencing program

1. **Program established.** There is established a fencing program to exclude green crabs from soft shell clam growing areas. This program shall be administered by the commissioner. When the commissioner has determined that a soft shell clam growing area is adversely affected by green crab predation, he may provide funds, materials or expertise for the construction and installation of fencing to municipalities.

2. **Regulations.** The commissioner shall adopt regulations concerning the establishment of a municipal program to:

A. **Assure compliance with the requirements necessary to accomplish the purpose of the program;**

B. **Provide criteria for determining which municipalities shall be awarded materials or funds, including:**

(1) **The extent that the resource of a community has been adversely affected;**

(2) **The possible effectiveness of a program in a municipality; and**

(3) **A municipality's ability to evaluate the program by monitoring and comparing data; and**

C. **Establish the method, forms and dates for application and the municipal reports required for implementation of this section.**

3. **Commissioner's powers and duties.** The commissioner may enter into agreements with municipalities concerning the administration and evaluation of the effectiveness of green crab fencing programs carried out under this section. He shall notify each municipality which has soft shell clam growing areas of the program.

4. **Funding.** The commissioner may disburse to a municipality funds, materials or services to provide 50% of the total expenditures necessary to carry out the program in that municipality. He may obligate annually from the Shellfish Fund an amount not to exceed \$25,000 to be used to carry out the purposes of this section.

5. **Report to Legislature.** The commissioner shall annually, by March 1st, report to the Legislature giving a complete evaluation of the program established by this section and whether the program should be continued.

§ 6673. Municipal leasing of flats

A municipality, which has established a shellfish conservation program as provided under section 6671, may lease areas in the intertidal zone to the extreme low water mark, within the municipality for the purpose of shellfish aquaculture.

1. **Municipal procedure.** A written application may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under license to exceed $\frac{1}{4}$ of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best interests of the municipality. On approval, the lease shall be forwarded to the commissioner.

2. **Department procedure.** The commissioner shall use the same procedure and the same grounds for approval as required for aquaculture leases under section 6072, except:

- A. Preference shall be given to municipal leases;
- B. No rent shall be set, but there shall be an annual municipal license fee of not less than \$1 per acre;
- C. The municipality may establish the conditions and limits on the lease; and
- D. The advice and consent of the advisory council shall not be required.

§ 6674. Prohibition on interference

It shall be unlawful for any person to interfere with the rights provided in a municipal lease or to take shellfish by any means or disturb or molest any shellfish or area in the intertidal zone that is included in a municipal lease.

**SUBCHAPTER II
SCALLOPS**

**ARTICLE 1
LICENSES**

§ 6701. Scallop license

1. **License required.** It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current scallop license or other license issued under this Part authorizing the activities.

2. **Licensed activity.** The holder of a scallop license may fish for or take

scallops or possess, ship, transport or sell scallops he has taken. The license shall also authorize crew members aboard the licensee's boat when it is engaged in dragging for scallops to undertake these activities.

3. Eligibility. A scallop license shall be a resident license.

4. Exception. In any one day, any person may take or possess not more than 2 bushels of shell scallops or 4 quarts of shucked scallops for personal use without a scallop license.

5. Fee. The fee for a scallop license shall be \$25.

ARTICLE 2 LIMITS ON FISHING

§ 6721. Minimum size

1. Minimum size. It shall be unlawful for any person to take, possess, ship, transport, buy or sell scallops whose shells are less than 3 inches in the longest diameter.

2. Tolerance of 10%. Any person may take, possess, ship, transport, buy or sell scallops that are less than 3 inches if they comprise less than 10% of any bulk pile. The 10% tolerance shall be determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

§ 6722. Closed areas

It shall be unlawful for any person to fish for or take scallops in the coastal waters from April 16th to October 31st, both days inclusive, except outside and southeasterly of a line drawn to and from the following points: Beginning at Petit Manan Island Light; thence running in a straight line to the southerly tip of Schoodic Island; thence in a straight line to the southeasterly tip of Little Cranberry Island; thence in a straight line to the northwesterly end of Little Duck Island; thence in a straight line to the southeasterly tip of Long Island; thence in a straight line to the whistle buoy off Johns Island; thence in a straight line to the southerly tip of Eastern Ear, Isle au Haut; thence in a straight line to Roaring Bull Ledge; thence in a straight line to Saddleback Ledge Light; thence in a straight line to Green Island Light at Vinalhaven; thence in a straight line to Twobush Light; thence in a straight line to the southerly tip of Burnt Island.

