

MAINE STATE LEGISLATURE

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EIGHTIETH LEGISLATURE

SENATE

NO. 98

In Senate, March 3, 1921.

Referred to Committee on Sea and Shore Fisheries and 600 copies ordered printed. Sent down for concurrence.

L. ERNEST THORNTON, Secretary.

Presented by Senator Thompson of Knox.

STATE OF MAINE

**IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-ONE**

AN ACT Regulating the Taking, Selling, Packing and Canning of Clams, Authorizing the Survey of Clam Bottoms and the Leasing Thereof by the State, Prohibiting the Taking of Clams from Leased Areas, Except by the Lessee, Authorizing the Selection and Reservation of Areas for Experimentation in Clam Conservation and Propagation, Establishing the Boundaries of Polluted Areas from which the Taking of Clams is Prohibited, and the Repeal of All Existing Laws Inconsistent Therewith.

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

Section 1. Records. There shall be kept at the office of the sea and shore fisheries commission, books of records

3 in which shall be recorded all leases, permits and other
4 conveyances of clam bottoms or land to be used for plant-
5 ing and cultivation of clams in accordance with this act.
6 A set of clear and simple forms, for all leases, permits and
7 conveyances of any kind, shall be prepared by the director
8 of sea and shore fisheries, with the advice of the attorney
9 general, and no title shall be vested in any lessee or trans-
10 fers of any interest or estate acquired under this act until
11 the conveyance or conveyances evidencing such leases or
12 transfers shall have been recorded in the office of the sea
13 and shore fisheries at Rockland.

Sect. 2. Surveys. The board of sea and shore fisheries
2 commissioners shall as soon as practicable after the passage
3 of this act, cause to be made a true and accurate survey of
4 the clam bottoms of the state of Maine, said survey to be
5 made with reference to fixed and permanent objects on
6 the adjoining shore and banks, giving courses and distances,
7 to be fully described and set forth in a written report. A
8 true and accurate delineation of the survey shall be made
9 on copies of published maps and charts of the United States
10 coast and geodetic survey, which said copies shall be kept
11 on file in the office of the sea and shore fisheries commis-
12 sion. Said survey shall be made by a competent hydro-
13 graphic engineer, employed by and acting under the direc-
14 tion and control of the board of commissioners of sea and
15 shore fisheries.

Sect. 3. Application fees. Any person who may desire
2 to plant and cultivate clams under the provisions of this
3 act, shall file with the director of sea and shore fisheries,
4 an application on the form furnished by the director, the
5 applicant who must be a resident of the state of Maine,
6 or riparian abuttor, shall indicate plainly the location of
7 the clam bottoms, and the number of acres he desires to
8 lease, also giving the post office address of the riparian
9 abuttor. A fee of five dollars shall be paid by the appli-
10 cant to the director of sea and shore fisheries at the time
11 of filing the application, which fee shall be returned to the
12 applicant if for any reason his application shall be declined.
13 When application has been made to the director he shall
14 give immediate notice in writing by mail, or otherwise to
15 the riparian abuttor, stating the name of applicant with the
16 number of acres of clam bottoms desired, at the expiration
17 of thirty days from the time said notice was given, if ripa-
18 rian abuttor fails to file an application according to the
19 provisions of this act, for adjoining clam bottoms, appli-
20 cations applying to this tract may be granted in order ap-
21 plication received. But if riparian abuttor shall file an
22 application for adjoining clam bottoms within thirty days
23 after notice of filing of first application, to him shall be
24 given the choice of location. The area of clam bottoms to
25 be leased by any person, firm or corporation shall not ex-
26 ceed five acres.

