

MAINE STATE LEGISLATURE

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NINETY-FOURTH LEGISLATURE

Legislative Document

No. 143

S. P. 122

In Senate, January 26, 1949

Referred to the Committee on Sea and Shore Fisheries, sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Sleeper of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT to Clarify and Simplify the Sea and Shore Fisheries Law.

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

Sec. 1. R. S., c. 34, § 5, amended. Section 5 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

Sec. 5. Rules and regulations. Whenever any existing conditions endanger the conservation of fish, shellfish, lobsters, **crabs, shrimp** or marine worms **in any coastal waters or flats of the state**, the commissioner, with the advice and approval of the advisory council, shall make such rules and regulations as he may deem necessary, providing for the times, number, weight and manner in which such fish, shellfish, lobsters, **crabs, shrimp** or marine worms may be taken from such waters or flats, in the manner hereinafter provided.

Petitions stating the conditions endangering the conservation of such fish, shellfish, lobsters, **crabs, shrimp** or marine worms, and the regulations which are desired as a remedy, may be addressed to the commissioner by a majority of the municipal officers or 25 citizens of the municipality in which the waters exist, or of any town adjacent to the waters or flats affected; or if the waters or flats are in unorganized territory, by a majority of the county commissioners of the county in which said waters or flats

exist. Such petitions shall be filed in the office of the commissioner before the 1st day of September of each year.

After receipt of such a petition, except when in the opinion of the commissioner an emergency exists, hearing shall be held in a place near where the waters or flats lie during the period from September 15th to December 1st, inclusive, of the year in which said petition has been filed, before the commissioner or such subordinate officer of the department as the commissioner may designate, at a date and place to be designated by the commissioner.

Notice of the hearings to be held and the time and place thereof shall be by publication once a week for 2 successive weeks prior to the hearing in a newspaper published in the county where said hearing is to be held, and if no paper is published there, in a newspaper having state-wide circulation.

After hearing pursuant to the petitions filed, the commissioner, with the advice and approval of the advisory council, shall make such regulations as may be deemed remedial of any danger to such conservation proven to exist at the time of said hearing, such regulations to become effective on January 1st of the year next following the date of the petition. The commissioner shall cause the regulations to be reduced to writing, and publish the same once ~~a week for 2 successive weeks~~ in a newspaper published in the county where the waters or flats are situated and which are affected thereby, or if no paper is published there, in a newspaper having state-wide circulation, the publication being prior to January 1st, following the date of the petition.

If an unusually large concentration of fishermen or diggers should occur on any of the coastal waters or flats in this state, so that the supply of fish, shellfish, lobsters, **crabs, shrimp** or marine worms on those waters or flats might be depleted, or when for any reason the conservation of these species appears to be endangered, the commissioner may declare an emergency and order a hearing held at a time and place to be designated by him, and shall cause notice thereof to be published at least 5 days prior to the hearing in a newspaper published in the county where the waters or flats are situated, and if no newspaper is published in that county, then the notice shall appear in a newspaper having state-wide circulation. After the hearing, the commissioner may promulgate regulations providing for the times, number, weight and manner in which such fish, shellfish, lobsters, **crabs, shrimp** or marine worms may be taken from such waters or flats. He shall reduce the regulations to writing and provide for the expiration date thereof, and shall cause notice of the same to be published, the regulations to take effect upon the day following the publication thereof.

Whenever the commissioner of agriculture shall certify to the commissioner of sea and shore fisheries that clams, quahogs or mussels from certain flats or shores are contaminated or polluted and are not in conformity with regulations promulgated by the said commissioner of agriculture and the regulations and standards of purity established by the United States Public Health Service and not acceptable for shipment in interstate commerce, the said commissioner of sea and shore fisheries is hereby authorized to close such flats without notice or hearing, to all digging of clams, quahogs and mussels.

~~The commissioner shall file a copy of each rule and regulation issued under the provisions of this chapter in the offices of the town clerks in the locality affected; and whenever such rules and regulations apply to unorganized territory, a like copy shall be filed with the clerk of courts of that county. He shall also file an attested copy of the rules and regulations with the secretary of state.~~

A certified copy of each rule and regulation issued under the provisions of this chapter shall be filed by the commissioner with the secretary of state and with the clerk of the superior court in the county where the waters or flats are situated and which are affected thereby.'

