STATE OF MAINE
MARINE RESOURCES

LAW BOOK

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PUBLIC LAWS
OF THE STATE OF MAINE
RELATING TO
MARINE RESOURCES

This handbook contains statutes pertaining to Marine Resources (Title 12) and related statutes.

We have made an effort to provide full and complete information on all laws pertaining to the fisheries, for the convenience of all concerned. The reader should be advised that the contents are subject to change between publications.

Further information may be obtained by writing to the Department of Marine Resources, 21 State House Station, Augusta, ME 04333, or contacting one of our Marine Patrol Officers (see roster included within this publication). This publication also lists our licenses and fees.

Patrick Keliher
Acting Commissioner of Marine Resources

IMPORTANT NOTICE

This Law Book does not contain Regulations, which the commissioner is authorized to adopt or amend. These fall into the following five categories:

1. **Species**. Scallops; lobsters; crabs; quahogs; hen and surf clams, smelts, mammals; marine worms; alewives; salmon and herring.

2. **Types of Gear**. Otter trawls; beam trawls; seines; traps; nets; lights; single hook and line or artificial flies.

3. **Conservation Areas**. Shellfish (clams, quahogs, mussels and oysters) and marine worms.

4. **Commercial Fishing Safety**. Allows the Commissioner to adopt commercial fishing safety rules recommended by the Commercial Fishing Safety Council.

Up-to-date information on any of the above may be obtained from the Department Headquarters.

5. **Municipal Shellfish Conservation Programs**. Any municipality may adopt, amend or repeal a shellfish conservation ordinance regulating shellfish. The ordinance may apply to the regulation or prohibition of taking shellfish, amount, size, license qualifications, fees, enforcement, protection and evaluations. At the time of this printing seventy towns had programs approved by this Department.

Municipal Offices, Marine Patrol Division Offices or Department Headquarters should be contacted for current information before harvesting shellfish.

6. **Closed areas**. Regulations may be adopted or amended by the Commissioner, as he deems necessary to close contaminated or polluted areas in the intertidal zone or coastal waters to the taking of marine mollusks. A significant number of coastal areas are now closed, some on a seasonal basis, until further public notice. This also includes other types of closed areas.

Shellfish Hotline Number
(1-800-232-4733)

Marine Patrol Division Offices, Department of Marine Resources Headquarters or Municipal Offices should be contacted for up-to-date and accurate information since closures may change frequently.

MARINE RESOURCES

12 M.R.S.A., Chapters 601–631 and 12 M.R.S.A., Chapter 419 compiled in accordance with the provisions of 12 M.R.S.A. Section 6022.

(Effective September 28, 2011)

PLEASE COME VISIT OUR WEBSITE LOCATED AT:

www.maine.gov/dmr

Catch up on the latest news happening at DMR

- **Current Laws & Regulations**
- **Lobster Newsletter**
- **Closed Areas**
- **License applications and On-line License Renewal**

And much, much MORE.

Summary Index of enacted, amended, repealed 12. M.R.S.A. laws for the 1st Session of the 125th Legislature.

§6001. Definitions	
(6-A) Commercial fisheries business	[PL 2011, c. 266] Enacted 9/28/11
(56) Working waterfront or working waterfront property	[PL 2011, c. 266] Enacted 9/28/11
§6005. Labeling shellfish	[PL 2011, c. 234] Enacted 6/6/11
§6022. Commissioner's appointment, duties and powers	
(17) Permit banking program	[PL 2011, c. 10] Enacted 9/28/11
(18) Commissioner's authority	[PL 2011, c. 266] Enacted 9/28/11
§6032. Marine Recreation Fishing Conservation and Management Fund	[PL 2011, c. 421] REPEALED 7/6/11
§6034. Commercial Fishing Safety Council	
(1) Appointment; composition	[PL 2011, c. 128] Enacted 9/28/11
(2) Term	[PL 2011, c. 128] Enacted 9/28/11
§6042. Maine Working Waterfront Access Protection Program	[PL 2011, c. 266] Enacted 9/28/11
§6072. Research and aquaculture leases	
(8) Preference	[PL 2011, c. 93] Effective 9/28/11
(8-A) Preference for limited-purpose lease areas	[PL 2011, c. 93] REPEALED 9/28/11
(12) Renewal	[PL 2011, c. 93] Effective 9/28/11
(12-B) Extension of lease	[PL 2011, c. 93] REPEALED 9/28/11
§6072-A. Limited-purpose lease for commercial or scientific research	
(18) Scientific lease renewal	[PL 2011, c. 93] Effective 9/28/11
(20) Extension of commercial lease	[PL 2011, c. 93] Effective 9/28/11
§6072-B. Emergency aquaculture lease for shellfish	
(7) Extension of emergency aquaculture lease.	[PL 2011, c. 93] Effective 9/28/11
§6078-A. Aquaculture Monitoring, Research and Development Fund	
(3) Expenditures; purpose	[PL 2011, c. 344] Effective 9/28/11
§6080. Aquaculture Advisory Council	[PL 2011, c. 344] REPEALED 9/28/11
§6173-A. Maine Working Waterfront Access Pilot Program; confidentiality for proprietary information	
(a) Confidential information	[PL 2011, c. 266] Effective 9/28/11
§6301. General Provisions	
(2) (R)	[PL 2011, c. 420] Effective 7/6/11
§6302-A. Taking of marine organisms by Passamaquoddy tribal members and members of the Penobscot Nation	[PL 2011, c. 137] Effective 5/25/11
(1) Tribal exemption; commercial harvesting licenses	[PL 2011, c. 137] Effective 5/25/11 and [PL 2011, c. 266] Effective 9/28/11
(2) – (9)	[PL 2011, c. 137] Effective 5/25/11

§6310. Appeal of license denial	
(1) Appeal of license denial	[PL 2011, c. 255] Effective 9/28/11
(2) Criteria for license issuance on appeal	
(2) (C)	[PL 2011, c. 255] Enacted 9/28/11
§6312. Saltwater recreational fishing registry	[PL 2011, c. 421] Effective 7/6/11
§6371. Administrative suspension	
(2) Suspension for refusal to allow a shellfish inspection by a department shellfish inspector	[PL 2011, c. 311] Effective 9/28/11
(3) Suspension for violations	[PL 2011, c. 311] Effective 9/28/11
§6372. Procedure for suspending on refusal to allow inspection	[PL 2011, c. 311] Effective 9/28/11
§6373. Procedure for suspending for violation of a shellfish provision	[PL 2011, c. 311] REPEALED 9/28/11
§6374. Procedure for suspending without criminal or civil adjudication	[PL 2011, c. 311] Enacted 9/28/11
§6421. Lobster and crab fishing licenses	
(4) Exception	[PL 2011, c. 5] Effective 9/28/11
(5-D) (B)	[PL 2011, c. 266] Effective 9/28/11
(5-D) (C)	[PL 2011, c. 266] Effective 9/28/11
(5-D) (D)	[PL 2011, c. 266] REPEALED 9/28/11
(5-D) (E)	[PL 2011, c. 266] Effective 9/28/11
§6431. Lobster measurement	
(1) Minimum and maximum length	[PL 2011, c. 266] Effective 9/28/11
(3) Certified lobster measure	[PL 2011, c. 266] Effective 9/28/11
(6) Exception; wholesale seafood dealer with lobster permit; rules.	[PL 2011, c. 247] Effective 6/7/11
(6-B) Exception; lobster processing; rules	[PL 2011, c. 247] Enacted 11/1/11
§6432. Methods of fishing	
(2) Marking	[PL 2011, c. 266] Effective 9/28/11
(3) Color Design	[PL 2011, c. 266] Effective 9/28/11
§6434. Molesting lobster gear	
(2) Adoption of rules required	[PL 2011, c. 266] Effective 9/28/11
§6501. Commercial fishing license	
(3) (B)	[PL 2011, c. 266] Effective 9/28/11
(3) (C)	[PL 2011, c. 266] REPEALED 9/28/11
(6) Definition	[PL 2011, c. 266] Effective 9/28/11
§6505-D. Eel and Elver Management Fund	
(2) Permissible uses	[PL 2011, c. 266] Effective 9/28/11
(3) Plan required	[PL 2011, c. 266] REPEALED 9/28/11
§6706. Limited entry	
(1) (A)	[PL 2011, c. 266] Effective 9/28/11
(2) License eligibility in subsequent years	[PL 2011, c. 237] Effective 6/7/11
(3) Scallop license limited entry system	[PL 2011, c. 237] Effective 6/7/11
(4) Repeal	[PL 2011, c. 237] REPEALED 6/7/11

§6851. Wholesale seafood license; wholesale seafood license with lobster permit; wholesale seafood license with urchin permit; wholesale seafood license with shrimp permit	
(2-B) Wholesale seafood license with a sea urchin buyer's permit	[PL 2011, c. 266] Effective 9/28/11
(2-C) Wholesale seafood license with a sea urchin processor's permit	[PL 2011, c. 266] Effective 9/28/11
§6851-B. Lobster processor license	
(2) (C)	[PL 2011, c. 247] Effective 6/7/11
(2) (D)	[PL 2011, c. 247] Effective 6/7/11
(2) (E)	[PL 2011, c. 247] Enacted 11/1/11
§6852-A. Enhanced retail seafood license	
(7) Inspection	[PL 2011, c. 311] Enacted 9/28/11
§6856. Shellfish sanitation and depuration certificate	
(3) depuration certificate	[PL 2011, c. 175] Effective 9/28/11
(3-A) Municipal consultation and approval; depuration harvesting	[PL 2011, c. 175] REPEALED 9/28/11
(3-B) Municipal pollution abatement plan	[PL 2011, c. 175] REPEALED 9/28/11
(3-C) Municipal depuration management plan	[PL 2011, c. 175] REPEALED 9/28/11
(3-D) Soft-shelled clam depuration harvesting in municipalities with municipal shellfish conservation programs	[PL 2011, c. 175] Enacted 9/28/11
(5) Right of entry	[PL 2011, c. 311] Effective 9/28/11
(7) Resident depuration harvesters	[PL 2011, c. 175] REPEALED 9/28/11
(8) Payments to municipalities	[PL 2011, c. 175] REPEALED 9/28/11
§6952-A. Trawling, seining or netting for lobsters	
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(3) (A)	[PL 2011, c. 266] Effective 9/28/11

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REQUIRED LICENSE FEES

REQUIRED LICENSES ISSUED BY MARINE RESOURCES FEES	
TYPE	**TOTAL FEES**
Lobster & Crab Harvesting Licenses	
Class I	$167.00
Class I, Under Age 18	$65.00
Class I, Over Age 70	$66.00
Class II	$335.00
Class II, Over 70	$168.00
Class III	$501.00
Class III, Over 70	$250.00
Marine Harvesting Demonstration (there is also a $15 exam charge for new applicants)	$26.00
Non-Commercial (5-trap limit) (there is also a $15 exam charge for new applicants)	$65.00
Apprentice Lobster & Crab Harvesting Licenses	
Apprentice Under Age 18	$65.00
Apprentice Age 18 and Above	$132.00
Student (Full time under age 23)	$65.00
Non-Resident Lobster & Crab Harvesting Licenses	
Class I	$790.75
Class I, Under Age 18	$387.00
Class II	$1,587.50
Class III	$2,369.25
Apprentice, 18 Years and Older	$785.00
Apprentice, Under Age 18	$387.00
Landing Permit	$840.25
Trap Tags	$.50 each
Marine Resource Dealer Licenses	
Wholesale Seafood, no lobsters	$443.00
Wholesale Seafood, with Lobsters, promotion surcharge	$693.00
Urchin Buyer, research surcharge (must hold Wholesale Seafood license)	$500.00
Urchin Processor, research surcharge (must hold Wholesale Seafood license)	$1,000.00
Wholesale Seafood Supplemental (must hold Wholesale license)	$87.00
Retail Seafood	$122.00

REQUIRED LICENSE FEES

Lobster Transportation (to take out of State) (no promotion surcharge if hold Wholesale with lobsters)	$562.00
Lobster Transportation Supplemental	$63.00
Lobster Meat Permit	$159.00
Shellfish Transportation (to take out of state)	$529.00
Shellfish Transportation Supplemental	$173.00
Marine Worm Dealer (Maine Residents Only)	$64.00
Marine Worm Dealer Supplemental	$26.00
Elver	$1,213.00
Elver Supplemental	$63.00
Commercial Shellfish & Marine Worm Digger Licenses	
Commercial Shellfish	$133.00
Commercial Shellfish, Over Age 70	$67.00
Limited Shellfish Wholesaler (must hold Commercial Shellfish license)	$115.00
Marine Worm Diggers	$50.00
Elver Harvesting Licenses	
Elver, Resident (and fee for gear type below)	$105.00
Elver, Non-Resident (and fee for gear type below)	$442.00
Elver Gear Type:	
1 Dip Net Only	
1 Fyke Net or Sheldon Trap Only	
1 Fyke Net or Trap, and Dip Net	$58.00
2 Fyke Nets or Traps	$58.00
Marine Harvesting Licenses	
Commercial Fishing-Single	$48.00
Commercial Fishing-Crew	$128.00
Commercial Fishing Non-Resident	$481.00
Commercial Pelagic & Anadromous Fishing – Single	$98.00
Commercial Pelagic & Anadromous Fishing – Crew	$328.00
Commercial Pelagic & Anadromous Fishing – Non-resident	$900.00
Commercial Fishing Non-Resident	$481.00
Commercial Shrimp-Single	$38.00
Commercial Shrimp-Crew	$103.00
Commercial Shrimp-Non-Resident	$385.00
Eel (Not for Elvers)	$125.00

REQUIRED LICENSE FEES

Green Crab (Resident)	$38.00
Green Crab (Non-Resident)	$76.00
Mussel – Dragger	$265.00
Mussel – Hand	$133.00
Quahog (Mahogany)	$128.00
Scallop – Dragger	$243.00
Scallop – Diver	$243.00
Scallop – Diver With Tender	$293.00
Scallop Non-Commercial	$58.00
Seaweed Permit	$58.00
Seaweed Supplemental	$29.00
Seaweed – Non-Resident	$230.00
Seaweed Non-Resident Supplemental	$58.00
Sea Urchin-Diver – Zone 1	$185.00
Sea Urchin-Diver – Zone 2	$312.00
Sea Urchin – Diver with Tender – Zone 1	$210.00
Sea Urchin – Diver with Tender – Zone 2	$362.00
Sea Urchin Raking/Trapping – Zone 1	$185.00
Sea Urchin Raking/Trapping – Zone 2	$312.00
Sea Urchin Dragger – Zone 1	$185.00
Sea Urchin Dragger – Zone 2	$312.00
Sea Urchin/Scallop Tender	$183.00
Sea Cucumber Dragger	$128.00
Surf Clam Boat	$265.00

CHAPTER 601
GENERAL PROVISIONS

§6001. Definitions

For the purposes of this Part, the following words shall have the following meanings, unless a different meaning is required by the context.

1. Aquaculture. "Aquaculture" means the culture or husbandry of marine organisms by any person.

1-A. Alewives. "Alewives" means the species Alosa pseudoharengus, commonly called alewife, and Alosa aestivalis, commonly called blueback herring.

2. Atlantic salmon. "Atlantic salmon" means the anadromous fish species Salmo salar that customarily migrates from inland waters to the ocean as part of its life cycle.

3. Bulk pile. "Bulk pile" means any pile or the contents of any box, barrel or other container.

4. Buy. "Buy" means to buy or purchase and includes offering to buy.

5. Car. "Car" means a lobster car, crate, box or other contrivance, whether sunken or floating, that may be used in coastal waters to hold live lobsters.

6. Coastal waters. "Coastal waters" means all waters of the State within the rise and fall of the tide out to the limits of the exclusive economic zone as shown on the most recently published Federal Government nautical chart, but it does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.

6-A. Commercial fisheries business. "Commercial fisheries business" means an enterprise directly or indirectly concerned with the commercial harvest of wild or aquacultured marine organisms, whose primary source of income is derived from these activities. "Commercial fisheries business" includes, but is not limited to:

A. Licensed commercial fishermen, aquaculturists and fishermen's cooperatives;

B. Persons providing direct services to commercial fishermen, aquaculturists or fishermen's cooperatives, as long as provision of these direct services requires the use of working waterfront property; and

C. Municipal and private piers and wharves operated to provide waterfront

access to commercial fishermen, aquaculturists or fishermen's cooperatives.

7. Commissioner. “Commissioner” means Commissioner of Marine Resources.

8. Common carrier. “Common carrier” means a vehicle that is:

A. Operating under authority granted by either the Federal Government or the carrier’s home state; and

B. Transporting goods for hire and the carrier does not own the marine organisms being transported.

9. Conservation. “Conservation” means providing for the development and wise utilization of the state’s marine resources, protecting the ultimate supply for present and future generations, preventing waste and implementing sound management programs.

10. Crayfish. “Crayfish” means all species from either fresh or salt water including, but not limited to, the family Palinuridae, including the representative genera Jasus and Palinurus, which have been called by such terms including, but not limited to, rock lobster, spiny lobster, sea crawfish, red lobster, thorny lobster, langoust, langoustini, langostino, crayfish, Sidney crawfish, kreef, Cuban rock lobster, African lobster or African crawfish.

11. Crew member. “Crew member” means any person assisting in operating or attending gear or operating a boat while fishing.

12. Dealer. “Dealer” means any person who buys, sells or distributes any marine organism.

13. Department. “Department” means the Department of Marine Resources.

13-A. Engage. “Engage” means engage or attempt to engage.

13-B. Equipment. “Equipment” means a box, trap, crate, net or other device or machinery used to harvest or store marine organisms.

13-C. Dip net. “Dip net” means a device consisting of a rigid frame filled with netting, firmly attached to a rigid handle and manually operated by a single person.

13-D. Eel. “Eel” means a member of the species Anguilla rostrata in that stage of its life cycle when it is 6 inches or more in length.

13-E. Eel pot. "Eel pot" means a cylindrical or rectangular trap with funnels that is baited and used to harvest eels. An eel pot is 50 cubic feet or less in total volume and utilizes wire or slatting no smaller than 1/2 inch square measure.

13-F. Elver. "Elver" means a member of the species Anguilla rostrata in that stage of its life cycle when it is less than 6 inches in length.

13-G. Elver fyke net. "Elver fyke net" means a fyke net that is 30 feet or less in length from cod end to either wing tip, is fitted with netting that measures 1/8-inch bar mesh or less, contains a 1/2-inch or less bar mesh excluder panel that covers the entrance of the net, and consists of not more than one funnel end, one cod end and 2 wings.

13-H. Elver dip net. "Elver dip net" means a dip net with a hoop of not more than 30 inches in diameter and fitted with netting that measures 1/8 inch bar mesh or less.

13-I. Established base of operations. "Established base of operations" means the location where a vessel has its primary relationship. Among the factors identifying a primary relationship are the locations at which the vessel is primarily moored or docked, where it prepares for expeditions and hires a crew and to which it regularly returns for repairs, supplies and activities relating to its business or trade. The fact that a vessel carries on one or more of these activities at more than one location within this State or at a location or locations outside this State does not prevent the vessel from being considered to have an established base of operations within the State if a substantial portion of these activities are carried on at a location or locations within this State. For purposes of this subsection, "substantial portion" means a period exceeding 60 days in any calendar year.

14. Establishment. "Establishment" means the premises, buildings, structures, facilities and equipment, including vehicles, used in the buying, selling or processing of marine organisms.

15. Finfish. "Finfish" means any cold-blooded marine animal having permanent gills and fins.

15-A. Fishway. "Fishway" means a manmade device, including fish elevators, fishlocks and fish ladders, that is used to enable fish to migrate upstream past dams, waterfalls, rapids or other obstacles.

16. Fish, the noun. The noun "fish" means all finfish, squid and shrimp, or other marine animal, except lobsters, crabs, shellfish, scallops and marine worms.

17. Fish, the verb. The verb "fish" means to take or attempt to take any marine organism by any method or means.

17-A. Freshwater fish. "Freshwater fish" means the following fish species, when found in coastal waters as defined in subsection 6: Brown trout; largemouth bass; smallmouth bass; black crappie; rainbow trout; brook trout; chain pickerel; and landlocked salmon.

17-B. Fork length. "Fork length" means the greatest dimension between the most anteriorly projecting part of the head and the apex of the V formed by the caudal fin. The measurement is a straight line and is not taken over the curve of the body.

17-C. Fyke net. "Fyke net" means a funnel-shaped net designed to intercept moving marine organisms and retain marine organisms in a confined space.

18. Handline. "Handline" means a single line with no more than 5 hooks attached which is hand held.

19. 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 container is sterilized by heat. It does not include friction cover containers or containers requiring refrigeration.

20. Hook and line. "Hook and line" means a single line with no more than 5 hooks, including the commonly called rod and reel and handline.

20-A. Hoop net. "Hoop net" means a stationary cylindrical net fitted with mesh measuring 1/2 inch or greater stretch measure, that is placed at the bottom of a body of water and has a diameter of 6 feet or less as measured at its widest point and has a length of 18 feet or less as measured from the cod end to the hoop that forms the mouth of the net. "Hoop net" includes wings or leads attached to the mouth of the hoop net.

21. Intertidal zone. "Intertidal zone" means the shores, flats or other land between high and low water mark.

22. License. "License" means a document issued by the State to a named person authorizing that person to engage in particular activities. License includes a permit, but does not include a certificate or lease.

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

24. Lobster trap. "Lobster trap" means a lobster trap, pot or other stationary contrivance or device that may be set on the ocean bottom and used for taking lobsters or crabs.

24-A. Mahogany quahog. "Mahogany quahog" means a marine mollusk, Artica icelandica.

25. Marine mollusk. "Marine mollusk" means any marine invertebrate animal of the phylum Mollusca, but shall not include squid or octopi.

26. Marine organism. "Marine organism" means any animal, plant or other life that inhabits waters below head of tide.

27. Marine resources. "Marine resources" means all renewable marine organisms and the entire ecology and habitat supporting those organisms.

28. Marine resources' laws. "Marine resources' laws" means chapter 419 and Part 9 or any other statute authorizing the commissioner or department to undertake any activity, and any regulation authorized by these statutes.

29. Marine species. "Marine species" means all marine animals except lobster, shellfish, marine worms and elvers.

30. Marine worms. "Marine worms" means sand, blood and clam worms.

30-A. Pacific salmon. "Pacific salmon" means all species of the genus Onchorhynchus.

31. Parlor section. "Parlor section" means that part of a lobster trap designed or intended to hold or detain lobsters until they are removed by the fisherman.

32. Permit. "Permit" means license.

33. Person. "Person" means any individual, firm, corporation or agency or political subdivision of government.

34. Personal use. "Personal use" means for consumption or use by oneself, by members of the immediate family or by invited guests.

34-A. Possession. "Possession" means to have in one's custody or control, either personally or by another who is under one's control.

35. Process, the verb. The verb "process" means handling, storing, cooking, preparing, producing, manufacturing, preserving, packing or other activity which could change the condition or form.

35-A. Quahog. "Quahog" means a marine mollusk, Mercenaria mercenaria, commonly called hard shelled clams, and Artica icelandica, commonly called mahogany quahogs.

36. Registered vessel. "Registered vessel" means:

A. A vessel that is owned or operated by a person licensed under this Part;

B. A vessel that is used to bring a marine organism into the State or its territorial waters;

C. A vessel that is registered or has been issued a certificate of number under chapter 935;

D. A vessel documented in accordance with 46 United States Code, Chapter 121 that has designated a Maine port of hail;

E. A vessel that has been issued a certificate of number by the United States Coast Guard under 46 United States Code, Chapter 123 that has identified Maine as the state of principal use; or

F. A vessel that has an established base of operations within this State.

37. Retail. "Retail" means sale, trade or service directly to the consumer for his personal use.

37-A. Rigged. "Rigged" means to have on board the equipment necessary to undertake the activity. The commissioner shall determine by rulemaking what equipment is necessary to undertake the activity. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

38. Scallop. "Scallop" means sea scallop, placopecten magellanicus.

38-A. Seaweed. "Seaweed" means all marine algae.

39. Sell. "Sell" means to sell, offer to sell or expose for sale.

40. Serve. "Serve" means the preparation of a marine organism for retail sale or consumption, but does not include shucking shellfish.

40-A. Sheldon eel trap. "Sheldon eel trap" means a box trap with a netted wing 10 feet or less in length used to intercept and direct elvers into the trap.

41. Shellfish. "Shellfish" means clams, quahogs, oysters and mussels and includes shellstock and shucked shellfish.

42. Shellstock. "Shellstock" means shellfish which have not been removed from their shells.

43. Ship, the verb. The verb "ship" means to send by a common carrier.

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

44-A. Single hook. "Single hook" means a hook with no more than one eye and one shank to which one or more points is attached.

45. Sunrise. "Sunrise" means the time given for sunrise as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.

46. Sunset. "Sunset" means the time given for sunset as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.

47. Suspension. "Suspension" means the revocation of a license, the right to obtain a license and the privilege to undertake the licensed activity, whether the suspension is temporary or permanent.

48. Take, the verb. The verb "take" means to remove or attempt to remove a marine organism from its natural habitat.

48-A. Total length. "Total length" means the greatest dimension between the most anteriorly projecting part of the head and the farthest tip of the caudal fin when the caudal rays are squeezed together. The measurement is a straight line and is not taken over the curve of the body.

48-B. Territorial waters. "Territorial waters" means all waters of the State within the rise and fall of the tide seaward to the 3-nautical-mile line as shown on the most recently published Federal Government nautical chart, but does not include areas above any fishway or dam when that fishway or dam is the dividing line between tidewater and fresh water.

49. Transfer. "Transfer" means to transport by boat on the water.

50. Transport, the verb. The verb "transport" means to move an object from one place to another by any means other than to ship.

51. Tub-trawl. "Tub-trawl" means a single line, with more than 5 hooks, including the commonly called tub-trawl, line trawl or long line.

52. Tuna. "Tuna" means any finfish commonly known as tuna, including the horse mackerel.

53. Vehicle. "Vehicle" means a machine or conveyance, including watercraft and aircraft, used to move or transport marine organisms.

54. Wholesale. "Wholesale" means sale, trade or service that is not directly to a consumer and is not retail.

55. Whole scallop. "Whole scallop" means a cultured scallop in any form, except when the final product form is the adductor muscle of the scallop only.

56. Working waterfront or working waterfront property. "Working waterfront" or "working waterfront property" means land, legally filled lands and piers and wharves and other improvements to land adjacent to the navigable coastal waters of the State and used by a commercial fisheries business.

§6002. Rules of construction

The following rules of construction apply to this Part, unless a different construction is plainly required by the context.

1. Reference to marine organisms. Reference to the taking or possession of any marine organism includes the taking and possession of any part of it.

2. Application to marine organisms. Marine resources' laws apply only to marine organisms, as distinguished from fresh water organisms, except where jurisdiction over migratory or other organisms is specifically given.

3. General application. Marine resources' laws shall apply to all registered vessels and to all persons where their activities occur within the State, within the coastal waters of the State or where the product of those activities are brought into the State or its coastal waters. They shall also apply to all residents of the State wherever those activities are conducted, but not within the jurisdiction of another state. These laws do not apply to marine organisms passing through the State under the authority of the laws of the United States. This subsection does not limit section 6859.

§6003. Coordination of fisheries management

The Commissioner of Marine Resources, in consultation with the Commissioner of Inland Fisheries and Wildlife, may regulate the taking of freshwater fish species in coastal waters. Rules shall be promulgated in accordance with section 6171. Whenever a bag limit on freshwater fish species in coastal waters exists, as defined in section 6001, subsection 17-A, no person may possess more than one day's bag limit, regardless of whether the fish are taken from inland or coastal waters.

§6004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of confinement; or

3. History. The record or previous history of the defendant warrants a period of confinement.

The court is not required to impose a period of confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date. Any period of confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A, or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

§6005. Labeling shellfish

A person who is authorized to hold or possess shellfish under chapter 623 may not label shellfish sold alive using the words "product of Maine" or any other similar words or terms that misleadingly suggest the shellfish was taken from the waters of this State unless the shellfish was in fact taken from the waters of the State.

The sale of shellfish labeled in violation of this section is a deceptive business practice in violation of Title 17-A, section 901. A violation of this section that results in a conviction under Title 17-A, section 901 is considered a conviction for a violation of a marine resources law under section 6351, subsection 1, paragraph A.

CHAPTER 603

DEPARTMENT ADMINISTRATION

§6021. Purpose

The Department of Marine Resources is established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes, as well as the exercise of all authority conferred by this Part.

§6021-A. Marine Products Marketing Program

The Marine Products Marketing Program is established to encourage, promote and provide for direct participation of Maine seafood producers in joint public and private market development programs. The commissioner may enter into agreements or cooperative arrangements with any person for the purpose of advertising and increasing the sale and consumption of seafood products. The commissioner may receive, administer and disburse any funds or contributions from these persons, either independently or in conjunction with state funds allocated to the purpose, provided that funds so contributed shall be used only for the purposes of market development programs.

§6022. Commissioner's appointment, duties and powers

1. Appointment and term. The commissioner shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Marine Resources and to confirmation by the Legislature. The commissioner shall serve at the pleasure of the Governor.

2. General powers. The commissioner shall be responsible for the administration and enforcement of all marine resources' laws and shall have all the powers of a marine patrol officer. He shall maintain records of all leases, certificates or licenses issued by the commissioner or required to be filed under section 6027.

3. Organization and personnel. The commissioner shall organize the department into the administrative units which the commissioner decides are necessary to carry out its duties. The commissioner shall hire all necessary employees of the department subject to the Civil Service Law, except that persons in the following positions shall be appointed by and serve at the pleasure of the commissioner: Deputy Commissioner; Chief, Bureau of Marine Patrol; and Assistant to the Commissioner for Public Information. The Chief of the Bureau of Marine Patrol shall be appointed from among the patrol personnel of the bureau with the rank of sergeant or higher. In the event that the Chief of the Bureau of Marine Patrol is not reappointed, that person shall have the right to be restored to the classified position from which that person shall have been promoted or to a position equivalent thereto in salary grade without impairment of that person's personnel status or the loss of seniority, retirement or other rights to which uninterrupted service in the classified position would have entitled that person. If that person's service in the position of Chief of the Bureau of Marine Patrol shall be terminated for cause, that person's right to be so restored shall be determined by the State Civil Service Appeals Board.

4. Warden code. The commissioner shall prepare a written code governing the operating procedures of the Bureau of Marine Patrol services for submission to the Director of Human Resources. The code shall become effective when approved by the Director of Human Resources.

5. Property. The commissioner may acquire and hold any right or interest in real or personal property on behalf of the State. The commissioner may by sale, lease or otherwise dispose of any such property, or portion of any such property or interest in any such property, subject to the provisions of section 598-A.

6. Enforcement agreements. The commissioner may enter into reciprocal enforcement agreements with political subdivisions of the State and with other states, regional authorities and the Federal Government. Pursuant to these agreements, the commissioner may designate and deputize federal law enforcement personnel and law enforcement personnel from other states to enforce marine resource laws and rules. In that event, the commissioner shall designate the specific laws and rules to be enforced. Agents so deputized may enforce those laws and rules so designated by the commissioner. Agents so deputized by the commissioner shall have the powers of a marine patrol officer, as defined in section 6025.

7. Report. The commissioner shall report to the Governor and Legislature every 2 years. This report shall include a detailed statement of the department's actions and functions and a survey of the present state of the state's fishing industries and their anticipated future, including statistics and data. The report may include those recommendations for amendments to the laws and licensing procedures of the marine resources' laws as may be necessary for the operation of the department. The report shall cover the period ending June 30th of each even-numbered year and shall be due within 6 months of the end of the period which it covers.

8. Pamphlet laws. The commissioner shall publish a pamphlet of the sections of this Part as soon as possible after the adjournment of the first regular session of each Legislature. In addition, the commissioner may publish any other laws or regulations.

9. Federal expenditures. The commissioner may accept federal funds for use in department programs and to do such acts as are consistent with the powers of the commissioner and as are necessary to carry out federal laws pursuant to which those funds are provided. The commissioner may accept any other funds as may be available to carry out the purposes of the department.

10. Ecological impact. The commissioner shall advise the United States Army Corps of Engineers, the Department of Transportation, the Department of Environmental Protection and appropriate state agencies on the ecological effects of dredging, filling and depositing of soil or otherwise altering coastal wetlands, whether these actions will affect adversely estuarine or marine fisheries and what mitigation or compensatory measures are available. The commissioner shall also recommend to these agencies whether dredging, filling or otherwise altering coastal wetlands is permitted under current state and federal wetland rules and regulations.

11. Interagency cooperation. The commissioner shall consult with, offer advice to and cooperate with the State Planning Office, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Conservation in carrying out his duties, and these agencies shall do the same in carrying out their duties. Cooperation shall include the exchange of information and the filing of copies of any application, petition, request, report or similar document which may bear upon the responsibilities of any of these departments. Details of those exchanges shall be worked out by the heads of the departments.

12. Regulations. The commissioner may make regulations as authorized by marine resources' laws.

14. Brands, labels and marks. The commissioner may develop, design and register brands, labels or marks, as that term is used in Title 10, section 1521, subsection 3, for identifying marine resource products packed in accordance with official grades and standards established by the department and shall furnish information to packers and shippers as to where these labels and marks may be obtained. A written application to the commissioner requesting permission to use these brands, labels or marks and a written acceptance thereto from the commissioner shall be a condition precedent to the use of these brands, labels or marks. The right to use these brands, labels or marks may be suspended or revoked by the commissioner according to the procedures set forth in section 6101, subsections 6 to 8, whenever it appears on investigation that they have been used to identify marine resource products not conforming to the grades or standards indicated.

15. Revolving fund. The commissioner may prepare and distribute printed and audio-visual materials on matters within his statutory jurisdiction. There is established within the department a revolving fund to cover the printing and distribution costs of these materials. The commissioner shall fix the prices at which publications of the department may be sold or delivered. The department shall retain, without charge, an appropriate number of each publication for complimentary distribution. Income from the sale of publications that were charged to the revolving fund and any other moneys the commissioner may receive, from whatever source, consistent with the purposes of this section, shall be credited to the revolving fund to be used as a continuing carrying account to carry out the purposes of the fund.

16. Atlantic salmon powers and responsibilities. The commissioner has the sole authority to introduce Atlantic salmon into the inland waters, other than in commercial aquaculture facilities. The commissioner has the sole authority to limit or prohibit the taking of Atlantic salmon and may adopt rules establishing the time, place and manner of Atlantic salmon fishing in all waters of the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

17. Permit banking program. The commissioner may administer a permit banking program in which the department holds federal limited access fishing permits and distributes the rights associated with those permits to eligible residents of the State with the goal of restoring and preserving access to federally managed fisheries. The commissioner may lease fisheries allocations, as required, to fund the costs associated with the permit banking program.

18. Commissioner's authority. The State assents to the provisions of the Federal Aid in Sport Fish Restoration Act, 16 United States Code, Chapter 10B, as amended. The commissioner may perform all acts necessary for the establishment and implementation of cooperative fish restoration and management

projects as defined by that Act and the implementing regulations promulgated under that Act.

§6023. Deputy commissioner

The commissioner shall designate a deputy commissioner, who shall serve at the pleasure of the commissioner. The deputy commissioner shall be responsible, under the direction of the commissioner, for the administration and enforcement of the marine resources' laws and shall have all the powers of a marine patrol officer. He shall serve as the commissioner in the commissioner's absence or disability or if the office of the commissioner becomes vacant. The commissioner may appoint an appropriate administrative officer in the department to perform the functions of the commissioner if both the commissioner and deputy commissioner are disabled or absent.

§6024. Advisory council

1-A. Appointment; composition; term; compensation. The Marine Resources Advisory Council, established by Title 5, section 12004-G, subsection 27, consists of 16 members. The chair of the Lobster Advisory Council, the chair of the Marine Recreational Fishing Advisory Council, the chair of the Sea Run Fisheries and Habitat Advisory Council, the chair of the Sea Urchin Zone Council and the chair of the Shellfish Advisory Council are ex officio members of the council. Each other member is appointed by the Governor and is subject to review by the joint standing committee of the Legislature having jurisdiction over marine resources matters and to confirmation by the Legislature. Five members must be persons who are licensed under this Part to engage in commercial harvesting activities. Those 5 members are selected by the Governor from names recommended to the Governor by groups representing commercial harvesting interests. Each member must represent a different commercial harvesting activity, except that none of those 5 members may represent lobster harvesters. The remaining 6 members must include one public member, 4 persons who hold a nonharvesting-related license under this Part and one person representing the aquaculture industry. The Governor shall select the person to represent the aquaculture industry from among the names recommended by the aquaculture industry. The composition of the council must reflect a geographical distribution along the coast. All appointed members are appointed for a term of 3 years, except a vacancy must be filled in the same manner as an original member for the unexpired portion of the term. An appointed member may not serve for more than 2 consecutive terms. Appointed members serve until their successors are appointed. The chair of the Lobster Advisory Council, the chair of the Marine Recreational Fishing Advisory Council, the chair of the Sea Run Fisheries and Habitat Advisory Council, the chair of the Sea Urchin Zone Council and the chair of the Shellfish Advisory Council shall serve until a new

chair of the Lobster Advisory Council, a new chair of the Marine Recreational Fishing Advisory Council, a new chair of the Sea Run Fisheries and Habitat Advisory Council, a new chair of the Sea Urchin Zone Council or a new chair of the Shellfish Advisory Council, respectively, is chosen. Members are compensated as provided in Title 5, chapter 379.

2. Powers and duties; meetings; officers. The council shall give the commissioner information and advice concerning the administration of the department and carry out other duties specifically delegated by marine resources' laws. The council shall hold regular quarterly meetings with the commissioner, or the commissioner's designee, and may hold special meetings at any time. The council shall elect one of its members as chair, one as vice-chair and one as secretary, all for a term of one year, at the first regular meeting in each year. The officers have the following duties.

A. The chair shall call and preside at all meetings of the council.

B. The vice-chair shall call and preside at all meetings of the council in the chair's absence.

C. The secretary shall cause records to be taken and to be preserved of all meetings of the council.

3. Quorum. A quorum shall be a majority of the current members of the council.

4. Council actions. An affirmative vote of a majority of the members present at a meeting or polled shall be required for any action. No action may be considered unless a quorum is present or, if there is no meeting, a quorum responds to a written poll.

5. Research oversight. The commissioner shall annually report to the council on the research of the department. The report shall include the present research plan and its implementation, any necessary revision of the plan and its necessary extension over the planning period. The council may appoint marine scientists, who are not employees of the department, to advise it in considering the research plan. After completing its review, the council shall report the plan, and any recommendations or comments, to the joint standing committee of the Legislature having jurisdiction over marine resources.

§6025. Marine patrol officers

1. Appointment. Applicants for the position of a marine patrol officer who qualify under the officer's code and pass the examination administered by

the Bureau of Human Resources may be appointed by the commissioner to hold office under Title 5, chapters 51 to 67 and under the officer's code.

2. Fees and other offices. Except before the District Court, officers are allowed the same fees as sheriffs and their deputies for like service which must be paid to the commissioner for use of the State. Officers may not hold any other state, county or municipal office for which they receive compensation, except elected positions in municipal or county government.

3. Powers and duties. Officers shall enforce all marine resources' laws and may arrest and prosecute all violators. They may serve all process pertaining to marine resources' laws. They shall have jurisdiction and authority in all areas where the laws for which they have responsibility apply. In addition to their specified powers and duties, the marine patrol officers are vested with the authority to enforce all laws of the State and may arrest for violations of any criminal laws. Any officer may require suitable aid in the execution of the duties of his office. Marine patrol officers may receive complete law enforcement training within one year from the date of employment and in-service training privileges at the Maine Criminal Justice Academy.

4. Search powers. Any marine patrol officer, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, possessed or transported contrary to law is concealed thereon or therein.

5. Sheriff and police powers as marine patrol officers. A sheriff, deputy sheriff, deputy sheriff, police officer, constable or inland fisheries and wildlife warden, within their respective jurisdiction, shall be vested with the powers of a marine patrol officer, except the powers provided in sections 6306 and 6434. When an officer acts under this section, the same fees shall be paid for his services to the usual recipient of the officer's fees.

§6025-A. New Hampshire marine patrol

A member of the New Hampshire marine patrol who, in the course of patrolling the waters of the Piscataqua River or Portsmouth Harbor, observes activity that the officer reasonably suspects may result in loss of life, widespread injury or widespread and severe property damage has authority to enter Maine and has the same authority to investigate, detain and execute an arrest as a Maine marine patrol officer. When a member of the New Hampshire marine patrol is engaged in Maine in carrying out the purpose of this subsection, that member has all the same privileges and immunities as Maine marine patrol officers in addition to privileges and immunities available under New Hampshire law.

The commissioner shall immediately notify the Secretary of State of New Hampshire if this section is repealed or amended to significantly alter its application.

§6026. **False personation**

Impersonation of a marine patrol officer shall be a violation of Title 17-A, section 457.

§6027. **Other governmental units to file documents**

Every state department, government agency or official and municipal or political subdivision shall file with the commissioner copies of all leases, permits, grants or licenses issued to carry on activities in the coastal waters.

§6028. **Volunteer marine patrol officers**

1. Appointment. The commissioner may appoint volunteer marine patrol officers upon such conditions as the commissioner may determine. Volunteer marine patrol officers shall serve without compensation and may be paid actual automobile costs at the rate paid to state employees.

2. Powers and duties. Volunteer marine patrol officers shall have the same powers and duties as marine patrol officers specified in section 6025, except that the exercise of these powers and duties shall be limited to marine resources laws set out in chapters 601 to 627, inclusive, and department regulations adopted pursuant to these statutes. Volunteer marine patrol officers shall complete reserve officer training at the Maine Criminal Justice Academy pursuant to Title 25, section 2805-A prior to assuming these duties.

§6029. **Search and rescue operations**

The Department of Marine Resources may provide search and rescue services in the coastal waters of the State and shall be the responsible state agency for those services, except when they involve lost or downed aircraft. The department shall develop a formal plan for those activities and designate one person within the department as coordinator of search and rescue to work with other search and rescue agencies, both governmental and private. The department shall attempt to establish and train regional volunteer organizations to assist with search and rescue and include them in plans and joint training exercises as appropriate.

§6029-A. **Safety and security services**

1. Enforcement of federal safety and security zones. At the request of

and as expressly provided by the United States Coast Guard in accordance with federal law, marine patrol officers may assist the United States Coast Guard in the enforcement of safety and security zones established by the United States Coast Guard Captain of the Port for Maine. Marine patrol officers may take all action necessary to assist the United States Coast Guard in enforcing security and safety zones to the extent authorized by the United States Coast Guard.

2. Memorandum of agreement. Prior to engaging in the activities authorized under this section, the Bureau of Marine Patrol must enter into a memorandum of agreement with the United States Coast Guard that establishes the appropriate procedures and protocols for enforcement activities authorized under this section. Any funds received from the Federal Government for reimbursement to the State for activities authorized under this section must be deposited in the Bureau of Marine Patrol federal programs account.

§6030. Department of Marine Resources Educational Fund

1. Fund. There is established the Department of Marine Resources Educational Fund, referred to in this section as the "fund." The department is authorized to set and receive fees to be deposited in the fund. The fund receives all funds collected by the department from the operation of the Aquarium and Resource Center at West Boothbay Harbor and the Burnt Island Living Lighthouse, including admission fees, the proceeds of sales at the Aquarium and Resource Center at West Boothbay Harbor and the Burnt Island Living Lighthouse and donations, grants or other funds presented to the department for the benefit of the Aquarium and Resource Center at West Boothbay Harbor and the Burnt Island Living Lighthouse and their educational programs. All money deposited in the fund and the earnings on the money remain in the fund to be used for the management and maintenance of the Aquarium and Resource Center at West Boothbay Harbor and the Burnt Island Living Lighthouse and their programs that educate the State's children, teachers and visitors about the State's marine resources. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the same purpose.

2. Annual report. By February 1st of each year, the commissioner shall submit an annual report to the joint standing committee of the Legislature having jurisdiction over fisheries matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. The report must detail the amount of money collected in the fund over the course of the prior year and the expense of managing and maintaining the Aquarium and Resource Center at West Boothbay Harbor and the Burnt Island Living Lighthouse and their programs. The commissioner shall make recommendations concerning how the fund may be increased or expenses reduced or both so that the Aquarium and Resource Center at West Boothbay

Harbor and the Burnt Island Living Lighthouse and their programs become increasingly financially self-sustaining.

§6030-A. Burnt Island; Burnt Island Living Lighthouse; rules

The commissioner may adopt such rules as are necessary to protect and preserve Burnt Island and the Burnt Island Living Lighthouse. In addition, the commissioner may adopt such rules as are necessary to provide for the successful implementation of the department-authorized educational and recreational programs that are conducted on the island. The rules may include restrictions on public access to Burnt Island and the Burnt Island Living Lighthouse as determined reasonably necessary for these purposes. Rules adopted pursuant to the section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

§6031. Governor's Marine Studies Fellowship Program

1. Fellowship program established. There is established within the department the Governor's Marine Studies Fellowship Program to encourage the study of disciplines important to the conservation, management and utilization of marine resources. Those disciplines include, but are not limited to: applied aquaculture research in culture techniques, engineering, disease prevention, diagnosis and treatment and product technology; marine science with focus on research in support of resource management and sustainability, including marine fisheries science and assessment, ecology and life history, water quality and contaminants, coastal oceanography, marine biotechnology and technology development and transfer; and marine resource policy and management. The program must provide support for undergraduate and graduate students at colleges and universities chartered in the State.

2. Program administration. The commissioner shall seek the advice and participation of academic and aquaculture and fisheries industry representatives in administering the Governor's Marine Studies Fellowship Program and in the award process. The commissioner shall establish program guidelines that provide for contributing support from academic institutions and aquaculture and fishing industry organizations at a minimum matching level for non-state participation of 2 non-state dollars for each state dollar and may provide for contributions by other interests that wish to provide fellowship support.

3. Fund established. There is established within the department the Governor's Marine Studies Fellowship Fund. The commissioner may receive funds from nongeneral fund sources for use in the Governor's Marine Studies Fellowship Program. All money received into the fund must be used for the purposes of the program. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be

used for the purposes of the fellowship fund.

§6032. Marine Recreation Fishing Conservation and Management Fund

[Repealed]

§6033. Marine Recreational Fishing Advisory Council

[Repealed]

§6034. Commercial Fishing Safety Council

1. Appointment; composition. The Commercial Fishing Safety Council, referred to in this section as "the council" and established by Title 5, section 12004-I, subsection 57-E, consists of 9 members appointed by the commissioner as follows:

A. One member who is a license holder under this Part and a member of the Lobster Advisory Council, recommended by the chair of the Lobster Advisory Council;

B. [Repealed]

C. One member who is a license holder under this Part and a member of the Sea Urchin Zone Council or the Scallop Advisory Council, recommended by the chair of the Sea Urchin Zone Council or the Scallop Advisory Council;

D. Three members who are license holders under this Part and who represent commercial marine harvesting activities;

E. An educator experienced in community-based adult education and volunteer safety training or an expert in fishing industry risk analysis and occupational health;

F. [Repealed]

G. An expert in marine safety equipment;

H. [Repealed]

I. [Repealed]

J. A spouse or domestic partner of a license holder under this Part; and

K. A member of the public.

The composition of the council must reflect a geographic distribution along the coast of the State. The council may invite to carry out the duties of the council other participants on an ad hoc basis, including representatives of private or governmental organizations or individuals with expertise or interest in marine, education, labor or health matters.

2. Term. The term of an appointed member is 3 years, except a vacancy of a member before the expiration of the member's term must be filled in the same manner as the original member for the unexpired portion of the member's term.

3. Officers. The officers of the council are the chair, vice-chair and secretary. The term of the officers is one year. The Governor shall appoint the first chair of the council. Except for the appointment of the original chair, the council shall elect a member of the council for each officer position at the first regular meeting of each year. The officers have the following duties:

A. The chair shall call and preside at council meetings;

B. The vice-chair shall call and preside at council meetings when the chair is absent; and

C. The secretary shall record all meetings of the council and preserve these records.

4. Meetings. The council shall hold regular quarterly meetings and may hold special meetings with the commissioner or the commissioner's designee. A member of the council may participate and is deemed present at a meeting of the council or of a subcommittee of the council by telephone, electronically or by any other means by which all members participating in the meeting are able to communicate with each other. The council shall ensure adequate facilities for full attendance at council meetings by the public.

5. Quorum. A quorum exists when a majority of the members of the council are present, either actually or pursuant to subsection 4.

6. Council actions. The council may act in the following ways:

A. If a quorum is present, in person or pursuant to subsection 4, by a majority vote of the members present or polled; or

B. If there is no meeting, by written poll of a quorum of members responding.

7. Duties. The council shall carry out duties specifically delegated to the council by law or by the commissioner and give the commissioner information and advice concerning fishing safety issues, including:

A. Minimum safety equipment, training and operational standards;

B. Community-based education programs that provide practical safety training and fisheries-specific safety training;

C. An outreach program to promote the culture of safety; and

D. Opportunities to minimize the costs and seek alternative funding sources, fees, incentives, grants or partnerships to minimize the financial impact of safety requirements.

E. [Repealed]

8. [Repealed]

9. Compensation. Members of the council are entitled to compensation according to Title 5, chapter 379.

§6035. **Commercial safety fishing plan**

No later than October 1st of each year, the Commercial Fishing Safety Council shall submit a commercial fishing safety plan to the commissioner that includes, but is not limited to, the council's fishing safety initiatives, any revisions to those initiatives and any new initiatives for the department to consider.

§6036. **Marine Fisheries Research and Development Fund**

1. Fund established. The Marine Fisheries Research and Development Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department. Unexpended balances in the fund at the end of the fiscal year may not lapse and must be carried forward to the next fiscal year and used for the purposes of this section.

2. Sources and uses of fund. Revenues from the total gasoline tax revenues credited to the fund under Title 36, section 2903-D may be used for research, development, propagation and management activities of the department. The commissioner may select activities and projects that will be most beneficial to the commercial fisheries of the State as well as the development of sport fisheries in the State. In addition to the revenues derived

from the total gasoline tax revenues, the fund may receive money from any source for the purposes of this subsection.

3. Allocations from fund. Expenditures from the fund are subject to legislative approval in the same manner as appropriations from the General Fund. The joint standing committee of the Legislature having jurisdiction over appropriations must approve the allocations.

§6037. Marine Fisheries Stock Enhancement Fund

1. Fund established. The Marine Fisheries Stock Enhancement Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the department to improve the marine economy in this State. Unexpended balances in the fund at the end of the fiscal year do not lapse and must be carried forward to the next fiscal year and used for the purposes of this section.

2. Uses of fund. Money in the fund must be administered by the department for commercial marine stock enhancement to improve the marine economy in this State through applied research, development, production of harvested marine species, infrastructure, monitoring and assessment. Money in the fund may be used as federal matching funds.

3. Department may accept contributions to fund. The department may accept money from any public or private source to augment state contributions to the fund.

