

**HOUSE . . . . . No. 01988**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Antonio F. D. Cabral*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to promote Massachusetts' fishing industry

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>

# HOUSE . . . . . No. 01988

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1988) of Haddad and others relative to marine fisheries, fishing and fishing vessels Joint Committee on Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to promote Massachusetts' fishing industry

□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 21A of the general laws, as appearing in the 2008 official edition, is  
2 hereby amended by striking section 4A.

3 SECTION 2. The general laws are hereby amended by inserting after chapter 25C the  
4 following:--

5 CHAPTER 25D.

6 DEPARTMENT OF MARINE RESOURCES AND FISHERIES

7 Section 1. In this chapter, unless the context otherwise requires, the following words shall have  
8 the following meanings and the following rules of construction shall apply:

9 "Angling", fishing with hand line or rod, with naturally or artificially baited hook.

10 "Canned lobster meat or crab meat", lobster meat or crab meat preserved by heat processing,  
11 freezing, or refrigeration, and packed in a container impervious to contamination and so sealed  
12 that once opened it cannot be re-sealed and re-used for its original purpose.

13 "Clam", a marine mollusk of the species *Mya arenaria* commonly called the soft-shell clam.

14 "Close season", the time during which fish cannot lawfully be taken.

15 "Coastal waters", all waters of the commonwealth within the rise and fall of the tide and the  
16 marine limits of the jurisdiction of the commonwealth, but not waters within or above any  
17 fishway or dam nor waters above any jurisdictional boundary legally established pursuant to  
18 section five of chapter one hundred and thirty in rivers and streams flowing into the sea.

19 "Commissioner", the commissioner of the department of marine resources and fisheries.

20 "Dealer", any person who commercially handles fish.

21 "Department", the department of marine resources and fisheries.

22 "Fish", any animal life inhabiting the ocean or its connecting waters including any crustacean or  
23 marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or  
24 not imbedded in the soil. All provisions of the chapter relative to fish shall, so far as apt, apply  
25 also to lobster meat and crab meat after the same has been taken from the shell.

26 The verb, "to fish", in all of its moods and tenses, to take or to attempt to take fish by any method  
27 or means, whether or not such method or means results in their capture.

28 "Fish car", a box or other contrivance in coastal waters, whether floating or sunken, used for  
29 keeping fish alive.

30 "Lobster", the common American lobster, of the species *Homarus americanus*.

31 "Marine fisheries", all fisheries in coastal waters.

32 "Open season", the time during which fish may lawfully be taken.

33 "Quahaug", a marine mollusk of the species *Venus mercenaria* commonly called the hard-shell  
34 clam.

35 "Recreational saltwater fishing", the non-commercial taking or attempted taking of finfish for  
36 personal or family use; provided, however, that the finfish are not sold, traded or bartered.

37 "Registered under the laws of the state", any vessel from a Massachusetts port which is licensed  
38 to operate for commercial fishing purposes under the authority of this chapter, or any vessel from  
39 a Massachusetts port which is operated for commercial fishing purposes by any person licensed  
40 under the authority of this chapter.

41 "Retail dealer", any person not a wholesale dealer who distributes fish commercially.

42 "Scallop", a marine mollusk of the species *Aequipecten irradians*, commonly known as the cape  
43 scallop or bay scallop.

44 "Sea scallop", a marine mollusk of the species *Pecten magellanicus*, commonly known as deep  
45 water scallop.

46 "secretary", the secretary of the executive office of housing and economic development

47 "Seed clam", a soft-shell clam of a size less than the minimum prescribed in section sixty-nine  
48 and useable for planting purposes only.

49 "Seed quahaug", a quahaug of a size less than the minimum prescribed in section sixty-nine and  
50 useable for planting purposes only.

51 "Seed scallop", an immature scallop without the annual growth line as described in section  
52 seventy.

53 "Shellfish", clams, conchs, limpets, mussels, oysters, periwinkles, quahaugs, razor clams or razor  
54 fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.

55 "Short lobster", any lobster measuring less than prescribed in section forty-four.