Sec. 2. R. S., c. 34, § 6, amended. Section 6 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'Sec. 6. Rules and regulations to continue until changed; penalty for violation thereof. All rules and regulations of the commissioner now in effect or hereafter promulgated shall remain in force until changed by further rules and regulations of said commissioner or by the legislature. All rules and regulations promulgated by legislative directive shall be published and filed as hereinbefore provided. All rules and regulations shall have the force of law. Whoever violates any provision of any rule or regulation of the commissioner promulgated by virtue of this chapter shall be punished by the penalties provided in section 144.'

Sec. 3. R. S., c. 34, § 14, repealed and replaced. Section 14 of chapter 34 of the revised statutes, as revised, is hereby repealed and the following enacted in place thereof:

'Sec. 14. Violation of civil service rules. Any officer in the coastal warden service who violates any civil service rule established by the civil service commission may be subject to dismissal, demotion or such other lesser penalty according to the nature of the offense.

All charges preferred against an officer shall be reduced to writing in the form of a complaint signed by the commissioner and filed with the

civil service commission. A copy of said complaint, attested to by the chairman of the civil service commission, shall be served on the accused in person or by registered mail at his last known address, together with a notice requiring him to appear and answer to said complaint at a time and place therein designated, not less than 7 days from the date of service or receipt of said complaint, when and where said accused may appear and be heard thereon.

The civil service commission, acting as a trial board, shall conduct all hearings on complaints involving violation of civil service rules or orders, and may grant continuances for good cause.

In the event an accused officer fails to appear and answer, as hereinbefore provided, or fails or refuses to appear before the trial board on the day assigned for hearing, he shall be defaulted, the complaint taken as true, and he shall be forthwith dismissed from the service. All findings of the trial board shall be final.

Pending any hearing on charges as aforesaid, the commissioner may suspend an accused from the service without pay until final determination by the trial board.

Sec. 4. R. S., c. 34, § 16, amended. Section 16 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

Sec. 16. Definitions. In this chapter, the following words shall have the following meanings and the following rules of construction shall apply:

“Angling,” fishing with handline or rod, with naturally or artificially baited hook.

“Catch pound,” that part of a weir or trap where fish are captured.

“Clam,” a marine mollusk commonly called the soft-shell clam.

“Closed season,” the time during which ~~fish~~ a species cannot lawfully be taken.

“Coastal warden,” a coastal warden appointed under the provisions of section 8.

“Coastal waters,” all waters of the state within the rise and fall of the tide and the marine limits of the jurisdiction of the state, but not waters within or above any fishway or dam when such fishway or dam is normally the dividing line between tidewater and fresh water, nor waters above any tidal bound that has been legally established in streams flowing into the sea.

"Commissioner," the commissioner of sea and shore fisheries.

"Dealer," any person who ~~commercially handles fish, shellfish or marine worms~~ **buys and sells or distributes any marine species.**

"Department," the department of sea and shore fisheries.

The verb, "To fish," in all of its moods and tenses, to take or attempt to take fish **or other marine species** by any method or means, whether or not such method or means results in their capture.

"Lobster car," a box or other contrivance in coastal waters, whether floating or sunken, used for keeping lobsters alive.

"Marine species," fish, shellfish, lobsters, crabs, shrimps and **marine worms.**

"Marine worms," clam, sand and blood-worms.

"Mutilated lobsters,"

I. Any lobster, the shell of which has been broken or cut in any manner that will make accurate measurements as prescribed in this chapter impossible.

II. Any female lobster whose middle flipper has been broken or cut in such manner as to hide or obliterate a V notch that may have been cut in it for identification.

III. The tail section of lobster meat that has been removed from the shell that is not whole and intact.

IV. Any female lobster from which eggs have been artificially removed.

"Open season," the time during which ~~fish~~ **species** may lawfully be taken.

"Person," the word person shall include a corporation, partnership and joint association.

"Quahog," a marine mollusk commonly called the hard-shell clam.

"Retail dealer," any person not a wholesale dealer who **buys, sells or distributes fish commercially any marine species.**

"Seed clam," a soft-shell clam of a size less than the minimum prescribed in section 90 and usable for planting purposes only.