§6038. Shellfish Advisory Council

1. Appointment; composition. The Shellfish Advisory Council, referred to in this section as "the council" and established by Title 5, section 12004-I, subsection 57-G, consists of 13 members who are appointed by the commissioner as follows:

A. Four members who are commercial shellfish license holders, at least 3 of whom must be primarily soft-shell clam harvesters. In making the appointments under this paragraph, the commissioner shall consider up to 6 recommendations from associations representing the interests of persons who harvest shellfish commercially;

B. Two members who are shellfish aquaculture lease holders. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who raise shellfish under aquaculture leases;

C. One member who represents the interests of municipalities with wastewater treatment systems;

D. Two members who are licensed wholesale seafood dealers who have been issued a shellfish sanitation certificate pursuant to section 6856, subsection 1. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who buy and sell shellfish;

E. One public member with knowledge of and interest in coastal water quality;

F. Two members who are municipal shellfish wardens. In making the appointments under this paragraph, the commissioner shall solicit and consider up to 3 recommendations for these 2 appointments from associations representing the interests of persons who protect and help manage municipal shellfish resources; and

G. One member who has been issued a shellfish depuration certificate under section 6856, subsection 3.

The commissioner shall make appointments so that the composition of the council reflects a geographic distribution along the coast of the State.

2. Purpose. The council shall make recommendations to the commissioner and the joint standing committee of the Legislature having jurisdiction over marine resources matters concerning:

A. How best to utilize state agencies, municipal governments, the shellfish industry and citizen groups to make improvements to and maintain the quality of the State's coastal waters and to expedite the opening of closed shellfish flats; and

B. Matters of interest to the State's shellfish industry, including, but not limited to, shellfish resource management, public health protection and the activities and recommendations of a multistate organization that promotes shellfish sanitation.

The council is responsible for brining forward to the commissioner matters of concern to the shellfish industry and for assisting the commissioner with the dissemination of information to members of the shellfish industry.

3. Term. The term of a member appointed to the council is 3 years, except that a vacancy during an unexpired term must be filled in the same

manner as for the original member for the unexpired portion of the member's term. A member may not serve more than 2 consecutive terms.

4. Officers. The officers of the council are the chair, vice-chair and secretary. The term of the officers is one year. The council shall elect a member of the council for each officer position at the first regular meeting of each year.

5. Meeting. The council shall meet at least once a year. It may also meet at other times at the call of the chair or the commissioner. In advance of a meeting of a multistate organization that promotes shellfish sanitation, the council shall meet to discuss matters of interest to the shellfish industry, the department and the multistate organization and to make recommendations as necessary.

6. Compensation. Council members are entitle to expenses according to Title 5, chapter 379, which are paid from the Shellfish Fund established in section 6651.

§6039. Halibut Fund

The Halibut Fund, referred to in this section as "the fund," is established within the department.

1. Sources. The fund is capitalized by fees received through the sale of halibut tags. In addition to those revenues, the commissioner may accept and deposit into the fund money from any other source, public or private. All money in the fund must be used for the purposes set forth in this section.

2. Purposes. The commissioner shall use the fund for halibut research and for the implementation of management measures needed for the halibut fishery.

3. Interest and balances credited to fund. Any interest earned on the money in the fund must be credited to the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year and credited to the fund.

§6040. Watercraft Fund

The Watercraft Fund, referred to in this section as "the fund," is established within the department,

Sources. The fund is capitalized by money collected from boat registrations pursuant to section 10206, subsection 3 and fines. In addition to those revenues,

the commissioner may accept and deposit into the fund money from any other source, public or private.

Purposes. The commissioner shall use the fund primarily for the purpose of funding vessel operations and maintenance and safety and enforcement programs.

Interest and balances credited to fund. Any interest earned on the money in the fund must be credited to the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year and credited to the fund.

§6041. Pelagic and Anadromous Fisheries Fund

The Pelagic and Anadromous Fisheries Fund, referred to in this section as "the fund," is established within the department. Balances in the fund may not lapse and must be carried forward to the next fiscal year.

1. Uses of fund. The commissioner shall use the fund for research directly related to pelagic or anadromous fishery management and the processing of landings data. The commissioner may authorize the expenditure of money in the fund for research and development programs that address the restoration, development or conservation of pelagic or anadromous fish resources.

2. Sources of revenue. The fund is capitalized by surcharges assessed under section 6502-A, subsection 7. In addition to those revenues, the commissioner may accept and deposit in the fund money from any other source, public or private.

§6042. Maine Working Waterfront Access Protection Program

1. Program established; administration. The Maine Working Waterfront Access Protection Program, referred to in this section as "the program," is established to provide protection to strategically significant working waterfront property whose continued availability to commercial fisheries businesses is essential to the long-term future of the economic sector. The department shall administer the program either directly or by contract with a suitable organization.

2. Review panel. The department shall organize a review panel to advise the commissioner in the operation of the program, including, but not limited to, evaluating applications and recommending to the department applicants for participation in the program.

3. Selection criteria. The selection criteria with which to evaluate

applications for protection of working waterfront property must include, but are not limited to:

A. The economic significance of the property to the commercial fisheries industry in the immediate vicinity and in the State as a whole;

B. The availability of alternative working waterfront property in the same vicinity;

C. The degree of community support for the proposed protection;

D. The probability of conversion of the working waterfront property to uses incompatible with commercial fisheries businesses; and

E. The utility of the working waterfront property for commercial fisheries business uses in terms of its natural characteristics and developed infrastructure.

4. Grant agreements. The commissioner shall enter into grant agreements with state agencies and designated cooperating entities for the purpose of receiving grants from the Maine Working Waterfront Access Protection Fund under Title 5, section 6203-B.

5. Right of first refusal. The commissioner shall retain a permanent right of first refusal on any working waterfront property acquired in fee or protected by working waterfront covenant or other less-than-fee interests under Title 5, section 6203-B. Exercise of the right of first refusal must be at a price determined by an independent professional appraiser based on the value of the working waterfront property to a commercial fisheries business at the time of the exercise of the right. The commissioner may assign this right to a commercial fisheries business or to a local government if, in the commissioner's judgment, such an assignment is consistent with the purposes of this section.

6. Termination. If the commissioner determines that the public purposes of a grant made under subsection 4 are no longer served, the commissioner may, consistent with the provisions of Title 33, chapter 6-A, terminate a grant agreement made under subsection 4 conditional on repayment of the original grant amount or an amount equal to that proportion of the then-current value of the protected property that represents the ratio of the original grant amount to the original fee interest value at the time of the grant. Any funds recovered under this subsection must be deposited into the Maine Working Waterfront Access Protection Fund under Title 5, section 6203-B and may be expended only for the purposes of this section.

CHAPTER 605
GENERAL DEPARTMENT ACTIVITIES

SUBCHAPTER 1 - GENERAL ACTIVITIES

§6051. General department activities

The department, under the direction of the commissioner, may conduct or sponsor programs for research and development of commercial, marine recreational and anadromous fishery resources and other marine resources of the State which may include biological, chemical, technological, hydrological, processing, depuration, marketing, financial, economic and promotional research and development. The department may carry out these programs within the department, in cooperation with other state agencies, and federal, regional and local governmental entities, or with private institutions or persons.

§6052. Specific department activities

The department, under the direction of the commissioner, may also:

1. Extension. Serve as the primary state agency to assist members of the fishing industries by providing technical and managerial assistance, including development of gear and techniques of fishing, within departmental capability;

2. Education. Conduct educational programs on all educational levels, including the training of teachers, conducting workshops and instructional programs, and developing curriculum, courses and texts for elementary and secondary students; provide access to and information on department facilities for any student; and develop and distribute information concerning marine resources and departmental programs and facilities;

3. Marketing. Except for aquaculture, serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assisting in marketing seafood, stimulating of consumer interest in and consumption of seafood, increasing the sales of seafood domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species;

4. Research. Serve as the primary state agency engaging in research for the conservation of marine resources; and engage in all aspects of marine research, including:

A. Providing information on stock levels and environments of commercially and recreationally valuable marine and anadromous fish organisms;

B. Solving particular problems that relate to the State's commercial, marine recreational and anadromous fishing industry;

C. Providing technical and scientific information and support for all department activities; and

D. Establishing a marine research revolving fund for soliciting and receiving funds for conducting marine research. A marine research fund established under this paragraph may be used only for research purposes set forth under paragraphs A and B and may not be used for research specific to any one company; and

5. Safety and security services. Provide safety and security services in the coastal waters of the State. The department shall coordinate with other local, state and federal agencies when the department provides such safety and security services.

§6053. General penalty

A violation of any provision of this chapter is a civil violation, unless another penalty has been expressly provided.

SUBCHAPTER 2 - LEASES AND SPECIAL LICENSES

§6071. Importing of certain marine organisms

1. Live importing for introduction into coastal waters. Except for Atlantic salmon imported by the commissioner, it is unlawful to import for introduction, possess for purposes of introduction or introduce into coastal waters a live marine organism without a permit issued by the commissioner pursuant to subsection 2.

2. Permits and regulations on importing for introduction. The commissioner may grant a permit to import for introduction, possess for purposes of introduction or introduce to the coastal waters a live marine organism if the introduction, importation or possession will not endanger the indigenous marine life or its environment. Prior to granting a permit to introduce a nonindigenous organism, that has not been previously introduced under a permit, the commissioner shall hold a hearing. The commissioner may adopt or amend rules governing the importing and introduction of organisms to the coastal waters and the issuing of permits, to the extent required to prevent the introduction of bacteria, fungus, virus or any other infectious or contagious disease or parasite, predator or other organism that may be dangerous to indigenous marine life or its environment.

2-A. Restricting importation of organism. The commissioner may adopt rules under which the commissioner may restrict the importation of a marine organism from a particular location when the commissioner determines that an organism from that location is or may be diseased or infected in any manner. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

3. Organism and products embargoed and condemned. The commissioner or the commissioner's agent may indefinitely embargo, condemn or order to be destroyed a marine organism or marine organism product either indigenous or imported if:

A. The organism or product is introduced to coastal waters in violation of this section and the commissioner determines that the organism or product is of unsound quality, contains any filthy, decomposed or putrid substance, may be poisonous or deleterious to health or is otherwise unsafe;

B. The organism or product is intended for introduction to coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment; or

C. Handling of the organism or product could result in the introduction of that organism or product to the coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment.

The commissioner shall cooperate with those state and federal agencies having similar responsibility in the protection of public health and in enforcing the order to embargo, condemn or destroy.

If any marine organisms or marine organism product is embargoed, condemned or ordered destroyed, the commissioner or the commissioner's agent shall, as soon as practical, notify the owner in writing of the amount and kind of marine organisms or marine organism product embargoed, condemned or destroyed.

4. Salmon imports prohibited. Except as provided in this subsection, it is unlawful to import for introduction into any waters of the State any Atlantic salmon, live or as eggs, that originate in any Icelandic or European territorial waters or any other species of salmon, exclusive of rainbow trout, originating west of the North America continental divide. The commissioner may grant an exemption from the provisions of this subsection for a term not to exceed 2 years, renewable upon application, for legitimate aquacultural projects.

§6071-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Intertidal zone. "Intertidal zone" means the shores, flats or other land between the high and mean low water mark.

§6072. Research and aquaculture leases

1. Authority. The commissioner may lease areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section is exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner. For the purposes of this section, the commissioner or the deputy commissioner serving in the place of the commissioner may authorize in writing qualified professional department staff to sign lease documents.

1-A. Lease requirement; finfish and suspension culture. Except as provided in paragraphs B and B-1 and sections 6072-A, 6072-B and 6072-C, it is unlawful for a person who does not have a lease issued by the commissioner under this section to construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of any other marine organism.

B. A person operating a facility in the coastal waters of the State, on or before the effective date of this subsection, for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1992 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1992. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State.

B-1. A person operating a facility in the coastal waters of the State for the suspended culture of a marine organism other than shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1994 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1994. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related

structures from the coastal waters of the State.

C. The commissioner may not consider an application for a lease under this section on an area registered under paragraph B or B-1 from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B or B-1.

A person who violates this subsection is subject to a civil penalty, payable to the State, of no more than $1,000 for each day of the violation.

2. Limitations of lease. The commissioner shall determine the provisions of each lease, provided:

A. A lease shall not exceed a term of 10 years;

B. [Repealed]

C. [Repealed]

D. [Repealed]

E. Except as provided in subsection 13-A, the lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 500 acres; and

F. No single lease may exceed 100 acres in size.

3. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not lease areas in the intertidal zone within the municipality without the consent of the municipal officers.

4. Applications. The application shall:

A. Be written on forms supplied by the commissioner;

B. Describe the location of the proposed lease area by coordinates or metes and bounds;

C. Identify the species to be cultivated;

D-1. Characterize the physical and ecological impact of the project on existing uses of the site and any adverse effects on the existing uses of the area, as defined by regulation promulgated by the Commissioner of Marine Resources;

D-2. [Repealed]

E. Describe the degree of exclusive use required by the project;

F. Include written permission of every riparian owner whose land to the low water mark will be actually used;

G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners as listed in the municipal tax records;

H. Include an environmental evaluation of the site upon which the decision to seek a lease was made. The evaluation shall include, but not be limited to, bottom characteristics, resident flora, fauna and hydrography of the site if appropriate for the proposed lease;

I. Describe the proposed source of organisms to be grown at the site; and

J. Include a nonrefundable application fee of at least $100, but not more than $2,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application.

4-A. Application information. A person who applies for a lease in an area for which that person has been issued a limited-purpose lease under section 6072-A or an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for a limited-purpose lease or an emergency lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

5. Application review. The commissioner shall review the application and set a hearing date if the commissioner is satisfied that the written application is complete, the application indicates that the lease could be granted and the applicant has the financial and technical capability to carry out the proposed activities. When the commissioner has determined that the application is complete, the commissioner shall forward a copy of the completed application and notice of hearing to the known riparian owners within 1,000 feet of the proposed lease and to the municipality or municipalities in which or adjacent to which the lease is proposed. A municipality must be granted intervenor status upon written request.

5-A. Department site review. Prior to the lease hearing, the department shall conduct an assessment of the proposed site and surrounding area to

determine the possible effects of the lease on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries and all other uses. This information must be provided to the intervenors and made available to the public 30 days before the hearing. As part of the site review, the department shall request information from the municipal harbor master about designated or traditional storm anchorages in proximity to the proposed lease. The commissioner may by rule establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed lease activity. The rules must provide a method of establishing a baseline to monitor the environmental effects of a lease activity. Rules adopted under this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A.

6. Hearing procedure. Prior to granting a lease, the commissioner shall hold a hearing. The hearing shall be an adjudicatory proceeding and shall be held in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV and the specific procedures of this section.

A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing shall be required to be given only to the lessee and the known riparian owners, the municipal officials of the municipality or municipalities in which or adjacent to which the lease is located and any interested parties that have provided a written request for notification.

B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public.

C. The Department of Environmental Protection, the Department of Conservation and the Department of Inland Fisheries and Wildlife must be notified of all lease applications.

7-A. Decision. In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed lease meets the following conditions as defined by rule.

A. The lease will not unreasonably interfere with the ingress and egress of riparian owners.

B. The lease will not unreasonably interfere with navigation.

C. The lease will not unreasonably interfere with fishing or other uses of the area. For the purposes of this paragraph, “fishing” includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that

includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years.

D. The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna.

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

The Executive Department, State Planning Office shall maintain a list of conserved lands. The commissioner shall request this information from the State Planning Office prior to holding a preapplication proceeding.

G. The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site.

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to establish noise, light and visual impact criteria under paragraphs G and H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

7-B. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.

8. Preference. If more than one person applies to lease an area, preference must be given as follows:

A. First, to the person who holds a lease for the area or a portion of the area under section 6072-A and who submitted an application for a lease under this section for the area or a portion of the area before the lease under section 6072-A expired;

B. Second, to the department;

C. Third, to the riparian owner of the intertidal zone in which the leased area is located;

D. Fourth, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and

E. Fifth, to the riparian owner within 100 feet of leased coastal waters.

8-A. [Repealed]

9. Rents. After consulting with the Director of the Bureau of Parks and Lands, the commissioner shall determine the rent that must be paid under each lease. The rent must represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than $50 an acre or more than $100 an acre. The commissioner has the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease. This discounted rate may not be less than $50 an acre.

10. Notification of granted leases. After the granting of a lease:

A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located;

B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under

this paragraph are considered confidential business record information for the purposes of section 6077.

11. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. The department shall hold a hearing with public notice prior to revoking any lease.

11-A. Lease assignment. The commissioner shall assign leases in accordance with this subsection.

A. When a lease under this section has been terminated by the lessee or has been revoked by the commissioner and all appeals have been exhausted, the commissioner may lease the same site on the same terms and conditions to a new lessee for the amount of time remaining in the term of the previous lease, subject to the requirements of this section. A lease that has been terminated or revoked may be assigned pursuant to this subsection at any time before its term expires. A lease assignment pursuant to this subsection is not an adjudicatory proceeding.

B. Before assigning a lease pursuant to this subsection, the commissioner shall give notice to the public of the opportunity to submit proposals to assume and operate the lease. The commissioner shall determine that a proposal is eligible for consideration if:

(1) The application is complete, using forms provided by the commissioner;

(2) The change in lessee would not violate any of the standards in subsection 7-A;

(3) The assignment is not intended to circumvent the intent of subsection 8;

(4) The assignment is not for speculative purposes; and

(5) Except as provided in subsection 13-A, the assignment will not cause the assignee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.

C. The commissioner shall consider the eligible proposals under paragraph

B and shall either:

(1) Select for assignment the proposal that is best suited to the lease site and in the best interests of the State;

(2) Declare all proposals unsuitable and solicit new proposals; or

(3) Suspend the assignment process for the lease site in question.

D. After a proposal is selected pursuant to paragraph C, but before the lease is assigned, the commissioner shall give notice of the pending assignment to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an opportunity to submit written comments on the proposed lease assignment within 14 days. The commissioner may decline to assign the lease and may select another proposal for assignment or proceed as described in paragraph C, subparagraph (2) or (3).

E. A decision by the commissioner to assign a lease or to decline to assign a lease to an applicant whose proposal was selected pursuant to paragraph C must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner to assign or not to assign a lease is a final decision.

F. The commissioner shall establish by rule the fee for assigning a lease under this subsection, which may not exceed $5,000, based on the type of aquaculture conducted and the size of the lease. The assignee must pay the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12. Renewal. The commissioner shall renew a lease if:

A. The commissioner receives, at least 90 days prior to the expiration of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;

B. The lessee has complied with the lease agreement during the term of the lease;

C. The commissioner determines that renewal of the lease is in the best interest of the State;

D. Except as provided in subsection 13-A, the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 500 acres; and

E. The lease is not being held for speculative purposes.

If a person who holds a lease pursuant to this section applies to renew the lease, the lease remains in effect until the commissioner makes a decision on the renewal application. If the renewal is denied, the lease expires 30 days after the date of the commissioner's decision.

When aquaculture has not been routinely or substantially conducted on a lease that is proposed for renewal, the commissioner may renew the lease, as long as the proposed renewal will continue to meet the criteria for approval in subsection 7-A.

A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given as required under subsection 6 and a hearing must be held if it is requested in writing by 5 persons. The commissioner may review multiple leases concurrently during the lease renewal process.

A lease renewal application must include a nonrefundable application fee of no more than $1,500, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

12-A. Transferability. A lease under this section may be transferred to another person for the remaining portion of its term subject to the conditions in this subsection. A lease transfer is not an adjudicatory proceeding.

A. An application to transfer a lease pursuant to this subsection must be made on forms provided by the commissioner. When the commissioner determines that the application is complete, the commissioner shall give notice of the proposed transfer to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an opportunity to submit written comments on the proposed lease transfer within 14 days.

B. The commissioner may grant lease transfers pursuant to this subsection if the commissioner determines that:

(1) The change in lessee does not violate any of the standards in subsection 7;

(2) The transfer is not intended to circumvent the intent of subsection 8;

(3) The transfer is not for speculative purposes; and

(4) Except as provided in subsection 13-A, the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.

A decision by the commissioner on an application to transfer a lease must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner on the transfer application is a final decision.

C. The commissioner shall establish by rule the fee for transferring a lease under this subsection, which may not exceed $5,000, based on the type of aquaculture conducted and the size of the lease. The transferee must pay the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12-B. [Repealed]

13. Regulations. The commissioner may adopt or amend regulations:

A. Establishing minimum standards for maintaining leases;

B. For procedures to issue, transfer, review, assign or revoke leases;

C. For notices and hearings to the extent that those procedures are not established by this section or the Maine Administrative Procedure Act, Title 5, chapter 375;

D. For regulating the harvest of wild organisms to be cultured on aquaculture leases;

E For establishing and revaluing fees and rents related to aquaculture;

F. For defining application requirements, an application review process and decision criteria;

G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species on the lease site; and

H. For establishing fallowing requirements and procedures.

13-A. Lease acreage increase; fallowing. The commissioner may require a person to submit an annual fallowing plan and a reassessment schedule for that plan to the commissioner that identifies lease sites that have been actively operated during the lease period and that will be fallowed. The commissioner shall review the plan and reassessment schedule and may approve them, reject

them or request changes. Revisions to the plan must be submitted in accordance with the reassessment schedule unless the commissioner authorizes an exception due to extraordinary circumstances.

A. Except as provided in paragraph B, a person may not be a tenant of any kind in leases covering an aggregate of more than 500 acres including fallowed leases at any time.

B. The commissioner may by rule authorize leases in excess of the 500-acre limit if the commissioner determines that the increase is beneficial for the management of aquaculture and is environmentally and economically appropriate. The commissioner may not authorize a person to be a tenant of any kind in leases covering an aggregate of more than 1,500 acres. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

For purposes of this subsection, "fallow" means a lease site without cultured organisms. A lease site fallowed pursuant to an enforcement action may not be considered fallowed for the purpose of this subsection.

14. Conflicts. Whenever a project described in a pending aquaculture lease conflicts or could conflict with a project described in a pending submerged lands act lease, the commissioner and the Commissioner of Conservation shall determine which project is in the best interests of the State.

15. Rules. The commissioner shall promulgate rules by January 1, 1988, to define a mussel seed size or seed management and harvest season.

16. [Repealed]

17. Restitution. A person who cuts any lines or marker buoys or intentionally damages approved aquaculture gear commits a civil violation for which a fine of not less than $100 for each violation may be adjudged. In addition, the court shall:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment.

§6072-A. Limited-purpose lease for commercial or scientific research

1. Authority. The commissioner may issue a limited-purpose lease for

areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for commercial aquaculture research and development or for scientific research. The commissioner or the deputy commissioner acting on the commissioner's behalf may authorize in writing qualified professional department staff to issue a final decision and sign a lease document on an application for a limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

2. Suspended culture. A person issued a limited-purpose lease under this section may construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of any other marine organism.

3. Limit on duration. A limited-purpose lease may not be issued for a period greater than 3 years.

4. Size limitation. A limited-purpose lease may not be issued for an area in excess of 4 acres.

5. Notice of application. Upon determining that an application is complete, the commissioner shall provide notice of a limited-purpose lease application to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The applicant shall provide the names and addresses of known riparian landowners within 1,000 feet of the proposed location of the lease. The names and addresses must be taken from the current property tax roster on file at the local municipal office or with the Department of Administrative and Financial Services, Bureau of Revenue Services for an unorganized territory. The commissioner shall publish a summary of the application in a newspaper of general circulation in the area proposed for a limited-purpose lease. A person may provide, within 30 days of receipt of notice or within 30 days of publication of a limited-purpose lease summary, to the commissioner comments on the proposed limited-purpose lease.

6. Public hearing. The commissioner may hold a public hearing on the proposed limited-purpose lease. The commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment periods provided in subsection 5.

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The commissioner shall

publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing.

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J. The rules must also require an applicant to provide to the department proof of access to the lease area. If access will be across riparian land, the applicant shall provide to the department the written permission of every riparian owner whose land will be used to access the lease area.

9. Application information. A person who applies for a lease in an area for which that person has been issued an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for an emergency aquaculture lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

10. Assessment of proposed activities. Within 180 days of the effective date of this section, the commissioner shall by rule establish a method for conducting an assessment of the proposed limited-purpose lease site and surrounding area to determine the possible effects of the proposed limited-purpose lease activity on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. The rules must establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed limited-purpose lease activity. The rules must provide a method for establishing a baseline to monitor the environmental effects of a limited-purpose lease activity.

11. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not issue a limited-purpose lease under this section for the intertidal zone within the municipality without the consent of the municipal officers.

12. Preference. If more than one person applies to lease an area, preference must be given as follows:

A. First, to the department;

B. Second, to the riparian owner of the intertidal zone in which the leased area is located;

C Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and

D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

13. Decision. The commissioner may grant a lease if a proposed project:

A. Will not unreasonably interfere with the ingress and egress of riparian owners;

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area;

D. Will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; and

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, state-owned or federally owned beaches and parks or municipally owned, state-owned or federally owned docking facilities.

The commissioner may by rule develop criteria for an applicant to meet the terms of this subsection.

14. Fee. The commissioner shall by rule determine the rental fee for a limited-purpose lease.

15. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.

16. Statement of rights conveyed. The commissioner shall include the following statement in a lease issued under this section: “A limited-purpose lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease.”

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. Upon written request, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located.

18. Scientific lease renewal. A limited-purpose lease for scientific research may be renewed. A scientific research lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4, but a public hearing is not mandatory unless it is requested in writing by 25 or more persons. The commissioner may review multiple leases concurrently during the lease renewal process. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease;

B. Research has not been conducted during the term of the lease; or

C. It is not in the best interest of the State to renew the limited-purpose lease.

19. Commercial lease not renewable. A limited-purpose lease for commercial aquaculture research and development may not be renewed.

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits an application under section 6072 for that lease area or a portion of that area before the expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect until the commissioner makes a decision. If the

commissioner grants that person a lease under section 6072, that person's limited-purpose lease remains in effect until the effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect until 30 days after the commissioner's decision.

22. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. The department shall hold a hearing with public notice prior to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.

23. Restitution. A person who cuts any lines or marker buoys or intentionally damages approved aquaculture gear commits a civil violation for which a fine of not less than $100 for each violation may be adjudged. In addition, the court shall:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-B. Emergency aquaculture lease for shellfish

1. Authority. The commissioner may issue an emergency aquaculture lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for the emergency aquaculture relocation of shellfish from an area for which a lease has been issued pursuant to section 6072 or section 6072-A when the health and safety of those shellfish are threatened.

2. Limitation. The commissioner may not issue a lease under this section unless:

A. The applicant holds a lease pursuant to section 6072 or 6072-A;

B. The applicant demonstrates to the commissioner that the health and

safety of shellfish at the leased area are threatened; and

C. The commissioner determines the relocation of those shellfish to an emergency aquaculture lease area would not threaten the water quality of the receiving waters or the health of marine organisms in those waters.

3. Permission of intertidal land owners. The commissioner may not grant an emergency aquaculture lease unless the applicant obtains the written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity occurs.

4. No fee. The commissioner may not charge a fee for an emergency aquaculture lease.

5. Suspended culture. A person issued an emergency aquaculture lease under this section may construct or operate in the coastal waters of the State a facility for the suspended culture of shellfish.

6. Limit on duration. An emergency aquaculture lease may not be issued for a period greater than 6 months.

7. Extension of emergency aquaculture lease. If a person who holds an emergency aquaculture lease submits an application under section 6072 or 6072-A for all or a portion of that lease area before the emergency aquaculture lease expires, and if the commissioner's decision under section 6072 or 6072-A occurs after the expiration of that emergency aquaculture lease, the emergency aquaculture lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the commissioner denies that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the commissioner's decision.

8. Public notice. Upon granting an emergency aquaculture lease, the commissioner shall provide notice to the municipality in which the emergency aquaculture lease area is located. Within at least 30 days from granting an emergency aquaculture lease, the commissioner shall publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restriction in the leased area.

9. Actions required of lease holder. After being granted an emergency aquaculture lease, a lessee shall:

A. Record the lease in the registry of deeds of each county in which the leased area is located; and

B. Mark the leased area in a manner prescribed by the commissioner.

10. Conditions. The commissioner may establish conditions that govern the use of the emergency aquaculture lease area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38, section 465-B.

11. Rules. The commissioner may adopt rules to establish application requirements, a process for application review and a process for deciding upon lease applications and otherwise implement the provisions of this section.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-C. Limited-purpose aquaculture license

1. License required. A person may not engage in the activities authorized under this section without a current limited-purpose aquaculture license or a lease issued under this Part authorizing the activities.

2. Licensed activities; criteria. The holder of a limited-purpose aquaculture license may utilize approved aquaculture gear in a site in the coastal waters of the State to engage in certain aquaculture activities that meet the criteria established in this subsection and in rules adopted by the commissioner. The license also authorizes unlicensed individuals to assist the license holder in the licensed activities with the written permission of the license holder. The commissioner, or qualified professional department staff designated in writing by the commissioner, may issue a limited-purpose aquaculture license for certain aquaculture activities if:

A. The proposed activity generates no discharge into coastal waters;

B. The applicant proposes to utilize aquaculture gear and markings approved by the commissioner in rules adopted pursuant to subsection 8;

C. The gear, excluding mooring equipment, does not cover more than 400 square feet of area and the gear does not present an unreasonable impediment to safe navigation;

D. The proposed activity does not unreasonably interfere with the ingress and egress of riparian owners;

E. The proposed activity does not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases and licensed aquaculture activities in that area;

F. The applicant holds no more than 3 other limited-purpose aquaculture licenses issued under this section; and

G. The consent of the riparian landowner is obtained if the proposed activity is located above the mean low-water mark.

3. Eligibility. A limited-purpose aquaculture license may be issued only to an individual or to a municipal shellfish management committee established pursuant to section 6671.

4. License limitations. The issuance of a limited-purpose aquaculture license does not constitute the issuance of a lease of an area in, on or under the coastal waters.

5. Application. The application for a limited-purpose aquaculture license must:

A. Be written on forms supplied by the commissioner;

B. Identify the species to be cultivated;

C. Describe the proposed source of organisms to be grown in the approved aquaculture gear;

D. Describe the location of the approved aquaculture gear deployment by coordinates or metes and bounds;

E. Include a clear set of plans that includes at a minimum:

(1) A location plan with an overhead plan view showing the aquaculture gear deployed at the proposed location. The area occupied by the gear must be drawn to scale on the plan. The location plan must include a north arrow, ebb and flood directions, any federal or local channels and anchorages, any nearby structures and property lines for all riparian owners

within 300 feet; and

(2) Two gear drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear;

F. Include documentation that riparian landowners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and

G. Include documentation that the municipal harbor master or appropriate municipal officers have been notified of the license application and proposed activity.

6. Fee. The application fee for a resident limited-purpose aquaculture license is $50 and $300 for a nonresident limited-purpose aquaculture license. The application fee is nonrefundable. All fees collected under this subsection must be deposited in the Aquaculture Research Fund established in section 6081.

7. Prohibition; molesting gear. A person other than a marine patrol officer, the licensed owner of the gear or the licensed owner's assistant, with written permission from the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear that is deployed under a current limited-purpose aquaculture license.

8. Rules. The commissioner shall adopt rules to implement this section, including, but not limited to, rules establishing the type of gear that is approved aquaculture gear for the purposes of a limited-purpose aquaculture license, minimum standards for maintaining gear, methods of gear identification and license application and review procedures. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

9. Violation; restitution. A person who violates this section commits a civil violation for which a fine of not less than $100 for each violation may be adjudged. If a person violates subsection 7 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall also:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

§6072-D. Aquaculture Management Fund

1. Fund established. The Aquaculture Management Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing fund within the department. All income received by the commissioner under this section must be deposited with the Treasurer of State. Any balance remaining in the fund at the end of a fiscal year does not lapse and must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund.

2. Fees. In accordance with the authority of the commissioner to levy lease rents pursuant to section 6072, subsections 9 and 13 and section 6072-A, subsection 14 and application fees pursuant to section 6072, subsections 4, 12 and 12-A, the commissioner shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement a fee structure for lease rents and application fees that are in addition to the minimum lease rents and application fees that are in effect on the effective date of this subsection. Any rent or fee assessed pursuant to this subsection that is in addition to the fees that are in effect on the effective date of this subsection must be credited to the fund. A person who does not pay the rent or fee commits a civil violation for which a fine of not more than $1,000 may be adjudged.

3. Additional revenues. The commissioner may expend annual revenues that are in excess of the operating expenses of a program under subsection 4 to address matters that the commissioner determines are of an emergency nature to the State's aquaculture industry, to address matters that the commissioner determines are of long-term interest to the State's aquaculture industry and to rebate revenues to all those persons who paid fees under subsection 2. The fund may receive money from any source for the purposes of this subsection.

4. Uses of fund. The commissioner may make expenditures from the fund to develop and manage effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data, process lease applications and make information about aquaculture available to the public.

5. Reports. On or before February 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all expenditures made from the fund in the previous fiscal year and a summary of work accomplished and planned.

§6073. Exclusivity; prohibition or interference

1. Exclusivity. Each lease for aquaculture shall be exclusive for the species and to the extent provided by the commissioner in the lease.

2. Prohibition on interference. It shall be unlawful to interfere with the rights provided in a lease.

2-A. Cultchless American oysters; possession. Prior to the point of retail sale, a person may not possess a cultchless American oyster grown in the State unless that person:

A. Is a grower licensed under section 6863, an employee of a licensed grower or an agent of a licensed grower; or

B. Is in the possession of a bill of sale or a bill of lading that includes the license number of the grower.

2-B. Marking. In the coastal waters of the State, a person may not mark or designate an area as a sea farm, aquaculture lease or other similar designation unless that area is currently leased for aquaculture or is under consideration by the department for a lease through the aquaculture lease application process.

3. Penalty. Any person who violates subsection 2-A or who knowingly and willfully violates subsection 2 is guilty of a Class D crime, except that, notwithstanding Title 17-A, sections 4-A and 1301, the court shall impose a fine of not less than $1,000 and restitution may be ordered made to the owner of the lease in an amount set by the court.

§6073-A. Season and minimum size exemption; aquaculture

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement for any marine organism cultivated on the leased area. The exemption applies only to those organisms actually cultivated on the leased area, except that upon harvest of finfish from the leased area pursuant to an aquaculture lease, any finfish of a species that was not cultivated on the leased area but occurred in the enclosure must also be harvested and retained for appropriate disposal by the holder of a lease. Such finfish may not be sold and may not be released or disposed of into the waters of the State and must be reported to the department at the same time as reports of the harvest are filed. The commissioner shall require a system of identification of organisms exempted under this section.

§6073-B. Harvester license exemption; aquaculture

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6421, 6501, 6748, 6748-A, 6748-D, 6751, 6801-A and 6803 to hold a separate license for the removal, possession, transport or sale of the cultured organisms, except for molluscan bivalve shellfish, from the leased area or the licensed gear.

§6073-C. Harvester license exemption; scallop aquaculture

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6701, 6702 and 6703 to hold a separate license for the removal, possession, transport or sale of scallops from the leased area or the licensed gear when the final product form is the adductor muscle only. This exemption does not apply to scallops in any other form.

§6073-D. Season and size exemption

A person who is in possession of a marine organism raised by means of aquaculture and lawfully obtained under the laws of the State is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement, except that this section does not apply to the requirements for lobsters, sturgeon and striped bass. This exemption applies to aquaculture products that do not meet the legal size or season requirements for wild-caught marine organisms of the same species.

The person possessing the marine organism must maintain sufficient documentation to prove the aquacultural origin of the marine organism, including, but not limited to, documents indicating the point of origin, quantity and dates of production or purchase of all cultured marine organisms exempted by this section, and the holder must present the documentation for inspection to department personnel upon request. A consumer in possession of such a marine organism may present a valid sales receipt to satisfy this requirement. It is prima facie evidence of possession of a marine organism in violation of the law if the person possessing the marine organism cannot present sufficient evidence to prove its aquacultural origin.

This section does not exempt the possessor of the marine organism from any requirement to hold a lease or license pursuant to section 6072, 6072-A, 6072-B, 6072-C or 6085 to engage in the culture of marine organisms.

§6074. Special license

The commissioner may issue a special license for research, aquaculture or education that exempts the holder from one or more marine resources' laws as to the time, place, length, condition, amount and manner of taking or possessing a marine organism. Except as provided in subsection 8, the commissioner may not issue a special license unless the application for that license is approved by the advisory council.

1. Exception. A special license shall not permit the holder to sell or, beyond the state limits, to ship or transport any marine organism that is less than the minimum size established by statute. This subsection shall not apply to:

A. [Repealed]

B. Any species grown in a hatchery for stock enhancement or resale for purposes of cultivation or stock enhancement.

2. Application. The application shall include a description of the proposed project including the objectives, the location and the estimated time of completion of the project. The application shall also include a list of the sections of law or regulation for which exemptions are required, and the specific reasons for each requested exemption.

3. Filing fee. Each application must include a nonrefundable filing fee of $100. The fee may be waived for research activity by institutions or organizations financed in whole or part by state funding. A filing fee may not be required from a municipality applying for a special license for using a hydraulic dredge under section 6623.

4. Limitation. The special license shall authorize only the individual named in the license to undertake the licensed activities. Any individual engaged in handling or harvesting marine organisms in the licensed project shall be listed on the license or supplemental license. The commissioner may, at any time, place conditions or limitations on the licensed activities which shall become part of the license.

5. Fees. At the time of the initial issuance of a special license, and each year upon renewal, an annual fee must be paid. The annual fee for a special license for no more than 2 individuals is $50. An annual fee for a special license for more than 2 individuals but no more than 10 individuals is $100. Additional individuals may be included in a special license in groups up to 10 for an additional $100 per group. The fee may be waived for research activity by institutions or organizations financed in whole or in part by state funding. A

license fee may not be required from a municipality for a special license for using a hydraulic dredge under section 6623. A license fee may not be required for employees of the department when they are acting in their capacity as employees under the direction of the commissioner or the commissioner's designated representative.

6. Renewal.

A. The initial issuance of each special license must specify the number of times the license may be renewed after the initial issuance. Each license may be renewed at least 4 times. The commissioner, with the advice and consent of the advisory council, may authorize renewals if the necessary investment in the research or aquaculture requires additional renewals.

B. The commissioner shall annually renew the license on request for the authorized number of renewals, unless the license holder has not complied with the conditions of the license or the commissioner finds that renewal is not in the best interest of the State. Renewals do not require a new application or filing fee and do not require the advice and consent of the advisory council.

7. Transportation permit. A transportation permit shall be required for a special license holder to ship, transport or sell any marine organism raised or harvested under a special license. The commissioner may place conditions or limitations on the activities authorized by this permit to the extent necessary to provide proper controls and to comply with federal or state health or sanitation standards. The commissioner shall annualy renew the permit on request unless the permit holder has not complied with the conditions of the permit or unless the permit holder no longer holds a special license.

8. Council approval not required. Approval by the advisory council is not required for a special license issued by the commissioner to the following:

A. An employee of the department when the employee is acting under the direction of the commissioner or the commissioner's designated representative;

B. A person who operates an aquarium;

C. A person who operates a festival;

D. A person who undertakes a public service activity;

E. A municipality that operates a hydraulic or mechanical soft-shell clam dredge for municipal transplanting projects under section 6623; or

F. A teacher who is providing a primary or secondary school program.

9. Penalty. An individual who fails to comply with the conditions or limitations on the licensed activity under this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6075. Pathology program

1. Purposes. The purposes of this section are to increase the availability of pathological assessment of shellfish stock to be introduced into the State for culturing purposes, of culturing facilities and areas and of shellstock to be exported to other states and countries. This shall be provided as a service to protect the state's waters and other resources, and to support the shellfish industries of the State.

2. Responsibilities. The department shall be the state agency responsible for carrying out necessary shellfish pathology services related to the importation and exportation of shellfish.

§6076. Marine Shellfish Toxins Monitoring Program

1. Purpose. A comprehensive Marine Shellfish Toxins Monitoring Program is established to protect the public health while providing for the harvest of susceptible species of marine mollusks in areas not shown to be affected by contamination.

2. Responsibilities. The department shall be the state agency responsible for implementing the program. The department may adopt rules under section 6172 as may be warranted to provide for adequate protection of the public health.

§6077. Aquaculture monitoring program

The department may establish and maintain an information base pertaining to the siting, development and operation of finfish aquaculture facilities within the State.

1. Coordination. The commissioner shall coordinate the data collection efforts of the department with those of other state agencies that regulate or assist the finfish aquaculture industry. All agencies of the State shall cooperate with the department in the establishment of the information system and shall provide all available information requested by the commissioner.

2. Data requirements. The commissioner may collect information in site-specific categories, including, but not limited to, those listed in this subsection, to allow effective enforcement of all laws pertaining to finfish aquaculture at individual facilities:

A. Geophysical site characteristics, including currents and bathymetry;

B. Benthic habitat characteristics and effects, including changes in community structure and function;

C. Water column effects, including water chemistry and plankton;

D. Feeding and production data sufficient to estimate effluent loading;

E. Smolt and broodstock introduction and transfer data;

F. Disease incidence and use of chemical therapeutics; and

G. Other ancillary information as the commissioner may find necessary.

3. Data collection; authority. The commissioner may require persons holding licenses related to finfish aquaculture under this Title to report information in the categories listed in subsection 2. Personnel retained by leaseholders to perform tasks required for data collection as specified in subsection 2 and this subsection must be reviewed and approved by the commissioner for acceptable professional qualifications and experience prior to performing any data collection services. Routine notations of site operation do not require approved personnel.

4. Confidentiality. Notwithstanding section 6173 and except as provided in paragraphs A and B, information obtained by the department under this section is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney's fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information.

A. Information submitted to the department under this section may be designated by the submittor as being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so

designated has been submitted to the department, giving the name of the submittor and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph.

B. The commissioner may not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

C. Any information that is collected by any other state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under paragraph A.

D. The commissioner may adopt rules to carry out the purposes of this section. The rules must be consistent with the provisions of Title 1, chapter 13, subchapter I.

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than $5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that

the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available.

§6078 [Repealed]

§6078-A. **Aquaculture Monitoring, Research and Development Fund**

1. Fund established. The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered confidential business record information for the purposes of section 6077.

2. [Repealed]

3. Expenditures; purpose. The commissioner may make expenditures from the fund to develop effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data and process lease applications. The commissioner shall expend the fund amounts in proportion to the amounts of revenue from finfish sources and shellfish sources. The commissioner may contract for services privately or under memoranda of agreement with other state agencies.

4. [Repealed]

5. Reports. On or before February 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all expenditures made from the fund in the previous fiscal year and on all work accomplished and planned. The joint standing committee may introduce and report out legislation it determines necessary to modify the provisions of this section.

6. Rules. The commissioner may adopt rules pursuant to this section only after consultation with the aquaculture industry that clearly establish the recommended framework for lease rents, application fees and production fees as well as the related personnel or contracting costs funded by the recommended fee increases. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

§6079. Aquicultural Use of Antibiotics; Notice

[Repealed]

§6080. Aquaculture Advisory Council

[Repealed]

§6081. Aquaculture Research Fund

The Aquaculture Research Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department. In addition to the fees derived from the limited-purpose aquaculture license, the commissioner may receive on behalf of the fund funds from any source. The commissioner shall use all money received into the fund for research and management related to the aquaculture industry. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund.

§6082. Confidentiality provisions for aquaculture information from other jurisdictions

Information obtained from other state, federal or foreign government agencies about aquaculture operations in other states, foreign countries or the exclusive economic zone that is designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt must be kept confidential by the department. Such information is not a public record as defined in Title 1, section 402, subsection 3. This section does not apply to aquaculture operations conducted in Maine.

§6083. Lease option

1. Lease option. A person may apply for a lease option that conveys the right to file an application for an aquaculture lease under section 6072, 6072-A or 6072-B for a particular area of the submerged lands of the State and for a defined period of time. The department may not accept an application for an aquaculture lease pursuant to section 6072, 6072-A or 6072-B or an application for a limited-purpose aquaculture license pursuant to section 6072-C in an area that is under a lease option, except as described in subsection 2.

2. Other claims of preference. A lease option under this section does not supersede the provisions for application preference in section 6072, subsection 8 and section 6072-A, subsection 12. Competing aquaculture lease applications from persons claiming preference under section 6072, subsection 8 or section 6072-A, subsection 12 must be evaluated by the department to determine if the

claim of preference is valid and, if it is found to be valid, the holder of the lease option may cancel the lease option and receive a fee refund prorated for the remainder of the term of the lease option.

3. Issuance criteria. The applicant for a lease option under this section must demonstrate that the site is being assessed in good faith for its suitability for aquaculture and that there is a reasonable likelihood that an application for an aquaculture lease will be filed during the term of the lease option. The area proposed for lease option may not contain an existing aquaculture lease or license or include an area that is part of an aquaculture lease or license application under consideration by the department.

4. Fee. The fee for issuance of a lease option under this section may be up to $500 for the first acre plus up to $50 for each additional acre, the amount to be established in rules adopted by the commissioner. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6084. Nonpayment of aquaculture lease fees

If a holder of an aquaculture lease or license under this subchapter fails to pay any related fees or charges, the commissioner may refuse to renew or issue any marine resources license or permit to the holder of the aquaculture lease or license.

§6085. Marine organism aquaculture license

1. License required. The commissioner may require a license for aquaculture of marine organisms in facilities that are not located in the coastal waters of the State but are located in the State.

2. Licensed activities. The holder of a license under this section may possess marine organisms the holder has raised by means of aquaculture. The holder of such a license is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement for any marine organism the holder has raised by means of aquaculture.

3. Permit denial. The commissioner may refuse to issue a license under this section if the commissioner finds that the aquaculture activity presents an unreasonable risk to indigenous marine life or its environment. In determining whether or not to refuse to issue a license, the commissioner shall consider factors, including, but not limited to:

A. Risk of accidental or intentional introduction of marine organisms or marine organism products into the coastal waters of the State;

B. Risk of the introduction or spread of disease within the State; and

C. Interference with the enforcement of possession, size or season limits for wild marine organisms.

4. Monitoring and revocation. The commissioner shall monitor licensed facilities under this section on an annual basis. If the commissioner determines following an annual review or at any other time that the licensed aquaculture activity presents an unreasonable risk to indigenous marine life or its environment, the commissioner may revoke the license after the licensee has been given an opportunity for a hearing before the department.

5. Reporting. The commissioner may require the holder of a license under this section to file periodic reports regarding the aquaculture practices and production of the facility. Information obtained pursuant to this provision is considered fisheries statistics for the purposes of section 6173, except that information about marine organism health reported pursuant to section 6071 may not be considered fisheries statistics.

6. Fee. The commissioner may charge a fee for a license under this section not to exceed $1,000, the amount to be established in rules adopted by the commissioner depending on the type and amount of aquaculture. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6086. Abandoned aquaculture equipment and stock

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abandoned aquaculture equipment" or "equipment" means any equipment associated with the operation of an aquaculture lease or license pursuant to section 6072, 6072-A, 6072-B or 6072-C that has been left by the aquaculture lease or license holder in coastal waters without intention of removal. "Abandoned aquaculture equipment" includes, but is not limited to, rafts, pens, barges, skiffs, nets, lines, mooring systems, cages, trays, racks, upwellers and other equipment used in the operation of an aquaculture site.

B. "Abandoned aquaculture stock" or "stock" means cultured marine organisms, including, but not limited to, fish, shellfish, sea urchins and algae, that have been left by the owner in coastal waters without intention of removal.

2. Eligibility. Abandoned aquaculture equipment or abandoned aquaculture stock is subject to removal under this section only if:

A. The aquaculture lease or license holder has indicated in writing to the department that the holder wishes to terminate the aquaculture lease or license with which the abandoned equipment or stock is associated; the department has revoked the lease pursuant to section 6072, subsection 11 or section 6072-A, subsection 22; or the term of the lease or license has expired;

B. The equipment or stock remains in the area of the lease or license site and the equipment or stock is not legally permitted to remain by another authority, such as a municipal mooring permit; and

C. The aquaculture lease or license holder has not entered into an agreement with the department to accomplish timely removal of the equipment or stock.

3. Responsibility of the department. The department's duties with respect to abandoned aquaculture equipment and abandoned aquaculture stock are as set out in this subsection.

A. The department shall investigate reports of abandoned aquaculture equipment or abandoned aquaculture stock and review terminated, expired or revoked aquaculture leases and licenses to determine if there is abandoned aquaculture equipment or abandoned aquaculture stock and give notice to the aquaculture lease or license holder. The department shall also give notice to any person who has declared to the department, in writing, a property interest in the equipment or stock and to any person the lease or license holder has, in writing, identified as having a property interest in the equipment or stock. The notice must require the lease or license holder and anyone with a property interest to respond within 15 days and to remove the equipment or stock from the coastal waters within 60 days of notification by the department or, if the equipment or stock is icebound, within 60 days of ice-out in the body of water where the equipment or stock is located. If the persons to whom the department has given notice cannot be contacted or do not respond to the notice and remove the equipment or stock within the time period specified, the department may initiate removal of the equipment or stock.

B. The department may authorize a 3rd party to remove abandoned aquaculture equipment or abandoned aquaculture stock if the department is satisfied that the work will be completed.

C. Notwithstanding the time periods for removal by a lease or license holder or person with a property interest specified in paragraph A, if the department determines at any time that abandoned aquaculture equipment or abandoned aquaculture stock is a human health or safety hazard or is an immediate threat to the marine environment, the department may immediately remove the equipment or stock from the coastal waters.

D. If the department removes abandoned aquaculture equipment or abandoned aquaculture stock from coastal waters under this subsection, the department may sell the equipment or stock. Any proceeds from the sale must first be applied to the costs to the State directly related to the expense of removal of the equipment or stock. Any money that remains may be applied to any liens against the equipment or stock. Money that finally remains must accrue to the Aquaculture Management Fund established under section 6072-D.

E. Abandoned aquaculture equipment or abandoned aquaculture stock located on intertidal land may not be removed by the department without the permission of the landowner unless the department determines that the equipment or stock is a human health or safety hazard or is an immediate threat to the marine environment.

F. The department may adopt rules governing abandoned aquaculture equipment and abandoned aquaculture stock, including, but not limited to, rules requiring the disclosure of property interests in abandoned aquaculture equipment and abandoned aquaculture stock. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Civil action. If the State is not compensated for removal costs under the provisions of subsection 3, the State shall first attempt to recover the removal costs by claiming these expenses against any bond the aquaculture lease or license holder held during the term of the aquaculture lease or license. If the department is unsuccessful in recovering the removal costs in that manner, the State may bring a civil action against the owner of the equipment or stock to cover any cost of removal of the equipment or stock from coastal waters. The court in its discretion may award an additional 50% of the cost of removal. The penalty is payable to the Aquaculture Management Fund established under section 6072-D.

SUBCHAPTER 3 - INSPECTION AND QUALITY CONTROL

§6101. Voluntary fish products inspection program

1. Purpose. The purpose of this section shall be to increase the availability of fishery product inspection services to Maine processors and packers in order to improve the marketing of fishery products.

2. Program. The department shall be the state agency which shall be responsible for cooperating with the Federal Government in developing and administering a voluntary fishery product inspection program.

3. Regulations. The commissioner may adopt or amend regulations not

inconsistent with the National Shellfish Sanitation Program and National Marine Fisheries Services regulations for the voluntary inspection of fishery products.

4. Sardines. The program shall exclude sardines and other fish inspected by the Maine Sardine Council.

5. Labeling. All products inspected under this section shall be accurately labeled to provide the public with information about the contents and quality of the fishery product. The commissioner may adopt regulations to insure proper and complete labeling.