Sect. 4. Leases. It shall be the duty of the department
2 of sea and shore fisheries to lease in the name of the state
3 of Maine tracts or parcels of clam bottoms in the area to
4 be opened for clam culture, according to the provisions of
5 this act. It shall be the duty of the director of sea and
6 shore fisheries to require that the tracts so leased shall be
7 as nearly rectangular as possible. It shall be the duty of
8 the director to demand from each lessee payment of rent
9 each year in advance. Leases of such clam bottoms shall
10 be made only to residents of Maine or the riparian abutter.
11 The term of such leases shall be ten years and the annual
12 rent for first grade clam bottoms as set forth by the survey
13 shall be one dollar per acre for each of the first two years
14 of said term of ten years; two dollars per acre for the third
15 year; three dollars per acre for the fourth year; and four
16 dollars per acre for the remainder of the term. The depart-
17 ment of sea and shore fisheries may lease at a rental price
18 which, in the judgment of the commission is a proper one
19 and commensurate with the value of the land so leased, any
20 land subject to the provisions of this act, which by the re-
21 port of the survey is below first grade clam bottoms; pro-
22 vided, however, that no land shall be leased at a less price
23 than twenty-five cents (25c) per acre, and the land so leased
24 shall be subject to all other provisions of this act. If any
25 part of the rent reserved under such leases shall remain
26 unpaid for more than sixty days after the same becomes
27 due, such lease or leases may at the option of the said di-

28 rector be declared void, and in that event the land shall
29 revert to the state and may be leased again in accordance
30 with the provisions of this act. The said commission may
31 at the request of any lessee, if it shall appear equitable so
32 to do, cancel his lease as to the whole or part of the lands
33 leased.

Sect. 5. Issuance of lease. Upon payment by the appli-
2 cant of the first yearly rental, as determined by the number
3 of acres declared in the application, the director of sea and
4 shore fisheries shall issue a lease stating the number of
5 acres with marks and bounds, and a concise but clear de-
6 scription of the land applied for as set forth in the appli-
7 cation, and upon execution of the lease the said director
8 shall have said lease duly recorded in a book or books to
9 be known as "The Register of Titles to Clam Bottoms."
10 The payment of the proper fees due for the application, and
11 recording in the register required by this section to be kept
12 shall constitute between the state and applicant the relation
13 of landlord and tenant for the term of ten years from the
14 record of the lands so applied for as aforesaid.

Sect. 6. Leased areas. The area of clam bottoms leased
2 by the state for the purpose of clam cultivation shall not
3 exceed one-half the total area of clam bottoms situated with-
4 in the limits of each town, the location of said leased areas
5 shall be determined by the sea and shore fisheries com-
6 mission.

Sect. 7. Rights of the lessee. The relation of land-owner
2 and tenant stated in section five shall have all the incidents
3 attaching to that relation as the same exists under the laws
4 of Maine, excepting only in the following particulars.

First. Land leased under this act shall be used only for
2 the purpose of planting and cultivating clams.

Second. Residents of this state shall have the right to
2 fish upon all leased areas, providing they do not remove or
3 destroy clams thereon.

Third. No right shall exist to redeem or purchase any
2 land of the state so leased.

Fourth. In no way shall any of the provisions of this
2 act be so construed as to interfere with or prevent the
3 riparian abuttor from the taking of rockweed, fishing, erect-
4 ing abutments, piers, or fish weirs.

Sect. 8. Marking the leased area. The director of sea
2 and shore fisheries shall at once notify the lessee of the
3 record in the register required by section five, and the lessee
4 shall as soon thereafter as practicable, not exceeding thirty
5 days from receipt of notice, cause the ground designated
6 as leased to him to be plainly marked out by stakes or mon-
7 uments, under the direction of the said director. At least
8 four such stakes or monuments shall have the initials of
9 the lessee plainly marked upon them, and such stakes or
10 monuments shall be at all times during the existence of said
11 lease continued by the lessee or his legal representative.

Sect. 9. Lessee's title to clams. The lessee of any land
2 leased for the purpose of planting and cultivating clams shall
3 have exclusive ownership of the title to all clams planted
4 by him or existing on land leased.

Sect. 10. Lease void. The lessee of clam bottoms shall
2 as soon as practicable after the execution of the lease, plant
3 the leased area with seed clams as provided by this act.
4 If after investigation the sea and shore fisheries commis-
5 sion is convinced that the said lessee is not acting in good
6 faith, but is leasing the said clam bottoms for the purpose
7 to prevent the use of said leased area for the planting and
8 cultivation of clams, the said lease shall be void and the
9 director of sea and shore fisheries shall cancel said lease.