§ 6723. Drag limits in Blue Hill Bay

It shall be unlawful to fish for or take scallops with any one combination of scallop drags in excess of 8 feet in width in Blue Hill Bay above or north of a line drawn from Bass Harbor Head in the Town of Tremont westerly to Pond Island and thence to Naskeag Point in the Town of Brooklin.

§ 6724. Otter trawl in Penobscot River

It shall be unlawful to fish for or take scallops by use of an otter trawl inside and upriver of a line drawn from the lighthouse on Dice Head, Castine to Turtle Head on Isleboro and thence to the town wharf at Bayside, Northport.

§ 6725. Possession of illegal scallops

It shall be unlawful to possess, ship, transport, buy or sell scallops taken in violation of this subchapter.

**SUBCHAPTER III
MARINE WORMS**

**ARTICLE 1
LICENSES**

§ 6751. Marine worm digger's license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current marine worm digger's license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm digger's license may fish for or take marine worms or possess, ship, transport or sell within the State, at retail or to the holder of a marine worm dealer's license, worms he has taken.

3. Eligibility. A marine worm digger's license shall be a resident license.

4. Fee. The fee for a marine worm digger's license shall be \$10.

§ 6752. Exception for personal use

Any person may take or possess not more than 125 marine worms in any one day for personal use without a marine worm digger's license or a marine worm dealer's license.

**ARTICLE 2
LIMITS ON FISHING AND INSPECTION**

§ 6771. Taking marine worms by hand

It shall be unlawful to fish for or take marine worms, except by devices or instruments operated solely by hand power.

§ 6772. Methods of sale and inspection of marine worms

1. Packaging and labeling. Every marine worm dealer shall furnish facilities for the storing, protection and security of trays, containers and worms belonging to diggers, as required by regulations. All dealers and diggers shall accurately

count and securely package the worms and mark or label the containers as required by regulations. They shall also maintain and report the records and information required by regulations.

2. **Tax.** Each marine worm dealer shall pay a tax of 5¢ per 100 worms sold to anyone, except another licensed marine worm dealer. The tax shall be paid to the department by the 15th of each month.

3. **Tax allocation.** Thirty percent of all taxes received under this section shall be paid into the Marine Worm Fund. The remaining percentage of taxes shall be paid into the General Fund.

4. **Inspection.** The commissioner shall cause periodic inspections of marine worm dealers' facilities and operations to insure compliance with this section. The commissioner, or his duly authorized agents, shall have free access, ingress and egress, at all reasonable hours to any establishment where marine worms are held or to any records required to be kept and may open any container of marine worms to make a proper inspection.

5. **Regulations.** The commissioner may adopt or amend regulations necessary to implement this section, including regulations governing the counting and packaging of marine worms and marking or labeling of containers of worms, the construction and security of the dealers' facilities and the records and reports of activities of the dealer. These regulations shall insure that the count of marine worms bought, sold and packaged is accurate and properly reflected in any labeling or marking, that the worms are securely packaged for shipping or transport and that records or reports fully reflect the activity of dealers and the number of worms bought and sold.

ARTICLE 3

MARINE WORM FUND

§ 6791. Marine Worm Fund

1. **Deposit of license revenues.** All revenues from marine worm licenses shall be paid into the Marine Worm Fund. The fund shall be maintained by the commissioner.

2. **Purposes of fund.** The commissioner may expend the money in the fund for research related to marine worms or the marine worm industry or for the restoration, development and conservation of the marine worm industry, including the development and maintenance of permanent or temporary facilities for those purposes.

3. **Nonlapsing.** The Marine Worm Fund shall not lapse.

**SUBCHAPTER IV
MISCELLANEOUS SPECIES**

**ARTICLE 1
LICENSES**

§ 6801. Sea moss license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current sea moss license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a sea moss license may take sea moss or possess, ship, transport or sell sea moss that he has harvested.

3. Fees. Fees for a sea moss license shall be:

A. \$10 for a resident; and

B. \$25 for a nonresident.

**CHAPTER 625
WHOLESALE AND RETAIL LICENSES**

§ 6851. Wholesale seafood license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current wholesale seafood license or other license issued under this Part authorizing the activities.

2. License activities. The holder of a wholesale seafood license may, in the wholesale or retail trade:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts;

B. Within or beyond the state limits, buy, sell, process or ship, or within the state limits, transport shellfish to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856; or

C. Buy, sell, process, ship or, within the state limits, transport lobster and properly permitted or lawfully imported lobster meat or parts. This license shall not authorize removing lobster meat from the shell unless a permit under section 6857 is held.