6. Misleading labeling prohibited. It shall be unlawful to sell any article inspected under this section under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size. Established trade names approved by the commissioner are permitted. It shall be unlawful to sell any article not inspected under this section under any name or other marking or labeling which is false and misleading when the mark or label is intended to represent the contents as having been inspected and graded.

7. Preventing misleading labeling. If the commissioner has reason to believe that a violation of subsection 6 is occurring, he may order the withholding of an inspection or grading label or mark.

8. Procedure. The commissioner shall give notice of his withholding order and may give an opportunity for a hearing on the order. The order shall be effective on service or receipt of the notice. The notice shall contain a statement of the violation, the order and any opportunity for a hearing, and shall be personally served on or mailed to the violator. Any hearing shall be requested in writing within 10 days, unless a longer period is mutually agreed to in writing. Notice of the hearing shall be given immediately to the violator.

If a hearing is held, it shall be conducted in the Augusta area. At the hearing, the violator shall be entitled to present any evidence concerning the violation and surrounding circumstances. All decisions of the commissioner shall be in writing. All decisions of the commissioner under this section may be reviewed in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

§6102. Mandatory quality control program

The commissioner may, in accordance with the most modern public health and food protection practices, establish and maintain effective surveillance and inspection of all segments of the state's fishing industries. He may establish a program to carry out this responsibility. The program may include provisions

similar to those of section 6856, shellfish sanitation and certificate, and section 6101, voluntary fish products inspection program, including any additional inspection, licensing and certification requirements that are necessary to insure proper sanitation and quality control. The commissioner may adopt or amend regulations prescribing the minimum standards for establishments and for sanitation and quality control of the processing of any marine organism or its products. Each set of regulations shall be based on the particular operational requirements of the species or phase of industry being regulated, and shall conform to the latest state or federal sanitation standards.

§6103. Implementation of fishery product or shellfish inspection programs

The Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Marine Resources shall cooperate in developing and implementing any fishery product or shellfish inspection programs. Those programs must meet the standards established by the Commissioner of Agriculture, Food and Rural Resources under the Maine Food Law.

SUBCHAPTER 3-A - SURIMI OR SURIMI PRODUCTS

§6111. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Surimi. "Surimi" means an intermediate manufactured seafood product derived from minced fish meat, washed to remove water-soluble protein, blood or other undesirable components and mixed with additives, containing sugars or sodium, or both, to enhance its frozen storage and functional characteristics.

§6112. Labeling of food products containing surimi

A food product may not be sold in this State consisting of or containing surimi unless the packaging containing the food product is clearly and conspicuously labeled or, if there is no packaging, unless a sign is conspicuously displayed, indicating that the product is "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department is sufficient to notify the public that the product contains surimi.

§6113. Serving food containing surimi

No food containing surimi or a surimi product may be served in any eating establishment in the State whether for consumption on or off the premises, unless on the menu and all notices advertising the food it is clearly and conspicuously labeled as "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department shall be sufficient to notify the public that the product contains surimi.

§6114. Violation; enforcement

1. Forfeiture. A violation of this subchapter is a civil violation for which a forfeiture not to exceed $100 may be adjudged.

SUBCHAPTER 4 - FISHWAYS

§6121. Fishways in existing dams or artificial obstructions

1. Commissioner's authority. In order to conserve, develop or restore anadromous fish resources, the commissioner may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other artificial obstruction within coastal waters frequented by alewives, shad, salmon, sturgeon or other anadromous fish species.

2. Examination of dams. The commissioner shall annually examine all dams and other artificial obstructions to fish passage within the coastal waters in order to determine whether fishways are necessary, sufficient or suitable for the passage of anadromous fish.

3. Initiation of fishway proceedings. The commissioner shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams or other artificial obstructions whenever he determines that either of the following conditions may exist:

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous fish; or

B Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species.

4. Adjudicatory proceedings.

A. A fishway proceeding shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, but a hearing may not be required unless requested in accordance with paragraph B. Notice of the proceeding shall be given in accordance with Title 5, section 9052, and the following requirements:

(1) Personal notice shall be given to the dam owner, lessee or other person in control of the dam or artificial obstruction, informing that person that a proceeding has been undertaken and of his right to request a hearing; and

(2) Notice to the public, in newspapers of general circulation in the areas affected, notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing.

B. If any interested person requests a public hearing, the commissioner shall, within 30 days, either notify the petitioners in writing of his denial stating the reasons, or schedule a public hearing. The commissioner shall hold a public hearing whenever:

(1) He is petitioned by 50 or more Maine residents; or

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing.

C. The commissioner shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction.

5. Decision. In the event the commissioner decides that a fishway should be constructed, repaired, altered or maintained, his final orders shall be issued with specific plans and descriptions of the fishway construction, alteration, repair or maintenance requirements, the conditions of the use of the fishway and the time and manner required for fishway operation. The commissioner may issue a decision requiring the owners, lessees or other persons in control of the dam or obstruction to construct, repair, alter or maintain a fishway. Such a decision shall be supported by a finding based on evidence submitted to the commissioner that either of the following conditions exist:

A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway, and habitat anywhere in the watershed above the dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species.

In the event that the commissioner decides that no fishway should be constructed, he shall specify in that decision a period immediately subsequent to that decision during which no fishway may be required to be constructed. That period may not exceed 5 years.

6. Compliance.

A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII.

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to the commissioner's decision.

7. Privileged entry. The commissioner, the commissioner's agents or subcontractors are privileged to enter upon any private land in order to examine, at least annually, fishways in dams or other artificial obstructions and the examination of dams provided in subsection 2. The commissioner shall notify the landowner, lessee or other person in control of the dam when the examination will take place and the time required to complete the examination. The commissioner shall make every effort to preserve private land and shall

restore surrounding lands to the grade and condition existing prior to entry, if economically feasible.

§6122. Construction of new dams or other artificial obstructions

1. Notice required. Prior to construction or prior to authorizing construction of a new dam or other obstruction in the coastal waters, the owner, lessee or other person in control of the dam or other artificial obstruction shall provide written notice to the commissioner, supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.

2. Initiation of fishway proceedings. Within 30 days of receipt of the construction notice, the commissioner shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 6121, subsection 3. If the commissioner determines that such construction or alteration may be necessary, he shall initiate fishway proceedings and follow the procedures prescribed in section 6121.

§6123. Obstructing fishways

A person who tampers with, damages, destroys or closes to fish migration or introduces foreign objects into any fishway without the authority of the commissioner commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6124. Violations; penalty

A person who improperly operates a fishway required pursuant to this subchapter commits a civil violation for which a forfeiture equivalent to the value of the fish killed but not more than $10,000 for each day of that violation may be adjudged.

§6125. Rules

The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall jointly make rules defining “fish kill.”

SUBCHAPTER 5 - MISCELLANEOUS ACTIVITIES

§6131. Alewife fishing rights

The commissioner is authorized to develop, manage or lease alewife fishing rights as follows.

1. Alewife rights. The commissioner shall grant the right, exclusive or otherwise, to take alewives to any municipality entitled to those rights on January 1, 1974 and may grant the right to take alewives to any other municipality provided:

A. Any municipality that has had the right to take alewives, exclusive or otherwise, or is granted that right by the commissioner, shall take action through its legislative body and file a copy of this action with the commissioner prior to April 20th or lose that right for the remaining part of that year;

B. Municipal rights that are not exercised for 3 consecutive years lapse;

C. At its annual meeting the municipality may determine by vote:

(1) Whether alewife fishing will be operated by the municipality through the municipal officers or a committee; and

(2) Whether the municipal rights to take alewives will be sold by the municipal officers or committee; and

D. Harvesting plans shall be developed as follows.

(1) Any municipality engaged in harvesting alewives shall submit a written harvesting plan to the commissioner prior to April 20th of each calendar year. All harvesting plans shall set forth in detail the exact conditions under which alewives may be taken, all in accordance with good conservation practices.

(2) The commissioner, after consultation with the appropriate municipal officers, shall approve or modify the harvesting plan as he deems necessary for the conservation of alewives and other anadromous fish, and shall file a copy of the approved plan with the clerk of the municipality.

2. Limitations. The following limitations apply to any grant.

A. It is unlawful to take alewives from 6 a.m. each Thursday morning until 6 a.m. Sunday morning. Municipalities that make other provisions for escape of spawning alewives, which are approved by the commissioner, are exempt from this limit.

B. It shall be unlawful for any municipality or purchaser or lessee of the municipal right to take alewives in any manner except as provided in the approved alewife harvesting plan.

3. Closed period in rivers and streams not under lease agreement. In any river or stream not managed under a lease agreement, there is a 72-hour closed period on the taking of alewives and obstruction of the watercourse to allow the free passage of fish from 6 a.m. on Thursday to 6 a.m. the following Sunday.

4. Violation of harvesting plan. If the commissioner determines after investigation that the municipality is not following its alewife harvesting plan, he shall notify the municipality. Any municipality which fails to take corrective action within 48 hours of notification shall lose its alewife fishing privilege for that calendar year. Upon further notification by the commissioner of loss of alewife fishing privileges, the municipality or its agents shall cease all fishing activity and immediately remove all traps, weirs, seines or other alewife fishing gear from their alewife waters.

5. Leasing of rights. The commissioner:

A. When the commissioner decides to manage or lease any alewife fishing rights where a municipality has had those rights and has failed to act as provided in subsection 1, shall so notify the clerk of the municipality in writing. After the notice, the commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices; and

B. May manage or lease alewife fishing rights in any river or stream where a municipality does not have those rights. The commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and approved and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices.

6. Violation of terms. It shall be unlawful for any person holding such a lease to violate any of its terms or to cause the same to be done.

7. Molesting equipment. It shall be unlawful to molest the fishing equipment of any lease holder or to interfere with the fishing rights granted by the lease.

8. Migratory Fish Fund. All fees received by the commissioner from alewife leasing rights are allocated to the Migratory Fish Fund, as established. Expenditures from the Migratory Fish Fund must be made:

A. To build fishways for alewives and other migratory fish;

B. For construction of other facilities for improving the environment of alewives and other migratory fish;

C. For general propagation and conservation of alewives and other migratory fish;

D. For research to enhance the fishing industry based on alewives and other migratory fish; and

E. For management measures required to maintain or enhance alewife populations or populations of other migratory fish.

The Migratory Fish Fund does not lapse.

§6132. Natural Fish Die-off Clean-up Program

Upon the request of any affected municipality, the Department of Marine Resources shall assess the extent and severity of public nuisance and potential threats to public health posed by natural fish die-offs. The department shall provide technical advice and, subject to the limits of available funding, financial assistance to the affected municipalities in the conduct of any cleanup or other mitigating measures.

§6133. Inspection of documents and watercraft

1. Inspection powers. Marine patrol officers may stop and board any watercraft at any time to inspect its documents, licenses and permits of the occupants of the watercraft and to conduct a safety inspection.

2. Rules. The commissioner shall adopt rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, which:

A. Specify safety requirements for watercraft subject to inspection. Requirements may be incorporated by reference to other state or federal watercraft safety laws, rules or regulations; and

B. Define the procedure for a safety inspection.

3. Failure to submit to inspection. Failure of an owner, operator or occupant of watercraft to submit to the inspection authorized by this section is a Class E crime and shall be grounds for the suspension, pursuant to chapter 617, of licenses issued under this Part to the person failing to submit.

§6134. Alewives passage; fishways on the St. Croix River

This section governs the passage of alewives on the Woodland Dam and the Grand Falls Dam located on the St. Croix River.

1. Woodland Dam. By May 1, 2008, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishway on the Woodland Dam is configured or operated in a manner that allows the passage of alewives.

2. Grand Falls Dam. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishway on the Grand Falls Dam is configured or operated in a manner that prevents the passage of alewives.

§6135. Maine Groundfish Fund

The Maine Groundfish Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing fund within the department. Unexpended balances in the fund at the end of the fiscal year may not lapse and must be carried forward to the next fiscal year and used for the purposes of this section. The fund may receive money from any source for the purposes of this section. Revenues may be used for support of the groundfish industry including research, development and economic assistance to maintain access, capacity and infrastructure along the entire coast. The commissioner shall select activities and projects that will be most beneficial to the commercial groundfish industry of the State.

§6136. Maine Coast Environmental Trust Fund

1. Creation of trust fund. There is established the Maine Coast Environmental Trust Fund, referred to in this section as "the trust," as an Other Special Revenue Funds account within the Department of Marine Resources.

2. Purpose of trust. The purpose of the trust is to protect and improve the quality of the State's marine environment by providing grants to qualifying organizations for activities to advance scientific research concerning the nature, magnitude and effect of pollution of the State's estuarine, near-shore and off-shore marine environments and the means to abate pollution or preserve and enhance estuarine, near-shore and off-shore marine habitats.

3. Sources for trust. Money obtained from the following sources must be paid to the Treasurer of State for the benefit of the trust:

A. Gifts, bequests and donations to the trust from private individuals or corporations desiring to protect and improve the marine environment through

applied research;

B. Grants to the trust from private or public foundations desiring to protect and improve the marine environment through applied and basic research;

C. Funds stipulated for deposit in the trust as part of the terms of settlement of legal actions against corporations, partnerships or individuals for violations of environmental laws, rules or regulations;

D. Funds for research received under any federal oil spill trust fund;

E. Revenues that may be from time to time realized through public bond issues;

F. Federal grants and loans; and

G. Appropriations and transfers authorized by the Legislature.

4. Use and administration of trust. Trust funds must be used to provide grants to meet the purposes of this section. The department shall administer the trust as follows.

A. Unless otherwise specified by the source of a contribution to the trust, 50% of a contribution to the trust must be deposited in a principal account and maintained as a permanent endowment. The income earned on funds held in this account, combined with the remaining 50% of funds contributed to the trust, must be deposited in an operating account and made available for disbursement as grants to accomplish the purposes of this section and as expenditures for purposes of administering the trust.

B. An executive agency is not eligible to receive funding from the trust unless the agency jointly undertakes a research proposal with another entity that is not an executive agency.

C. The department shall give preference to institutions, organizations and entities located and operated in the State.

D. Principal, or interest earned from principal, with special instructions from contributors must be awarded in accordance with the contributors' instructions.

E. All money in the trust not immediately required for payment, pursuant to the provisions of this section, must be invested by the Treasurer of State as authorized by Title 5, section 138, except that the securities in which the trust money is invested must remain part of the trust until exchanged for other

securities and the income from all investments must remain a part of the trust unless prohibited by federal law.

5. Report, amendment and termination of trust. The department shall file a report as follows.

A. The department shall report to the Legislature on a biennial basis concerning the activities of the trust.

B. In the event the department determines that the provisions of the trust should be amended, the department shall make appropriate recommendations to the Legislature in its biennial report.

C. The department may recommend in its biennial report that the trust be terminated if termination is determined to be appropriate. In the event that the Legislature terminates the trust, the principal and operating funds must be disbursed in a manner consistent with the purpose of the trust.

§6137. Atlantic Salmon Commission

[Repealed]

§6138. Members; appointment; composition; term; compensation; meetings

[Repealed]

§6139. Sea Run Fisheries and Habitat Advisory Council

1. Appointment; composition; term; compensation. The Sea Run Fisheries and Habitat Advisory Council, referred to in this section as "the council," is established and consists of 7 members appointed by the commissioner. All council members must have a demonstrated interest in the restoration and recovery of diadromous species. A majority of the council members must have interest and experience in the management of Atlantic salmon. One member of the council must represent interests in the southern coastal area, one member must represent interests in the midcoast area, one member must represent interests in the Downeast area, one member must represent interests in the northern part of the State, one member must represent interests from the Penobscot watershed and one member must represent interests in the Kennebec watershed. In addition the council must have one member who represents tribal interests. Members must be appointed to 3-year terms and may serve 2 consecutive terms. Members are compensated as provided in Title 5, chapter 379.

2. Powers and duties; meetings; officers. The council shall give the commissioner information and advice concerning the development of plans and programs for the protection, preservation, enhancement, restoration and management of all diadromous species in each of the river basin complexes that represent the historic range of diadromous fish in the State. The council shall give the commission information and advice concerning the development of plans and programs for the protection, preservation, enhancement, restoration and management of Atlantic salmon. The council shall hold meetings with the commissioner, or the commissioner's designee. The council shall elect one of its members as chair, one as vice-chair and one as secretary, all for a term of one year, at the first regular meeting in each year. The officers have the following duties.

A. The chair shall call and preside at all meetings of the council.

B. The vice-chair shall call and preside at all meetings of the council in the chair's absence.

C. The secretary shall cause records to be taken and preserved of all meetings of the council.

3. Quorum. A quorum is a majority of the current members of the council.

4. Council actions. An affirmative vote of a majority of the members present at a meeting or polled is required for any action. An action may not be considered unless a quorum is present or, if there is no meeting, a quorum responds to a written poll.

§6140. Atlantic salmon license

1. License required. Except as otherwise provided in this section, a person may not fish for Atlantic salmon from any state waters without a current Atlantic salmon license.

2. Licensed activity. The holder of an Atlantic salmon license may fish for Atlantic salmon in inland and coastal waters of the State.

3. License fees. The following provisions govern license fees.

A. The fee for an Atlantic salmon license is $15 for a resident.

B. The fee for an Atlantic salmon license for any nonresident is as follows:

(1) For a season license for a nonresident 16 years of age or older, $30;

(2) For a 3-day license for a nonresident 16 years of age or older, $15. This license may not be exchanged for a season license; and

(3) For a license for a nonresident under 16 years of age, $5.

C. Members of Indian tribes in this State and residents of this State under 16 years of age are exempt from any fee.

4. Atlantic salmon; possession, buying or selling. A person may not possess, buy or sell Atlantic salmon unless each fish is clearly identified by one of the following methods:

A. Tagged with a New Brunswick, Quebec, Nova Scotia, Prince Edward Island or Newfoundland-Labrador Atlantic salmon tag if imported from those Canadian provinces;

B. Identified by a sales receipt less than 24 hours old;

C. For wholesale and retail seafood dealers, identified by a bill of sale indicating numbers of fish purchased, dates of purchase and point of origin of all fish purchased; or

D. Tagged with a tag that conforms to rules adopted by the commissioner and identifies the fish as having been legally obtained from a private fee pond licensed pursuant to section 12508. Fish obtained in this manner may not be resold.

5. Exceptions. This section does not apply to a person holding a lease that allows that person to engage in the aquaculture of Atlantic salmon in this State while conducting authorized activities on that person's lease site.

6. Agent's fee. Any clerk or agent appointed by the department to issue an Atlantic salmon license shall retain $2 for each license issued.

7. Use of license fees. All license fees must be used by the commissioner for purposes of conservation and management of the Atlantic salmon in this State.

8. Duplicates. The department or its agents shall issue a duplicate license to any person whose license was accidentally lost or destroyed. The fee for a replacement license is $1.

9. Fishing in inland waters. When fishing in inland waters, the holder of

a license authorized under this section is subject to all the provisions of Part 13.

§6140-A. **Atlantic salmon; method of fishing; season**

Unless more restrictive rules are adopted by the commission, the following restrictions apply to methods of fishing and the season for Atlantic salmon.

1. Catch and release only. All fishing for Atlantic salmon is catch and release, except for Atlantic salmon lawfully raised by means of aquaculture.

2. Method of fishing. A person may not fish for Atlantic salmon in waters of the State by any means other than hook and line with an unweighted artificial fly.

3. Closed season. A person may not fish for Atlantic salmon from waters of the State by any means from October 16th to April 30th.

4. Open season. The commission, after consultation with and advice from the Sea Run Fisheries and Habitat Advisory Council, may establish by rule an open season during which a person may fish for Atlantic salmon. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6140-B. **Unlawful fishing, possession or sale of Atlantic salmon**

1. Prohibition. A person may not fish for Atlantic salmon in violation of the provisions of this Part.

2. Possession of parts prohibited. A person may not possess any part of an Atlantic salmon taken from the inland or coastal waters of this State.

3. Sale of Atlantic salmon prohibited. A person may not sell or offer for sale any Atlantic salmon taken from waters of the State, except Atlantic salmon lawfully raised by means of aquaculture.

4. Exemptions. The following are exempt from the possession prohibitions of this section:

A. Atlantic salmon imported from outside the State;

B. Atlantic salmon imported by taxidermists solely for taxidermy purposes; and

C. Atlantic salmon raised by means of aquaculture.

5. Incidental catch. An individual engaged in recreational or commercial fishing for species other than Atlantic salmon does not commit a violation of this section as long as any incidental catch of an Atlantic salmon results in an immediate liberation alive into the adjacent waters of the State.

6. Penalty. A person who violates this section commits a Class E crime, and the court shall impose an additional fine of $500, none of which may be suspended, for each Atlantic salmon unlawfully possessed.

CHAPTER 606
FISHERIES MANAGEMENT RESEARCH

SUBCHAPTER 1 - LOBSTER RESEARCH

§6141. Lobster research program

The commissioner shall establish a program of lobster research within the Bureau of Resource Management. The purpose of this program is to develop reliable scientific information for use in management decisions.

1. Research. The lobster research program shall include investigation of lobster population dynamics, reproductive behavior and migration patterns. Specific attention shall be given to evaluating the impacts of the State's v-notch program on the reproductive potential of lobster stocks.

2. Policy investigations. The commissioner shall develop in the lobster research program the capacity to systematically analyze the effects of conservation and management options. The analysis includes both the biological and economic components of the fishery. Options for policy analysis include, without limitaton, changes in the lobster measures, seasons, limitations on effort and limitations on entry to the fishery. Analysis of these options shall be conducted cooperatively with the industry and the Lobster Advisory Council.

3. Data collection. The commissioner shall continue the lobster fisheries data collection project undertaken by the department since 1967. Continuity of data collection shall be ensured.

4. Cooperation. The commissioner shall cooperatively develop and coordinate the lobster research program with the University of Maine and the lobster industry.

5. Report. The commissioner shall prepare an annual report to the Legislature setting out the accomplishments of the previous year and an updated, 5-year research plan for future activities with proposed budget

requirements. The report shall be reviewed by the Lobster Advisory Council prior to submission to the Legislature. The report shall be submitted to the joint standing committee of the Legislature having jurisdiction over marine resources on or before March 15th of each year.

6. Funds. All federal and state funds obtained and used by the department for lobster research shall be utilized to achieve the objectives of this subchapter.

CHAPTER 607
REGULATIONS

SUBCHAPTER 1 - REGULATION POWERS

§6171. Conservation and propagation of marine organisms

1. Commissioner's powers. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms.

2. Limitations. A regulation authorized under this section may only limit the taking of marine organisms by one or more of the following:

A. Time;

B. Method;

C. Number;

D. Weight;

E. Length; or

F. Location.

2-A. Management plans. The commissioner may only adopt a management plan or other policy on the conservation or regulation of marine organisms after prior notice and public hearing and with the advice and consent of the advisory council.

3. Emergency regulations. The commissioner may adopt or amend regulations under the emergency procedures, if immediate action is necessary to protect or conserve any marine organism from unusual damage or imminent depletion. An unusually large concentration of fishermen which might deplete the supply of any marine organism shall justify adopting emergency regulations.

4. Procedure. The procedures of subchapter II shall be used in adopting or amending regulations authorized by this section.

5. Rules to limit taking of marine organisms. The commissioner may adopt rules that limit the taking of a marine organism for the purpose of protecting another marine organism.

A. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

B. If the commissioner determines that for biological reasons a rule adopted under this section must take effect prior to final adoption under paragraph A, the commissioner may adopt the rule as a routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A. A rule adopted under this paragraph is effective until 90 days after the adjournment of the next regular session of the Legislature. Rules adopted pursuant to this paragraph must also be submitted to the Legislature under paragraph A. The commissioner may not adopt rules under Title 5, section 8054 pursuant to this paragraph.

This paragraph is repealed July 31, 2012.

§6171-A. Protection of public health and safety and prevention of gear conflicts

1. Commissioner's powers. The commissioner may investigate conditions affecting public safety, public health or property and conflicts among harvesters of marine organisms. The commissioner, with the advice and consent of the Marine Resources Advisory Council, may adopt or amend such rules as the commissioner considers necessary to:

A. Protect public health;

B. Protect public safety;

C. Prevent property damage; or

D. Prevent gear conflicts and promote the optimum development of marine organisms.

Rules adopted in accordance with this subsection may include, but are not limited to, rules governing area closures when necessary to address conflicts among persons who fish commercially that may cause a threat of harm to a person.

2. Limitations. The limitations of section 6171, subsection 2 also apply to

rules to prevent gear conflicts.

3. Considerations. In adopting rules to prevent gear conflicts, the commissioner shall consider:

A. Traditional uses of the marine organisms;

B. Total economic benefits to the area in which the organisms are harvested; and

C. Promotion of the optimum economic and biological management of marine resources.

In each case, the commissioner shall accommodate the needs of all interested parties to the maximum extent possible, through provisions for joint use, alternate use or other methods.

4-A. Emergency rules. The commissioner may adopt or amend rules on an emergency basis if immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested.

5-A. Procedure. The procedures of subchapter 2 must be used in adopting or amending rules authorized by this section.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6171-B. Sustainable development of emerging fisheries

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Emerging fishery" means the commercial fishing for any marine organism, except herring and groundfish species, that requires a commercial fishing license issued under section 6501

B. "Endorsement" means an authorization, identified on a commercial fishing license issued under section 6501, to harvest, possess, transport and sell a specific marine organism for which there is an emerging fishery.

2. Determination of sustainability. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the Marine Resources Advisory Council, may require a person to hold an endorsement to participate in an emerging fishery if the commissioner

determines that a marine organism or its habitat is under increasing pressure that could impact its sustainability. The commissioner shall ensure that emerging fisheries do not develop at a rate that is not sustainable on a long-term basis.

Harvesters involved in an emerging fishery may petition the commissioner to investigate the sustainability of that emerging fishery.

3. Eligibility for endorsements. The commissioner may limit the number of endorsements issued to control the number of individuals engaged in commercial harvesting in an emerging fishery, based on criteria established by rule. The commissioner may require the collection and timely reporting of any biological or environmental data as a condition of the endorsement. The commissioner's authority to limit the number of endorsements issued for a specific marine organism is limited to a period of 3 years from the date of the issue of the first endorsement, renewable for one 3-year extension.

4. Endorsement required. Notwithstanding section 6501, a person may not fish for, take, possess, ship, transport or sell a marine organism for which an endorsement is required pursuant to subsection 2 unless that person holds a current commercial fishing license with an endorsement for that organism, except that a license with an endorsement is not required for that person to fish for, take, possess or transport the organism only for personal use.

A fee may not be charged for an endorsement required pursuant to this section.

5. Incidental harvest. Notwithstanding subsection 4, the taking or possession at sea of a marine organism for which an endorsement is required is not prohibited if the taking is incidental to the harvesting of another organism.

6. Rule-making authority. The commissioner may adopt rules to establish eligibility for endorsements, the number of endorsements issued and reporting requirements. Rules authorized by this section must be adopted and amended in accordance with the procedures outlined in subchapter II and are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

7. Report. The commissioner, within 24 months of the issuance of the first endorsement for a marine organism, shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters regarding the status of the emerging fishery, management goals and objectives and control of access to the emerging fishery. In the report, the commissioner shall consider:

A. The long-term sustainability of the resource;

B. The impact of harvesting on other fisheries; and

C. The department's ability to enforce and administer the management program.

§6171-C. Protection of public health

[Repealed]

§6172. Contaminated or polluted flats

1. Commissioner's powers. The commissioner may examine the coastal waters and the intertidal zone and adopt rules to close coastal waters or intertidal zone areas if the commissioner determines that any marine organisms are or may become contaminated or polluted. The commissioner may adopt or amend rules as the commissioner determines necessary, setting forth standards for closure of contaminated or polluted areas, giving consideration to established state water quality standards, the most recently adopted federal sanitation standards, or other state or federal public health standards, the most recent generally accepted research data and known sources of pollution in any area, in a manner to protect the public health and safety while allowing reasonable use of the State's marine organisms.

1-A. Federal waters. The commissioner may adopt rules establishing standards for closing waters under the jurisdiction of the Federal Government to the harvesting of a marine organism that the commissioner determines is or may become contaminated or polluted. The commissioner may, in accordance with standards adopted under this subsection, by rule close waters under the jurisdiction of the Federal Government to the harvesting of a marine organism when the commissioner determines the organism is or may become contaminated or polluted. Rules adopted pursuant to this subsection must be in conformance with applicable federal law and regulations. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

1-B. Advisory council. Notwithstanding section 6171-A, the advice and consent of the Marine Resources Advisory Council is not required prior to adoption of a rule under this section.

2. Emergency rules. The commissioner may adopt or amend rules under the emergency procedures, if immediate action is necessary to prevent the taking of polluted or contaminated marine organisms.

3. Repeal. The commissioner shall repeal a rule closing an area or waters when the marine organisms are no longer contaminated or polluted or when the

waters meet the sanitary standards set forth in any department rules. The commissioner may use emergency regulatory procedures to open areas or waters that have been closed under emergency procedures of this section.

4. Procedure. The procedures of subchapter II shall be used in adopting or amending rules authorized by this section.

5. Private property; right of entry. The commissioner's authority to enter privately owned land or buildings to carry out the purposes of this section is prescribed as follows:

A. The commissioner, upon presentation of credentials, may enter privately owned land at reasonable times with the owner's permission. If entry to the land is denied by the owner, the commissioner may seek a search warrant to inspect the land for sources of pollution under this section. A warrant may not be issued to search a domicile or residential building or ancillary structures; and

B. The commissioner may enter a privately owned domicile, building or structure only with the owner's permission and only in the presence of the owner or the owner's agent.

For the purposes of this subsection, "commissioner" means the Commissioner of Marine Resources or an employee of the department authorized by the commissioner to inspect coastal waters and intertidal zones for sources of pollution.

§6173. Confidentiality of statistics

1. Collection and reporting of statistics. The commissioner may, with the advice and consent of the advisory council, adopt rules to collect pertinent data with respect to the fisheries, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight, areas in which fishing was conducted, time of fishing, number of hauls and the estimated processing capacity of, and the actual processing capacity utilized by United States fish processors. The commissioner may collect statistics from any source and may require reporting of these statistics. The information collected by or reported to the commissioner is confidential and may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. The commissioner may share data collected under this section with the National Marine Fisheries Service or successor organization for research or fisheries management purposes, provided that federal laws and regulations protect the confidentiality of the shared data. The commissioner shall adopt rules to carry out the purposes of this section.

Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. Renewal of licenses. If a holder of a license issued under this Part fails to provide information required under this section, the commissioner may refuse to renew that holder's license until the holder complies with the requirements of this section.

§6173-A. Maine Working Waterfront Access Pilot Program; confidentiality for proprietary information

Except as provided in subsections 1 and 2, information obtained by the department under this section is a public record as provided by Title 1, chapter 13, subchapter 1.

1. Confidential information. Information submitted to the department under the provisions of the Maine Working Waterfront Access Protection Program established by section 6042 may be designated by the submittor as proprietary information and as being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, and the Attorney General. The designation must be clearly indicated on each page or other unit of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submittor and the general nature of the information. Upon a request for information the scope of which includes information so designated, the commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is proprietary information. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for all or any part of the designated information requested and within 15 days shall give written notice of the decision to the submittor and the person requesting the designated information. A person aggrieved by a decision of the department under this subsection may appeal to the Superior Court.

2. Release information. The commissioner may not release information designated under subsection 1 prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

3. Nonconfidential information. Any information that is collected by any other local, state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other

approval may not be designated or treated as confidential information under subsection 1.

4. Definition. For the purposes of this section, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available.

§6174. Rules as law; proof of rules; penalty

1. Rules as law. All rules adopted by the commissioner have the force of law.

2. Proof of rules. A certified copy of a rule is admissible in court to prove the rule and is prima facie evidence that the rule was properly adopted. A rule must be personally certified by the commissioner, deputy commissioner or Chief of the Bureau of Marine Patrol and must be accompanied by a signed statement that it was in force on the date of the alleged violation. The certified copy is admissible in evidence on the testimony of a marine patrol officer that the patrol officer received the certified rule after requesting it by telephone or otherwise from the department. No further foundation is necessary for the admission of the certified copy.

3. Penalty. Whoever violates a rule commits a civil violation for which a fine of not less than $100 for each violation may be adjudged.

§6175. Alternative bait

The commissioner may adopt rules to regulate the use of alternative bait in marine fisheries. For the purposes of this section, "alternative bait" means any bait that does not naturally originate from the ocean. Rules adopted pursuant to this section must be adopted in accordance with the procedures in subchapter 2 and are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6176. Commercial fishing safety

The commissioner may adopt commercial fishing safety rules recommended by the Commercial Fishing Safety Council. Rules authorized by this section must be adopted and amended in accordance with the procedures outlined in subchapter 2 and are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUBCHAPTER 2 - REGULATION PROCEDURE

§6191. Rulemaking

1. Procedures. In adopting or amending any rule, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act, Title 5, chapter 375, and the additional requirements of this subchapter.

2. Other requirements.

A. A public hearing may be held but is not required unless it is requested by an interested person

B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.

C. A rule, except a rule authorized under section 6172, may not be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.

§6192. Emergency rulemaking

1. Procedures. In an emergency adoption of a rule or amendment to a rule, the commissioner may modify the procedures required under the Maine Administrative Procedure Act and section 6191 in the following manner.

A. In an emergency adoption of a rule or amendment to a rule relating to the public health and safety, including rules authorized under sections 6171-A and 6172, prior public notice and hearing is not required.

B. In an emergency adoption of a rule or amendment to a rule authorized by section 6171 or 6171-A, the rule is effective immediately, as provided in subsection 4. A public hearing must be held in the affected area after the rule takes effect if requested of the commissioner in writing by 5 persons. The hearing must be held within 30 days of the commissioner receiving the written request. Notice of that hearing must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area. In an emergency adoption of a rule or amendment to a rule relating to gear conflicts, as authorized by section 6171-A, the commissioner shall decide within 5 business days after the hearing whether to continue or repeal an emergency closure. The commissioner's findings of fact must include the justification for the repeal or continuance of the closure, an analysis of the objections expressed at the public hearing and the date for the end of the

closure. Emergency rules under this paragraph may be repealed by the Marine Resources Advisory Council.

D. Within 48 hours after the adoption of an emergency rule or an emergency amendment to a rule authorized under section 6171-A, subsection 1, paragraph B or C, the commissioner shall hold a public meeting in the area affected by the emergency rule. A public meeting convened pursuant to this paragraph is not a public hearing for purposes of the Maine Administrative Procedure Act.

2. Advisory council. The advice and consent of the advisory council is not required prior to an emergency adoption of a rule or amendment to a rule.

3. Effective period. Any emergency rule is effective only for 90 days, or any lesser period of time specified in the rule. After the expiration of the emergency period, the rule may only be adopted as provided by section 6191. This subsection does not apply to emergency rules authorized under section 6172, which are effective until repealed.

4. Effective date. Except as provided in this subsection, emergency rules become effective immediately upon publication in a newspaper of general circulation in the area of the State affected, provided those rules are submitted to the Attorney General and filed with the Secretary of State as required under the Maine Administrative Procedure Act, Title 5, chapter 375, within the next business day following publication.

Notwithstanding any provisions of the Maine Administrative Procedure Act, an emergency rule authorized by section 6172, subsection 2 or 3 is effective immediately upon signature by the commissioner or the commissioner's authorized designee. Upon signing an emergency rule that closes or opens an area or waters to the taking of marine organisms, the commissioner or the commissioner's authorized designee shall give oral notice of that action to local governmental authorities and shall publish notice of a closure as soon as possible in a newspaper of general circulation in the area of the State affected. Marine patrol officers shall take action to prevent taking of shellfish from a closed area, including the embargo of contaminated shellfish under section 6856, subsection 6 and the arrest of any person violating the emergency rule.

5. Repeal. Emergency rules may be repealed in the same manner as they are adopted.

§6193. Exemption from requirement to supply copies

Emergency rules authorized under section 6172 are exempt from the requirement that they be supplied to persons who have requested them, as

required under Title 5, section 8056, subsection 1.

§6194. Shellfish area closure status notification

Notwithstanding Title 5, section 8053, the notification of rulemaking relating to the status of a shellfish area is not required to be published in a newspaper. The department shall place any information concerning the opening or closing of a shellfish area on the department's shellfish sanitation hotline and on the department's publicly accessible website. The commissioner may, in the case of an emergency as determined by the commissioner, advertise a change in the status of a shellfish area in the newspaper.

CHAPTER 609
ENFORCEMENT

§6201. Prosecution by district attorney

Each district attorney shall prosecute all violations of marine resources' laws occurring within his county when requested by the commissioner, a marine patrol officer or other person authorized to enforce any provision of marine resources' laws.

§6202. Jurisdiction

The District Court shall have concurrent original jurisdiction with the Superior Court in all prosecutions under the marine resources' laws.

§6203. Court procedure

The provisions of Titles 14 and 15 relating to court procedure shall apply in all prosecutions under the marine resources' laws.

§6204. General penalty

A violation of any provision of marine resources' laws is a Class D crime, unless another penalty has been expressly provided. Except as otherwise specifically provided, these crimes are strict liability crimes as defined in Title 17-A, section 34, subsection 4-A.

§6205. Certificate as evidence

A certificate of the commissioner, deputy commissioner or Chief of the Bureau of Marine Patrol stating what the records of the department show shall

be admissible as evidence in all courts as proof of the department records. A certificate stating that the records do not show that a person held a license shall be prima facie evidence that the person did not hold the license on the date specified in the certificate. The certified copy shall be admissible in evidence on the testimony of a officer that he received the certificate after requesting it by telephone or otherwise from the department. No further foundation shall be necessary for the admission of the certificate.

§6206. Fees and forms for libel proceedings

This section applies to the libel proceedings authorized in section 6207.

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

A. For the libel and order of notice, $5;

B. For the entry of the libel, $2;

C. For the hearing, $5;

D. For posting the notices, and the officer's return of service, $10;

E. For the delivery or restoration of the items, $10; and

F. For all the officer's travel in connection with the entire proceeding, as provided under Title 5, section 8.

2. Forms. These forms, with such changes as adapt them to the particular court, locality and circumstances of the case, shall be sufficient in law:

A. Form of libel:

FORM OF LIBEL

STATE OF MAINE

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

Your libelant, …… ..... of ..……....., Maine, a marine patrol officer, states that on the .....day of...……....., 20....., at..... in this county, he seized certain fish, shellfish, lobsters, or other marine species, or parts thereof, or certain equipment, described as follows:

.....

.....

That the items seized and described were either taken, bought, sold, shipped, transported, possessed or used in violation of a provision of the Maine Revised Statutes, Title 12, chapters 601 to 627, or in violation of a regulation authorized by those chapters. The specific violation of statute or regulation is.....……
.....……

Wherefore he prays for a decree of forfeiture of these items in accordance with the provisions of the Maine Revised Statutes, Title 12, section 6207.

Signed at .....……, in this county, this ..... day of ....., 20.....

(Signed) .....…….
Marine Patrol Officer

B. Form for order of notice:

ORDER OF NOTICE:

STATE OF MAINE

(L.S.)

County of .....…….. SS

To all persons interested in the libel of .....……..... 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, why the items described in the libel should not be declared forfeited to the State.

It is ordered that the hearing be held on ..... ……. 20....., at ..... (a.m., p.m.) at …….....in ....……..... of …….....(county).

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

Ordered this ..... day of ……..., 20..... by me ……..... Judge of the .....……..... Court.

……..
Judge

C. Form for officer's return of service:

OFFICER'S RETURN OF SERVICE:

STATE OF MAINE

..... SS ……....., 20……....

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 .....……....., as follows: one at .....……..., and one at ....., in accordance with said order of notice.

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

Posting notices and return of service, ... $10.00

Travel .....

_____

Total $.....

.....
Date

(Signed).....……..
Marine Patrol Officer

D. Form for order of forfeiture:

ORDER OF FORFEITURE:

STATE OF MAINE

(LS)
.....……..... SS

To ..……....., a marine patrol officer:

Whereas it appears that the libel and notice were properly made, which libel and order of notice are made a part of this order of forfeiture,

And whereas it appears that service was properly made,

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

And whereas one .....……..... of ……..... did appear and claim the .....……....by filing a written claim and after a full hearing it appeared to me that the claimant was not therefore entitled to any item claimed, judgment is rendered against the claimant and for the State. The state's costs are taxed as ....……..... 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 or filed a written claim;)

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

You are hereby ordered to turn the forfeited items over to the Commissioner of Marine Resources.

Dated, this ..... day of ..... A.D. 20 .....

(Signed) .....…….
Judge

§6207. Seizure and disposition of equipment and organisms

Any marine organism, that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of marine resources' laws, is contraband and is subject to forfeiture in accordance with this section and section 6206. All equipment and vehicles used or possessed in violation of any provision of marine resources' laws are contraband and are subject to forfeiture.

1. May be seized without warrant; marine patrol officer's duty to libel; contents of libel. Whenever a marine patrol officer seizes any organism or equipment and does not return them to the owner, 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 of the date and place of seizure;

C. A statement of the violation that causes the seizure; and

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 $75, unless there is reasonable doubt as to their ownership; and

B. All marine organisms of illegal size, shellfish taken from polluted areas, shellfish or shellfish products embargoed, condemned or ordered destroyed by the commissioner, 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, female lobsters which have had the eggs removed by other means than natural hatching, and any other marine organism, 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, 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; and

C. An order that a true copy of the libel and the order of the notice, attested by the marine patrol officer, 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.

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 them.

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

B. The officer shall hold any proceeds of a sale subject to the decision of the court as to their final disposition.

5. Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines. If no claimant appears at the time of the hearing on the libel, 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 marine resources' laws.

6. Duty of claimant to file written claim on or before hearing day; contents. Any person who claims title or the right to possession of any item listed in the libel shall file a written claim with the judge on or before the day set for hearing. The claim shall contain the following:

A. A statement of his claimed title or right and its foundation;

B. A statement of the specific items claimed;

C. A statement of the date and 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 marine resources' laws;

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

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

7. Claimant admitted as party; hearing. If any person makes 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 libelant 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 marine resources' laws, 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 libelant commanding him to deliver the 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 marine resources' laws.

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.

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 them.

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

§6208. Marine resources' citation form

1. Form. The commissioner shall designate the Uniform Summons and Complaint as the citation form to be used by the Bureau of Marine Patrol, except that the commissioner may permit the use of any citation forms

approved by the Chief Judge of the District Court before May 1, 1991 that are in current stock as of May 1, 1991 until those stocks are depleted.

2. Responsibility for issuance and disposition. Responsibility for issuance and disposition is as follows.

A. The commissioner is responsible for all marine resources' citation forms approved by the Chief Judge of the District Court prior to May 1, 1991. The Department of Public Safety is responsible for all Uniform Summons and Complaint forms issued by the Bureau of Marine Patrol. The commissioner or the commissioner's designee is responsible for the further issuance of Uniform Summons and Complaint books to individual law enforcement officers and the proper disposition of those books.

3. Illegal disposition; prohibited act. It is unlawful and official misconduct for any marine patrol officer or other public employee to dispose of an official citation form or Uniform Summons and Complaint, except in accordance with law and as provided for in any applicable official policy or procedure of the Bureau of Marine Patrol.

4. When a lawful complaint. If the citation provided for in this section or a Uniform Summons and Complaint is duly sworn to as required by law and otherwise legally sufficient in respect to the form of a complaint and charging an offense, it may be filed in a court having jurisdiction and constitutes a lawful complaint for the purpose of the commencement of any criminal prosecution or civil violation proceeding.

5. When a lawful summons. A citation as provided for in this section or a Uniform Summons and Complaint, when served upon a person by a law enforcement officer, acts as a summons to appear in court or to otherwise respond in accordance with law on or before the date specified in the summons. Any person who fails to appear in court as directed by the summons or to otherwise respond in accordance with law on or before the date specified in the summons commits a Class E crime. Upon that person's failure to appear or to respond in accordance with law, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear or to respond resulted from just cause.

6. Refusal to sign; prohibited act. Any person who refuses to sign a citation or Uniform Summons and Complaint after having been ordered to do so by a law enforcement officer commits a Class E crime.

§6209. Commissioner to keep records

The commissioner shall collect and maintain criminal history record

information pertinent to violations of chapters 601 to 627. He may collect and maintain other records and information pertinent to other functions of the department, including the enforcement of civil violations.

CHAPTER 615
GENERAL LICENSE PROVISIONS

§6301. General provisions

1. Resident license. Any individual who has been domiciled in Maine for the 6 months preceding the date of application is eligible for a resident license. A corporation is eligible for a resident license if it has been created and exists under the laws of Maine and it has existed in Maine during the 6 months preceding the date of application. A firm or partnership is eligible if all of its officers or partners have been domiciled in Maine for the 6 months preceding the date of application.

For the purposes of this chapter, a resident is a person who:

A. If registered to vote, is registered in Maine;

B. If licensed to drive a motor vehicle, has made application for a Maine motor vehicle operator's license;

C. If the owner of one or more motor vehicles located within the State, has registered at least one of the motor vehicles in Maine; and

D. If required to file a Maine income tax return on the previous April 15th, filed a Maine income tax return.

2. Expiration. A license or certificate issued by the commissioner expires on December 31st of the year in which it is issued, except that:

A. A depuration certificate issued under section 6856 expires on April 30th of each year;

B. A shellfish license issued under section 6601 expires on April 30th of each year;

C. A marine worm digger's license issued under section 6751 expires on April 30th of each year;

D. A shellfish sanitation certificate issued under section 6856 expires on May 31st of each year;

E. A marine worm dealer's license issued under section 6853 expires on March 31st of each year;

F. A marine worm dealer's supplemental license issued under section 6853 expires on March 31st of each year;

G. A retail seafood license issued under section 6852 expires on March 31st of each year;

H. A wholesale seafood license with a lobster permit issued under section 6851 expires on March 31st of each year;

I. A wholesale seafood license issued under section 6851 expires on March 31st of each year;

J. A wholesale seafood license with a sea urchin buyer's permit issued under section 6851 expires on March 31st of each year;

K. A wholesale seafood license with a sea urchin processor's permit issued under section 6851 expires on March 31st of each year;

L. A wholesale seafood supplemental license issued under section 6851 expires on March 31st of each year;

M. A shellfish transportation license issued under section 6855 expires on March 31st of each year;

N. A shellfish transportation supplemental license issued under section 6855 expires on March 31st of each year;

O. A lobster meat permit issued under section 6857 expires on March 31st of each year;

P. A lobster transportation license issued under section 6854 expires on March 31st of each year;

Q. A lobster transportation supplemental license issued under section 6854 expires on March 31st of each year;

R. A wholesale seafood license with a shrimp permit issued under section 6851 expires on March 31st of each year;

S. An enhanced retail seafood license issued under section 6852-A expires on March 31st of each year; [as enacted by PL 2009, c. 561]

(Paragraph S as enacted by PL 2009, c. 523, §3 is REALLOCATED to Title 12, Section 6301, Subsection 2, Paragraph V)

T. A seaweed buyer's license issued under section 6803-A expires on March 31st of each year; and

U. A limited wholesale shellfish harvester's license issued under section 6851A expires on March 31st of each year.

V. (REALLOCATED from T. 12, §6301, sub-§2, ¶S) A lobster processor license issued under section 6851B expires on March 31st of each year.

3. Nontransferable. A license or certificate shall not be transferable.

4. Supplemental license. A supplemental license may only be issued for an establishment or vehicle which is owned, leased or rented by the license holder.

5. Information. When application information concerning any person, establishment or vehicle named in a license or certificate changes, the holder shall immediately notify the commissioner in writing within 3 business days or the license or certificate shall become void.

§6302. General exceptions

Notwithstanding any licensing provision, a license or certificate is not required for a person to:

1. Personal use. Possess or transport any marine organism that has been lawfully acquired and is for personal use. A receipt or bill of sale is required for lawful acquisition;

2. Common carrier. Carry any marine organism by a common carrier; or

3. Hermetically sealed containers. Buy, sell, ship or transport within or beyond the state limits or possess any marine organism that is in a hermetically sealed container.

§6302-A. Taking of marine organisms by Passamaquoddy tribal members and members of the Penobscot Nation

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe or Penobscot Nation who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6701, 6702, 6703, 6731, 6745, 6746,

6748, 6748-A, 6748-D, 6751, 6803 or 6804 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe or nation to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe or Penobscot Nation issued a tribal license pursuant to this subsection to conduct activities is subject to all laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe or nation:

A. May utilize lobster traps tagged with trap tags issued by the tribe or nation in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe or nation is not required to pay trap tag fees under section 6431-B if the tribe or nation issues that member trap tags;

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe or nation in a manner consistent with tags issued pursuant to section 6505-B. A member of the tribe or nation is not required to pay elver fishing gear fees under section 6505-B if the tribe or nation issues that member elver fishing gear tags; and

C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671.

2. Tribal exemption; sustenance or ceremonial tribal use. Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe or Penobscot Nation who is a resident of the State may at any time take, possess, transport and distribute:

A. Any marine organism, except lobster, for sustenance use if the tribal member holds a valid sustenance fishing license issued by the tribe or nation. A sustenance fishing license holder who fishes for sea urchins may not harvest sea urchins out of season;

B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe or nation. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe or nation in a manner consistent with trap tags issued pursuant to section 6431-B; however, a sustenance lobster license holder may not harvest lobsters for sustenance use with more than 25 traps; and

C. Any marine organism for noncommercial use in a tribal ceremony within the State, if the member holds a valid ceremonial tribal permit issued to the tribal member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and council at either Passamaquoddy reservation or by the Penobscot Reservation Tribal Council.

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within the Passamaquoddy reservation at Pleasant Point or Indian Township, the Penobscot Indian Reservation or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms. A member of the Passamaquoddy Tribe or Penobscot Nation who takes a marine organism under a license or permit issued pursuant to this subsection must comply with all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism, except that a state law or rule that sets a season for the harvesting of a marine organism does not apply to a member of the Passamaquoddy Tribe or Penobscot Nation who takes a marine organism for sustenance use or for noncommercial use in a tribal ceremony. A member of the Passamaquoddy Tribe or Penobscot Nation issued a license or permit under this subsection is exempt from paying elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe or Penobscot Nation who fishes for or takes lobster under a license or permit issued pursuant to this subsection must comply with the closed periods under section 6440.

3. Lobster, sea urchin, scallop and elver licenses; limitations. Pursuant to subsection 1:

A. The Passamaquoddy Tribe and Penobscot Nation may each issue up to 24 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

B. The Passamaquoddy Tribe may not issue more than 24 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in accordance with section 6749-P;

C. The commissioner shall adopt rules authorizing the Penobscot Nation to issue commercial sea urchin licenses if the commissioner determines that sea urchin resources are sufficient to permit the issuance of new licenses. The commissioner may not authorize the Penobscot Nation to issue more than 24 commercial sea urchin licenses in any calendar year;

D. The Penobscot Nation may not issue more than 20 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses for the taking of scallops if the commissioner determines that scallop

resources are sufficient to permit the issuance of new licenses; and

E. The Penobscot Nation may not issue more than 8 commercial licenses for the taking of elvers in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses for the taking of elvers if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses.