Sect. 11. Assignment of leases; restrictions. No assign-
2 ment or transfer of any interest acquired by this act shall
3 be valid for any purpose if made to a non-resident of this
4 state.

Sect. 12. Interference with lessee's clams or buoys; pen-
2 alties. Any person who shall wilfully and without author-
3 ity take or remove clams from any land leased under the
4 provisions of this act, or shall wilfully injure or interfere
5 with clams on such land in any manner, or injure the clams
6 within the stakes or monuments marking the same, shall
7 upon conviction thereof, for the first offence, be sentenced
8 to imprisonment in jail or in the state prison at Thomaston,
9 in the discretion of the court, for not less than three months
10 and not more than two years, and for the second, or any

11 subsequent offence, be sentenced to imprisonment in the
12 state prison at Thomaston for not less than two years, and
13 not more than five years.

Sect. 13. Trespassers taking clams on leased areas; pen-
2 alties. Any person who shall dig clams upon any land
3 leased under the provisions of this act without the consent
4 of the lessee or owner, upon conviction thereof, shall, for
5 the first offence be fined not less than fifty dollars, nor more
6 than two hundred dollars, in the discretion of the court,
7 be imprisoned in jail or in the state prison for not less than
8 three months or more than one year, or shall be both fined
9 and imprisoned, and for the second, or any subsequent of-
10 fence, shall be sentenced to imprisonment in the state prison
11 for not less than two years or more than five years.

Sect. 14. Certain depleted natural clam bottoms may be
2 reserved for experimental purposes; penalties. The director
3 of sea and shore fisheries is authorized to select and re-
4 serve for experiments in clam conservation and propaga-
5 tion such areas as are deemed necessary, said areas to be
6 located at different points on the coast of Maine, and to
7 transplant thereon seed clams or to cultivate seed clams, or
8 in any other feasible manner to develop methods of pro-
9 duction of clams, and the department of sea and shore fish-
10 eries shall improve, replenish or cultivate said experimental
11 areas in such manner and for such length of time as it may
12 determine. The said department shall have power to dis-
13 pose of the clams at any time, and manner, and upon any
14 terms which it may establish, the proceeds thereof to be

15 paid to the treasurer of the state, and placed to the credit
16 of the "sea and shore fisheries clam fund." Any persons
17 taking clams upon such experimental area without a permit
18 in writing from the said director shall be guilty of a mis-
19 demeanor, and upon conviction thereof shall for the first of-
20 fence be fined not less than fifty dollars, be imprisoned in
21 jail or in the state prison, in the discretion of the court,
22 for not less than three months or more than two years, and
23 for the second, or any subsequent offence, be sentenced to
24 imprisonment in the state prison for not less than two years
25 or more than five years.

Sect. 15. Marking reserved experimental areas. As soon
2 as practicable after location of reserved area is decided
3 upon the director of sea and shore fisheries shall cause the
4 ground taken for experimental purposes to be plainly marked
5 out by erecting at or above high water mark one or more
6 centrally located large signs, with the legend "state reserva-
7 tion," in dark blue letters on yellow ground, and shall also
8 erect at high water mark on each areal limit a sign with
9 the legend, "reservation limit."

Sect. 16. Interference with reservation signs prohibited.
2 Any person who shall in any way interfere with, remove
3 or deface any sign erected by the department of sea and
4 shore fisheries, on reserved experimental areas, shall upon
5 conviction in the discretion of the court, be sentenced to
6 state prison for a term of not less than one year or more
7 than three years.

