

# MAINE STATE LEGISLATURE

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NEW DRAFT

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E I G H T Y - S I X T H   L E G I S L A T U R E

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Legislative Document

No. 1014

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S. P. 634

In Senate, March 22, 1933.

Reported by Senator Blaisdell of Hancock from Committee on Sea and Shore Fisheries and laid on table to be printed under Joint Rules.

ROYDEN V. BROWN, Secretary.

New Draft of S. P. 341

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

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AN ACT to Protect the Propagation and Cultivation of Quahaugs.

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

**Sec. 1. General provisions.** Upon application in writing, the commissioner of sea and shore fisheries shall grant a written license to any owner of tide flats, other than those used as public bathing beaches, for the purpose of cultivating and propagating quahaugs upon said flats, not in excess of 5 acres between high and low water mark within the limits to be specified in the license for a term of 10 years. All such licenses shall be subject to such rules and regulations as are approved by the commissioner of sea and shore fisheries, but the same may not be assigned, except as hereinafter provided.

**Sec. 2. Notice of hearing for granting license.** No license shall be granted if the exercise thereof would materially obstruct navigable water. No license shall be granted until after a public hearing held in the town where said flats are located, due notice of which has been posted in 3 or more public places and published in a newspaper, if there be any newspaper published in the city or town in which the premises are situated, by the commissioner of sea and shore fisheries, at least 10 days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area and description

of the flats where the cultivation and propagation of quahaugs is to be carried on.

**Sec. 3. Establishment and maintenance of metes and bounds for territory under license; penalty for removal or destruction of bounds.** The licensee, upon receiving his license, shall cause the area so designated in the license granted to be plainly marked either by stakes, ranges, or monuments, which shall be maintained by him during the time of the license. Failure to place or maintain the same shall be sufficient cause for revocation of license by the commissioner of sea and shore fisheries. Any person who moves, destroys, mutilates or changes the position of stakes, ranges, or monuments, when the same have been properly placed and maintained in accord with the license and in designation of the area described in the license, without the consent of the licensee, shall be punished for the 1st offense by a fine of not more than \$100, and for a second offense by a fine of not more than \$200.

**Sec. 4. Cost of license and disposal of fees.** A license granted hereunder shall describe by metes and bounds, the flats to which the license is applicable, and shall have no force until it is recorded with the clerk of the city or town in which said flats are located, which record shall be open to public inspection. The licensee shall pay, annually, to the commissioner of sea and shore fisheries, a fee of \$2 per acre for the license granted. All fees received under this act by the commissioner of sea and shore fisheries and all money received by him under this act shall be paid by him to the treasurer of state and the same is hereby appropriated for carrying out the provisions of this act.

**Sec. 5. Penalty for trespassing on licensed territory.** No person except the licensee or his agents shall dig or take quahaugs or quahaug seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees, shall, for the purpose described in the license, have the exclusive use of the territory described therein, during the term of the license, and may during said term take any shell-fish or worms therefrom. Any person who without the consent of the licensee, digs, takes, or removes any quahaugs or quahaug seeds or other shellfish or worms from or within the territory covered by the license shall be liable in an action of tort to pay to the licensee treble damages. Any person, except the licensee or his agents, who takes, digs, destroys, or removes quahaugs, quahaug seed, other shell-fish or worms from such a territory covered by a license, as above described, shall in addition be punished by a fine of \$20 for each offense.

**Sec. 6. Provision for revocation of license.** The commissioner of sea and shore fisheries shall have the power to revoke or suspend any license

issued under the provisions of this act whenever it is determined by him that the licensee is not actually occupying and using in good faith the territory covered by the license for the purpose of cultivating and propagating quahaugs in said territory. Before revoking or suspending any license the commissioner of sea and shore fisheries shall give written notice to the licensee affected, stating that he contemplates the revocation or suspension of the same and giving his reasons therefor. Such notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of the hearing the licensee may by himself or counsel present such evidence to the said commissioner as he deem fit and after hearing all the testimony the said commissioner shall decide the question in such manner as appears to him just and right. The place of such hearing shall be held in the town where the territory under consideration is located. Any licensee who feels aggrieved or dissatisfied with the decision of the said commissioner may appeal from said decision within 10 days to the superior court in the county where the licensee resides.

**Sec. 7. R. S., c. 50, § 66, amended.** Section 66 of chapter 50 of the revised statutes is hereby amended to read as follows:

**'Sec. 66. Planting of oysters, quahaugs, etc., by inhabitants of state, exclusive rights; penalty for trespassing.** Any inhabitant of the state, with consent of the adjacent riparian proprietors, may plant oysters and quahaugs below low water mark in any navigable waters, in places where there is no natural oyster bed; enclose such ground with stakes, set at suitable distances, extending at least 2 feet above high water mark, but so as not to obstruct the free navigation of such waters; and have the exclusive right of taking such oysters and quahaugs. Whoever trespasses on such enclosure or injures such oyster beds **where oysters or quahaugs have been planted** is liable in an action of trespass for all damages; and if he takes any oysters, quahaugs, or any shell-fish ~~therein~~ without the consent of the owner, he shall forfeit not less than \$20 nor more than \$50 or be imprisoned not exceeding 3 months.'