The Passamaquoddy Tribe, Penobscot Nation and Department of Marine Resources shall report on the status of the sea urchin, scallop and elver fisheries to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of each even-numbered year.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Sea urchin and scallop handfishing and tender licenses; limitations. The Passamaquoddy Tribe or Penobscot Nation may not issue a license or permit pursuant to subsection 1 or 2:

A. For the harvesting of sea urchins or scallops by hand unless the license or permit applicant meets the diver competency requirements of section 6531; and

B. For the tending of a person who fishes for or takes scallops or sea urchins by diving unless the applicant meets the safety training requirements of section 6533.

5. Notification. Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe or Penobscot Nation unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or a tribal official in accordance with section 6027.

6. License suspension. If a member of the Passamaquoddy Tribe or Penobscot Nation issued a license or permit under this section is convicted or adjudicated of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe or Penobscot Nation issued a license or permit under this section is convicted or adjudicated of a violation for which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.

7. Enforcement. A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe or Penobscot Nation who is issued a license or permit pursuant to this section must be enforced pursuant to

chapter 609. A member of the Passamaquoddy Tribe or Penobscot Nation who is issued a license or permit pursuant to this section must possess and exhibit that license or permit in accordance with section 6305 and must comply with the provisions of section 6306 regarding inspections and searches by marine patrol officers for violations related to licensed or permitted activities.

8. Resident of the State defined. For the purposes of this section, "resident of the State" means a member of the Passamaquoddy Tribe or Penobscot Nation who is eligible to obtain a state resident license under section 6301, subsection 1.

9. Political subdivision. Nothing in this section may be construed to indicate that the Passamaquoddy Tribe or the Penobscot Nation is a political subdivision of the State.

§6303. Application

1. Forms. Application shall be made on forms furnished by the commissioner.

2. Misrepresentation or error. Any license issued through misrepresentation or misstatement shall be void. Any license issued through error shall be void after notice to the holder.

3. Satisfactory answers. Failure or refusal to satisfactorily answer any question on or about the application shall be a basis for denying the application.

§6304. Fees

1. [Repealed]

2. Duplication. Licenses that have been lost or destroyed must be reissued at a cost of $6.

§6305. Possession of license

1. Exhibit on demand. When any person is engaged in an activity which is licensed under marine resources' laws, he shall, on the request of a marine patrol officer or other authorized person, exhibit his license.

2. Prima facie evidence. A failure to exhibit a license within a reasonable time, when requested, shall be prima facie evidence that the person is not licensed.

3. Crew members. If crew members are included in the license for any

operation, any bona fide crew member may carry out that operation if the license is in his possession.

§6306. Consent to inspection; violation

1. Consent to inspection. Any person who signs an application for a license or aquaculture lease or receives a license or aquaculture lease under this Part has a duty to submit to inspection and search for violations related to the licensed activities by a marine patrol officer under the following conditions.

A. Watercraft or vehicles and the equipment located on watercraft or vehicles used primarily in a trade or business requiring a license or aquaculture lease under this Part may be searched or inspected at any time.

B. Any other location where activities subject to this Part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in paragraph B may be inspected at any time if a marine patrol officer has a reasonable suspicion of a violation of this Part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

2. Seizure of evidence. Any person who signs an application for a license or aquaculture lease or receives a license or aquaculture lease under this Part has a duty to permit seizure of evidence of a violation of marine resources laws found during an inspection or search.

3. Refusal. Refusal to permit inspection or seizure is a basis for suspension of any or all licenses under this chapter or revocation of aquaculture leases.

§6307. Misstatement or misrepresentation

It shall be unlawful to intentionally or knowingly make a misstatement or misrepresentation on an application for a license or certificate.

§6308. Compliance with support orders; license qualifications and conditions

In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by the various acts of the department, applicants for licensure or registration, licensees renewing their licenses and existing licensees must also comply with the requirements of Title 19-A, section 2201.

§6309. Licensees not in compliance with a court order of support; enforcement of parental support obligations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Compliance with a support order" means that the support obligor has obtained or maintained health insurance coverage if required by a support order and is:

(1) No more than 60 days in arrears in making any of the following payments:

(a) Payments in full for current support;

(b) Periodic payments on a support arrearage pursuant to a written agreement with the Department of Health and Human Services; and

(c) Periodic payments as set forth in a support order; and

(2) No more than 30 days in arrears in making payments as described in subparagraph (1) if the obligor has been in arrears for more than 30 days in making payments as described in subparagraph (1) at least 2 times within the past 24 months.

B. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

2. Noncompliance with a support order. An applicant for the issuance or renewal of a license or an existing licensee regulated by the department under this subpart who is not in compliance with a support order is subject to the requirements of Title 19-A, section 2201.

§6310. Appeal of license denial

1. Appeal of license denial. A person who is denied a Class I, Class II or Class III lobster and crab fishing license because that person does not meet the eligibility requirements of section 6421, subsection 5, paragraph A; a person who is denied a handfishing sea urchin license, a sea urchin dragging license or

a sea urchin hand-raking and trapping license because that person does not meet the eligibility requirements of section 6749-O, subsection 2-A; or a person who is denied a hand fishing scallop license or a scallop dragging license because that person does not meet the eligibility requirements of section 6706, subsection 2 may appeal to the commissioner under this section for a review of that license denial.

2. Criteria for license issuance on appeal. The commissioner may issue a license on appeal only if the criteria in this subsection are met.

A. A Class I, Class II or Class III lobster and crab fishing license may be issued to a person on appeal only if:

(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in 1997, 1998 or 1999, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person may not request an appeal under this subparagraph after December 31, 2001;

(2) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for a license in licensing year 2000 or in subsequent years, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition;

(3) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the lobster fishery and meeting the eligibility requirements for a license, and the person documents that the person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service; or

(4) That person was diagnosed with muscular dystrophy between 1983 and 1988 and that person harvested lobsters while in possession of a Class I, Class II or Class III lobster and crab fishing license within one year prior to the diagnosis but has not held a Class I, Class II or Class III lobster and crab fishing license since the year following that person's diagnosis with the disease. The person must provide the commissioner with documentation from a physician of the diagnosis of muscular dystrophy and a statement from a physician that the person is currently physically capable of safely conducting the activities involved with the commercial harvest of lobsters. A person that receives a Class I, Class II or Class III lobster and crab fishing license pursuant to this subparagraph is limited to 300 trap tags and those trap tags expire when the person is no longer eligible to hold the license and may not be counted in an exit ration system for a lobster management zone. This subparagraph is repealed October 1, 2010.

B. A handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license may be issued to a person on appeal only if:

(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for that license, and the person documents that the person harvested sea urchins while in possession of the same license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition; or

(2) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the urchin fishery and meeting the eligibility requirements for that license and the person documents that the person harvested sea urchins while in possession of the same license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service.

For the purposes of this subsection, "family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

C. A hand fishing scallop license or a scallop dragging license may be issued to a person on appeal only if:

(1) A substantial illness or medical condition on the part of the person or a family member prevented that person from meeting the eligibility requirements for that license, and the person documents that the person harvested scallops while in possession of the same license within one year prior to the onset of the illness or medical condition. The person shall provide the commissioner with documentation from a physician describing the illness or other medical condition. A person must request an appeal under this subparagraph within one year of the onset of the illness or medical condition; or

(2) Service in the United States Armed Forces or the United States Coast Guard precluded that person from participating in the scallop fishery and meeting the eligibility requirements for that license, and the person documents that the person harvested scallops while in possession of the same license within one year prior to entering the service. The person may not have served for more than 6 consecutive years since the most recent year in which the person held a license, and the person must have been honorably discharged from service. A person must request an appeal under this subparagraph within one year of discharge from service.

3. Appeals process. A person appealing a license denial under this section must request the appeal in writing. The commissioner shall hold a hearing on the appeal if a hearing is requested in writing within 10 days of the initial request for appeal. If a hearing is requested, it must be held within 30 days of the request unless a longer period is mutually agreed to in writing, and it must be conducted in the Augusta area.

A hearing held under this subsection is informal. At the hearing, the appellant may present any evidence concerning the criteria listed in subsection 2 that might justify issuing a license to the person, and the commissioner may request any additional information the commissioner considers necessary. Any medical information provided as part of the appeal is a confidential record for the purposes of Title 1, section 402, subsection 3, paragraph A.

4. Issuance on appeal. Issuance of a license on appeal is at the discretion of the commissioner, except that a license may not be issued unless the criteria in subsection 2 are met. Decisions of the commissioner must be in writing.

§6311. Active duty military members

1. Definition. As used in this section, unless the context otherwise indicates, “active duty for a period of more than 30 days” has the same meaning

as in 10 United States Code, Section 101(d)(2).

2. Partial waiver of lobster apprentice requirements. Notwithstanding Title 37-B, section 390-A or any other provision of this Part, the commissioner shall waive a portion of the number of days and hours of practical lobster fishing experience required under the apprentice program established pursuant to section 6422, subsection 1 for a person who is a member of the National Guard or the Reserves of the United States Armed Forces if:

A. The person was under an order to active duty for a period of more than 30 days;

B. The period of active duty conflicts with the requirements of the apprentice program; and

C. The person was licensed pursuant to section 6421, subsection 1, paragraphs D and E.

This waiver does not apply to the 2-year minimum required under section 6422, subsection 2.

3. Waiver of licensing requirements. Notwithstanding Title 37-B, section 390-A or any other provision of this Part, the commissioner shall waive the licensing requirements under section 6421, subsection 5, paragraph A; section 6505-A, subsection 2, paragraph C; and section 6749-O, subsection 2-A for a person who is a member of the National Guard or the Reserves of the United States Armed Forces and was under an order to active duty for a period of more than 30 days. This subsection does not apply to a person who did not possess a license pursuant to section 6421, 6505-A, 6748, 6748-D or 6749 or in the calendar year prior to that person's being called to active duty.

4. Limited application. This section applies only if the member's service is in support of:

A. An operational mission for which members of the Reserves of the United States Armed Forces have been ordered to active duty without volunteering for that mission; or

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress.

§6312. Saltwater recreational fishing registry

1. Definitions. As used in this section, unless the context otherwise

indicates, the following terms have the following meanings.

A. [Repealed]

B. [Repealed]

C. "Registry" means the registry for persons engaged in saltwater recreational fishing established under subsection 2.

2. Saltwater recreational fishing registry established. The commissioner shall administer and maintain a registry of persons who engage in saltwater recreational fishing in the coastal waters of the State. The registry must at a minimum contain the name, address, date of birth and telephone number for each person registered. Only an individual may register.

3. Registration required. Unless the registry is suspended by rule under subsection 16, a person may not engage in saltwater recreational fishing in the coastal waters of the State or land or possess fish taken from the coastal waters of the State without registering pursuant to this section except that the following persons are exempt from this prohibition:

A. A person under 16 years of age;

B. A passenger on board a vessel captained by an individual who possesses a valid recreational fishing operator's license pursuant to subsection 5;

C. A person renting a smelt fishing camp from an operator that possesses a valid recreational fishing operator's license pursuant to subsection 5;

D. [Repealed]

E. [Repealed]

F. [Repealed]

G. A resident fishing on July 4th, Labor Day weekend or Memorial Day weekend;

H. A person who has employed the guiding services of an individual who possesses a current guide license for tidewater fishing as provided by rule pursuant to section 12853 and a valid recreational fishing operator's license pursuant to subsection 5;

I. A person fishing from a dock, pier or wharf that is owned by an

individual who possesses a valid recreational fishing operator's license pursuant to subsection 5;

J. A person who holds and presents upon demand a current and valid registration or license to engage in saltwater recreational fishing by a state that has been designated as an exempted state under 50 Code of Federal Regulations, Section 600.1415;

K. A person registered on the National Saltwater Angler Registry through the United States Department of Commerce, National Oceanic and Atmospheric Administration;

L. A member of the Passamaquoddy Tribe, if the Passamaquoddy Tribe certifies to the commissioner that it will collect the registry data required under subsection 2 from tribal members who engage in saltwater recreational fishing and report the data to the commissioner;

M. A member of the Penobscot Nation, if the Penobscot Nation certifies to the commissioner that it will collect the registry data required under subsection 2 from members of the Penobscot Nation who engage in saltwater recreational fishing and report the data to the commissioner;

N. A member of the Houlton Band of Maliseet Indians, if the Houlton Band of Maliseet Indians certifies to the commissioner that it will collect the registry data required under subsection 2 from band members who engage in saltwater recreational fishing and report the data to the commissioner; and

O. A member of the Aroostook Band of Micmacs, if the Aroostook Band of Micmacs certifies to the commissioner that it will collect the registry data required under subsection 2 from band members who engage in saltwater recreational fishing and report the data to the commissioner.

Registration does not authorize a person to sell fish taken pursuant to the registry.

A person who has indicated on a valid freshwater fishing license issued under Part 13 whether or not the person engaged in saltwater recreational fishing during the prior year is not required to register under this subsection. The Department of Inland Fisheries and Wildlife shall provide registry data from persons exempted under this subsection regarding saltwater recreational fishing by these persons to the department at a time and manner as determined by the department.

A person who has indicated on a valid commercial fishing license issued under this Part whether or not the person engaged in saltwater recreational

fishing during the prior year is not required to register under this subsection. The department shall collect data regarding saltwater recreational fishing by these persons exempted under this subsection.

4. [Repealed]

5. Recreational fishing operator's license. The following persons eligible to hold a recreational fishing operator's license issued by the commissioner:

A. A captain of a vessel licensed to carry passengers for hire for saltwater recreational fishing;

B. A person operating a business that rents smelt fishing camps for saltwater recreational smelt fishing;

C. A person who owns a private dock, pier or wharf and makes that wharf available to customers for the purpose of recreational fishing as part of a commercial enterprise; and

D. An individual who possesses a current guide license for tidewater fishing as provided by rule pursuant to section 12853.

A person who holds a recreational fishing operator's license shall collect data from persons who engage in saltwater recreational fishing and report the data to the commissioner as specified by the commissioner by rule.

There is no fee for a recreational fishing operator's license.

6. [Repealed]

7. [Repealed]

8. Penalty. A person who violates this section commits a civil violation for which a fine of not less than $100 may be adjudged.

9. Suspension. A person on the registry is subject to the applicable suspension provisions under chapter 617.

10. Collaboration on outreach efforts. The commissioner shall work with fishing and hunting groups and interested parties in the commissioner's efforts to notify and educate the public about the registry.

11. Report. The commissioner shall report registry information to the United States Department of Commerce, National Oceanic and Atmospheric

Administration in a form and manner as required by the National Oceanic and Atmospheric Administration.

12. Rules. The commissioner may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

13. Registration expiration. A registration issued under this section is valid until December 31st of the year in which it was issued. If applicable federal requirements allow, the commissioner may by rule extend the period for which a registration is valid.

14. Registry procedures. A person may register pursuant to this section through an agent appointed by the Department of Inland Fisheries and Wildlife to issue licenses under section 12501, through a publicly accessible online electronic system for registration operated by the department or at the department through a department employee.

15. Agent fees. A fee may not be charged for registering under this section. A person registering through an agent under section 12501 may be charged an agent fee of $2 if the only transaction conducted by that person is registering on the registry. A person registering on a publicly accessible online electronic system for registration may be charged an agent fee of $1. A person registering at the department with a department employee may be charged an agent fee of $1.

16. Termination of registry requirement. If the Marine Recreational Information Program administered by the United States Department of Commerce, National Oceanic and Atmospheric Administration does not receive funding to conduct surveys and perform data analysis, the department by rule shall suspend the registry. If the department suspends the registry, a person is not required to register under this section in order to engage in saltwater recreational fishing.

CHAPTER 617
LICENSE SUSPENSION

SUBCHAPTER 1 - SUSPENSION PROCEEDINGS

Article 1 Suspension on Conviction

§6351. Suspension based on criminal conviction or civil adjudication

1. Grounds for suspension. Any of the following is grounds for suspension of a license, the right to obtain a license or a certificate issued under

this Part:

A. A conviction for a violation of a marine resources law;

B. A conviction for a violation of Title 17-A, chapter 31;

B-1. A conviction for a violation of Title 17-A, chapter 15;

C. A conviction for a criminal offense against a marine patrol officer while that officer is engaged in the performance of official duty;

D. A civil adjudication of having violated a marine resources law; or

E. A suspension authorized under section 6409 or 6410.

2. Suspension procedure. In order to suspend a license or certificate because of a conviction or adjudication, the commissioner shall follow the procedures of this article.

3. Denial of license. An applicant for any license or certificate as set out in this chapter may be denied a license or certificate in the same manner as provided for in this section.

§6352. Notice

The commissioner shall give notice of a suspension or a revocation and may give an opportunity for a hearing to the holder.

1. Time of notice. Notice must be given within 60 days of the conviction or adjudication pursuant to section 6351 and must be mailed to the last known address as provided in the department's marine resources licensing and enforcement database or be served in hand.

2. Nature of notice. The notice must contain:

A. A statement of the conviction or adjudication pursuant to section 6351;

B. The reason and statutory grounds for the suspension or revocation;

C. The effective date of the suspension or revocation; and

D. The opportunity for a hearing, should one exist.

4. Receipt date. The notice is deemed received 3 days after the mailing.

5. Effective date of suspension or revocation. A suspension or revoca-

tion is effective on the date specified by the commissioner on the notice, which may not be less than 10 days after the mailing of the notice of suspension or revocation by the commissioner. [See P.L. 2009, C. 151]

§6353. Hearing

1. Request for hearing; place of hearing. A hearing must be requested in writing within 10 days from the effective date of the suspension. If requested, it must be held within 10 days of the request unless a longer period of time is mutually agreed to in writing. The hearing must be conducted in the Augusta area.

2. Evidence. At the hearing, the holder or the department may present any evidence concerning the violation.

3. Decisions. Decisions of the commissioner must be in writing. The commissioner may reinstate the license or certificate or reduce the suspension period if the commissioner is satisfied that to do so would be in the best interests of justice, except that the commissioner may not reduce suspensions set by statute.

Article 2 Suspension without Conviction

§6371. Administrative suspension

1. Suspension for refusal to allow inspection. Refusal to allow a shellfish inspection under section 6852-A or 6856 is grounds for suspension of any licenses or certificates issued under marine resources laws. In order to suspend a license or certificate under this subsection, the commissioner shall follow the procedures of section 6372.

2. Suspension for refusal to allow a shellfish inspection by a department shellfish inspector. Refusal to allow a shellfish inspection under section 6852-A or 6856 is grounds for suspension of any licenses or certificates issued under marine resources laws. In order to suspend a license or certificate under this subsection, the commissioner shall follow the procedures of section 6372.

3. Suspension for violations. Except as provided in subsections 1 and 2, violation of any section of marine resources laws or rules adopted under this Part is grounds for suspension under section 6374 of any licenses or certificates issued under this Part.

§6372. Procedure for suspending on refusal to allow inspection

Notwithstanding the Maine Administrative Procedure Act, the procedure for suspending a license for refusal to allow inspection or seizure under section 6306 or refusal to allow inspection under section 6852-A or section 6856 is as follows.

1. Initiation and suspension. A marine patrol officer may deliver to the commissioner a written statement under oath that a person has refused to allow inspection or seizure under section 6306. The commissioner, on receipt of the affidavit, shall immediately notify the person in writing that his license has been suspended.

2. Notice. The notice shall state that there is an opportunity for a hearing, if it is requested in writing within 10 days of the notice.

3. Hearing. Any hearing shall be held within 3 business days after receipt of the request for the hearing. A hearing may be held more than 3 business days after the request if the request states in writing that the delay was voluntarily requested by the license holder. The hearing shall be held in accordance with the following provisions of the Maine Administrative Procedure Act, Title 5, chapter 375:

A. Evidence, Title 5, section 9057, except the issues are limited to whether the licensee had a license and whether the licensee refused inspection;

B. Notice, Title 5, section 9058;

C. Record, Title 5, section 9059;

D. Decisions, Title 5, section 9061, except the decision shall be made not more than one business day after completion of the hearing; and

E. Presiding officer, Title 5, section 9062, subsections 3 and 4, except the presiding officer shall be the commissioner or deputy commissioner.

4. Stay. Upon written request, the commissioner may delay the suspension pending the determination of the original hearing or the appeal, if he finds that suspension will cause undue hardship.

5. Appeal. The decision of the commissioner may be appealed to the Superior Court, if it is filed with the court within 30 days of the decision.

§6373. Procedure for suspending for violation of a shellfish provision

[Repealed]

§6374. Procedure for suspending without criminal conviction or civil adjudication.

Except as provided in section 6371, subsections 1 and 2, the procedure for suspending a license or certificate for a violation of marine resources law without a criminal conviction or civil adjudication is governed by this section.

1. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of marine resources law has been committed, the commissioner shall immediately examine the affidavit and determine if a suspension is necessary. If the commissioner determines based on a preponderance of the evidence that a suspension is necessary, the commissioner shall immediately notify in writing the person who violated the law. The notice must state that there is an opportunity for a hearing, if the person requests the hearing in writing within 10 days of the notice.

2. Hearing. A hearing requested under subsection 1 must be held within 10 business days after receipt by the commissioner of a request for hearing except that a hearing may be held more than 10 business days after the request if the delay is requested by the person requesting the hearing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license and whether that person committed a violation of marine resources law; and

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing.

3. Finding of marine resources violation and suspension. If the presiding officer of the hearing under subsection 2 finds that a violation of marine resources law has been committed, the presiding officer shall immediately notify the commissioner of the finding, and the commissioner may suspend the license or certificate of the person requesting the hearing. The length of the suspension of the license or certificate may not exceed:

A. One year from the date of a first finding of a violation under this subsection;

B. Two years from the date of a 2nd finding of a violation under this subsection; or

C. Three years from the date of a 3rd or subsequent finding of a violation under this subsection.

4. Prohibition against multiple suspensions. If the commissioner suspends a license or certificate under this section, the commissioner may not suspend the license or certificate because of a criminal conviction or civil adjudication for the same violation.

5. Appeal. A decision of the commissioner to suspend a license or certificate pursuant to this section may be appealed to the Superior Court if it is filed with the court within 30 days of the decision.

6. Request for hearing on suspension length; place of hearing. The license or certificate holder may request a hearing regarding the length of suspension under this section. A hearing must be requested in writing within 10 days from the effective date of the suspension. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to in writing. The hearing must be conducted in the Augusta area.

SUBCHAPTER 2 - SUSPENSION PENALTIES

§6401. Suspension based on criminal conviction

1. Violation of marine resources laws. The commissioner may suspend any licenses or certificates issued under this Part if a person is convicted or adjudicated in court of violating any section of the marine resources laws.

2. Length of suspension. The suspension of a license or certificate may not exceed:

A. One year from the date of the first conviction or adjudication;

B. Two years from the date of the 2nd conviction or adjudication; and

C. Three years from the date of the 3rd or subsequent conviction or adjudication.

3. Applicable standards. Any conviction or adjudication occurring more than 7 years before the last conviction or adjudication may not be counted in determining lengths of suspension.

§6402. Suspension based on adjudication of molesting

The commissioner shall suspend the lobster and crab fishing license of a license holder or the nonresident lobster and crab landing permit of a permit

holder adjudicated in court of violating section 6434. This suspension is for 3 years from the date of adjudication. For a 3rd or subsequent adjudication, the commissioner may permanently revoke the license holder's license.

1. Adjudications for cutting lobster trap lines. A person adjudicated under section 6434 of molesting lobster gear by cutting a lobster trap line shall, upon making full payment as ordered by the court under section 6434, subsection 4, paragraph A, provide the commissioner with proof of that payment. If the commissioner does not receive that proof within 3 years after the date of adjudication, the commissioner shall continue that license suspension until such time as that proof is received.

§6402-A. Suspension based on conviction of dragging in cable area

For any person convicted in court of violating section 6954 or 6954-A, the commissioner shall suspend the license authorizing the activity in which the person was engaged at the time of the violation. The suspension shall be for one year from the date of the conviction.

§6402-B. Suspension based on 2 or more convictions of possessing illegal lobsters

Notwithstanding section 6401, subsection 2, the commissioner shall suspend the lobster and crab fishing license of any license holder or the nonresident lobster and crab landing permit of a permit holder convicted of a 2nd or subsequent offense of possessing a lobster in violation of section 6431, 6436, 6438-A or 6952-A if the conviction of the 2nd or subsequent offense involved possession of 5 or more illegal lobsters. If the 2nd offense occurs on the same day as the first offense, the commissioner may waive the mandatory suspension.

1. Second offense. For a 2nd conviction the commissioner shall suspend the license for at least one year from the date of conviction and may suspend the license for up to 3 years.

2. Third or subsequent offense. For a 3rd or subsequent conviction, the commissioner shall suspend the license for 3 years from the date of conviction and may permanently revoke the license holder's license.

§6402-C. Suspension based on 2 or more convictions of dragging within the prohibited area surrounding aquaculture operations

For any person convicted of a 2nd or subsequent offense of section 6957, subsection 1, the commissioner shall suspend the license authorizing the

activity in which the person was engaged at the time of the violation. The suspension is for 5 years from the date of conviction.

§6403. Suspension based on refusing inspection or seizure

The commissioner may suspend any and all licenses issued under this Part if the license holder refuses to allow inspection or seizure under section 6306. This suspension may not exceed one year.

§6404. Suspension based on conviction of scrubbing lobsters

The commissioner shall suspend the lobster and crab fishing license, wholesale seafood license and the commercial fishing license of any license holder or the nonresident lobster and crab landing permit of a permit holder convicted in court of violating section 6438-A. The suspension must be for one year from the date of conviction.

§6404-A. Suspension based on adjudication of molesting elver gear

The commissioner shall suspend the elver fishing license of any license holder adjudicated in court of violating section 6575-D. This suspension must be for one year from the date of adjudication.

§6404-B. Suspension based on conviction of fishing on closed days for sea urchin fishing

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of violating section 6749 or any rule adopted under section 6749. The suspension must be for one year from the date of conviction.

§6404-C. Suspension based on conviction of sea urchin fishing in zone for which person is not licensed

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of violating section 6749-P. The suspension must be for one year from the date of conviction.

§6404-D. Suspension based on conviction of sea urchin fishing in a closed area

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of violating section 6749-N. The suspension must be for one year from the date of conviction.

§6404-E. Suspension based on 3 or more convictions of possessing small sea urchins

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of a 3rd or subsequent offense of possessing sea urchins smaller than the minimum size established pursuant to section 6749-A. The suspension must be for at least one year from the date of conviction and may be up to 3 years. Any conviction occurring more than 5 years before the last conviction may not be counted in determining the suspension.

§6404-F. Suspension based on 3 or more convictions of possessing oversize sea urchins

The commissioner shall suspend the sea urchin fishing license of any license holder convicted in court of a 3rd or subsequent offense of possessing sea urchins larger than the maximum size established pursuant to rule. The suspension must be for at least one year but not more than 3 years from the date of conviction. Any conviction occurring more than 5 years before the last conviction may not be counted in determining the suspension.

§6404-G. Suspension based on 2 or more convictions of scallop fishing in a conservation area

The commissioner shall suspend the license authorizing the activity in which the person was engaged at the time of the violation for any person adjudicated of a 2nd or subsequent violation of section 6626. The suspension must be for one year from the date of adjudication.

§6405. Trap removal

Any person whose lobster and crab fishing license has been suspended shall, within 5 days of suspension, remove from the water all of his lobster traps or cars, except cars numbered with another valid license number. The commissioner may extend the time period if adverse weather conditions or other circumstances beyond the control of the license holder prevent removal within that time period.

During the removal period, the license holder shall not sell, lease or otherwise transfer ownership of the holder's lobster traps or cars or give written permission to another person to raise, lift or transfer those traps or cars. The commissioner may allow another licensed person, subject to any conditions or limitations, to assist the license holder in removing his traps or cars, if that assistance is required because of personal hardship or a large number of traps.

§6406. Engaging in activities while under suspension

1. Prohibited acts. It is unlawful for any person whose license or right to obtain a license is under suspension to:

A. Engage in any licensed activity;

B. Give another person permission to raise, lift, transfer or possess lobster traps or cars marked with the suspended person's lobster and crab fishing license number or lobster traps with buoys that carry the color design on file with the suspended license;

C. Assist a holder of a Class II lobster and crab fishing license as a crew member; or

D. [Repealed]

E. For any violation occurring on or after the effective date of this paragraph, assist any license holder as a crew member in any activity authorized by the suspended license.

2. Penalty. Violation of this section is a Class D crime, except that the court shall impose a fine of not less than $500 nor more than $2,000.

§6407. Conviction; juvenile offense; failure to appear

Under this chapter:

1. Conviction. A judgment of guilt shall be considered a conviction during the pendency of appeal;

2. Juvenile offense. A conviction as a juvenile offense shall be considered a conviction; and

3. Failure to appear. Failure to appear in court when properly summoned shall be considered a conviction.

§6408. Suspension of lobster and crab fishing license

A person whose Class I, Class II or Class III lobster and crab fishing license has been suspended for more than one year must appear in person before the commissioner prior to being issued a Class I, Class II or Class III lobster and crab fishing license pursuant to section 6421, subsection 5, paragraph D.

§6409. Suspension of license for failure to appear, answer or pay

If a license is suspended pursuant to Title 14, section 3142, the suspension remains in effect and that person is ineligible to obtain or hold a license until the person pays the fine. On payment of the fine and on condition of payment of a $25 administrative fee to the department, the suspension is rescinded and the eligibility to obtain or hold a license reinstated. For the purposes of this section, "fine" has the same meaning as in Title 14, section 3141, subsection 1.

§6410. Suspension of license for failure to comply with court order of support

If a person's eligibility to obtain or hold a license or registration is suspended pursuant to Title 19A, section 2201, the suspension remains in effect until the person is in compliance with a court order of support. On condition of payment of a $25 administrative fee to the department, the suspension is rescinded and the person's eligibility to obtain or hold a license reinstated.

§6411. Refusal to renew or reissue license for failure to file or failure to pay state tax obligations

If a person's eligibility to obtain a license is suspended pursuant to Title 36, section 175, the suspension is in effect until the State Tax Assessor issues a certificate of good standing. On condition of payment of a $25 administrative fee to the department, the suspension is rescinded and the person's eligibility to obtain a license reinstated.

CHAPTER 619

LOBSTER AND CRAB FISHING LICENSES

SUBCHAPTER 1 - LICENSES

§6421. Lobster and crab fishing licenses

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Class I lobster and crab fishing license;

B. Class II lobster and crab fishing license;

C. Class III lobster and crab fishing license;

D. Apprentice lobster and crab fishing license;

E. Student lobster and crab fishing license;

F. Noncommercial lobster and crab fishing license;

F-1. Nonresident lobster and crab landing permit; or

G. Other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a Class I, Class II, Class III, apprentice or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

2-A. Licensed activity; noncommercial license. The holder of a noncommercial lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs the license holder has taken. The license does not authorize the license holder to sell lobsters or to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.

2-B. Licensed activity; nonresident lobster and crab landing permit. The holder of a nonresident lobster and crab landing permit may possess, transport and sell within the State lobsters or crabs the license holder has taken from outside Maine's territorial waters. The permit does not authorize the permit holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.

3-A. License limitation. A license authorizes activities by individuals as follows.

A. A Class I license authorizes the licensed activities under subsection 2 by the individual who is named in the license. Any individual assisting or helping a Class I license holder in these activities must also be licensed.

B. A Class II license authorizes the license holder to engage in the licensed activities under subsection 2. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

C. A Class III license authorizes the license holder to engage in the licensed activities under subsection 2. A Class III license holder may engage 2 unlicensed crew members to assist in the licensed activities under the direct

supervision of the Class III license holder.

D. An apprentice lobster and crab fishing license authorizes the apprentice so licensed to engage in the licensed activities under subsection 2 on that apprentice's sponsor's vessel when the apprentice's sponsor is on board the vessel. A person who holds an apprentice lobster and crab fishing license may not tend any traps unless the traps are fished by the sponsor of the apprentice so licensed. An applicant for an apprentice lobster and crab fishing license may designate up to 3 sponsors. For the purpose of this paragraph, "apprentice's sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

E. A student license authorizes the license holder to engage in the licensed activities under subsection 2. A student license may be issued only to a person who, at the time of application, is 8 years of age or older and under 23 years of age. A person issued a student license may not submerge more than:

(1) Ten lobster traps in the coastal waters of the State if the person is 8 years of age or older and under 11 years of age;

(2) Fifty lobster traps in the coastal waters of the State if the person is 11 years of age or older and under 14 years of age; or

(3) One hundred and fifty lobster traps in the coastal waters of the State if the person is 14 years of age or older and under 23 years of age.

A person issued a student license is enrolled in the apprentice program under section 6422. When applying for a license the person must designate a sponsor. For the purposes of this paragraph, "sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

F. A noncommercial lobster and crab fishing license authorizes the license holder to engage in the licensed activities under subsection 2-A. A person issued a noncommercial lobster and crab fishing license may not submerge at any one time more than 5 lobster traps in the coastal waters of the State. At the time a noncommercial lobster and crab fishing license is issued or renewed, the applicant or license holder shall declare the vessel that will be used to conduct lobster and crab fishing activities under that license. The license holder's trap tags are allocated to that vessel, pursuant to the license. The department is not authorized to issue more than 10 noncommercial trap tags to the declared vessel, regardless of the number of noncommercial license holders fishing from that vessel.

4. Exception. A license is not required for a person:

A. To take or catch crabs with bare hands or hook and line; or

B. Who is issued a commercial fishing license under section 6501 to take, possess and sell crabs that have been taken as bycatch while using an otter trawl within the exclusive economic zone as shown on the most recently published Federal Government nautical chart. Crabs taken by otter trawl within the territorial waters must be liberated alive immediately.

5. Eligibility. A noncommercial or student lobster and crab fishing license may only be issued to an individual who is a resident. A Class I, Class II or Class III license may be issued to a person 17 years of age or older only if the person:

A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year <u>or fulfills the requirements of section 6310, subsection 2, paragraph A, subparagraph (4)</u>; [this underlined section is repealed on October 1, 2010]

B. [Repealed]

C. Meets the requirements of the apprentice program under section 6422 or section 6475; or

D. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

Not withstanding the age requirements of this subsection, a person who holds a Class I, Class II or Class III license on December 31, 2007 may continue to be issued a Class I, Class II or Class III license provided that person continues to meet the requirements of paragraph A.

5-A. Student license eligibility. A student license may be issued only to a person who, at the time of application, is a full-time student 8 years of age or older and under 23 years of age. For the purposes of this subsection, "full-time student" means:

A. A person attending a public day school in accordance with the attendance requirement of Title 20-A, section 5001-A, subsection 1;

B. A person meeting the requirements of an alternative to attendance at public day school in accordance with Title 20-A, section 5001-A, subsection 3; or

C. A person enrolled in and meeting the requirements of a full-time course of study at a college or university accredited by a state-recognized accrediting agency or body.

A person may not be considered to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if it is shown that the person has a bona fide intention of continuing to pursue a full-time course of study during the semester or other enrollment period immediately following the interim period. For purposes of this subsection, "full-time course of study" means at least 60% of the usual course load for the program in which the person is enrolled.

The commissioner may revoke a student license of an individual who has ceased to be a full-time student.

5-B. Noncommercial lobster and crab fishing license eligibility. Beginning with license year 2003, a noncommercial lobster and crab fishing license may be issued only to a person who, at the time of application, is 8 years of age or older and has:

A. Successfully completed a lobster and crab fishing written examination, as provided in section 6423; or

B. Held a Class I, Class II or Class III lobster and crab fishing license and has landed lobster under that license.

Once a person successfully completes the examination, that person need not repeat the examination to renew the license.

5-C. Apprentice lobster and crab fishing license eligibility. An apprentice lobster and crab fishing license may be issued only to a person who, at the time of application, is 8 years of age or older.

5-D. Nonresident lobster and crab landing permit eligibility. A nonresident lobster and crab landing permit may be issued only to an individual who:

A. Does not meet the resident provisions under section 6301, subsection 1;

B. Possesses a valid federal lobster permit or a valid lobster fishing license from a state other than this State; and

C. Except as authorized under subsection 5-E, does not operate a lobster and crab fishing vessel with an established base of operations in this State.

5-E. Exception; nonresident lobster and crab landing permit with an established base of operations in State. An individual may be excepted from subsection 5-D, paragraph C as long as the individual submits documentation to the commissioner by December 31, 2011 that the individual operated a lobster and crab fishing vessel with an established base of operations in the State as a nonresident in calendar years 2010 and 2011. Documentation must include at a minimum proof of lobster landings at a Maine dealer, proof of utilization of a mooring or dock in a Maine harbor for a sufficient time to meet the requirements to be an established base of operations in this State pursuant to section 6001, subsection 13-I, proof that the individual possessed a valid federal lobster permit or a valid lobster fishing license from a state other than this State and proof that the individual did not meet the resident provisions under section 6301, subsection 1.

6. Buoy colors. Each license applicant must describe, on the application, a single color design of the applicant's buoys.

7-A. Fee. Except as provided in subsection 8, the fee for the license is:

A. Sixty-five dollars for a resident Class I license for applicants under 18 years of age;

A-1. Three hundred eighty-seven dollars for a nonresident Class I license for applicants under 18 years of age;

B. One hundred thirty-five dollars and seventy-five cents for a resident Class I license for applicants 18 years of age or older;

B-1. Seven hundred ninety dollars and seventy-five cents for a nonresident Class I license for applicants 18 years of age or older;

C. Two hundred seventy-two dollars and fifty cents for a resident Class II license;

C-1. Fifteen hundred eighty-seven dollars and fifty cents for a nonresident Class II license;

D. Four hundred seven dollars and twenty-five cents for a resident Class III license;

D-1. Two thousand three hundred sixty-nine dollars and twenty-five cents for a nonresident Class III license;

E. Sixty-five dollars for a resident apprentice lobster and crab fishing license for applicants under 18 years of age;

E-1. Three hundred eighty-seven dollars for a nonresident apprentice lobster and crab fishing license for applicants under 18 years of age;

F. One hundred thirty-two dollars for a resident apprentice lobster and crab fishing license for applicants 18 years of age or older;

F-1. Seven hundred eighty-five dollars for a nonresident apprentice lobster and crab fishing license for applicants 18 years of age or older;

G. Sixty-five dollars for a student lobster and crab fishing license;

H. Sixty-five dollars for a noncommercial lobster and crab fishing license; and

I. Five hundred ninety dollars and twenty-five cents for a nonresident lobster and crab landing permit.

8. Exception. The fee for a license for an applicant 70 years of age or older is:

A. For a Class I or an apprentice lobster and crab fishing license, $66;

B. For a Class II lobster and crab fishing license, $136; and

C. For a Class III lobster and crab fishing license, $203.

9. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6421-C. Application of student and noncommercial license age requirements

1. Student licenses. Notwithstanding the age requirements of section 6421, subsection 3-A, paragraph E and section 6421, subsection 5-A, a person who holds a student license on October 31, 2003 may continue to be issued a student license until that person reaches 23 years of age. Notwithstanding the trap limits under section 6421, subsection 3-A, paragraph E, a person who is 8 years of age or older and who holds a student license on October 31, 2003 may not submerge at any one time more than 150 lobster traps in the coastal waters of the State. A person who holds a student license and is less than 8 years of age on October 31, 2003 may not at any one time submerge more than 10 traps in the coastal waters of the State and upon reaching 8 years of age is subject to the trap limits provided in section 6421, subsection 3-A, paragraph E. A person who holds a student license on October 31, 2003 must comply with the full-

time student requirement of section 6421, subsection 5-A and the apprenticeship program and sponsor requirements of section 6421, subsection 3-A, paragraph E.

2. Noncommercial licenses. Notwithstanding the age requirements of section 6421, subsection 5-B, a person who holds a noncommercial license and is less than 8 years of age on October 31, 2003 may continue to be issued a noncommercial license subject to the examination and licensure requirements of section 6421, subsection 5-B.

3. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6422. Apprentice program

1. Program established; experience component. By July 1, 1996, the commissioner shall establish by rule an apprentice program for entry into the lobster fishery. The program must include practical lobster fishing experience. A person must be 8 years of age or older and hold an apprentice lobster and crab fishing license or a student lobster and crab fishing license under section 6421 to enter the program.

2. Length of program. The commissioner shall determine the length of time an apprentice is enrolled in the program, which must be a minimum of 2 years.

3. Educational courses. The program may include any educational courses the commissioner determines appropriate. Educational courses may be taught by the department or by any public or private sector association or organization authorized by the commissioner. For any course taught by the department, the commissioner shall set an enrollment fee sufficient to recover all costs incurred by the department in teaching the course.

4. Allowance for waivers. Notwithstanding subsections 1 and 2, the commissioner may waive all or part of the practical lobster fishing experience component or the program length for a person before that person enters the apprentice program if the person:

A. [Repealed]

B. [Repealed]

C. [Repealed]

D. [Repealed]

E. Documents to the commissioner that the person obtained practical lobster fishing experience as an apprentice in the Monhegan Lobster Conservation Area pursuant to section 6475.

§6423. Lobster and crab fishing education program

The commissioner shall establish an education program in accordance with this section for training applicants for noncommercial lobster and crab fishing licenses.

1. Pamphlet. The department shall issue a pamphlet of all the laws and rules relating to a noncommercial lobster and crab fishing license to each applicant for a noncommercial lobster and crab fishing license who has not successfully completed a written examination pursuant to subsection 2 or met the requirements of section 6421, subsection 5-B, paragraph B.

2. Examination. A written examination is required for any person who applies for a noncommercial lobster and crab fishing license who has not successfully completed a written examination under this subsection or met the requirements of section 6421, subsection 5-B, paragraph B. The commissioner shall determine the form and content of the written examination. The written examination must be provided to an applicant with the pamphlet required under subsection 1. The applicant must return the completed written examination to the department and receive a passing grade on the written examination prior to receiving a noncommercial license.

3. Surcharge; credit to Lobster Management Fund. The commissioner shall set a surcharge, not to exceed $15, sufficient to recover the costs incurred by the department in providing the program under this section. A person who successfully completes the program and pays the surcharge may not be charged the surcharge to renew the license. The commissioner may provide copies of the education materials developed under this section to an applicant for another lobster and crab fishing license upon receipt of the surcharge. Surcharges collected under this subsection must be credited to the Lobster Management Fund established in section 6431-C.

SUBCHAPTER 2
LIMITS ON FISHING AND PROHIBITED ACTS

§6431. Lobster measurement

1. Minimum and maximum length. A person may not buy, sell, give away, transport, ship or possess any lobster that is less than the minimum size established in this subsection or more than 5 inches in length, as determined by

the lobster measure certified in accordance with subsection 3. Except as provided in subsection 1-A, the minimum lobster size is 3 8/32 inches.

1-A. Most restrictive minimum size. A person possessing a valid lobster and crab fishing license and who also owns or is incorporated or partnered in a vessel or vessels that hold federal limited access lobster permits must comply with the most restrictive minimum lobster size for all federal lobster management areas declared on the federal permit designated on that person's Maine lobster and crab fishing license application, whenever the fishing activity occurs. The applicable most restrictive minimum lobster size is contained in the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for American Lobster.

2. Method of measurement. Measurement shall be made 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.

3. Certified lobster measure. The department shall use a lobster measure that is certified for accuracy by the Department of Agriculture, Food and Rural Resources, Office of Sealer of Weights and Measures. The measure must conform to the legal lobster sizes in effect at the time. Any measurement used to substantiate a violation of this section must be made with a certified lobster measure.

4. Mutilation. It shall be unlawful to possess any lobster, or part thereof, which is mutilated in a manner which makes accurate measurement impossible, except that any person, firm or corporation may possess lobster tails removed under section 6851B.

5. Exception for immediate liberation. No violation of this section shall occur if the illegal lobster is immediately liberated alive into the coastal waters when taken.

6. Exception; wholesale seafood dealer with lobster permit; rules. This section does not apply to live lobsters imported by a holder of a wholesale seafood license with a lobster permit to another wholesale seafood license holder with a lobster permit if the containers are sealed in accordance with rules adopted by the commissioner; or to imported lobsters being shipped or transported out-of-state if they are in containers sealed in accordance with rules adopted by the commissioner. The commissioner may adopt or amend rules to prescribe the time, manner and method of sealing containers for the effective operation of this subsection. The rules may contain a requirement for a special permit and provisions for inspection of the containers, contents and seals. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

6-A. Grace period. There is a 180-day grace period following the effective date of each of the minimum size increases as provided in this section within which a person holding a wholesale or retail seafood dealer license or a lobster transportation license may handle lobsters legally purchased or received in the prior year which do not meet the new minimum size requirements.

6-B. Exception; lobster processing; rules. A person who holds both a wholesale seafood license with a lobster permit and a lobster processor license and who possesses lobster in accordance with subsection 6 may process those imported lobsters in accordance with rules adopted by the commissioner, as long as the following criteria are met:

A. The lobsters are not harvested or landed in this State;

B. The lobsters are legal in the waters from which they were harvested; and

C. The lobsters are not less than the minimum size established in this section.

Lobster tails processed under this subsection may not be offered for sale within this State in the wholesale or retail trade. Lobster meat processed from the claws and knuckles may be sold within this State in the wholesale or retail trade.

This subsection takes effect November 1, 2011 and is repealed 90 days after the adjournment of the First Regular Session of the 126th Legislature.

7. Penalty. Possession of lobsters in violation of this section is a Class D crime, except that the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $200 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000. A court may not suspend a fine imposed under this subsection.

§6431-A. Trap limit

1. Limit. Before March 1, 2000, the holder of a Class I, Class II or Class III license issued under section 6421 may not submerge more than 1,000 traps. After February 29, 2000, the holder of a Class I, Class II or Class III license or a nonresident lobster and crab landing permit issued under section 6421 may not submerge more than 800 traps. If a lower trap limit is adopted by rule for a zone pursuant to section 6446, a license holder who fishes in that zone may not submerge a number of traps that exceeds the lower limit.

The number of traps fished from a vessel may not exceed the applicable trap limit established in this subsection, regardless of the number of license holders fishing from that vessel.

2. [Repealed]

3. [Repealed]

4. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6431-B. Tag system

The commissioner shall establish by rule a lobster trap tag system under which lobster and crab fishing license holders and nonresident lobster and crab landing permit holders must purchase tags for the purpose of identifying and tracking traps. The rules must contain provisions for replacing lost tags. The commissioner may impose a per-tag fee to cover the cost of trap tags, the costs of administering and enforcing a lobster trap tag system, the costs of management of the lobster fishery and the costs associated with lobster management policy councils and referenda pursuant to section 6447. Trap tag fees must be deposited in the Lobster Management Fund established under section 6431-C.

§6431-C. Lobster Management Fund

1. Lobster Management Fund. The Lobster Management Fund is established as a dedicated nonlapsing fund. The fund is administered by the department.

2. Purpose. All money credited to the Lobster Management Fund must be used to cover the costs of trap tags and the administration and enforcement of a lobster trap tag system under section 6431-B, the costs of management of the lobster fishery, the costs associated with lobster management policy councils and referenda pursuant to section 6447, costs associated with the Lobster Advisory Council not supported by the General Fund, the costs associated with determining eligibility for lobster and crab fishing licenses and eligibility to fish for or take lobsters from a vessel and the costs associated with the provision of educational programs, for which a surcharge is collected from the enrollee, pursuant to section 6423.

§6431-D. Boat trap limit

[Repealed]

§6431-E. Vessel limitation

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Family member" means a spouse, brother, sister, son-in-law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

B. "Owner" means:

(1) An individual who is the owner of a vessel registered under chapter 935 or the owner of a vessel documented under 46 Code of Federal Regulations, Part 67;

(2) The person who owns the highest percentage of a partnership, corporation or other entity that is the owner of a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67; or

(3) When 2 or more people own in equal proportion the highest percentages of a partnership, corporation or other entity that owns a vessel registered under chapter 935 or a vessel documented under 46 Code of Federal Regulations, Part 67, one of the highest percentage owners as designated by the owners of that partnership, corporation or other entity.

C. "Qualifying period" means any 46 days during 3 consecutive months in one calendar year.

D. "Replacement vessel" means a vessel that is substituted for the use of a vessel that is no longer utilized by an individual, partnership, corporation or other entity.

2. Owner or family member on board. This subsection applies to a person that holds a Class I, Class II or Class III lobster and crab fishing license issued under section 6421. Except as provided in subsection 3, a vessel may not be used to fish for or take lobsters unless that vessel is owned by a Class I, Class II or Class III lobster and crab fishing license holder and:

A. The owner of that vessel is present on that vessel and has a that vessel named on the owner's Class I, Class II or Class III lobster and crab fishing license; or

B. A family member of the vessel owner holds a Class I, Class II or Class

III lobster and crab fishing license and is present on that vessel.

3. Exemptions; individuals. The commissioner may authorize a person to fish for or take lobsters from a vessel when an owner or family member is not on board pursuant to subsection 2 if that person holds a Class I, Class II or Class III lobster and crab fishing license and:

A. The owner of that vessel holds a Class I, Class II or Class III lobster and crab fishing license, documents to the commissioner that an illness or disability temporarily prevents that owner from fishing for or taking lobsters from that vessel, and requests in writing to the commissioner that the commissioner authorize that person to use that vessel to fish for or take lobsters and tend the owner's traps pursuant to section 6434;

B. Is the owner of a vessel that has become temporarily inoperable because of an accident or a mechanical failure and requests in writing permission from the commissioner to use that vessel to fish for or take lobsters;

C. Documents to the commissioner by December 31, 2000 that that person fished for or took lobsters during the qualifying period in each of calendar years 1995, 1996 and 1997 from the same vessel and that vessel did not have on board an individual who meets the criteria of subsection 2, paragraph A or B. A person may not qualify for the exemption under this paragraph unless that person continues to fish for or take lobsters from the vessel from which the person harvested lobsters during the qualifying period in each of calendar years 1995, 1996 and 1997, or from a replacement vessel;

D. An individual, partnership, corporation or other entity documents to the commissioner by December 31, 2000 that that individual or partnership, corporation or other entity rented, leased or otherwise made available that vessel to the holder of a Class I, Class II or Class III lobster and crab fishing license during the qualifying period in each of calendar years 1995, 1996 and 1997 for the purpose of fishing for or taking lobsters. A person authorized under this paragraph may fish for or take lobsters only from the vessel that was made available during the qualifying period in each of calendar years 1995, 1996 and 1997, or a replacement vessel; or

E. The person is licensed by the United States Coast Guard to operate a passenger-carrying vessel in coastal waters. The vessel must be inspected by the United States Coast Guard and documented and licensed by the United States Coast Guard to carry passengers. By June 30, 2001, the owner of the vessel shall document to the commissioner that the vessel was utilized to fish for or take lobsters with paying passengers on board during the qualifying period in each of calendar years 1995, 1996 and 1997. The owner of the vessel shall notify the commissioner in writing on an annual basis, prior to the vessel

being utilized to fish for or take lobsters, of the name and lobster license number of any person who will be using the vessel to fish for lobster during that calendar year. A person authorized under this paragraph may fish for or take lobsters only from the vessel that was made available during the qualifying period in each of calendar years 1995, 1996 and 1997, or a replacement vessel. No more than 40 lobster traps may be fished from that vessel.

4. Rules. The commissioner may adopt rules to implement and administer this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6431-F. Trap tags

1. Trap tag limits. The following provisions govern trap tag limits.

A. [Repealed]

B. Each year, a Class I, Class II or Class III lobster and crab fishing license holder may purchase a number of trap tags that is not greater than 100 more than the number the license holder purchased for the previous license year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established by rule for the zones identified on that person's license pursuant to section 6446, subsection 1-A.

