

MAINE STATE LEGISLATURE

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CHAPTER 417
REGULATIONS GOVERNING TAKING OF FISH
AND SHELLFISH

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SUBCHAPTER I

LICENSES GENERALLY

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§ 3801. Commercial licenses; residents

It is unlawful for any resident of the State of Maine to operate in the coastal waters of the State any weir, floating fish trap or boat engaged in seining, netting or dragging, unless he has a current written license from the commissioner as provided in this section.

1. License designation; residence requirements. The license, designated as a resident commercial fishing license, may be issued by the commissioner to any person who has been a legal resident of the State of Maine for one year next prior to the date of his application.

2. General scope of license. The licensee is entitled to take all species of fish from the tidal waters of the State when and where it is otherwise lawful to take them, except shellfish, lobsters, crabs or scallops.

1961, c. 238, § 5.

3. License fees; restrictions. A resident may obtain resident commercial fishing licenses to operate any number or any combination of the following: A boat engaged in seining, netting or dragging, a weir or a floating fish trap.

A. If he does not desire the license to cover any crew, other than a single operator, the fee is \$3 for each boat, weir or fish trap licensed.

(1) All licenses issued under paragraph A are restricted to no crew other than a single operator.

B. If he desires the license to cover one or more crew members, other than a single operator, who are residents of this State, the fee is \$10 for each boat, weir or fish trap licensed.

(1) All licenses issued under paragraph B are unrestricted as to the number of crew members, but are restricted to crew members who are residents of this State.

C. If he desires the license to cover one or more crew members who are not residents of this State, the fee is \$10 for each such boat, weir or fish trap and \$25 for each member of the crew who is not a resident of this State.

(1) Any and all licenses issued under paragraph C are unrestricted as to the number of resident crew members, but are restricted to the number of nonresident crew members stated in the license.

4. Equipment and restrictions to be stated in license. The commissioner shall set forth in the license the equipment covered by the license and the crew member restrictions.

5. Persons assisting are crew members; special penalty. Any person assisting or helping in attending fishing gear or operating the boat is considered a member of the crew.

A. If a boat, weir or fish trap so licensed has more crew members than is stated in the license, the operator of the boat, weir or fish trap shall pay a fine of \$25 for each such unauthorized person, or be imprisoned for not more than 30 days.

6. General licensing provisions apply. Section 3751 applies to resident commercial fishing licenses.

R.S.1954, c. 38, § 36; 1959, c. 331, § 1; 1961, c. 238, § 5.

§ 3802. —Nonresidents

It is unlawful for a nonresident of the State of Maine to use or operate in the coastal waters of the State, any weir, floating fish trap or boat engaged in seining, dragging or netting, unless

he has a current written license from the commissioner as provided in this section.

1. License designation; who may obtain. The license, designated as a nonresident commercial fishing license, may be issued to any person who is not a resident of the State.

2. General scope of license. The licensee is entitled to take all species of fish from the tidal waters of the State when and where it is otherwise lawful to take them, except shellfish, lobsters, crabs or scallops.

1961, c. 238, § 6.

3. License fees; restrictions. A person who is not a resident of this State may obtain a nonresident commercial fishing license to operate any number or any combination of the following: A boat engaged in seining, netting or dragging, a weir or a floating fish trap.

A. If he does not desire the license to cover more than 2 nonresident crew members, other than the operator, the fee is \$100 for each boat, weir or fish trap licensed.

(1) All licenses issued under paragraph A are unrestricted as to the number of crew members who are residents of this State, but are restricted to not more than 2 crew members, other than the operator, who are not residents of this State.

B. If he desires the license to cover more than 2 nonresident crew members, other than the operator, the fee is \$100 for each boat, weir or fish trap licensed, plus \$25 for each nonresident crew member, other than the operator, beyond the first 2 covered by the license.

(1) Any and all licenses issued under paragraph B are unrestricted as to the number of resident crew members, but are restricted to the number of nonresident crew members stated in the license.

4. Equipment and restrictions to be stated in license. The commissioner shall set forth in the license the equipment licensed and the restrictions as to crew members.

5. Persons assisting are crew members; special penalty. Any person assisting or helping in attending fishing gear or operating the boat is considered a member of the crew.

A. If a weir, trap or boat so licensed has more members than is stated in the license, the operator of the weir, trap or

boat shall be punished by a fine of \$50 for each unauthorized person, or by imprisonment for not more than 30 days.

6. General licensing provisions apply. Section 3751 applies to nonresident commercial fishing licenses.

R.S.1954, c. 38, § 37; 1959, c. 331, § 1; 1961, c. 238, § 6.

SUBCHAPTER II

MISCELLANEOUS SPECIES

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ARTICLE 1. HERRING

§ 3851. Canning purposes

From the first day of December to the 15th day of the following April the following provisions are in force:

1. Unlawful to take, preserve or sell certain herring for canning purposes during period. During that period it is unlawful for any person, firm or corporation to take, preserve, sell or offer for sale any herring for canning purposes which are less than 8 inches in length measured from one extreme to the other.

2. Unlawful to can any herring during period. During that period it is unlawful for any person, firm or corporation to can in hermetically sealed containers herring of any description taken from the coastal waters of Maine.

3. Penalties. Whoever violates any provision of this section shall be punished as follows:

A. By a fine of \$20 for every 100 cans of herring, or fraction thereof, if less than 100 cans;

B. By a fine of \$20 for every 100 herring if the herring are not canned; or

C. By imprisonment for not more than 30 days.

R.S.1954, c. 38, § 22; 1959, c. 331, § 1; 1961, c. 401, § 2.

§ 3852. Sale and purchase by standard unit of measure

It is unlawful for any person, firm or corporation to purchase or sell herring in their live or raw state for packing purposes other than by some standard unit of measurement, such as by the bushel, barrel of 3 bushels, hogshead of 17½ bushels or by a fractional part of a standard unit of measurement.

1. Penalty. Whoever violates any provision of this section shall be punished by the penalties provided in section 3857.

R.S.1954, c. 38, § 24; 1959, c. 331, § 1.

§ 3853. Boats to be sealed

The State Sealer of Weights and Measures, or some person appointed by him for this purpose, shall measure and seal all holds of all boats transporting herring for processing purposes.

1. Fee; amount; determination of. The owner of the boat shall pay a fee for the measuring and sealing provided in this section in such amount as the State Sealer of Weights and Measures shall determine.

A. The State Sealer of Weights and Measures shall determine the fee for boats based on an equitable hogshead carrying capacity in sufficient sum to cover the estimated costs to the State for carrying out the intent of this section.

2. Method of measurement. The measure must be in 5 hogshead divisions, measured by liquid measure from a calibrated prover, to the top of the hatch coaming with the measurement plainly marked and permanently sealed in the hold of the boat, both forward and aft, while the boat is afloat, in the most practical manner as prescribed by the State Sealer of Weights and Measures.

3. Owner to notify state sealer if any seal broken. The boat owner shall immediately notify the State Sealer of Weights and Measures of any alteration or the breaking of any seal in any hold of the owner's boat.

4. State sealer to certify to commissioner. The State Sealer of Weights and Measures shall forthwith, after measuring and sealing each boat, certify to the commissioner the name of the owner of each boat, the name of each boat and the capacity of each boat.

5. Unlawful to buy, sell or transport herring from unsealed hold. It is unlawful for any person, firm or corporation to buy, sell or transport any herring for processing purposes from or in the hold of any boat which has not been measured and sealed as provided in this section.

1961, c. 238, § 3.

6. Penalty. Whoever violates any provision of this section shall be punished by the penalties provided in section 3857.

R.S.1954, c. 38, § 24; 1957, c. 359, § 1; 1959, c. 331, § 1; 1961, c. 238, § 3.

§ 3854. Payment by cash or written acknowledgment

Any person, firm or corporation purchasing herring from a fisherman, or his agent, shall either pay cash to the fisherman or his agent at the time of the purchase, or shall furnish to the fisherman or his agent a written acknowledgment of the purchase.

1. Contents of acknowledgment. The buyer shall insert in the written acknowledgment all information necessary for a complete understanding of the transaction, including the price and quantity, and a provision for payment at a time not later than 7 days after delivery of the herring.

2. Payments to be made in money. The buyer shall make all payments to the fisherman, or his agent, in money or in money equivalent.

3. Penalty. Whoever violates any provision of this section shall be punished by the penalties provided in section 3857.

R.S.1954, c. 38, § 24; 1959, c. 331, § 1.

§ 3855. Size

It is unlawful for any person, firm or corporation to take from the coastal waters of Maine, to sell, to offer for sale, to purchase, to process, to ship, to transport, or to have in possession herring which are less than 4 inches long, overall length measured from one extreme to the other, except as provided in this section.

1. Tolerance of 25%; how determined. Any person, firm or corporation may take, sell, purchase, process, ship, transport or have possession of herring which are less than 4 inches in length when they are mixed with herring of greater length, provided the herring of less than 4 inches in length comprise less than 25% of the entire lot.

A. The tolerance of 25% is determined by volume of $\frac{1}{2}$ bushel of herring for each 30 hogsheads of herring, or fraction thereof, taken at random from various parts of the lot.

2. Exception for bait purposes. Any person, firm or corporation may have possession of herring which are less than 4 inches in length, provided the same are possessed for the purpose of bait for fishing.

3. Commissioners to cooperate in enforcement. The Commissioner of Sea and Shore Fisheries and the Commissioner of Agriculture shall cooperate in the enforcement of this section.

4. Penalty. Any person, firm or corporation who violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for not more than 60 days.

1955, c. 304; 1957, c. 61; 1959, c. 331, § 1.

§ 3856. Artificial lights in taking

It is unlawful for any person to take herring by use or aid of an artificial light of any kind in the coastal waters of this State, except as provided in this section:

1. Exception for York County and part of Sheepscot Bay. This section does not apply to York County and so much of Sheepscot Bay as is located within the following bounds: Beginning at the northerly point of Green Island; thence southerly by the coastline to the Cuckolds Light Station; thence westerly to Pond Island Light Station; thence northeasterly by the coastline to the northerly point of MacMahan Island; thence easterly to the point of beginning.

2. Exception for Kennebec River and tributaries. This section does not apply to the taking of alewives and blue backs in the waters of the Kennebec River and its tributaries, including the Sasanoa River, northerly from a line between Squirrel Point Light in the Town of Arrowsic and the highway bridge over the outlet of Center Pond, so called, in the Town of Phippsburg, from April 1st to October 1st of each year. Nothing in this section shall be so construed as to affect in any way the established rights of any town to the alewife fishing within its corporate limits. (1961, c. 144.)

R.S.1954, c. 38, § 25; 1959, c. 331, § 1; 1961, c. 144.

§ 3857. Penalties

Any person, firm or corporation who violates any provision of sections 3852, 3853 or 3854 shall be punished by a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for not more than 60 days.

R.S.1954, c. 38, § 24; 1959, c. 331, § 1.

ARTICLE 2. QUAHOGS

§ 3901. Minimum size

It is unlawful for any person to take or have in his possession quahogs which are less than 2 inches in the longest diameter to the amount of more than 10% of any lot.

1. Definitions. A lot, as used in this section, means the total number of quahogs in any bulk pile. Where quahogs are in a box, barrel or other container, the contents of each box, barrel or other container constitute a separate lot.

1959, c. 354, § 2.

2. Method of determining tolerance. The tolerance of 10% must be determined by numerical count of not less than one peck nor more than 4 pecks, taken at random from various parts of the lot, except that the tolerance must be determined by numerical count of the entire lot when the lot contains less than one peck.

3. Exception for permittee. This section does not apply to the possession of seed quahogs under authority of a permit, issued by the commissioner, as provided in section 4308.

1959, c. 354, § 2.

4. Penalties. Whoever violates this section shall be punished by the following penalties:

A. For the first offense by a fine of not less than \$10 nor more than \$25, or by imprisonment for not more than 30 days;

B. For the 2nd offense by a fine of not less than \$20 nor more than \$50, or by imprisonment for not more than 30 days;

C. For the 3rd offense by a fine of not less than \$40 nor more than \$100, or by imprisonment for not more than 60 days;

D. For the 4th and subsequent offenses by a fine of \$100, or by imprisonment for not more than 60 days.

R.S.1954, c. 38, § 92; 1955, c. 333, § 2; 1959, c. 331, § 1; c. 354, § 2.

Director's Note: See P.L.1963, c. 302 re time limitation on statute repealing the two-inch clam law.

ARTICLE 3. SALMON

§ 3951. Closed season

From the 16th day of July to the 31st day of the following March of each year is closed season for salmon, in all the tidal waters of the State. During the closed season it is unlawful to take or kill salmon in any manner, except as provided in this section.

1. Exception for rod and line. Between the 16th day of July and the 15th day of September of each year, it is lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise.

2. Exception for weirs on St. Croix River. Salmon may be taken in weirs on the St. Croix River below the breakwater at the ledge between the 15th day of May and the 31st day of August of each year.

3. Penalty. Whoever violates any provision of this section shall be punished as provided in section 4504, and by a fine of \$10 for each salmon taken.

R.S.1954, c. 38, § 30; 1959, c. 331, § 1.

