

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1399

H.P. 1001

House of Representatives, February 18, 1999

An Act to Simplify the Licensing of Seafood Dealers in the State.

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative VOLENIK of Brooklin.

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

2
4 **Sec. 1.** 12 MRSA §6301, sub-§2, ¶¶E to L and O, as enacted by PL 1995, c. 492, §3 and affected by §5, are repealed.

6 **Sec. 2.** 12 MRSA §6302, sub-§4, ¶B, as enacted by PL 1997, c. 544, §1, is amended to read:

8
10 B. Lobster parts or meat, if they are purchased from a wholesale seafood license holder ~~who possesses a lobster meat permit under section 6857~~ or if they have been lawfully imported.

12
14 **Sec. 3.** 12 MRSA §6431, sub-§4, as amended by PL 1985, c. 129, §1, is further amended to read:

16 **4. Mutilation.** It ~~shall be~~ is unlawful to possess any lobster, or part thereof, ~~which that~~ is mutilated in a manner ~~which that~~ that makes accurate measurement impossible, except that any person, firm or corporation may possess lobster tails removed under section ~~6862~~ 6865.

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20
22 **Sec. 4.** 12 MRSA §6851, as amended by PL 1997, c. 19, §§8 and 9, is repealed.

24
26 **Sec. 5.** 12 MRSA §§6852 and 6853, as amended by PL 1991, c. 591, Pt. T, §15, are repealed.

28 **Sec. 6.** 12 MRSA §6853-A is enacted to read:

30 §6853-A. Seafood sales license

32 1. License required. A person may not engage in the activities authorized by a license under this section without a current seafood sales license or other license issued under this Part authorizing the activities.

34 2. Licensed activities. In the wholesale or retail trade, the holder of a seafood sales license may:

36 A. Within or beyond the State limits, buy, sell, process, ship or transport any marine species or its parts, except lobsters;

38 B. Within or beyond the State limits, buy, sell, shuck, pack, ship or, within the State limits, transport fresh or frozen shellfish, except lobsters, to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856;

2 C. Buy, sell, process, ship or, within State limits,
3 transport crayfish, subject to the provisions of section
4 6861-A;

5 D. Within the State limits, buy sell, process, ship or
6 transport lobsters, lobster meat or lobster parts, provided
7 the lobsters, lobster meat or lobster parts are processed in
8 accordance with section 6865 or have been lawfully imported;
9 and

10 E. Serve:

11 (1) Shellstock or lobsters;

12 (2) Shucked shellfish, if they are bought from a
13 seafood sales license holder certified under section
14 6856;

15 (3) Lobster parts or meat, if they are processed in
16 accordance with section 6865 or have been lawfully
17 obtained; and

18 (4) Crayfish, subject to the provisions of section
19 6861-A.

20 3. Exceptions. This section does not apply to smoked
21 herring or alewives.

22 4. License limited. A license under this section
23 authorizes the licensed activities at one establishment and from
24 up to 4 supplemental vehicles. It does not authorize any
25 activities on a vessel rigged to fish, except that it authorizes
26 the sale and transportation of scallops from any vessel.

27 5. Fee. The fee for a seafood sales license is \$400.

28 Sec. 7. 12 MRSA §6854, sub-§2, as amended by PL 1979, c. 127,
29 §88, is further amended to read:

30 2. License activity. The holder of a lobster transportation
31 license may buy from a licensed-wholesale seafood dealer sales
32 license holder and transport beyond the state limits lobsters or
33 their parts or meat. Lobster parts or meat may only be
34 transported if they are properly-permitted-under processed in
35 accordance with section 6857 6865 or lawfully imported.

36 Sec. 8. 12 MRSA §6855, sub-§3, as enacted by PL 1977, c. 661,
37 §5, is amended to read:

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

7 **Sec. 9. 12 MRSA §6856, sub-§§1 and 2,** as enacted by PL 1977, c.
8 661, §5, are amended to read:

9 **1. Certified activities.** A shellfish certificate
10 authorizes a wholesale seafood sales license holder or a
11 shellfish transportation license holder to undertake the
12 activities expressly authorized therein, which may include buying
13 and selling, shipping, transporting, shucking or other processing
14 of shellfish. A wholesale seafood sales license or shellfish
15 transportation license shall ~~is~~ also be necessary to undertake
16 the activities authorized under those licenses.

17 **2. Express authorizations.** The commissioner shall
18 expressly state the authorized activities on each shellfish
19 certificate. The activities authorized shall ~~must~~ be sufficient
20 to allow the holder to carry out his wholesale or transportation
21 operations, provided they may--~~be~~ are limited to the extent
22 required to protect the public health.
23

24 **Sec. 10. 12 MRSA §6856, sub-§3,** as amended by PL 1989, c. 770,
25 §1, is further amended to read:

26 **3. Depuration certificate.** The commissioner may issue a
27 depuration certificate to a wholesale seafood sales license
28 holder that authorizes the holder to take shellfish from closed
29 areas for depuration, processing and transportation. The
30 certificate must establish limits on harvesting, depurating and
31 processing methods and any other provisions required to assure
32 the public safety. The commissioner may permit depuration of
33 shellfish not contaminated by paralytic shellfish poisoning if it
34 is established that the water used during depuration will not
35 contaminate the shellfish with paralytic shellfish poisoning. To
36 ensure consistency with municipal shellfish conservation
37 programs, established pursuant to section 6671, the commissioner
38 must consult with a municipal shellfish conservation committee
39 before taking action to open an area within that municipality for
40 depuration digging. The commissioner may continue to issue
41 controlled purification certificates for areas that were
42 restricted to depuration digging on September 1, 1989, without
43 consulting municipalities.
44

45 **Sec. 11. 12 MRSA §6857,** as amended by PL 1991, c. 591, Pt. T,
46 §19, is repealed.
47

2 **Sec. 12. 12 MRSA §6858**, as amended by PL 1991, c. 390, §9, is
repealed.