2. Exceptions. Notwithstanding subsection 1, the following trap tag limits apply:

A. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license for the first time after meeting the requirements of the apprentice program under section 6422, the license holder may not purchase more than 300 trap tags for the initial license year. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established by rule for the zones identified on that person's license pursuant to section 6446, subsection 1-A; and

B. [Repealed]

C. If the license holder was issued a Class I, Class II or Class III lobster and crab fishing license on appeal, the license holder may purchase for the initial license year a number of trap tags up to the number of trap tags purchased by the person for the most recent year in which the person held a license. For each following year, the license holder may purchase up to an increase of 100 trap tags each year as long as the total number purchased does not exceed the number of traps allowed under the lowest trap limit established

by rule for the zones identified on that person's license pursuant to section 6446, subsection 1-A.

3. [Repealed]

4. Trap limit. A person may not submerge a number of traps greater than the number of traps allowed under the lowest trap limit established by rule for the lobster management zones identified on that person's license pursuant to section 6446, subsection 1-A.

5. [Repealed]

§6431-G. Vessel operation

1. Limitation. Except as provided in subsection 2, the holder of a Class I, Class II or Class III lobster and crab fishing license may not operate a vessel for the purposes of fishing for or taking lobster other than the vessel named on the holder's lobster and crab fishing license. For the purposes of this section, "operate a vessel" means steering the vessel, operating the vessel's engine throttle or gear shift or operating the mechanism used to haul lobster traps from the water. "Operating a vessel" does not include the baiting of traps or the handling of traps once they are on board the vessel.

2. Exemptions. The commissioner may authorize an individual who possesses a Class I, Class II or Class III lobster and crab fishing license to fish for or take lobsters from a vessel other than the vessel named on the holder's lobster and crab fishing license if:

A. A Class I, Class II or Class III license holder is temporarily prevented by illness or disability from fishing for or taking lobsters from the license holder's vessel and requests in writing to the commissioner that the commissioner authorize the individual to operate that vessel to fish for or take lobsters and tend the license holder's traps pursuant to section 6434;

B. The vessel named on the individual's license has become temporarily inoperable because of an accident or a mechanical failure and the individual requests in writing and is granted permission from the commissioner to use another vessel to fish for or take lobsters; or

C. The individual is designated as the sponsor of a student pursuant to section 6421 and is operating the vessel named on the student's license for the purposes of providing practical lobster fishing training to the student while the student is present on the vessel.

§6432. Methods of fishing

1. Conventional traps. A person may not fish for or take lobster by any method other than conventional lobster traps, as defined in rule, or from any platform other than a vessel. A vessel does not include a dock.

2. Marking. It is unlawful to set, raise, lift or transfer any lobster trap or buoy unless it is clearly marked with the owner's lobster and crab fishing license number or the owner's nonresident lobster and crab landing permit number. A lobster or crab trap or trawl must be marked by a lobster buoy as described in subsections 3 and 4. The buoy must be visible at the surface.

3. Color design. It is unlawful to set, raise, lift or transfer any lobster trap unless the color design of the attached buoy is the same as the color design that is on file with the license application and is displayed on the boat, or unless the person is duly licensed and possesses written permission from the rightful owner of the lobster trap or buoy. Prior notification of changes in buoy color design must be provided to the commissioner. The Bureau of Marine Patrol may require the alteration of an individual's lobster and crab fishing buoy color design if a marine patrol officer has determined that the buoy color design is not distinct and distinguishable from the buoy color designs of the individual's family members as defined by section 6431-E.

4. Design display. The buoy color design shall be displayed on the boat as follows:

A. On both sides of the hull or on a panel painted on both sides and attached to the boat's forward topside in a manner so as to be clearly visible on both sides of the boat. Each color shall appear as a solid color strip 4 inches high and 18 inches long abutting another color on its longest side to form a rectangle with a one-inch black border on all sides; or

B. A buoy of at least 12 inches long, mounted in a manner so that the color design is clearly visible on both sides of the boat.

5. Penalty for possession. Possession of lobsters other than caught by the method specified in subsection 1 is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $200 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000. A court may not suspend a fine imposed under this subsection.

§6432-A. Bait

1. Offal prohibited. A person may not use offal as bait to fish for or take lobster or crabs. For the purposes of this section, "offal" means the carcass, waste parts, renderings or remains of a wild or domesticated animal that is not a marine organism, but does not include animal hide from which the hair has been removed.

2. Prima facie evidence. The possession of offal while fishing for or taking lobster or crabs is prima facie evidence of a violation of this section.

§6433. Escape vents

1. Vent required. It is unlawful to fish for or to take lobsters unless the lobster trap is equipped with unobstructed vents or gaps in the parlor section as follows:

A. A rectangular or oblong escape vent not less than 1 3/4 inches (44.5 mm.) by 5.75 inches (146 mm.) located next to the bottom edge or on the top if the escape vent is placed over the head of an end parlor section;

B. Two circular escape vents not less than 2 1/4 inches (57.2 mm.) in diameter located next to the bottom edge or on the top if the escape vents are placed over the head of an end parlor section;

C. A gap caused by raising, modifying or separating horizontal laths to comply with paragraph A or B

D. A gap caused by separating or modifying vertical laths to comply with paragraph A;

E. A gap caused by separating both ends of 2 laths 1 3/4 inches (44.5 mm.) on the top of the parlor section next to the middle bow or supporting frame and over the parlor head;

F. In a wire or plastic trap, by a gap created by cutting vents in the side or end to comply with paragraph A or B.

1-A. Adjustment. Notwithstanding subsection 1, the commissioner shall specify by rule the dimensions of vents in lobster traps which shall be appropriate for the minimum legal lobster size in effect.

2. Action prohibited. It shall be unlawful to set, raise, haul or transfer any lobster trap unless the trap is equipped with an escape vent as required in this section or has been exempted under subsection 3.

3. Exemption. The commissioner may exempt specific trap designs from the escape vent requirements of this section if it is proved to his satisfaction that the specific trap design will only take crabs and is incapable of taking lobsters.

§6433-A. Biodegradable escape panels

Beginning January 1, 1990, all lobster traps must be equipped with a biodegradable ghost panel. A "ghost panel" is an escape panel which is designed to release lobsters from traps which are lost while fishing. The commissioner shall, by rule, provide for implementation of this requirement. The commissioner may not require ghost panels prior to January 1, 1990.

§6433-B. Runners

1. Definitions. As used in this section, unless the context otherwise indicates, the term "runner" means a device on the bottom of a lobster trap that prevents damage to lobster claws and allows the trap to be pulled smoothly out of the water.

2. Device to prevent damage to lobster claws. A lobster trap must have a device attached to the trap that is designed to prevent damage to lobster claws.

A. If stick runners are used:

(1) The runners may be made out of any material;

(2) The runners must be at least 1/4 inch thick; and

(3) A minimum of two runners must be attached to the lobster trap and the runners must be placed on opposite sides of the bottom of the lobster trap.

B. If a 2nd layer of material is used in lieu of stick runners, it must be layered in a manner that creates a mesh size smaller than the base trap mesh when attached to the bottom of the trap.

C. If a device other than a device identified in paragraph A or B is used, the device must be designed to minimize damage to lobster claws and must be approved by the commissioner.

§6434. Molesting lobster gear

A person may not raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car except as provided in this section.

1. Permitted activities. Lobster traps, warps, buoys and cars may be raised, lifted, transferred, possessed or otherwise molested by the following:

A. A marine patrol officer;

B. The licensed owner;

C. Any person having written permission from the commissioner; and

D. Any person authorized by rule pursuant to subsection 2.

2. Adoption of rules required. The commissioner shall adopt rules, no later than January 1, 1990, authorizing the removal of traps, warps, buoys or cars that are washed up above the mean low tide mark or are otherwise abandoned or lost. Notwithstanding Title 25, sections 3502 and 3503, the commissioner may dispose of such traps, warps, buoys or cars, or authorize their disposal, if the owner cannot be identified or if the owner has been notified and fails to respond within 30 days.

3. Using another's lobster gear; prohibition. Traps, warps, buoys or cars may not be used for fishing by any person other than the licensed owner unless that person has written permission from the commissioner.

3-A. Penalty. A person who violates this section commits a civil violation for which a fine of not less than $100 or more than $500 may be adjudged.

4. Restitution. If a person violates this section by cutting a lobster trap line, the court shall:

A. Order that person to pay to the owner of the trap line that was cut an amount equal to twice the replacement value of all traps lost as a result of that cutting; and

B. Direct that person to provide proof of payment of that restitution to the commissioner as required by section 6402, subsection 1.

Restitution imposed under this subsection is in addition to any penalty imposed under subsection 6204.

§6435. Setting near weirs

It shall be unlawful to set any lobster trap within 300 feet of the mouth of any fish weir when the weir owner or operator is licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

§6436. Egg-bearing lobsters; v-notched lobsters

1. Egg-bearing and v-notched lobsters. A person may not take, transport, sell or possess:

A. Any lobster that is bearing eggs; or

B. Any female lobster marked with a v-notch in the right flipper next to the middle flipper or any female lobster that is mutilated in a manner that could hide or obliterate that mark. The right flipper is determined when the underside of the lobster is down and its tail is toward the person making the determination.

2. Exceptions. No violation of this section shall occur if:

A. The lobster is immediately liberated alive into the coastal waters when taken or discovered in a pound; or

B. The lobster is possessed and sold to the department by a lobster pound owner who has a permit to do so as provided in this section.

3. Permitted possession; regulations. The commissioner may issue a permit for the holding and delivery of egg-bearing lobsters to the department by a lobster pound owner who holds a current wholesale seafood license. The commissioner may adopt regulations governing the issuing of permits and the conditions and limitations under which these lobsters may be held and delivered.

4. Prima facie evidence.

A. Discovery of an egg-bearing lobster by a marine patrol officer in a pound not included in a permit under section 3 shall be prima facie evidence of a violation

B. Any lobster whose right flipper is v-notched or mutilated in a manner which could hide or obliterate such a mark shall be prima facie evidence that the lobster is a v-notched female lobster.

5. Penalty for possession of egg-bearing lobsters. Possession of lobsters in violation of subsection 1, paragraph A is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of $1,000 for each violation and, in addition, a fine of $200 for each lobster involved, up to and including the first 5, and a fine of $400 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $2,500 or more than $10,000. A court may

not suspend a fine imposed under this subsection.

6. Penalty for possession of v-notched lobsters. Possession of lobsters in violation of subsection 1, paragraph B is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $400 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000. A court may not suspend a fine imposed under this subsection.

§6438-A. Artificial removal of eggs; prohibition

1. Prohibition. It is unlawful to remove extruded eggs from any female lobster or to take, buy, sell, possess, transport or ship any female lobster from which extruded eggs have been removed by any means other than natural hatching.

2. Penalty. A violation of this section is a Class D crime, except that the court shall impose a fine of $1,000 for each violation and, in addition, a fine of $300 for each lobster involved or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000. A court may not suspend a fine imposed under this subsection.

§6439. Areas of limited lobster fishing

[Repealed]

§6439-A. Limited lobster fishing in the vicinity of Kittery

It is unlawful to have on a trawl more than 10 lobster traps in the waters southerly of a line running between the Kitts Rocks Whistle Buoy and the West Sister Buoy and extending westerly to the New Hampshire border, and from the West Sister Buoy to the Murray Rock Buoy and thence to and through the lighthouse on Boone Island and, continuing in a straight line, to the point of intersection with the 3-nautical-mile line. Each trawl set in this area must be marked on each end with at least one buoy with a buoy stick of at least 4 feet in length

§6439-B. Limited lobster fishing in certain portions of Saco Bay

[Repealed]

§6440. Closed periods

It is unlawful to raise or haul any lobster trap:

1. Summer. During the period 1/2 hour after sunset until 1/2 hour before sunrise from June 1st to October 31st, both days inclusive; and

2. Weekends. During the period from 4 p.m., Eastern Daylight Savings Time, Saturday, to 1/2 hour before sunrise the following Monday morning from June 1st to August 31st, both days inclusive, except that it is lawful to raise or haul traps during this period if a hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

§6441. Plugged lobsters

The commissioner, in accordance with section 6191, may adopt regulations prohibiting the possession of plugged lobsters, provided that he has determined that these regulations will not adversely affect lobster importation.

§6442. Lobster identification tags; fee authorized

The commissioner may impose a reasonable fee not to exceed 50¢ per tag, for the issuance of lobster trap identification tags in those areas of the State included in the Swan's Island Trap Limit Program.

The fees collected must be paid to the department. The commissioner shall use these fees for the administration of the lobster trap tag system. Any fees that are unexpended at the end of the fiscal year do not lapse.

§6443. Underwater storage

Beginning January 1, 1990, any trap or other container used for storing lobsters beneath the surface of the coastal waters must be clearly marked with the wholesale seafood license number or the fishing license number of the person storing the lobsters. Any trap or other container and the contents in it found in violation of this section may be seized and the contents returned to their natural habitat.

§6444. Dipping lobster traps or similar gear

No person may dip, soak or treat lobster or crab traps, warps or cars prior to use in waters of the State other than in a solution of salt and sea water except as provided in this section.

The commissioner may authorize a specified amount of dipping, soaking or treating of lobster or crab traps, warps or cars in solutions other than salt and sea water for research purposes. This authorization shall be in writing.

§6445. Logbooks for lobster harvesters

The commissioner shall adopt rules requiring any person holding a lobster and crab fishing license to maintain a logbook. The rules must indicate the type of data that must be recorded in the logbook, the manner for producing the logbooks and the method for analyzing data from the logbooks. The commissioner shall charge a fee for the logbook that is sufficient to recover all costs associated with the production of the logbook and the analysis of the data. Fees received by the department from the sale of logbooks are dedicated revenue and must be used by the department for the purposes of this section. The logbook and data analysis may be produced and conducted by the department or may be produced and conducted by a public or private entity under contract with the department. Disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173. A person who fails to maintain a logbook when required to do so commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6446. Lobster management zones

1. Establishment of zones. The commissioner may establish by rule zones to facilitate local or regional management of lobster fishery efforts.

1-A. Declared lobster zone; authorized zones. On an application for a Class I, Class II, Class III or noncommercial lobster and crab fishing license or a nonresident lobster and crab landing permit, a person shall declare the lobster management zone in which that person proposes to fish a majority of that person's lobster traps and shall list all other zones in which that person proposes to fish any of that person's lobster traps. A Class I, Class II, Class III or noncommercial lobster and crab fishing license or a nonresident lobster and crab landing permit must identify the declared lobster zone in which the person is authorized to fish a majority of that person's lobster traps and must identify all other zones in which a person is authorized to fish that person's traps. A person may not place any lobster traps in a zone that is not identified on that person's license. For the purposes of this subsection, the majority of a person's lobster traps must be determined from the number of trap tags issued to that person.

2. Rules for zones. The commissioner may adopt rules for a zone established under subsection 1 that are proposed pursuant to section 6447, subsection 5, section 6447, subsection 5-C or section 6447, subsection 5-D only when the rules were proposed by the lobster management policy council established for that zone pursuant to section 6447, subsection 1 and the proposed rules were approved in a referendum pursuant to section 6447, subsection 6. The commissioner may accept the rules proposed by a lobster

management policy council as reasonable and adopt those rules or reject the council's proposed rules as unreasonable. The rules adopted under this subsection by the commissioner must accurately reflect the intent of the rules proposed by a lobster management policy council but are not required to be a verbatim rendition of the proposed rules.

2-A. [Repealed]

2-B. [Repealed]

3. Application of zone rules. The commissioner may adopt rules that define the application of zone rules to a person who holds a license under section 6421 and who fishes for lobsters in more than one zone.

4. Public hearing not required. In adopting rules under subsection 2, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052. Except as provided in subsection 6, the commissioner shall comply with all other provisions of Title 5, chapter 375 when adopting rules under subsection 2.

5. Role of advisory council. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this section without the advice and consent of the Marine Resources Advisory Council.

6. Petition for rule prohibited. A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule for a lobster management zone established under this section that regulates the number of lobster traps fished and the time periods allowed for complying with that number, the number of lobster traps allowed on a trawl and the time of day when lobster fishing may occur.

§6447. Lobster management policy councils

1. Councils. The commissioner shall establish a lobster management policy council for each zone created under section 6446. Council members must be reimbursed pursuant to Title 5, section 12004-I, subsection 57-A.

2. Rules for operation. By July 1, 1996, the commissioner shall establish by rule operating procedures for lobster management policy councils, including, but not limited to, the number of members on councils, the election and terms of council members and the process for referenda on council policies. A council must have an odd number of voting members.

3. Council members appointment; election. Upon establishing a lobster management policy council, the commissioner shall appoint members to the

council to equitably represent lobster harvesters throughout a zone. Members appointed by the commissioner serve one-year terms. An election of subsequent council members must be held within one year of the commissioner's appointments. Council members are elected by plurality vote. An individual who has been convicted or adjudicated of a lobster violation within the previous 7 years is not eligible for election as a council member unless a waiver from this limitation has been granted by the commissioner for good cause as determined by the commissioner in the commissioner's discretion.

4. Legislative representation. The President of the Senate and the Speaker of the House shall jointly appoint a Legislator to each lobster management policy council. The Legislator is a nonvoting member and serves a 2-year term.

5. Council authority. Upon approval in a referendum under subsection 6, a lobster management policy council may propose to the commissioner rules for a zone to place the following limitations on lobster and crab fishing license holders that fish in that zone, as long as the proposed limitations are equal to or stricter than the limitations under section 6431-A, 6439-A or 6440:

A. The number of lobster traps fished and the time periods allowed for complying with that number;

B. The number of lobster traps allowed on a trawl; and

C. The time of day when lobster fishing may occur.

5-A. [Repealed]

5-B. [Repealed]

5-C. Apprentice program rules. Notwithstanding any other provision of this subchapter, upon approval in a referendum under subsection 6, a lobster management policy council may propose to the commissioner rules for a zone that do any of the following:

A. Increase the minimum length of time an apprentice must be enrolled in the apprentice program beyond the period established in section 6422, subsection 2. The minimum enrollment period may not exceed 5 years.

B. Require a sponsor of an apprentice to have held a Class I, Class II or Class III lobster and crab fishing license for at least 5 years; and

C. Require a person to complete all requirements of the apprentice program in a specific zone in order to enter that zone as a Class I, Class II or

Class III lobster and crab fishing license holder. A rule proposed under this paragraph and adopted under section 6446, subsection 2 may not be applied to those portions of the apprentice program requirements a person has completed prior to the effective date of the rule.

A rule proposed under paragraph A or B and adopted by the commissioner under section 6446, subsection 2 does not apply to persons who are enrolled in the apprentice program on the date the rule takes effect.

5-D. Council authority; under 18 waiting list. Notwithstanding any other provision in this subchapter and upon approval in a referendum under subsection 6, a lobster management policy council in a limited-entry zone may propose to the commissioner that the limitation described in this subsection be placed on entry by individuals into that zone in accordance with rules adopted by the department.

This limitation would require that the number of individuals who are authorized to be issued a lobster and crab fishing license that identifies a limited-entry zone as the declared lobster zone without meeting the requirements of section 6448, subsection 4, in accordance with section 6448, subsection 8, paragraph A, be limited to the number of new zone entrants who enter that zone in accordance with section 6448, subsection 7. This limitation may not be applied to a person who is under 18 years of age and lives on a year-round basis on an island within the coastal waters that is not connected to the mainland by any artificial structure.

The commissioner shall maintain a waiting list of individuals who have identified the limited-entry zone as their declared lobster zone in accordance with section 6448, subsection 8, paragraph A. For the purposes of this subsection, an individual on a waiting list maintained by the commissioner does not need to meet the eligibility requirements of section 6421, subsection 5-A in order to purchase a student license.

The commissioner may establish by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Referendum on policy proposals. A lobster management policy council must submit proposed rules to referendum in the zone in which the rules would apply before submitting those proposed rules to the commissioner. A lobster management policy council may submit proposed rules to the commissioner if the proposed rules are approved by 2/3 of those voting in the referendum.

7. Council member and voter qualifications. A person may not be a

member of a zone's lobster management policy council or vote in a zone's council election or referendum unless that person:

A. Possesses a Class I, Class II or Class III lobster and crab fishing license issued under section 6421; and

B. Declared at the time of obtaining a Class I, Class II or Class III license the zone in which the person fishes a majority of that person's lobster traps. A person may declare only one zone as the zone in which the person fishes a majority of that person's lobster traps.

The holder of a lobster and crab fishing license issued under section 6421 may fish for lobsters in any zone.

8. Role of advisory council. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this section without the advice and consent of the Marine Resources Advisory Council.

§6448. Limited-entry zones

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Declared lobster zone" means the zone identified on a lobster and crab fishing license pursuant to section 6446, subsection 1-A.

B. "Limited-entry zone" means a lobster management zone established pursuant to section 6446 for which rules establishing limits on new zone entrants have been adopted pursuant to subsection 2.

C. "New zone entrant" means a person who declares a limited-entry zone as that person's declared lobster zone but who did not hold in the previous licensing year a Class I, Class II or Class III lobster and crab fishing license that identified that zone as the person's declared lobster zone.

2. Rules for limited-entry zones. The commissioner may adopt rules establishing limits on new zone entrants to a lobster management zone. These rules must be adopted in accordance with this subsection.

A. After conducting a written survey in the zone, a lobster management policy council may propose to the commissioner an exit ratio to limit new zone entrants to the zone. The lobster management policy council is not required to submit the proposal to referendum and the proposed exit ratio does not need to receive approval through the survey in order to be forwarded to the commissioner.

B. The commissioner may initiate rulemaking under this subsection only upon receipt of a proposal under paragraph A. The commissioner shall hold a public hearing on the proposed rules pursuant to Title 5, section 8052. The public hearing must be held in the zone in which the rules would apply and the results of the written survey must be entered into the record.

C. In accordance with subsection 7, the commissioner shall adopt rules that establish an exit ratio between the number of trap tags retired by individuals who declared that zone as their declared lobster zone in the year prior to the previous calendar year, but who did not declare that zone as their declared lobster zone in the previous calendar year, and the number of trap tags issued to new zone entrants authorized under subsection 7. An exit ratio established by rule under this subsection is not required to be the same as the exit ratio proposed by the lobster management policy council.

D. Upon written notification from the lobster management policy council that a majority of the council has voted to conduct a survey in a zone regarding a proposal for an exit ratio to limit new zone entrants to the zone, the commissioner shall close the zone to new zone entrants until the commissioner either adopts rules under this subsection or declares that the commissioner will not initiate rulemaking under this subsection. In no event may the zone remain closed for longer than one year unless the commissioner has adopted rules establishing limits on new zone entrants to the zone. This paragraph does not apply to surveys conducted in accordance with subsection 10.

E. When a lobster management policy council proposes to the commissioner a change in the exit ratio established under paragraph C and a new exit ratio is adopted by rule under this subsection, the commissioner shall allow individuals who meet the following conditions to enter the zone in accordance with the previously existing exit ratio:

(1) The individual has completed the requirements of the apprenticeship program established under section 6422 by the date the commissioner receives written notification from the lobster management policy council that a majority of the council has voted to conduct a survey pursuant to paragraph D; and

(2) The individual's name is listed on the waiting list maintained under subsection 6 by the date the commissioner receives written notification from the lobster management policy council that a majority of the council has voted to conduct a survey pursuant to paragraph D.

This paragraph does not apply when an exit ration based on the number of trap tags retired is adopted, in accordance with paragraph C, for the first time in a lobster management zone.

F. When a lobster management policy council proposes to the commissioner to establish an exit ratio for the first time to limit new zone entrants under paragraph A, it may also propose to the commissioner a provision to exempt from the exit ratio, upon completion of the apprentice program, an individual who has completed at least 92% of the hours required and at least 92% of the days required by the apprentice program established under section 6422 by the date the commissioner receives written notification from the lobster management policy council pursuant to paragraph D.

3. Fishing in limited-entry zones. A person who holds a Class I, Class II or Class III lobster and crab fishing license may not fish a majority of that person's lobster traps in a limited-entry zone unless that person's license identifies that zone as the declared lobster zone.

4. Limited-entry zone as declared lobster zone. A person may not be issued a Class I, Class II or Class III lobster and crab fishing license that identifies a limited-entry zone as the declared lobster zone unless that person:

A. Held in the previous licensing year a Class I, Class II or Class III lobster and crab fishing license that identified that zone as the person's declared lobster zone; or

B. Is authorized as a new zone entrant by the commissioner pursuant to subsection 7 to declare that zone as the person's declared lobster zone.

5. Application for limited-entry zone. A person who wishes to be a new zone entrant shall indicate to the commissioner in writing a request to declare a limited-entry zone as the person's declared lobster zone, in accordance with this subsection. A person may indicate up to 2 limited-entry zones that the person requests to declare as the person's declared lobster zone. The commissioner shall stamp each request with the time and date of submission. A person may not be authorized as a new zone entrant unless that person made a request under this subsection no later than December 15th of the previous calendar year.

A. A person who held a Class I, Class II or Class III lobster and crab fishing license in the previous licensing year and wishes to be a new zone entrant shall indicate to the commissioner in writing a request to declare a limited-entry zone as the person's declared lobster zone. The person must be put on a waiting list maintained under subsection 6 according to the time and date the commissioner receives the request.

B. A person who did not hold a Class I, Class II or Class III lobster and crab fishing license in the previous licensing year and wishes to be a new zone entrant shall indicate to the commissioner in writing which zone the person requests to declare as the person's declared lobster zone. The person must be

put on a waiting list maintained under subsection 6 according to the date the commissioner determines that the person is eligible for a Class I, Class II or Class III lobster and crab fishing license pursuant to section 6421, subsection 5, except that if the person does not indicate to the commissioner in writing which zone the person requests to declare as the person's declared lobster zone within 30 days of the date the commissioner determines that the person is eligible, the person must be put on the waiting list according to the time and date the commissioner receives such a written request.

6. Chronological waiting list. The commissioner shall maintain and make available a waiting list of people who have requested to declare a limited-entry zone as their declared lobster zone. The list must be arranged in chronological order in accordance with subsection 5. The commissioner shall create a waiting list for a zone at the time the commissioner closes the zone pursuant to subsection 2, paragraph D.

7. Authorization of new zone entrants. The commissioner shall determine by February 1st of each licensing year the number of new zone entrants that may be authorized for each limited-entry zone. The number of new zone entrants authorized in a licensing year must be in accordance with the exit ratio established under subsection 2 for that zone. Upon completion of the survey required under subsection 10, the commissioner may adopt rules in accordance with subsection 2, paragraph C. Upon adoption of these rules, the exit ration must be used to establish the number of trap tags that may be issued to new zone entrants. The number of new zone entrants must be determined by dividing the number of trap tags that may be issued to new zone entrants by the zone trap limit as described under section 6431-A. The number of new zone entrants must be rounded down to the nearest whole number and the remaining trap tags carried over to the following year's allocation. The commissioner shall authorize new zone entrants in chronological order of requests received under subsection 5. The commissioner shall notify the authorized new zone entrants by certified mail. If a person does not declare a zone within 30 days after receiving the notification by certified mail, that person must be taken off the waiting list and the next person on the list must be authorized as a new zone entrant. If a person has indicated a request for more than one zone pursuant to subsection 5, that person must be taken off the waiting list for the 2nd zone when the person declares one of the zones as that person's declared lobster zone after being authorized to do so. If a person who holds a current Class I, Class II or Class III license is authorized as a new zone entrant and declares the zone as that person's declared lobster zone, the commissioner shall change the zone identified on that person's license to the limited-entry zone for which the person is authorized.

8. Exceptions. Notwithstanding subsection 4, the following persons may be issued a Class I, Class II or Class III lobster and crab fishing license that

identifies a limited-entry zone as the declared lobster zone without meeting the requirements in subsection 4.

A. A person who is under 18 years of age who successfully completed the requirements of the apprentice program under section 6422 or 6475 and who submitted documentation of completion of the apprentice program to the department before attaining 18 years of age may declare any zone as that person's declared lobster zone as long as the individual has met all apprentice program rules that may have been adopted in that zone.

B. A person who is issued a Class I, Class II or Class III lobster and crab fishing license on appeal pursuant to section 6310, subsection 2, paragraph A, subparagraph (1) or (2) may declare as that person's declared lobster zone the zone in which the person was authorized to fish a majority of that person's lobster traps in the most recent year in which the person held a license.

C. A person who is issued a Class I, Class II or Class III lobster and crab fishing license pursuant to section 6421, subsection 5, paragraph D may declare as that person's declared lobster zone the zone in which the person was authorized to fish a majority of that person's lobster traps in the most recent year in which the person held a license.

D. A person who is issued a Class I, Class II or Class III lobster and crab fishing license and is 70 years of age or older may declare any zone as that person's declared lobster zone.

E. A person who has either successfully completed the requirements of the apprentice program under section 6422 or 6475 or held a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year and who has registered to enter an established island limited-entry program as described under section 6449 may declare as that person's declared lobster zone the zone in which that island limited-entry program is located when the person becomes eligible to enter the island limited-entry program.

The trap tags issued to a person who declares a limited-entry zone as that person's declared lobster zone pursuant to this subsection may not be counted for the purposes of the exit ratio or the number of new zone entrants that may be authorized for that zone.

9. Rules. The commissioner may establish by rule procedures to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

10. Survey required. A lobster management policy council in a limited-entry zone as of September 1, 2007 must conduct a written survey in its zone

pursuant to subsection 2 prior to September 1, 2008 in order to allow the council to recommend to the commissioner an exit ratio based on trap tags. Failure of a lobster management-policy council in a limited-entry zone to conduct this survey and submit its recommendation to the commissioner by September 15, 2008 will result in the commissioner's adopting an exit-to-entry ratio of trap tags retired to trap tags issued of 1:1 for that zone until such a survey is conducted.

§6449. Island limited-entry programs

An island limited-entry program may be established pursuant to this section in order to maintain a number of licenses appropriate for the needs of an island community and the local lobster resource.

1. Proposal to the commissioner. Notwithstanding section 6448, subsection 7, a year-round island community may petition the commissioner for the establishment of an island limited-entry zone program if a minimum of 5 island residents that are holders of a Class I, Class II or Class III lobster and crab fishing license or 10% of the island residents that are holders of a Class I, Class II or Class III lobster and crab fishing license, whichever is greater, signs the petition submitted to the commissioner. If 2/3 of the Class I, Class II or Class III lobster and crab fishing license holders that are residents on the island voting in a referendum held pursuant to section 6447, subsection 6 support the establishment of an island limited-entry zone program, the commissioner may adopt rules to establish such a program, including a waiting list. Before establishing or amending the number of licenses available to island residents, the commissioner shall determine the number of licenses preferred by 2/3 of the Class I, Class II or Class III lobster and crab fishing license holders resident on the island. The commissioner may accept the preferences proposed by 2/3 of the license holders as reasonable and adopt those preferences or reject the preferences as unreasonable. The commissioner shall consult with the lobster management policy council for the lobster management zone in which the island is located before making the decision.

2. No longer resident. An individual who obtains a Class I, Class II or Class III lobster and crab fishing license through an island limited-entry program but who no longer wishes to maintain residency on the island is subject to the following requirements.

A. A person who held a Class I, Class II or Class III lobster and crab fishing license and maintained residency on the island for a period of not less than 8 years and who can document to the commissioner that the person harvested lobsters in each of the 8 years may end the person's residency on the island and fish elsewhere in the lobster management zone in which the island is located without going on a waiting list as established in section 6448.

B. A person who holds a Class I, Class II or Class III lobster and crab fishing license and who either has maintained residency on the island for less than 8 years or who has maintained residency on the island for at least 8 years but cannot document to the commissioner that the person harvested lobsters in each of the 8 years may end the person's residency on the island and become eligible to fish elsewhere in the lobster management zone in which the island is located if that person complies with the waiting list requirement established in accordance with section 6448.

3. Restriction. This section applies only to an island in the coastal waters with a year-round community that is not connected to the mainland by an artificial structure.

4. Rules. The commissioner shall adopt rules to implement the island limited-entry program. The rules must include but are not limited to:

A. A definition of residency on an island;

B. Allowances for the temporary absence from an island due to a medical condition or educational requirements; and

C. Providing for an opportunity for increasing the number of Class I, Class II or Class III lobster and crab fishing license holders on an island, if appropriate, based on the characteristics of the island and the lobster resource.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUBCHAPTER 3 - LOBSTER FUND

§6451. Lobster Fund

1. Allocation of license fees. Ten dollars of each $135.75 fee, $10 of each $132 fee, $10 of each $136 fee, $20 of each $203 fee, $20 of each $272.50 fee, $30 of each $407.25 fee, $30 of each $387 fee, $60 of each $785 fee, $60 of each $790.75 fee, $120 of each $1,587.50 fee, $180 of each $2,369.25 fee, $5 of each $65 fee and $5 of each $66 fee for each lobster and crab fishing license must be allocated to the Lobster Fund, which must be used for the purposes of lobster biology research, of propagation of lobsters by liberating seed lobsters and female lobsters in Maine coastal waters and of establishing and supporting lobster hatcheries.

2. Purchases: liberation. The commissioner may authorize the expenditure of the money in the Lobster Fund for the purpose of purchasing seed lobsters from Maine lobster pound owners and female lobsters from

wholesale seafood license holders. The commissioner shall establish the purchase price for seed and female lobsters after consultation with the industry. The commissioner shall give priority to purchasing seed lobsters.

3. Liberation and v-notching. The commissioner may provide purchased seed lobsters to lobster hatcheries. The remaining seed and all other female lobsters shall be liberated in the coastal waters after v-notching them in the right flipper. The right flipper shall be determined as established under section 6436, subsection 1.

4. Program. The commissioner may authorize the expenditure of money in the Lobster Fund for research and development programs which address the restoration, development or conservation of lobster resources.

5. Nonlapsing fund. The Lobster Fund shall not lapse.

6. Lobster hatcheries. The commissioner, with the advice of the Lobster Advisory Council, may authorize expenditure of money from the Lobster Fund, any available funds and, as appropriated by the Legislature, the General Fund to make grants in support of the establishment and operation of lobster hatcheries. The grants shall be for a one-year period and shall be renewable indefinitely upon successful reapplication. There shall be no more than 5 lobster hatcheries supported under this section. The commissioner shall develop rules, including biological and economic criteria for evaluating proposals. The commissioner shall require the grantee to keep a log of activities regarding the hatchery and shall require a written report at the termination of each grant.

7. Lobster Advisory Council. The commissioner shall consult with the Lobster Advisory Council on the expenditure of funds under this section.

8. Apprentice program. The commissioner may authorize the expenditure of money in the Lobster Fund to cover the initial costs of developing and delivering the educational component of the apprentice program under section 6422, subsection 3. Any expenditures must be reimbursed to the Lobster Fund from the fees charged under section 6422, subsection 3.

SUBCHAPTER 3-A — LOBSTER PROMOTION COUNCIL

§6455. Lobster Promotion Council

1. Council established; purpose. The Lobster Promotion Council, established in Title 5, section 12004-H, subsection 14 and referred to in this subchapter as the "council," is created to promote and market actively Maine lobsters in state, regional, national and international markets. The council shall draw upon the expertise of the Maine lobster industry and established private

marketing firms to identify market areas that will provide the greatest return on the investments made by lobster license holders and undertake those media or promotional efforts that represent the most cost-effective use of a limited promotional budget. The council shall remain responsive to the Maine lobster industry, conduct its business in a public manner and undertake marketing efforts that promote the quality and full utilization of the product and the unique character of the coastal Maine lobster fishery.

The council consists of 9 voting members appointed as follows:

A. From the western district of the State, consisting of lands located between the Piscataqua River and the Kennebec River, 3 members meeting the qualifications in subsection 2;

B. From the midcoast district of the State, consisting of all lands located between the Kennebec River and the Penobscot River, 3 members meeting the qualifications in subsection 2; and

C. From the eastern district of the State, consisting of all lands located between the Penobscot River and the St. Croix River, 3 members meeting the qualifications in subsection 2.

The commissioner shall appoint the members of the council from among a list of nominees prepared by the Lobster Advisory Council. The commissioner shall appoint one member within each district for an initial term of one year, one member within each district for an initial term of 2 years and one member within each district for an initial term of 3 years. All subsequent members are appointed by the commissioner for terms of 3 years. A person may not serve more than 2 consecutive 3-year terms as a member of the council. By majority vote, the council shall annually elect a chair from among its members. The commissioner is an ex officio, nonvoting member of the council.

1-A. Council is a public instrumentality. The council is established as a public instrumentality serving a public purpose. As a public instrumentality:

A. Employees of the council may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372 and the state retirement system provisions of Title 5, Part 20;

B. The council may not be construed to be a state agency for any purposes, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4; and

C. Notwithstanding any provisions of paragraphs A and B:

(1) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter 1, except as provided in subsection 1B. The commissioner and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over marine resource matters have access to all material designated confidential by the council;

(2) Except as required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18; and

(3) For the purposes of the Maine Tort Claims Act, the council is a "governmental entity" and its employees are "employees" as those terms are defined in Title 14, section 8102.

1-B. Market studies and promotional plans; proprietary information. Information provided to or developed by the council and included in a promotional plan or market study is public unless the council determines that it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the council or the person submitting the information and would make available information not otherwise publicly available.

2. Qualifications of members. From each district, 3 members must be appointed who meet the following criteria:

A. One person who is a full-time harvester and who has held a valid lobster and crab fishing license for at least 5 consecutive years;

B. One person who is a dealer or pound operator and who:

(1) Has held a valid wholesale shellfish license or lobster transport license for a period of at least 5 consecutive years; or

(2) Is the manager of, or an officer in, a business entity operating in the State that holds a valid wholesale shellfish license or lobster transport license; and

C. One person who is a public member.

A person is eligible for appointment to the council from a district only if that person is a resident of the district or if that person's place of business is located within the district.

3. Meetings. The council shall meet at least quarterly. A quorum of 5 members is required to conduct the business of the council. Additional meetings may be called by the chair. If 3 or more members of the council submit to the chair a written request for a meeting, the chair shall call a meeting to be held no sooner than 14 days after receipt of the written request. The commissioner may remove any member with unexcused absences from 2 or more consecutive meetings of the council.

3-A. Employees. The council shall hire a full-time executive director and may hire staff as needed to perform its duties. Employees of the Lobster Promotion Council serve at the pleasure of the council. The salary and benefits for employees of the council are determined by the council.

4. Powers and duties. The council may:

A. Undertake promotional marketing programs in cooperation with the lobster industry;

B. Promote national and international markets for lobsters harvested or processed in the State;

C. Provide material and technical assistance to persons seeking to market lobsters harvested or processed in the State;

D. Conduct other efforts as determined necessary to increase the sales of lobsters harvested or processed in the State;

D-1. Market and sell goods directly related to the functions of the council and deposit all proceeds in the Lobster Promotion Fund;

E. Make expenditures from the Lobster Promotion Fund to carry out the purposes of this subchapter. Money in the fund may be used only for the following purposes:

(1) Promotion, advertising and marketing development. The council may implement programs and activities to promote, advertise and develop markets for lobster and make or enter into contracts with any local, state, federal or private agency, department, firm, corporation, entity or person for those purposes; and

(2) The hiring of staff and the payment of compensation for employees, payment of per diem and reimbursement of expenses for members pursuant to Title 5, section 12004-H and payment of administrative and overhead costs associated with the business of the council; and

F. Accept and deposit in the fund additional funding from any source, public or private.

5. Fund established; license surcharge assessed. The Lobster Promotion Fund, referred to in this subchapter as the "fund," is established to carry out the purposes of this subchapter. The department shall pay to the fund all money appropriated or received by the department for the purposes of this subchapter, except that the department may retain funds necessary to reimburse the department for the actual cost of collecting the license surcharges established in this subsection. The fund is capitalized from the following annual surcharges assessed on the following licenses issued by the department for calendar years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 to 2020:

A. Class I crab and lobster licenses for persons 18 to 69 years of age, $31.25;

B. Class II crab and lobster licenses, $62.50, except that for license holders 70 years of age or older the surcharge is $32;

C. Class III crab and lobster licenses, $93.75, except that for license holders 70 years of age or older the surcharge is $47;

D. Wholesale seafood licenses with lobster permits, $250;

E. Lobster transportation licenses, $250; and

F. Nonresident lobster and crab landing permits, $250.00.

A person holding more than one of the licenses listed in this subsection is assessed a surcharge only on the highest surchargeable license held.

The Treasurer of State shall hold all surcharges assessed by this subsection in the fund and invest all money in the fund until disbursed to the council upon request of the council. Interest from investments accrues to the fund.

All money in the fund is subject to allocation by the Legislature. Unexpended balances in the fund at the end of the fiscal year may not lapse but must be carried forward to be used for the same purposes.

In addition to payment of the regular license fee and the surcharge, a person purchasing a license subject to the surcharges established in this subsection may make voluntary contributions to the fund at the time the license is purchased. Voluntary contributions received by the department from a licensee

pursuant to this subsection must be deposited in the fund by the department and must be used by the council for the purposes of this subchapter.

6. Report. By February 15th of each year, the council shall report to the joint standing committees of the Legislature having jurisdiction over financial affairs and marine resource matters on the programs undertaken pursuant to this subchapter, expenditures from the fund and balances in all accounts in the fund.

7. Audit. An annual audit of the expenditures of the council must be performed. The council may contract with the Department of Audit or with a private sector accounting firm to conduct the audit. The council shall report the results of that audit to the joint standing committee of the Legislature having jurisdiction over marine resource matters. If the annual audit is performed by the Department of Audit, the council shall reimburse the department for its costs to conduct that audit.

SUBCHAPTER 4 - LOBSTER ADVISORY COUNCIL

§6461. Purpose

The lobster fishing industry is one of the most important industries in the State because of its contribution to the economy and also because of its unique social, historic and cultural contributions to this State's quality of life.

This subchapter is enacted to help conserve and promote the prosperity and welfare of the State and its citizens and the lobster fishing that helps to support them. This subchapter will accomplish these goals by fostering and promoting better methods of conserving, utilizing, processing, marketing and studying the lobster.

§6462-A. Lobster Advisory Council

1. Appointment; composition. The Lobster Advisory Council, established by Title 5, section 12004-I, subsection 58 and in this subchapter known as the "council," consists of the following members:

A. One person from each lobster management policy council established under section 6447. Each lobster management policy council shall choose by majority vote a member to serve on the council;

B. Two persons who hold wholesale seafood licenses and are primarily dealers in lobsters, appointed by the commissioner;

C. One person who is a member of the general public and does not hold any license under this subchapter, appointed by the commissioner; and

D. Three persons who hold lobster and crab fishing licenses and who are not members of lobster management policy councils established under section 6447, appointed by the commissioner. Each person appointed under this paragraph must reside in a different county. One person appointed under this paragraph must hold a noncommercial lobster and crab fishing license.

2. Term. The term for a member who represents a lobster management policy council is coterminous with that person's term on that policy council. All other members serve for terms of 3 years, except that a vacancy must be filled by the commissioner for the unexpired portion of the term. A vacancy for a member representing a lobster management policy council must be appointed by that policy council using procedures defined in subsection 1. Members continue to serve until their successors are appointed.

3. Compensation. Members are entitled to compensation according to Title 5, chapter 379.

4. Quorum. A quorum is a majority of the members of the council, at least 4 of whom must be lobster and crab fishing license holders.

5. Chair and officers. The council shall annually choose one of its members to serve as chair for a one-year term. The council may select other officers and designate their duties.

6. Meetings. The council shall meet at least 4 times a year at regular intervals. It may also meet at other times at the call of the chair or the commissioner.

§6463. Council programs and activities

1. Advise. The council shall advise the commissioner on activities of the department that relate to the lobster industry. The council may investigate problems affecting the lobster industry and make recommendations to the commissioner and the Marine Resources Advisory Council concerning its investigations.

2. Research plans. The council may review current lobster research programs and plans for research on the lobster stock, and submit to the commissioner and Marine Resources Advisory Council, annually, its recommendations on those programs and plans.

3. Dispute resolution. The council may consider disputed issues brought to the council by any lobster management policy council established under section 6447. The council may make recommendations to the commissioner with regard to resolving such issues.

SUBCHAPTER 4-A

LOBSTER RESEARCH, EDUCATION AND DEVELOPMENT FUND

§6465. Education and Development Fund

The Lobster Research, Education and Development Fund, referred to in this subchapter as the "fund," is established in the department. Balances in the fund may not lapse and must be carried forward and used for the purposes of this section.

1. Sources and uses of fund. Revenues from lobster special registration plate fees credited to the fund under Title 29-A, section 456-A may be used for research and education to support the development of the lobster industry in this State. Revenues may also be used to support the operation of the research, education and development board described in subsection 2, including reimbursement for travel expenses of its members.

2. Research, education and development board. The commissioner shall appoint a research, education and development board and consult with the board regarding the expenditures from the fund. The board is composed of one member from each of the following organizations:

A. A statewide association representing the interests of persons who harvest lobster commercially;

B. An association representing the interests of persons who harvest lobster commercially in Washington and Hancock counties;

C. A southern Maine association representing the interests of persons who harvest lobster commercially;

D. A statewide import-export lobster dealers' association;

E. A statewide lobster pound owners' association;

F. A statewide lobster processors' association;

G. The Lobster Promotion Council under section 6455

H. The Lobster Advisory Council established by Title 5, section 12004-I, subsection 58; and

I. An international lobster institute. This member must be a resident of the State.

Members are entitled to compensation according to Title 5, chapter 379.

SUBCHAPTER 5 – MONHEGAN LOBSTER CONSERVATION AREA

§6471. Monhegan Lobster Conservation Area

1. Monhegan Lobster Conservation Area. The following territorial waters of the State in the vicinity of Monhegan Island are known as the Monhegan Lobster Conservation Area:

Beginning at a point located at latitude 43`45.09' north and longitude 069`22.16' west that is 2 nautical miles southwesterly of the nearest shore of Monhegan Island; in a southwesterly direction to latitude 43`44.28' north and longitude 069`23.37' west at a point on the 3-nautical-mile line; then following the 3-nautical-mile line around the southern end of Monhegan Island to latitude 43`44.94' north and longitude 069`14.26' west; then in a somewhat northerly direction to latitude 43`45.8' north and longitude 069`15.3' west, to a point that is 2 nautical miles from the nearest shore of Monhegan Island; then following a line that is 2 nautical miles from the nearest shore of Monhegan Island and that continues around the northern end of Monhegan Island to the point of beginning.

§6472. Closed and open seasons

1. Closed season. It is unlawful for a person to fish for or take lobsters in the Monhegan Lobster Conservation Area from June 26th to August 31st, both days inclusive, and on any day not included in the open season established by the commissioner under subsection 2.

2. Open season. The commissioner shall establish by rule an open season not to exceed 250 days between October 1st and the following June 25th during which a person may fish for or take lobsters in the Monhegan Lobster Conservation Area.

A. Before establishing or amending the open season under this section, the commissioner shall determine the open season preferred by 2/3 of the individuals registered to obtain Monhegan Lobster Conservation Area trap tags under section 6474. The commissioner may accept the preferences proposed by 2/3 of the registrants as reasonable and adopt those preferences or reject the preferences as unreasonable. The commissioner shall consult with the lobster management policy council for Zone D before making this decision.

B. In adopting rules under this subsection, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052.

C. A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule establishing the open lobster season in the Monhegan Lobster Conservation Area.

D. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this subsection without the advice and consent of the Marine Resources Advisory Council. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

3. Trap limit. The commissioner shall establish by rule a trap limit for the open season established pursuant to subsection 2. The trap limit may not exceed 475 traps per individual registered to obtain Monhegan Lobster Conservation Area trap tags under section 6474.

A. Before establishing or amending the trap limit under this subsection, the commissioner shall determine the trap limit preferred by 2/3 of the individuals registered to obtain Monhegan Lobster Conservation Area trap tags under section 6474. The commissioner may accept the preferences proposed by 2/3 of the registrants as reasonable and adopt those preferences or reject the preferences as unreasonable. The commissioner shall consult with the lobster management policy council for Zone D before making this decision.

B. In adopting rules under this subsection, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052.

C. A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule establishing the trap limit in the Monhegan Lobster Conservation Area.

D. Notwithstanding any provisions to the contrary, the commissioner may adopt rules under this subsection without the advice and consent of the Marine Resources Advisory Council. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

§6473. Fishing in other waters

1. Limitations. A person registered for Monhegan Lobster Conservation Area trap tags under section 6474 may not fish for or take lobsters:

A. In the State's 3-mile territorial sea at any time, except in that portion of the coastal waters designated under section 6471 as the Monhegan Lobster Conservation Area during the open season established for the area under section 6472; and

B. In federal waters during the Monhegan Lobster Conservation Area

closed season.

2. Exception. Notwithstanding subsection 1, a person registered for Monhegan Lobster Conservation Area trap tags may serve as a crew member to assist in the licensed activities under the direct supervision of a Class I, Class II or Class III license holder outside the Monhegan Lobster Conservation Area.

§6474. Fishing without Monhegan trap tags prohibited

1. Prohibition. A person may not submerge a lobster trap in the Monhegan Lobster Conservation Area unless a lobster trap tag designated for use in the Monhegan Lobster Conservation Area is affixed to the trap. The commissioner shall charge fees and deposit those fees for Monhegan Lobster Conservation Area trap tags in accordance with section 6431-B.

2. Trap tag expiration. Trap tags issued for use during a Monhegan Lobster Conservation Area open season expire upon the closing of that season.

3. Trap tag eligibility for the 1998-99 open season. The commissioner may not issue Monhegan Lobster Conservation Area trap tags to a person between the effective date of this section and June 25, 1999 unless that person:

A. Possesses a Class I, Class II or Class III lobster and crab fishing license;

B. Registered with the commissioner for harvesting lobsters during the January 1, 1997 to June 25, 1997 open season under rules that established the Monhegan Island Area Lobster Trap Regulation; and

C. Documents to the commissioner that that person harvested lobsters at any time between January 1, 1997 and June 25, 1997 under rules that established the Monhegan Island Area Lobster Trap Regulation.

A person eligible to obtain trap tags under this section is deemed registered for the purpose of obtaining Monhegan Lobster Conservation Area trap tags for the 1998-99 open season, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

4. Trap tag eligibility after July 31, 1999. Except as provided under subsection 5, the commissioner may not issue Monhegan Lobster Conservation Area trap tags to a person after July 31, 1999 unless that person:

A. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that the person harvested lobsters from the Monhegan Lobster

Conservation Area in the prior open season and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season;

B. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that that person did not harvest lobsters from the Monhegan Lobster Conservation Area in the prior open season because of an illness or medical condition and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season; or

C. Becomes registered for trap tag registration pursuant to section 6475.

5. License suspension and eligibility. A person eligible to register for Monhegan Lobster Conservation Area trap tags under subsection 4, paragraph A if not for the suspension of that person's Class I, Class II or Class III lobster and crab fishing license may not, for the purpose of admitting new registrants, be considered to have failed to register pursuant to section 6475, subsection 1, paragraph C, subparagraph (3). Upon reinstatement of that person's license, that person is deemed registered and the commissioner may issue trap tags to that person, unless that person notifies the commissioner before reinstatement that the person chooses to not be registered.

