

# MAINE STATE LEGISLATURE

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HELEN GINDER, LEGISLATIVE ASSISTANT



HOUSE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON MARINE RESOURCES

March 5, 1976

Legislative Council  
107th Legislature  
State House  
Augusta, Maine 04333

Members of the Council:

In accordance with H.P. 1759 directing the Marine Resources Committee to study the statutes regulating the harvesting, processing, buying and selling of fish and shellfish, in Maine, we enclose herein the final report of the Committee.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard N. Berry".

Richard N. Berry, Senate Chairman

A handwritten signature in dark ink, appearing to read "Lawrence P. Greenlaw, Jr." with a large flourish at the end.

Lawrence P. Greenlaw, Jr.  
House Chairman  
Committee on Marine Resources

REPORT OF THE COMMITTEE ON  
MARINE RESOURCES ON ITS  
STUDY OF THE STATUTES  
REGULATING THE SHELLFISH INDUSTRY

January 12, 1976

Senate

Richard N. Berry, Chairman  
Minnette H. Cummings  
Bruce M. Reeves

House

Lawrence P. Greenlaw, Jr., Chairman  
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Douglas W. Curtis  
Maynard G. Conners  
Bonnie D. Post

In response to Legislative Order number H.P. 1759 the Joint Standing Committee on Marine Resources undertook a study of the general licensing statutes of the Department of Maine Resources. Particular emphasis and attention was given to those statutes which specifically provide for licensing of shellfish processors from the time that the shellfish are harvested until and including their sale and shipment or transport. The present statutes were enacted over a period of many years and were amended or repealed in different Legislative Sessions without a complete analysis of their affect on other statutes.

In addition, the Commissioner of Marine Resources advised the Committee about the urgency to review and revise the State's shellfish sanitation statutes inasmuch as the Federal Government was in the process of promulgating comprehensive and sweeping regulations affecting every aspect of the shellfish industry. Whether or not those regulations would apply directly to Maine licensees would, according to the proposed regulations, depend on the adequacy of Maine's statutes. If Maine adopts statutes necessary to provide a comprehensive state plan for the sanitary control of the harvesting and marketing of the shellfish resources, Maine's Department of Marine Resources may continue to regulate these resources. If Maine does not provide statutes necessary for a comprehensive state plan, licensing procedures and sanitary regulations will be superimposed by the Federal Government. Federal inspections and approval would be necessary for a harvester or processor to begin or continue in business.

Both the Commissioner of Marine Resources and the Committee advised HEW Secretary David Matthews and Maine's Congressional delegation in writing about our opposition to the proposed regulations. The result of these communications, in addition to other adverse comments by other affected states, was that the Pure Food and Drug Administration agreed to review their proposals and reissue them for comment during the summer of 1976. This action gave the Committee and the Legislature some time to enact responsible legislation to insure the proper protection of the public health and welfare regarding shellfish harvesting and processing.

The committee met to discuss and revise each draft of the bill. Substantive and technical changes were made in close cooperation with the Department of Marine Resources. Revisions in present law were made to correct conflicts in other sections of Title 12, resulting from the legislation drafted. In addition, changes were made in other sections of Title 12 that were evidently unconstitutional or inconsistent with general law. Particular attention was given to providing due process when a licensee was subject to suspension, revocation or denial of application of a license and to streamline the licensure process as much as possible. The definitions applicable to chapters 410-417 of Title 12 were revised and rewritten to clarify them as well as to make them conform to standard scientific nomenclature and as nearly as practicable to the definitions used in the proposed federal regulations.

The legislation appended hereto implements the results of the Committee's work. The bill revises the definitions applicable to the Marine Resources statutes, establishes uniform procedures and standards for licenses issued by the Department of Marine Resources, and revises the shellfish sanitation procedures. These laws will provide for fair and effective enforcement of measures necessary to protect the public health and safety and to help preserve for the State of Maine and its people the benefits of the commercial shellfish industry.

STATE OF MAINE

In House

~~Ordered~~

WHEREAS, the public interest requires that effective uniform laws be established that eliminate conflicts, provide for effective enforcement and protect the rights of all; and

WHEREAS, the statutes regulating the harvesting, processing, transporting, buying and selling of fish and shellfish contain provisions which need clarification and improvement; and

WHEREAS, the Joint Standing Committee on Marine Resources has considered several bills which attempted to resolve these problems; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Council be authorized, through the Joint Standing Committee on Marine Resources, to study the laws relating to the regulation of the shellfish and fishing industry, practices concerning that industry, and the provisions of L.D. 1790, 1759 and 1622 in order to determine a clear, equitable and uniform legislative policy governing the shellfish and fishing industry; and be it further

ORDERED, that the Legislative Council, acting through the Committee on Marine Resources, coordinate its study with the Department of Marine Resources and that such agencies and departments as may be determined by the Legislative Council acting through the Committee on Marine Resources, be authorized and respectfully directed to provide the Council with such information, technical advice and assistance as the Committee deems necessary to carry out the purposes of this Order; and be it further

ORDERED, that the Council report the results of its findings together with any proposed recommendations and necessary implementing

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legislation to the next special or regular session of the Legislature;  
and be it further

ORDERED, upon passage in concurrence, that suitable copies of  
this Order be transmitted forthwith to said agencies as notice of  
this directive.

BP1759

(Mrs. Post)

NAME: *Bonnie Post*

TOWN: Owls Head

HOUSE OF REPRESENTATIVES  
READ AND PASSED

JUN 20 1975

*Edwin D. Post*

CLERK

SENT UP FOR CONCURRENCE

IN SENATE CHAMBER *Rud*

TABLED BY *SEN. SPEERS*  
OF KENNEBEC

JUN 23 1975

PENDING *Passage*

HARRY M. STARRBRANCH, SECRETARY



# State of Maine

In the Year of our Lord, Nineteen Hundred seventy-six.