Sect. 17. Culling clams. All clams taken from clam bottoms shall be culled on their natural beds as taken, and clams measuring less than two and one-half inches in length, measuring the long diameter of the shell, shall be replaced on said clam bottoms when taken, and it shall be unlawful for any person to take, buy, sell, or have in possession clams less than two and one-half inches measuring the long diameter of the shell. Whenever any warden, or other officer shall have reason to believe that this section has been violated with reference to the culling of clams, such warden or other officer shall with or without a warrant examine the cargo of any boat or vessel, enter any building or factory, market, peddler's vehicle, or any receptacle or place when they have reason to believe that clams of less than the legal size are to be found. If upon examination the said warden or other officer shall find that five per cent or more of clams found shall consist of clams that measure less than two and one-half inches measured the long diameter of the shells, the captain of the vessel or boat, or the person in charge of said vessel or boat, the owner or lessee of factory, building, vehicle or receptacle in which such clams of less than two and one-half inches measured the long diameter of the shell are found, shall be deemed to have violated this section, and upon conviction shall be fined not less than twenty-five or more than two hundred dollars, or confined in jail not less than thirty days nor more than six months, either or both. Clams taken under a violation of this act shall be confiscated and returned to their natural

29 beds and the vessel or boat on which said clams are found
30 shall be held as security for payment of said fine.

Sect. 18. Uncooked shucked clams. It shall be unlawful
2 to have in possession clams uncooked and shucked, for sale,
3 or for use in hotels, restaurants, markets, factories, ped-
4 dlers or others, the rims of which are less than two and
5 one-half inches in length, measured from its attachment to
6 the commonly named belly, to its junction with the shoulder.
7 Whenever the director of sea and shore fisheries or any of
8 his wardens shall have reason to believe that this section
9 has been violated the director or wardens shall with or with-
10 out a warrant enter such premises and examine said un-
11 cooked shucked clams. If said director or wardens shall
12 find that five per cent or more of said clam rims are less
13 than two and one-half inches, measured from their attach-
14 ment to the so-called belly to its junction with the shoulder,
15 the proprietor of the hotel, restaurant, market, factory, ped-
16 dler or others from whose possession said clams are taken
17 shall be deemed to have violated this section, and upon con-
18 viction shall be fined not less than twenty or more than fifty
19 dollars, or confined in jail not less than thirty days or more
20 than three months, or both. Said clams confiscated and given
21 to the worthy poor through the medium of the assessors of
22 the poor of the town or city in which violation occurred.

Sect. 19. Disposition of clams shucked for bait. It shall
2 be unlawful for any person or firm to have in possession
3 any shucked clams for sale, to be used for bait or for ship-
4 ment, any uncleaned shucked clams, those that are fresh,

5 the rims of which measure less than two and one-half inches
6 in length measuring from its attachment to the commonly
7 named belly, to its junction with the shoulder, or clams
8 that are salted, those that measure in length, measuring as
9 above. Whenever the director of sea and shore fisheries or
10 any of his wardens shall have reason to believe that this
11 section has been violated the director or wardens shall with
12 or without a warrant enter such suspected premises and ex-
13 amine such clams. If said director or wardens shall find
14 five per cent or more of said clam rims are less than the
15 above mentioned measurements, the person or firm from
16 whom the said clams are taken shall be deemed to have
17 violated this section, and upon conviction shall be fined not
18 less than twenty-five or more than one hundred dollars or
19 confined in jail not less than sixty days or more than six
20 months, either or both. Said clams to be confiscated and
21 taken to the nearest fishing ground and sown broadcast from
22 boat in motion, to serve as food for bottom fish.

Sect. 20. Measuring clams. No clams measuring less
2 than two and one-half inches in length, measuring the long
3 diameter of the shell, shall be canned. Whenever any warden
4 or other officer shall have reason to believe that this sec-
5 tion is being violated with reference to canning clams, such
6 warden or other officer with or without a warrant may
7 enter any such premises or boats where they have reason
8 to believe that clams of less than legal size may be found.
9 If upon examination the said warden or other officer shall
10 find that five per cent or more of clams found shall consist

11 of clams that measure less than legal length, the captain of
12 vessel or boat, or person in charge of said vessel or boat,
13 the owner, lessee or person in charge of factory, building,
14 receptacle or vehicle in which such clams of less than legal
15 length are found shall be deemed to have violated this sec-
16 tion, and upon conviction shall be fined not less than fifty
17 or more than three hundred dollars, or confined in jail not
18 less than sixty days or more than one year, either or both.
19 Clams taken under this act shall be confiscated, and if in
20 the shell be returned to their natural beds, if shucked and
21 fit for table use shall be given to the worthy poor, as provided
22 for in section eighteen, if shucked and not fit for table use
23 shall be disposed of as provided for in section nineteen.