56 "Territorial waters", the same as coastal waters.

57 "Truckman", any person other than a common carrier, using a truck or other vehicle in  
58 distributing fish.

59 "Wholesale dealer", any person who distributes fish commercially in bulk or for resale by a  
60 dealer, or who operates branch stores for the retail sale of fish.

61 A person who knowingly counsels, aids or assists in a violation of any provision of this chapter  
62 or of any rule or regulation made thereunder or knowingly shares in any of the proceeds of said  
63 violation by receiving or possessing fish, shall be deemed to have incurred the penalties imposed  
64 thereby upon the person guilty of such violation.

65 Whenever the taking of fish is authorized, reference is had to taking by lawful means and in a  
66 lawful manner.

67 Any reference to the taking or having in possession of a fish shall include the taking or having  
68 in possession of any part or portion thereof.

69 This chapter and regulations made under the authority thereof shall apply to all marine fisheries  
70 and fish within the jurisdiction of the commonwealth and to all vessels registered under the laws  
71 of the commonwealth. This provision shall not be construed to limit the authority of the director  
72 to protect anadromous fish by providing for their passage from the coastal waters to spawning  
73 grounds in streams and ponds in inland waters and to regulate fisheries contained therein for the  
74 taking of such anadromous fish.

75 Section 2. The department of seafood and marine resources shall be within the executive office  
76 of housing and economic development and shall be under the administrative supervision of a  
77 director who shall be called the commissioner of seafood and marine resources. The  
78 commissioner shall be appointed and may be removed by the governor. The department shall  
79 administer all the laws relating to marine fisheries as appearing in chapter twenty-five D and any  
80 other general or special laws, except as pertain to the enforcement thereof. It shall be responsible  
81 for the biological development of marine fish and fisheries. Said department shall co-operate  
82 with all departments, boards, officials and institutions of the commonwealth or its subdivisions  
83 that may be concerned in any way with matters under its supervision. It shall co-operate with  
84 adjoining states and with the United States of America, or any agency thereof, with foreign  
85 countries, and any other agency, as may be authorized by the general court, and receive and  
86 dispense such funds from any of such agencies, states or governments as may be authorized by  
87 the general court.

88 Section 1B. There shall be in the department a commission to be known as the marine fisheries  
89 advisory commission hereinafter called the commission, which shall consist of nine members,  
90 who shall represent to the extent possible the various segments of the fishing industry, including  
91 geographic diversity, types of catch, business size, employment and type and stage of

92 production, from fishing to processing to wholesale and retail trade. The members shall be  
93 appointed by the governor for a term of three years. No member of the commission shall hold  
94 any other position in the department while serving as such.

95 The commission shall annually elect its own chairman and clerk and shall keep accurate records  
96 of its meetings and hearings and shall meet at least quarterly and at the call of the chairman. A  
97 quorum to conduct business shall consist of five members. The commission shall hold public  
98 hearings relative to matters within the jurisdiction of the department and shall make  
99 recommendations to the commissioner for the proper management and development of the  
100 marine fisheries of the commonwealth. The commissioner or his designee shall attend all  
101 meetings and hearings of the commission and may present evidence thereat and shall include in  
102 his annual report a report of the commission. The members of the commission shall serve  
103 without compensation but shall be reimbursed for actual expenses incurred in the performance of  
104 their official duties.

105 Section 3. Licenses, permits and certificates of registration issued by the director or his agent  
106 shall not, except as otherwise provided in this chapter, be transferable and shall be produced for  
107 examination upon demand of any authorized person.

108 Notwithstanding the foregoing, the department promulgate regulations to permit the transfer of  
109 fishing licenses held in a limited entry fishery, so-called.