"Seed quahog," a hard-shell clam of a size less than the minimum prescribed in section 90 and usable for planting purposes only.

"Shellfish," all marine mollusks, but not lobsters, crabs and shrimps.

"Ship," to consign by common carrier.

"Territorial waters," the same as coastal waters.

"Tidal waters," the same as coastal waters.

"Wholesale dealer," any person who **buys**, sells or distributes ~~fish commercially~~ **any marine species** in bulk lots of more than 50 lbs. for resale by ~~any~~ a dealer.

Whenever the taking of fish or **other marine species** is authorized, reference is had to taking by lawful means and in a lawful manner.

Any reference to the taking or having in possession of a fish, ~~or~~ shellfish or **other marine species** shall include the taking or having in possession of any part or portion thereof.

This chapter and regulations made thereunder, unless otherwise specifically provided, shall apply only to fish in or taken from coastal waters; but this provision shall not be construed so as to limit the authority of the commissioner to protect migratory fish by providing for their passage from the coastal waters to spawning grounds in streams and ponds in inland waters and to have concurrent jurisdiction with the commissioner of inland fisheries and game to regulate commercial fisheries therein for the taking of such migratory fish.

Any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to permanently reside here, and who has resided in this state during the 6 months next prior to the date an application is filed for any license under the provisions of this chapter, except where a longer residence is specifically provided for.

For the purposes of this chapter, all aliens shall be classified as non-residents.

Any alien who has resided in this state continuously for 2 years and in addition thereto is assessed and pays taxes on real estate in the municipality in which he resides, if otherwise eligible, may purchase any license under the provisions of this chapter.'

Sec. 5. R. S., c. 34, § 19, repealed and replaced. Section 19 of chapter 34 of the revised statutes, as revised, is hereby repealed and the following enacted in place thereof:

'Sec. 19. Commissioner may take land not to exceed 2 acres in 1 location; proceedings; by lease, etc., may acquire more than 2 acres. The commissioner may take any flats and waters not exceeding an area of 2 acres in extent at any 1 location, and hold the same for a period not exceeding 10 years for use by said commissioner or by the United States Fish and Wildlife Service in the prosecution of scientific research relative to shellfish or other fish over which said commissioner has supervision. Whenever said commissioner shall deem it necessary in the furtherance of the objects and purposes of this section to take any such flats and waters, he shall obtain written permission from the riparian owner or owners thereof to control said flats or waters; after receiving such permission said commissioner shall hold a public hearing in the town where the flats and waters are located. Notice of said public hearing, containing the character, extent and location of the flats and waters to be taken and the time for which taken, shall be posted in 2 public places in the town and published not less than 7 days prior to the date of hearing in a newspaper in the county where the flats and waters are situated. After said hearing the commissioner may, for purposes authorized in this section, take such flats and waters and shall cause the area so taken to be plainly posted and bounded by suitable marks and ranges and shall cause public notice of the taking of such waters and flats to be given by publishing in a newspaper in the county where the flats or waters are situated. Said commissioner may, by agreement, lease or grant, and under such terms and conditions as may be agreed upon with the owner thereof, take possession of suitable shellfish grounds, flats, waters and water-rights, not limited to 2 acres in area, with necessary shore rights, and may use and operate the same under the provisions of and for the purposes of this section. Any agreement, lease or grant executed under the provisions of this section shall be recorded in the registry of deeds in the county wherein said flats or waters are located.'

Sec. 6. R. S., c. 34, § 39, amended. The 2nd paragraph of section 39 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'The foregoing shall not apply to the taking of alewives ~~by the town of Warren in the Georges river, nor~~ by the town of Waldoboro in Medomak river, nor by the town of Woolwich in Nequasset stream, nor ~~shall it apply to the taking of alewives~~ by the West Harbor Ice Company in the water below its fishway ~~nor by the town of Warren in the St. George river~~ nor shall it apply to the taking of smelts in the St. George river from the time the ice goes out in the spring until April 25, both days inclusive, of each year.'