ARTICLE 4. SCALLOPS

§ 4001. License

It is unlawful for any person to operate in the coastal waters of the State any boat or drag engaged in the taking of scallops unless he has a current written license from the commissioner as provided in this section.

1. Exception for home consumption. Any person may operate a boat engaged in taking scallops for his own or his family's consumption without having a license as provided in this section, provided he does not take or possess more than 2 bushels of scallops in the shell in any one day, nor more than 4 quarts of shucked scallops.

2. License designation; resident requirements. The license, designated as a scallop fishing license, may be issued by the commissioner to any person who has been a legal resident of the State of Maine for one year next prior to the date of his application.

3. General scope of license. The licensee is entitled to take scallops from the tidal waters of the State when and where it is otherwise lawful to take them.

4. Any number of boats may be licensed; fee; number of crew members unlimited. A resident may obtain scallop fishing licenses for any number of boats engaged in taking scallops, with or without a drag.

A. The fee is \$10 for each boat licensed.

B. The licensee may have any number of crew members, provided they are residents of this State.

5. General licensing provisions apply. Section 3751 applies to scallop fishing licenses.

R.S.1954, c. 38, § 106; 1959, c. 331, § 1.

§ 4002. Closed season

It is unlawful for any person to fish for or take scallops from the coastal waters of the State from the 15th day of April until the 31st day of the following October of each year, except as provided in this section:

1. Exception. It is lawful to fish for and take scallops at any time in those waters which are outside the limits of, and southeasterly of a line formed by the following points: Beginning at Petit Manan Island Light, thence running in a straight line to the southerly tip of Schoodic Island; thence in a straight line to the southeasterly tip of Little Cranberry Island; thence in a straight line to the northwesterly end of Little Duck Island; thence in a straight line to the southeasterly tip of Long Island Head on Long Island; thence in a straight line to the whistle buoy off Johns Island; thence in a straight line to the southeasterly tip of Eastern Ear Isle au Haut; thence in a straight line to Roaring Bull Ledge; thence in a straight line to Saddleback Ledge Light; thence in a straight line to Green Island Light at Vinalhaven; thence in a straight line to Twobush Light; thence in a straight line to the southerly tip of Burnt Island.

2. Possession unlawful. It is unlawful for any person to have in his possession any scallops taken in violation of this section.

3. Penalty. Whoever violates any of the provisions of this section shall be subject to the penalties provided in section 4504,

and in addition shall pay a fine of \$5 for every 100 scallops so taken or possessed, whether they are in the shell or shelled.

R.S.1954, c. 38, § 104; 1959, c. 331, § 1; 1963, c. 87.

§ 4003. Minimum size

It is unlawful for any person to take or have in his possession scallops which are less than 3 inches in the longest diameter to the amount of more than 10% of any lot.

1. Scallop definition. Scallops, as used in this section, means scallops which are in the shell.

2. Lot definition. A lot, as used in this section, means the total number of scallops in any bulk pile. When the scallops are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

3. Method of determining tolerance. The tolerance of 10% must be determined by numerical count of not less than one peck nor more than 4 pecks, taken at random from various parts of the lot, or by numerical count of the entire lot if it contains less than one peck.

1957, c. 67; 1959, c. 331, § 1.

ARTICLE 5. SEA MOSS

§ 4051. License; resident and nonresident

It is unlawful for any person to take sea moss from any of the coastal shores, or within the tidal waters of the State, unless he has a current written license from the commissioner as provided in this section:

1. Resident license; designation; resident requirement; fee. A license, designated as a resident sea moss license, may be issued to any person who has been a legal resident of the State for 6 months or more next prior to the date of his application.

A. The license fee for a resident sea moss license is \$2 which must accompany the application to the commissioner.

2. Nonresident license; designation; fee. A license, designated as a nonresident sea moss license, may be issued to any nonresident upon application to the commissioner.

A. The license fee for a nonresident sea moss license is \$15 which must accompany the application.

3. Penalty. 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.

R.S.1954, c. 38, § 126; 1959, c. 331, § 1.

ARTICLE 6. SMELTS

§ 4101. Closed season

From March 15th to June 15th of each year it is unlawful to fish for or take any smelts from the tidal waters of the State by any means other than by the use of a hand dip-net operated by one man, or by the ordinary mode of angling with hook and line.

1. Limit on smelts, exceptions for possession. From March 15th to June 15th of each year it is unlawful to take, catch, kill or have in possession more than 4 quarts of smelts of any description in any one day, regardless of where the smelts were taken, except as otherwise provided in this section.

A. A dealer in fish who is licensed under section 4302 or 4303, or a bait dealer licensed under section 2558, is excused from the possession of more than 4 quarts of smelts if the possession occurs in his vehicle or place of business, but no dealer may catch more than 4 quarts of smelts in any one day.

B. This subsection does not apply to the possession of more than 4 quarts of smelts in any grocery store or fish market if the same were legally taken.

2. Certain commercial fishing licensees excused; prima facie evidence. The holder of a current resident commercial fishing license or a current nonresident commercial fishing license is excused from this section to the extent of any smelts which he catches in any licensed weir or trap maintained and operated in tidal waters for catching herring.

A. If any such licensee is found with smelts in his possession by a coastal warden or game warden, he shall immediately on request show his resident or nonresident commercial fishing license, and his neglect to do so is prima facie evidence that he is not excused as provided in this subsection.

3. Exception for localities covered by special legislation; prima facie evidence. Any provision of this section that is in con-

flict with any provision of any special legislation which regulates the taking or possession of smelts in any given locality is superseded by that special legislation.

A. If any person, other than as provided in subsection 1, paragraphs A and B or in subsection 2, is found in possession of more than 4 quarts of smelts in a municipality when and where special legislation does not authorize the possession of more smelts anywhere within that municipality at the time of the possession, it is prima facie evidence that the smelts are possessed in violation of subsection 1.

4. No right inconsistent with regulations granted. Nothing in this section grants to any person any right to take smelts from any area in any manner which is contrary to any regulation of the commissioner. (1959, c. 255.)

R.S.1954, c. 38, § 32; 1957, c. 30, § 4; 1959, c. 255; c. 331, § 1.

ARTICLE 7. TUNA

§ 4151. Method of taking; penalties

It is unlawful for any person to fish for, take, catch or kill any tuna fish in the tidal waters of the State by any method other than by harpoon or by hook and line, and it is unlawful to possess any tuna fish which was taken, caught or killed in violation of any provision of this section.

1. Penalty. Any boat, seine or other contrivance, together with the contents, which is used contrary to any provision of this section is subject to seizure and forfeiture under the procedure of section 4552.

R.S.1954, c. 38, § 122; 1957, c. 235; 1959, c. 331, § 1.

ARTICLE 8. PROHIBITED ACTS

§ 4201. Seines or nets not to be set near weirs

It is unlawful for any person to set or assist in setting any net or seine within 2,000 feet of the mouth of any weir which is licensed under section 3801 or 3802 and under the licensing provisions of Title 38, chapter 9, except as otherwise provided in this section.

1. Exception. This section does not apply to the owner nor to the person in charge of the weir.

2. Penalty. Whoever violates any provision of this section shall be punished by a fine of \$100 or by imprisonment for 30 days, or by both.

A. Each day that a net or seine is used in violation of this section constitutes a separate offense.

R.S.1954, c. 38, § 28; 1959, c. 280; c. 331, § 1.

§ 4202. Otter trawls unlawful

It is unlawful to fish or take fish by otter trawl from the coastal waters within the jurisdiction of this State between 69° 50' west longitude to 70° 20' west longitude from midnight, Friday, to midnight, Saturday, of each week during the months of June, July and August of each year.

1. Penalty. Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both.

1961, c. 67.

§ 4203. Otter or beam trawls prohibited in Washington County

The use of either otter or beam trawls within the territorial waters of Washington County is prohibited.

1. Penalty. Whoever violates this section shall be punished by a fine of \$100 for the first offense, and in default of payment by imprisonment for 30 days; and for the 2nd or subsequent offense, he shall be punished by a fine of \$200, and in default of payment by 60 days imprisonment.

R.S.1954, c. 38, § 27; 1959, c. 331, § 1.

§ 4204. Trawls; size and use in Casco Bay and adjacent waters

This section applies to all the coastal waters within the jurisdiction of the State between 69° 50' west longitude and 70° 20' west longitude.

1. Maximum size of trawls. It is unlawful to fish with or use an otter trawl or any other trawl within the above area during the months of June, July and August of each year of greater size than as follows:

A. The length of the foot rope may not be greater than 70 feet measured from wing tip to wing tip along the bottom of the wings and bosom;

B. The length of the head rope may not be greater than 50 feet measured from wing tip to wing tip along the bottom of the wings and bosom;

C. The length of each door may not be greater than 6 feet measured from the forward end to the aft end of the door; and

D. The width of each door may not be greater than 3 feet 6 inches measured from top to bottom of the door.

2. Permit. It is unlawful to fish with or use an otter trawl or any other trawl within the above area, unless the operator of the boat has a current permit from the commissioner.

A. The commissioner shall issue such permits to any holder of a current resident or nonresident commercial fishing license, providing that the trawl complies with the size provided in this section.

B. The commissioner shall cause the trawl to be inspected for size prior to issuing the permit.

C. There is no charge for issuing the permit.

D. The permit shall be valid concurrently with the resident or nonresident commercial fishing license.

E. Such permit shall be carried on the boat when the boat is used for trawl fishing in said area. Failure to produce the permit when requested by a coastal warden in uniform is prima facie evidence that the operator of the boat does not hold a current permit as provided by this section.

3. Penalty. Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both.

1961, c. 75.

§ 4205. Vessels over 65 feet; use in Casco Bay and adjacent waters

This section applies to all the coastal waters within the jurisdiction of the State between 69° 50' west longitude and 70° 20' west longitude.

1. Maximum size of otter trawlers. It is unlawful for any vessel with a register length in excess of 65 feet to fish with or

use an otter trawl, or any other trawl within the above area during the months of June, July and August of each year.

A. For the purposes of this section register length shall be as set forth on said vessel's operating document or marine license issued in conformity to Title L "Regulation of Vessels in Domestic Commerce" of the Revised Statutes of the United States of America.

2. Penalty. Whoever violates this section shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment for not more than 30 days, or by both.

1961, c. 74.

§ 4206. Dumping of dead or scaled fish

It is unlawful for any person to deposit upon the shores, in the bays, harbors or rivers of this State any dead fish, or parts thereof, or fish smothered or injured so they will die. It is unlawful for any person to release or dump any fish, whether dead or alive, in the waters within the jurisdiction of the State after the scales have been intentionally removed from the fish.

1. Penalty. Whoever violates this section, or aids therein, shall be punished by a fine of \$100 or by imprisonment for not more than 30 days, or by both.

R.S.1954, c. 38, § 33; 1959, c. 331, § 1.

§ 4207. Use of dynamite or poison

It is unlawful for any person to use dynamite or any poisonous or stupefying substance for the purpose of destroying or taking any kind of fish in the tidal waters of this State.

1. Sale or possession of fish so taken illegal. It is unlawful for any person to buy, sell or possess for any purpose any fish taken by use of dynamite or any poisonous or stupefying substance.

2. Carrying of dynamite or poison illegal. It is unlawful for any person, while engaged in fishing to carry in any fishing boat or vessel any dynamite or other explosives or poisonous or stupefying substance.

3. Penalty. Whoever violates any provision of this section shall be punished by a fine of \$100 and by imprisonment for 60 days.

R.S.1954, c. 38, § 34; 1959, c. 331, § 1.

SUBCHAPTER III

SHELLFISH AND MARINE WORMS

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ARTICLE 1. GENERAL PROVISIONS

§ 4251. Municipal funds for conservation

Any municipality by vote of its legislative body may raise and appropriate money for any shellfish conservation program which has been approved by the commissioner.

1963, c. 277, § 1.

§ 4252. Municipal ordinances for regulation and licensing

Any municipality which has raised or appropriated money within 2 years next prior to acting under this section for a shellfish conservation program approved by the commissioner as authorized under section 4251 may enact a municipal ordinance fixing the time when clams, quahogs and mussels may be taken from any or all of the coastal waters and flats within the mu-

municipality. The ordinance may provide limitations on the amount of clams, quahogs and mussels which may be taken within the municipality, and may provide that municipal licenses be required for the taking of any such species within the municipality, and may determine the qualifications for the license, including residence requirements, and may fix the license fees. The ordinance may provide for the size of soft-shell clams which may be taken from the flats within the municipality.

Director's Note: See P.L.1963, c. 302, re time limitation of last sentence.

1. Filing requirements. Ordinances adopted under this section shall remain in full force and effect for a period of 3 years unless sooner terminated by the terms of the ordinance or by repeal by the municipal legislative body. A certified copy of the ordinance shall be filed with the commissioner within 7 days after its adoption.

1963, c. 277, § 3.

2. Local enforcement. Any municipality that enacts any ordinance under authority of this section shall be responsible for the enforcement of the ordinance.

3. Penalty for ordinances. Whoever takes clams, quahogs or mussels contrary to a municipal ordinance authorized by this section shall be punished by a fine of not more than \$10 or by imprisonment for not more than 30 days.