## An Act Concerning Shellfish Licensing.

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

Sec. 1. 12 MRSA §3401, as last amended by PL 1973, c. 663, §1, is repealed and the following enacted in place thereof:

### §3401. Definitions

Each word or term defined in this section has the meaning indicated in this section for the purposes of chapters 401 to 417, unless a different meaning is plainly required by the context.

1. Angling. "Angling" means fishing with handline or rod with a live or artificially baited hook.

2. Atlantic salmon. "Atlantic salmon" means a finned fish, named salmo salar which ascends rivers and their tributaries for the purpose of spawning.

3. Can, the verb. The verb "to can" means, in all its moods and tenses, to process or preserve food in hermetically sealed containers.

4. Certificate. "Certificate" means a numbered document issued by a State, a foreign or the federal government, which is evidence that the named processor is authorized to ship shellfish in interstate commerce.

5. Clam. "Clam" means a species of bivalve molluscan, mya arenaria, commonly called a soft-shelled clam.

6. Closed season. "Closed season" means the time during which a particular species may not be caught or taken.

7. Coastal waters. "Coastal waters" means all waters of the State within the rise and fall of the tide and within the marine limits of the jurisdiction of the State; but it does not include waters within or above any fishway or dam when that fishway or dam is normally the dividing line between tidewater and fresh water, nor does it include waters above any tidal bound that has been legally established in streams flowing into the sea.

8. Commissioner. "Commissioner" means Commissioner of Marine Resources.

9. Condemn. "Condemn" means to adjudge to be unfit for use.

10. Conservation. "Conservation" means providing for the development and wise utilization of Maine's marine resources, protecting the ultimate supply for present and future generations, preventing waste or for implementing sound management programs.

11. Consumer. "Consumer" means an individual who buys any marine species for his own consumption or use, or for that of members of his immediate family or invited guests.

12. Crab. "Crab" means a crustacean of the suborder Brachyura.

13. Crawfish. "Crawfish" means those species of the family Palinuridae, including the representative genera Panulirus, Jasus and Palenrus, which have been called by such terms as rock lobster, spiny lobster, sea crawfish, red lobster, thorny lobster, langoust, crayfish, Sidney crawfish, kreef, Cuban rock lobster or African lobster or African crawfish.

14. Cultivation. "Cultivation" means the artificial control or manipulation by man of any marine species at some state of its life history for the purpose of increasing yield or improving quality.

15. Dealer. "Dealer" means any person who buys and sells or distributes any marine species.

16. Department. "Department" means Department of Marine Resources.

17. Embargo. "Embargo" means to retain, seize or prohibit the movement of specified kinds of freight.

18. Establishment or Place of Business. "Establishment" or "Place of Business" means the premises, buildings, structures, facilities and equipment, including vehicles, used in the processing of marine species or fishery products.

19. Fish, the noun. "Fish" means any cold blooded vertebrate marine animal having permanent gills and fins, which is commonly called a finfish.

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

21. Fishery product. "Fishery product" shall mean any product capable of use as human food which is made wholly or in part from any marine species or part thereof.

22. Fresh fish. "Fresh fish" means any fish which has not been smoked, pickled, cooked, canned or quick frozen.

23. Harvester. "Harvester" means one who takes shellfish from its growing area.

24. Held in the State of Maine. "Held in the State of Maine" shall mean any shellfish processed in the State of Maine.

25. Hermetically sealed. "Hermetically sealed" means a container which has been made airtight by fusion so that no air, gas or spirits can either enter or escape, whether or not the can is sterilized by heat, but does not include friction cover containers.

26. License. "License" means a document issued by the State to a named person authorizing that person to engage in particular activities.

27. License-~~certificate~~. "License-~~certificate~~" means a document which is a combination of a license and a certificate.

28. Lobster. "Lobster" means a crustacean of the genus Homarus americanus.

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

30. Marine and estuarine resources or marine resources. "Marine and estuarine resources" or "marine resources" means all renewable marine organisms, including fish, shellfish and marine plants, and the entire ecology and habitat supporting such marine organisms, unless otherwise provided by law.

31. Marine organism. "Marine organism" means any marine species, marine plant and other marine life.

32. Marine ~~species~~. "Marine species" includes all animals which usually inhabit salt water, including all fish, shellfish, lobsters, crabs, shrimps and marine worms; but is limited to the number and type of those species indicated by the context of the particular section where it is used.

33. Marine worms. "Marine worms" mean clam, sand and blood worms.

34. Open season. "Open season" means that time during which a particular species may lawfully be taken.

35. Permit. "Permit" means a license.

36. Person. "Person"  $\longleftrightarrow$  means any individual, firm or corporation.

37. Process, ~~Processed~~ and ~~Processing~~. "Process, ~~Processed~~ and ~~Processing~~"  $\longleftrightarrow$  mean harvesting, handling, storing, preparing, producing, manufacturing, preserving, packing, transporting, holding or selling any marine species or parts thereof.

38. Quahog. "Quahog" means a species of bivalve molluscan, Mercenaria mercenaria or Mercenaria campechiensis, commonly called a hard-shell clam, and Artica islandica, commonly called a mahogany quahog or ocean quahog.

39. Resident. "Resident" means a person domiciled in Maine.

40. Residence. "Residence" means domicile.

41. Revocation. "Revocation" means annulment of permitted activity.

42. Roadside vendor. "Roadside vendor"  $\longleftrightarrow$  means all persons who sell, offer for sale, hold, buy, transport or serve shellfish from a vehicle.

43. Salmon commission. "Salmon commission" means Atlantic Sea Run Salmon Commission.

44. Seafood. "Seafood" means all edible marine species.

45. Seed clam. "Seed clam" means a clam which is less than 2 inches long in its longest diameter.

46. Seed quahog. "Seed quahog" means a quahog which is less than 2 inches long in its longest diameter.

47. Shellfish. "Shellfish" means all edible species of bivalve molluscans, except the scallop species from the family Peclinidae.