3. Exceptions. This section shall not apply to smoked herring or alewives.

4. License limited. A license shall only authorize these activities at one establishment or with one vehicle.

5. Supplemental license. A supplemental license shall be obtained for each additional establishment or vehicle.

6. Fee. The fees shall be as follows:

A. \$50 for the wholesale seafood license; and

B. \$10 for each supplemental license.

§ 6852. Retail seafood license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a retail seafood license or other license issued under this Part authorizing the activities.

2. License activity. The holder of a retail seafood license may, in the retail trade within the state limits, buy, sell, transport, ship or serve:

A. Shellstock or lobsters;

B. Shucked shellfish, if they are bought from a wholesale seafood license holder certified under section 6856; or

C. Lobster parts or meat, if they are properly permitted under section 6857, or have been lawfully imported.

3. License limited. A license shall only authorize these activities at one establishment or with one vehicle.

4. Fee. The fee for a retail seafood license shall be \$10.

§ 6853. Marine worm dealer's license

1. License required. It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current marine worm dealer's or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm dealer's license may buy, possess, ship, transport or sell marine worms.

3. License limited. A license shall only authorize these activities at one establishment or with one vehicle.

4. Supplemental license. A supplemental license shall be obtained for each additional establishment or vehicle.

5. Eligibility. The marine worm dealer's license shall be a resident license.

6. Fee. The fee for a marine worm dealer's license shall be \$25, and the fee for a supplemental license shall be \$10.

§ 6854. Lobster transportation license

1. License required. It shall be unlawful for any person to engage in the

activities authorized under this license by this section without a lobster transportation license.

2. License activity. The holder of a lobster transportation license may buy from a licensed wholesale seafood dealer and transport beyond the state limits, lobsters or their parts or meat. Lobster parts or meat may only be transported if they are properly permitted under section 4107 or lawfully imported.

3. Licensed limitations. A license shall only authorize these activities with one vehicle, which is owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license shall be obtained for each additional vehicle.

5. Information required. Each application shall identify each vehicle or other mode of transportation to be used for transporting lobster.

6. Fees. The fee for a lobster transportation license shall be \$50, and the fee for a supplemental license shall be \$10.

§ 6855. Shellfish transportation license

1. License required. It shall be unlawful for any person to engage in the activities authorized under this license by this section without a shellfish transportation license.

2. License activity. The holder of a shellfish transportation license may buy certified shellfish and transport them beyond the state limits, to the extent these activities are expressly authorized by a shellfish certificate or its equivalent from another state.

3. License limitations. All shellfish transported under this license shall be procured from a wholesale seafood licensee certified under section 6856. A license shall only authorize these activities with one vehicle, which is owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license shall be obtained for each additional vehicle.

5. Information required. Each application shall identify each vehicle or other mode of transportation to be used for transporting shellfish.

6. Fees. The fee for a shellfish transportation license shall be \$50, and the fee for a supplemental license shall be \$10.

§ 6856. Shellfish sanitation and certificate

1. Certified activities. A shellfish certificate authorizes a wholesale seafood license holder or a shellfish transportation license holder to undertake the

activities expressly authorized therein, which may include buying and selling, shipping, transporting, shucking or other processing of shellfish. A wholesale seafood license or shellfish transportation license shall also be necessary to undertake the activities authorized under those licenses.

2. Express authorizations. The commissioner shall expressly state the authorized activities on each shellfish certificate. The activities authorized shall be sufficient to allow the holder to carry out his wholesale or transportation operations, provided they may be limited to the extent required to protect the public health.

3. Depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder which authorizes the holder to take shellfish from closed areas for depuration and to process or transport them. The certificate shall establish the limits on harvesting, depurating and processing methods and any other provisions required to assure the public safety.

4. Regulations. The commissioner may adopt or amend regulations concerning:

- A. The procedures for issuing certificates and the required qualifications for each type of certificate;
- B. The minimum sanitation standards for establishments and vehicles;
- C. The sanitation and quality control standards for shellfish and their products;
- D. The methods for taking, handling and processing of shellfish taken from closed flats;
- E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish;
- F. The labeling or marking of shipments of shellfish; and
- G. Other regulations necessary to the public health.

The regulations shall be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety while allowing reasonable use of the state's shellfish.

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or his agent, shall have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access shall be grounds for suspension or revocation of any certificate or license under the provisions of section 6373.

