

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 2

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1955

Preserve. Chapter 237 deleted from the paragraph relating to Jefferson and Whitefield the part of the description consisting of the names of the landowners. Chapter 277, in the paragraph relating to Wells and York Game Preserve, substituted "Josias river" for "Agamenticus road" in lines five and six, and "Maine turnpike" for "logging road, so called" in line six. It

also changed the words "westerly and northerly along said logging road" in the same paragraph to read "northerly along said Maine turnpike." Chapter 364, effective on approval May 17, 1955, inserted in alphabetical order the paragraph relating to Bartlett's Island. Only the paragraphs added or changed by the amendments are set out.

Field Trials for Retrieving Dogs.

Sec. 151. Repealed by Public Laws 1955, c. 290, § 22.

Cross reference.—For present provisions re field trials for retrieving dogs, see § 117-A of this chapter.

Chapter 38.

Department of Sea and Shore Fisheries.

Sections 122-126. Tuna. Seals. Marine Worms. Sea Moss.

Fish Packing.

Sec. 23. Repealed by Public Laws 1955, c. 23.

Sec. 24-A. Size of herring.—Except for use as bait for fishing, it shall be unlawful for any person, firm or corporation to take from the coastal waters of Maine, or to sell, offer for sale, purchase, transfer in any manner, use, process, dispose of in any way or have in his possession for any purpose whatsoever herring less than 4 inches long, overall length measured from one extreme to another; except that when herring under 4 inches in length are mixed with longer herring and the herring of prohibited size represent less than 25% of the lot taken at any one time, sale or purchase, the foregoing provisions in this paragraph shall not apply. The tolerance of 25% herein set out shall be determined by numerical count of $\frac{1}{2}$ bushel of herring for each 500 bushels of herring or fraction thereof, taken at random from various parts of said lot. The commissioner of sea and shore fisheries and the commissioner of agriculture shall cooperate in the enforcement of the provisions of this section.

Any person, firm or corporation violating any of the provisions of this section shall be punished by a fine of not less than \$100 nor more than \$500 for each offense. (1955, c. 304.)

Regulation of Shellfish Industry.

Sec. 39-A. Procedure for propagation of quahogs.—A person, firm or corporation, who holds a permit to cultivate shellfish granted by a town, may apply for sub-legal quahogs to the municipal officers of a town or city whose flats are occupied by a sub-legal population of hard-shelled clams or quahogs. Such application shall include a description of the discrete area from which seed quahogs or hard-shelled clams are to be obtained and a further description of the means by which said seed quahogs or hard-shelled clams shall be harvested for transplanting purposes. No municipal permit shall be granted until after a public hearing, due notice of which has been posted in 3 or more public places and published in a newspaper, if there be any, published in the city or town in which the premises are situated, 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 applica-

tion and the location and description of the area occupied by said seed quahogs or hard-shelled clams. Notice shall also be given of said hearing to the commissioner of sea and shore fisheries. If the municipal officers shall deny applicant's request for sub-legal quahogs, an appeal shall lie with the commissioner of sea and shore fisheries, whose decision shall be final. Following favorable action taken by the municipal officers in granting said transplanting permit to the applicant, the municipal officers shall notify the commissioner of sea and shore fisheries of the action taken. Following the grant of the municipal permit, the applicant shall then apply to the commissioner of sea and shore fisheries for a specific permit which shall include a description of said seed area, a description of means and manner of harvesting and transporting and a description of the area where said seed will be planted. After the commissioner has appraised himself of the conditions under which the transplanting will take place, the commissioner shall grant said permit subject to the following conditions: Seed will be planted only in flats in the state of Maine which are either publicly or privately controlled. Said permit shall contain a specified expiration date and a specified volume of seed stocks which during the permitted time may be transplanted. Said volume of seed quahogs to be transplanted under all private permits shall not exceed 25 per cent of the estimated population within said discrete area nor shall the total volume granted to any one permit holder exceed 5 per cent of said estimated population. Such estimate to be determined by research personnel of the department of sea and shore fisheries utilizing accepted survey methods. (1955, c. 333, § 1.)

Sec. 51. Repealed by Public Laws 1955, c. 163.