48. Shellstock. "Shellstock" means shellfish which remain in their shells.

49. Ship, the verb. The verb "ship" in any of its moods and tenses means to send by a common carrier.

50. Shucked shellfish. "Shucked shellfish" means shellfish or parts thereof which have been removed from their shells.

51. Soft-shell clam. "Soft-shell clam" means clam.

52. Species. "Species" means the scientific name used in the classification of marine organisms.

53. Sticker. A "sticker" is a numbered document which can be permanently attached to a surface for identification purposes.

54. Suspension. "Suspension" means the temporary removal of a license and the authority to undertake a licensed activity.

55. Take, the verb. The verb "to take" means to fish for, hunt for, pursue, capture or kill, or attempt to do any of those acts. It does not include harvesting of marine species that are cultivated by the commissioner or persons authorized by him to cultivate pursuant to chapters 401 to 417.

56. Territorial waters. "Territorial waters" means coastal waters as defined in this section.

57. Tidal waters. "Tidal waters" means coastal waters as defined in this section.

58. Transport, the verb. The verb "to transport" in all its moods and tenses means to move an object from one place to another by any means other than to ship as defined in this section.

59. Tuna. "Tuna" means any fish of the mackerel group, excluding the mackerel, *Scomber scombrus*, but including the horse mackerel, *Thunnus Hynnus*, albacore, *Thunnus alalunga*, and related species, commonly called tuna.

60. Vehicle. "Vehicle"  $\longleftrightarrow$  means any device used for transportation.

61. Warden service. "Warden service" means coastal warden service which includes all coastal wardens regardless of rank, grade or position.

Sec. 2. 12 MRSA §3402, sub-§3 is repealed and the following enacted in place thereof:

3. Permits as licenses. Any reference to permits shall be construed as meaning a license.

Sec. 3. 12 MRSA §3452, 1st ¶, as repealed and replaced by PL 1973, c. 110, is amended to read:

The commissioner may authorize individuals, concerns or entities to take shellfish from polluted flats or waters for the purpose of depurating them in accordance with the requirements set forth in section-4302-B chapter 415 and the regulations promulgated thereunder.

Sec. 4. 12 MRSA §3452, sub-§3, as repealed and replaced by PL 1973, c. 110 is amended to read:

3. Sale of depurated shellfish. Depurated shellfish may be sold in accordance with section-4302-B chapter 415 and the regulations promulgated thereunder.

Sec. 5. 12 MRSA c. 415, as amended, is repealed and the following enacted in place thereof:

#### CHAPTER 415

#### LICENSES GENERALLY

##### §3751 Purpose

The legislature finds that the state bears the primary responsibility for the conservation and the sanitary control of harvesting, shipping and transporting, procuring, storage and handling of marine species within its jurisdiction. The legislature further finds that uniform laws and administrative procedures are essential to fair and effective enforcement of measures necessary to protect the public health and welfare and to preserve the economic benefits of the commercial fisheries for the state and its people. Therefore, the legislature intends, by chapters 401 to 417, to provide legislation to enable the Commissioner of Marine Resources to effectively regulate the processing of marine species in the state.

##### §3752 General provisions

This chapter applies to any license issued by the commissioner under chapters 401 to 417, unless a section authorizing a license specifically provides otherwise.

1. Application. The applicant shall apply for a license on a form provided by the commissioner. The application for a license shall contain the name or names of the applicant and the names of the agents, owners, officers and managers of the operation to be licensed. The application shall also contain a signed consent to inspection, as required by section 3753. In addition, the application shall contain all other information required for the issuing of a license under chapters 401 to 417.

2. Residence requirement. Only a person who has been a Maine resident for six months next prior to the date of his application is eligible to be issued a license under chapters 401 to 417, unless a particular licensing section provides otherwise.

3. Issuance of licenses. The commissioner may issue any license when he has determined that the applicant has complied with the requirements for the particular license, as provided in chapters 401 to 417 and the regulations promulgated thereunder.

4. Amendment of licenses. The licensee shall immediately notify the department of any change of the agents, owners, officers or managers of the licensed operation, or any change of vehicle or place of business required to be included in a license application, which occurs prior to the expiration of the license. Such notification shall be an amendment to the license, or supplemental license.

5. Errors or misrepresentation in application.

← A. Any license issued through error is void and the holder shall surrender it on demand of the commissioner.

← B. It <sup>shall be</sup> / unlawful for any person to willfully make a misstatement or misrepresentation on any application for any license.

6. Licenses are not transferable.  
shall be

← A. Any license issued / not/transferable.

← B. Any agent, owner, officer or manager named in the license application, license, or license amendment, or a crew member when the license so provides, may carry out the duties of the licensee in his absence, provided the license is in such person's possession.

7. Licenses to be exhibited on demand; prima facie evidence.

← A. Any person holding a license shall at all times, when engaged in the activity or occupation so licensed, exhibit the license issued to him upon demand of any coastal warden or any other authorized person.

shall be

← B. Failure to exhibit the requested license on demand <sup>shall be</sup> prima facie evidence that the person so failing is unlicensed.

8. Expiration of licenses. A license <sup>shall</sup> / expire at midnight on December 31st of the calendar year in which it was issued.

9. One-half fee after September 30th. The fee for any license issued after September 30th of each calendar year shall be 1/2 the original fee.

10. Lost licenses; fee for duplicate. The Commissioner shall issue a duplicate license to any person who has lost or destroyed any license issued to him. The fee for a duplicate license shall be (one dollar).

§ 3753. Inspection and Consent

1. Inspection of areas connected with a business. The Commissioner or his agents may inspect and search any boats, vehicles and buildings and any box, bag, barrel, car or other container owned or possessed by the licensee or permittee which may be used in connection with the act or activity covered by the license or permit and may seize any contraband or evidence found therein. Any inspection, search or seizure shall be for the purpose of enforcing compliance with Chapters 401 to 417 and the regulations promulgated thereunder. Any part of a building used for habitation shall not be searched without a search warrant.