6. Limit on number of registrants. The total number of individuals registered to obtain Monhegan Lobster Conservation Area trap tags may not exceed the number of individuals initially eligible pursuant to subsection 3, paragraphs A, B and C.

7. Periods of registration. Monhegan Lobster Conservation Area registrations are valid as follows.

A. A person registered under subsection 3 is registered for the entire period from the effective date of this section until July 31, 1999, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

B. A person registered under subsection 4, paragraph A or B is registered for the entire period from August 1st of the year of registration until the following July 31st.

C. A person registered under subsection 4, paragraph C is registered for the entire period from the date of registration until the following July 31st.

D. A person registered under section 5 through the reinstatement of a suspended license is registered for the entire period from the date of license reinstatement until the following July 31st.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6475. New participants; apprenticeship

1. New participants. A person who is not registered to obtain Monhegan Lobster Conservation Area trap tags may obtain trap tags if that person becomes registered for Monhegan Lobster Conservation Area trap tags pursuant to this section.

A. The commissioner shall maintain a registry of persons who have completed the Monhegan Lobster Conservation Area apprenticeship under paragraph B. Each person included in the registry must be listed chronologically according to the time and date the commissioner received a validated log book under paragraph B.

B. A person fulfills the time requirements of a Monhegan Lobster Conservation Area apprenticeship if, after November 30, 1998, that person serves for 200 fishing days during a minimum period of 24 months in the Monhegan Lobster Conservation Area on a vessel operated by a Monhegan Lobster Conservation Area trap tag registrant who agrees to sponsor that person as an apprentice. For the purposes of this subsection, a “fishing day” means 5 hours or more in a calendar day of lobster-fishing-related activity. The commissioner shall administer the apprenticeship pursuant to rules adopted under section 6422 regarding an apprentice log book and educational courses. A person completes a Monhegan Lobster Conservation Area apprenticeship upon presentation to the commissioner of a validated log book that documents that person meets the requirements of this paragraph.

C. A person listed in the registry under paragraph A may register for Monhegan Lobster Conservation Area trap tags if:

(1) That person possesses a Class I, Class II or Class III lobster and crab fishing license;

(2) That person has been listed in the registry longer than all other persons listed; and

(3) A person registered for trap tags in an open season does not register to obtain trap tags for the subsequent open season under section 6474,

subsection 4, paragraph A or B.

The commissioner shall by August 15th notify a person who becomes eligible for registration under this paragraph. If that person does not register with the commissioner within 30 days, that person becomes ineligible for registration and the commissioner shall immediately notify the next individual who has been listed for the longest period of time in the registry. That individual must register within 30 days.

2. Registration in later years. A person who registers for Monhegan Lobster Conservation Area trap tags under subsection 1 must follow the provisions of section 6474, subsection 4, paragraph A or B to register for trap tags for each subsequent open season.

3. License requirements; apprenticeship. License requirements for an apprenticeship in the Monhegan Lobster Conservation Area are as follows.

A. A person who does not possess a Class I, Class II or Class III lobster and crab fishing license must possess an apprentice license issued under section 6421 to be an apprentice in the Monhegan Lobster Conservation Area. The waiver provisions of the apprentice program under section 6422, subsection 4 do not apply to an apprentice in the Monhegan Lobster Conservation Area.

B. A person who possesses a Class I, Class II or Class III lobster and crab fishing license is not required to possess an apprentice license issued under section 6421 to be an apprentice in the Monhegan Lobster Conservation Area.

4. Issuance of commercial lobster license. A person who does not possess a Class I, Class II or Class III lobster and crab fishing license may be issued a Class I, Class II or Class III lobster and crab fishing license upon completion of the apprenticeship under subsection 1, paragraph B.

5. Registrants exiting the Monhegan Lobster Conservation Area. A person who is registered to fish within the Monhegan Lobster Conservation Area and who no longer wishes to fish there may exit the area at the end of the registration period established in this section in the following manner:

A. A person who has been registered for a period of not less than 5 open seasons and who can document to the commissioner that that person has harvested lobsters in each of 5 open seasons may exit the Monhegan Lobster Conservation Area and fish elsewhere in Zone D without going on a waiting list as established in section 6448.

B. A person who has been registered for a period of less than 5 open seasons or who cannot document to the commissioner that that person

harvested lobsters in at least 5 open seasons may exit the Monhegan Lobster Conservation Area and become eligible to fish elsewhere in Zone D if that person complies with the waiting list requirement established in accordance with section 6448.

§6476. Former registrants

A person whose registration to obtain Monhegan Lobster Conservation Area trap tags has lapsed may be listed in the registry under section 6475, subsection 1, paragraph A and may purchase trap tags if the person becomes registered pursuant to section 6475, subsection 1, paragraph C. A person included in the registry pursuant to this subsection must be listed chronologically according to the time and date the commissioner received written notification from that person requesting that person be listed in the registry.

§6477. Student license holder

Notwithstanding section 6474, the commissioner may issue up to 15 Monhegan Lobster Conservation Area trap tags to a person issued a student license under section 6421. The license holder must tend the tagged traps from a vessel operated by a person registered under section 6474. The student license holder must be present when that license holder's lobster traps are tended. A student license holder shall certify on forms supplied by the commissioner that a person registered under section 6474 agrees to allow the student license holder to fish for or take lobsters from that person's vessel.

CHAPTER 621
FINFISH LICENSES

SUBCHAPTER 1 - LICENSES

§6501. Commercial fishing license

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Commercial fishing license for a resident operator;

B. Commercial fishing license for a resident operator and all crew members;

C. Commercial fishing license for a nonresident operator and all crew members; or

D. Other license under this Part authorizing the activities.

2. Licensed activity. The holder of a commercial fishing license may fish for or take fish or possess, ship, transport or sell fish that the holder has taken. The license authorizes crew members aboard the licensee's boat when it is engaged in commercial fishing to undertake these activities, if the license provides for crew members.

3. Exemptions. The licensing requirement under subsection 1 does not apply to activities described in this subsection.

A. A person may fish for, take, possess or transport any species of fish if they have been taken by speargun, harpoon, minnow trap, hand dip net or hook and line and are only for personal use.

B. A person may fish for, take, possess or transport halibut if they have been taken by tub trawl or by hook and line and are only for personal use.

4. Eligibility. A commercial fishing license may be issued only to an individual.

5. Fees. Fees for commercial fishing licenses are:

A. Forty-eight dollars for resident operator;

B. One hundred twenty-eight dollars for resident operator and all crew members; and

C. Four hundred eighty-one dollars for nonresident operator and all crew members.

6. Definition. For the purposes of this chapter, "fish" means all marine finfish except Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, alewife, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad. For the purposes of this chapter, "fish" also means all other marine organisms, except lobsters, crabs, sea urchins, shellfish, scallops, marine worms, elvers, sea cucumbers, eels, shrimp or seaweed.

7. [Repealed]

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6502. Nonresident special tuna permit

A nonresident individual may fish for, take, possess, ship, transport or sell

tuna that the individual has taken, without a commercial fishing license, if the individual has a current special tuna permit.

1. Eligibility. A special tuna permit may be issued to a nonresident individual who is a registered participant in a tuna tournament that is sponsored and operated by a nonprofit association or corporation that has existed for at least one year prior to the tournament. An individual may not be issued more than one permit in any one calendar year.

2. Authorized activity. A special tuna permittee may fish for, take for sale and sell only one tuna in any one calendar year. The permit is valid for the length of the tournament plus one day or for 7 days from the date of issue, whichever is shorter.

3. Fee. The permit fee is $84, which may be credited against the license fee for a commercial fishing license, if it is issued to the permittee within 30 days of the issuing of the permit.

4. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6502-A. Commercial pelagic and anadromous fishing license

1. Definition. As used in this section, "pelagic or anadromous fish" means Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, alewife, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad.

2. License required. A person may not engage in the activities authorized under this section without a current:

A. Commercial pelagic and anadromous fishing license for a resident operator;

B. Commercial pelagic and anadromous fishing license for a resident operator and all crew members; or

C. Commercial pelagic and anadromous fishing license for a nonresident operator and all crew members.

3. Licensed activity. The holder of a commercial pelagic and anadromous fishing license may fish for or take or possess, ship, transport or sell pelagic or anadromous fish that the holder has taken. The commissioner shall determine by rule what crew members may fish under a commercial pelagic and

anadromous fishing license that provides for crew members. Rules adopted pursuant to this subsection are routing technical rules as defined in Title 5, chapter 375, subchapter 2A.

4. Exemption. The licensing requirement under subsection 2 does not apply to a person who fishes for, takes, possesses or transports any pelagic or anadromous fish that have been taken by speargun, harpoon, minnow trap or hook and line and are only for personal use.

5. Eligibility. A commercial pelagic and anadroumous fishing license may be issued only to an individual.

6. Fees. Fees for commercial pelagic and anadromous fishing licenses are:

A. Forty-eight dollars for a resident operator;

B. One hundred twenty-eight dollars for a resident operator and all crew members; and

C. Five hundred dollars for a nonresident operator and all crew members.

7. Surcharges. The following surcharges are assessed on holders of commercial pelagic and anadromous fishing licenses issued by the department:

A. For a commercial pelagic and anadromous fishing license for a resident operator, $50;

B. For a commercial pelagic and anadromous fishing license for a resident operator with crew, $200; and

C. For a commercial pelagic and anadromous fishing license for a nonresident operator with crew, $400.

The commissioner shall deposit surcharges collected pursuant to this subsection in the Pelagic and Anadromous Fisheries Fund established under section 6041.

8. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6505-A. Elver fishing license

1. License required. A person may not fish for or take elvers or possess, ship, transport or sell elvers that the person has taken unless the person is issued one of the following elver fishing licenses under this section:

A. A resident elver fishing license for one device;

B. A resident elver fishing license for 2 devices;

C. A nonresident elver fishing license for one device; or

D. A nonresident elver fishing license for 2 devices.

2. Eligibility. An elver fishing license may be issued only to an individual who:

A. [Repealed]

B. [Repealed]

C. Possessed an elver fishing license in the previous calendar year; or

D. [Repealed]

E. Did not possess an elver fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

2-A. [Repealed]

3. Limits on issuance. The department may not issue an elver fishing license during the open season for elver fishing.

4. Fees. Fees for elver fishing licenses are:

A. For a person who is a resident, $105; and

B. For a person who is a nonresident, $442.

Fifty dollars of each license fee collected under this subsection accrues to the Eel and Elver Management Fund established in section 6505-D.

5. Gear. Except as prohibited by section 6575-B, subsection 2-B, a person issued a license under this section may utilize one elver fyke net, one Sheldon eel trap or one dip net to fish for or take elvers without paying the fee required for a first net or trap pursuant to section 6505-B. A license issued under this section must identify the number and types of nets that the license holder may use pursuant to this section and section 6505-B.

6. Minimum age. A person who is under 15 years of age may not fish for or take elvers.

7. Nonresident licenses; reciprocity with other states. A nonresident is eligible to purchase an elver fishing license only if the nonresident documents to the commissioner that the nonresident's state of residence allows Maine residents to purchase an elver license and fish for elvers in that state.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6505-B. Elver gear fees

1. Elver fyke net and Sheldon eel trap fee. A person may not submerge an elver fyke net or a Sheldon eel trap in the waters of the State to fish for or take elvers unless the net or trap owner pays annually the following fees:

A. Fifty-eight dollars per net or trap for the use of an elver fyke net or Sheldon eel trap, except that the fee under this paragraph does not apply to an elver fyke net or Sheldon eel trap a person utilizes pursuant to section 6505-A, subsection 5.

2. Tags for elver fyke net and Sheldon eel trap. A person may not submerge an elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless a tag issued by the department is affixed to the shoreside wing of the net or trap and is clearly visible. The department may issue a replacement tag when an owner issued a tag documents that a net or trap has been damaged or lost.

3. Dip net fee. A person may not utilize a dip net to fish for or take elvers without paying a fee of $58 per dip net annually.

This subsection does not apply to a dip net a person utilizes pursuant to section 6505-A, subsection 5.

4. Payment with license. The fees required under subsections 1 and 3 must be paid upon application for an elver fishing license under section 6505-A.

5. Disposition of fees. Fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D as follows:

A. Fifty dollars per net or trap for the use of an elver fyke net or Sheldon eel trap; and

B. Fifty dollars per dip net.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6505-C. Eel harvesting license

1. License required. A person may not fish for or take eels in the coastal waters of the State or possess, ship, transport or sell eels that the person has taken in the coastal waters of the State without an eel harvesting license.

2. Exemptions. A person may fish for or take for personal use eels in the coastal waters of the State by speargun, harpoon, trap or hook and line and may possess or transport eels that person has taken pursuant to this subsection. The department shall adopt rules establishing a limit on the number of eels that a person may fish for, take, possess or transport pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Eligibility. An eel harvesting license may be issued only to an individual.

4. Fees. The fee for an eel harvesting license is $125.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that $50 must accrue to the General Fund for each license sold under this section.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6505-D. Eel and Elver Management Fund

1. Fund established. The Eel and Elver Management Fund, referred to in this section as the “fund,” is established as a dedicated, nonlapsing fund.

2. Permissible uses. The commissioner may use the fund to research and manage the State’s eel and elver resources, to enforce the laws related to eels and elvers and to cover the costs associated with determining eligibility for elver fishing licenses.

SUBCHAPTER 2 - LIMITS ON FISHING AND PROHIBITED ACTS

Article 1 General Prohibitions

§6521. Dumping of dead marine animals or scaled finfish

1. Deposition of dead marine animals; exception. A person may not deposit or discard, in intertidal zones or in harbors or rivers below the dividing line between tidewater and fresh water, any dead marine animal or its parts, except that:

A. A person may deposit oyster shell cultch in those waters solely to promote growth of oysters with the written permission of the commissioner and under any conditions the commissioner determines appropriate; and

B. The commissioner may grant an exception to this subsection within federal requirements for the purpose of conducting research on dead marine animals.

2. Scaled finfish. A person may not deposit, release or dump into the coastal waters any dead or alive finfish from which the scales have been removed.

3. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6522. Monofilament nets

A person who discards or abandons into any waters any net made of monofilament or of other material which is not biodegradable commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6523. Marking ice fishing shacks

A person may not place any shack or temporary structure used for ice fishing on the frozen territorial waters or use the shack or structure, unless the owner’s name and address are painted or otherwise clearly marked on the outside with 2-inch letters. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6525-A. Setting near weirs or stop seines

1. Setting nets or seines near weirs. It is unlawful for any person, other than the weir owner or his crew members, to set or assist in setting any net or seine within 2,000 feet of the mouth of a weir in operating condition whose operator is validly licensed under section 6501 and when the weir is licensed under Title 38, chapter 9.

2. Exception. Stop seining is permitted in any cove that does not have a weir even when the seine is less than 2,000 feet from a weir in another cove.

3. Cove name and designation. The commissioner shall prepare a map of areas of the State, where weirs are used as a method of fishing, which fixes the location of each weir and designates the boundaries of each cove in which those weirs are located. The map shall be provided to municipalities by the commissioner. Owners of licensed weirs and applicants for a license shall receive a map at cost. When an applicant for a license finds no designation on the map of cove boundaries for the cove where he wants to construct a weir, the municipal officers from the city or town within which the weir will be located shall notify the commissioner of the intended location of the weir on the map. The commissioner shall designate boundaries for the cove.

4. Limitation on location of weirs. Weirs shall be licensed according to the following.

A. After the effective date of this Act, no weir may be licensed for construction which is less than 2,000 feet from an existing weir.

B. Weirs which were licensed in 1983 and preceding years may continue to be licensed even when they are located less than 2,000 feet from an existing weir.

C. Any weir licensed in 1983 and preceding years for which the license expired as provided in section 1023 shall be required to be licensed as a new weir as provided in paragraph A

5. Limitation on purse seining. No person may purse seine within 2,000 feet of a licensed weir in operating condition, except that no person may purse seine for herring within one mile of a weir in operating condition that is licensed prior to the effective date of this section.

§6526. Rules; bait dealers license

The commissioner may adopt rules requiring that a person selling bait be licensed.

Article 1-A Commercial Underwater Handharvesting Safety

§6531. Licenses

The commissioner may not issue a handfishing scallop license under section 6701 or a handfishing sea urchin license under section 6748 to any person for calendar year 1995 or later unless:

1. Completion of competency course. That person successfully completes a commercial underwater handharvesting competency course offered under section 6532; or

2. Grandfathered. The commissioner determines that that person meets the grandfather provisions of section 6534.

§6532. Commercial underwater handharvesting competency

By August 15, 1994, the commissioner shall establish a competency training course for individuals engaged in commercial underwater handharvesting activities. The course may be taught by the department or offered by any public or private sector association or organization authorized by the commissioner to offer the course.

1. Enrollment prerequisite. A person is not eligible for enrollment in a course offered under this section unless that person possesses a valid open water diving certification. For the purposes of this article, the term "open water diving certification" means a diving certificate issued by a SCUBA training course meeting or exceeding the basic SCUBA training standards established by the American National Standards Institute.

2. Equipment requirements. Each person in the course must have a mask, a snorkel, fins, a buoyancy compensator jacket with low pressure inflator, an air tank and regulator, a pressure gauge, a weight belt and sufficient weights and a properly fitting wet or dry suit. The student provides that equipment if the equipment is not provided by the instructor.

3. Recovery of costs; department. For any course taught by the department, the commissioner shall set an enrollment fee sufficient to recover all costs incurred by the department in teaching the course.

4. Prescribing the course. In establishing the course, the commissioner may:

A. Prescribe the qualifications of instructors and impose on instructors any minimum insurance liability requirements considered necessary by the commissioner;

B. Prescribe the course content and the method of instruction, including the time and place of examinations; and

C. Establish standards for certifying the commercial underwater handharvesting competency of individuals who successfully complete the course.

5. Allowance for waivers. The commissioner may waive any component of a course offered under this section for a person who demonstrates to the commissioner, either through documented experience or technical or professional accreditation, a level of competency for that component that is at least equal to the level of competency necessary to successfully complete the course. It is the responsibility of the person seeking a waiver under this subsection to make that request in writing to the commissioner and to provide the commissioner with any documentation the commissioner determines necessary to make a decision.

§6533. Training required to act as a scallop or sea urchin tender

A person may not act as a tender pursuant to section 6535, section 6701, subsection 5, paragraph B or section 6748, subsection 4, paragraph B unless that person has met the diving tender safety requirements established in rule.

§6534. Grandfathered harvesters

A person is grandfathered for the purposes of section 6531, subsection 2 if the commissioner determines that that person:

1. Prior license holder. Possessed a scallop or urchin handharvesting license in 1992, 1993 and 1994; and

2. Seminar. Attends a classroom seminar on safe sea urchin handharvesting practices conducted or approved by the department.

§6535. Sea urchin and scallop diving tender license

1. License required. A person may not act as a diving tender on a boat engaged as a platform for the harvesting of sea urchins and scallops by hand unless that person is licensed under this section.

2. Licensed activity. A person licensed under this section may tend divers who harvest sea urchins and scallops by hand and operate a boat as a platform for the harvesting of sea urchins and scallops by hand and may possess, ship, transport and sell sea urchins and scallops harvested by licensed harvesters the tender has tended. A sea urchin and scallop diving tender license does not

authorize the holder to harvest sea urchins and scallops. As used in this subsection, "tend" means to assist the diver in any way, to operate a boat as a platform for harvesting or to cull or otherwise handle the harvested product.

As long as one person present on a boat engaged as a platform for the harvesting of sea urchins and scallops by hand has met the tender safety requirements adopted by rule pursuant to section 6533, all other persons present on the boat may operate the boat or engage in culling activities or otherwise hand the harvested product. An individual who engages in harvesting activities in accordance with a license issued under section 6701 or 6748 may not be considered as the person who has met the tender safety requirements adopted by rule pursuant to section 6533.

3. Eligibility. A sea urchin and scallop diving tender license may be issued only to an individual who is a resident.

4. Fees. The fee for a license issued under this section is $133.

4-A. Exception. A person acting as a tender under section 6701, subsection 5, paragraph B or section 6748, subsection 4, paragraph B does not need to possess a license issued under this Part.

6. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6536. Scallop diving tender license

[Repealed]

Article 2 Herring Limitations

§6541. Artificial lights in herring fishing

It shall be unlawful to take herring by use of or with the aid of any artificial light in the coastal waters, except as provided in this section.

The commissioner may adopt or amend regulations that set aside specific areas where artificial light may be used in the taking of herring, provided the herring are to be taken for bait and the activity will not unreasonably interfere with commercial herring fishing.

§6542. Size of herring

It shall be unlawful to take, buy, sell, process, ship, transport or possess herring which are less than 4 1/2 inches in length, except:

1. [Repealed]

2. Tolerance of 25%. Any person may take, buy, sell, process, ship, transport or possess herring that are less than 4 1/2 inches, if they comprise less than 25% by volume of an entire lot. The 25% tolerance by volume shall be determined by examination of 1/2 bushel chosen at random from each 30 hogsheads of herring or fraction thereof.

§6543. Standard unit of herring measure

A person who purchases or sells herring in their live or raw state for packing, other than by a standard unit of measure or by a fractional part of a standard unit of measure, commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged. The standard units of measure are the bushel, barrel of 3 bushels or the hogshead of 17 1/2 bushels.

§6544. Sealing of herring boats

A person who sells or transports any herring for processing, from or in the hold of any boat, which has not been measured and sealed as provided in this section, commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

1. Sealing of boats. The holds of all boats transporting herring for processing purposes must be measured and sealed by the State Sealer of Weights and Measures or the state sealer's designee.

2. Fee. The owner of the boat shall pay a fee for the measuring and sealing as determined by the State Sealer of Weights and Measures, based on the carrying capacity of the boat.

3. Method of measuring and sealing. The measure must be in 5 hogshead divisions measured by liquid measure from a calibrated prover to the top of the hatch coaming. The measurement must be marked and permanently sealed, both forward and aft, in the hold, in the most practicable manner, while the boat is afloat.

4. Notification of broken seals. The boat owner shall immediately notify the State Sealer of Weights and Measures of any alteration or the breaking of any seal.

5. Certification to commissioner. After measuring and sealing each boat, the State Sealer of Weights and Measures shall certify to the commissioner the name of the owner and the name and capacity of each boat.

§6545. Enforcement cooperation

The Commissioner of Marine Resources and the Commissioner of Agriculture shall cooperate in the enforcement of sections 6542 and 6543.

§6546. Sale and purchase of herring; written acknowledgement

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

1. Contents of acknowledgment. Unless otherwise agreed to by the parties, 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 14 days after delivery of the herring.

2. Payments. Unless otherwise agreed to by the parties, the buyer shall make all payments to the fisherman, or his agent, in money or in money equivalent, which includes, but is not limited to, credit against any outstanding indebtedness the fisherman may have to the buyer.

§6547. Sale or packing of herring

The sale and packing of herring is subject to the following.

1. Human consumption and bait purposes. If there is a buyer of herring for processing for human consumption within a reasonable distance of the place where the herring are caught that is available at the time they are offered for sale and ready and willing to purchase at a price acceptable to the seller, it is unlawful for any person, firm or corporation to sell, offer for sale or transfer in any manner herring that are 4 1/2 inches in length or longer, when measured from one extreme to the other, to any person, firm or corporation for purposes other than for human consumption or bait, unless those herring are not desirable for processing for human consumption.

2. Fish meal or oil. It is unlawful for any person, firm or corporation to process herring that are 4 1/2 inches in length or longer, when measured from one extreme to the other, for use as fish meal or oil.

3. Canning, packing or processing. No person, firm or corporation may can, pack or otherwise process those herring other than for human consumption, except as provided in this section.

4. Processing, transfer or sale of by-products. Nothing in this section may prohibit the processing, transfer or sale of herring cuttings, by-products or

waste.

Article 3 Miscellaneous Species

§6551. Tuna; method of taking

A person may not:

1. Fish for or take tuna; permitted methods. Fish for or take any tuna by any method other than by harpoons or by hook and line; or

2. Possess. Possess any tuna that was taken in an unlawful manner.

§6553-A. Implements and devices in Washington County waters

Between May 1st and December 1st of each year, it shall be unlawful to set or use any device, such as fish spawn, grapnel, spear, trawl, weir, gaff, seine, gill net, trap or set line on the waters of the Pleasant River and its tributaries in Columbia Falls and Addison, in Washington County, above Maine River Bridge, so-called, in Addison, and during that closed period no person may have in his possession any grapnel, trawl, weir, seine, gill net, trap or set line on the waters of the Pleasant River or its tributaries within those boundaries. This section does not apply to the taking of eels by spear from those waters during the month of November annually. This section does not apply to the taking of alewives from those waters as authorized by the general law or by vote of the Town of Columbia Falls. Any equipment used in violation of this section shall be confiscated by the commissioner, after final adjudication of any charge brought under this section.

§6554. Pacific salmon; method of taking; limits

1. Minimum length. A person may not take or possess Pacific salmon which are less than 14 inches in length.

2. Method of taking. A person may not fish for or take Pacific salmon from the coastal waters by any means other than hook and line with a single hook.

3. Limits. A person may not take more than 2 Pacific salmon in any one day.

4. Exception for aquaculture. A person lawfully engaged in the aquaculture of Pacific salmon is exempt from this section if that person holds a special license, if required, under section 6074.

5. Recommendations; commissioner. Nothing in this chapter may prohibit the commissioner from recommending to the Legislature changes in the limit on Pacific salmon that may be taken by hook and line with a single hook.

6. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6555. Striped bass; method of taking

It is unlawful to fish for or take striped bass, except by hook and line.

§6556. Striped bass; limits; personal use

It is unlawful for any person to fish for or take striped bass, except for personal use.

Article 4 Certain Area Limitations

§6571. Washington County

Within the territorial waters adjacent to Washington County:

1. Otter or beam trawls prohibited. From May 1st to December 15th, both days inclusive, it shall be unlawful to use either otter or beam trawls, except in the St. Croix River above or north of Quoddy Head lighthouse; and

§6572. Identification of groundfish spawning areas

1. Spawning areas for certain species. By January 1, 1998, the commissioner shall by rule identify all locations of the territorial waters that serve as spawning areas for cod, haddock or yellowtail flounder and the dates during which those spawning activities occur in each area. In determining the coastal spawning areas for cod, haddock and yellowtail flounder, the commissioner shall solicit information on the State's historic coastal groundfish spawning areas from persons who participate in, or are otherwise knowledgeable about, commercial and recreational coastal marine fisheries. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

2. Report. The commissioner shall by March 15, 2003 report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on areas identified as spawning areas for cod, haddock or yellowtail

flounder and any actions taken by the commissioner regarding those spawning areas.

3. Repeal of authority. After June 30, 2003, the commissioner may not designate spawning areas for cod, haddock or yellowtail flounder.

Article 5 Elver and Eel Limitations

§6575. Open season; elver harvesting

1. Open season. It is unlawful for a person to fish for or take elvers within the waters of the State except during the open season from noon on March 22nd to noon on May 31st.

2. Setting nets and traps. It is unlawful for a person to immerse or leave immersed an elver fyke net or a Sheldon eel trap in any river, stream or brook of the waters of the State at any time other than the open season for elver fishing.

3. Locating nets. It is unlawful for a person to designate or claim by any means a location in which to set an elver fyke net or a Sheldon eel trap at any time other than the open season for elver fishing.

§6575-A. Closed period; elver harvesting

It is unlawful for a person to fish for or take elvers from noon Friday to noon Sunday. A person may leave an elver fyke net or a Sheldon eel trap in the waters of the State during the closed period if the net or trap is left in a condition that prevents the capture of elvers. The terminal portion of a fyke net cod end must contain a rigid device with an opening not less than 3 inches in diameter and not exceeding 6 inches in length that is unobstructed by any other portion of the net.

§6575-B. Method of elver fishing; limits on gear

1. Gear. It is unlawful for a person to fish for or take elvers by any method other than by dip net, elver fyke net or Sheldon eel trap.

2-B. Type and amount of gear. It is unlawful for a person to immerse elver fishing gear other than the types and amounts authorized pursuant to this subsection.

A. A person who is issued an elver fishing license pursuant to section 6505-A, subsection 2, paragraph C may not immerse elver fishing gear other than the types and amounts of gear the person was authorized to immerse

during the previous elver fishing season, except that a person may surrender the authority to use an elver fyke net in order to use an elver dip net.

3. Rebuttable presumption. It is a rebuttable presumption that an elver fyke net, Sheldon eel trap or elver dip net immersed in any waters of the State at any time of the year is immersed for the purpose of fishing for or taking elvers.

4. Prohibition on fishing from boats. It is unlawful for a person to set or tend an elver fyke net or a Sheldon eel trap from a boat or to fish for or take elvers from a boat. A person may transport an elver fyke net, a Sheldon eel trap or a dip net by boat.

5. Use of dip nets. It is unlawful for a person to use a dip net to fish for or take elvers while standing in the coastal waters of the State.

6. Prohibition on fishing from artificial platforms. A person may not build or use an artificial platform to fish for elvers. This subsection does not prohibit fishing for elvers from piers or floats established for purposes other than elver fishing.

7. Bycatch release. A person immediately shall return alive into the waters of the State any species other than elver that is caught in an elver fyke net.

§6575-C. Closed areas; elver fishing

1. Dams with fishways. A person may not fish for or take elvers within 150 feet of any part of a dam with a fishway or within 150 feet of a fishway.

2. Alewife traps. A person may not fish for or take elvers within 50 feet of a licensed alewife trap.

3. Portion of rivers, streams and brooks. A person may not:

A. Fish for or take elvers at any time within the middle 1/3 of a river, stream, brook or other watercourse, as measured at mean high tide, within the coastal waters of the State; or

B. Obstruct the middle 1/3 of any river, stream, brook or other watercourse, as measured at mean low tide, within the coastal waters of the State.

4. Dip nets near elver fyke nets. A person may not fish for or take elvers with a dip net in the mouth of an elver fyke net. For the purposes of this

subsection, "mouth of an elver fyke net" means that area within an elver fyke net that is net-side of a straight line that runs from one meshed wing tip of the net to the other meshed wing tip.

5. Fyke net placement. A person may not place or set an elver fyke net or take elvers from an elver fyke net when any portion of the net, including any anchoring device, is located within an imaginary line between the wing ends of another elver fyke net. Cod end anchoring devices may not exceed 10 feet in length and wing end anchoring devices may not interfere with or create a hazard to navigation within the middle 1/3 of a navigable watercourse. A marine patrol officer may open the cod end of a net that is located in violation of this subsection.

6. Obstructing elver fyke nets. A person may not set an elver fyke net or place an obstruction near an elver fyke net in a manner that interferes with the operation of an elver fyke net.

7. Rulemaking; gear placement. If necessary to conserve the elver resource, the commissioner may adopt rules pursuant to section 6171 relating to placement of elver fishing gear based on the configuration of specific rivers, streams, brooks or other watercourses. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§6575-D. Molesting elver fishing gear

1. Prohibition. A person other than a marine patrol officer or the license holder issued a tag for an elver fyke net or a Sheldon eel trap may not utilize, transfer, alter, possess or in any manner handle the net or trap unless that person has been issued an elver fishing license under section 6505-A and:

A. [Repealed]

B. Is issued written permission by a marine patrol officer to tend the net or trap of a license holder issued a tag. A marine patrol officer may issue a person written permission for the person to tend the license holder's net or trap only for the purpose of releasing captured elvers into the waters of the State if the license holder can not tend the net or trap because of a disability or personal or family medical condition. If the license holder is unable to tend the net or trap for more than 2 weeks, the net or trap must be removed from the water.

2. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6575-E. Method of eel fishing

Except as provided in section 6505-C, subsection 2, it is unlawful for a person licensed under section 6505-C to fish for or take eels by any method other than eel pot or hoop net.

§6575-F. West side of Orland River closed to elver fishing

A person may not fish for or take elvers within the portion of the Orland River between the west bank and the center of the river from the southernmost point of land on Fish Point to the dam in Orland.

CHAPTER 623

SHELLFISH, SCALLOPS, WORMS AND MISCELLANEOUS LICENSES

SUBCHAPTER 1 - SHELLFISH

Article 1 Licenses

§6601. Commercial shellfish license

1. License required. A person may not engage in the activities authorized under this section without a current commercial shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a commercial shellfish license may fish for, take, possess or transport shellfish within the state limits or sell shellstock the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail seafood license holder under section 6852-A. The holder may also sell shellstock the holder has taken from that license holder's home in the retail trade. This license does not authorize the holder to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671.

2-A. Licensed activities; aquaculture. The holder of a commercial shellfish license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a commercial shellfish license may remove, possess, transport within the state limits or sell cultured shellfish the holder has removed from the leased area or the licensed gear to a wholesale seafood license holder certified under section 6856. Such a holder of a commercial shellfish license may also sell such shellstock from that license holder's home in the retail trade. The department

shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Eligibility. A commercial shellfish license may be issued only to an individual who is a resident.

4. Personal use exception. A person may take or possess no more than one peck of shellstock or 3 bushels of "hen" or "surf" clams for personal use in one day without a license, unless municipal ordinances further limit the taking of shellfish. This subsection does not apply to individuals whose ability to obtain a shellfish license has been suspended by the commissioner.

5. Fee. Except as provided in subsection 5-A, the fee for a commercial shellfish license is $133.

5-A. Exception. The fee for a commercial shellfish license for applicants 70 years of age or older is $67.

6. Definition. For the purposes of this subchapter, "shellfish" means shellstock clams, quahogs other than mahogany quahogs, and oyster shellstock.

7. [Repealed]

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6602. Surf clam boat license

1. License required. A person may not use a boat for dragging for the harvesting of surf clams unless that boat carries a current surf clam boat license issued by the commissioner.

2. Licensed activity. A surf clam boat license issued under this section may be used for harvesting surf clams. The holder of a surf clam boat license may also possess or transport surf clams within state limits or sell surf clams the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail seafood license holder under section 6852-A. The license also authorizes the captain and crew members aboard the licensed boat when engaged in harvesting surf clams to undertake these activities.

3. Eligibility. A surf clam boat license may be issued only to an individual who is a resident of this State.

4. Exception. In any one day, a person may take or possess not more than 3 bushels of surf clams for personal use without a surf clam boat license.

5. Fee. The fee for a surf clam boat license is $265.

6. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

Article 2 Limits on Fishing

§6621. Closed areas

1. Taking from closed areas. A person may not:

A. Fish for or take shellfish from any area closed by regulation;

B. Fish for or take shellfish from any area closed by regulation when the person has one or more prior convictions for violating paragraph A;

C. Possess, ship, transport or sell shellfish taken from any area closed by regulation; or

D. Possess, ship, transport or sell shellfish taken from any area closed by regulation when the person has one or more prior convictions for violating paragraph C.

2. Washing or holding in closed areas. A person may not:

A. Wash, hold or keep shellfish in any area closed by regulation;

B. Wash, hold or keep shellfish in any area closed by regulation when the person has one or more convictions for violating paragraph A;

C. Possess, ship, transport or sell shellfish washed, held or kept in any area closed by regulation; or

D. Possess, ship, transport or sell shellfish washed, held or kept in any area closed by regulation when the person has one or more convictions for violating paragraph C.

3. Exception. This section does not apply to:

A. The taking of shellfish under the authority of section 6856;

B. [Repealed]

C. Municipal officials, with express written authorization from the commissioner, who are engaging in activities authorized under section 6671. Requests for exception must be submitted to the commissioner in writing stating the activities proposed and the name of the person designated by the municipal officials to supervise those activities. In addition, the municipality shall, at least 24 hours prior to engaging in the activity, notify the department of the time or times the activity authorized under this paragraph will be conducted;

D. The harvesting of shellfish from closed areas designated for purposes of relaying when harvesting is approved in writing by the commissioner consistent with regulations promulgated under section 6856; or

E. The harvesting of marine mollusks from closed areas for the use of bait or other uses not meant for human consumption, if the harvesting takes place according to rules adopted by the commissioner. The commissioner may adopt rules that permit the taking, possession, shipping, transportation and selling of marine mollusks for bait or other uses not meant for human consumption, if the rules do not jeopardize certification of the State's shellfish according to the National Shellfish Sanitation Program.

4. Penalty. A person who violates this article commits a Class D crime. The following minimum penalties apply:

A. For the first offense, a fine of not less than $300; and

B. For subsequent offenses within 10 years from the date of conviction for the first violation, a fine of not less than $500.

The court may not suspend a fine imposed under this subsection. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

§6623. Method of taking soft shell clams

1. Hand implement only. It shall be unlawful to fish for or take soft shell clams, except by implements operated solely by hand, except as provided in this section.

1-A. Artificial breathing device prohibited. A person may not fish for or take soft shell clams while using an artificial breathing device that allows that person to breathe underwater. This subsection does not apply to the holder of a lease issued under section 6072, 6072-A or 6072-B when fishing for or taking soft shell clams cultivated on the leased area.

2. Special license for dredging. The commissioner may issue a special license, acting in accordance with the procedures set forth in section 6074,

subsections 1 to 6, to operate a hydraulic or mechanical soft-shell clam dredge for educational or scientific purposes, for use on an aquaculture lease site or for municipal transplanting projects. The dredge shall not be used for commercial soft-shell clam harvesting except as authorized in this subsection. The dredge design and proposed operation shall be approved by the commissioner. The operation of the dredge shall not interfere with commercial digging and shall not be used for taking marine worms, lobsters or other crustaceans.

3. Department excepted. This section shall not apply to equipment operated by the department for transplanting under a conservation program or conducting research on shellfish.

§6625. Identification and tagging of shellfish

1. Tagging required. The holder of a commercial shellfishing license issued under section 6601, 6731, 6732, 6745 or 6746 shall identify shellstock the license holder has taken by means of a harvester's tag. The tag must be consistent with the format required by the department under rules adopted to meet this requirement. Each container of shellstock must be tagged in accordance with department rules. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.

2. [Repealed]

3. Rules. The commissioner may adopt or amend rules that establish requirements for shellfish harvesters' tags.

§6626. Scallop conservation areas

Notwithstanding section 6174, subsection 3, a person who violates a rule adopted pursuant to section 6171 regarding a scallop conservation area commits a civil violation for which the penalties under this section apply.

1. First offense. For the first offense, a fine of $1,000 is imposed and all scallops on board may be seized.

2. Second or subsequent offense. For a 2nd or subsequent offense, a mandatory minimum fine of $1,000 is imposed, all scallops on board may be seized and the commissioner shall suspend the license authorizing the activity in which the person was engaged at the time of violation. The court may not suspend a fine imposed under this paragraph. The license suspension must be for one year from the date of adjudication.

Article 3 Shellfish Fund

§6651. Shellfish Fund

1. Fees to be paid into fund. Fees from shellfish licenses, mussel hand-raking and boat licenses, shellfish transportation licenses and wholesale seafood licenses must be paid into the Shellfish Fund as follows:

A. Seventy-four dollars and seventy-five cents from a commercial shellfish license;

B. One hundred forty-nine dollars and fifty cents from a mussel boat license;

C. Seventy-four dollars and seventy-five cents from a mussel hand-raking license;

D. Two hundred forty-nine dollars from a shellfish transportation license;

E. Ninety-seven dollars and fifty cents from a shellfish transportation supplemental license;

F. Two hundred fifty dollars and twenty-five cents from a wholesale seafood license; and

G. Forty-eight dollars and seventy-five cents from a wholesale seafood supplemental license.

The Shellfish Fund may receive any other money, including any other gift, grant or other source of revenue.

2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for management, enforcement, restoration, development and conservation of shellfish and mussels in the intertidal zone or coastal waters and for the costs associated with the Shellfish Advisory Council established by Title 5, section 12004-I, subsection 57-G.

3. Nonlapsing fund. The Shellfish Fund shall not lapse.

Article 4 Municipal Conservation Programs

§6671. Municipal shellfish conservation programs

1. Municipal funds. Any municipality may, by vote of its legislative body, raise and appropriate money for the implementation of a shellfish

conservation program.

1-A. Municipal fines. In accordance with Title 30-A, section 3001, a fine collected pursuant to this section must be paid to the municipality in which the violation occurred.

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance as provided by this section. A municipality may establish a municipal shellfish management committee to administer a municipal program.

3. Shellfish conservation ordinance. The following provisions govern a shellfish conservation ordinance.

A. Within any area of the municipality, a shellfish conservation ordinance may:

(1) Regulate or prohibit the possession of shellfish;

(2) Fix the amount of shellfish that may be taken;

(3) Provide for protection from shellfish predators;

(4) Authorize the municipal officials to open and close flats under specified conditions; and

(5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.

B. An ordinance must limit the size of soft-shell clams in accordance with article 5.

C. Except as provided in section 6621, subsection 3, paragraph C, a program or ordinance may not allow surveying, sampling or harvesting of shellfish in areas closed by regulation of the commissioner.

3-A. Shellfish conservation licensing. A shellfish conservation ordinance may fix the qualifications for a license, including municipal residency, subject to the following provisions.

A-1. The following exceptions apply.

(1) An individual is not required to hold a shellfish license issued by the commissioner under section 6601 in order to obtain a municipal

commercial license.

(2) A municipality may issue licenses under this section regardless of whether or not the area has been closed by the commissioner.

(3) An individual taking shellfish from a closed area for depuration under a depuration certificate issued by the commissioner is not required to hold a municipal shellfish license.

B. A shellfish conservation ordinance may fix license fees as follows.

(1) If the ordinance sets a fee of $200 or less for a resident license, the fee for a nonresident license may not exceed twice the resident fee.

(2) If the ordinance sets a fee of more than $200 for a resident license, the fee for a nonresident license may not exceed 1 1/2 times the resident fee.

C. Application methods and procedures for licenses may be determined by the shellfish conservation ordinance subject to the provisions of this section. Notice of the number and the procedure for application must be published in a trade or industry publication or in a newspaper or combination of newspapers with general circulation that the municipal officers consider effective in reaching individuals affected not less than 10 days prior to the period of issuance and must be posted in the municipal offices until the period of issuance concludes. The period of issuance for resident and nonresident licenses must be the same. Subsequent to the period of issuance, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

D. Except as otherwise provided in this section, a shellfish conservation ordinance may not discriminate between resident license holders and nonresident license holders.

E. A licensing authority shall provide and reserve a minimum number of commercial licenses for nonresidents. The number of nonresident commercial licenses may not be less than 10% of the number of commercial licenses provided for residents. When the number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

F. When 2 or more municipalities have entered into a regional shellfish management agreement pursuant to subsection 7, the combined total number of commercial licenses for nonresidents provided by those municipalities must be

a number not less than 10% of the combined total number of commercial licenses issued for residents. When the combined total number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the combined total number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

G-1. A licensing authority that issues recreational licenses to residents shall also make available to nonresidents recreational licenses. The number of nonresident recreational licenses may not be less than 10% of the number of recreational licenses issued to residents.

For the purposes of this paragraph, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

For purposes of this subsection, "licensing authority" means a municipality or 2 or more municipalities that have entered into a regional shellfish management agreement pursuant to subsection 7.

4. Adoption requirements. Shellfish conservation ordinances may be adopted under this section by municipalities or unorganized townships.

A. Prior to adopting an ordinance, a municipality or unorganized township shall raise or appropriate money for a shellfish conservation program.

B. An ordinance proposed by a municipality or unorganized territory under this section must be approved in writing by the commissioner prior to its adoption, except that the commissioner may not withhold approval based on the amount of license fees specified in an ordinance.

C. Unorganized townships may adopt ordinances if:

(1) At least 10 inhabitants have petitioned the county commissioners to adopt the ordinances;

(2) The county commissioners of the townships have held a public hearing with at least 7 days' prior notice in one of the affected townships; and

(3) A majority of the inhabitants eligible to vote voting at referendum approve the ordinances.

The county commissioners act as the municipal legislative body within unorganized townships that have elected to adopt ordinances under this section.

4-A. State parks. The commissioner shall consult with the Commissioner of Conservation in review of any municipal ordinance that affects intertidal areas located within state parks. The commissioner may not approve any ordinance that threatens any important resources or provides insufficient opportunity for recreational shellfish harvesting within state parks.

4-B. Management program approval. The commissioner may adopt rules that set the criteria that municipal shellfish conservation programs and ordinances must meet in order to be approved by the commissioner.

5. Period of ordinance. Ordinances or amendments to an ordinance adopted under this section remain in effect until repealed by the municipality or rescinded by the commissioner. A certified copy of the ordinance or amendment to the ordinance must be filed with the commissioner within 20 days of its adoption. If a copy of the ordinance or an amendment to the ordinance is not filed within 20 days, the ordinance reverts to the ordinance previously in effect until the new ordinance or amendment is filed.

6. Municipality defined. For the purposes of this section, municipality includes:

A. Village corporations; and

B. The combined towns of Yarmouth and North Yarmouth.

7. Joint programs; reciprocal privileges. Municipalities may enter into regional shellfish management agreements with other municipalities and adopt regional shellfish management programs. The agreements, and the programs and ordinances adopted under them, are subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a regional shellfish management agreement may be extended to the residents of other municipalities in the agreement. A regional shellfish management committee comprised of at least one resident from each municipality named in the regional agreement may be established to administer a regional program.

8. Local enforcement. The following provisions apply to enforcement.

A. A municipality that enacts an ordinance under this section is responsible for enforcing it.

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this article must be certified by the commissioner within one year of the warden's appointment. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall

establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The program must include training in sampling techniques for the detection of pollutants and contaminants in shellfish areas. The commissioner may establish by rule procedures for certification, recertification and revocation of certification. The commissioner may revoke a certificate for failure of the warden to comply with performance standards.

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing the warden and, if the warden is authorized by the municipality and meets the training requirements of Title 25, section 2804-I, the warden may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden also has, within that warden's jurisdiction, the powers of a marine patrol officer provided in section 6025, subsection 4 and the authority to enforce section 6621. All of the powers conferred in this subsection are limited to the enforcement of a municipal shellfish conservation ordinance and section 6621.

At the commissioner's request, a certified municipal shellfish conservation warden may collect samples and otherwise assist the department in the detection of pollutants and contaminants. The commissioner is not required to conduct tests on samples not requested by the commissioner.

9. [Repealed]

10. Criminal penalty. A person who violates a provision of a municipal ordinance adopted under this section commits a Class D crime punishable by the following fines:

A. For harvesting shellfish from an area closed for conservation purposes:

(1) For the first offense by a commercial license holder, a fine of not less than $300;

(2) For subsequent offenses by a commercial license holder, a fine of not less than $500 and not more than $1,500;

(3) For the first offense by a recreational license holder, a fine of not less than $100; and

(4) For subsequent offenses by a recreational license holder, a fine of not less than $100 and not more than $500; or

B. For violating any other provision of a municipal ordinance adopted under this section, a fine of not less than $100 and not more than $1,500.

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use. A fine for a violation of article 5 must be as provided by section 6681.

10-A. Civil penalty. A person who harvests shellfish without a municipal shellfish license or in violation of a license restriction commits a civil violation for which the following fines may be adjudged:

A. For harvesting shellfish without a municipal shellfish license:

(1) For commercial purposes, a fine of not less than $300 and not more than $1,500. Possession of more than one peck of clams without a license is prima facie evidence of a violation of this subparagraph; and

(2) For personal use, a fine of not less than $100 and not more than $500; and

B. For harvesting shellfish in violation of a license restriction:

(1) By a commercial license holder, a fine of not less than $300 and not more than $1,500; and

(2) By a recreational license holder, a fine of not less than $100 and not more than $500.

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For the purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

11. Certificate as evidence. A certificate of the clerk of the municipality or any other custodian of the records of a municipal shellfish conservation ordinance adopted under this section stating what the records of the municipality show is admissible as evidence in all courts as proof of the municipal records. A certificate stating that the records do not show that a person held a license is prima facie evidence that the person did not hold the license on the date specified in the certificate. A certificate stating that the records show that a shellfish conservation ordinance or portions of an ordinance were in effect on a particular date is prima facie evidence that the ordinance was in effect on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of a municipal shellfish conservation warden that the warden received the certificate after requesting it from the

municipality. Further foundation is not necessary for the admission of the certificate.

12. Intertidal mussel harvesting. With the advice of the municipality, the commissioner may issue a permit to an individual licensed pursuant to section 6746 that authorizes the permit holder to fish for and take mussels from an area designated by the municipality pursuant to subsection 3. The commissioner shall limit the number of permits issued for a designated area to that number the commissioner determines is necessary to achieve the goals of the municipality's shellfish conservation program. The permit may specify limits on the amount of mussels taken, when the mussels may be taken and gear usage and any other conditions necessary for consistency with the shellfish conservation program.

§6672. Green crab fencing program

1. Program established. There is established a fencing program to exclude green crabs from soft shell clam growing areas. This program shall be administered by the commissioner. When the commissioner has determined that a soft shell clam growing area is adversely affected by green crab predation, he may provide funds, materials or expertise for the construction and installation of fencing to municipalities.

2. Regulations. The commissioner shall adopt regulations concerning the establishment of a municipal program to:

A. Assure compliance with the requirements necessary to accomplish the purpose of the program;

B. Provide criteria for determining which municipalities shall be awarded materials or funds, including:

(1) The extent that the resource of a community has been adversely affected;

(2) The possible effectiveness of a program in a municipality; and

(3) A municipality's ability to evaluate the program by monitoring and comparing data; and

C. Establish the method, forms and dates for application and the municipal reports required for implementation of this section.

3. Commissioner's powers and duties. The commissioner may enter into agreements with municipalities concerning the administration and evaluation of the effectiveness of green crab fencing programs carried out under

this section. He shall notify each municipality which has soft shell clam growing areas of the program.

4. Funding. The commissioner may disburse to a municipality funds, materials or services to provide 50% of the total expenditures necessary to carry out the program in that municipality. He may obligate annually from the Shellfish Fund an amount not to exceed $25,000 to be used to carry out the purposes of this section.

5. Report to Legislature. The commissioner shall annually, by March 1st, report to the Legislature giving a complete evaluation of the program established by this section and whether the program should be continued.

§6673. Municipal shellfish aquaculture permit

A municipality that has established a shellfish conservation program as provided under section 6671 may, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark within the municipality for the purpose of shellfish aquaculture. Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality. The municipality may charge an application fee that reflects the costs of processing an application. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.

2-A. Decision. In evaluating a proposed municipal shellfish aquaculture permit, a municipal officer shall take into consideration the number and density of permits and leases in the area and may issue the permit if the municipal officer finds the proposed project meets the following criteria.

A. The permit conforms to the municipality's shellfish conservation program.

B. The permit will not cause the total area under all municipal shellfish aquaculture permits in the municipality to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.

C. Issuing the permit is in the best interests of the municipality.

D. The permit will not unreasonably interfere with ingress and egress of riparian owners.

E. The permit will not unreasonably interfere with navigation

F. The permit will not unreasonably interfere with fishing or other uses of the area. For purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and is subject to a pollution abatement plan that predates the permit application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years.

G. The permit will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site affected by the permit and surrounding marine and upland areas to support existing ecologically significant flora and fauna.

H. The applicant has demonstrated that there is an available source of organisms to be cultured for the site affected by the permit.

I. The permit does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal government or conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

A municipality shall review the Executive Department, State Planning Office's list of conserved lands compiled pursuant to section 6072, subsection 7-A, paragraph F prior to issuing a municipal shellfish aquaculture permit.