Sec. 57. License required to dig or take clams, etc., in Kennebunkport.—No person shall, in the town of Kennebunkport in the county of York, dig or take clams, clamworms or bloodworms for sale unless license has been granted to him by the municipal officers of said town, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued except to a resident of said town. Nothing herein shall prohibit any resident or a riparian owner of shores or flats therein from digging and taking clams for food for himself and family without license. From October 1, 1955 to October 1, 1957, no clams shall be dug or taken from the flats in Batson's river or in any of its branches or tributaries, in said town of Kennebunkport, except that, during said 2-year period, any resident or property owner of said town may dig from said flats not to exceed 2 pecks of clams at one tide. For the purposes of sections 57 to 59, inclusive, the term "a resident" shall mean a person who has resided in this state for the term of at least 6 consecutive months and in the town of Kennebunkport for at least 3 consecutive months prior to receiving a license. (R. S. c. 34. 1947, c. 332. 1955, c. 221.)

Effect of amendment.—The 1955 amendment inserted the fourth sentence.

Sec. 70-A. License required to dig or take clams, etc., in town of Harpswell.—No person, firm or corporation shall, within the limits of the town of Harpswell, in the county of Cumberland, dig or take any clams or quahogs without having first obtained a license from the municipal officers of said town of Harpswell, who are authorized to grant and issue such licenses and fix the fee therefor. No license shall be granted or issued to any person, firm or corporation unless such person, firm or corporation is a resident of said town of Harpswell. Nothing herein shall prohibit a resident or riparian owner of shores or flats in said town of Harpswell from digging and taking clams and quahogs therefrom for food for himself and family without license. For the purposes of sections 70-A to 70-D, inclusive, the term "a resident" shall mean a person, firm or corporation who has resided in this state for a term of at least 6 consecutive

months and in the town of Harpswell for at least 3 consecutive months prior to making application for license. (1955, c. 116.)

Sec. 70-B. Dealers' licenses.—No person shall be a dealer in clams or quahogs in the town of Harpswell without having first obtained a license from the municipal officers of said town, who are authorized to issue such license and fix the fee therefor. For the purposes of sections 70-A to 70-D, inclusive, the term "dealer" herein used shall mean any person, firm or corporation buying clams or quahogs for resale. (1955, c. 116.)

Sec. 70-C. Licenses; revocation; appeals.—The municipal officers may revoke any license issued by them under the provisions of the preceding sections, upon evidence satisfactory to them that the person digging or taking clams or quahogs has violated any of the laws of the state regulating the digging or taking of clams or quahogs. If the municipal officers refuse to issue the license provided for in said sections or if a license has been revoked by the municipal officers, a person aggrieved may apply to any justice of the superior court, in term time or vacation, who may order the issuance or restoration thereof, provided said justice finds the municipal officers acted fraudulently or corruptly or erred in their conclusion of facts. (1955, c. 116.)

Sec. 70-D. Penalty.—Whoever violates any of the provisions of sections 70-A to 70-D, inclusive, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 30 days. Trial justices within their county shall have jurisdiction concurrent with municipal courts and the superior court of prosecutions for violations hereof. (1955, c. 116.)

Sec. 92. Taking of clams and quahogs.—Whoever takes or has in his possession quahogs or soft-shell clams less than 2 inches in the longest diameter, hereinafter referred to as seed quahogs or seed clams, to the amount of more than 10% of any batch or lot shall be punished by a fine of not less than \$10, nor more than \$25, for the 1st offense; by a fine of not less than \$20, nor more than \$50, for the 2nd offense; by a fine of not less than \$40, nor more than \$100, for the 3rd offense; and by a fine of \$100 for the 4th and all subsequent offenses. On the 2nd conviction thereof the commissioner may in his discretion suspend the offender's commercial shellfish and marine worm license issued under the provisions of this chapter for a period not to exceed 1 month; on the 3rd conviction for a period not to exceed 3 months; and on the 4th and subsequent conviction for a period not to exceed 1 year. Provided, however, it shall not be unlawful to take seed quahogs or seed clams or have the same in possession under authority of a permit therefor, which the commissioner is authorized to grant, for replanting in waters or flats within the state or under the provisions of section 39-A. The tolerance of 10% shall be determined by numerical count, or by measure of not 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.

(1955, c. 333, § 2.)

Effect of amendment.—The 1955 amendment deleted the words "any other purpose" at the end of the third sentence of the first paragraph and inserted in place

thereof the words "under the provisions of section 39-A." As the second and third paragraphs were not changed, they are not set out.