Sect. 21. Illegal clams defined. Any clam measuring less
2 than two and one-half inches in length, measuring the long
3 diameter of the shell, shall be deemed illegal. Any shucked
4 clams the rims of which are less than two and one-half
5 inches, measured from its attachment to the so-called belly,
6 to its junction with the shoulder, shall be deemed illegal.
7 Mutilated clam rims shall be prima facia evidence that they
8 are illegal.

Sect. 22. Permit for taking seed clams. The director of
2 sea and shore fisheries upon definite written application
3 from the lessee of any area of clam bottoms, shall issue a
4 permit to said lessee to take the number of bushels of seed
5 clams required to plant said lessee's area of clam bottoms,
6 from the heavy set ^a of small clams near said lessee's area.
7 Any person who shall take clams of less than legal size

8 under such permit for any purpose other than for planting
9 areas leased for the purpose of cultivation, shall be deemed
10 to have violated this section, and upon conviction shall be
11 punished as provided for in section seventeen.

Sect. 23. License for taking clams. Any resident of this
2 state desiring to take clams, for sale, or canning purposes,
3 from any clam bottoms of this state, shall first obtain by
4 application to the director of sea and shore fisheries at Rock-
5 land, a fisherman's license, and such license shall have ef-
6 fect from the first day of September in the year in which
7 it may have been obtained, to the fifteenth day of May, in-
8 clusive, next succeeding. Blank applications shall be fur-
9 nished by the director of sea and shore fisheries to applicant
10 who shall make oath or affirmation before a clerk or justice
11 of peace, authorized to administer oaths; that the facts set
12 forth therein are strictly true, and that he will comply with
13 and obey all laws of this state regulating the taking of clams.
14 The director of sea and shore fisheries upon the receipt of
15 the application properly attested, upon the payment of one
16 dollar license fee, shall issue a fisherman's license to the
17 person applying for same.

Sect. 24. Penalty. If any person shall take clams for
2 sale or canning purposes, without first having obtained a
3 license as required by the preceding sections of this chap-
4 ter, shall upon conviction be fined not less than twenty nor
5 more than one hundred dollars, and stand committed to
6 the county jail until all costs and fines are paid. All per-

7 sons taking clams under the provisions of this act shall ex-
8 hibit their authority for so doing when required by any
9 warden or other officers of the state.

Sect. 25. Packer's license. It shall be unlawful for any
2 person, firm or corporation to engage in the business of
3 packing or canning clams without first procuring a license
4 to engage in such business by application to the director of
5 sea and shore fisheries, who upon request shall furnish ap-
6 plication blank to applicant, who after he or they have prop-
7 erly filled in the application, shall make oath or affirmation
8 to same before a justice of peace or person authorized to
9 administer oaths; that the facts set forth therein are strictly
10 true, and that he or they will comply with and obey all the
11 laws of this state relating to packing and canning of clams.
12 The director upon receipt of application properly filled in
13 and attested, upon the payment of twenty-five dollars license
14 fee, shall issue a license to the person, firm or corporation
15 applying for same. Said license shall take effect from the
16 first day of September in the year in which it may have
17 been obtained, to the fifteenth day of May inclusive, next
18 succeeding.

Sect. 26. Penalty. If any person, firm or corporation shall
2 engage or attempt to engage in the business of packing or
3 canning clams without first obtaining a license, as provided
4 in the foregoing section, he or they shall be deemed guilty
5 of a misdemeanor and shall be fined not less than two hun-
6 dred dollars or more than five hundred dollars for each of-
7 fense.

