

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 644

S. P. 414

In Senate, February 11, 1941.

Referred to Committee on Sea and Shore Fisheries. Sent up for concurrence and 650 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Stilphen of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Revising the Regulation of the Clamming Industry.

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

Sec. 1. Declaration of policy. It shall be unlawful to dig or take clams, quahaugs or mussels from the beds or flats along the shores of the tidal regions within the jurisdiction of this state at such times, or in such manner or under such conditions that the conservation of such clams, quahaugs or mussels shall be endangered. The commissioner of sea and shore fisheries is hereby designated as the exclusive agent of the state to determine at what times and in what manner and under what conditions the taking or digging of clams, quahaugs and mussels would endanger their conservation. As such agent the commissioner shall have full power to make rulings closing any of such beds or flats to diggers for such period or periods as to him seems advisable or for an indeterminate period, whenever, in his opinion, such act will be for the best interest of the conservation of such clams, quahaugs or mussels. The commissioner shall give notice of any such ruling by posting notices in at least 2 conspicuous places within the town where such area is located giving full information regarding the extent of the area affected, the period or periods of time involved and any other necessary information. At least one of such notices shall be posted

in the area affected. Any such ruling shall be deemed to take effect as of the time of such posting. The commissioner may alter, revoke or modify such rulings whenever it seems advisable to him to do so by posting notices as hereinafter provided. Any person or persons aggrieved by the making, alteration, revocation or modification of such a ruling or by its expiration as fixed by the commissioner, shall have the right, at any time within 10 days after the effective date thereof, to appeal to the governor and council whose judgment shall be final and binding on all parties.

Sec. 2. Closing of certain flats. In furtherance of the best interests of the clamming industry in this state, the commissioner shall, in the manner as provided in the preceding section, make rulings closing for digging purposes any areas which in his opinion are subject to contamination or pollution. In so doing he shall have due regard for the public health laws of the state of Maine and of the United States.

Sec. 3. Towns may regulate taking of clams. Any town may at its annual meeting, promulgate rules providing for the granting of permits for the digging or taking of clams, quahaugs or mussels from such areas within the limits of said town as have not been closed by the commissioner under the provisions of the 2 preceding sections, and unless so regulated by vote, residents of the town may so dig or take from such unclosed areas without written permit.

Sec. 4. Penalty. Whoever digs or takes any clams, quahaugs or mussels from areas closed by the commissioner under the provisions of sections 1 and 2 of this act or contrary to municipal regulations authorized by section 3, shall, for each offense, be punished by a fine of not more than \$10 or by imprisonment for not more than 30 days.

Sec. 5. Digging of soft-shelled clams. No person, firm or corporation shall dig or have in possession, or offer, or expose for sale soft-shelled clams less than 2 inches in the longest diameter, to the amount of more than 15% of any batch in whole or in part. This tolerance of 15% to be determined by numerical count, or by measure of not more than 4 pecks, taken at random from various parts of said lot or batch. Provided, however, that the commissioner of sea and shore fisheries in his discretion may, however, issue permits to persons who wish to take clam seed for the purpose of propagating clams. Any person, firm or corporation who takes or has in his possession or offers for sale soft-shelled clams in violation of any of the provisions herein stated, or who neglects to comply with the regulations shall be punished by a fine of not less than \$10, nor more than

\$100 for the first offense, and by a fine of not less than \$10, nor more than \$50 for each subsequent offense.

Sec. 6. Propagation of clams, etc., by state. The commissioner may, from time to time, as his judgment may determine, select proper locations below low-water mark on the coast of Maine for the propagation of oysters and quahaugs, and between high and low-water mark for the propagation of clams and mussels, cause the same to be properly stocked with oysters, quahaugs, clams and mussels and erect proper and sufficient marks or bounds to indicate the locations thus made. But this section shall not be construed to authorize the taking of flats, which by the colonial ordinance of 1641 are possessed by the adjacent upland owners, without the consent of such owners and the payment of the proper damages to such owners for such taking. No person shall dig, fish for, take, or carry away any oysters, quahaugs, or clams or mussels, within any location so selected, for a period of 3 years after such location was stocked as aforesaid, without the permission in writing of the commissioner; nor shall any person wilfully injure, deface, destroy, or remove any such bounds or marks, nor tie or fasten any boat or vessel thereto. Whoever violates any provision of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days, or by both such fine and imprisonment.

Sec. 7. Licenses for propagation of clams, etc. Upon application in writing, the commissioner of sea and shore fisheries, may grant, if in his opinion the same is in best interests of the state, a written license to any owner of tide flats, other than those used as public bathing beaches, for the purpose of cultivating and propagating clams, quahaugs and mussels upon not more than 5 acres of said flats 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. The same may not be assigned, except as hereinafter provided. No license shall be granted if the exercise thereof would materially obstruct navigable water.

Sec. 7-A. Licensee to mark lot. 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. 7-B. Recording of license; fee. 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. 7-C. Protection of licensed flats. No person except the licensee or his agents shall dig or take quahaugs, clams or mussels, or their 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 shellfish or worms therefrom. Any person who without the consent of the licensee, digs, takes, or removes any clams, quahaugs or mussels, or their seed 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 clams, quahaugs or mussels, or their seed, other shellfish 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. 7-D. Suspension of licenses. 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 clams, quahaugs or mussels 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 him-

self or counsel, present such evidence to the said commissioner as he deems fit and after hearing all the testimony the same commissioner shall decide the question in such manner as appears to him just and right. The 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 ten days to the superior court in the county where the licensee resides.

Sec. 8. Repealing clause. All public and private laws and all resolves heretofore passed relating to the opening and closing of clam flats or beds within the jurisdiction of this state and the digging, possession, transportation or sale of clams therefrom, are hereby repealed.