110 Unless otherwise specifically provided by law or regulations promulgated by the department,  
111 every license, permit or certificate issued under any provision of this chapter or any other  
112 provision of law relating to marine fish and fisheries or of any rule or regulation made under  
113 authority thereof, held by any person convicted of a violation of any of the laws relating to

114 marine fish and fisheries or any rule or regulation made under authority thereof by a court of  
115 competent jurisdiction, or any person who pleads nolo contendere or admits to sufficient facts in  
116 a court of competent jurisdiction to an allegation of a violation of any such law, rule or  
117 regulation, may be suspended and inoperative for one month for the first offense, three months  
118 for the second offense, and for one year for any subsequent offense. All suspended or void  
119 licenses, permits or certificates shall be surrendered forthwith to any officer authorized to  
120 enforce the laws relating to marine fish and fisheries. No person whose license, permit or  
121 certificate has become suspended or void shall be given a new license, permit or certificate under  
122 authority of any provision of law relating to marine fish and fisheries during the period of  
123 suspension, and any license, permit or certificate so issued shall also be void and shall be  
124 surrendered forthwith on demand of any officer authorized to enforce the laws relating to marine  
125 fish and fisheries. No fee received for a license, permit or certificate suspended or made void  
126 under this section shall be refunded. All traps, trawls, pots, buoys, lines, boats or other fishing  
127 gear used in violation of the laws relating to lobsters may be impounded by the division of law  
128 enforcement for a period of not less than thirty days nor more than one year from and after the  
129 date on which the owner, lessee or person in possession of such traps, trawls, pots, buoys, lines,  
130 boats or other fishing gear is convicted of such violation.

131 Whoever violates any provision of this chapter shall, unless otherwise provided, be punished by  
132 a fine of not less than ten nor more than five thousand dollars, or by imprisonment for not more  
133 than one year, or both.

134 Whoever violates any rule or regulation made under authority of this chapter shall, unless  
135 otherwise provided, be punished by a fine of not less than fifty nor more than one thousand  
136 dollars.



137 Any penalty imposed under this section shall be in addition to the suspension or revocation of  
138 licenses, permits or certificates as authorized by this section, and to any forfeiture proceedings  
139 authorized under this chapter.

140 Section 4. Whoever loses or by mistake or accident destroys a license, permit or certificate  
141 issued under any provision of this chapter may, upon application to the commissioner,  
142 accompanied by a fee of three dollars and an affidavit setting forth the circumstances of said  
143 loss, receive a duplicate thereof.

144 Section 5. The commissioner or his agent shall make a record, in books kept therefor, of all  
145 licenses, permits or certificates issued by him under the authority of this chapter, and shall date  
146 each license, permit or certificate as of the date of issue; and except as hereinafter provided no  
147 other date shall be placed on such license, permit or certificate. Such books shall be subject at all  
148 times to audit and inspection by the state auditor or by the comptroller or by their respective  
149 agents.

150 Nothing herein shall be construed to prohibit the sale of license, permits and certificates during  
151 the month of December in any year to be valid for use only on and after January first next  
152 succeeding. Any license, permit or certificate so sold shall have the date of sale endorsed  
153 thereon.

154 Section 6. In a city or town bordering on coastal waters, a police officer employed on a full time,  
155 provisional or reserve basis shall, for the enforcement of the provisions of this chapter have the  
156 authority granted to an environmental police officer, subject to such rules and regulations as the  
157 commissioner is hereby authorized to adopt.

158 Section 7. The commissioner, chiefs of enforcement, deputy chiefs of enforcement and all  
159 environmental police officers and deputy environmental police officers or a member of the state  
160 police may, without a warrant, search any boat, vessel, fish car, bag, box, locker, package, crate,  
161 any building other than a dwelling house, any motor vehicle as defined in section one of chapter  
162 ninety, or other vehicle, or any other personal property in which he has reasonable cause to  
163 believe, and does believe, that fish taken, held, kept, possessed, transported or held for  
164 transportation or sale in violation of law, may be found, and may seize any such fish there found,  
165 and may seize any boat, vessel, fish car, bag, box, locker, package, crate, any motor vehicle as  
166 defined in section one of chapter ninety, or other vehicle, or any other personal property used in  
167 a violation of the laws relative to marine fisheries and hold the same for forfeiture.

168 Any such person or officer may arrest without a warrant any person found violating any  
169 provision of this chapter or of any ordinance, rule or regulation made under authority thereof, or  
170 any other provision of law relative to marine fisheries.