Sect. 27. Water polluted areas reserved. It shall be the
2 duty of the director of sea and shore fisheries to investi-
3 gate and have examined along the entire coast of Maine all
4 sources of water pollution and sewage from cities, decaying
5 animal matter, such as refuse and water containing poison-
6 ous substances from factories, packing, curing and canning
7 establishments, and limit the taking of clams for market or
8 consumption, outside an area, the boundaries of which shall
9 be determined and established by bacterial examination of
10 the clams within the limits of said area, said boundaries to
11 extend beyond the point where any infected shell fish are
12 found. All such areas shall be plainly marked by warning
13 signs, stakes, monuments and buoys. It shall be deemed
14 unlawful for any person to take clams from said area; or
15 remove, deface or interfere in any way with the signs, stakes,
16 monuments or buoys, erected by the state to mark the bounds
17 of said areas, and upon conviction shall be sentenced to
18 state prison for not less than one or more than three years.

Sect. 28. Clams taken from polluted areas. By order of,
2 or written permit from the director of sea and shore fish-
3 eries, clams may be taken from any polluted area for use
4 only as seed for cultivating clam bottoms, when said bot-
5 toms are located where there is a sufficient current, upon
6 the said order or permit clams from polluted area shall be
7 used for seed only, when acceptable assurance has been given
8 said director that such clam seed shall remain undisturbed
9 after being sown for a stated number of weeks and then
10 not taken to market until a bacteriological examination has

11 been made, and said clams declared free from bacterial
12 infection by the department of sea and shore fisheries. Any
13 person, firm or corporation violating the provisions of this
14 section shall be deemed guilty of a misdemeanor, and upon
15 conviction shall be sentenced to state prison for not less
16 than one or more than three years.

Sect. 29. Size of bait barrels. In all contracts relating
2 to the sale of clam bait, fresh or salt, by the barrel, and
3 clam bait barrels, such barrel shall be twenty-five and one-
4 fourth inches long and fifteen and one-half inches head di-
5 ameter, outside measure. Whoever violates this provision
6 shall be liable to a penalty of fifty dollars for each offence.

Sect. 30. Close time on clams. The canning, packing and
2 barreling of clams, either fresh or in salt, and the digging
3 of clams for the purpose of canning, packing, or barreling
4 between the fifteenth day of May and the first day of Sep-
5 tember following, is hereby prohibited under a penalty of
6 five dollars a bushel in the shell.

Sect. 31. Transportation of clams regulated. The ship-
2 ping or transportation of clams in any manner beyond the
3 limits of the state, between the fifteenth day of May and
4 the first day of September following, is hereby prohibited
5 under a penalty of five dollars for each bushel so shipped or
6 transported.

Sect. 32. Jurisdiction of offences. In all prosecutions un-
2 der this chapter municipal and police judges and trial jus-
3 tices have by complaint original and concurrent jurisdiction
4 with the supreme judicial and superior courts.

Sect. 33. Fines and penalties, how recovered; settlement
2 of offences; director shall report to treasurer of state. All
3 fines and penalties under this chapter may be recovered by
4 complaint, indictment or action of debt made or brought
5 in the county where the offence was committed or in an
6 adjoining county. The action of debt shall be brought in
7 the name of the director of sea and shore fisheries, and all
8 offenses under, or violations of, the provisions of this stat-
9 ute, may be settled by the director of sea and shore fish-
10 eries, upon such terms and conditions as he deems advis-
11 able. All fines, penalties and collections under this chap-
12 ter, except when otherwise expressly provided, shall forth-
13 with be paid to the director of sea and shore fisheries and
14 by him paid to the treasurer of the state to be added to and
15 made a part of the appropriation for the sea and shore fish-
16 eries clam fund. And the director shall report to the treasur-
17 er of state the amount of each fine, penalty and collection
18 itemized and the name of the party paying the same, which
19 shall be kept on record in the treasurer's office.

Sect. 34. Disposition of license fees, and rentals. All
2 moneys received by the director of sea and shore fisheries
3 under the provisions of this chapter, shall by him be paid to
4 the treasurer of state to be added to and made a part of
5 the appropriation for the department of sea and shore fish-
6 eries clam fund.

Sect. 35. All laws relating to the regulation of the clam
2 industry existing prior to the passage of this act are hereby
3 repealed.