6. **Products embargoed and condemned.** The commissioner, or his agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish or shellfish product in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health, or otherwise unsafe. The commissioner and his agent shall cooperate with those state and federal agencies, having similar responsibility, in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish or shellfish 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 shellfish or shellfish product embargoed, condemned or destroyed.

§ 6857. Lobster meat permit

1. **Permit required.** It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current lobster meat permit.

2. **Permitted activity.** A lobster meat permit authorizes a wholesale seafood license holder or a retail seafood license holder to remove lobster meat from the shell for sale, under the following conditions.

A. The meat shall only be removed from the shell at the establishment named in the permit.

B. The meat shall only come from legal sized lobsters.

C. Tail sections shall be removed from the shell whole and intact and shall be maintained in that state.

D. All containers in which lobster meat is packed after removal and which are to be sold, shipped or transported shall be clearly labeled with the lobster meat permit number of the packer.

3. **Exception.** No permit shall be required to remove lobster meat for serving in hotels and restaurants provided the meat is removed from the shell in a hotel or restaurant for serving on the premises.

4. **License limitation.** A permit shall only authorize these activities at one location or place of business.

5. **Fee.** The fee for a lobster meat permit shall be \$25.

6. **Prima facie evidence meat removed for sale.** If any lobster meat which has been removed from the shell is found on the premises of any establishment which is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it shall be prima facie evidence that the meat was removed for sale.

§ 6858. Size and condition of lobster meat

1. **Size of lobster meat.** It shall be unlawful for any person to possess any tail section of lobster meat removed from the shell which is less than 4¼ inches or more than 6½ inches in length when laid out straight and measured from end to end, not including the small part that is on the body end of the tail section.

2. **Condition of lobster meat.** It shall be unlawful for any person to remove a tail section of lobster meat from the shell unless it is removed whole and intact or to possess any tail section of lobster meat removed from the shell which is not whole and intact.

3. **Hotels and restaurants may cut up tail sections for serving; prima facie evidence.** Hotels and restaurants may cut up tail sections of lobster meat on the premises immediately prior to and for the purpose of serving it to customers. If cut up tail sections of lobster meat are found under refrigeration in a hotel or restaurant, and they are unmixed with any other food, it is prima facie evidence that the tail sections were not immediately to be served to customers as provided in this section.

4. **Exception for wholesale dealer.** The holder of a wholesale seafood license may, at his regular establishment, cut up lobster tail sections immediately prior to and for the purpose of preserving, canning or freezing them as processed stews, pies, salads newburgs or chowders.

5. **Exception for personal use.** Any person may cut up tail sections of lobster at his home immediately prior to and for the purpose of personal use.

6. **Prima facie evidence.** If cut up tail sections of lobster meat are found at an establishment, which is engaged in selling, processing or transporting food in any manner for human consumption, it shall be prima facie evidence that the same were not cut up immediately prior to and for the purpose of personal use.

7. **Violation.** The penalty for violation of this section shall be the same as that provided under section 6431, subsection 7.

§ 6859. Unmarked lobster shipping container

It shall be unlawful for any person to ship, offer to ship or accept for shipment any lobsters or their parts in any container that is not clearly marked to indicate that it contains lobsters.

§ 6860. Labeling of shrimp

It shall be unlawful for any person to process and package shrimp, unless the country or state of origin is clearly marked on the container.

§ 6861. Crawfish; license; meat; mix or commingle; listing

1. **License required.** It shall be unlawful for any person to engage in the activities authorized by this license under this section without a current wholesale or retail crawfish license.

2. Licensed activity.

A. The holder of a wholesale crawfish license may, in the wholesale trade, buy, sell, ship and transport within the state limits or process crawfish.

B. The holder of a retail crawfish license may, in the retail trade, buy, sell, ship or transport within the state limits, serve or process crawfish.

3. License limited. A wholesale or retail license shall only authorize these activities at one location or with one vehicle.

4. Supplemental license. A supplemental license shall be obtained for each additional establishment or vehicles.

5. Fees. The fees shall be as follows:

A. For a wholesale crawfish license, \$50;

B. For a retail crawfish license, \$25; and

C. For a supplemental license, \$10.

6. Meat. It shall be unlawful for any person to possess crawfish meat which has been removed from the shell, except that hotels and restaurants and other food service operators may remove such meat from the shell on the premises immediately prior to and for the purpose of serving it to customers.

A. If crawfish meat removed from the shell is found under refrigeration in a hotel, restaurant, other food service operator or in any other place, it shall be prima facie evidence that the meat was not immediately to be served to customers.