2. Consent to inspection or seizure. Whoever applies for and is issued any license or permit shall give written consent on the application form for the inspection, search or seizure authorized under sub section 1.

3. Prohibition. A licensee shall not refuse to permit an inspection, search or seizure consented to and authorized under this section.

4. Refusal to permit inspection. If a licensee refuses to permit an inspection or search authorized by chapters 401 to 417, then the commissioner, because of the threat to public health and safety, may suspend any licenses of that person. On the receipt of a written sworn statement that such authorized inspection or search has been refused, the commissioner may immediately suspend the licenses issued and notify the person in writing of the suspension and of his right to a hearing within 10 days of notice by registered or certified mail. Such suspension shall continue until the licensee permits the authorized inspection or search.

5. Hearing may be requested. If the licensee desires a hearing, he shall so notify the commissioner in writing by registered or certified mail within 10 days of the receipt of notice of his suspension. The hearing shall be held within 2 working days of the receipt by the Commissioner of the request, unless the licensee agrees to extend the time limit. Any suspension shall remain in effect pending the outcome of such hearing. The scope of such a hearing shall cover whether the individual was the holder of a license issued by the commissioner, whether he refused to permit inspection or search upon the request of the commissioner or his agent, and whether such search was authorized under this section. The Commissioner shall render a written decision within (1) working day of the close of the hearing. If it is determined after hearing that such person did not refuse to permit inspection or search by the commissioner or his agent or that the inspection or search was not authorized, the suspension shall be removed immediately. The licensee shall have a right of appeal to the Superior

Court in the county where he resides, of any adverse decision of the commissioner, if such appeal is filed within 10 days of receipt of the commissioner's decision. Any suspension shall remain in effect pending the outcome of such appeal.

6. Penalty. The penalty for violation of this section is stated in sections 3754, 3755 and 4504.

§ 3754. Suspension or revocation of licenses or denial of application following a conviction

1. Suspension or revocation.

A. The commissioner may suspend or revoke a license issued under authority of chapters 401 to 417 when the holder of such license is convicted by a court of law of violating the license provisions, the regulations applicable to the licensed activities, the general licensing provisions of this chapter or the private and special laws enforced by the department and applicable to the activities licensed.

B. Prior to suspension or revocation under paragraph A, the commissioner shall notify the holder in writing by registered or certified mail and provide an opportunity for a hearing. The notice shall include a statement of the intent to suspend or revoke, the reasons therefor, the date, court and place of convictions, and the date, time and place of the hearing. The hearing shall take place within 30 days of the notice and shall include opportunity for all parties to present evidence and argument on all issues involved. A written decision shall be issued by the commissioner within 10 days of the close of the hearing.

2. Period of suspension or period of denial of reapplication following revocation. Unless a section authorizing a license specifically provides otherwise, the suspension or denial of reapplication following revocation shall be as follows:

A. For the first conviction or violation, the suspension or denial of reapplication following revocation shall not exceed a period of 6 months from the date of the commissioner's decision,

B. For the 2nd conviction or violation, the suspension or denial of reapplication following revocation shall not exceed a period of 9 months from the date of the commissioner's decision,

C. For the 3rd or subsequent conviction or violation, the suspension or denial of reapplication following revocation shall not exceed a period of one year from the date of the commissioner's decision.

Any conviction, or violation recognized under section 3755, occurring 7 years or more prior to the most recent conviction shall not be considered in the determination of the number of convictions or violations.

3. Exception. On conviction of a violation of section 4457, the commissioner shall suspend the offender's lobster and crab fishing license and shall suspend his right to obtain such a license for a period of 3 years.



4. Denial of application.

A. The commissioner may refuse to issue a license, without prior hearing, when an applicant has been convicted in the prior year by a court of law of violating the license provisions, the regulations applicable to such license, the general licensing provisions of this chapter, or the private and special laws enforced by the department and applicable to the activities to be licensed, and:

(1) the applicant was not licensed during such period; or

(2) the applicant's present or prior license has been suspended or revoked and the period of suspension or period of denial or reapplication following revocation has not expired.

B. Any person whose application has been denied under this subsection may file a written request for a hearing with the commissioner. The hearing shall be instituted within 10 days following the receipt of the request. At the hearing, the person requesting the hearing may present any relevant facts concerning the suspension, revocation, denial of application, conviction or violation. The commissioner may grant the application, or he may shorten the period of suspension or revocation, if he is satisfied that either procedure would be in the interest of justice.

5. Suspensions during appeal period. The Commissioner may continue a suspension of a license during an appeal from a conviction. The Commissioner shall not revoke a license until final court disposition or until time for filing an appeal has elapsed.

6. Juvenile offense. For the purposes of this section, a juvenile shall be subject to the same suspension, revocation or denial of application provisions as an adult.

other devices

7. Duty to remove traps and / after lobster and crab fishing license suspended or revoked. Any person whose lobster and crab fishing license has been suspended or revoked shall within 5 days thereafter remove from the water all his pots, traps, cars or other devices used, or usable, in catching and holding of crabs or lobsters. The commissioner may extend the 5 day period for removal at the request of the licensee, if such extension is necessary because of circumstances beyond the control of the licensee.

8. Appeal. Any person adversely affected by the decision of the commissioner may appeal such decision to the Superior Court of the county of his residence if the appeal is filed within 10 days of receipt of the commissioner's decision. Any suspension shall remain in effect pending the outcome of such appeal.

§3755. Suspension or revocation of licenses or denial of application by administrative proceedings

1. Suspension or revocation of licenses.

— A. The commissioner may suspend or revoke a license issued under authority of chapters 401 to 417 when the commissioner determines, after notice and opportunity for a hearing, that the licensee has violated a license provision, the regulations applicable to the licensed activities, the general licensing provisions of this chapter or the private and special laws enforced by the department and applicable to the activities licensed.