R.S.1954, c. 38, § 49; 1959, c. 331, § 1; c. 354, § 1; 1963, c. 277, §§ 2, 3.

§ 4253. Cultivation of oysters

Any inhabitants of the State, with the consent of the adjacent riparian proprietors, may plant oysters below low water mark in any navigable water in any place where there is no natural oyster bed, subject to this section:

1. Planter's duties. Any person who wishes to take advantage of this section shall do the following:

A. He shall mark the area as follows:

(1) He shall enclose the area with stakes extending at least 2 feet above high water mark, but so as not to obstruct the free navigation of the waters.

(2) He shall place notices that the area is used for the planting of oysters on the banks of shores adjacent to the protected area, not more than 10 feet nor less than

6 feet above the ground in conspicuous positions. The notices must be painted on wood in black capital Roman letters, not less than 2 inches in height and not less than $\frac{1}{2}$ inch in breadth, so that the letters are plainly legible. He shall maintain the notices during the time that he wishes to have the advantages of this section.

B. He shall describe the area by metes and bounds in a written statement which must state that he is using the area for the purposes of this section and must include the written consent of the adjacent riparian proprietors. He shall record this written statement with the town clerk of the municipality where the area is located and with the commissioner.

2. Permittee has exclusive rights; penalty. After he has complied with all the provisions of subsection 1 he is permitted to plant oysters and has the exclusive right to the taking of the oysters within the specified area.

A. It is unlawful for any person, without the consent of the permittee, to trespass within the area or to injure the area where the oysters have been planted, and whoever does so shall be liable to the permittee in a civil action for any damages.

(1) And in addition, if any person, without the consent of the permittee, takes any oysters or any shellfish from within the area, he shall be punished by a fine of not less than \$20 nor more than \$50, or by imprisonment for not more than 3 months. (1961, c. 317, § 80.)

R.S.1954, c. 38, §§ 35, 103; 1959, c. 331, § 1; 1961, c. 317, § 80.

ARTICLE 2. LICENSES AND PERMITS

§ 4301. Commercial license required

It is unlawful for any person to dig or take any clams, quahogs, oysters, mussels or marine worms from the flats, shores or coastal waters of the State without having a current written license from the commissioner as provided in this section.

1. Exception for home consumption. Any person may dig or take clams, quahogs, oysters or mussels for consumption by himself or by the members of his family without having a license as provided in this section, provided that the total amount of each species of shellfish dug, taken or possessed in any one day does not exceed $\frac{1}{2}$ bushel.

2. Exception for marine worms. Any person may take marine worms without having a license as provided in this section, provided that he does not dig, take or possess more than 30 in any one day.

3. Exception for bait purposes. The holder of a commercial fishing license or a lobster and crab fishing license may take any species of shellfish for bait purposes only, without having the license provided in this section.

4. License designation; general scope. The license, designated as a commercial shellfish and marine worm license, entitles the holder to dig or take any amount of clams, quahogs, mussels or oysters, when and where it is otherwise lawful to do so, to transport and sell the same within the State, and to dig, take, buy, transport and sell any number of marine worms.

5. Resident requirement; fee. A person who has been a resident of the State of Maine for 6 months or more, next prior to the date of his application, may make application to the commissioner for a commercial shellfish and marine worm license on forms provided by the commissioner.

A. The fee for the license is \$3 which the applicant shall submit with his application.

6. Unlawful possession. It is unlawful for any person, except the holder of a current commercial shellfish and marine worm license, to possess more than $\frac{1}{2}$ bushel of clams, quahogs, oysters or mussels in any one day, or to so possess more than 30 marine worms in any one day.

A. This subsection does not apply to the possession of shellfish for bait purposes as provided in subsection 3.

B. This subsection does not apply to the holder of a current retail seafood dealer's license authorized under section 4303, nor to the holder of a current wholesale seafood dealer's and processor's license, authorized under section 4302.

7. Licensee's authority to take worms. The holder of a current commercial shellfish and marine worm license may dig or take shellfish, marine worms, clamworms, bloodworms or sandworms in any of the tidal waters or flats of the State, except in those areas which are closed to the digging or taking of the same by regulation passed under sections 3503 or 3504, and except in those areas under municipal shellfish cultivation authorized in section 4304. The holder may not dig or take any shellfish contrary to any ordinance in full force and effect which was

passed pursuant to the authority provided in section 4252 and amendments thereto.

A. The holder of a current commercial shellfish and marine worm license may buy or sell any of the above described worms.

1963, c. 75, § 1; c. 277, § 4.

8. General licensing provisions apply. Section 3751 applies to commercial shellfish and marine worm licenses.

R.S.1954, c. 38, § 108; 1955, c. 110, § 1; c. 155, § 1; 1957, c. 30, § 12; 1959, c. 331, § 1; 1963, c. 75, § 1; c. 277, § 4.

§ 4302. Wholesale seafood dealer's and processor's license

It is unlawful for any person, firm or corporation to engage in the wholesale trade in any fish, shellfish, lobsters, crabs, or parts thereof, or to process, preserve or can them in any manner for sale in the wholesale trade without holding a current written license from the commissioner as provided in this section.

1. Exception for smoked herring and alewives. This section does not apply to the smoking of alewives or herring as smoked herring or bloaters, nor to the sale of same.

2. License designation; general scope. The license, designated as a wholesale seafood dealer's and processor's license, entitles the holder when and where it is otherwise lawful, to buy and sell, both wholesale and retail, to serve, process, preserve, pickle, cook, freeze, smoke or can for sale, all species of fish, shellfish, lobsters and crabs, subject to the following provisions:

A. The licensee must in addition have a permit as provided by section 4402 if he removes lobster meat from the shell.

B. The licensee must have a shellfish shucking certificate as provided by section 4310 if he removes clams, quahogs or mussels from the shell for shipment beyond the limits of the State.

3. Scope of license for shipment and transportation. The following provisions apply to the licensee's authority to ship and transport marine species:

A. The licensee may ship and transport all species of fish, except lobsters and shellfish, within and without the limits of the State.

B. The licensee may ship and transport lobsters and shellfish within the limits of the State.

C. The licensee may ship, but not transport, lobsters beyond the limits of the State.

D. The licensee may ship, but not transport, shellfish beyond the limits of the State, provided he holds a current shellfish certificate from the commissioner.

1963, c. 411, § 7.

4. Definitions of "to ship" and "to transport." The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or to send by any method other than to ship as defined in this subsection.

5. Sale to dealer is a sale in wholesale trade. Any sale to either a wholesale seafood dealer or processor or to a retail seafood dealer is a sale in the wholesale trade and is unlawful unless the seller is licensed in accordance with this section.

6. License fees; supplemental licenses. The fee for a wholesale seafood dealer's and processor's license is \$35.

A. In addition the holder of a wholesale seafood dealer's and processor's license must obtain from the commissioner a supplemental license for each place of business, other than his principal place of business, and for each vehicle, airplane or boat, used to transport any marine species covered by this section.

(1) The fee for each supplemental license is \$10.

7. General licensing provisions apply. Section 3751 applies to a wholesale seafood dealer's and processor's license.

R.S.1954, c. 38, § 111; 1957, c. 236; 1959, c. 331, § 1; 1963, c. 411, § 7.

§ 4303. Retail dealer's license

It is unlawful for any person, firm or corporation to buy, sell, offer for sale, serve, ship or transport in any manner any clams, quahogs, crabs, lobsters, or parts thereof, without having a current written license from the commissioner as provided in this section.

1. Exceptions. The licensing provisions of this section do not apply in the following instances:

A. To the transportation of the marine species, or parts thereof, covered by this section, by a person who possesses them for the purpose of consumption by himself and his family;

B. To the transportation or selling by a properly licensed fisherman of the particular marine species which his particular fishing license authorizes him to take or catch;

C. To the shipping or transportation of the marine species, or parts thereof, covered by this section by a common carrier engaged in carrying freight on a fixed schedule within or without the State, provided as follows:

(1) The particular marine species, or parts thereof, are received by the common carrier at one of his regular established places of business on land for receiving general freight; and

(2) The receptacle containing the particular marine species, or parts thereof, is plainly marked in accordance with the law.

D. To the shipping, transporting, buying or selling of the marine species, or parts thereof, covered by this section by a properly licensed wholesale seafood dealer or processor under section 4302.

2. License designation; general scope. The license, designated as a retail seafood dealer's license, entitles the holder, as a retail dealer only, to buy, sell, offer for sale, serve, ship and transport clams, quahogs, crabs and lobsters, or parts thereof, within the limits of the State.

A. "Retail dealer" as used in this section means a dealer who sells, serves, ships or transports marine species directly to the consumer.

3. Application; license fees. A person, firm or corporation may make application to the commissioner for retail seafood dealer's licenses on forms furnished by the commissioner.

A. The license fee is \$2 for each license which the applicant shall submit with his application.

B. A separate license is required for each market, hotel, restaurant, store or other place where clams, quahogs, crabs, lobsters, or parts thereof, are served or sold in the retail trade, and for each boat or vehicle used to transport such marine species.

4. Section applies to marine species in any form; exception. This section applies to clams, quahogs, crabs, lobsters, or parts thereof, in any form whatever, whether the same are cooked or uncooked, are in or out of the shell, are alive or canned, or frozen or preserved in any manner.

A. Except that stores may possess, buy or sell any of the marine species, or parts thereof, covered by this section which are in hermetically sealed containers without being required to obtain a retail seafood dealer's license.

R.S.1954, c. 38, § 110; 1957, c. 30, § 7; 1959, c. 331, § 1.

§ 4304. Cultivation of clams and mussels

The municipal officers of any municipality, and the commissioner in the event that the municipality has been deorganized by Act of the Legislature, are authorized to grant written licenses for the purpose of planting and cultivating clams, quahogs or mussels upon the flats and creeks of their respective jurisdictions, subject to this section:

1. Survey and plan must first be made; filing. Before granting any license, the municipal officers of a municipality, or the commissioner in the case of a deorganized municipality, shall cause a survey and plan to be made of the territory within which licenses are to be granted.

A. The plan is to be kept in the office of the clerk of the municipality, or in the office of the department if the municipality is deorganized.

2. Total area under cultivation limited. The total area under licensed cultivation may not exceed $\frac{1}{4}$ of the total area of all the flats and tidal creeks within the municipality.

3. Term of license. The term of the license may not be less than 5 years nor more than 10 years.

A. The municipal officers shall fix the exact term within those limits in event the legislative body of the municipality fails to do so.

B. The commissioner shall fix the term within the 5 to 10 year limits for deorganized municipalities.

4. Annual license fee. The licensee shall pay an annual license fee to the municipality, or to the department if the municipality is deorganized.

A. The municipal fee may not be less than \$1 nor more than \$5 per acre annually.

(1) The municipal officers shall fix the exact fee within those limits if the legislative body of the municipality fails to do so.

B. The fee for a license in a deorganized municipality is \$5 per acre annually.

5. Persons qualified for license. A license may be granted only to a person who has resided in the State for at least one year next preceding the date of his application, or who has been a taxpayer in the municipality for at least one year next preceding the date of his application.

6. May not obstruct navigable water. No license may be granted if the exercise thereof would materially obstruct navigable water.

7. Preference given in certain cases. The granting authority shall give preference to a riparian proprietor of adjacent property when there are 2 or more applicants for the same area, and an adjacent riparian proprietor is one of them.

8. Authority to pass ordinances. A municipality may enact municipal ordinances, which do not conflict with this section and sections 4305 and 4351, to further regulate the licenses authorized by this section.

9. Procedure in § 4305 to be followed. The municipal officers and the commissioner shall follow the procedure provided in section 4305 in granting licenses authorized by this section.

R.S.1954, c. 38, §§ 39, 41, 42, 44; 1959, c. 331, § 1.

§ 4305. Procedure for licenses authorized by § 4304

The procedure for granting, assigning and holding the licenses authorized by section 4304 is as follows:

1. License application. Any person interested in obtaining a license shall apply in writing to the municipal officers of the municipality wherein the flats or creeks to be under license are located, or to the commissioner if the municipality is deorganized.

A. The application must state a description of the exact area applied for.

B. The application must state that the applicant has resided in the State at least one year next preceding the date

of application, or that the applicant has been a taxpayer in the municipality for at least one year next preceding the date of application.

2. Notice of hearing. Upon receipt of an application properly completed, the municipal officers, or the commissioner if the municipality is deorganized, shall order notice of a public hearing on the application.

A. The notice must state the name of the applicant, the date of the application, a description of the exact area applied for and the time and place of the hearing.

B. The notice must be posted in at least 3 public places in the municipality and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.

(1) If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in the municipality.

3. Hearing. The municipal officers, or the commissioner if the municipality is deorganized, shall hold a public hearing at the time and place designated in the notice.

A. Any interested person may give relevant evidence at the hearing.

4. Granting license. After the hearing the municipal officers, or the commissioner if the municipality is deorganized, may grant the license within the area specified in the application, subject to the following provisions:

A. All the requirements of section 4304 have been fulfilled.

B. The applicant pays the license fee for the first year.

C. The license specifies the name of the applicant and describes the exact area under license by metes and bounds.

5. Area licensed to be marked on plan; recording. Immediately after granting the license the municipal officers, or the commissioner if the municipality is deorganized, shall mark the area licensed on the plan provided for in section 4304.