Sec. 108. Commercial shellfish and marine worm license.—No person, except the holder of a commercial shellfish and marine worm license, shall sell any clams, quahogs, oysters, mussels or marine worms that he has dug or taken from the flats, shores or coastal waters of the state.

No nonresident of the state shall dig or take more than ½ bushel of clams,

quahogs, oysters or mussels nor more than 30 marine worms during any one 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, oysters or mussels nor more than 30 marine worms during any one day from the flats, shores or coastal waters of the state without first having procured from the commissioner a written license therefor; except that a holder of a lobster and crab fishing license or a holder of a commercial fishing license may dig or take more than $\frac{1}{2}$ bushel of clams, quahogs, oysters or mussels for bait purposes only without obtaining a commercial shellfish and marine worm license.

A license, designated as a commercial shellfish and marine worm 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, oysters or mussels in quantities greater than $\frac{1}{2}$ bushel during any one day and to transport and sell the same in the shell within the State; and to dig, take, buy or sell marine worms.

No person, except the holder of a commercial shellfish and marine worm license as provided for in this section or a dealer duly licensed under the provisions of this chapter or as provided in the 3rd paragraph of this section, shall have in his possession more than $\frac{1}{2}$ bushel of clams, quahogs, oysters or mussels, nor more than 30 marine worms. (1947, c. 286. 1949, c. 415, § 16. 1953, c. 129, § 16. 1955, c. 155, § 1.)

Effect of amendment.—The 1955 amendment made this section applicable to oysters.

Sec. 109. Disposition of funds from sale of licenses.—The funds received from sale of certain licenses, namely, "commercial shellfish and marine worm licenses," "interstate shellfish transportation licenses" and 10% of the revenue from the sale of licenses under the provisions of section 111 shall constitute a shellfish fund, so called, to be expended under the direction of the commissioner for the sole purpose of restoration, development and conservation of clams, quahogs, oysters, mussels and marine worms in the coastal waters of the state and for establishment and maintenance of facilities therefor.

Said funds shall not lapse, but funds so collected in any one year may be used in that or any succeeding year for said purpose. (1947, c. 286. 1951, c. 175, § 9; c. 266, § 49. 1953, c. 129, § 17. 1955, c. 155, § 2.)

Effect of amendment.—The 1955 amendment inserted the words "oysters" near the end of the first paragraph.

Regulation of Lobster Industry.

The problems of the lobster industry are of a nature peculiar to itself and the statutes are designed and enacted with reference thereto. *State v. Mitchell*, 150 Me. 396, 113 A. (2d) 618.

Sec. 112. Lobster and crab fishing license.—No person shall fish for, take or catch lobsters or crabs in any manner without having first procured from the commissioner a written license therefor, which shall be kept upon the person while fishing or transporting such lobsters or crabs and which shall be exhibited to any coastal warden upon request.

Any person, assisting or helping another in lobster fishing or in attending to lobster traps or pots, shall be considered a lobster fisherman and must procure a license therefor.

Such license shall be issued only to persons who have been, for 3 years immediately prior to the date of the application, legal residents of this state; provided, however, that any person who has previously been a legal resident of this state and has re-established a legal residence here for a period of 1 year next pre-

ceding his application shall be entitled to have his nonresidence taken as part of said 3 years, and the fee for such license shall be \$5; and provided further, that a veteran of World War II, or the Korean campaign, who is honorably discharged, honorably separated or retired from active service in the armed forces shall be granted such license if he has been a resident of Maine for at least 1 year prior to the date of the application. (R. S. c. 34. 1947, c. 332. 1949, cc. 106. 121, 274. 1951, c. 257. 1953, c. 129, § 22. 1955, c. 333, § 3.)

Effect of amendment.—The 1955 amendment repealed the former last paragraph, which provided that the holder of a lobster fishing license shall be entitled to all the privileges of a commercial fishing license.

Sec. 117. Only owner or authorized person may examine or tend traps, pots or cars set for catching or holding lobsters or crabs.—No person, except the rightful owner or an officer authorized to enforce the sea and shore fisheries laws, shall raise, lift, transfer or in any manner molest any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, nor take, remove or carry away from the beach or shore, any such pot, trap, car or other contrivance or warp or buoy thereof without the written permission of the owner thereof.

(1955, c. 333, § 6.)