Sec. 7. R. S., c. 34, § 44, amended. Section 44 of chapter 34 of the revised statutes, as revised, is hereby amended by adding after the 1st paragraph thereof a new paragraph to read as follows:

‘No person, except the holder of a commercial fishing license provided for in section 50, shall take, catch or kill in any 1 day more than 4 quarts of smelts in tidal waters; nor shall any person, except the holder of the said commercial fishing license or a dealer duly licensed under the provisions of this chapter, have in his possession more than 4 quarts of smelts.’

Sec. 8. R. S., c. 34, §§ 45 and 46, repealed. Sections 45 and 46 of chapter 34 of the revised statutes, as revised, are hereby repealed.

Sec. 9. R. S., c. 34, § 50, amended. The 2nd paragraph of section 50 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

‘A license designated as a resident commercial fishing license may be issued to persons who have been for 3 years prior to the date of their application, legal residents of the state, upon payment of a fee of \$3, which license shall entitle the holder to take all species of fish, except clams, quahogs, mussels, lobsters and scallops by any lawful method, except the use of a weir, floating fish trap or seine.’

Sec. 10. R. S., c. 34, § 52, amended. The 2nd paragraph of section 52 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

‘The license fee for operating a weir, floating fish trap or for operating a boat engaged in seining, in coastal waters, shall be \$10 for each such weir, floating fish trap or boat; provided, however, that the fee for operating any weir or floating fish trap, the catch pound of which is not more than 80 feet in outside perimeter, shall be \$5.’

Sec. 11. R. S., c. 34, § 53-A, amended. Section 53-A of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

‘Sec. 53-A. Commission created; compensation; powers and duties. There shall be created a commission to be known as the “Atlantic Sea Run Salmon Commission,” which shall consist of 3 persons as follows: the commissioner of inland fisheries and game and the commissioner of sea and shore fisheries as ex officio members, and a 3rd member who shall be a citizen of Maine and who shall be appointed by the governor and council for a term of 4 years. The member appointed by the governor and council shall receive \$10 per day and expenses as compensation when engaged in the discharge of his official duties.

The Atlantic Sea Run Salmon Commission, hereinafter in this section designated as "the commission," shall have authority to promulgate rules and regulations providing for the times, number and manner in which Atlantic sea run salmon may be taken in all waters of the state ~~and to designate waters, frequented by this species, where special Atlantic salmon fishing licenses shall be required.~~

Whenever any existing conditions adversely affect Atlantic sea run salmon within the territorial limits of the state, the commission, after notice and hearing, shall make such regulations as may be deemed remedial of any such adverse conditions in the manner hereinafter provided.

Petitions, stating the conditions affecting the fish and the regulations which are desired as a remedy, may be addressed to the commission by a majority of the municipal officers or 25 citizens of any municipality in which the waters exist; or if the waters are in an unorganized territory, by a majority of the county commissioners of the county in which said waters exist; or the commission may declare an emergency and designate the time and place of hearing.

Notice of the hearings to be held and the time and place thereof shall be published once a week for 2 successive weeks prior to the hearing in a newspaper published in the county where said hearing is to be held, and if no paper is published there, ~~in a newspaper having state-wide circulation~~ **the Daily Kennebec Journal, a newspaper printed at Augusta**; except when an emergency has been declared, notice shall be published at least 5 days before the date of the hearing instead of 2 weeks.

After hearing pursuant to the petition or emergency declared, the commission shall make such regulations as may be deemed remedial of any adverse conditions proven to exist at the time of said hearing and shall establish the effective date of such regulations, which shall be at least 10 days after the date of hearing. The commission shall cause the regulations to be reduced to writing and shall publish the same once ~~a week for 2 successive weeks~~ in a newspaper published in the county where the waters are situated and which are affected thereby, or if no paper is published there, ~~in a newspaper having state wide circulation~~ **the Daily Kennebec Journal, a newspaper printed at Augusta**. The commission shall file a certified copy of said regulations with the secretary of state and with the clerk of the superior court of the county in which the waters affected thereby are situated.

Notwithstanding the provisions of section 5 of chapter 33, as revised, and section 5 of ~~chapter 34 of the revised statutes~~ **this chapter, as revised, all**

petitions in regard to Atlantic sea run salmon shall be addressed to the commission, which shall have sole jurisdiction to promulgate rules and regulations affecting Atlantic sea run salmon.