171 Section 8. A court or official authorized to issue warrants in criminal cases shall, upon a sworn  
172 complaint that the complainant believes that any fish unlawfully taken or possessed are  
173 concealed in any boat, vehicle, fish car, box, locker, crate, package, building or other particular  
174 place, other than a dwelling house, within its or his jurisdiction, if satisfied that there is  
175 reasonable cause for such belief, issue a warrant to search therefor. The warrant shall designate  
176 and describe the place to be searched and the articles for which search is to be made and, if  
177 possible, the person by whom the articles are believed to be owned, kept or possessed, and shall  
178 be directed to any officer named in section eleven commanding him to search the place where  
179 the fish for which he is required to search are believed to be concealed, and to seize such fish.

180 Section 9. All fish unlawfully taken, held, possessed or dealt with contrary to any provision of  
181 this chapter or of any rule or regulation made under authority thereof, and all boats, vehicles and  
182 apparatus used therein, may, in addition to any or all of the penalties contained therein, be seized,  
183 libelled and forfeited to the commonwealth.

184 Whenever seizure and confiscation or forfeiture is provided by any provision of this chapter,  
185 unless another procedure is therein indicated such confiscation or forfeiture shall be according to  
186 the provisions of chapter two hundred and fifty-seven. Fish so seized except shellfish apparently  
187 taken from an area determined under section seventy-four or corresponding provisions of earlier  
188 laws to be contaminated, and except fish seized under the provisions of section eighty-nine, may  
189 be so libelled or, at the discretion of the commissioner, be disposed of by him for the best  
190 interests of the commonwealth, or, in the alternative, be sold at private sale or public auction, and  
191 the net proceeds of such sale may be libeled in the same manner and with the same effect as if  
192 such proceeds were the property itself, unless the person named in the warrant or some person in  
193 his behalf shall before the commencement of such libel or sale request that the fish be preserved  
194 until final action is had thereon. Shellfish apparently taken from an area determined to be  
195 contaminated as aforesaid, and fish seized under the provisions of section eighty-nine, shall be  
196 disposed of by the director in such manner as will prevent the use thereof as food.

197 Section 10. The commissioner, the chiefs of enforcement, deputy chiefs of enforcement and all  
198 environmental police officers and deputy environmental police officers, or any member of the  
199 state police may request any person whom he has cause to believe is engaged in unlawfully  
200 fishing, or to be unlawfully in possession of fish, or to be in possession of fish unlawfully taken,  
201 to forthwith display for inspection all fish then in his possession, and may arrest without warrant  
202 a person refusing or failing to comply with such request.

203 Whoever, being in a boat in coastal waters throws or dumps overboard the contents of any pail,  
204 bag, barrel or other receptacle, or throws overboard any fish, after having been requested or  
205 signaled by any officer authorized to enforce this section to stand by for inspection shall be  
206 deemed to have violated this section.

207 Whoever violates any provision of this section shall be punished by a fine of not less than one  
208 hundred nor more than two hundred dollars.

209 Section 11. Actions and prosecutions under the laws relative to fish or marine fisheries shall,  
210 unless otherwise expressly provided, be commenced within one year after the time when the  
211 cause of action accrued or the offence was committed.

212 Section 12. Any game protector, fish and game warden, coastal warden, conservation officer or  
213 other person who is empowered to make arrests for violations of the conservation or marine  
214 fishing laws of the state of New Hampshire or of the state of Rhode Island may pursue any  
215 person found fishing in the coastal waters of such state in violation of the marine fishing laws  
216 thereof onto adjacent coastal waters of this commonwealth and there arrest him and take him into  
217 such other state for the purpose of prosecuting him for such violation; provided, that such other  
218 state shall have enacted legislation giving substantially similar authority to the environmental  
219 police officers of the division of law enforcement including deputy environmental police officers  
220 and other appropriate officers of this commonwealth relative to persons found fishing in the  
221 coastal waters of this commonwealth in violation of the marine fishing laws thereof.