A. The municipal officers shall record any license issued by them with the clerk of the municipality, and shall record the license with the commissioner.

6. Duties of licensee; marking area; notice. Immediately after receiving his license, the licensee has the following duties:

A. He shall cause the area covered by his license to be plainly marked by stakes, buoys, ranges or monuments which he shall maintain during the entire term of his license.

B. He shall place notices that the area is licensed on the banks or shores adjacent to the protected area not more than 10 feet nor less than 6 feet above the ground in conspicuous positions. The notices must be painted on wood in black Roman letters not less than 2 inches in height and not less than $\frac{1}{2}$ inch in breadth so that the letters are plainly legible. He shall maintain the notices during the term of his license.

7. License recorded before effective; revocation. No license becomes effective until the recording provisions of subsection 5 are fulfilled, and failure to place and maintain the markers and notices provided by subsection 6 is sufficient cause for the revocation of the license by the authority granting the license.

8. Licensee to give annual report. Every person licensed shall submit a written report on oath, on or before the first day of January of each year, to the authority who granted his license. The report must state the total number of bushels of each kind of shellfish produced or marketed from the area licensed during the preceding year, and an estimate of the total number of bushels of each kind of shellfish planted or growing on the licensed area at the time of the report.

9. Forfeiture if area does not produce. The granting authority shall determine the market value of all the shellfish reported in the report provided in subsection 8.

A. If the total amount on any one report falls below the market value, as thus determined, of \$25 per acre within the first 2 years of the term of the license, or below the market value, as thus determined, of \$50 per acre for any 3 consecutive years thereafter, then the authority which granted the license may declare it forfeited.

10. Assignment of license. A licensee may assign his license to any person who has resided in the State for at least one year next preceding the date of the assignment, or who has been a taxpayer in the municipality where the licensed area is located for at least one year next preceding the date of the assignment, provided the granting authority gives written consent to the assignment.

A. Once the license is assigned, and the assignment has been approved by the granting authority, the assignee has all the

privileges and duties of the original licensee and is subject to all the provisions of law as though he were the original licensee.

R.S.1954, c. 38, §§ 39, 41, 42, 44, 47; 1959, c. 331, § 1.

§ 4306. Interstate transportation

It is unlawful for any person, firm or corporation to ship or transport, or attempt to ship or transport, beyond the limits of this State any soft-shell clams, quahogs or mussels, whether removed from the shell or not, or to cause the same to be done, without having a current license from the commissioner as provided in this section.

1. Application; designation of license. A person, firm or corporation may apply for a license, designated as an interstate shellfish transportation license, to the commissioner on a form provided by him for that purpose. The form or the application must contain the following:

A. It must contain a description, sufficient to identify it, of the particular boat, truck, automobile, airplane or other vehicle of transportation to be used.

B. It must contain any other information that may be requested by the commissioner.

2. License fees. The fee for the license is \$35 which covers one boat, one truck, one automobile, one airplane or one other type of vehicle. There is an extra fee of \$10 for each vehicle beyond the first to be used as a means of transportation for the shellfish.

3. Shellfish must be procured from holder of a shellfish certificate. It is unlawful for any person, firm or corporation to transport or cause to be transported beyond the limits of this State, any clams, quahogs or mussels, except those which have been procured from the holder of a current shellfish certificate.

A. But should the holder of a current interstate shellfish transportation license also hold a current shellfish certificate, then he may procure shellfish from the persons named in his certificate for that purpose.

4. Exception for the holder of a wholesale seafood dealer's license. The holder of a current wholesale seafood dealer's and processor's license may ship, but not transport, clams, quahogs and mussels beyond the limits of the State without having an in-

terstate shellfish transportation license, but not without having a shellfish certificate as provided by section 4309.

A. The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or send an object from one place to another by any other means than to ship as here defined.

5. Common carrier and other exceptions. This section does not apply to a common carrier licensed by the Interstate Commerce Commission who is transporting clams, quahogs or mussels in containers labelled in accordance with section 4353, nor to any person who lawfully possesses them for immediate consumption by himself and his family, nor does this section apply to clams, quahogs or mussels that are being transported through this State under authority of the laws of the United States.

6. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$200, or by imprisonment for not more than 90 days, or by both.

7. Suspension in event of shellfish poisoning. In event of evidence of shellfish poisoning as provided in section 4309, the commissioner shall suspend any or all interstate shellfish transportation licenses in the manner and for the reasons set forth in that section. (1963, c. 411, § 4.)

R.S.1954, c. 38, § 91; 1957, c. 237, §§ 1, 2; 1959, c. 331, § 1; 1961, c. 238, § 7; 1963, c. 411, § 4.

§ 4307. Intrastate shellfish permit

It is unlawful for any person, firm or corporation to shuck any clams, quahogs or mussels for sale to stores, restaurants or other dealer in the intrastate trade, or cause the same to be done, without having a current permit for that purpose from the commissioner.

It is unlawful for any person, firm or corporation to buy or take from any person any clams, quahogs or mussels, removed from the shell for the purpose of serving them in any restaurant or selling them in any store, or to any other dealer in this State, unless the shellfish are in containers marked with the intrastate shellfish permit number under which they were shucked.

1. Application. Any person, firm or corporation may make application on blanks furnished by the commissioner for a shellfish shucker's permit giving authority to shuck and remove clams,

quahogs and mussels from the shell for sale to stores, restaurants or other dealer in the intrastate trade. Each application must contain the following:

- A. It must be signed by the applicant.
- B. It must show the exact location of the flats from which the clams, quahogs and mussels are to be dug.
- C. It must show the exact location within the State of the shucking house where the shellfish will be removed from the shell.
- D. It must bear all the names of all the persons who will dig the clams, quahogs and mussels that are to be shucked by the applicant.

2. Issuance of permit. The commissioner may issue this permit if he is satisfied that the shucking house and premises conform to the sanitary standards recommended by the United States Public Health Service and conform to the laws and regulations of the State of Maine, and if he is satisfied that the shucked product from the shucking house conforms to the standards of purity and quality recommended by the United States Public Health Service and conforms to the laws and regulations of the State of Maine.

A. The commissioner shall adopt regulations, after public hearing, setting forth the minimum standards and requirements consistent with necessary standards for the physical plant and equipment for operation of a shucking house under this section. Notice of the public hearing must be published once at least 7 days before the hearing in the state paper. The regulations adopted after the hearing must be published in the state paper 7 days before they become effective. They may be amended or repealed at any time by the commissioner after like notice, hearing and publication.

3. Contents of permit. The permit must bear a number and designate by local name the areas from which clams, quahogs and mussels may be taken under the permit. It must bear the names of all persons who will dig the shellfish that are to be shucked.

4. Authorization of holder. The permit entitles the holder to shuck clams, quahogs and mussels for intrastate trade at the shucking house specified in the permit which are dug in the flats specified in the permit and are dug by the persons specified in the permit.

5. Expiration of permits. Shellfish shucking permits issued under this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner revoked or suspended.

6. Suspension of permits. The commissioner may suspend for any period of time any permits issued by him, or the right to obtain a permit whenever he determines that any of the provisions of law or regulations governing the shipment or transportation of clams, quahogs or mussels, or the provisions of law or regulations governing establishments where the clams, quahogs or mussels are shucked have been violated.

A. The commissioner may suspend any permits issued under this section under the procedure set forth in section 4309, subsection 5, as amended.

7. Holder to make reports. The holder of any permit issued under this section shall make a record of all sales and purchases of shellfish covered by this section on forms supplied by the department and shall file those records with the department weekly. The records and reports must contain the following information:

A. The location of the flats where the shellfish are dug and the amounts dug in each location.

B. The amounts of shellfish sold and where sold.

1963, c. 411, § 8.

§ 4308. Transplanting of seed clams and quahogs

The commissioner is authorized to issue permits to dig and transplant seed quahogs or seed clams to any person licensed to cultivate shellfish under the authority of section 4304, subject to this section.

1. Application for permit. Any person so qualified shall apply to the commissioner through the municipal officers of the municipality where the seed quahogs or seed clams to be transplanted are located, or directly to the commissioner if the seed quahogs or seed clams to be transplanted are located in a municipality which has been deorganized by Act of the Legislature.

A. The application must state all the following information:

(1) A description of the exact area where the seed quahogs or seed clams are to be obtained;

(2) A description of the means by which seed quahogs or seed clams are to be harvested for transplanting purposes;

(3) The method of transplanting the seed quahogs or seed clams;

(4) A description of the area where they will be planted.

2. Notice of hearing. Upon receipt of an application properly completed, the municipal officers of the municipality where the seed quahogs or seed clams are to be obtained, or the commissioner if that municipality is deorganized, shall order notice of a public hearing on the application.

A. The notice must state the name and address of the applicant, the date of application, a description of the exact area where the seed quahogs or seed clams are to be obtained and the time and place of the hearing.

B. The notice must be posted in at least 3 public places in the municipality, and published once in a newspaper published in the municipality, all at least 10 days before the date of hearing.

(1) If there is no newspaper published in the municipality, then notice must be published in a newspaper having general circulation in that municipality.

C. Notice of the hearing must be given the commissioner, unless the municipality from which the seed quahogs or seed clams are to be obtained is deorganized.

3. Disapproval; appeal; denial. After the hearing the municipal officers may disapprove the application, in which case the applicant may appeal to the commissioner whose decision is final.

A. If the municipality is deorganized, the commissioner may deny the application and that denial is final.

4. Approval of application. After the hearing the municipal officers may approve the application if all the provisions of this section are met, and the applicant shall then forward a copy of the application and approval to the commissioner.

5. Granting of permit. After receipt of the copy of the application and approval, or after the hearing if the seed quahogs or seed clams are located in a deorganized municipality, the com-

missioner may grant the permit, subject to the following provisions:

A. The commissioner shall appraise himself of the conditions under which the transplanting will take place before issuing a permit.

B. The seed quahogs or seed clams may be planted only in flats located in this State.

C. The permit must contain a specific expiration date, and a specified maximum volume of seed quahogs or seed clams which may be transplanted within the permitted time.

(1) The maximum volume of seed quahogs or seed clams to be transplanted under all permits may not exceed 25% of the estimated seed quahog or seed clam population in any given area, and the maximum volume granted to any one permit holder may not exceed 5% of the estimated seed quahog or seed clam population in the area specified in the application.

(a) Research personnel of the department shall determine the seed quahog or seed clam population by utilizing accepted survey methods.

6. Rights of permittee. The holder of a permit may remove seed quahogs or seed clams, whichever is specified in the permit, from the area specified in the permit, transport them to and transplant them in the area specified in his permit, provided he does not exceed the maximum volume specified in his permit.

1955, c. 333, § 1; 1959, c. 331, § 1.

§ 4309. Certificate to ship shellfish out of State

It is unlawful for any person, firm or corporation to ship beyond the limits of this State any soft-shell clams, quahogs or mussels, whether the same have been removed from the shell or not, or to sell such shellfish to another for shipment or transportation beyond the limits of the State, or to cause the same to be done, without having a current shellfish certificate from the commissioner as provided in this section.

1. Application. Any person, firm or corporation may apply for a shellfish certificate on a form provided by the commissioner. Each application for a shellfish certificate must contain the following:

A. It must be signed by the applicant.

B. It must show the names of persons licensed to fish, dig and sell clams, quahogs and mussels, if any, from whom such shellfish in the shell are to be procured by the applicant.

C. It must show the name of the persons holding shucking certificates, if any, from whom shucked soft-shell clams, quahogs or mussels are to be procured by the applicant.

1963, c. 411, § 3.

2. Issuance of certificate; contents of certificate. If the commissioner is satisfied that all persons named in the application are properly licensed or certified, he may issue the applicant a certificate. The certificate must contain the following:

A. The certificate must bear a number.

B. The certificate must designate the persons from whom clams, quahogs and mussels in the shell may be procured for interstate shipment or transportation.

C. The certificate must show from whom soft-shell clams, quahogs and mussels that have been shucked or removed from the shell may be procured for interstate shipment.

1963, c. 411, § 3.

3. Holder to make and file records with department. The holder of the certificate shall make a record of all sales and purchases of shellfish on forms supplied by the department and shall file those records with the department weekly. The records must contain the following information:

A. The location of the flats where the shellfish were dug and the amounts dug in each location.

B. The amounts of shellfish sold and where sold.

1963, c. 411, § 3.

4. Expiration of certificates. Shellfish certificates issued under this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner suspended, and must be renewed annually thereafter.

1963, c. 411, § 3.

5. Suspension of certificate. The commissioner may suspend for any period of time any certificate issued by him, or the right to obtain a certificate, whenever the holder of the certificate has violated any provision of the certificate or any law or regulation pertaining to shellfish.

A. The commissioner shall immediately suspend any or all shellfish certificates, intrastate shellfish permits and inter-

state shellfish transportation licenses if he is satisfied that evidence exists of shellfish poisoning caused by shellfish taken from the State and that the exact source of the contaminated shellfish is not definitely known.

(1) He shall cause notice of the suspension to be published in the state paper and the suspension is effective from the moment of that publication.