B. If any amount of lobster or crawfish meat outside the shell, which does not meet the legal length requirements for lobster, as established by section 6858, is found under refrigeration in possession of any person or in any place of business, it shall be prima facie evidence that it is illegal lobster meat and will be subject to the penalty as provided by section 6858.

7. Mix or commingle. It shall be unlawful for any person to mix or commingle crawfish in any form with lobster or to possess such a mixture or to cause or allow it to be done.

8. List. It shall be unlawful for any person to list, label, advertise, sell, offer for sale or represent for the purpose of sale crawfish, as lobster or imitation lobster, unless the country or state of origin is clearly disclosed or the listing, labeling or advertising is designed to clearly and affirmatively reflect the product being offered for sale.

9. Monthly reports. Any wholesale crawfish licensee dealing in crawfish shall

make a record of all purchases, processing and sales of crawfish on forms supplied by the commissioner and shall file those records with the commissioner monthly. All records filed pursuant to this section shall be confidential and not open to public inspection. The records and reports shall contain the following information:

- A. The amount by volume or weight of crawfish brought into the State and the country or state of its origin;
- B. The nature of the processing, if any, by the licensee; and
- C. The amount by volume or weight of crawfish sold within the State, the amount by volume or weight of crawfish sold to purchasers outside the State and the name of the common carrier transporting the product.

10. **Monthly records.** All retail crawfish licensees shall make a record of all purchases and sales of crawfish on forms supplied by the commissioner and shall maintain those records for a period of 12 months. All records maintained pursuant to this section shall be confidential and not open to public inspection.

11. **Records.** Any person, licensed under this section, shall make records available to a coastal warden on demand.

12. **Regulations.** The commissioner shall adopt or amend any regulations necessary to supervise and control licensees dealing in crawfish and to protect the interests of the State in the conduct, management and operation of the business of dealing in crawfish to assure compliance with this section.

13. **Penalty.** Violation of this section shall be a Class D crime, except that the court shall impose a fine of not less than \$500 nor more than \$1,000.

CHAPTER 627 GENERAL PROHIBITIONS

§ 6951. Fishing with dynamite or poison

It shall be unlawful to:

- 1. **Use dynamite or poison.** Use dynamite or any poisonous or stupefying substance for the purpose of destroying or taking fish in the coastal waters;
- 2. **Possess dynamite or poison.** Possess or carry dynamite or other explosives or poisonous or other stupefying substance while engaged in fishing in a boat; and
- 3. **Possess dynamited or poisoned fish.** Possess, buy or sell fish taken by use of dynamite or other explosives or poisonous or other stupefying substance.

§ 6952. Trawling, seining or netting for lobster

It shall be unlawful for any person to fish for or take lobsters by use of an otter

or beam trawl, seine or net or to have in possession any lobsters, regardless of their source, on board any boat rigged for otter or beam trawling, seining or netting.

1. Exceptions.

A. No violation of this section shall occur if the lobster is immediately liberated alive in the coastal waters.

B. This section shall not apply to any boat rigged for otter or beam trawling, seining or netting if all nets are removed from the boat before fishing for lobsters.

§ 6953. Stopping for inspection; penalty

It shall be unlawful for the operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, or any person:

1. Stopping. To fail or refuse to stop immediately upon request or signal of any coastal warden in uniform;

2. Remaining stopped. After he has so stopped, to fail to remain stopped until the coastal warden reaches his immediate vicinity and makes known to that operator the reason for the request or signal;

3. Standing by. To fail or refuse to stand by immediately for inspection on request of any coastal warden in uniform;

4. Throwing or dumping items. Who has been requested or signaled to stop by a coastal warden in uniform to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the coastal warden has inspected the same.

K. Violation of this section shall be a Class E crime, except that the court shall impose a fine of not less than \$100 nor more than \$500.

Sec. 5. 36 MRSA c. 711, as amended by PL 1973, c. 513, § 22, is repealed.

Sec. 6. Present regulations. All regulations of the department or of the Atlantic Sea Run Salmon Commission in effect on the effective date of this Act shall remain in full force until amended or repealed by the commissioner or commission, as provided under this Act. The provisions to Title 12, section 3856, subsections 1 and 2, as in effect on December 31, 1978, shall become regulations of the commissioner under Title 12, section 6541, until amended or repealed by the commissioner. The provisions of Title 12, sections 4212 and 4213 as in effect on December 31, 1978, shall also become regulations of the commissioner until amended or repealed by the commissioner.

Sec. 7. Effective date. This Act shall become effective January 1, 1979.