A municipality shall put its findings on each of the criteria listed in this subsection in writing and make those findings available to the public.

3. Municipal shellfish aquaculture permit. Prior to issuing a municipal shellfish aquaculture permit pursuant to this section, a municipality shall adopt

ordinances that establish procedures for consideration of permit applications under the decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. Additionally, the municipality shall adopt ordinances designed to prevent speculative holding of permits. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed $100 per acre annually. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit on an annual basis and submit an annual report on permit activities to the department. Such information is considered landings data.

4. Renewals. A municipality shall give public notice for a municipal shellfish aquaculture permit renewal as required under subsection 1-A, and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required, it must be held in accordance with procedures established in an ordinance adopted under subsection 3. A renewal may be granted as long as the permit continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and made available to the public.

§6674. Interference with municipal shellfish aquaculture permit

A person may not knowingly interfere with the ability of a person who holds a municipal shellfish aquaculture permit from carrying out the privileges granted to the permittee under that permit. Except for the permittee, a person may not take shellfish in an area that is included in a municipal shellfish aquaculture permit. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6675. Shellfish reseeding program

The department shall carry out a program of shellfish reseeding. The program shall include such activities as the transplanting of soft shell clams from areas of large concentrations to potentially productive areas, and relaying shellfish otherwise inhibited from attaining optimum market size. The program may be carried out in cooperation with municipal and joint shellfish conservation programs. The department may close areas under section 6171 to protect reseeded flats, including areas subject to municipal shellfish conservation ordinances

§6676. Summary of municipal ordinances

The department shall prepare a summary description of all municipal shellfish ordinances, which must include, but not be limited to, a listing for each municipality of the license application period, fee structure and number of licenses available to residents and nonresidents. The department shall update the summary and make it available to the public in a manner that the commissioner considers to be effective in reaching the persons affected.

Article 5 Soft-shell Clam Management

§6681. Soft-shell clam management

1. Purpose. The Legislature finds that the conservation and wise use of the State's shellfish resource may be enhanced by a 2-inch minimum size limit on possession of soft-shell clam shell stock in combination with other management programs.

The Legislature further finds that management programs should be designed to meet local circumstances as appropriate, but also finds that a minimum size limit to be beneficial must be a uniform standard statewide.

The Legislature intends by this Article to enhance the value of the State's shellfish resource by the institution of uniform standards which can be implemented and enforced statewide.

2. Definition. For the purposes of this subchapter, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft-shelled clam shell stock.

3. Minimum size. A person may not possess soft-shelled clam shell stock whose shells are less than 2 inches in the largest diameter:

A. If the soft-shelled clams comprise more than 10% but less than 20% of a bulk pile as determined under subsection 4;

B. If the soft-shelled clams comprise 20% or more of a bulk pile as determined under subsection 4; or

C. If the soft-shelled clams comprise 20% or more of a bulk pile as determined under subsection 4 and the person has one or more prior convictions for violating paragraph B. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

4. Tolerance. Any person may possess soft-shelled clams that are less

than 2 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

5. Enforcement. State, county and municipal wardens and enforcement officers shall enforce this subchapter.

6-A. Penalty. A person who violates this article commits a Class D crime. The following minimum penalties apply:

A. For possession of a bulk pile of shellfish of which 20% or more of the shellfish are smaller than the minimum size established in subsection 3:

(1) For the first offense, a fine of not less than $300; and

(2) For subsequent offenses within 10 years from the date of conviction for the first violation, a fine of not less than $500.

The court may not suspend a fine imposed under this paragraph; and

B. For possession of a bulk pile of shellfish of which more than 10% but less than 20% of the shellfish are smaller than the minimum size established in subsection 3, a fine not less than $100 and not more than $1,000.

7. Sunset. This section shall be reviewed by the joint standing committee of the Legislature having jurisdiction over marine resources in the Second Regular Session of the 113th Legislature. That committee shall report its findings no later than April 1, 1988.

Article 6 Water Quality

§6691. Water quality samplers

A commercial shellfish license holder who complies with the shellfish sanitation program's quality assurance and quality control training and certification requirements as administered by the department may serve as a volunteer water quality sampler for the department.

SUBCHAPTER 2 - SCALLOPS

Article 1 Licenses

§6701. Scallop license

1. License required. A person may not engage in the activities authorized under this section without a current hand fishing scallop license or other license issued under this Part authorizing the activities. A person acting as tender to an individual possessing a current individual hand fishing scallop license issued under subsection 5, paragraph A shall possess a scallop or sea urchin tender license issued under section 6535.

2. Licensed activity. The holder of a hand fishing scallop license may take scallops by hand or possess, ship, transport or sell shucked scallops the holder has taken. An unlicensed person acting as a tender for an individual licensed under subsection 5, paragraph B, in accordance with subsection 4, may possess, ship, transport and sell shucked scallops the hand fishing scallop license holder has taken. A person may not act as a tender under subsection 5, paragraph B unless that person has met the tender safety requirements adopted by rule pursuant to section 6533.

3. Eligibility. A hand fishing scallop license may be issued only to an individual who is a resident.

4. Exception. A person may act as a tender to an individual possessing a current hand fishing scallop license with tender issued under subsection 5, paragraph B without being licensed under this Part if that person has met the tender safety requirements adopted by rule pursuant to section 6533.

5. Fees. Fees for hand fishing scallop licenses are:

A. For an individual hand fishing scallop license, $143; and

B. For a hand fishing scallop license with tender, $193.

6. Violation. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6702. Scallop dragging license

1. License required. A person may not use a boat for dragging for scallops unless that person holds a scallop dragging license issued by the commissioner and that boat is identified on the license.

2. Licensed activity. A person licensed under this section may use the boat identified on the license to drag for scallops and possess, ship, sell or transport shucked scallops taken under the license. The license also authorizes the captain and crew members aboard the boat identified on the license when engaged in dragging for scallops to undertake these activities, except that the captain and crew members may not fish for or take scallops if the license holder is not aboard that boat except as provided in subsection 2-A.

2-A. Exemptions. Not withstanding subsection 2, the commissioner may authorize a person to fish for or take scallops from a boat when the person holding a scallop dragging license that contains the name of that boat is not on board if:

A. The holder of the scallop dragging license documents to the commissioner that an illness or disability temporarily prevents the license holder from fishing for or taking scallops from that boat and requests in writing to the commissioner that the commissioner authorize another person to use that boat to fish for or take scallops; or

B. The boat named on the license of a license holder is temporarily inoperable because of an accident or a mechanical failure and the license holder requests in writing to the commissioner that the commissioner authorize the license holder to use another boat to fish for or take scallops.

3. Eligibility. A scallop dragging license may be issued only to an individual who is a resident.

4. Personal Use Exception. In any one day, a person licensed pursuant to section 6703 may take or possess not more than one bushel of shell scallops or 2 quarts of shucked scallops for personal use without a scallop dragging license under this section.

5. Fee. The fee for a scallop dragging license is $143.

6. Violation.

A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6703. Noncommercial scallop license; fee

1. License required. A person may not engage in the activities authorized by this license under this section without a current noncommercial scallop license.

2. Licensed activity. The holder of a noncommercial scallop license may take scallops by hand or by use of a drag and may possess, ship or transport scallops he has taken.

3. License limitation; quantity. In any one day, the holder of a noncommercial scallop license may not take or possess more than one bushel of shell scallops or 2 quarts of shucked scallops.

3-A. License limitation; personal use. The holder of a noncommercial scallop license may take or possess scallops for personal use only and may not sell scallops the holder has taken.

4. Fee. The fee for a noncommercial scallop license is $18.

5. Penalty. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is

imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

6. Violation in Cobscook Bay. Notwithstanding subsection 5, a person who violates this section in Cobscook Bay commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

§6706. Limited entry

1. License eligibility in 2009. The commissioner may not issue a 2009 hand fishing scallop license or a 2009 scallop dragging license to a person unless that person possessed a scallop license issued pursuant to section 6701 or a scallop boat license issued pursuant to section 6702 in either:

A. The 2005, 2006 or 2007 license year; or

B. The 2008 license year prior to May 1, 2008.

2. License eligibility in subsequent years. Except as provided in subsection 3, the commissioner may not issue a hand fishing scallop license or a scallop dragging license to any person in any year subsequent to 2009 unless that person possessed that license in the previous calendar year or is eligible to obtain a license in accordance with the limited entry system established under subsection 3.

3. Scallop license limited entry system. Notwithstanding subsection 2, the commissioner shall establish by rule a limited entry system under which a person who did not hold a hand fishing scallop license or a scallop dragging license in the previous calendar year may become eligible to obtain that license. The rules for a limited entry system must include provisions for the method and administration of the program. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

4. [Repealed]

Article 2 Limits on Fishing

§6721-A. Shell size minimum

1. Minimum shell size. Except as provided in subsection 4, this subsection governs the shell size limits of scallops.

A. From December 1, 2003 to November 30, 2004, a person may not possess, ship, transport, buy or sell scallops that are less than 3 3/4 inches in the longest diameter.

B. On December 1, 2004 and thereafter, a person may not possess, ship, transport, buy or sell scallops that are less than 4 inches in the longest diameter.

2. Prima facie evidence. It is prima facie evidence of possession of illegal scallops if a vessel contains scallops less than the minimum shell size set by this section or the minimum shell size set by rules adopted pursuant to this section while a person licensed under this subchapter or crew member of a person licensed under this subchapter is shucking scallops.

3. Release of undersize scallops. Those scallops that are less than the minimum shell size established by this section or by rules adopted pursuant to this section must be immediately liberated into the waters from which they were taken.

4. Rules. After December 1, 2004, the commissioner may adopt rules to increase the minimum shell size set by this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5. Violation. Notwithstanding section 6174, subsection 3, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6722. Scallop season

1. Scallop fishing season. Unless modified by rules adopted under section 6171-A, a person may not fish for or take scallops in the territorial waters from April 16th to November 30th, both days inclusive.

2. Violations. Not withstanding section 6174, subsection 3, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

§6723. Drag limits in Blue Hill Bay

1. Drag limit. Except as provided by rule pursuant to section 6727-A, subsection 2, a person may not fish for or take scallops with any one combination of scallop drags in excess of 8 feet, 6 inches in width, measured from the extreme outside edge of the mouth of the drag or drags, in Blue Hill Bay above or north of a line drawn from Bass Harbor Head in the Town of Tremont westerly to Pond Island and thence to Naskeag Point in the Town of Brooklin.

2. Violation. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6724. Otter trawl in Penobscot River

1. Prohibition. A person may not fish for or take scallops by use of an otter trawl inside and upriver of a line drawn from the lighthouse on Dice Head, Castine to Turtle Head on Islesboro and thence to the town wharf at Bayside, Northport.

2. Violations. A person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6725. Possession of illegal scallops

1. Prohibition. A person may not possess, ship, transport, buy or sell scallops taken in violation of this subchapter.

2. Violations. Not withstanding section 6174, subsection 3, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6726. Ring size

1. Minimum size. The minimum ring size is 3 1/2 inches except as provided by rule. The commissioner shall establish by rule a minimum ring size that may not be smaller than 4 inches in diameter. A person may not use a drag to fish for or take scallops in the territorial waters with rings that measure less

than the ring size provided pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. Measurement of rings. Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement may not include links or normal welds from ring manufacturing. The rings measured must be at least 5 rings away from the mouth and at least 2 rings away from other rigid portions of the drag.

3. Configuration of drag. The commissioner shall adopt rules that limit the mesh size of net material on the top of a scallop drag, prohibit chafing gear or cookies on the top of a scallop drag, establish ring link restrictions for a scallop drag and prohibit drag or net obstructions. Rules initially adopted pursuant to this subsection must be identical to federal regulations in the Atlantic sea scallop fishery in effect on March 25, 1997 that limit the mesh size of net material on the top of a scallop drag, prohibit chafing gear or cookies on the top of a scallop drag, establish ring link restrictions for a scallop drag and prohibit drag or net obstructions. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

4. Violations. Notwithstanding section 6174, subsection 3, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

§6727. Drag width

[Repealed]

§6728. Limits in Cobscook Bay

1. Daily limit; rules. In the coastal waters northerly and inshore of the international bridge that connects Lubec to Campobello Island, New

Brunswick, Canada, a person may not fish for, take or possess more than 15 gallons of scallop meat per day. Under this subsection a person may not unload any portion of a day's catch and return to fishing. The department shall establish by rule a bushel limit of shellstock that is equivalent to 15 gallons of meat. The department shall also establish by rule a method to allow harvesters to land and possess scallops in Cobscook Bay that are taken outside the area defined in this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Violation. Notwithstanding section 6174, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

3-A. Violation. A person who violates this section commits a civil violation. The following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized; and

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized and the scallop dragging license may be suspended for one year. This penalty is imposed in addition to the penalty imposed under section 6728-B.

§6728-B. Habitual violations

The commissioner shall suspend the hand fishing scallop license or other license issued under this Part authorizing the taking of scallops of any license holder adjudicated or convicted in court of a 3rd or subsequent violation of this subchapter. The suspension must be for at least one year from the date of conviction and may be for up to 3 years.

Article 3 Scallop Research

§6729. License surcharges

1. License surcharges. The following surcharges are assessed on licenses issued by the department:

A. For a hand fishing scallop license, $100;

B. For a scallop draggers license, $100;

C. For a sea urchin and scallop diving tender license, $50;

D. For a noncommercial scallop license, $40; and

E. For a hand fishing scallop license with tender, $100.

2. Deposit. The commissioner shall deposit surcharges assessed in this section in the Scallop Research Fund under section 6729-A, except that fees collected under subsection 1, paragraph C must be divided equally between the Scallop Research Fund and the Sea Urchin Research Fund established in section 6749-R.

§6729-A. Scallop Research Fund

The Scallop Research Fund, referred to in this section as "the fund," is established in the department. Balances in the fund may not lapse and must be carried forward to the next fiscal year.

1. Uses of fund. The commissioner shall use the fund for research directly related to scallop fishery management information needs, for implementation of scallop management measures and for reporting to licensed scallop harvesters on the results of research and the use of fund revenues. The commissioner may authorize the expenditure of money in the fund for research and development programs that address the restoration, development or conservation of scallop resources. The commissioner shall consult with the Scallop Advisory Council under section 6729-B before deciding upon research projects and awarding grants from the fund. The fund may also be used for support of the Scallop Advisory Council, including reimbursement for travel expenses.

2. Sources of revenue. The fund is capitalized by surcharges assessed under section 6729. In addition to those revenues, the commissioner may accept and deposit in the fund money from any other source, public or private.

3. Scallop Advisory Council. The commissioner shall consult with the Scallop Advisory Council under section 6729-B on the expenditure of funds under this section.

§6729-B. Scallop Advisory Council

1. Appointment; composition. The Scallop Advisory Council, referred to in this section as "the council," established by Title 5, section 12004-I, subsection 57-F, consists of 13 members. The commissioner shall appoint the members as follows:

A. Four scallop harvesters who hold current hand fishing scallop licenses;

B. Four scallop harvesters who hold current scallop draggers licenses;

C. Two wholesale seafood license holders who deal in scallops;

D. Two scientists who have expertise in marine resources management; and

E. One person who is a public member.

The commissioner shall ensure geographic representation in making appointments under paragraphs A and B.

2. Term. A member serves for a 2-year term, except that a vacancy must be filled by the commissioner for the unexpired portion of a term. When a vacancy occurs, the commissioner shall fill the vacancy by appointing a member from the same category of members listed in subsection 1 as the member who vacated the council. A member continues to serve until the member's successor is appointed.

3. Purpose. The council shall make recommendations to the commissioner concerning:

A. Research projects and grants made by the Scallop Research Fund. The council may seek advice from scientists who have expertise in marine resources management in determining the research needs for the scallop fishery; and

B. Other matters of interest to the scallop fishery.

4. Compensation. Members are entitled to expenses according to Title 5, chapter 379.

5. Chair and officers. The council shall choose annually one of its

members to serve as chair for a one-year term. The council may select other officers and designate their duties.

6. Meetings. The council shall meet at least once a year. It may also meet at other times at the call of the chair or the chair's designee or at the call of the commissioner or the commissioner's designee.

SUBCHAPTER 2-A - QUAHOGS

Article 1 Licenses

§6731. Mahogany quahogs

1. License required. Except as provided in subsection 3, a person may not engage in the activities authorized under this section without a current mahogany quahog license.

2. Licensed activities. The holder of a mahogany quahog license may:

A. Fish for or take mahogany quahogs in any harvesting area indicated on the license;

B. Possess or transport mahogany quahogs within the State; or

C. Sell mahogany quahogs that the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail seafood license holder under section 6852-A.

The license authorizes crew members aboard the licensee's boat to undertake these activities when engaged in dragging for mahogany quahogs if the licensee is present.

3. Personal use exception. A person may take or possess no more than 3 bushels of mahogany quahogs for personal use in one day without a license.

4. Fee. The fee for a mahogany quahog license is $128. Fees collected pursuant to this section must be deposited in the General Fund.

5. Conditions. Each licensee may participate in the monitoring program established in section 6731-A within the harvest area indicated on the license. The holder of a mahogany quahog license shall comply with all other conditions of licensing established by the commissioner.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be

adjudged.

§6731-A. Mahogany quahog monitoring program

The department shall establish a program to protect the public health by monitoring the levels of paralytic shellfish toxin in mahogany quahogs. The department shall identify harvesting areas, sampling areas and stations needed to achieve this goal in accordance with the following provisions.

1. Harvesting areas. The department shall establish harvesting areas that reflect the demand for taking mahogany quahogs by harvesters from the various regions of the State and the relative location of mahogany quahog beds.

2. Industry groups. For each harvesting area the department shall establish a volunteer industry-based group to select mahogany quahog harvesters to collect samples and transport department personnel to and from sampling areas. Each group shall select and notify the department of the mahogany quahog harvesters who have volunteered for each month's sampling duty in the harvesting area.

3. Sampling. The department shall schedule all sampling runs. A department observer shall be on board each vessel engaged in the sampling activity. The department shall notify the harvester in advance as to the time, location and number of samples to be collected. In the event weekly collection of samples is not feasible, an alternative sampling date may be established by the department. The department shall test for the presence of paralytic shellfish toxin in the samples.

4. Rules. The commissioner may adopt rules, in accordance with the Maine Administrative Procedure Act, necessary to achieve the intent of this section.

5. Mahogany Quahog Monitoring Fund. The Mahogany Quahog Monitoring Fund is established within the department. The commissioner shall use any money credited to the Mahogany Quahog Monitoring Fund for the collection of samples required under this section to monitor the level of paralytic shellfish toxin in mahogany quahogs and to conduct stock assessments of the mahogany quahog resource. All money in the Mahogany Quahog Monitoring Fund is subject to allocation by the Legislature. The Mahogany Quahog Monitoring Fund may not lapse but must carry forward to be used for the same purpose. Nothing in this subsection prohibits the commissioner from using other funds budgeted by the department to carry out the purposes of this section.

6. Stock assessment and report. The department shall conduct stock

assessments of the mahogany quahog resource beginning no later than January 1, 2005. The department shall report biennially to the joint standing committee of the Legislatur e having jurisdiction over marine resources matters on the progress of the stock assessment and the status of the Mahogany Quahog Monitoring Fund starting on January 1, 2006.

§6732. Other quahogs

1. License required. A person may not engage in the activities authorized under this section without a current commercial shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a commercial shellfish license may fish for or take quahogs, other than mahogany quahogs, or possess or transport quahogs within the state limits or sell quahogs the holder has taken to a wholesale seafood license holder certified under section 6856.

3. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

Article 2 Limits On Fishing

§6743. Closed areas

1. Quahogs from closed areas. A person may not:

A. Fish for or take quahogs, including mahogany quahogs, from an area closed by regulation; or

B. Possess, ship, transport or sell quahogs, including mahogany quahogs, taken from an area closed by regulation.

2. Washing or holding in closed areas. A person may not:

A. Wash, hold or keep quahogs in an area closed by regulation; or

B. Possess, ship, transport or sell quahogs washed, held or kept in an area closed by regulation.

3. Exception. This section does not apply to the taking of quahogs under the authority of section 6856.

SUBCHAPTER 2-B - MUSSELS

§6745. Hand-raking mussel license

1. License required. A person may not engage in the activities authorized under this section without a current mussel license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a hand-raking mussel license may take mussels by hand raking or possess or transport mussels within the state limits or sell mussels the holder has taken to a wholesale seafood license holder certified under section 6856 or an enchanced retail seafood license holder under section 6852-A.

2-A. Licensed activities; aquaculture. The holder of a hand-raking mussel license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of hand-raking mussel license may remove, possess, transport within the state limits or sell cultured mussels the holder has removed from the leased area or the licensed gear to a whoesale seafood license holder certified under section 6856. Such a holder of a hand-raking mussel license may also sell such mussels from that license holder's home in the retail trade. The department shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Eligibility. A hand-raking mussel license may be issued only to an individual who is a resident.

4. Exception. In any one day, a person may take or possess not more than 2 bushels of shellstock for personal use without a mussel license.

5. Fee. The fee for a hand-raking mussel license is $133.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6746. Mussel boat license

1. License required. A person may not use a boat for dragging for mussels unless that boat carries a current mussel boat license issued by the commissioner.

2. Licensed activity. A boat license under this section may be used for dragging for mussels. The holder of a mussel boat license may also possess or transport mussels within the state limits or sell mussels the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail seafood license holder under section 6852-A. The license also authorizes the captain and crew members aboard the licensed boat when engaged in dragging for mussels to undertake these activities. A mussel boat license does not authorize the holder to fish for or take mussels in violation of a municipal ordinance adopted pursuant to section 6671.

2-A. Licensed activities; aquaculture. The holder of a mussel boat license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a mussel boat license may remove, possess, transport within the state limits or sell cutltured mussels the holder has removed from the leased area to a wholesale seafood license holder certified under section 6856. Such a holder of a mussel boat license may also sell such mussels from that license holder's home in the retail trade. The department shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Eligibility. A mussel boat license may be issued only to an individual who is a resident.

4. Exception. In any one day, a person may take or possess not more than 2 bushels of shell mussels for personal use without a mussel license.

5. Fee. The fee for a mussel boat license is $265.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6746-A. Night prohibition

A person may not fish for or take mussels pursuant to section 6746 between sunset and sunrise within the territorial waters except that the commissioner may authorize the harvest of seed mussels during those times.

§6747. Closed areas

1. Taking from closed areas. A person may not:

A. Fish for or take mussels from an area closed by regulation; or

B. Possess, ship, transport or sell mussels taken from an area closed by regulation.

2. Washing or holding in closed areas. A person may not:

A. Wash, hold or keep mussels in an area closed by regulation; or

B. Possess, ship, transport or sell mussels washed, held or kept in an area closed by regulation.

3. Exception. This section does not apply to:

A. The taking of mussels under the authority of section 6856.

SUBCHAPTER 2-C - SEA URCHINS

Article 1 Licenses

§6748. Handfishing sea urchin license

1. License required. A person may not engage in the activities authorized under this section without a current handfishing sea urchin license or other license issued under this Part authorizing the activities. A person acting as tender to an individual possessing a current individual handfishing sea urchin license issued under subsection 4, paragraph A shall possess a sea urchin and scallop diving tender license issued under section 6535. The handfishing sea urchin license with tender issued under subsection 4, paragraph B authorizes a person to engage in the activities described in section 6535, subsection 2 aboard the licensee's boat when it is engaged in the harvesting of sea urchins.

1-A. Exception. A person may act as a tender to an individual possessing a current handfishing sea urchin license with tender issued under subsection 4, paragraph B without being licensed under this Part if that person has met the tender safety requirements adopted by rule pursuant to section 6533.

2. Licensed activity. The holder of a handfishing sea urchin license may take sea urchins by hand or possess, ship, transport or sell sea urchins taken by that licensee. An unlicensed person acting as a tender for an individual licensed under subsection 4, paragraph B, in accordance with subsection 1-A, may possess, ship, transport and sell sea urchins the handfishing sea urchin license holder has taken. A person may not act as a tender under subsection 4, paragraph B unless that person has met the tender safety requirements adopted by rule pursuant to section 6533.

3. Eligibility. A handfishing sea urchin license may be issued only to an individual who is a resident.

4. Fees. Fees for handfishing sea urchin licenses are:

A. For an individual handfishing sea urchin license, $152; and

B. For a handfishing sea urchin license with tender, $202.

4-A. Temporary Zone 1 fee. Not withstanding subsection 4, the fees for a n individual handfishing sea urchin license and a handfishing sea urchin license with tender issued for calendar year 2010 or 2011 to handfish for sea urchins within the area designated as Zone 1 under section 6749-N are $25 and $50 per year, respectively.

This subsection is repealed December 31, 2011.

5. Rebuttable presumption. It is unlawful for an individual to dive from a vessel with sea urchins on board unless that individual is licensed under this section. It is a rebuttable presumption that an individual diving from a vessel with sea urchins on board at any time of the year is diving for the purpose of fishing for or taking sea urchins.

6. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6748-A. Sea urchin draggers license

1. License required. A person may not engage in the activities authorized under this section without a current sea urchin dragging license.

2. Licensed activity. The holder of a sea urchin dragging license may use the vessel named on the holder's license to drag for sea urchins. The license also authorizes the captain and crew members aboard the vessel named on the license to drag for and possess, ship, transport and sell sea urchins, except that the captain and crew members may not drag for sea urchins if the license holder is not aboard the vessel.

2-A. Change of named individual. A person who is the owner of a vessel named on a sea urchin dragging license in 2000 but not the individual named on that license may apply to the commissioner to be the individual named on that sea urchin dragging license in 2002. The person must provide written notarized documentation to the commissioner authorizing the change in license name by the individual who was named on that license in 2000. If no such request is received by the commissioner by December 1, 2001, then the individual named

on the 2002 sea urchin dragging license will be the same as the individual named on the 2001 sea urchin dragging license and no future changes of the named individual will be permitted.

2-B. Exemptions. Notwithstanding subsection 2, the commissioner may authorize a person to fish for or take sea urchins from a vessel when the person holding a sea urchin dragging license that contains the name of that vessel is not on board if:

A. The holder of the sea urchin dragging license documents to the commissioner that an illness or disability temporarily prevents the license holder from fishing for or taking sea urchins from that vessel and requests in writing to the commissioner that the commissioner authorize another person to use that vessel to fish for or take sea urchins from the vessel

B. The vessel named on the license of a license holder is temporarily inoperable because of an accident or a mechanical failure and the license holder requests in writing to the commissioner that the commissioner authorize the license holder to use another vessel to fish for or take sea urchins; or

C. An individual documents to the commissioner that the individual has held or leased more than one sea urchin dragging license for 3 consecutive years, was the owner of the vessels named on those licenses during those same years and is currently the owner of the vessels named on those licenses. Under this paragraph, the commissioner may renew each license held by the eligible individual if the vessel named on that license is unchanged from the vessel named on the license in 2000.

3. Eligibility. A sea urchin dragging license may be issued only to an individual who is a resident.

4. Fee. The fee for a sea urchin dragging license is $152.

4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fee for a sea urchin dragging license issued for calendar year 2010 or 2011 to drag for sea urchins within the area designated as Zone 1 under section 6749-N is $25 per year

This subsection is repealed December 31, 2011.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6748-C. Drags

Except as provided in this section, it is unlawful for any person to fish for or take sea urchins using a drag, or any combination of drags, in any coastal waters of the State.

1. Exception. The commissioner may adopt rules that allow the use of a drag that is designed to minimize impact on the benthic environment and harvested resources. Rules adopted by the commissioner under this section must describe the type of drag that may be used, including any limitations on type or size of drag components or limitations on the length or width of the drag.

§6748-D. Sea urchin hand-raking and trapping license

1. License required. A person may not engage in the activities authorized under this section without a current sea urchin hand-raking and trapping license.

2. Licensed activity. The holder of a sea urchin hand-raking and trapping license may take sea urchins by hand-raking or by trap and may possess, ship, transport or sell sea urchins taken by that licensee.

3. Eligibility. A sea urchin hand-raking and trapping license may be issued only to an individual who is a resident.

4. Fee. The fee for a sea urchin hand-raking and trapping license is $152.

4-A. Temporary Zone 1 fee. Notwithstanding subsection 4, the fee for a sea urchin hand-raking and trapping license issued for calendar year 2010 or 2011 to hand-rake or trap sea urchins within the area designated as Zone 1 under section 6749-N is $25 per year.

This subsection is repealed December 31, 2011.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

Article 2 Limits on Fishing

§6749. Sea urchin harvesting season and open days

1. Closed season. It is unlawful for a person to fish for or take sea urchins from May 1st to August 31st.

2. Open days. The commissioner, in consultation with the Sea Urchin Zone Council under section 6749-X, shall establish by rule, within that area designated Zone 1 and that area designated as Zone 2 under section 6749-N, the open days for those zones during which a person may fish for or take sea urchins. Rules may specify the open days for gear type and may further define more than one time period. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Prohibition. It is unlawful for a person to possess aboard a vessel, fish for or take sea urchins on any day not designated as open to sea urchin harvesting under this section.

§6749-A. Minimum size

1. Zone 1 prohibition. Except as provided in this subsection, a person may not take, possess, ship, transport, buy or sell a sea urchin having shell measurements less than the minimum size established by rule for Zone 1.

A. A person holding a dragging license may take a sea urchin that measures less than the minimum size established by rule for Zone 1 if that sea urchin is harvested by dragging and is immediately culled on board and liberated alive into the marine waters.

B. A person who holds a hand-fishing license may take a sea urchin that measures less than the minimum size established by rule for Zone 1 as provided by the commissioner.

2. Zone 2 prohibition. A person may not take, possess, ship, transport, buy or sell a sea urchin having shell measurements less than the minimum size established by rule for Zone 2. A person may take a sea urchin that measures less than the minimum size established by rule for Zone 2 if that sea urchin is culled on board immediately after harvesting and is liberated alive into the marine waters.

3. Rules. The commissioner may adopt rules to carry out the purposes of this section and to provide for increases in the minimum shell size of sea urchins after consultation with the Sea Urchin Zone Council. Rules adopted

pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class D crime for which a fine of not less than $500 may be adjudged.

B. A person who violates this section after having previously violated this section commits a Class D crime for which a fine of not less than $1,000 may be adjudged.

Fines imposed under this subsection may not be suspended.

§6749-B. Sea urchins and lobsters; simultaneous possession or transport prohibited

A person licensed under section 6748 to take sea urchins by hand may not simultaneously possess or transport sea urchins and lobsters aboard a registered vessel.

§6749-C. Rules

1. Importation and processing. The commissioner may adopt rules under this subchapter that require a sea urchins processor to maintain records sufficient to identify the point of origin of sea urchins received by that processor.

2. Fisheries management. The commissioner may adopt rules under chapter 607, subchapter I to promote the conservation and propagation of sea urchins. Those rules may include, but are not limited to, limits on size of drags used to take sea urchins, limits on the nighttime dragging of sea urchins and tolerance allowance for the harvesting of sea urchins less than 2 inches in the longest diameter.

3. Minimum size. Before January 1, 1994, the commissioner shall adopt rules establishing the method for determining whether a sea urchin measures less than 2 inches in the longest diameter. If necessary, the commissioner may use emergency rule-making authority under chapter 607, subchapter II to adopt rules under this subsection.

Article 3 Emergency Limitations; Sea Urchin Fishery

§6749-N. Closed areas; zone identification

Notwithstanding section 6749, it is unlawful for a person to fish for or take sea urchins from:

1. Zone 1. Zone 1, from May 1st to July 31st. For the purposes of this article, "Zone 1" means all coastal waters west of a line beginning at the easternmost point of Fort Point State Park on Cape Jellison then running southwesterly to channel marker #1 south of Sears Island, then running southwesterly to channel marker BW "11" located between Marshall's Point and Bayside in the Town of Northport, then running southwesterly to channel marker #9 east of Great Spruce Head located in the Town of Northport, then running southerly to Graves channel marker northeast of the Town of Camden, then running southeasterly to the Penobscot Bay Buoy east of Rockland harbor, then running southerly to the TB1 whistle southwest of Junken Ledge, then running southeasterly to Red Nun #10 buoy at Foster Ledges, then running due south magnetic to the boundary of the State's coastal waters; and

2. Zone 2. Zone 2, from May 1st to July 31st. For the purpose of this article, "Zone 2" means all coastal waters east of that line established in subsection 1, including all coastal waters of the Penobscot River north of Fort Point State Park.

The commissioner shall report annually to the joint standing committee of the Legislature having subject matter jurisdiction over marine resource matters on the quantity and type of sea urchin licenses sold in each zone in each year.

3. Conservation areas. The commissioner may adopt rules to establish conservation areas pursuant to section 6171 for the purposes of sea urchin research that are considered closed areas for the purpose of this section. Fishing for sea urchins in a conservation area adopted through the department for sea urchin research is considered a violation of this subchapter and subject to the penalties under section 6749-Y. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§6749-O. Limited entry; exceptions

2-A. License eligibility. The commissioner may not issue a handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license to any person unless that person:

A. Possessed that license in the previous calendar year;

B. Becomes eligible to obtain that license pursuant to a limited entry system under subsection 2-B; or

C. Did not possess a sea urchin license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

2-B. Sea urchin license limited entry system. The commissioner shall establish by rule a limited entry system under which a person who did not hold a handfishing sea urchin license, a sea urchin dragging license or a sea urchin hand-raking and trapping license in the previous calendar year may become eligible to obtain that license for use in a zone established pursuant to section 6749-N. The rules for a limited entry system must include provisions for the method and administration of the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

5. Protection from depletion. The commission may adopt rules for sea urchin license limited entry system to prohibit a new entry in a year when it is necessary to protect or conserve the urchin fishery from imminent depletion.

§6749-P. Licenses by zone

A person eligible to purchase a license under section 6749-O may purchase those licenses only for Zone 1 or Zone 2. All of those licenses issued to any one person in any one year must be for the same zone. A person may not change from the zone in which the person harvested sea urchins in the previous calendar year unless the change is authorized in accordance with section 6749-Z. A handfishing sea urchin license, a sea urchin hand-raking and trapping license or a sea urchin dragging license authorizes the licensed activity only in the zone for which it is issued. A sea urchin dragging license must list the documentation or registration number of the vessel to be used by that licensee when dragging. A vessel documentation number or registration number may not be listed on more than one sea urchin dragging license.

§6749-Q. License surcharges

The following surcharges are assessed on licenses issued by the department:

1. Handfishing sea urchin license. One hundred and sixty dollars on a sea urchin handharvesting license;

1-A. Sea urchin hand-raking and trapping license. One hundred and sixty dollars on a sea urchin hand-raking and trapping license;

1-B. Handfishing sea urchin license with tender. One hundred and sixty dollars on a handfishing sea urchin license with tender.

2. Sea urchin dragging license. One hundred and sixty dollars on a sea urchin dragging license;

3. Sea urchin boat tender's license. Thirty-five dollars on a sea urchin and scallop diving tender's license;

4. Wholesale seafood license with a sea urchin buyer's permit. Five hundred dollars on a wholesale seafood license with a sea urchin buyer's permit; and

5. Wholesale seafood license with a sea urchin processor's permit. One thousand dollars on a wholesale seafood license with a sea urchin processor's permit.

The commissioner shall deposit all surcharges assessed in this section in the Sea Urchin Research Fund established in section 6749-R, except that fees collected under subsection 3 must be evenly split between the Sea Urchin Research Fund and the Scallop Research Fund established in section 6729-A.

§6749-R. Sea Urchin Research Fund

The Sea Urchin Research Fund, referred to in this article as the "fund," is established in the department. Balances in the fund may not lapse and must be carried forward and used for the purposes of this section.

1. Uses of fund. The commissioner shall use the fund for research directly related to sea urchin fishery management information needs and for reporting to licensed sea urchin harvesters, boat tenders, processors and buyers on the results of research and the use of fund revenues. The purpose of that research must be to determine, with the highest reliability possible given available resources, the greatest level of effort that may be applied to the sea urchin fishery without harming the long-term economic and biological sustainability of the sea urchin fishery. The commissioner shall consult with the Sea Urchin Zone Council under section 6749-X before deciding upon research projects and awarding grants from the fund. The fund may be used to provide for safety education and training requirements for the sea urchin fishery and to administer management measures for the fishery. The commissioner shall consult with the Sea Urchin Zone Council on the expenditure of funds for these purposes. The fund may also be used to cover the costs associated with determining eligibility for licenses under this subchapter, for law enforcement and support for the Sea Urchin Zone Council, including reimbursement for travel expenses. Up to 30% of allotted revenues may be used for law enforcement purposes.

2. Sources of revenue. The fund is capitalized by surcharges assessed under section 6749-Q. In addition to those revenues, the commissioner may accept and deposit in the fund money from any other source, public or private. All money in the fund must be used for the purposes set forth in this section.

3. Reports. The commissioner shall submit an interim and a final report on expenditures from the fund and research findings to the joint standing committee of the Legislature having jurisdiction over marine resource matters. An interim report must be submitted by July 1, 1996. A 2nd interim report must be submitted by January 1, 1998. A final report must be submitted by January 1, 1999.

§6749-S. Log books for sea urchin buyers and processors

1. Log book; rules. The commissioner shall adopt rules requiring any person holding a wholesale seafood license with a sea urchin buyer's permit or a wholesale seafood license with a sea urchin processor's permit to maintain a log book. The rules must indicate the type of data that must be recorded in the log book, the manner for producing the log books and the method for analyzing data from the log books. The commissioner shall charge a fee for the log book that is sufficient to recover all costs associated with the production of the log book and analysis of the data, except that any personnel and operating costs associated with the log book must be paid from allocations from the Sea Urchin Research Fund. Fees received by the department from the sale of log books are dedicated revenue and must be used by the department for the purposes of this section. The log book and data analysis may be produced and conducted by the department or may be produced and conducted by a public or private entity under contract with the department. Disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173.

2. Reporting. The commissioner may deny an application for the renewal of a wholesale seafood license with a sea urchin buyer's permit or a wholesale seafood license with a sea urchin processor's permit if the license holder fails to maintain a log book or report the data required by rule pursuant to subsection 1.

Rules adopted by the commissioner to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§6749-U. Extension of closing dates

The commissioner may by rule extend the closing dates established under sections 6749 and 6749-N for entire zones or portions of zones for the purpose of conserving spawning sea urchins.

§6749-V. Dragging closure

Notwithstanding section 6749-N, it is unlawful for a person to fish for or take sea urchins with a drag or any combination of drags in the coastal waters of the State from May 1st to September 30th.

§6749-X. Sea Urchin Zone Council

1. Appointment; composition. The Sea Urchin Zone Council, referred to in this section as the "council," established by Title 5, section 12004-I, subsection 57-B, consists of 15 members. Seven members of the council are elected by the sea urchin industry as follows:

A. One sea urchin harvester who holds a current handfishing sea urchin license for Zone 1;

B. One sea urchin harvester who holds a current handfishing sea urchin license for Zone 2;

C. One sea urchin harvester who holds a current sea urchin draggers license for Zone 1;

D. One sea urchin harvester who holds a current sea urchin draggers license for Zone 2;

E. One individual who holds a current wholesale seafood license with a sea urchin buyer's permit;

F. One individual who holds a current wholesale seafood license with a sea urchin processor's permit; and

G. [Repealed]

H. [Repealed]

I. [Repealed]

J. One sea urchin harvester who holds a current boat tender's license.

The commissioner shall appoint the remaining 8 members. If possible, those 8 appointees must include, but not be limited to, a marine scientist, an aquaculturalist, a person holding a sea urchin draggers license, a person holding a sea urchin and scallop diving tender license and a person holding a sea urchin hand-raking and trapping license. In making appointments under this subsection, the commissioner shall select members to ensure a geographic

distribution of representation from each zone.

1-A. Elections. The commissioner shall adopt by rule procedures for conducting the election of members required under subsection 1. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. Term. Council members serve for 2 years and continue serving until a successor is duly appointed or elected and qualified. When a vacancy occurs of an appointed member, the commissioner shall fill the vacancy by appointing a member from the same category of members listed in subsection 1 as the member who vacated the council. When a vacancy occurs of an elected member, the vacancy must be filled by an election as provided by rule.

3. Purpose. The council shall make recommendations to the commissioner concerning:

A. The designation of open days for the harvesting of sea urchins by handfishing, dragging, hand-raking and trapping pursuant to rules adopted under section 6749;

B. Research projects and grants funded by the Sea Urchin Research Fund under section 6749-R. The council may seek advice from scientists who have expertise in marine resource management in determining the research needs for the sea urchin fishery;

C. Other matters of interest to the sea urchin fishery; and

D. The ratio of the number of new licenses issued to the number of the licenses not renewed.

4. Chair and officers. The council shall annually choose one of its members to serve as chair for a one-year term. The council may select other officers and designate their duties.

5. Meetings. The council shall meet at least once each year. The council may also meet at other times at the call of the chair or the chair's designee or the call of the commissioner or the commissioner's designee.

6. Compensation. Members are entitled to compensation according to Title 5, chapter 379.

§6749-Y. Penalty

Notwithstanding section 6204 and unless otherwise specified, a person who

violates or fails to comply with this subchapter commits a Class D crime that is punishable by a fine of not less than $500. The fine may not be suspended.

§6749-Z. Changing zones

1. Authorization of changes. Beginning in calendar year 1997, a person eligible to purchase a license under section 6749-O who wishes to change the zone in which the person harvests sea urchins may not change zones unless the change is authorized by the commissioner in accordance with this section.

2. Zone change request on application. A person eligible to purchase a license under section 6749-O who wishes to change the zone in which that person was licensed to harvest sea urchins in the previous calendar year must indicate on a sea urchin harvesting license application a preference to change the zone in which the person harvests sea urchins. The commissioner shall stamp each sea urchin harvesting licese application with the time and date of submission.

3. Conditions for authorization. The total number of authorized change requests for Zone 1 during a licensing year must equal the total authorized requests for Zone 2. The commissioner shall authorize zone change requests in chronological order of requests received under this section.

4. Limitation on approving zone changes. The commissioner may not authorize a zone change between August 1st and December 31st.

5. Effective date of zone change. The effective date of a zone change authorized by the commissioner is August 1st.

SUBCHAPTER 3 - MARINE WORMS

Article 1 Licenses

§6751. Marine worm digger's license

1. License required. A person may not engage in the activities authorized under this section without a current marine worm digger's license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm digger's license may fish for or take marine worms or possess, ship, transport or sell within the State worms the licensee has taken.

3. Eligibility. A marine worm digger's license may be issued only to an individual who is a resident.

4. Fee. The fee for a marine worm digger's license is $50.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6752. Exception for personal use

Any person may take or possess not more than 125 marine worms in any one day for personal use without a marine worm digger's license or a marine worm dealer's license.

Article 2 Limits on Fishing and Inspection

§6771. Taking marine worms by hand

It shall be unlawful to fish for or take marine worms, except by devices or instruments operated solely by hand power.

Article 3 Marine Worm Fund

§6791. Marine Worm Fund

1. Deposit of license revenues. Revenues from marine worm licenses must be paid into the Marine Worm Fund as follows:

A. Forty-three dollars from a marine worm digger's license;

B. Fifty-five dollars from a marine worm dealer's license; and

C. Twenty-two dollars from a supplemental marine worm dealer's license.

The fund must be maintained by the commissioner.

2. Purposes of fund. The commissioner may expend the money in the fund for research related to marine worms or the marine worm industry or for the restoration, development and conservation of the marine worm industry, including the development and maintenance of permanent or temporary facilities for those purposes.

3. Nonlapsing. The Marine Worm Fund shall not lapse.

SUBCHAPTER 4 - MISCELLANEOUS SPECIES

Article 1 Licenses

§6801-A. Sea cucumber drag license

1. License required. A person may not engage in the activities authorized under this section without a current sea cucumber drag license. A sea cucumber drag license must list the documentation or registration number of the vessel to be used by the licensee when dragging.

2. Licensed activities. The holder of a sea cucumber drag license may use the vessel named on the holder's license to drag for sea cucumbers. The license also authorizes the captain and crew members aboard the vessel named on the license to drag for and possess, ship, transport and sell sea cucumbers, except that the captain and crew members may not drag for sea cucumbers if the license holder is not aboard the vessel.

3. Exemptions. Notwithstanding subsection 2, the commissioner may authorize a person to fish for or take sea cucumbers from a vessel when the person holding a sea cucumber drag license that contains the name of that vessel is not on board if:

A. The holder of the sea cucumber drag license documents to the commissioner that an illness or disability temporarily prevents the license holder from fishing for or taking sea cucumbers from that vessel and requests in writing to the commissioner that the commissioner authorize another person to use that vessel to fish for or take sea cucumbers from the vessel; or

B. The vessel named on the license of a license holder is temporarily inoperable because of an accident or a mechanical failure and the license holder requests in writing to the commissioner that the commissioner authorize the license holder to use another vessel to fish for or take sea cucumbers.

4. Eligibility. A sea cucumber drag license may be issued only to an individual.

5. Fee. The fee for a sea cucumber drag license is $128.

6. Violation. A person who commits a violation under this section commits a civil violation for which a forfeiture of not less than $100 may be adjudged.

§6803. Seaweed permit

1. Permit required. Except as provided in subsections 1-A and 2, a person may not harvest, possess, ship, transport or sell seaweed without a current:

A. Resident seaweed permit; or

B. Nonresident seaweed permit.

1-A. Supplemental permit. An employee or immediate relation of a seaweed permit holder may harvest, possess or transport seaweed for commercial purposes with a current:

A. Resident supplemental seaweed permit; or

B. Nonresident supplemental seaweed permit.

2. Exceptions. The following are not required to have a permit:

A. The holder of a current marine worm dealer's license;

B. The holder of a current wholesale seafood license;

C. A person who harvests, possesses, ships or transports no more than 50 pounds of seaweed a day for noncommercial purposes;

D. Charitable or municipal organizations that harvest, possess, ship or transport seaweed for noncommercial use by that organization; or

E. Anyone harvesting, possessing, shipping, transporting or selling seaweed that has detached naturally and is dead.

3. Fees. The fee schedule for seaweed permits is as follows:

A. Fifty-eight dollars for a resident seaweed permit;

B. Two hundred thirty dollars for a nonresident seaweed permit;

C. Twenty-nine dollars for a resident supplemental seaweed permit; and

D. Fifty-eight dollars for a nonresident supplemental seaweed permit.

4. Disposition of fees. Fees collected under this section accrue to the Seaweed Management Fund established in section 6806 as follows:

A. Fifty dollars for a resident seaweed permit;

B. Two hundred dollars for a nonresident seaweed permit;

C. Twenty-five dollars for a resident supplemental seaweed permit; and

D. Fifty dollars for a nonresident supplemental seaweed permit.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6803-A. Seaweed buyer's license

1. License required. A seaweed buyer's license is required for a person who purchases more than 10 wet tons or an equivalent number of dry tons annually directly from seaweed harvesters holding a permit under section 6803. A person may not engage in the activities authorized under this section without a current seaweed buyer's license.

2. Licensed activity. The holder of a seaweed buyer's license may buy, possess, ship, transport or sell seaweed.

3. Fees. The fee for a seaweed buyer's license is:

A. Two hundred dollars for a resident seaweed buyer's license; and

B. Five hundred dollars for a nonresident seaweed buyer's license.

4. Disposition of fees. Fees collected under this section accrue to the Seaweed Management Fund established in section 6806.

5. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 or more than $500 may be adjudged.

A holder of a license issued under this section may buy only from a harvester who possesses a seaweed permit under section 6803. The harvester shall make the seaweed permit available for inspection upon the license holder's request.

§6803-B. Seaweed buyer's surcharge

A person licensed under section 6803-A shall pay an annual surcharge, which must be deposited in the Seaweed Management Fund established under section 6806. The commissioner shall establish the surcharge by rule, but the

surcharge may not exceed $5 per wet ton. The commissioner may refuse to renew a license under this Part or exclude a person from participating in harvest plans under section 6803-C, subsection 4 for failing to pay the surcharge under this section.

§6803-C. Cobscook Bay Rockweed Management Area

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cobscook Bay Rockweed Management Area" means the area of Cobscook Bay westward and within a line between the southernmost tip of Estes Head due east to the Canadian border and south along the border to the Franklin D. Roosevelt International Memorial Bridge.

B. "Rockweed" means Ascophyllum nodosum.

2. Designation of areas closed to harvesting. The commissioner shall identify areas within the Cobscook Bay Rockweed Management Area that are closed to the commercial harvest of rockweed, including, but not limited to, areas around public and private conservation areas, state parks and federally owned lands and lobster nursery areas. The commissioner shall identify and close to the commercial harvest of rockweed up to 30 acres within Cobscook Bay for the purpose of research.

3. Harvest management sectors. The commissioner shall divide the Cobscook Bay Rockweed Management Area into at least 14 harvest management sectors to:

A. Evenly distribute harvest effort;

B. Allow easy identification of the harvest management sectors from land or on the water; and

C. Facilitate enforcement.

The department shall post the harvest management sectors on the department's publicly accessible website with the coordinates of closed areas.

4. Harvest plan. Except as provided in section 6803, subsection 2, paragraph C, a person harvesting rockweed for commercial purposes shall participate in an annual harvest plan approved by the department.

5. Eligibility for harvest plan. To be eligible to submit an annual harvest plan to harvest rockweed within the Cobscook Bay Rockweed Management

Area, a harvester or that harvester's representative must notify the commissioner of that person's intent to harvest within the area before January 1st of the proposed year of harvest.

6. Allocation of sectors. Prior to submitting an annual harvest plan, eligible harvesters or their representatives must meet as needed to allocate harvest management sectors.

7. Annual harvest plan. An annual harvest plan must include, but is not limited to, the following:

A. The name and telephone number of the person or entity responsible for the harvest management sector;

B. Identification of harvest management sectors proposed for harvest;

C. Total rockweed biomass contained in the harvest management sector based on a survey conducted within the previous 3 years;

D. The biomass amount proposed to be harvested;

E. A description of the methods of harvest;

F. A description of how marine organisms harvested with the rockweed will be managed; and

G. A description of harvester training.

8. Annual harvest plans. Eligible harvesters or their representatives shall submit their annual harvest plans to the commissioner no later than March 1st. The annual harvest plans must be made available to the public on that date.

9. Biomass harvest limit. The total biomass removed in a harvest management sector may not exceed 17% of the harvestable biomass that is eligible to be harvested annually. A harvester must report to the commissioner the total biomass removed by that harvester within a sector annually. Beginning January 1, 2010, the harvest report must be verified by an independent 3rd party.

10. Bycatch. A person harvesting rockweed must make a reasonable effort to remove marine organisms harvested with the rockweed from the harvested rockweed and return those marine organisms alive back into Cobscook Bay as soon as practicable.

11. Penalties. A person that violates this section commits a Class E crime

for which a fine of not less than $1,000 must be adjudged. Each day a person violates this section constitutes a separate violation.

§6804. Commercial northern shrimp license

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Resident commercial northern shrimp license;

B. Resident with crew commercial northern shrimp license; or

C. Nonresident with crew commercial northern shrimp license.

2. Licensed activities. The holder of a commercial northern shrimp license may fish for or take shrimp or possess, ship, transport or sell northern shrimp that the license holder has taken. A license issued under subsection 7, paragraph B or C also authorizes unlicensed crew members aboard the vessel declared by the license holder to engage in these activities.