(2) The commissioner shall lift the suspension as soon as he is satisfied that the source of the poisoning has been located and isolated or that the danger of shellfish poisoning no longer exists. The commissioner shall publish notice of the lifting of the suspension in the state paper and the suspension is terminated the moment of publication.

1963, c. 411, § 3.

6. Unlawful to ship shellfish not procured from persons named in certificate. It is unlawful for the holder of a shellfish certificate to ship any clams, quahogs or mussels beyond the limits of the State unless they are procured from a person named in the shellfish certificate for that purpose.

7. Common carrier and other exceptions. This section does not apply to a common carrier licensed by the Interstate Commerce Commission who is transporting shellfish in containers labelled as provided in section 4353, nor does this section apply to shellfish which are being shipped through this State under authority of the laws of the United States.

8. Lawful for interstate shellfish transportation licensee to transport without certificate; definitions of "to ship" and "to transport." The holder of a current interstate shellfish transportation license authorized in section 4306 may transport, but not ship, shellfish beyond the limits of this State without holding a shellfish certificate as provided in this section, provided he does so in accordance with section 4306.

A. The verb "to ship" in all its moods and tenses as used in this section means to send by a common carrier. The verb "to transport" in all its moods and tenses means to carry or send an object from one place to another by any other means other than to ship as here defined.

9. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$200, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, § 91; 1957, c. 237, §§ 1, 2; c. 429, § 49; 1959, c. 331, § 1; 1963, c. 411, § 3.

§ 4310. Certificate to pack or shuck shellfish for interstate shipment

It is unlawful for any person, firm or corporation to pack any clams, quahogs or mussels, whether or not removed from the shell or to shuck or remove from the shell any clams, quahogs or mussels for shipment or transportation beyond the limits of the State, or to cause the same to be done, without first having a current certificate for that purpose from the commissioner as provided in this section.

It is unlawful for any person, firm or corporation to buy or take from any person any clams, quahogs or mussels which have been packed, whether or not they have been removed from the shell, for shipment or transportation beyond the limits of the State, or cause the same to be done, unless the clams, quahogs and mussels were packed in a packing house or shucking house certified by the commissioner at the time they were packed.

It is unlawful for any person, firm or corporation to buy, or take from any person any shucked clams, quahogs or mussels for shipment or transportation beyond the limits of the State, or to cause the same to be done, unless the clams, quahogs and mussels were shucked in a shucking house certified by the commissioner at the time of the shucking.

1. Application. Any person, firm or corporation may make application on blanks furnished by the commissioner for a shellfish packer's or shucker's certificate giving authority to pack or to shuck and remove clams, quahogs and mussels from the shell for shipment or transportation beyond the limits of the State. Each application must contain the following:

- A.** It must be signed by the applicant.
- B.** It must show the exact location of the flats from which the clams, quahogs and mussels are to be dug.
- C.** It must show the exact location within the State of the packing house where the shellfish will be packed or the shucking house where the shellfish will be removed from the shell.
- D.** It must bear all the names of all the persons who will dig the clams, quahogs and mussels that are to be packed or

shucked, and shipped by the applicant beyond the limits of the State.

1963, c. 411, § 5.

2. Issuance of certificate. The commissioner may issue this certificate if he is satisfied that the packing house or shucking house and premises conform to the sanitary standards recommended by the United States Public Health Service and conform to the laws and regulations of the State of Maine, and if he is satisfied that the shucked product from the shucking house conforms to the standards of purity and quality recommended by the United States Public Health Service and conforms to the laws and regulations of the State of Maine.

1963, c. 411, § 5.

3. Contents of certificate. The certificate must bear a number and designate by local name the areas from which clams, quahogs and mussels may be taken, packed or shucked, transported, shipped or sold by the applicant.

It must bear the names of all persons who will dig the shellfish that are to be packed or shucked.

1963, c. 411, § 5.

4. Authorization of holder. The certificate entitles the holder to either pack or shuck or both as specified in the certificate, clams, quahogs and mussels for interstate trade at the packing or shucking house specified in the certificate which are dug in the flats specified in the certificate, and are dug by the persons specified in the certificate.

1963, c. 411, § 5.

5. Expiration of certificate. Shellfish shucking certificates issued under this section expire at midnight on December 31st of the calendar year in which they were issued, unless sooner revoked or suspended.

1963, c. 411, § 5.

6. Suspension of certificate. The commissioner may suspend for any period of time any certificates issued by him, or the right to obtain a certificate, whenever he determines that any of the provisions of law or of regulations governing the shipment or transportation of clams, quahogs or mussels, or the provisions of law or regulations governing establishments where the clams, quahogs or mussels are shucked or packed, have been violated.

1963, c. 411, § 5.

7. Holder to make reports. The holder of any certificate issued under this section shall make a record of all sales and purchases of shellfish covered by this section on forms supplied by the department and shall file those records with the department weekly. The records and reports must contain the following information:

A. The location of the flats where the shellfish are dug and the amounts dug in each location;

B. The amounts of shellfish sold and where sold.

1963, c. 411, § 5.

8. Exceptions. This section does not apply to shellfish shucked for sale in intrastate trade, nor to shellfish shucked in hotels or restaurants for serving on the premises, nor to shucking shellfish at home for home consumption.

R.S.1954, c. 38, § 95; 1959, c. 331, § 1; 1963, c. 411, § 5.

§ 4311. Disposition of license fees

All the license fees received from commercial shellfish and marine worm licenses and from interstate shellfish transportation licenses, and 10% of all the license fees received from wholesale seafood dealer's and processor's licenses are allocated to the Shellfish Fund, as heretofore established.

1. Purposes for which fund may be used. The commissioner may expend any and all of the money in the Shellfish Fund from time to time for the purpose of restoration, development and conservation of clams, quahogs, oysters, mussels and marine worms in the shores, flats or coastal waters of the State, and for the establishment and maintenance of permanent and temporary facilities used for such purposes.

2. Fund does not lapse. The Shellfish Fund does not lapse. Fees so collected or allocated in any one year may be used in the same or any succeeding year.

A. All funds which were in the Shellfish Fund as provided in the Revised Statutes, 1954, chapter 38, section 109 immediately prior to September 12, 1959 are in the Shellfish Fund as authorized in this section in all respects as though they were originally allocated under this section.

R.S.1954, c. 38, § 109; 1955, c. 155, § 2; 1959, c. 331, § 1.

ARTICLE 3. PROHIBITED ACTS

§ 4351. Violations regarding shellfish cultivation; local enforcement

The following provisions apply to areas under the licenses authorized by section 4304.

1. Taking shellfish without consent of licensee; penalty. It is unlawful for any person, except the licensee, his employees, heirs or assignees, to dig or take clams, quahogs or mussels, or clam, quahog or mussel seed from the area licensed. The licensee, his heirs or assignees have exclusive use of the shellfish in the area described in the license during the term of the license.

A. The licensee, his heirs or assignees may in a civil action recover treble damages and costs of any person who, without his or their consent, digs or takes any clams, quahogs, mussels or other shellfish from the area covered by the license.

B. Whoever so digs or takes clams, quahogs or other shellfish shall, in addition, be punished by a fine of \$20 for each offense, or by imprisonment for not more than 30 days, or by both.

1961, c. 317, § 78.

2. Molesting shellfish without consent of licensee; penalty. It is unlawful for any person, without the consent of the licensee, his heirs or assignees, to do any of the following acts, and whoever does so shall be punished for the first offense by a fine of not more than \$20 or by imprisonment for not more than one month, and for a subsequent offense by a fine of not more than \$50 or by imprisonment for not more than 6 months:

A. To work a dredge, tongs, rake or other implement for the taking of shellfish of any description, for any purpose whatever, upon or over the area covered by the license;

B. To disturb the growth of shellfish upon the area covered by the license in any manner;

C. To discharge any substance upon the area covered by the license which may directly or indirectly injure the shellfish thereon.

3. Molesting markers; penalty. It is unlawful for any person to willfully do any of the following acts, and whoever does so shall be punished by a fine of not more than \$20, or by imprisonment for not more than 30 days, and in addition shall be li-

able in a civil action to the licensee, his heirs or assignees in treble damages and costs:

A. To willfully injure, deface, destroy, move or remove any mark or bound used to define the extent of any area covered by a license;

B. To willfully place any unauthorized mark or bound on the area covered by a license;

C. To willfully fasten any boat or vessel to any mark or bound used to define the extent of the area covered by the license;

D. To willfully injure, deface, destroy, move or remove any notice required by section 4305.

1961, c. 317, § 79.

4. Local enforcement. It is the responsibility of the municipality, or the commissioner if the municipality is deorganized, to enforce all provisions relating to licenses issued under the authority of section 4304.

R.S.1954, c. 38, §§ 43, 45, 46, 48; 1959, c. 331, § 1; 1961, c. 317, §§ 78, 79.

§ 4352. Method of taking clams or marine worms

It is unlawful to take or dig clams or marine worms in the State of Maine contrary to this section.

1. Hand powered devices only. It is unlawful to take or dig any clams or marine worms, except by devices or instruments operated solely by hand power.

2. Boats and hydraulic dredges. It is unlawful for the purpose of taking clams or marine worms to dig, rake, loosen or disturb the flats with the propeller or with any other part of any boat or hydraulic dredge.

3. Department equipment excepted. This section does not apply to equipment operated by the Department of Sea and Shore Fisheries.

4. Maryland dredges excepted in Hancock County. This section does not apply to any Maryland type dredge operated solely within the limits of Hancock County, provided permission to operate the dredge is obtained from the municipal officers of the municipality where the dredge is operated, and provided no marine worms taken by these machines may be marketed in any form or manner.

1957, c. 370; 1959, c. 331, § 1.

§ 4353. Shipment in unlabeled containers

All containers, except hermetically sealed containers, used in the shipment or transportation of clams, quahogs or mussels from a place within the State to a place outside the State must bear a label as provided in this section:

1. What label must state. The label must state in plain and distinct letters and figures the following information:

A. The name of the consignor, the number of the shellfish certificates under which they are being shipped, or the number of the shellfish interstate transportation licenses under which they are being transported, the number of the certificates under which they were packed, and, if the shellfish have been removed from the shell, the number of the shellfish certificates under which they were shucked;

B. The name of the consignee;

C. The words "Clams," "Quahogs" or "Mussels," whichever the containers hold;

D. The date of shipment;

E. The name of the municipality in which the clams, quahogs or mussels were dug.

1963, c. 411, § 6.

2. Illegal to ship or transport unlabelled containers or attempt to do so. It is unlawful for any person, firm or corporation to ship or transport, or attempt to ship or transport, clams, quahogs and mussels from a place within the State to a place outside the State, or cause the same to be done, unless the containers are marked as provided in this section, or the shellfish are being transported in hermetically sealed containers. (1961, c. 238, § 8.)

R.S.1954, c. 38, § 96; 1959, c. 331, § 1; 1961, c. 238, § 8; 1963, c. 411, § 6.

SUBCHAPTER IV

LOBSTERS, CRABS AND CRAWFISH

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ARTICLE 1. LICENSES AND PERMITS

§ 4401. Purchase of egg-bearing lobsters; regulations; V-notch lobsters

The commissioner may authorize the taking, holding and delivery to the custody of the department any egg-bearing lobsters by any person holding any license connected with lobsters which is issued under the authority of any provision of chapters 401 to 417.

1. Regulations. The commissioner may adopt regulations for the effective operation of this section, provided no regulation is inconsistent with any provision of this section.

2. Written permit to possess, etc. Any person authorized to take, hold and deliver such lobsters must have a written permit from the commissioner setting forth the name of the permittee, the date of the expiration of the permit and the conditions and limitations under which such lobsters may be taken, held and delivered by the permittee.

3. Payment. The commissioner shall pay the permittee for egg-bearing lobsters to the extent of the appropriation authorized by the Legislature for that purpose, but at a rate not above the current wholesale price of other lobsters in the State.

4. Commissioner shall mark and liberate lobsters; possession of V-notch lobsters and mutilated lobsters unlawful. The

commissioner shall cause the female lobsters bearing eggs to be liberated in the coastal waters of the State, as the commissioner may deem for the best interests of the State.

A. The commissioner shall cause such egg-bearing lobsters, before being liberated, to be marked by cutting a V-notch in the middle flipper of their tails.

B. It is unlawful for any person to have in his possession any female lobster marked with a V-notch in the middle flipper of its tail, and any female lobster which is mutilated in such a manner to hide or obliterate such mark.

(1) If any person catching any female lobster so marked or mutilated immediately after catching it returns it alive to the waters from which it was taken, he is excused from the illegal possession of that lobster.

5. Penalty for the taking, holding or possession of female lobsters. Whoever takes, holds, transports, ships or has in his possession any female lobsters in violation of any provision of this section shall be punished by a fine of not less than \$25, and in addition by a fine of \$10 for each such female lobster involved, or by imprisonment for not more than 90 days, or by both.

6. Prima facie evidence. The fact that a lobster has a V-notch in the middle flipper of its tail, or has a mutilated middle flipper of its tail, is prima facie evidence that the lobster is a female lobster.

R.S.1954, c. 38, § 119; 1959, c. 331, § 1.