— B. Prior to suspension or revocation under paragraph A, the commissioner shall notify the licensee in writing by registered or certified mail of the intent to suspend or revoke the license, the reasons therefor and violations alleged, and the time, date and place of the hearing. The hearing shall take place within 30 days of the notice and shall include opportunity for all parties to present evidence and argument on all issues involved. A written decision shall be issued by the commissioner within 10 days after the close of the hearing.

2. Period of suspension or period of denial of reapplication following revocation. Unless a section authorizing a license specifically provides otherwise, the suspension or denial of reapplication following revocation shall be as follows.

— A. For the first violation or conviction, the suspension or denial of reapplication following revocation shall not exceed a period of 6 months,

— B. For the (second) violation or conviction, the suspension or denial of reapplication following revocation shall not exceed a period of 9 months,

— C. For the (third) or subsequent violation or conviction, the suspension or denial of reapplication following revocation shall not exceed a period of one year.

*Revised 4/15/90*  
— Any violation, or conviction recognized under section 3754, occurring 7 years or more prior to the most recent violation shall not be considered in the determination of the number of violations or convictions.

3. Exception. On conviction of a violation of section 4457, the commissioner shall suspend the offender's lobster and crab fishing license and shall suspend his right to obtain such a license for a period of 3 years.

4. Denial of application.

— A. The commissioner may refuse to issue a license, without prior hearing, when an applicant's present or prior license has been revoked or suspended and the period of denial or reapplication following revocation or period of suspension has not expired.

B. Any person affected may request a hearing as provided in section 3754, subsection 4, paragraph B.

5. Emergency suspension.

A. The Commissioner may suspend any or all licenses of a licensee for any length of time necessary to protect the public health and safety, if he is satisfied that evidence exists that continued licensure poses an immediate threat to public health or safety. Notice of such suspension shall be immediately given to each licensee affected, with the reasons therefor. Such suspension shall be removed and notice given to each licensee as soon as the threat of danger to the public health and safety no longer exists.

B. Any licensee whose license or licenses are suspended under this sub section may request a hearing by notifying the commissioner in writing within 10 days of the receipt of notice of his suspension. The hearing shall be held within 2 working days of the receipt by the commissioner of the request, unless the licensee agrees to extend the time limit. Any suspension shall remain in effect pending the outcome of such hearing. The commissioner shall render a written decision within (1) working day of the close of the hearing.

6. Appeal. Any person adversely affected by the decision of the Commissioner may appeal such decision to the Superior Court of the County of his residence, if the appeal is filed within 10 days of receipt of the commissioner's decision. Any suspension shall remain in effect pending the outcome of such appeal.

7. Juvenile offense.

For the purposes of this section, a juvenile shall be subject to the same suspension, revocation or denial of application provisions as an adult.

8. Duty to remove traps and <sup>other devices</sup> after lobster and crab fishing license suspended or revoked. Any person whose lobster and crab fishing license has been suspended or revoked shall within 5 days thereafter remove from the water all his pots, traps, cars or other devices used, or usable, in catching and holding of crabs or lobsters. The commissioner may extend the 5-day period for removal at the request of the licensee, if such extension is necessary because of circumstances beyond the control of the licensee.

\$3756. Products embargoed or condemned; administrative action

1. Procedure for embargo or condemnation. Whenever the commissioner or his agents find after careful investigation that a product poses a threat to public health and safety because it is of unsound quality, contains any filthy or decomposed substance, is poisonous or deleterious to health or is otherwise unsafe for human consumption, he shall immediately, indefinitely embargo, condemn and order to be destroyed any such fish, shellfish, lobster, crab or products thereof. The commissioner and his deputy shall cooperate with those state and federal agencies, having similar responsibility in the protection of public health, in enforcing the order to embargo, condemn or destroy.

2. Notification regarding embargo, condemnation or ordering destruction. In the event that any fish, shellfish, lobster, crab or products thereof are embargoed, condemned or ordered destroyed, the commissioner or his agent shall, within 24 hours thereafter, notify the owner in writing of the amount and kind of fish, shellfish, lobster, crab or products thereof embargoed, condemned or destroyed.

§3757. Regulatory and inspection powers.

1. Regulations to be promulgated. The commissioner may by regulation establish minimum standards for sanitary quality of the harvesting, processing or storing of fish, shellfish, lobster, crabs or parts or products thereof. The sanitary quality regulations shall be based upon the particular operational requirements of the species, the process or activity being regulated, the most recently adopted federal sanitation standards and the most recent generally accepted research data. The commissioner may also promulgate regulations requiring reporting and record keeping to ensure compliance with statutes and regulations. The commissioner may by regulation adopt a comprehensive state plan that describes the legal, administrative and investigatory activities necessary for the sanitary control of shellfish growing areas and the shellfish industry.

2. Public hearing.

← A. The commissioner shall hold a public hearing prior to adopting regulations. Notice of the public hearing shall be published once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby. The regulations adopted after the hearing shall be published in at least one newspaper or journal of general circulation adequate to provide reasonable notice to the public affected thereby, at least once, at least 14 days before they become effective. They may be amended or repealed at any time by the commissioner after like notice, hearing and publication of the portions amended or repealed.

← B. Notwithstanding the foregoing paragraph, whenever the commissioner reasonably determines that the public safety, health or welfare is threatened, he may issue and shall publish emergency regulations which are effective immediately without a hearing or prior publication, provided that thereafter he holds a public hearing as provided in this subsection. Such emergency regulations shall be effective for no more than 90 days after issuance.

3. Savings clause. Regulations adopted by the commissioner under repealed section 4302-B, as amended, remain in full force and effect until repealed as provided in this section.