4 **Sec. 13. 12 MRSA §6861-A, sub-§4**, as enacted by PL 1989, c.
348, §13, is amended to read:

6 **4. Records.** Any person, licensed under section ~~6851--or~~
8 ~~6852~~ **6853-A** who deals in crayfish, shall make records available
to a marine patrol officer on demand.

10 **Sec. 14. 12 MRSA §6862**, as amended by PL 1997, c. 84, §1, is
12 repealed.

14 **Sec. 15. 12 MRSA §6864**, as enacted by PL 1995, c. 536, Pt. A,
§10 and affected by §13, is repealed.

16 **Sec. 16. 12 MRSA §6865** is enacted to read:

18 **§6865. Removing lobster meat from shell**

20 **1. Prohibition.** It is unlawful for a person to remove
22 lobster meat from the shell or to process lobster meat except as
24 provided in this section.

26 **2. Seafood sales license holder.** A person who holds a
28 seafood sales license, or an employee of that person, may remove
lobster meat and tail meat from the shell for sale and process
lobster meat, lobster tails and portions of lobster tails if:

30 A. The lobster meat and lobster tail meat are removed at
32 the establishment named in the license;

34 B. The lobster meat, lobster tails and lobster tail
portions come from legal-sized lobsters; and

36 C. All containers in which lobster meat, lobster tails and
38 lobster tail portions are packed to be sold, shipped or
40 transported are clearly labeled with the name, address and
42 permit number of the packer. The labeling requirements of
this paragraph do not apply to processed stews, pies,
salads, newburgs or chowders that contain lobster tail
sections.

44 **3. Hotels and restaurants.** If the establishment named in a
46 seafood sales license is a hotel or restaurant, the license
48 holder, or an employee of the license holder, may not remove
lobster meat or tail meat from the shell or cut up the lobster
meat or tail meat unless the lobster meat or tail meat:

2 A. Is removed at the establishment named in the license
3 immediately before and for the purpose of being served to
4 customers; and

5 B. Comes from legal-sized lobsters.

6
7 4. Hotels and restaurants; customers. A customer served a
8 lobster at a hotel or restaurant may remove lobster meat and tail
9 meat from the shell for consumption at that hotel or restaurant.

10 5. Personal use. A person may remove lobster meat and tail
11 meat from the shell and cut up tail sections of lobster at that
12 person's home for the purpose of personal use.

13 6. Exceptions. This section does not apply to:

14 A. Hermetically sealed containers; and

15 B. Frozen or canned lobster meat if the person possessing
16 it:

17 (1) Is not the first person offering it for sale in
18 this State and maintains records indicating from whom
19 the lobster meat was purchased; and

20 (2) Did not pack the container or know that it
21 contained lobster meat in violation of this section.

22 7. Rules. The commissioner may adopt rules to implement
23 this section. The commissioner shall specify by rule the legal
24 size for a lobster meat tail section to conform with the minimum
25 legal lobster size in effect. Rules adopted pursuant to this
26 subsection are routine technical rules pursuant to Title 5,
27 chapter 375, subchapter II-A.

28 8. Prima facie evidence. The following prima facie
29 evidence conditions apply:

30 A. If any lobster meat that has been removed from the shell
31 is found on the premises of any establishment that is
32 engaged in the selling, serving, processing or transporting
33 of food in any form for human consumption, it is prima facie
34 evidence that the meat was removed for sale;

35 B. If cut-up tail sections of lobster meat are found under
36 refrigeration in a hotel or restaurant, and they are unmixed
37 with any other food, it is prima facie evidence that the
38 tail sections were not immediately to be served to customers
39 as provided in this section; and

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2 C. If cut-up tail sections of lobster meat are found at an
4 establishment that is engaged in selling, processing or
6 transporting food in any manner for human consumption, it is
8 prima facie evidence that the same were not cut up for the
10 purpose of personal use.

12 9. Penalty. The penalty for a violation of this section is
14 the same as that provided under section 6431, subsection 7.

16 **Sec. 17. 36 MRSA §4714**, as enacted by PL 1987, c. 513, §10,
18 is amended to read:

20 **36 § 4714. Certificate required for license**

22 The Department of Marine Resources shall ~~shall~~ may not issue or
24 renew a wholesale seafood license as set forth in Title 12,
26 section ~~6851~~ 6853-A; a shellfish transportation license as set
28 forth in Title 12, section 6855; or a shellfish certificate as
set forth in Title 12, section 6856, for the purpose of dealing
in mahogany quahogs without proof of certification by the State
Tax Assessor, as required by this chapter. The Department of
Marine Resources shall make available to the State Tax Assessor
any licensing information necessary to implement this section.

30 **SUMMARY**

32 This bill consolidates into one license all wholesale and
34 retail seafood activities. It repeals the requirement that
separate permits be obtained for processing lobster meat, lobster
tails and lobster tail parts. It retains the current limitations
on how lobster meat, lobster tails and lobster tail parts may be
processed, but it consolidates those provisions from 3 sections
of law into one section.