§ 4402. Removal of lobster meat from shell

It is unlawful for any person, firm or corporation to remove lobster meat from the shell for sale without a current permit issued by the commissioner, except as provided in this section:

1. Dealer may obtain permit; fee. Any person, firm or corporation licensed as a dealer under sections 4302 or 4303 may be granted a permit to remove lobster meat from the shell upon written application to the commissioner and the payment of a fee of \$10.

2. Permittee may remove meat from shell with limitations. The permit entitles the holder to remove lobster meat from the shell subject to the following provisions:

A. It is unlawful to remove the meat from the shell at any place other than the permittee's place of business as stated in the permit.

- B. The meat must come from legal sized lobsters.
- C. Tail sections of lobster meat must be removed from the shell whole and intact.

3. Permittee may sell, transport, ship, possess meat with limitations. The permit entitles the holder to sell, to transport within the State, to ship anywhere, or to have in his possession lobster meat, when and where it is otherwise lawful to do so, subject to the following provisions:

- A. The meat must come from legal sized lobsters.
- B. The meat must conform to section 4455.
- C. The meat must be kept in marked containers as provided in section 4454.

4. Unlawful to ship, transport or possess lobster meat not removed under permit; exceptions. It is unlawful for any person, firm or corporation to ship, transport or possess any lobster meat which has been removed from the shell for sale, unless the meat was removed from the shell by the holder of a permit provided in this section.

- A. This subsection does not apply to a common carrier nor to meat passing through this State under the authority of laws of the United States.

5. Exception for hotels and restaurants. No permit is required to remove lobster meat for serving in hotels and restaurants, provided the meat is removed on the premises, and lobster meat which has been removed from the shell in a hotel or restaurant for serving on the premises may be legally possessed by the hotel or restaurant.

6. Prima facie evidence meat removed for sale. If any lobster meat which has been removed from the shell is found on the premises of any place of business which is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it is prima facie evidence that the meat was removed for sale.

R.S.1954, c. 38, § 116; 1959, c. 331, § 1.

§ 4403. Interstate lobster transportation

It is unlawful for any person, firm or corporation to transport, or attempt to transport, in any manner any lobsters, or parts thereof, beyond the limits of the State, or to cause the same to be done, without having a current license from the commissioner as provided in this section.

1. Exception for common carrier. This section does not apply to a common carrier.

2. License designation; application. Any person may apply for a license, designated as an interstate lobster transportation license, to the commissioner on forms furnished by the commissioner. The application must contain the following:

A. A description of each boat, truck, automobile, airplane or other vehicle to be used in the transportation sufficient to identify it;

B. The name and address of the owner of each boat, truck, automobile, airplane or other vehicle to be used in the transportation.

3. License fees. The license fee is \$50 plus \$5 for each boat, truck, automobile, airplane or other vehicle, beyond the first, to be used by the licensee in the transportation.

A. The license fee is only \$25 plus \$5 for each vehicle, beyond the first, for the holder of a current wholesale seafood dealer's and processor's license.

4. Only vehicles listed in license may be used. It is unlawful for any person, firm or corporation to use any boat, truck, automobile, airplane or other vehicle for the transportation unless it is described in the license.

5. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 90 days, or by both.

6. General licensing provisions apply. The general licensing provisions of section 3751 apply to interstate lobster transportation licenses.

R.S.1954, c. 38, § 113; 1959, c. 331, § 1.

§ 4404. Lobster and crab fishing

It is unlawful for any person to fish for, take or catch any lobsters or crabs in any manner without having a current written license as provided in this section.

1. Exception for crabs for home consumption. This section does not apply to the taking or catching of crabs with bare hands, or with hook and line, that may be found along the shore, under rocks or in pools left by the receding tides, provided they are used for home consumption by the taker, and are not sold.

2. License designation; general scope. The license, designated as a lobster and crab fishing license, entitles the holder to take lobsters and crabs when and where it is otherwise lawful to take them.

3. Scope of license for transportation; license to be exhibited. The license entitles the holder to transport lobsters and crabs within the limits of the State, provided he keeps his license upon his person while so transporting lobsters or crabs, and provided he exhibits the license while so engaged on request of a coastal warden.

4. Residence requirements. A person who has been a legal resident of the State for at least 3 years next prior to the date of his application may apply to the commissioner for a lobster and crab fishing license.

A. Any person who was previously a legal resident of this State and has reestablished his legal residence here for a period of one year next preceding his application may count the time of his nonresidence as part of his 3-year period.

B. A veteran of World War II or the Korean War who is honorably discharged, honorably separated or retired from active service in the armed forces may apply for a license if he has been a legal resident of this State for at least one year at any time prior to the date of his application, and is a legal resident of this State at the time of his application.

1961, c. 238, § 9.

5. License fee. The fee for a lobster and crab fishing license is \$10 which the applicant shall enclose with his application.

1961, c. 168, § 1.

6. Lobster Fund. Five dollars of the license fee received from each \$10 for lobster and crab fishing licenses shall be allocated to the Lobster Fund, as heretofore established.

A. The commissioner may expend any and all of the money in the Lobster Fund from time to time for the purpose of propagation of lobsters, and for purchasing seed lobsters from Maine lobster pounds and female lobsters from Maine wholesale lobster dealers and liberating said lobsters in Maine coastal waters.

B. The Lobster Fund does not lapse. Fees so collected or allocated in any one year may be used in the same or any succeeding year.

1961, c. 168, § 2.

7. Certain persons considered as fishing. Any person, assisting or helping another in lobster or crab fishing either by operating the boat or in attending to lobster or crab traps or pots, is considered as fishing and must have a current license under this section.

8. General licensing provisions apply. The general licensing provisions of section 3751 apply to lobster and crab fishing licenses.

R.S.1954, c. 38, § 112; 1955, c. 333, § 3; 1957, c. 242; 1959, c. 331, § 1; 1961, c. 168, §§ 1, 2; c. 238, § 9.

ARTICLE 2. PROHIBITED ACTS

§ 4451. Lobsters; length, double gauge measure

The commissioner shall provide a measure, designated as the state double gauge lobster measure, for determining the legal length of lobsters. The commissioner shall cause one gauge on the measure to be $3\frac{3}{16}$ inches in length and the other 5 inches in length. No evidence concerning the legal length of any lobster is admissible in any court in the State in any manner unless the legal length of the lobster has been determined by such a measure. The commissioner shall sell the measures at cost on request of any person who is the holder of a lobster and crab fishing license or who is licensed to handle or process lobsters in any manner.

1. Short lobsters illegal; method of measurement; penalty. It is unlawful for any person to buy, sell, expose for sale, give away, transport or have in possession any lobster, alive or dead, cooked or uncooked, which is less than $3\frac{3}{16}$ inches in length as determined by the state double gauge lobster measure by measuring from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

A. And whoever does so shall be punished by a fine of \$10 and in addition by a fine of \$5 for each such lobster involved, or by imprisonment for not more than 90 days, or by both.

2. Long lobsters illegal; method of measurement; penalty. It is unlawful for any person to buy, sell, expose for sale, give away, transport or possess any lobster, alive or dead, cooked or uncooked, which is more than 5 inches in length as determined by the state double gauge lobster measure by measuring from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell.

A. And whoever does so shall be punished by a fine of \$10 and in addition by a fine of \$25 for each such lobster involved, or by imprisonment for not more than 90 days, or by both.

1961, c. 238, § 10.

3. Exception if lobster immediately liberated alive when caught. If any lobster which is shorter than $3\frac{3}{16}$ inches in length, or longer than 5 inches in length, as determined by the method of measuring provided in subsections 1 and 2, or is mutilated in such a manner as to make accurate measurement impossible, is immediately liberated when caught, the person who so liberates the lobster is excused from the unlawful possession of that lobster.

1961, c. 238, § 10.

4. Mutilated lobsters illegal; penalty. It is unlawful to possess any lobster, or part thereof, alive or dead, cooked or uncooked, which is mutilated in such a manner as to make accurate measurement impossible.

A. And whoever does so shall be punished by a fine of \$25 for each such lobster involved, or by a fine of not more than \$100 if the number of lobsters cannot be determined, or by imprisonment for 90 days, or by both.

R.S.1954, c. 38, § 114; 1957, c. 334, § 7; c. 361, §§ 1, 2; 1959, c. 331, § 1; 1961, c. 238, § 10.

§ 4452. Sale of crawfish; imitation lobster

It is unlawful for any person to sell, offer for sale or possess for sale within the State crawfish, so-called, in any form. It is unlawful to serve in public eating places, to label or advertise as lobster or imitation lobster any species of fish in either a canned, frozen or fresh state, whether removed from the shell or not, except the species of lobster commonly known as *Homarus americanus*.

1. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, §§ 107, 116; 1959, c. 331, § 1.

§ 4453. Conventional method of catching lobsters required

It is unlawful to fish for or catch lobsters from the coastal waters of the State by any method other than the conventional method of lobster traps or pots.

1. Exception if lobster immediately liberated alive when caught. If any lobster so caught or taken is immediately liberated alive into coastal waters, then the person so liberating the lobster is excused from the unlawful taking or catching of it.

2. Definition. A "lobster trap or pot" for the purposes of this section shall be held to mean a stationary device set on the ocean bottom and commonly used along the Maine coast for catching lobsters.

1961, c. 204.

§ 4454. Shipping lobsters in unlabeled containers

All barrels, boxes or other containers containing lobster meat which has been removed from the shell for sale must be plainly labelled with the name of the permittee and with the words "Lobster Meat Removed Under Permit Number," followed by the number of the permit under which the lobster meat was removed.

1. Shipping, transporting or possession of unmarked containers illegal. It is unlawful for any person, firm or corporation, except as provided in this section, to possess, ship or transport any lobster meat removed from the shell for sale unless the container is labelled as provided in this section.

2. Prima facie evidence meat removed for sale. If more than 10 pounds of lobster meat which has been removed from the shell is found in any motor vehicle or in any boat or airplane, or if any amount of lobster meat which has been removed from the shell is found in any place of business which is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it is prima facie evidence that the lobster meat was removed for sale.

3. Exception for hotels and restaurants. Lobster meat which has been removed from the shell in a hotel or restaurant immediately prior to and for the purpose of consumption on the premises need not be labelled as provided in this section, and the same may be legally possessed at the hotel or restaurant.

4. Exception for meat passing through State. This section does not apply to lobster meat passing through this State under laws of the United States.

5. Exception for some foreign canned meat. This section does not apply to lobster meat which has been canned beyond

the limits of this State in hermetically sealed containers which do not require refrigeration.

6. Exception for holder of wholesale seafood dealer's and processor's license. The holder of a wholesale seafood dealer's and processor's license may possess lobster meat from other states and countries in containers which have not been marked as provided in this section if he meets all the requirements of section 4456, subsection 2.

R.S.1954, c. 38, § 116; 1959, c. 331, § 1.

§ 4455. Possession of certain lobster meat unlawful

It is unlawful to possess any tail section of lobster meat removed from the shell unless it conforms to this section.

1. Unlawful to possess tail section which is shorter than 4¼ inches; penalty. It is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is less than 4¼ 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 the tail section.

A. Whoever possesses any such tail section of lobster meat shall be punished by a fine of \$10 and in addition by a fine of \$5 for each such tail section of lobster meat possessed, or by imprisonment for not more than 90 days, or by both.

2. Unlawful to possess tail section which is longer than 6½ inches, penalty. It is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is more than 6½ 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 the tail section.

A. Whoever possesses any such tail section shall be punished by a fine of \$10 and in addition by a fine of \$25 for each tail section of lobster meat possessed, or by imprisonment for not more than 90 days, or by both.

3. Removal or possession of tail sections not whole unlawful. It is unlawful to remove any tail section of lobster meat from the shell of a lobster unless it is removed whole and intact, and it is unlawful for any person, firm or corporation to possess any tail section of lobster meat removed from the shell which is not whole and intact.

4. Hotels and restaurants may cut up tail sections for serving; prima facie evidence. Hotels and restaurants may cut

up tail sections of lobster meat on the premises immediately prior to and for the purpose of serving it to customers.

A. If cut up tail sections of lobster meat are found under refrigeration in a hotel or restaurant and they are unmixed with any other food, it is prima facie evidence that the tail sections were not immediately to be served to customers as provided in this subsection.

5. Exception for wholesale dealer. The holder of a wholesale seafood dealer's and processor's license in this State may at his regular place of business cut up lobster tail sections immediately prior to and for the purpose of preserving, canning or freezing them as processed stews, pies, salads, newburgs or chowders.

1963, c. 75, § 2; c. 414, § 12-F.

6. Exception for home consumption; prima facie evidence. Any person, who possesses lobster meat for the purpose of consumption by himself and his family, may cut up tail sections of lobster at his home immediately prior to and for the purpose of serving it to himself and his family.

A. If cut up tail sections of lobster meat are found at a place of business which is engaged in selling, processing or transporting food in any manner for human consumption, it is prima facie evidence that the same were not cut up immediately prior to and for the purpose of serving them to the respondent or his family.

7. Exception for common carrier. This section relating to the possession of cut up tail sections of lobster meat, or the possession of tail sections of lobster meat of illegal size, does not apply to a common carrier who possesses them for transportation if the containers are labelled as provided in section 4460.