4. Inspection of fishing industry. The commissioner may establish and maintain effective continuous monitoring and inspection of the fish, shellfish, lobster and crab industries which are regulated under authority of this section.

5. Right of access. In order to establish and maintain effective continuous monitoring and inspection, the commissioner or his agent shall have unrestricted access to any buildings, vehicles, or boats used in the harvesting, processing or storing of any fish, shellfish, lobster, crab or parts thereof. Such access shall be for inspection or collection of samples. Denial of access shall be grounds for the suspension of a license or other authorization as provided in sections 3753, 3754, 3755 and 4504.

Sec. 15. 12 MRSA §4309, as last amended by PL 1967, c. 82, §§10, 11, 12, 13 and 14, is repealed.

Sec. 16. 12 MRSA §4311, as last amended by PL 1965, c. 59, §4, is repealed.

Sec. 17. 12 MRSA §§4312 to 4318 are enacted to read:

§4312. Commercial shellfish license.

1. License required. It shall be unlawful for any person to dig or take any shellfish from the flats, shores or tidal or coastal waters of the State without having a license from the commissioner as provided in this section and the general licensing provisions of chapter 415.

2. Exceptions. Any person may dig or take shellfish for consumption by himself, the members of his family or his guests, without having a license as provided in this section, provided that the total amount of each species dug or taken in any one day does not exceed 1/2 bushel.

3. Designation and general scope of license. The license which is designated the commercial shellfish license shall entitle the holder to dig or take any amount of shellfish in any of the tidal or coastal waters or flats of the State, except in those areas which are closed to the digging or taking of the same by any section of chapters 401 to 417 or the regulations promulgated thereunder. The holder may transport and sell shellstock that he has lawfully dug or taken, but shall not transport or sell shucked shellfish under this license. The holder shall not dig or take any shellfish in violation of any ordinance in full force and effect, which was passed pursuant to the authority provided in section 4252 and amendments thereto.

4. Possession, prima facie evidence. The possession by any person, except the holder of a wholesale shellfish or retail seafood license, of more than 1/2 bushel of shellfish in one day is prima facie evidence that such shellfish were dug or taken in one day by the possessor, unless that person has in his possession a bill of sale therefor.

5. License fee. The fee for the license / shall be \$10, which the applicant shall submit with his application.

6. Penalties. The penalty for a violation of this section is stated in sections 3754, 3755 and 4504.

§4313. Wholesale shellfish license - certificate.

1. License - certificate required. It / shall be unlawful for any person to engage in the State in the wholesale trade, shipment, transportation or processing for sale in the wholesale trade of any shellfish or parts thereof without holding a wholesale shellfish license - certificate from the commissioner as provided in this section and the general licensing provisions of chapter 415.

2. General scope of license - certificate. The license - certificate entitles the holder, when and where it is otherwise lawful, to engage in the wholesale trade, ship, transport, sell to consumer and process for sale all shellfish. The license - certificates shall comply with all regulations promulgated under chapters 401 to 417.

3. Application information. The application for a license - certificate under this section shall include the following:

← A. The names of the persons who purchase or otherwise procure shell stock for the applicant;

← B. The names of the persons who purchase or otherwise procure shucked shellfish for the applicant;

← C. A clear description of each vehicle to be used in the wholesale trade, regardless of the state of registration; and

← D. The location of each place of business within the state.

4. Issuance and contents of license - certificate. If the commissioner is satisfied that all persons named in the application are or will be properly licensed under chapters 401 to 417, he may issue the applicant a license - certificate. The license - certificate shall contain the following:

← A. A unique registration number;

← B. The names of the persons who purchase or otherwise procure shellstock for the licensee;

← C. The names of the persons who purchase or otherwise procure shucked shellfish for the licensees; and

← D. Other information the Commissioner finds necessary.

5. Supplemental license. The holder of a wholesale shellfish license - certificate shall obtain a supplemental license for each place of business and for each vehicle used to transport shellfish in the wholesale trade.

6. Vehicle inspection; sticker displayed.

The department shall inspect all vehicles described on the application or amendment thereto for compliance with state standards of sanitation and thermal protection for shellfish; and shall issue, annually, stickers for vehicles passing inspection. The sticker shall be placed on the windshield of the vehicle in compliance with Title 29, section 1370.

7. Retail to wholesale sale prohibited. No wholesale shellfish license - certificate holder shall purchase from any retail seafood licensee, shellfish for the purpose of sale in the wholesale trade.

8. Sale in the wholesale trade; defined. For the purposes of this section, any sale to either a wholesale shellfish license - certificate holder or a retail seafood licensee shall be a sale in the wholesale trade, except a sale by a holder of a commercial shellfish license, of shellfish he has dug or taken himself, or a sale by a retail seafood licensee to another retail seafood licensee.

9. Common carrier and interstate commerce 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, or in hermetically sealed containers, nor does this section apply to shellfish which are being shipped through this State under authority of the laws of the United States.

10. License fees.

- ← A. The fee for a wholesale shellfish license / <sup>shall be</sup> \$50.  
← B. The fee for a supplemental license / <sup>shall be</sup> \$10.

11. Penalty. The penalty for violation of this section is stated in sections 3754, 3755 and 4504.

§4314. Wholesale seafood license

1. License required. It <sup>shall be</sup> unlawful for any person to engage in this State in the wholesale trade, shipment, transportation or processing for sale in the wholesale trade of any fish, lobster, crabs or parts thereof without a wholesale seafood license from the commissioner as provided in this section, and the general licensing provisions of chapter 415.

2. Exceptions. This section does not apply to the smoking or sale of alewives or herring as smoked herring or bloaters.

3. General scope of license.

← A. ← → The license entitles the holder, when and where it is otherwise lawful, to engage in the wholesale trade, shipment within or outside the state, transportation within the state, serving and selling lobster to a consumer, and processing without removing lobster meat from the shell. To remove lobster meat from the shell, the licensee shall have a permit as provided under section 4402. To transport lobster beyond the limits of the state, the licensee shall comply with the requirements of section 4403.