222 Section 13. Any occupation under this chapter of tide waters or any work done therein, shall be  
223 subject to the pertinent provisions of chapter ninety-one.

224 Section 14. The director may:

225 (1) Destroy from time to time license books and stubs, licenses, permits, certificates of  
226 registration and blanks relative thereto, after the same have been properly audited by the state  
227 auditor, and such other documents as the director deems advisable after the same have been  
228 noted on the official records;

229 (2) Take, or in writing authorize his agents to take fish at any time or in any manner for purposes  
230 connected with propagation or scientific observation;

231 (3) Investigate questions relating to fish and personally or by assistants, institute and conduct  
232 inquiries pertaining to such questions, and conduct such biological research and assist cities and  
233 towns in the development of shellfish conservation and management plans as will, in his opinion,  
234 tend to conserve, improve and increase the supply of fish in the coastal waters.

235 (4) Aid in the promotion and development of the commercial fishing industry; investigate  
236 improved methods of marketing and distributing commercial fish products within the  
237 commonwealth; and establish standards and design labels for the identification of commercial  
238 fish products processed, prepared or packed for distribution and for retail sales;

239 (5) Arrange for lectures and may issue for general distribution such publications as he considers  
240 best adapted to promote the interests of commercial fisheries;

241 (6) Establish and maintain properties at such places within the commonwealth as he may select  
242 for the purpose of propagating, rearing and protecting fish;

243 (7) Occupy, use and control not exceeding ten ponds and estuaries, creeks or other arms of the  
244 sea, within the coastal waters, and the necessary land thereto adjoining, for the propagation and  
245 distribution of fish frequenting the coastal waters and for the scientific investigation of their

246 habits, if such occupation and use do not impair the private rights of any person or materially  
247 obstruct any navigable waters. Notice of such occupation and use and the purpose thereof shall  
248 be conspicuously posted by the director at the nearest points to said ponds and estuaries, creeks  
249 or other arms of the sea, and shall be recorded in the registry of deeds in the county or district  
250 where they are situated.

251 (8) With the approval of the secretary, for the purpose of protecting and improving marine  
252 resources, on behalf of the commonwealth acquire in fee by purchase, gift or devise, or by lease,  
253 or with the consent of the owners, may control, any land with buildings and improvements  
254 thereon and with the consent of the owner of any land may control the flow of any water on or  
255 over his land.

256 (9) With the approval of the governor, receive in trust for the commonwealth any grant or devise  
257 of real property or any gift or bequest of personal property for the purpose of aiding in the  
258 enhancement and protection of any marine resources; provided, that, unless approved by the  
259 general court, no obligation shall be imposed on the commonwealth to expend in carrying out  
260 any such trust an amount greater than the income of the trust property, or greater than the income  
261 and the principal thereof, if by the terms of such trust the principal may be expended. Any such  
262 gift or bequest of money or securities shall be transferred forthwith to the state treasurer, who  
263 shall administer it as provided in section sixteen of chapter ten.

264 (10) Notwithstanding any contrary provision of law, with the exception of chapter 130 of the  
265 General Laws of the Commonwealth of Massachusetts, adopt, amend, or repeal all rules and  
266 regulations, with the approval of the Governor, necessary for the maintenance, preservation and  
267 protection of all marine fisheries resources between the mean high water mark of the

268 commonwealth and a straight line extension of the lateral boundaries of the commonwealth  
269 drawn seaward to a distance of 200 miles or to a point where the water depth reaches 100  
270 fathom, whichever is the greatest. Any person, firm or corporation convicted of violating any  
271 rule or regulation authorized under the provisions of this paragraph shall be punished by a fine  
272 not to exceed ten thousand dollars (\$10,000). Violations may be prosecuted in any superior court  
273 within the Commonwealth of Massachusetts.

274 (11) Subject to the notice provisions of chapter thirty A, without hearing, with the approval of  
275 the commissioner, adopt regulations declared by him to be emergency regulations necessary for  
276 immediate management or control of the marine fisheries. Such emergency regulations may be  
277 limited in time but shall not remain in effect for a period longer than forty-five days.