A special license, to be issued by the commission, shall be required for taking, catching or killing Atlantic sea run salmon in such waters as the commission shall designate.

There shall be 3 classes of the licenses issued under the provisions of this section: a resident salmon angling license; a non-resident salmon angling license; and a resident commercial salmon license.

The fee for the resident salmon angling license issued to residents of the state shall be \$3 for those residents over 21 years of age and \$1 for these residents under 21 years of age; the fee for the non-resident salmon angling license shall be \$5; and the fee for a resident commercial salmon license shall be \$5.

Licenses provided for in this section shall be in addition to any other required fishing license and they shall expire on December 31st of the calendar year in which they are issued.

Funds received from the sale of licenses authorized under this section shall constitute an "Atlantic Sea Run Salmon Restoration Fund," so-called, to be expended under the direction of the commission for the sole purpose of improving conditions affecting this species. Said funds shall not lapse; but funds so collected in any 1 year may be used in that or any succeeding year for said purpose.

All rules and regulations promulgated under authority of this section shall be enforced by coastal wardens and inland fish and game wardens, each of whom shall have jurisdiction in either the coastal or inland waters.

Whoever violates any provision of this section or any rule and regulation promulgated hereunder shall be subject to a fine of not less than \$10 nor more than \$30 for each offense.

The license provision of this section shall become effective January 1, 1948.

Sec. 12. R. S., c. 34, § 62, amended. Section 62 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'Sec. 62. Towns to regulate taking of clams, quahogs and mussels; penalty for taking contrary to municipal regulations. Any town may at its annual meeting fix the times in which clams, quahogs and mussels may be

taken within its limits and the prices for which its municipal officers shall grant permits therefor; and unless so regulated by vote, residents of the town may take clams, quahogs and mussels without written permit; but without permit, any inhabitant within his own town or transient persons therein may take clams, quahogs and mussels for consumption by himself and family. This section does not apply to hotel keepers taking clams, quahogs and mussels for the use of their hotels ~~nor does it interfere with any law relating to the taking of shellfish for bait by fishermen.~~ Whoever takes clams, quahogs or mussels contrary to municipal regulations authorized by this section shall, for each offense, be punished by a fine of not more than \$10, or by imprisonment for not more than 30 days. This section shall not be construed to effect the repeal of any special privileges enjoyed by the inhabitants of certain towns by virtue of any public or private and special laws ~~in force on the effective date of this chapter;~~ but any town to which any such law applies may in addition have all the advantages of this section if such town shall so vote. Any town that promulgates any regulations under authority of this section shall be responsible for enforcement of the same. **A certified copy of each regulation adopted under the provisions of this section shall be filed with the commissioner of sea and shore fisheries.'**

Sec. 13. R. S., c. 34, § 89, amended. The 1st paragraph of section 89 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'No person, firm or corporation, as principal or by an agent or servant, shall ship or transport **or attempt to ship or transport** in any manner, beyond the limits of this state, any clams, quahogs or mussels in the shell or shucked, without first having procured therefor a shellfish certificate from the commissioner of agriculture and a license from the commissioner of sea and shore fisheries.'

Sec. 14. R. S., c. 34, § 90, amended. The last sentence of the 1st paragraph of section 90 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'The tolerance of 10% shall be determined by numerical count, or by measure of not ~~more~~ less than **1 peck nor more than 4 pecks**, taken at random from various parts of said batch or lot; **provided, however, that such tolerance shall be determined by numerical count of the entire batch or lot when said batch or lot is less than 1 peck.'**

Sec. 15. R. S., c. 34, § 94, amended. The last paragraph of section 94 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

‘When digging of clams, quahogs or mussels in any area is prohibited by the commissioner of sea and shore fisheries because of contamination or pollution, he shall cause plain and distinct signs to be posted on **or adjacent to** the area within which said digging is prohibited.’

Sec. 16. R. S., c. 34, §§ 105, 106 and 107, repealed. Sections 105, 106 and 107 of chapter 34 of the revised statutes, as revised, are hereby repealed.