4. Application information. The application for a license under this section shall provide a clear description of each vehicle to be used in the wholesale trade, regardless of state of registration, and the location of each place of business within the state.

5. Supplemental licenses. The holder of a wholesale seafood license shall obtain a supplemental license for each place of business and for each vehicle used to transport seafood in the wholesale trade.

6. Sale in wholesale trade; defined. For the purposes of this section, any sale to either a wholesale seafood licensee or to a retail seafood licensee <sup>shall be</sup> a sale in the wholesale trade, except a sale by a holder of a commercial fishing license.

7. License fees.

- ← A. The fee for a wholesale seafood license / <sup>shall be</sup> \$50.  
← B. The fee for a supplemental license / <sup>shall be</sup> \$10.

8. Penalty. The penalty for violation of this section is stated in sections 3754, 3755 and 4504.

§4315. Retail seafood license

1. License required. It <sup>shall be</sup> unlawful for any person to sell, offer for sale, buy for resale, serve, ship or transport in any manner, to the consumer or to retail dealers any shellfish, crabs, lobsters or parts thereof without a retail seafood license from the commissioner as provided in this section and in general licensing provisions of chapter 415. A separate license <sup>shall be</sup> required for each place of business or vehicle used to sell, offer for sale or serve any shellfish, crabs, lobsters or parts thereof.

2. Exceptions. The licensing provisions of this section do not apply:

← A. To the transportation of shellfish, lobster, crabs or parts thereof by a consumer;

← B. To the transportation or selling of shellfish by a commercial shellfish licensee;

← C. To the transportation or selling of lobsters and crabs by a lobster and crab fishing licensee;

← D. To the shipping of lobsters or crabs or parts thereof by a common carrier engaged in carrying freight on a fixed schedule within or outside the State, provided:

← (1) The lobsters, crabs 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 lobsters, crabs or parts thereof is plainly marked in accordance with the law; or

← E. To the possession, purchase or sale by a store or restaurant, of shellfish, lobsters, crabs or parts thereof in hermetically sealed containers.

3. General scope of license. This license entitles the holder, as a retail licensee, to:

← A. Buy shellfish, including shucked shellfish, shellstock or parts thereof from a wholesale shellfish licensee;

← B. Buy shellstock from a commercial shellfish licensee;

← C. Buy lobsters and crabs from a wholesale seafood licensee or a lobster and crab fishing licensee; and

← D. Sell, offer for sale or serve from only one place of business or vehicle within the state, shellfish, shucked shellfish, shellstock, lobsters, crabs or parts thereof, processed or unprocessed, to consumers or to other retail seafood licensees.

4. Application information. The application for a license under this section shall provide a clear description of each vehicle to be used in the retail trade, regardless of state of registration, and the location of each place of business within the state.

5. License fee. The fee for a retail seafood license shall be \$10.

§4316. Non-resident Export License

shall be

1. License required. It is unlawful for any non-resident person, firm or corporation to ship or transport beyond the limits of the state any shellfish purchased or procured within the state without a non-resident export license as provided in this subsection and the general licensing provisions of chapter 415.



2. General scope. The license entitles the holder to ship or transport, beyond the limits of the state, shellfish, shellstock or shucked shellfish purchased or procured in the state from a wholesale shellfish license - certificate holder.

3. Purchases or procurement restricted. The non-resident export licensee shall purchase or procure shellfish only from a wholesale shellfish license - certificate holder.

4. Application information. The application information for a license under this section shall include the following:

← A. The number and state of issuance of a valid shellfish certificate or its equivalent; and

← B. A clear description of each vehicle to be used in the transportation or shipment of shellfish under this license.

5. Residence requirement exception. This license may be issued only to non-residents of this state.

6. Shellfish certificates required. No non-resident export license shall be issued to or held by any non-resident person, firm or corporation who does not have a valid shellfish certificate or its equivalent from his state of residence or state of destination of the shellfish.

7. Vehicle inspection; sticker displayed. The department shall inspect all vehicles described on the application or amendment thereto for compliance with state standards of sanitation and thermal protection for shellfish; and shall issue annually stickers for vehicles passing inspection. The sticker shall be placed on the windshield of the vehicle in compliance with Title 29, or the requirements of the state of vehicle registration. (Section 1370.)

8. Supplemental licenses. The holder of a non-resident export license shall obtain a supplemental license for each vehicle, beyond the first, used to transport or ship shellfish.

9. Common carrier and interstate commerce 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, or in hermetically sealed containers, nor does this section apply to shellfish which are being shipped through this State under authority of the laws of the United States.

10. License fees.

- ← A. The license fee for a non-resident export license <sup>shall be</sup> / \$35.
- ← B. The fee for a supplemental license <sup>shall be</sup> / \$10.

\$4317. Non-resident Import License.

<sup>shall be</sup>  
1. License required. It / unlawful for any non-resident person, firm or corporation to ship or transport into the state or to sell to any person within the state any shellfish purchased or procured beyond the limits of the state without a non-resident import license as provided in this subsection and the general licensing provisions of chapter 415.

2. General scope. The license entitles the holder to ship or transport into the state and to sell, from only one place of business, to a wholesale shellfish license-certificate holder, a retail seafood licensee or a consumer, any shellfish, shellstock or shucked shellfish purchased or procured beyond the limits of the state.

3. Application information. The application information for a license under this section shall include the following:

← A. The number and state of issuance of a valid shellfish certificate or its equivalent;

← B. A clear description of each vehicle to be used in the transportation or shipment of shellfish under this license; and

← C. The location of each place of business within the State from which sales are made.