278 (12) Authorize agents to sell certain permits issued pursuant to section 83 and authorize agents  
279 who are not employed by the commonwealth to charge an administrative fee for such permits not  
280 to exceed \$1.50 for each permit.

281 Section 15. Upon petition signed by any interested party or upon his own motion, the  
282 commissioner shall submit to the marine fisheries advisory commission proposals relating to the  
283 management of the marine fisheries. After public hearing, notice of which shall be published in a  
284 newspaper of general distribution in the areas affected, the commission shall in writing approve  
285 or disapprove such proposals. If any proposal is so approved, the director shall in accordance  
286 with such approval adopt, amend or repeal rules and regulations, subject to the approval of the  
287 secretary, which shall govern the following activities only:

288 (1) The manner of taking fish;

289 (2) The legal size limits of fish to be taken;

290 (3) The seasons and hours during which fish may be taken;

291 (4) The numbers or quantities of fish which may be taken;

292 (5) The opening and closing of areas within the coastal waters to the taking of any and all types  
293 of fish; provided that no area shall be so opened or closed without the consent of the selectmen  
294 of the town or the mayor and council of the city affected thereby. Upon the request of the  
295 commission, the selectmen or mayor and council shall hold a public hearing upon the question  
296 and shall thereafter notify the commission in writing within forty-five days after such request has  
297 been received or consent will be deemed to have been granted.

298 No such rule or regulation shall require a license for the taking of finned fish from coastal  
299 waters for non-commercial purposes.

300 Section 16. Notwithstanding the provisions of this chapter, the commissioner may, by issuance  
301 of a written permit under such terms and conditions as he may impose, authorize the possession  
302 and taking of fish at any season and of any size for purposes of propagation, rearing, harvesting  
303 or sale in connection with an aquacultural enterprise in which the fish being so propagated,  
304 reared and harvested are kept separate from natural stocks of the same species.

305 Section 17. (a) The commissioner shall establish a state recreational saltwater fishing permit  
306 program to comply with the state exemption requirements of section 401 (g)(2) of the  
307 Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1881 (g)(2) and may  
308 promulgate regulations implementing the state program in accordance with sections 17 and 17A.

309 (b) No person shall engage in the recreational activity of finfishing, or take or land finfish for  
310 recreational purposes in or from the coastal waters of the commonwealth without first obtaining



311 a saltwater recreational fishing permit from the commissioner. The permit process shall require  
312 the applicant to submit, in addition to any other information required by the commissioner, the  
313 applicant's name, address, telephone number and date of birth. A permit shall not be required in  
314 the following circumstances:

315 (1) a non-resident holding a valid recreational saltwater fishing permit from a coastal state;  
316 provided, however, that the commissioner shall determine that: the requirements of such other  
317 state permit are substantially the same as the commonwealth's permit requirements; and the  
318 privileges granted under law to the resident of the other coastal state are similar to those  
319 permitted by the commonwealth;

320 (2) a person under 16 years of age;

321 (3) a disabled person, as defined in section 1 of chapter 19C; or

322 (4) a person fishing as a passenger on a for-hire vessel; provided, however, that the owner of  
323 the vessel has a valid permit from the director as provided in subsection (c).

324 (c) The commissioner may issue a recreational saltwater fishing permit to an individual or a  
325 business entity that is engaged in for-hire recreational fishing in the coastal waters of the  
326 commonwealth, and such permit shall be valid for all persons on board the for-hire vessel. The  
327 commissioner may establish categories and related requirements for such permits.

328 (d) The commissioner may establish categories of recreational saltwater fishing permits,  
329 including, but not limited to, individual permits, age-related permits and for-hire permits, and  
330 may charge a separate annual fee for each category of permits. The amounts of such fees shall be  
331 established by the secretary of administration and finance under section 3B of chapter 7;

332 provided, however, that the director or authorized agents may not charge a fee to individuals  
333 requesting a permit who, at the time of permit application, are 60 years of age or older or less  
334 than 16 years of age. The director shall develop a fee schedule for all classes of permits and  
335 submit such schedule to the clerks of the house of representatives and senate not less than 30  
336 days before the schedule is to take effect.