Sec. 17. R. S., c. 34, § 109, amended. Section 109 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

‘**Sec. 109. Scallop fishing license provided for.** No person shall fish for or take in any manner for commercial purposes any scallops without first having procured from the commissioner a written license therefor.

A license, designated as a scallop fishing license, ~~shall~~ **may** be issued to **any person who has been for 3 years prior to the date of his application a legal resident of the state** upon payment of a fee of \$5 and shall entitle the holder to take scallops for commercial purposes at times and in places permitted by law. The holder of a scallop fishing license shall not be required to procure a resident commercial fishing license, but shall be entitled to all privileges of the same by virtue of such scallop fishing license.’

Sec. 18. R. S., c. 34, § 110-A, repealed and replaced. Section 110-A of chapter 34 of the revised statutes, as revised, is hereby repealed and the following enacted in place thereof:

‘**Sec. 110-A. Commercial shellfish license provided for.** No person, except the holder of a commercial shellfish license, shall sell any clams, quahogs or mussels that he has dug or taken from the flats, shores or coastal waters of the state.

No non-resident of the state shall dig or take more than $\frac{1}{2}$ bushel of clams, quahogs or mussels during any 1 day from the flats, shores or coastal waters of the state.

No resident of the state shall dig or take more than $\frac{1}{2}$ bushel of clams, quahogs or mussels during any 1 day from the flats, shores or coastal waters of the state without first having procured from the commissioner a written license therefor.

A license, designated as a commercial shellfish license, may be issued to residents of the state who shall make application for the same.

The fee shall be \$3 and it shall entitle the holder to dig or take clams, quahogs or mussels in quantities greater than $\frac{1}{2}$ bushel during any 1 day and to transport and sell the same in the shell within the state.

No person, except the holder of a commercial shellfish license as provided for in this section or a dealer duly licensed under the provisions of this chapter, shall have in his possession more than $\frac{1}{2}$ bushel of clams, quahogs or mussels.'

Sec. 19. R. S., c. 34, § III, amended. Section III of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'Sec. III. Dealer's license required to sell, ship or transport fresh fish, shellfish, lobsters or crabs, or parts thereof; exceptions. No person, except as hereinafter provided provided in this chapter, shall buy, and sell, ship or transport in any manner any fresh fish, shellfish, lobsters or crabs, or parts thereof, without first having procured from the commissioner a written license therefor.

A license, designated as a retail sea food dealer's license, shall entitle the holder, as a retail dealer, to buy, and sell, serve, ship and transport fresh fish, shellfish, lobsters or crabs, or parts thereof, within the limits of the state.

The fee for such license shall be \$5, provided that a separate license shall be required for each market, store or other facility where fresh fish, shellfish, lobsters or crabs are sold in retail trade.

A ~~retail sea food~~ dealer's license shall not be required of a person to transport fish, shellfish, lobsters or crabs, or parts thereof, that are possessed by him for immediate consumption by himself and his family, nor of a properly licensed fisherman who, by virtue of his fishing license, may transport and sell within the state any species that has been lawfully taken by him, nor of a common carrier engaged in carrying freight on a fixed schedule within or without the state, provided that such fish, shellfish, lobsters or crabs, or parts thereof, are received by said common carrier at one of his regular established places on land for receiving general freight and the receptacle containing the same is plainly marked in accordance with law.

~~Any dealer licensed under the provisions of this section, who buys lobsters in excess of 50 pounds at one time, shall record the license number~~

~~of the seller and shall keep such record for a year, which record shall be available for the inspection of any warden of the department.~~

Sec. 20. R. S., c. 34, § 112, amended. The 1st paragraph of section 112 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

~~'No person, except as provided in the preceding section~~ **sections 111, 113 and 114,** shall serve at any public place any fresh clams, quahogs, mussels, lobsters or crabs, or parts thereof, without first having procured from the commissioner a written license therefor.'

Sec. 21. R. S., c. 34, § 113, repealed and replaced. Section 113 of chapter 34 of the revised statutes, as revised, is hereby repealed and the following enacted in place thereof:

'Sec. 113. Wholesale sea food dealer's license; retail sales permitted; transportation limited. No person, firm or corporation shall engage in a wholesale trade in fresh fish, shellfish or parts thereof, without first having procured from the commissioner a written license therefor.