4. Residency requirement exception. This license may be issued only to non-residents of this state.

5. Shellfish certificate required. No non-resident import license shall be issued to or held by any non resident person, firm or corporation who does not have a valid shellfish certificate or its equivalent from his state of residence or the state from which the shellfish are obtained.

6. Vehicle inspection; sticker displayed. The department shall inspect all vehicles described on the application or amendment thereto for compliance with state standards of sanitation and thermal protection for shellfish; and shall issue annually stickers for vehicles passing inspection. The sticker shall be placed on the windshield of the vehicle in compliance with Title 29, or the requirements of the state of vehicle registration. (section 1370)

7. Supplemental licenses. The holder of a non-resident import license shall obtain a supplemental license for each vehicle, beyond the first, used to transport or ship shellfish.

8. Common carrier and interstate commerce 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, or in hermetically sealed containers, nor does this section apply to shellfish which are being shipped through this State under authority of the laws of the United States.

9. License fees.

← A. The license fee for a non-resident import license shall be \$35.  
← B. The fee for a supplemental license shall be \$10.

\$4318. Disposition of license fees.

All the license fees received from the commercial shellfish licenses and wholesale shellfish license - certificates, and from non-resident import and export licenses, as provided in sections 4312, 4313, 4316 and 4317, shall be 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 shellfish in the shores, flats or coastal waters of the State, for the establishment and maintenance of permanent and temporary facilities used for such purposes and for the shellfish inspection program.

2. Fund <sup>to</sup> ~~←~~ not <sup>shall not</sup> lapse. The Shellfish Fund <sup>shall not</sup> ~~not~~ lapse. Fees so collected or allocated in any one year may be used in the same or any succeeding year.

3. Prior Funds.

(All funds which were in the Shellfish Fund as provided in the Revised Statutes of 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.)

Sec. 18. 12 MRSA / <sup>\$4353,</sup> ~~sub-\$1~~, ¶A, as amended by PL 1967, c.337, §9, is further amended to read:

A. The name of the consignor, the number of the ~~whole-~~<sup>certificates</sup> sale shellfish/license - certificates under which they are being shipped, or the number of the ~~interstate~~ shellfish-transportation nonresident export licenses under which they are being transported, the number of ~~certificates~~ <sup>certificates</sup> the /license - certificates under which they were packed, and, if the shellfish have been removed from the shell, the number of the ~~wholesale shellfish/~~<sup>certificates</sup> license - certificates under which they were shucked;

Sec. 19. 12 MRSA / <sup>\$4353,</sup> ~~sub-\$4~~, ¶¶A and B, as enacted by PL 1969, c. 408, §4, are amended to read:

A. Each individual package or container of fresh or frozen shucked shellfish shall have permanently recorded on the package or container, so as to be clearly visible, the packer's, repacker's or distributor's name and address and, the packer's or repacker's current certificate number preceded by the abbreviated name of the state and the packer's or repacker's nonresident import license number.

B. Shell stock shall be identified by a visible tag or label fastened to each container and bearing the number of the shipper's current certificate and non-resident import license, his name and address, the name and address of the consignee, the kind and quantity of shell stock in the container, and the date of harvest or shipment.

Sec. 20. 12 MRSA §4402, sub-§1, as amended by PL 1975,  
c. 565, §17, is further amended to read:

1. Dealer may obtain permit; fee. Any person, firm  
or corporation licensed as a dealer under sections ~~4302-or~~  
~~4303~~ 4314 or 4315 may be granted a permit to remove lobster  
meat from the shell upon written application to the commis-  
sioner and the payment of a fee of \$25.

Sec. 21. 12 MRSA §4403, sub-§3, ¶A, as amended by  
PL 1975, c. 565, §19, is further amended to read:

A. The license fee ~~is only~~ <sup>shall be</sup> \$25 plus \$10 for each  
vehicle, beyond the first, for the holder of a  
current wholesale seafood dealer's-and-processor's  
license.

Sec. 22. 12 MRSA §4403, sub-§6 is repealed.

Sec. 23. 12 MRSA §4404, sub-§4, ¶¶A and B are repealed.

Sec. 24. 12 MRSA §4404, sub-§8 is repealed.

Sec. 25. 12 MRSA §4404, sub-§9, as enacted by PL 1973,  
c. 784, §1 and as last repealed and replaced by PL 1975, c. 518,  
§3, is repealed and the following enacted in place thereof:

9. Application. The applicant shall apply for a license  
on forms provided by the commissioner. The application shall  
require such information as may be necessary in order to demonstrate  
a fulfillment of the requirements of the license. The commissioner  
shall not issue a license unless all of the questions on the  
application are fully answered.

Sec. 26. 12 MRSA §4455, sub-§5 is amended to read:

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.

Sec. 27. 12 MRSA §4506 is amended to read:

§4606. Affidavit of commissioner or chief warden admissible  
in evidence

~~A-certificate~~ An affidavit 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. Affidavit prima facie evidence person not the holder of a license or permit. ~~A certificate~~ An affidavit 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~~ affidavit did not hold such a license or permit on the date specified in the ~~certificate~~ affidavit.

2. Affidavit prima facie evidence of license, permit or right suspension. ~~A certificate~~ An affidavit 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 affidavit in evidence. Any ~~certificate~~ affidavit 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~~ an affidavit 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~~ Certified copies for the proof of those regulations are provided in section 3404.

Sec. 28. 12 MRSA §4551, sub-§1, ¶A, as enacted by PL 1973, c. 459, §2, is repealed.

Statement of Fact

The purpose of this bill is to provide uniform licensing provisions applicable to all commercial fishing and shellfish licenses; to provide distinct provisions for specific licenses when necessary, to provide when and under what circumstances revocation, suspension and denial of application for licenses may be exercised by the commissioner; to consolidate licensing and certification procedures to reduce administration requirements and to ensure the protection of the public health, safety and welfare by requiring the establishment of regulations for the maintenance of sanitary conditions for harvesting, processing, transporting, shipping and storing marine species.