A. The meat may, nevertheless, be confiscated, and the person who shipped it is still responsible.

8. Exception for meat passing through State. This section, relating to the possession of cut up tail sections of lobster meat, or the possession of tail sections of lobster meat of illegal size, does not apply to lobster meat passing through this State under the authority of laws of the United States.

9. Exception for some canned lobster meat. This section does not apply to lobster meat which has been canned in hermetically sealed containers which do not require refrigeration.

R.S.1954, c. 38, § 116; 1959, c. 331, § 1; 1963, c. 75, § 2; c. 414, § 12-F.

§ 4456. Possession of foreign lobster meat by wholesale dealer

The following provisions apply to foreign lobster meat which has been removed from the shell.

1. Definition of foreign lobster meat. "Foreign lobster meat" as used in this section means lobster meat which came from any other state or country.

2. Wholesale dealer may possess under certain conditions. The holder of a wholesale seafood dealer's and processor's license may possess foreign lobster meat which is removed from the shell, subject to the following provisions:

A. The shipping containers may not be opened until immediately prior to processing the meat.

B. The meat must be possessed for the purpose of canning or freezing it for resale as processed stews, newburgs, chowders or pies in the retail trade.

C. The meat may not be resold unless it is so processed.

D. The tail sections of such meat must not be cut up until immediately before processing, must be of legal length and must not have been removed from lobsters of illegal size.

E. The dealer who purchases such meat is required to file a monthly statement of shipments received with the commissioner on forms furnished by the commissioner.

R.S.1954, c. 38, § 116; 1957, c. 234; 1959, c. 331, § 1

§ 4457. Restrictions on persons raising, possessing or molesting traps

It is unlawful for any person, except a Maine coastal warden, the rightful owner, or a person having written permission from the rightful owner, to raise, lift, transfer or in any manner to molest any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, regardless who set the pot, trap, car or other contrivance. It is unlawful for any person, except a Maine coastal warden, the rightful owner, or a person having written permission from the rightful owner, to take, remove or carry away from the beach or shore, or have in his possession any pot, trap, car or other contrivance normally used for the taking or holding of lobsters or crabs, or any warp or buoy.

1. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, § 117; 1955, c. 333, § 6; 1957, c. 30, § 9; 1959, c. 331, § 1; c. 378, § 32; 1961, c. 238, § 11; 1963, c. 138, § 1.

§ 4458. Hauling lobster pots at night

From June 1st to October 31st of each year, it is unlawful for any person to raise, haul or transfer from the tidal waters of this State any pot, trap or other contrivance that is set for the taking of lobsters or crabs during the period $\frac{1}{2}$ hour after sunset until $\frac{1}{2}$ hour before sunrise of the following morning.

1. Definition of sunset and sunrise. For the purpose of this section sunset and sunrise is that time given for sunset or sunrise in the Maine Farmer's Almanac for the particular day involved converted to the legal standard of time in force in this State on that day.

1957, c. 232; 1959, c. 331, § 1; 1961, c. 54; 1963, c. 75, § 3.

§ 4459. Possession of egg-bearing lobsters

It is unlawful for any person to take, sell or have in his possession any lobster which is bearing eggs.

1. Exception for egg-bearing lobsters immediately liberated alive. If any person who takes a lobster which is bearing eggs immediately liberates it alive when caught to the waters from which it was taken, he is excused from the unlawful possession of that lobster.

2. Penalty. Whoever violates any provision of this section shall be punished by a fine of \$10 for each lobster involved, or by imprisonment for not more than 90 days, or by both.

3. Exception for permittee. This section does not apply to any person who takes or holds them under authority of a permit from the commissioner as provided in section 4401.

4. Exception for pounds; prima facie evidence. This section does not apply to lobsters spawning in pounds if they are upon discovery in the pound immediately liberated alive in the coastal waters.

A. If an egg-bearing lobster is found in a pound by a coastal warden, or other officer who is authorized to enforce chapters 401 to 417, it is prima facie evidence that the egg-bearing lobster was previously discovered, and that the lobster is possessed in violation of this section.

R.S.1954, c. 38, § 118; 1959, c. 331, § 1.

§ 4460. Unmarked lobster shipping containers

It is unlawful for any person, firm or corporation to ship, or offer for shipment, any lobsters, or any parts thereof, or cause the same to be done, except in barrels, boxes or other containers that are plainly marked on the outside with the word "LOBSTERS" in capital letters at least one inch in height, together with the full name of the shipper.

1. Unlawful to transport lobsters unless containers marked.

It is unlawful for any common carrier, or any person, to accept lobsters for transportation, or to transport any lobsters, or parts thereof, unless they are packed and marked in accordance with this section.

2. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$50 nor more than \$300, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, § 120; 1959, c. 331, § 1.

§ 4461. Unmarked lobster and crab pots and traps

It is unlawful for any person to set, raise or haul in or from the tidal waters of this State any pot or trap for any lobster or crab, or to cause the same to be done, without having it and the buoy attached thereto plainly carved or branded with his lobster and crab fishing license number.

1. Lobster cars to be marked. It is unlawful for any person, firm or corporation to use or set in tidal waters of this State any car or other contrivance for the holding or keeping of lobsters, or to cause the same to be done, without having it plainly carved or branded with the owner's lobster and crab fishing license number, retail seafood dealer's license number or wholesale seafood dealer's and processor's license number.

2. Penalty. Whoever violates any provision of this section shall be subject to the penalties provided in section 4504 and in addition shall forfeit to the State the pot, trap, buoy, car or other contrivance not so marked, and any lobsters or crabs found therein.

R.S.1954, c. 38, § 115; 1957, c. 30, § 8; 1959, c. 331, § 1.

§ 4462. Setting of traps near weirs

It is unlawful for any person to set any lobster trap within 300 feet of the mouth of any fish weir which is licensed under section 3801 or 3802.

1. Penalty. Whoever violates any provision of this section shall be punished by a fine of \$10 or by imprisonment for not more than 30 days.

R.S.1954, c. 38, § 121; 1957, c. 30, § 10; 1959, c. 331, § 1.

§ 4463. Lobster traps on trawls; York County

It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in any of the tidal waters of York County.

1961, c. 121.

§ 4464. —Saco Bay; Cumberland County

It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in that part of Saco Bay west of a line running 150° true from the center of Spurwink River in Scarborough.

1961, c. 337.

§ 4465. —Certain tidal waters

It is unlawful to have on any trawl more than 3 lobster traps on one warp and buoy in that part of the tidal waters of the State easterly from a line running true south from Pemaquid Point Light, Lincoln County, to a line true south from Owl's Head Light, Knox County.

1961, c. 337.

SUBCHAPTER V

ENFORCEMENT AND PENALTIES

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ARTICLE 1. GENERAL PROVISIONS

§ 4501. Prosecution by county attorney

Each county attorney shall prosecute all violations of chapters 401 to 417 occurring within his county when requested by the commissioner, a coastal warden or other person authorized to enforce any provision of chapters 401 to 417.

R.S.1954, c. 38, § 130; 1959, c. 331, § 1.

§ 4502. Jurisdiction

The District Court has concurrent original jurisdiction with the Superior Court in all prosecutions under chapters 401 to 417.

R.S.1954, c. 38, § 133; 1959, c. 331, § 1; 1963, c. 402, § 82.

§ 4503. Arrest without warrant

Any officer authorized to enforce the sea and shore fisheries laws may, without a warrant, arrest any violator of those laws.

1. Respondent to be taken to nearest court. The arresting officer shall with reasonable diligence cause the violator to be taken, for a warrant and trial, before the District Court in the division nearest to where the alleged offense was committed. (1963, c. 402, § 83.)

R.S.1954, c. 38, § 134; 1959, c. 331, § 1; 1963, c. 402, § 83.

§ 4504. General penalty

Whoever violates any provision of chapters 401 to 417, or any regulation authorized by chapters 401 to 417, or any rule and regulation authorized by the Revised Statutes of 1954, chapter 38, or any regulation adopted by the commissioner by legislative directive, excepting only those violations for which specific penalties are provided, shall be punished by a fine of not less than \$10 nor

more than \$300, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, § 141; 1959, c. 331, § 1.

§ 4505. **Violations by corporations; proceedings**

In case of violation of any provision of chapters 401 to 417, or of any regulation authorized by chapters 401 to 417, by a corporation, the warrant may be served by giving in hand to the president, secretary, clerk or manager of the corporation a true attested copy of the complaint and warrant.

1. Service on foreign corporations. If the corporation is a foreign corporation, it may be served on the corporation's attorney appointed under Title 13, section 591. If the corporation has not appointed such an attorney, it may be served on the Secretary of State, provided another attested copy of the complaint and warrant is sent by registered mail, return receipt requested, to the corporation's home office. For service on the Secretary of State the returned receipt and the officer's return of service showing compliance with this section constitute sufficient service regardless of Title 13, section 591.

2. Corporation deemed in court after service. The corporation is deemed in court and subject to the court's jurisdiction upon return to the court of a warrant served as provided in this section.

3. Forfeiture for failure to appear; forfeiture deemed conviction. If the corporation fails to appear in court within 10 days of service of the warrant, court holidays not counted, the court may order any sum of money not exceeding the maximum fine for the alleged violation to be forfeited by the corporation to the use of the State.

A. In addition, such a forfeiture is deemed a conviction of a provision of chapters 401 to 417 for the purposes of suspension of licenses, permits or rights thereto.

4. Fines and forfeitures collected by execution. Any fine or forfeiture imposed by the court may be collected by an execution issued by the court against the property of the corporation as in civil actions.

5. Section does not exempt agents, etc. This section does not exempt any agent, officer or employee of the corporation from prosecution.

R.S.1954, c. 38, § 129; 1959, c. 331, § 1.

§ 4506. Certificate of commissioner or chief warden admissible in evidence

A certificate of the commissioner, or of the chief coastal warden, signed by either, stating what the records of the commissioner's office show on any given matter are admissible as evidence in all courts to prove what the records of the commissioner's office are on that matter.

1. Certificate prima facie evidence person not the holder of a license or permit. A certificate of the commissioner, or of the chief coastal warden, signed by either, stating that the records of the commissioner's office do not show that a particular person, firm or corporation, on a given date, held any certain license or licenses, or permit or permits, which the commissioner is authorized to issue under chapters 401 to 417, is prima facie evidence that the person, firm or corporation named in the certificate did not hold such a license or permit on the date specified in the certificate.

2. Certificate prima facie evidence of license, permit or right suspension. A certificate of the commissioner, or of the chief coastal warden, signed by either, stating that the records of the office of the commissioner show that on a given date a particular person's, firm's or corporation's license or licenses, or permit or permits, or rights thereto, all as described in subsection 1, were under suspension, is prima facie evidence of such suspension.

3. Necessary foundation to admit certificate in evidence. Any certificate provided for in this section is admissible in evidence, without further foundation, in any court after testimony by any coastal warden that he recognizes the exhibit, and that it is a certificate which he received after requesting the same from the office of the commissioner by telephone or otherwise.

4. Section does not apply to proof of regulations. This section does not apply to the proof of regulations adopted by the commissioner under the authority of section 3503 or 3504, nor to the proof of regulations adopted by the salmon commission. Certificates for the proof of those regulations are provided in section 3404. (1961, c. 238, § 12.)

R.S.1954, c. 38, § 128; 1957, c. 30, § 15; 1959, c. 331, § 1; 1961, c. 238, § 12.

§ 4507. Witness compelled to testify

In any prosecution for a violation of any provision of chapters 401 to 417, or for a violation of any regulation authorized by

chapters 401 to 417, any person, whether a participant or not, when requested by the county attorney, the commissioner or the person conducting the prosecution, may be compelled to testify as a witness against any other person charged with any such violation.

1. Evidence may not be used against witness. If the witness, after his refusal to answer the question on the grounds of self-incrimination, is compelled to answer, the evidence so given may not be used against him in any criminal prosecution.

R.S.1954, c. 38, § 131; 1959, c. 331, § 1.

§ 4508. Recovery and disposition of fines, fees and forfeitures

This section applies to all fines, fees, forfeitures and penalties authorized by chapters 401 to 417, except those authorized for municipal ordinances.

1. Methods of recovery. Any of them may be recovered by complaint, indictment or civil action brought in the county where the offense was committed. The civil action must be brought in the name of the State.

A. This subsection does not prevent any other remedy or means of recovery of any fine, fee or forfeiture which may otherwise be authorized in chapters 401 to 417.

1961, c. 317, § 81.

2. Disposition of fines, fees and forfeitures; commissioner's records. All of them, except where otherwise expressly provided in chapters 401 to 417, accrue to the commissioner, and he shall pay them to the Treasurer of State.

A. The commissioner shall make and keep in his office an itemized record of the amount of each fine, fee, forfeiture, penalty and collection with the name of the payer of each.

R.S.1954, c. 38, § 139; 1959, c. 331, § 1; 1961, c. 317, § 81.

§ 4509. State pays costs of imprisonment

The State shall pay to the county involved the costs of imprisonment in the county jail for violation of any provision of chapters 401 to 417 or any regulation authorized by chapters 401 to 417. The costs for any single imprisonment may not exceed the average amount paid for board of federal prisoners.

R.S.1954, c. 38, § 140; 1959, c. 331, § 1.