The fee for a license, designated as a wholesale sea food dealer's license, shall be \$25 and shall entitle the holder to buy and sell fresh fish, shellfish, and parts thereof, in wholesale trade; provided also, that such licensee shall be permitted to serve and to sell fresh fish, shellfish, lobsters and crabs in retail trade and to transport the same within the limits of the state.

Any person, firm or corporation licensed under the provisions of this section, that maintains any facility for the buying or selling of fresh fish or shellfish in addition to his or their principal place of business, shall procure for each such facility a supplemental license and the fee therefor shall be \$5.

The term "fresh fish" as used in this chapter is distinguished from fish that have been smoked, pickled, canned or quick frozen and the term "shellfish" does not include lobsters and crabs.

The amount paid for a wholesale sea food dealer's license may be credited on a wholesale lobster dealer's license upon the additional payment of \$25 in the same year in which the wholesale sea food dealer's license was issued.'

Sec. 22. R. S., c. 34, § 114, amended. Section 114 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'Sec. 114. Wholesale lobster dealer's license provided for. No person, firm or corporation shall engage in a wholesale trade in lobsters without first having procured from the commissioner a written license therefor.

The fee for a license, designated as a wholesale lobster dealer's license, shall be \$50 and shall entitle the holder to buy, ~~and sell,~~ **serve** and transport fresh fish, shellfish, ~~and lobsters and crabs~~ in wholesale **and retail** trade within the state and to ship the same within and outside the state.

Any person, firm or corporation licensed under the provisions of this section, that maintains any facility for the buying **or selling** of fresh fish, shellfish ~~or~~, lobsters **or crabs** ~~at any point~~ other than his or their principal place of business, shall procure from the commissioner for each such facility a supplemental license and the fee therefor shall be \$5.

~~Any person, firm or corporation that distributes fish, shellfish or lobsters, or parts thereof, commercially, in bulk lots of more than 50 lbs. for resale by a dealer, shall be classified as a wholesale dealer.~~

~~Any dealer licensed under the provisions of this section, who buys lobsters in excess of 50 pounds at a time, shall record the license number of the seller and shall keep such record for a year, which record shall be available for the inspection of any warden of the department.~~

A dealer licensed under this section, who received crates of lobsters from a point beyond the limits of the state and immediately reconsigns them with contents intact to another such dealer within the state, shall not be responsible for the size of lobsters contained therein, provided each such crate is labeled in the manner prescribed by the commissioner and with materials furnished at cost by said commissioner.'

Sec. 23. R. S., c. 34, § 116, amended. The 1st paragraph of section 116 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'No person, firm or corporation, as principal or by an agent or servant, except a common carrier, shall transport **or attempt to transport** in any manner any lobsters or parts thereof beyond the limits of the state without first having procured from the commissioner a written license therefor.'

Sec. 24. R. S., c. 34, § 120, amended. Section 120 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

Sec. 120. Sale of lobster meat regulated; penalty. No person shall remove lobster meat from the shell for sale without a permit therefor, nor shall any person sell, offer or expose for sale, give away, ship or transport any lobster meat after the same has been removed from the shell except as herein provided.

A permit to remove lobster meat from the shell for sale may be granted to any person licensed as a dealer under the provisions of sections III or ~~III~~ **114** upon written application to the commissioner and the payment of a fee of \$10.

Such permit shall entitle the holder to remove lobster meat from the shell of legal size lobsters at his regular place of business and to sell, deliver, transport or ship the same under such regulations as the commissioner may prescribe, provided that the tail section of all lobster meat shall be removed from the shell whole and intact and shall be not less than $4\frac{1}{4}$, nor more than $6\frac{1}{2}$ 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 said tail section.

It shall be unlawful to sell, offer for sale, deliver, ship or transport any tail section of lobster meat that is not whole and intact as removed from the shell.

All barrels, boxes or other containers containing lobster meat that has been removed from the shell, before being transported or offered for transportation, shall be plainly labeled with the name of the permittee, together with the words, "Lobster Meat Removed Under Permit Number _____," followed by the number of the permit under which such lobster meat was removed.