Effect of amendment.—The 1955 amendment inserted the word "rightful" before "owner" in line three of the first paragraph, and inserted the word "transfer" in line four thereof. It also inserted in the first paragraph the words "nor take, remove or carry away from the beach or shore, any such pot, trap, car or other contrivance or warp or buoy thereof." As the second and third paragraphs were not

changed by the amendment, they are not set out.

Before the passage of the 1955 amendment it was held that the word "owner" in this section included a finder of a lost lobster trap with possession and control good against all the world, except the rightful owner. *State v. Mitchell*, 150 Me. 396, 113 A. (2d) 618.

Tuna. Seals. Marine Worms. Sea Moss.

Sec. 125-A. Marine worms, taking.—It shall be lawful for any person, firm or corporation, who legally possesses a commercial shellfish and marine worm license, to dig, take, buy or sell marine worms, clamworms, bloodworms and sandworms in any tidewater area of the state, except those areas which are closed to all digging for the conservation of marine worms by the department.

No area shall be closed for the purpose of conservation to the digging or taking of marine worms, clamworms, bloodworms and sandworms except as provided in section 5. (1955, c. 110, § 1.)

Revocation and Suspension of Licenses. Court Procedure.

Sec. 127. Licenses, revocation and suspension.

When an appeal has been taken by any person from the decision or sentence imposed for an alleged violation of the provisions of this chapter, or of any rules and regulations adopted by the commissioner pursuant thereto, the commissioner shall suspend, until final disposition by the court, the license or right thereto of such person to conduct the particular activity in which he was engaged at the time of the alleged violation, and may suspend for the same period all licenses held by him that have been issued under authority of this chapter.

If, at the time of committing a violation of any of the provisions of this chapter or of any rules and regulations of the commissioner, the offender shall not be the holder of a license to conduct the particular activity in which he was engaged at the time of such violation, the commissioner may issue such a license

to said person at any time after the date of final determination of any complaint or legal proceedings instituted as a result of the violation.

(1955, c. 333, § 4.)

Effect of amendment.—The 1955 amendment deleted “a” in line one of the third paragraph and inserted in place thereof the words “the decision or.” It also inserted after the word “license” in line four of such paragraph the words “or right thereto.” The amendment substituted “may” for “shall not” in the fourth

line of the fourth paragraph and in the fifth line it substituted the words “at any time after” for the words “until fifteen days have elapsed from.” As the rest of the section was not changed by the amendment, only the third and fourth paragraphs are set out.

Jurisdiction of Offenses. Search and Seizure. Stopping of Vehicles.

Sec. 138. Vehicles required to stop on signal.—It shall be unlawful for the operator of a boat, motor vehicle or other vehicle or conveyance of any kind to fail or refuse to stop any such boat, motor vehicle or other vehicle or conveyance of any kind and stand by for inspection upon request or signal of a coastal warden in uniform.

(1955, c. 333, § 5.)

Effect of amendment.—The 1955 amendment substituted “or” for “to” between the words “fail” and “refuse” in line three of

the first paragraph. As the second paragraph was not changed, it is not set out.

Chapter 38-A.

Department of Development of Industry and Commerce.

- Sections 1- 3. Organization.
- Section 4. Division of Research and Planning.
- Section 5. Division of Development.
- Section 6. Division of Recreational Promotion.
- Sections 7- 8. Advisory Board.
- Section 9. Building at Eastern States Exposition.
- Sections 10-11. Persons of Baltic Origin.

Legislative intent.—Section 9 of the act which added this chapter reads as follows: “It is the intent of the legislature that the powers and duties of the Maine development commission are hereby transferred to, and shall hereafter be exercised and performed by, the department of development of industry and commerce. Said commission shall transfer to said department all property, records and other data now in its custody. With respect to the year end closing at June 30, 1955, all encumbered balances of the Maine development commission shall be credited to the department and all appropriations to the commission made by the 97th legislature

shall be credited to the department. In the transition from the development commission operation to the department of development of industry and commerce operation, the legislature intends that the personnel of the commission shall be transferred to the department in such generally similar job responsibilities as may be consistent with the efficient organization of the department.

“It is further the intent of the legislature that the department shall assist, and be assisted by, the Maine publicity bureau in accordance with the provisions set forth in section 1 of chapter 22 of the private and special laws of 1937.”

Organization.

Sec. 1. Department created; commissioner.—There is hereby created a department of development of industry and commerce, hereinafter in this chapter called the “department.” The department shall be under the supervision and control of a commissioner of development of industry and commerce, hereinafter