§ 4510. Fees and forms for libel proceedings

This section applies to the libel proceedings authorized in section 4552.

1. Fees. The fees to be taxed on the libel proceedings are as follows:

- A. For the libel and order of notice, \$3;
- B. For the entry of the libel, \$1;
- C. For the hearing, \$1;
- D. For posting the notices, and the officer's return of service, \$4;
- E. For the delivery or restoration of the items, \$4;
- F. For all the officer's travel in connection with the entire proceeding, 10¢ per mile.

2. Forms. The forms set forth in this subsection, with such changes as adapt them to the particular court, locality and circumstances of the case, are sufficient in law:

A. Form of libel:

STATE OF MAINE

County of SS To the Honorable
 Clerk
, Judge of
 Complaint Justice
 Court.

Your libellant, of, Maine, a coastal warden for the State of Maine, states that on the day of, 19..., at in said county, he seized certain fish, shellfish, lobsters, or other marine species, or parts thereof, or certain equipment, described as follows:

.....
 That the items were (were not) seized in the possession of a common carrier, to wit: one

.....
 That the items seized and above described were either taken, caught, bought, sold, shipped, transported, possessed or used in violation of a provision of the Revised Statutes of Maine of 1964, Title 12, chapters 401 to 417, as revised, or in violation of a regulation authorized by those chapters; to wit: that they were in violation of the following section of Title 12,

or the following regulation:
.....
.....

Wherefore he prays for a decree of forfeiture of said items in accordance with the provisions of the Revised Statutes of Maine, Title 12, section 4552, and amendments thereto.

Signed at, in said county, this day of, A.D. 19

(Signed)
Coastal Warden

B. Form for order of notice:

STATE OF MAINE

(L. S.)

County ofSS

To all persons interested in the libel of here-
unto annexed and made part of this order of notice:

You are hereby notified to appear before me at the time and place appointed for the hearing in this order of notice, and show cause, if any you have, why the items described in said libel should not be declared forfeited to the State.

It is hereby ordered that the hearing be held on the day of A.D. 19... at of the clock in the noon, at in the of in said county.

It is further ordered that a true copy of said libel and this order of notice, attested by a coastal warden, be posted in two conspicuous places in the of in said county, the municipality where said items were seized, at least 10 days before the day of hearing.

(If the items were seized while in the possession of a common carrier, insert the order in the following paragraph, otherwise strike it out.)

It is further ordered that a true copy of said libel and this order of notice, attested by a coastal warden, be served on the common carrier in whose possession they were seized, to wit: one by leaving the same at his place of business nearest to where they were seized, at least 10 days before the day of hearing.

Ordered this day of A.D. 19... by me, Judge of the Court.

..... Judge

C. Form for officer's return of service:

STATE OF MAINE

.....SS

..... A.D. 19...

I have this day made service of the within libel and order of notice, by posting a true copy of each, attested by me, in two conspicuous places in said, to wit: one at, and one at, in accordance with said order of notice.

(If the items were seized in possession of a common carrier, the officer's return should contain the following paragraph, otherwise it should be stricken out.)

And on the day of A.D. 19... I served a true copy of the libel and the order of notice, attested by me, on the common carrier in whose possession said items were seized, by leaving the same at his place of business nearest to where they were seized, to wit: at in the of and County of

The fees which may be taxed for my services, if any, are as follows:

Posting notices and return of service \$4.00.
Travel
Total \$

.....

(Signed) _____
Coastal Warden

D. Form for order of forfeiture:

STATE OF MAINE

(LS)

.....SS

To, a coastal warden of the State of Maine, or any such coastal warden:

Whereas it appears that the within libel and notice were made in accordance with the statute in such case made and pro-

vided, which libel and order of notice are made a part of this order of forfeiture,

And whereas from the coastal warden’s return it appears that service was made in accordance with said order of notice,

And whereas hearing was held at the time and place fixed in said order of notice,

And whereas one of did appear and claim said by filing a written claim as provided in the Revised Statutes of 1964, Title 12, section 4552, as amended, and after a full hearing on the part of the claimant and the libellant it appeared to me that said claimant was not entitled to any item claimed, and judgment is therefore rendered against the said claimant for the State for costs which are taxed at dollars and cents.

(Or in substitute of the above paragraph the following paragraph if it is applicable:)

And whereas no person appeared at said hearing and filed a written claim as provided in the Revised Statutes of 1964, Title 12, section 4552, and amendments thereto.

It is therefore ordered by me, said Judge that all said items described in said libel be forfeited to the State.

You are hereby ordered to turn said forfeited items over to the Commissioner of Sea and Shore Fisheries.

Ordered by me, said Judge, this day of A.D. 19....

(Signed)
Judge
(1963, c. 402, §§ 84-86.)

R.S.1954, c. 38, § 135; 1959, c. 331, § 1; 1963, c. 402, §§ 84-86.

ARTICLE 2. SEARCHES AND SEIZURES

§ 4551. Boats, vehicles and persons to stop on request

It is unlawful for the operator of any boat, motor vehicle, other vehicle or conveyance of any kind to fail or refuse to stop on signal or request of a coastal warden in uniform. It is unlawful for any other person to fail or refuse to stop on signal or request of any coastal warden in uniform.

1. Unlawful to fail to remain stopped. It is unlawful for that operator or other person, after he has so stopped, to fail to remain stopped until the coastal warden reaches his immediate

vicinity and makes known to that operator or other person the reason for the request or signal.

2. Unlawful to fail to stand by for inspection. It is unlawful for any person to fail or refuse to stand by for inspection on request of any coastal warden in uniform.

3. Unlawful dumping after signal to stop. It is unlawful for any person, who has been requested or signalled to stop by a coastal warden in uniform, to throw or dump into any water any lobster, or any pail, bag, barrel or other container of any type, or the contents thereof, before the coastal warden has inspected the same.

4. Penalty. Whoever violates any provision of this section shall be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment for not more than 90 days, or by both.

R.S.1954, c. 38, § 138; 1955, c. 333, § 5; 1959, c. 331, § 1.

§ 4552. Seizure and disposition of equipment and species

All fish, shellfish, lobsters and other marine species, and parts thereof, which are taken, caught, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of chapters 401 to 417, or in violation of any regulation authorized by chapters 401 to 417, is contraband and is subject to forfeiture to the State in accordance with this section and section 4510. All equipment used or possessed in violation of any provision of chapters 401 to 417, or in violation of any regulation authorized by chapters 401 to 417, is likewise contraband and so subject to forfeiture.

1. May be seized without warrant; warden's duty to libel; contents of libel. Whenever a coastal warden may find any of the above items, he may seize the same without a warrant and keep them for a reasonable time. If he does seize them and does not return them to the owner, except as provided in subsection 2, he shall within a reasonable time file a libel with a judge. He shall insert the following information in the libel:

- A. The description of the items seized by him;
- B. A statement that they were seized by him on a certain day in a certain municipality;
- C. A statement that the items seized were either taken, caught, bought, sold, shipped, transported, possessed or used in violation of a provision of chapters 401 to 417, or a regula-

tion authorized by chapters 401 to 417, whichever is applicable;

D. A prayer for a decree of forfeiture of those items.

2. Items which need not be libeled. The following items need not be libeled:

A. If the aggregate value of all items seized is less than \$10, unless there is reasonable doubt as to their ownership;

B. All marine species of illegal size, shellfish taken from polluted areas, female egg-bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, and any other marine species, the possession of which is unlawful throughout the State.

3. Order of notice; contents. The judge to whom the libel is directed shall fix a time for the hearing of the libel. He shall issue an order of notice to all persons interested, in which order of notice he shall insert the following:

A. A citation to all persons interested to appear at the time and place appointed for the hearing and show cause, if any they have, why the items described in the libel should not be declared forfeited to the State;

B. The time and the place fixed for the hearing;

C. An order that a true copy of the libel and the order of the notice, attested by a coastal warden, be posted in 2 conspicuous places in the municipality, or place where the items were seized, at least 10 days before the day set for the hearing;

D. In event that the items were seized from the possession of a common carrier, he shall order the common carrier served with a true copy of the libel and the order of court, attested by a coastal warden, by leaving the same at his place of business nearest to the place where the items were seized, at least 10 days before the day set for hearing.

4. Sale or other disposition prior to hearing. If after receipt of the libel and before the hearing, the judge finds that the items seized will be unsuitable for food, or other use, at the day of hearing, he shall order the officer who made the seizure to dispose of the same.

A. The officer may then dispose of the items at public or private sale or otherwise dispose of such property.

B. If the items are disposed of by sale, the officer shall hold the proceeds of the sale subject to the decision of the court as to final disposition of them.

5. Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines. If no claimant appears at the hearing on the libel at the time specified in the order of notice, on return of service of the officer in compliance with the order of notice, the judge shall declare the items forfeited to the State.

A. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds over to the judge who shall dispose of them in the same manner that he disposes of fines collected under chapters 401 to 417.

6. Duty of claimant to file written claim on or before hearing day; contents. If any person appears at the time of the hearing on the libel as specified in the order of notice, and claims title to any item listed in the libel, or claims the right to possession of any item, he shall file a written claim with the judge on or before the day set for hearing. The claim must contain the following:

A. A statement of his title or right so claimed and the foundation thereof;

B. A statement of the specific items claimed;

C. A statement of the time and the place of the seizure, and the name of the officer by whom they were seized;

D. A statement that the items claimed were not held in possession or use, with his knowledge or consent, in violation of any provision of chapters 401 to 417, or in violation of any regulation authorized by chapters 401 to 417;

E. He shall state his business and his place of residence;

F. He shall sign and make oath to the claim before the judge.

7. Claimant admitted as party; hearing. If any person, firm or corporation makes a written claim as provided in subsection 6, the judge shall admit him as a party to the process, shall proceed to determine the truth of the allegations in the claim and libel and shall hear any relevant evidence offered by the libellant or the claimant.

8. Court order if claimant found entitled to any item claimed. If the judge upon hearing is satisfied that any item listed in the claimant's claim was not, with the claimant's knowledge or consent, used or possessed in violation of any provision of chap-

ters 401 to 417, or any regulation authorized by chapters 401 to 417, and that the claimant has title or is entitled to possession of that item, he shall give the claimant an order in writing. The judge shall direct the order to the libellant commanding him to deliver that item to the claimant, or, if the item has been sold, to deliver the proceeds of the sale to the claimant within 48 hours after the demand.

9. Forfeiture; executions for cost; appeal; recognizance.

If the judge finds that the claimant is not entitled to any item claimed, the judge shall render judgment against the claimant for the State for costs to be taxed as in civil cases before the judge. The judge shall issue an execution for the costs as in civil cases. The judge shall declare the articles forfeited to the State. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds of the sale over to the judge who shall dispose of them in the same manner he disposes of fines collected under chapters 401 to 417.

A. The claimant may appeal to the Superior Court next to be held within the county where the judge's court is located, and, if he appeals, the judge may order the claimant to recognize with sureties as on appeals in civil cases from the judge.

B. The judge may order that the items or proceeds of sale remain in the custody of the officer pending the appeal.

10. Disposition of forfeited items. The officer shall turn over any articles declared forfeited to the commissioner who shall dispose of the same.

R.S.1954, c. 38, § 135; 1959, c. 331, § 1.

§ 4553. Report to commissioner

The coastal warden making any seizure under section 4552 shall within 10 days thereafter report all the particulars of the seizure, the sale or other disposition, the court action taken and all expenses involved to the commissioner.

R.S.1954, c. 38, § 136; 1959, c. 331, § 1.

§ 4554. Search warrants and authority to search without one

The commissioner or any coastal warden may, with or without a search warrant, open, enter and examine all buildings,

camps, vessels, boats, airplanes, motor vehicles, all other vehicles and all other places if he has reason to believe that fish, shellfish or lobsters, other marine species or parts of any of them are to be found in the place searched, and if he has reason to believe those marine species were taken or possessed in violation of any provision of chapters 401 to 417 or in violation of any regulation authorized by chapters 401 to 417. He may likewise open and examine all boxes, barrels, packages or other containers. He may seize any such marine species found.

1. Dwelling may be searched only with warrant and only in the daytime, sealed railroad car only with warrant. No dwelling house may be searched without a search warrant, and then only in the daytime, and no sealed railroad car may be searched without a warrant.

2. Authority to issue search warrants; contents. Any judge may issue warrants to search any place within his jurisdiction for the purposes set forth in this section upon complaint under oath of the commissioner or a coastal warden.

A. The complaint must contain the following:

- (1) The particular marine species sought;
- (2) The particular dwelling house, railroad car or other place to be searched;
- (3) A statement that the complainant has reason to believe the particular marine species are now held or concealed in the particular dwelling house, railroad car or other place;
- (4) A statement that the complainant has reason to believe that the particular marine species were taken or possessed in violation of a provision of chapters 401 to 417, or in violation of a regulation authorized by chapters 401 to 417;
- (5) A request that a search warrant be issued.

B. The search warrant must contain the following:

- (1) Reference to the complaint annexed as part of the warrant or all the information required in the complaint;
- (2) An order for the search of the particular place described in the complaint for the particular marine species described in the complaint.

R.S.1954, c. 38, § 137; 1959, c. 331, § 1.