No permit shall be required for the resale of such meat so long as it remains in the original package, provided that such package is plainly labeled with the name of the permittee, together with the words "Lobster Meat Removed Under Permit Number _____," followed by the number of the permit under which said lobster meat was removed.

The foregoing provisions of this section shall not apply to such lobster meat in possession of a common carrier for transportation, and which is marked as provided in this section; nor shall they apply to lobster meat passing through the state under authority of laws of the United States, nor

shall any permit be required of a person to possess or transport lobster meat that is lawfully possessed by him for immediate consumption by himself and family; nor shall a permit be required to remove lobster meat for serving in hotels or restaurants, provided said meat is removed on the premises where it is served.

Whoever violates any provision of this section shall be subject to the penalty provided for in section 144, and in addition, \$5 for each illegal lobster or part thereof involved.'

Sec. 25. R. S., c. 34, § 129, repealed and replaced. Section 129 of chapter 34 of the revised statutes, as revised, is hereby repealed and the following enacted in place thereof:

'Sec. 129. License required to sell marine worms. No person shall sell any clam-worms, blood-worms or sand-worms without first having procured from the commissioner a written license therefor.

A license, designated as a marine worm license, shall entitle the holder to sell clam-worms, blood-worms and sand-worms that he has dug or taken from the coastal flats or to buy and sell the same as a dealer.

The fee for a marine worm license shall be \$3 and shall be issued upon written application; provided that only legal residents of the state shall be eligible to procure such a license.'

Sec. 26. R. S., c. 34, § 139, amended.' The 1st 3 paragraphs of section 139 of chapter 34 of the revised statutes, as revised, is hereby amended to read as follows:

'All fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, taken, caught, bought, sold, carried, transported or found in possession of any person in violation of the provisions of this chapter shall be contraband and shall be forfeited to the state. In all cases where a coastal warden may find fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, or equipment possessed in violation of the provisions of this chapter, he may seize the same without a warrant and keep them for a reasonable time. The officer who made such seizure may within a reasonable time file with a magistrate a libel against such fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, or any equipment possessed in violation of the provisions of this chapter, setting forth their seizure by him, describing such fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, or equipment and that they were taken, caught, ~~killed~~ bought, sold, carried, transported or had in possession in violation of the provisions of

this chapter, and pray for a decree of forfeiture thereof, except that articles of less than \$10 in value shall not be libeled unless reasonable doubt exists as to the ownership thereof. Such magistrate shall thereupon fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed and show cause why said fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, or equipment possessed should not be declared forfeited, by causing a true and attested copy of said libel and monition to be posted in 2 conspicuous places in the town or place where such fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, or equipment possessed were seized, or in such place or places as is ordered by the magistrate, 10 days at least before the day to which said libel is returnable. Copies shall be served on common carriers.

In case the magistrate finds that the fish, shellfish ~~or~~, lobsters or other marine species, or any parts thereof, seized, will be unsuitable for food or other use at the day to which said libel is returnable, he shall order the officer making the seizure to dispose of the same. The officer disposing of the same shall, in case of sale, hold the proceeds of said sale subject to order of the court for decision as to the right of the claimant, if any appear, to said fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof. If the magistrate finds the claimant, if any appear, is not entitled to said fish, shellfish ~~or~~, lobsters or other marine species, or parts thereof, the officer making such seizure shall turn over to the magistrate proceeds of such sale and such magistrate shall forward the proceeds thereof to the commissioner in the same manner as is provided by section 143.

If no claimant appears, such magistrate shall, on proof of notice as aforesaid declare the same forfeited to the state. If any person appears and claims such articles, or any parts thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed and the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer by whom the same were seized; and in it must declare that they were not had in possession in violation of the provisions of this chapter with his knowledge or consent, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process and the magistrate shall proceed to determine the truth of the allegations in said claim and libel and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon the hearing, satisfied that said fish, shellfish ~~or~~, lobsters or other marine species,

or parts thereof, or any equipment possessed were not had in possession in violation of the provisions of this chapter, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer having the same in custody commanding him to deliver to said claimant the articles, or proceeds derived from the sale of the same, to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said articles so seized, he shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said articles forfeited to the state. The claimant may appeal and shall recognize with sureties as on appeals in civil causes from a magistrate.'