3. Boat declaration. The license holder shall declare the name of the vessel to be used for fishing under the commercial northern shrimp license at the time of application for the license and may not change that declaration during the license year unless the original vessel is sold and replaced, has been damaged and will be under repair for not less than one month or has been destroyed or lost.

4. [Repealed]

5. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport northern shrimp only for personal use.

6. Eligibility. A commercial northern shrimp license may be issued only to an individual.

7. Fees. Fees for the commercial northern shrimp license are as follows:

A. Thirty-eight dollars for a resident license that authorizes the license holder to engage in the licensed activities under subsection 2;

B. One hundred three dollars for a resident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2; and

C. Three hundred and eighty-five dollars for a nonresident license that

authorizes the license holder and crew members to engage in the licensed activities under subsection 2.

8. Disposition of fees. Fees for commercial northern shrimp licenses must be deposited in the Shrimp Management Fund established in section 6805 as follows:

A. Thirty-three dollars for a resident license that authorizes the license holder to engage in the licensed activities under subsection 2;

B. Eighty-nine dollars for a resident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2; and

C. Three hundred thirty-four dollars for a nonresident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2.

9. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

§6805. Shrimp Management Fund

1. Fund established. The Shrimp Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department.

2. Purposes of fund. The commissioner shall use the fund for research and assessment related to management of the shrimp fishery.

3. Source of revenue. In addition to the fees derived from the commercial shrimp license, the fund may receive money from any source for the purposes described in subsection 2.

§6806. Seaweed Management Fund

1. Fund established. The Seaweed Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund.

2. Permissible uses. The commissioner shall use the fund in accordance with a plan required under subsection 3 to research and manage the State's seaweed resources and to enforce the laws and rules related to seaweed.

3. Plan required. Beginning in calendar year 2000, the commissioner shall by May 1st of each year present a plan for expenditures from the fund for

the next fiscal year to the joint standing committee of the Legislature having jurisdiction over marine resource matters. When developing the plan, the commissioner shall consult with harvesters and seaweed dealers.

§6807. Seaweed harvesting rules

The commissioner may adopt rules regulating the harvest of seaweed on a species-specific basis, including, but not limited to, the total number of licenses that may be issued, the designation of a harvesting season or seasons, the quantity of the resource that may be harvested in a season, areas that may be open or closed to harvest and gear and techniques that may be used in harvesting. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6808. Commercial green crab only license

1. License required. It is unlawful for a person to engage in the activities authorized by this license under this section without a current commercial green crab only license.

2. Licensed activities. The holder of a commercial green crab only license may fish for or take green crabs or possess, ship, transport or sell green crabs that the license holder has taken.

3. [Repealed]

4. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport green crabs for personal use. A municipality or the holder of an aquaculture lease or license that harvests green crabs under authorization from the department is not required to have a commercial green crab license as long as the harvesting of green crabs occurs under supervision of the municipality or the holder of an aquaculture lease or license.

5. Eligibility. A commercial green crab only license may be issued only to an individual.

6. Fees. The fee for a commercial green crab only license is $38 for a resident license and $76 for a nonresident license, which authorizes the license holder to engage in the licensed activities under subsection 2.

7. Disposition of fees. Fees for commercial green crab only licenses must be deposited in the Green Crab Management Fund established in section 6809 as follows:

A. Thirty-three dollars for a resident commercial green crab only license; and

B. Sixty-six dollars for a nonresident commercial green crab only license.

8. Prohibition. The holder of a commercial green crab only license may not have aboard a boat used for crab fishing any lobster or lobster parts.

§6809. Green Crab Management Fund

1. Fund established. The Green Crab Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department.

2. Purposes of fund. The commissioner shall use the fund for research and management programs for the green crab fishery.

3. Source of revenue. In addition to the fees derived from the commercial green crab license, the fund may receive money from any source for the purposes described in subsection 2.

§6810. Method of fishing

1. Authorized traps. It is unlawful to fish for green crabs under a license issued pursuant to subsection 6808 with traps not authorized by the commissioner.

2. Trap design; rules. The commissioner shall establish authorized green crab trap designs by rule. Rules adopted by the commissioner pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§6810-A. Marine harvesting demonstration license

1. License required. Notwithstanding section 6074, an individual may not engage in an activity authorized under this section without a valid marine harvesting demonstration license.

2. Licensed activities. An individual who holds a marine harvesting demonstration license may engage in limited fishing activities for the purpose of providing an educational demonstration of marine harvesting techniques or of the marine ecology of the Gulf of Maine as part of a commercial operation. An individual may not handle a lobster trap, warp or buoy used for the purposes of this section unless that individual meets the requirements of subsection 7.

Subject to the requirements of subsection 3, an individual who holds a Class I, Class II or Class III lobster and crab fishing license may assist a person who holds a marine harvesting demonstration license on that person's boat in the demonstration of lobster and crab fishing without obtaining a marine harvesting demonstration license.

3. License limitations. An individual who holds a marine harvesting demonstration license may not sell, retain, ship or transport any portion of the catch and shall release all organisms alive into the area from which the organisms were harvested. A vessel identified under subsection 6 may not be used for the commercial harvest of marine organisms unless otherwise provided by the department.

4. Gear limitations and requirements. The commissioner shall specify the type and amount of gear that may be used under a marine harvesting demonstration license.

A. The number of lobster traps fished from a vessel may not exceed 20 traps, regardless of the number of marine harvesting demonstration license holders fishing from that vessel.

B. The commissioner shall establish a lobster trap tag system under which a marine harvesting demonstration license holder must purchase a tag for the purpose of identifying and tracking traps. The commissioner may impose a per-tag fee to cover the cost of the trap tags and the costs of administering and enforcing the lobster trap tag system. Trap tag fees must be deposited in the Lobster Management Fund established under section 6431-C.

5. Boat declaration. The marine harvesting demonstration license holder shall declare the name of the vessel to be used for fishing under the license at the time of application for the license and may not change that vessel during the license year unless otherwise authorized by the department.

An individual who holds a marine harvesting demonstration license may assist another person who holds a marine harvesting demonstration license on that person's vessel without declaring the name of that vessel. The individual who assists another license holder must have written permission from that license holder before handling that person's demonstration lobster traps, warps or buoys.

6. Demonstration vessel identification. A vessel may not be used for the purposes of this section unless that vessel is clearly identified as provided by the commissioner under this subsection. The commissioner shall establish the type and specifications of vessel identification to be used for purposes of this

section. The commissioner may impose an administrative fee to cover costs associated with implementing this subsection.

7. Additional requirements for lobster and crab harvesting demonstrations. A person may not demonstrate lobster or crab harvesting methods under this section unless that person holds a marine harvesting demonstration license and:

A. Has successfully completed a lobster and crab fishing written examination as provided in section 6423; or

B. Held a Class I, Class II or Class III lobster and crab fishing license and has landed lobster under that license.

An individual who successfully completes the examination under paragraph A is not required to repeat that examination to renew a marine harvesting demonstration license.

8. Fee. The fee for a marine harvesting demonstration license is $26.

9. Rules. The commissioner may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10. Application of laws. Except as provided in this section, licenses issued under this section are subject to applicable laws under this Part.

11. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $1,000 may be adjudged.

Article 2 Limits On Fishing

§6811. Sea cucumber harvesting season

Unless modified by rules adopted under section 6171-A, it is unlawful for a person to fish for or take sea cucumbers from July 1st to September 30th, both days inclusive.

§6812. Sea cucumber drag

1. Drag width. It is unlawful to utilize a drag to fish for or take sea cucumbers that exceeds 5 feet, 6 inches in width, measured from extreme outside edge to extreme outside edge.

2. Configuration of drag. The commissioner shall adopt rules that

describe the type of drag that may be used to fish for or take sea cucumbers, including, but not limited to, limitations on the type or size of drag components. Such rules are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6813. Sea Cucumber Management Fund

1. Fund established. The Sea Cucumber Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department. The commissioner may receive on behalf of the fund money from any source for the purposes described in subsection 2. All money received into the fund must be used for the purposes of the fund. Unexpended balances in the fund at the end of the fiscal year may not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund. Any interest earned on the money in the fund must be credited to the fund.

2. Purposes of fund. The commissioner shall use the fund to research and manage the State's sea cucumber fishery and to enforce the laws related to sea cucumbers.

3. Fees. The following fees must be assessed and credited to the fund. Every wholesale seafood license holder that purchases sea cucumbers shall keep, as a part of permanent records, a record of all sea cucumbers purchased at point of first sale. Every wholesale seafood license holder that purchases sea cucumbers shall, on or before the last day of each month, pay to the commissioner a fee of up to 20¢ for every 100 pounds reported as purchased. The commissioner shall establish by rule the amount of the fee and any procedural requirements for collection of the fee, including, but not limited to, reporting forms and monthly reporting of purchase amounts. Timely payment of the fee is a condition of renewal of the wholesale seafood license issued under section 6851. If it appears to the commissioner from an inspection of records or otherwise that an additional fee is due or overpayment has been made, additional assessments or refunds must be made by the commissioner to the wholesale seafood license holder.

§6814. Sea cucumber rules

The commissioner may adopt rules under chapter 607, subchapter 1 to promote the conservation and propagation of sea cucumbers. Those rules may include, but are not limited to, the establishment of management areas in which the harvest of sea cucumbers will be permitted, limits on the number of licenses associated with those management areas and annual limits on total harvest from each of those management areas. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Article 3 Limitations On Sea Cucumber Drag Licenses

§6821. Limited entry

1. License eligibility. The commissioner may not issue a sea cucumber drag license under section 6801-A to any person unless that person possessed that license in the previous calendar year or becomes eligible to obtain that license pursuant to a limited entry system under subsection 2.

2. Sea cucumber drag license limited entry system. The commissioner may establish by rule a limited entry system under which a person who did not hold a sea cucumber drag license under section 6801-A in the previous calendar year may become eligible to obtain that license. The rules for a limited entry system must include provisions for the method and administration of the system. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Exceptions. Notwithstanding subsection 1, the following persons may be issued a sea cucumber drag license for license year 2006:

A. A person who was certified as eligible for and obtained a sea cucumber endorsement in 2000; and

B. A person who reported landings of at least 100,000 pounds of sea cucumbers during license year 2002, 2003 or 2004.

4. Protection from depletion. The commissioner may adopt rules for the sea cucumber drag license limited entry system to prohibit new entry in a year when it is necessary to protect or conserve the sea cucumber resource from imminent depletion.

§6822. Licenses by area

If management areas are established pursuant to section 6814, then a person eligible to purchase a license under section 6821 may purchase that license for only one of the management areas. A person may not change from the management area in which the person harvested sea cucumbers in the previous calendar year unless the change is authorized in accordance with section 6823. A sea cucumber drag license authorizes the licensed activity only in the management area for which it is issued.

§6823. Changing sea cucumber management areas

This section applies if management areas are established pursuant to section 6814.

1. Authorization of changes. Beginning in calendar year 2007, a person eligible to purchase a sea cucumber drag license under section 6821 who wishes to change the management area in which the person harvests sea cucumbers may not change management areas unless the change is authorized by the commissioner in accordance with this section.

2. Management area change request on application. A person eligible to purchase a sea cucumber drag license under section 6821 who wishes to change the management area in which that person was licensed to harvest sea cucumbers in the previous calendar year must indicate on a sea cucumber drag license application form a preference to change the management area in which the person harvests sea cucumbers. The commissioner shall stamp each sea cucumber drag license application form with the time and date of submission.

3. Conditions for authorization. A request to change management areas is authorized based on the commissioner's assessment of the ability of the management area to sustain additional fishing effort. The commissioner shall authorize management area change requests in chronological order of requests received under this section.

4. Limitation on approving management area change. The commissioner may not authorize a management area change during the period from October 1st to June 30th.

5. Effective date of management area change. The effective date of a management area change authorized by the commissioner is October 1st.

CHAPTER 625
WHOLESALE AND RETAIL LICENSES

§6851. Wholesale seafood license; wholesale seafood license with lobster permit; wholesale seafood license with urchin permit; wholesale seafood license with shrimp permit

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Wholesale seafood license;

B. Supplemental wholesale seafood license; or

C. Other license issued under this Part authorizing the activities

2. License activities. The holder of a wholesale seafood license may, in the wholesale or retail trade:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts, except lobsters, sea urchins and shrimp;

B. Within or beyond the state limits, buy, sell, shuck, pack, ship or, within the state limits, transport fresh or frozen shellfish, except lobsters, to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856; or

C. [Repealed]

D. Buy, sell, process, ship or, within the state limits, transport crayfish.

A holder of a wholesale seafood license when buying directly from a harvester may buy only from a harvester who possesses the license or permit for that species as required under this Part. The harvester shall make the applicable marine resources license or permit available for inspection upon the wholesale seafood license holder's request.

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2 and may buy, sell, process or ship lobster or properly licensed or lawfully imported lobster meat or parts. A person holding a wholesale seafood license with a lobster permit may transport lobster or properly licensed or lawfully imported lobster meat or parts anywhere within the state limits. A license under this subsection does not authorize a person to possess or transport lobster that person has taken unless that person is in possession of a license issued under section 6421, subsection 3-A, paragraph A, B, C or E. A license under this subsection does not authorize a person to remove lobster meat from the shell unless a license under section 6851B is held.

2-B. Wholesale seafood license with a sea urchin buyer's permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a sea urchin buyer's permit. A person holding a wholesale seafood license with a sea urchin buyer's permit may engage in all the activities in subsection 2 and may buy, sell, ship or transport whole sea urchins or sea urchin parts. A license under this subsection does not authorize a person to engage in the processing of sea urchins.

2-C. Wholesale seafood license with a sea urchin processor's permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a sea urchin processor's permit. A person holding a wholesale seafood license with a sea urchin processor's permit may engage in all the

activities in subsection 2 and may buy, sell, process, ship or transport whole sea urchins or sea urchin parts processed under that license.

2-D. Wholesale seafood license with shrimp permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit. A person holding a wholesale seafood license with a shrimp permit may engage in all of the activities in subsection 2 and may buy, sell, process, ship or transport shrimp.

3. Exceptions. This section does not apply to smoked herring or alewives.

4. License limited. A license under this section authorizes activities at only one establishment or with only one vehicle, but not on a vessel rigged to fish, provided that this license also authorizes the sale and transportation of scallops from any vessel. The limitation in this subsection does not apply to holders of licenses issued under section 6421 when they are transporting lobsters on the vessel they have declared on their lobster license application.

5. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

6. Fees. The fees are as follows:

A. Four hundred forty-three dollars for a wholesale seafood license or a wholesale seafood license with a lobster permit, sea urchin buyer's permit, shrimp permit or sea urchin processor's permit; and

B. Eighty-five dollars for each supplemental license.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6851-A. Limited wholesale shellfish harvester's license

1. License required. A person may not engage in the activities authorized under this section without a current commercial shellfish license issued under section 6601.

2. Licensed activity. A holder of a limited wholesale shellfish harvester's license may, within or beyond the state limits, sell, ship or transport in the wholesale trade only shellfish the holder has taken.

3. License limited. A limited wholesale shellfish harvester's license authorizes activities under this section at only one establishment and with only

one vehicle.

4. Fee. The fee for a limited wholesale shellfish harvester's license is $115.

§6851-B. Lobster processor license

1. License required. A person may not engage in the activities authorized under this section without a current wholesale seafood license with a lobster permit as required under section 6851 and a current lobster processor license.

2. Licensed activity. A lobster processor license authorizes a person to process lobsters and lobster meat for sale in accordance with rules adopted by the commissioner, including, but not limited to, the appropriate fee for the license, which may not exceed $750, and under the following conditions:

A. The lobster and lobster meat may be processed only at the fixed place of business named on the license;

B. The lobster meat or lobster parts may come from only legal-sized lobsters;

C. All containers in which lobster meat is packed after removal and that are to be sold, shipped or transported must be clearly labeled with the lobster processor license number of the packer;

D. Records must be maintained at the fixed place of business named on the license; and

E. Notwithstanding paragraph B, the lobster meat or lobster parts may come from lobsters that are not legal-sized as provided in section 6431, subsection 6-B.

This paragraph takes effect November 1, 2011 and is repealed 90 days after the adjournment of the First Regular Session of the 126th Legislature.

The commissioner may grant waivers for specific lobster products not addressed in rules that are produced by holders of lobster processor licenses. Such a waiver must be in writing and must describe in detail the product that is not specified in rule.

3. Exception. A license is not required to remove lobster meat for serving in hotels and restaurants if the meat is removed from the shell in a hotel or restaurant for serving on the premises.

4. License limited. A lobster processor license authorizes activities under this section at only one fixed place of business.

5. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 nor more than $2,000 may be adjudged.

§6852. Retail seafood license

1. License required. A person may not engage in the activities authorized under this section without a retail seafood license or other license issued under this Part authorizing the activities.

2. License activity. The holder of a retail seafood license may, in the retail trade within the state limits, buy, sell, transport, ship or serve:

A. Shellstock and shucked shellfish if they are bought from a wholesale seafood license holder certified under section 6856;

B. [Repealed]

C. Lobster parts or meat, if they are permitted under section 6857, purchased from a wholesale seafood license holder who possesses a lobster processor license under section 6851B or have been lawfully imported;

D. Crayfish; or

E. Lobsters.

A holder of a retail seafood license when buying directly from a harvester may buy only from a harvester who possesses the license or permit for that species as required under this Part. The harvester shall make the applicable marine resources license or permit available for inspection upon the retail seafood license holder's request.

3. License limited. A license authorizes these activities at only one establishment or with only one vehicle.

4. Fee. The fee for a retail seafood license is $122.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

6. Rules. The commissioner may adopt or amend rules that establish requirements for retail seafood license holders concerning:

A. The minimum sanitation standards for establishments and vehicles;

B. The sanitation and quality control standards for shellfish and whole scallops and their products;

C. The methods for handling, shipping and transporting of shellfish and whole scallops;

D. The records and reports of purchases, shipping and transporting of shellfish and whole scallops;

E. The labeling or marking of shipments of shellfish and wholesale scallops; and

F. The protection of public health.

Rules adopted pursuant to this subsection must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data and must be designed to protect the public health and safety while allowing reasonable use of shellfish and whole scallops. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6852-A. Enhanced retail seafood license

1. Licensed required. A person may not engage in the activities authorized under this section without a current enhanced retail seafood license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of an enhanced retail seafood license may, in the retail trade within the state limits, buy, sell, transport, ship or serve:

A. Shellstock bought from a commercial shellfish license holder licensed under section 6601, a surf clam boat license holder licensed under section 6602, a mahogany quahog license holder licensed under section 6731, a hand-raking mussel license holder licensed under section 6745 and a mussel boat license holder licensed under section 6746;

B. Shellstock and shucked shellfish if they are bought from a wholesale seafood license holder certified under section 6856;

C. Lobster parts or meat if they are permitted under section 6857 or have been lawfully imported;

D. Crayfish; and

E. Lobsters.

3. License limited. An enhanced retail seafood license authorizes the activities under subsection 2 at only one establishment or with only one vehicle.

3-A. Retail sale of certain seafood products. Notwithstanding any provision of law to the contrary, a license or certificate is not required for a person to sell at retail:

A. Shucked shellfish, if the shucked shellfish is purchased from a wholesale seafood license holder certified under section 6856; or

B. Lobster parts or meat, if they are purchased from a wholesale seafood license holder who possesses a lobster processor license under section 6851B or if they have been lawfully imported.

4. Fee. The annual fee for an enhanced retail seafood license is $150. Forty-four dollars of the license fee is dedicated to the Shellfish Fund under section 6651.

5. Violation. A person who violates this section commits a civil violation for which a fine of not less than $100 or more than $500 may be adjudged.

6. Rules. Rules adopted by the commissioner pursuant to section 6852, subsection 6 are applicable to this section.

7. Inspection. For the purposes of inspection or collection of samples, the commissioner or the commissioner's agent may access an establishment or part thereof or vehicle in which activities authorized under this section are conducted by a person holding an enhanced retail seafood license. Denial of access is grounds for suspension or revocation of an enhanced retail seafood license under the provisions of section 6372.

§6853. Marine worm dealer's license

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Marine worm dealer's license;

B. Supplemental marine worm dealer's license; or

C. Other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm dealer's license may buy, possess, ship, transport or sell marine worms.

3. License limited. A license authorizes these activities at only one establishment or with only one vehicle.

4. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

5. Eligibility. The marine worm dealer's license is a resident license.

6. Fee. The fee for a marine worm dealer's license is $64 and the fee for a supplemental license is $26.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

A holder of a license required under this section when buying directly from a harvester may buy only from a harvester who possesses a marene worm digger's license under section 6751. The harvester shall make the marine worm digger's license available for inspection upon the license holder's request.

§6854. Lobster transportation license

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Lobster transportation license; or

B. Supplemental lobster transportation license.

2. License activity. The holder of a lobster transportation license may buy from a licensed wholesale seafood dealer and transport beyond the state limits lobsters or their parts or meat. Lobster parts or meat may be transported only if they are properly permitted under section 6851B or 6857 or have been lawfully imported.

3. License limitations. A license authorizes these activities with only one vehicle owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license must be obtained for each additional vehicle.

5. Information required. Each application must identify each vehicle or

other mode of transportation to be used for transporting lobster.

6. Fees. The fee for a lobster transportation license is $312 and the fee for a supplemental license is $63.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6855. Shellfish transportation license

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Shellfish transportation license; or

B. Supplemental shellfish transportation license

2. License activity. The holder of a shellfish transportation license may buy certified shellfish and transport them beyond the state limits, to the extent these activities are expressly authorized by a shellfish certificate or its equivalent from another state.

3. License limitations. All shellfish transported under this license must be procured from a wholesale seafood licensee certified under section 6856. A license authorizes these activities with only one vehicle owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license must be obtained for each additional vehicle.

5. Information required. Each application must identify each vehicle or other mode of transportation to be used for transporting shellfish.

6. Fees. The fee for a shellfish transportation license is $529 and the fee for a supplemental license is $173.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6856. Shellfish sanitation and depuration certificate

1. Shellfish sanitation certificate. A person may not undertake the processing, buying, selling, shipping, transporting or shucking of shellfish or

whole scallops without a shellfish sanitation certificate unless authorized under section 6701 or 6702. The commissioner may issue a shellfish sanitation certificate to a wholesale seafood license holder, a limited wholesale shellfish harvester's license holder or a shellfish transportation license holder that authorizes the holder to undertake the activities expressly authorized therein, which may include buying and selling, shipping, transporting, shucking or other processing of shellfish or whole scallops. A wholesale seafood license, limited wholesale shellfish harvester's license or shellfish transportation license is also necessary to undertake the activities authorized under those licenses.

2. Express authorizations. The commissioner shall expressly state the authorized activities on each shellfish sanitation certificate. The activities authorized must be sufficient to allow the holder to carry out the holder's wholesale or transportation operations, except that the operations may be limited to the extent required to protect the public health.

3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ensure the public safety. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning.

3-A. Municipal consultation and approval; depuration harvesting.

[Repealed]

3-B. Municipal pollution abatement plan. [Repealed]

3-C. Municipal depuration management plan. [Repealed]

3-D. Soft-shelled clam depuration harvesting in municipalities with municipal shellfish conservation programs. Soft-shelled clam depuration activities conducted within a municipality that has a municipal shellfish conservation program pursuant to section 6671 are subject to the following provisions.

A. Using the following general guidelines to identify whether pollution abatement activities are likely to succeed in a shellfish growing area, the commissioner may close a shellfish growing area for municipal pollution abatement activities.

(1) Pollution abatement activities are likely to succeed in shellfish growing areas affected by identified failing residential septic systems and other identified localized sources of human or animal fecal contamination when funding for abatement is available.

(2) Pollution abatement activities are not likely to succeed in shellfish growing areas affected by wastewater treatment plant outfall or other point sources of treated or partially treated sewage unless complete removal of pollution sources has been achieved.

(3) Abatement activities are not likely to succeed in shellfish growing areas affected by chronic nonpoint source contamination from rivers or streams.

At the request of the municipality, the commissioner may allow soft-shelled clam depuration harvesting in a shellfish growing area closed under this paragraph.

B. In conducting depuration harvesting activities under this subsection, a person holding a depuration certificate shall engage commercial harvesters holding valid municipal and state commercial shellfish licenses. If there are insufficient municipally licensed commercial harvesters, the depuration certificate holder may supplement with other commercial shellfish harvesters licensed in the State.

C. A depuration certificate holder shall maintain a generalized depuration management plan on file with the commissioner that sets forth methods for identifying harvest limits, operational procedures for harvest management and responsibilities of authorized representatives.

D. A depuration certificate holder shall pay each municipality an amount equal to 50¢ for each bushel of soft-shelled clams taken in that municipality under the depuration certificate. When submitting payment to a municipality under this paragraph, the depuration certificate holder shall include a summary of reports submitted to the department pursuant to rules adopted under subsection 4.

4. Rules. The commissioner may adopt or amend rules concerning:

A. The procedures for issuing certificates and the required qualifications for each type of certificate;

B. The minimum sanitation standards for establishments and vehicles;

C. The sanitation and quality control standards for shellfish and whole

scallops and their products;

D. The methods for taking, handling, shipping, transporting and processing of shellfish and whole scallops taken from closed areas;

E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish and whole scallops;

F. The labeling or marking of shipments of shellfish and whole scallops; and

G. Other rules necessary to the public health.

The rules must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety while allowing reasonable use of the State's shellfish and whole scallops.

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or the commissioner's agent, must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access is grounds for suspension or revocation of any certificate or license under the provisions of section 6372.

6. Products embargoed and condemned. The commissioner, or the commissioner's agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish, shellfish product or whole scallop in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe. The commissioner and the commissioner's agent shall cooperate with those state and federal agencies having similar responsibility in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish, shellfish product or whole scallop in any establishment is embargoed, condemned or ordered destroyed, the commissioner, or the commissioner's agent, shall, as soon thereafter as practical, notify the owner in writing of the amount and kind of shellfish, shellfish product or whole scallop embargoed, condemned or destroyed.

§6857. Lobster meat permit

1. Permit required. A person may not engage in the activities authorized under this section without a current lobster meat permit.

2. Permitted activity. A lobster meat permit authorizes a wholesale seafood license holder or a retail seafood license holder to remove lobster meat from the shell for sale under the following conditions.

A. The meat may be removed from the shell only at the establishment named in the permit.

B. The meat may come from only legal-sized lobsters.

C. Tail sections must be removed from the shell whole and intact and must be maintained in that state.

D. All containers in which lobster meat is packed after removal and that are to be sold, shipped or transported must be clearly labeled with the lobster meat permit number of the packer.

3. Exception. A permit is not required to remove lobster meat for serving in hotels and restaurants if the meat is removed from the shell in a hotel or restaurant for serving on the premises.

4. License limitation. A permit authorizes these activities at only one location or place of business.

5. Fee. The fee for a lobster meat permit is $159.

6. Prima facie evidence meat removed for sale. If any lobster meat that has been removed from the shell is found on the premises of any establishment that 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.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

§6858. Size and condition of lobster meat

[Repealed]

§6859. Unmarked lobster shipping container

A person who ships, offers to ship or accepts for shipment any lobsters or their parts in any container that is not clearly marked to indicate that it contains lobsters commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6860. Labeling of shrimp

A person who processes and packages shrimp without clearly marking the country or state of origin on the container commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6861-A. Permitted and prohibited activities for crayfish dealers

1. Meat. Crayfish meat is subject to the following prohibitions.

A. A person may not possess crayfish meat removed from the shell except as follows:

(1) For immediate personal consumption;

(2) For the purpose of serving the meat immediately to a customer;

(3) Under refrigeration and in its original container, clearly labeled as crayfish, with the country or state of origin clearly disclosed; or

(4) Mixed with other food if receipts are available to prove the product is crayfish.

B. It is prima facie evidence that lobster or crayfish meat is illegal lobster meat if the crayfish or lobster meat is outside the shell; is not in its original container and clearly labeled as crayfish, with the country or state of origin clearly disclosed; and:

(2) Is unmixed with any other food and there are no receipts available to prove the product is crayfish.

2. Mix or commingle. A person may not:

A. Mix or commingle crayfish in any form with lobster;

B. Cause or allow crayfish to be mixed or commingled with lobster; or

C. Possess a mixture of crayfish and lobster.

3. List. It shall be unlawful to list, label, advertise, sell, offer for sale or represent, for the purpose of sale, crayfish as lobster or imitation lobster, unless the country or state of origin is clearly disclosed or the listing, labeling or advertising is designed to clearly and affirmatively reflect the product being offered for sale.

4. Records. Any person, licensed under section 6851 or 6852 who deals in crayfish, shall make records available to a marine patrol officer on demand.

5. Rules. The commissioner shall adopt or amend any rules necessary to supervise and control licensees dealing in crayfish and to protect the interests of the State in the conduct, management and operation of the business of dealing in crayfish to assure compliance with this section.

6. Penalties. The following penalties apply to violations of this section.

A. Violation of subsection 1, paragraph A is subject to the general penalty provisions of section 6201

B. Violation of subsection 1, paragraph B is subject to the penalty provisions of section 6431, subsection 7.

C. Except as provided in paragraphs A and B, violation of this section is a Class D crime, except that the court shall impose a fine of not less than $100.

7. License exception for bait purposes. A license shall not be required for crayfish kept or sold for bait purposes and marked or labeled "Not for Human Consumption."

§6862. Lobster tail permit

[Repealed]

§6863. Cultchless American oyster growers license

A person may not grow cultchless American oysters in the State unless licensed under this section.

1. Definitions. For the purposes of this Part, the term "cultchless" means the absence, at the shell hinge, of foreign material or a scar and the term "American oyster" means the genus and species Crassostrea virginica.

2. License. The commissioner shall establish by rule the criteria for a cultchless American oyster growers license.

3. Fee. The annual fee for a cultchless American oyster growers license is $12.

4. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6864. Elver dealer's license

1. License required. A person may not buy, possess, ship, transport or sell elvers without an elver dealer's license.

2. License limited. An elver dealer's license authorizes the licensed activities at only one establishment or with only one vehicle.

3. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

4. Fee. The fee for an elver dealer's license is $1,213 and the fee for each supplemental license is $63.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that $376 accrues to the General Fund for each elver dealer's license sold under this section and $52 accrues to the General Fund for each supplemental license sold under this section.

6. [Repealed]

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

8. Reporting. A dealer licensed under this section shall report the total annual harvest of elvers received by that dealer to the department within 30 days after the end of the elver fishing season. The commissioner shall prescribe how that data and any other information necessary for a meaningful analysis of the elver harvest are reported to the department.

A holder of an elver dealer license when buying directly from a harvester may buy only from a harvester who possesses an elver fishing license under section 6505-A. The harvester shall make the elver fishing license available for inspection upon the elver dealer license holder's request.

CHAPTER 627
GENERAL PROHIBITIONS

§6951. Fishing with dynamite or poison

It shall be unlawful to:

1. Use dynamite or poison. Use dynamite or any poisonous or stupefying substance for the purpose of destroying or taking fish in the coastal waters;

2. Possess dynamite or poison. Possess or carry dynamite or other explosives or poisonous or other stupefying substance while engaged in fishing in a boat; and

3. Possess dynamited or poisoned fish. Possess, buy or sell fish taken by use of dynamite or other explosives or poisonous or other stupefying substance.

§6952 Trawling, seining or netting for lobster [Repealed]

§6952-A. Trawling, seining or netting for lobsters

1. Trawling, seining or netting for lobsters prohibited. A person may not:

A. Fish for or take lobsters by use of a trawl, drag, dredge, seine or net; or

B. Possess any lobsters, regardless of their source, on board any boat rigged for dragging, trawling, dredging, seining or netting.

2. Exception; liberated alive. A person does not violate this section if the lobster is immediately liberated alive in the coastal waters.

3. Exceptions; boats. This section does not apply to:

A. A boat rigged for dragging, trawling, dredging or seining if all nets, drags and dredges are removed from the boat; or

B. A boat rigged for netting if there are no finfish taken by gill net aboard.

4. Penalty for possession. A violation of this section is a Class D crime, except that in addition to any punishment that may be imposed under Title 17-A, Part 3, the court shall impose a fine of $500 for each violation and, in addition, a fine of $100 for each lobster involved, up to and including the first 5, and a fine of $200 for each lobster in excess of 5, or, if the number of lobsters cannot be determined, a fine of not less than $1,000 or more than $5,000. A court may not suspend a fine imposed under this subsection.

§6953. Stopping for inspection; penalty

It shall be unlawful for the operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, or any person:

1. Stopping. To fail or refuse to stop immediately upon request or signal of any marine patrol officer in uniform;

2. Remaining stopped. After he has so stopped, to fail to remain stopped until the marine patrol officer reaches his immediate vicinity and makes known to that operator the reason for the request or signal;

3. Standing by. To fail or refuse to stand by immediately for inspection on request of any marine patrol officer in uniform;

4. Throwing or dumping items. Who has been requested or signaled to stop by a marine patrol officer in uniform to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the marine patrol officer has inspected the same.

Violation of this section is a Class D crime, except that the court shall impose a fine of not less than $500. A court may not suspend a fine imposed under this section.

§6954. Dragging in cable area

1. Violation. It is unlawful to operate any watercraft when towing a drag or trawl in any waters that are identified or marked as underwater cable or pipeline areas, either as shown on the most recently published United States Government nautical chart or as shown or described by rule adopted by the commissioner. The commissioner may make rules showing or describing the locations of underwater cables or pipelines that are not identified on the most recent United States Government nautical charts. A drag or trawl must be lifted out of the water to transit the cable area.

2. Penalty. A violation of this section is a Class D crime, except that the minimum fine shall be $500 and may not be suspended.

§6954-A. Dragging and scalloping prohibited in the Frenchboro area

1. Violation. Unless permitted by rules adopted under subsection 1-A, a person may not:

A. Take scallops by any means within the Frenchboro area; or

B. Operate any watercraft when towing a drag or trawl within the Frenchboro area. A drag or trawl must be lifted out of the water to transit the cable area.

For purposes of this section, “the Frenchboro area” means the following

area: starting at the easternmost point on Red Point, Swan's Island; thence in an easterly direction to the southernmost point of the western Sister's Island; thence in a southeasterly direction to the southernmost point of Crow Island; thence in a southerly direction to the northernmost point of Harbor Island, Frenchboro, Long Island; thence southerly to the state ferry terminal located on the eastern side of Lunt's Harbor, Frenchboro, Long Island, and then starting at the westernmost point of Gooseberry Point on Frenchboro, Long Island; westerly to the northeast point of John's Island; thence northwest to the easternmost point of the largest of the Baker Islands; thence northwesterly to the northeastern point of Harbor Island, Swan's Island; thence northerly to Quarry Wharf, Minturn, Swan's Island.

1-A. Scalloping permitted by rule. The commissioner may adopt and amend rules permitting the taking of scallops in the Frenchboro area, as defined in subsection 1, except that the rules may not permit the use of drags more than 30 inches wide and may not permit the use of drag ropes more than 3/8 inch in diameter.

2. Penalty. A violation of this section is a Class D crime, except that the minimum fine shall be $500 and may not be suspended.

§6954-B. Drag limits in South Bay in Lubec [Repealed]

§6954-C. Drag limits north of international bridge, Lubec

1. Gear requirements. It is unlawful to fish in the territorial waters northerly and inshore of the international bridge that connects Lubec to Campobello Island, New Brunswick, Canada with any drag or combination of drags:

A. That measures in excess of 5 feet, 6 inches in width measuring from one extreme outside edge of the mouth of the drag or combination of drags to the opposite extreme outside edge; and

B. If used for the taking of scallops, that is greater than 8 rings deep.

2. Violation. Notwithstanding section 6174, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of $500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of $750 is imposed and all scallops on board may be seized; and

C. For the 3rd and subsequent offenses, a mandatory fine of $750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

§6955. Fishing in waters of Union River Bay and the lower Union River

It is unlawful to fish with any type of net, fish trap or weir from April 15th to August 1st in the tidal waters of Union River Bay and the lower Union River north of a line drawn from the southernmost tip of Newbury Neck in the Town of Surry and extended eastward to the southernmost tip of Oak Point in the Town of Trenton. The closed area shall extend northward to the downstream side of the Bangor Hydropower Company dam in the City of Ellsworth. Fishing for eels or smelts by means of hand dip nets, fyke nets or baited eel traps shall be exempt from this section. The taking of alewives under the provisions of section 6131, subsection 5, shall be exempt from this section

§6956. Diver's down flag required

A person licensed to harvest a marine species by hand must display a diver's down flag when using a self-contained underwater breathing apparatus to harvest that species. For the purposes of this section, "diver's down flag" means the International Code Flag "A" as defined in navigation rules adopted by the United States Coast Guard. A person who violates this section commits a civil violation for which a forfeiture of not less than $100 and not more than $500 may be adjudged.

§6957. Fishing near floating equipment

1. Prohibition. A person may not operate a vessel using drags, otter trawls, pair trawls, beam trawls, scottish seines or midwater trawls to fish for or take finfish, shellfish, sea urchins or any other marine organisms within 300 feet of any suspended culture floating cages, tray racks or other floating equipment authorized in a lease issued by the commissioner under section 6072, 6072-A or 6072-B, or a license issued under section 6072-C, if the equipment is marked in accordance with subsection 1-A.

1-A. Markings. The owner of a suspended culture floating cage, tray rack or other floating equipment shall mark the area in which a vessel is prohibited under subsection 1 with at least 4 anchors, each marked by a yellow buoy at least 2 feet in diameter.

2. Penalty. A violation of subsection 1 is a Class D crime, except that, notwithstanding Title 17-A, section 1301, the court shall impose a minimum fine of $1,000 that may not be suspended.

§6958. False search and rescue information

A person who intentionally provides the department or causes to be given to the department false or misleading information that results in an unnecessary search and rescue effort or prolongs an ongoing search and rescue effort is subject to a civil penalty of up to the cost of providing the search and rescue service, payable to the State. This penalty is recoverable in a civil action. The State may also recover the cost of bringing the action, including a reasonable attorney's fee.

§6959. Dragging in Taunton River area [Repealed]

§6959-A. Dragging in Taunton River area [Repealed]

CHAPTER 629
GREAT SALT BAY MARINE SHELLFISH PRESERVE

§6961. Great Salt Bay marine shellfish preserve

1. Designation; prohibition. The Great Salt Bay is designated as a marine shellfish preserve in which the harvesting of any shellfish species and other harvesting activities involving bottom disturbance are prohibited, except that the commissioner may authorize research activities in the area.

2. Great Salt Bay defined. For the purposes of this section, "Great Salt Bay" means the tidal portion of the Damariscotta River in the towns of Damariscotta, Newcastle and Nobleboro that is north of a line extending between 2 points of land located 600 yards north of the U.S. Route 1 highway bridge.

3. Research activities. This section does not apply to research activities in the Great Salt Bay that are authorized by the commissioner.

4. Taking of finfish. Nothing in this section may be construed to limit the taking of finfish from the Great Salt Bay.

CHAPTER 631
ENDANGERED OR THREATENED MARINE SPECIES

§6971. Commissioner's authority over marine endangered and threatened species

In accordance with section 12801, the commissioner has authority as provided in this chapter to carry out the purpose of that section with regard to marine species.

§6972. Commissioner's programs

The commissioner may establish such programs as are necessary for the protection of marine species listed pursuant to this chapter in order to achieve compliance with the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

§6973. Designation of marine species as state endangered or state threatened

1. Commissioner's authority. The commissioner may recommend a marine species found in the State for designation as a state endangered or state threatened marine species if that species is listed as an endangered or threatened species by the United States Secretary of the Interior, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

2. Modification to list. The commissioner may recommend that a marine species designated as a state endangered or state threatened species be removed from the list in section 6975 or recommend other changes to that list.

3. Public notice and hearings. Prior to recommending an addition, deletion or other change to the list of state endangered and state threatened marine species in section 6975, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

§6974. Legislative authority

The Legislature has sole authority to designate a marine species as a state endangered or state threatened species or to remove a species or change the designation of a species listed in section 6975.

§6975. List of state endangered and state threatened marine species

The list of state endangered or state threatened marine species by common name, scientific name and status is as follows:

1. Right whale. Right whale, Eubalaena glacialis, endangered;

2. Humpback whale. Humpback whale, Megaptera novaeangliae, endangered;

3. Finback whale. Finback whale, Balaenoptera physalus, endangered;

4. Sperm whale. Sperm whale, Physeter catodon, endangered;

5. Sei whale. Sei whale, Balaenoptera borealis, endangered;

6. Leatherback turtle. Leatherback turtle, Dermochelys coriacea, endangered;

7. Atlantic ridley turtle. Atlantic ridley turtle, Lepidochelys kempii, endangered;

8. Loggerhead turtle. Loggerhead turtle, Caretta caretta, threatened; and

9. Shortnose sturgeon. Shortnose sturgeon, Acipenser brevirostrum, endangered.

§6976. Cooperative agreements

The commissioner may enter into agreements with federal agencies, other states, state agencies, political subdivisions of this State or private persons for the establishment and maintenance of programs for the conservation of state endangered or state threatened marine species and may receive all federal funds allocated for obligations to the State pursuant to these agreements. Federal funds received for the conservation of state endangered or state threatened marine species listed pursuant to this chapter must be allocated directly to the department to ensure compliance with any conditions of the listing.

§6977. Annual report

The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over marine resources matters and the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of state endangered or state threatened marine species. The commissioner shall notify the Legislature by January 1st of each year that the report has been delivered.

§ 6978. Endangered or Threatened Marine Species Fund

The Endangered or Threatened Marine Species Fund, referred to in this section as “the fund,” is established within the department.

1. Sources. The commissioner may receive donations and funding from any source on behalf of the fund.

2. Purpose; use of fund. The purpose of the fund is to support activities related to the management of endangered or threatened marine species. All money received into the fund must be used for the purposes of the fund.

3. Interest and balances credited to fund. Any interest earned on the money in the fund must be credited to the fund. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year and credited to the fund to be used for the purposes of this section.

CHAPTER 419
ATLANTIC STATES MARINE FISHERIES COMPACT

SUBCHAPTER 1 - COMPACT

§4601. Purpose — Article I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

§4602. Entry into force — Article II

This agreement shall become operative immediately as to those states executing it whenever any 2 or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon coastal waters frequented by anadromous fish, flowing into coastal waters under the jurisdiction of any of the aforementioned states, may become a party hereto as provided.

§4603. Commission — Article III

Each state joining herein shall appoint 3 representatives to a commission constituted and designated as the Atlantic States Marine Fisheries Commission, as authorized by Title 5, section 12004-K, subsection 6. One shall be the executive officer of the administrative agency of the state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The 2nd shall be a member of the legislature of the state designated by the commission or committee on interstate cooperation of that state, or if there be none, or if the commission on interstate cooperation cannot constitutionally designate the member, that legislator shall be designated by the governor thereof; provided, if it is constitutionally impossible to appoint a legislator as a commissioner from that state, the 2nd member shall be appointed by the governor of that state in that governor's discretion. The 3rd shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

§4604. — Powers and duties — Article IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when 2 or more of the states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

§4605. — Officers — Article V

The commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

§4606. — Voting — Article VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

§4607. Research; advisory committee — Article VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

§4608. Participation limited — Article VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with Article II the participation of such state in the action of the commission shall be limited to such species of anadromous fish.

§4609. Rights preserved — Article IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

§4610. Continued absence — Article X

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

§4611. Annual appropriation — Article XI

The states party hereto agree to make annual appropriations to the support of the commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than $200 per year and the annual contribution of each state above the minimum shall be figured to the nearest $100.

Budgets shall be recommended by a majority of the commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

§4612. Renunciation — Article XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending 6 months' notice in writing of intention to withdraw from the compact to the other states party hereto.

§4613. Regulations; withdrawal — Article XIII

The State of Maine enters into an amendment of the Atlantic States Marine Fisheries Compact with any one or more of the states of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida and such other states as may become party to that compact for the purpose of permitting the states that ratify this amendment to establish joint regulations of specific fisheries common to those states through the Atlantic States Marine Fisheries Commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the Governor and shall be in accordance with Article XII, which shall be effective as to this State with those states which similarly ratify this amendment. The states consenting to this amendment agree that any 2 or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating state with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such commission for the exercise of the additional powers so granted provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in

the Atlantic States Marine Fisheries Commission under the general compact.

SUBCHAPTER 2 - PROVISIONS RELATING TO COMPACT

§4651. Ratification

The Governor of this State is authorized and directed to execute a compact on behalf of the State of Maine with any one or more of the states of New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as in this chapter.

§4652. Commissioners; vacancies; term; removal

In pursuance of Article III of the compact there are 3 members, in this subchapter called "commissioners," of the Atlantic States Marine Fisheries Commission, in this subchapter called "commission," from the State of Maine. The first commissioner from the State of Maine must be the Commissioner of Marine Resources of the State of Maine ex officio, and the term of any such ex officio commissioner must terminate at the time that commissioner ceases to hold the office of Commissioner of Marine Resources and that commissioner's successor as commissioner must be that commissioner's successor as Commissioner of Marine Resources. The 2nd commissioner from the State of Maine must be a Legislator appointed jointly by the President of the Senate and the Speaker of the House of Representatives. The Legislator appointed as the 2nd commissioner serves until the end of the term of the Legislature in which that person was appointed or until replaced by the President of the Senate and the Speaker of the House of Representatives. The Governor shall appoint a citizen as a 3rd commissioner who must have a knowledge of and interest in the marine fisheries problem. The term of that commissioner is 3 years and that commissioner holds office until a successor is appointed and qualified. Vacancies occurring in the office of that commissioner for any reason or cause must be filled by appointment by the Governor for the unexpired term. The Commissioner of Marine Resources as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in that commissioner's department or office the power to be present and participate, including voting as that commissioner's representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial 3 members begin at the date of the appointment of the appointive commissioner, provided the compact must then have gone into effect in accordance with Article II of the compact; otherwise the terms begin upon the date upon which the compact becomes effective in accordance with Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing.

§4653. Powers

There is granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Maine are authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular, it being declared to be the policy of the State of Maine to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the State Government or administration of the State of Maine are authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

§4654. — Supplemental nature

Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Maine or by the laws of the states of New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida or by the Congress or the terms of said compact.

§4655. Accounts

The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Maine on or before the 10th day of December in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Maine which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The State Auditor of the State of Maine is authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such auditor may deem proper and to report the results of such examination to the Governor.

§4656. Appropriation

Any moneys appropriated by the Legislature for the expenses of the commission shall be paid out of the State Treasury on the audit and warrant of the State Controller, upon vouchers certified by the chairman of the commission in the manner prescribed by law.

BUREAU OF MARINE PATROL ROSTER		
Phone numbers are indicated: C-Cell; H-Home; W-Work		
HALLOWELL HEADQUARTERS		
Col. Joseph Fessenden	624-6580 **W**	Hallowell Office
Major Alan Talbot	624-6555 **W**	Hallowell Office
Pilot Steve Ingram	624-6560 **W**	Special Services/Hallowell
DIVISION 1: KITTERY TO ST. GEORGE RIVER		
Lt. Jon Cornish	633-9595 **W** 725-1141 **H**	Boothbay Harbor Office-Div 1
SECTION 1: KITTERY TO PORTLAND		
Sgt. Robert Beal	479-3931 **C**	Kittery to Scarborough
Spec. Edward A. Logan	571-9891 **H** 446-7139 **C**	P/V "Vigilant" Kennebunk River
MPO David Testaverde	361-4683 **H**	Kittery – York
MPO Brent Chasse	735-8485 **H**	York – Wells
MPO Vacant		Wells – Cape Porpoise
MPO – Military Leave		
MPO Carl Vickerson	829-8399 **H**	Saco River – Cape Elizabeth
SECTION 2: PORTLAND TO KENNEBEC RIVER		
Sgt. Daniel White	592-1260 **C**	Portland to Kennebec River
Spec. Michael W. Neelon	883-8863 **H** 592-0213 **C**	P/V "Challenge II" S.
MPO David Barry	510-7364 **H**	South Portland – Yarmouth
MPO Thomas Hale	885-9231 **H**	South Portland – Yarmouth
Vacant		Yarmouth – Freeport
Vacant		Freeport – South Harpswell
MPO Scott Couture	725-5683 **H**	Bailey Island – Brunswick
MPO Clinton Thompson	729-4284 **H**	Bath-Phippsburg – Kennebec River
SECTION 3: KENNEBEC RIVER TO ST. GEORGE RIVER		
Sgt. Rene Cloutier	354-8540 **H**	Kennebec – St George
Spec. Michael Forgues	633-5583 **H** 592-2170 **C**	P/V "Monitor" Boothbay Harbor
MPO Donaldson Boord	882-5521 **H**	Boothbay
MPO Chris Hilton	371-9373	Georgetown
Vacant		Damariscotta – Bristol
Vacant		Bremen New Harbor
MPO Mike Young	832-5285 **H**	Waldoboro – Cushing–Friendship
DIVISION II: ST. GEORGE RIVER TO CANADIAN BOUNDARY		
Lt. Dale Sprowl	667-3373 **W** 667-3120 **H**	Lamoine Office

DEPARTMENT OF MARINE RESOURCES

SECTION 4: ST. GEORGE RIVER TO PENOBSCOT RIVER		
Sgt. Marlowe Sonksen	230-7373 **H**	St George R–Penobscot River
Spec. Corrie Roberts	596-0346 **H** 542-2167 C	P/V "Guardian III" Rockland
MPO Matthew Sinclair	372-1024 **H**	P/V "Guardian III" Rockland
MPO Wesley Dean	651-4918 **H**	Spruce Head – Owls Head
MPO Matthew Wyman	785-3184 H	Vinalhaven – North Haven
MPO Brian G. Tolman	273-2227 **H**	Vinalhaven – North Haven
Spec. Matthew Talbot	596-0747 **H**	Rockland – Stockton Springs
SECTION 5: PENOBSCOT RIVER TO HANCOCK BRIDGE		
Sgt. Jay Carroll	244-7280 **H**	Penobscot River-Hancock Brdg
Spec. Colin MacDonald	664-0221 **H** 446-7136 **C**	P/V "Dirigo" Northeast Harbor
MPO Thomas Reardon	664-6025 **H**	MDI/Ellsworth
Vacant		Bucksport–Blue Hill–Castine
MPO Jodi Mosher	449-6936 **H**	Deer Isle –Stonington
MPO Rustin Ames	374-3756 **H**	Stonington – Deer Isle
MPO Sean Dow	667-8020 **H**	Swans Island–Cranberry Isles
SECTION 6: HANCOCK BRIDGE TO CANADIAN BORDER		
Sgt. Troy Dow	664-0221 **H**	Hancock – Eastport
Spec. Mark L. Murry	255-4183 **H** 592-1558 **C**	P/V MAINE Jonesport
Spec. Russell Wright	733-7510 **H** 592-8728 **C**	P/V SENTINEL Lubec – Eastport Cell
MPO Michael Pinkham	422-9953 **H**	Gouldsboro – Winter Harbor
MPO Royce M. Eaton	546-2364 **H**	Milbridge – Cherryfield
MPO Gordon Faulkingham	497-2268 **H**	Jonesport – Beals Island
MPO Jason Leavitt	215-2079	Machias – Bucks Harbor
Vacant	733-2107 **H**	Eastport - Calais

Officers, areas of assignments, and phone numbers may change.

Contact the Marine Patrol Office for updated information.

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