

PART I ADMINISTRATION OF THE GOVERNMENT

(Chapters 1 through 182)

TITLE XIX AGRICULTURE AND CONSERVATION

CHAPTER 130 MARINE FISH AND FISHERIES

Section 52 Taking of eels, shellfish and sea worms; areas in which commercial taking prohibited

Section 52. The selectmen of a town bordering upon coastal waters, if so authorized by their town, and the board of aldermen or the city council of any city so situated may control, regulate or prohibit the taking of eels and any or all kinds of shellfish and sea worms within such cities and towns and may, from time to time, without other or special authority therefor, make any regulations not contrary to law in regard to said fisheries as they deem expedient, including the times, places, methods, purposes, uses, sizes, quantities and any other particulars of such taking, and may grant permits, and establish the fees therefor, subject to any such regulation, then or thereafter in force. Any such authorizations to said selectmen hereunder shall continue in force until subsequent action of such town shall repeal the same. Any regulations made under authority of this section shall continue in force until the board of aldermen, city council, or selectmen, as the case may be, shall alter, amend, rescind or repeal the same, or the authority of the selectmen to make and enforce such regulations shall be repealed. No city or town shall require a person to be licensed to take shellfish who is accompanying or operating a boat for a person so licensed and who is not otherwise actively engaged in or assisting in such fishing.

Any regulations made hereunder shall take effect as therein stated, shall be published by posting a copy of the same in the office of the aldermen, city council or selectmen making the same, and in the office of the city or town clerk, and in three or more public places in said city or town, or by publishing the same once in a newspaper, if any, published in said city or town, and by sending a certified copy thereof to the director, twenty-four hours at least before the time set for the same to take effect; provided that the director may, if he deems it necessary for the protection of shellfish in emergency, authorize the making of such regulations effective immediately, in which case publication shall be made within forty-eight hours after the same shall take effect. The records of the aldermen, city council or selectmen, as to the contents of the regulations, and the method and time of publication thereof, or a copy thereof attested by their secretary, shall be prima facie evidence of such facts therein stated. The records of the town as to the instructions to the selectmen, or a copy thereof attested by the town clerk, shall be prima facie evidence of such instructions.

If any city or town bordering on the coastal waters neglects or refuses to take the control of the shellfish, sea worms or eels within its boundaries as provided in this section, such control shall be temporarily exercised by the director for the benefit of such city or town and such authority shall continue until such time as the aldermen or city council of such city or the selectmen under authority of a vote of such town shall take over such control. Nothing in this paragraph shall be construed as authorizing the director to take control of or exercise the authority provided in this section over the taking of clams from any areas leased from the commonwealth by cities or towns in Essex county as provided in chapter seven hundred and ten of the acts of nineteen hundred and twelve and amendments thereto nor shall such authority extend to the issuance of private shellfish grants as provided in section fifty-seven.

Every city or town which exercises the authority over such coastal fisheries as provided in this section shall set aside an area or areas not then in private control or under municipal cultivation in which the commercial taking of shellfish shall be prohibited and from which shellfish may be taken, for his own family use, by any inhabitant of the commonwealth holding a permit therefor from such city or town. In any city or town issuing such permits to take shellfish for family use, any inhabitant of the commonwealth shall be issued such a permit upon payment of the fee, if any, established therefor. Such permits shall be uniform, and the regulations established in connection therewith shall make no distinction among different classes of permit holders except with respect to the amount of the fee therefor. Such permit shall not allow the taking of shellfish of a size at a season prohibited by law and the amount therefor taken for any family shall not exceed in any one week, one bushel of any or all kinds of shellfish, but the councilmen or selectmen, as the case may be, may, with the approval of the director, reduce the maximum amount of any or all of such shellfish taken for such purpose.

Nothing in this section shall be construed to authorize the aldermen, city council or selectmen to exercise any authority hereunder in areas declared under section seventy-four or under corresponding provisions of earlier laws to be contaminated unless such action is in accordance with a management plan developed by cities and towns with the assistance and approval of the director.

For purposes of this section and of section fifty-four, the term shellfish shall not include the commercial harvest of those species of shellfish known as sea clams (*spilosa solidissima*) and ocean quahogs (*artica islandica*); provided, however, that the director may authorize the commercial management of sea clams and ocean quahogs by regional management of cities and towns, if in his opinion regional management will be in the best interests of the commonwealth. Regional management shall be based upon a regional plan developed by the cities and towns concerned and approved by the director. The director is authorized to promulgate rules and regulations for the development, approval and implementation of all regional plans.