337 (e) The commissioner may authorize agents to sell recreational saltwater fishing permits issued  
338 under this section and authorize agents who are not employed by the commonwealth to charge  
339 and retain a reasonable service fee for such service.

340 (f) The commissioner may designate not more than 2 days in each year as free recreational  
341 saltwater fishing days. A person may take saltwater finfish for noncommercial purposes on a free  
342 recreational saltwater fishing day without obtaining or possessing a permit or paying a permit fee  
343 as prescribed in this section; provided, however, that a person who takes saltwater finfish on a  
344 free recreational fishing day must comply with all laws, rules and regulations governing the  
345 holders of a recreational fishing permit and all other conditions and limitations regulating the  
346 taking of saltwater finfish.

347 (g) There shall be established within the department a marine recreational fisheries  
348 development panel. The panel shall advise the commissioner on the development and  
349 administration of recreational saltwater fishing improvement programs, including, but not limited  
350 to, the improvement of public access to marine recreational fisheries. The panel shall consist of 2  
351 members of the marine fisheries advisory commission and 3 members of the public at large, all  
352 of whom shall have specific expertise and background in the commonwealth's marine  
353 recreational fisheries. The panel members shall be appointed by the commissioner for terms not

354 to exceed 3 years. Any member shall be eligible for reappointment. The panel shall meet at least  
355 twice annually and shall also meet at the request of the director or the commissioner. Three of  
356 the members shall constitute a quorum and the affirmative vote of a majority of members present  
357 at a duly called meeting where a quorum is present shall be necessary for any action to be taken  
358 by the panel.

359 Section 18. Whoever violates section 17, or any rule or regulation made under authority thereof,  
360 shall be punished by a fine per offense as promulgated by the director. All funds received by the  
361 commonwealth under this section shall be deposited in the Marine Recreational Fisheries  
362 Development Fund established by section 35NN of chapter 10.

363 Section 19. Whoever without right enters in or upon any building or other structure or any area  
364 of land, flats or water, set apart and used by or under authority of the director for conducting  
365 scientific experiments or investigations or for propagation or protection of fish, or whoever  
366 contrary to regulations fishes in waters so set apart and used after the director has caused printed  
367 notices of such occupation and use and the purposes thereof to be placed in a conspicuous  
368 position upon any such building or other structure or adjacent to any such area of land, flats or  
369 water, and whoever injures or defaces any such building or other structure or any notice posted  
370 as aforesaid, or injures or destroys any property used in such experiments or investigations or for  
371 such purposes, or otherwise interferes therewith, shall be punished by a fine of not less than fifty  
372 nor more than two hundred dollars or by imprisonment for not more than six months.

373 Section 20. The commissioner shall assist and co-operate with coastal cities and towns for the  
374 purpose of increasing the supply of shellfish and exterminating the enemies thereof within their  
375 borders, and for this purpose may expend such sums as may be appropriated therefor. The

376 expenditure of any funds so appropriated shall be apportioned by the commissioner among said  
377 coastal cities and towns in such amounts as will, in his opinion, effect the greatest amount of  
378 relief and assistance to the shellfish industry; provided, that no money shall be expended  
379 hereunder in any such city or town for the purpose of such relief or assistance unless such city or  
380 town, within one year prior to the date of such expenditure, shall have expended an amount equal  
381 to at least one fourth of the total cost of such work, or shall have contributed services or material  
382 of a value, as determined by the commissioner, equal to such proportion. The work of increasing  
383 the supply of shellfish and exterminating the enemies thereof in coastal cities and towns aided  
384 hereunder shall be done and expenditures therefor shall be made in such manner as the  
385 commissioner may determine and in accordance with rules and regulations which the director  
386 shall make with respect thereto, which rules and regulations he is hereby authorized to make and  
387 enforce.

388 The commissioner, in the operation of any plant for the treatment or purification or propagation  
389 of shellfish, is hereby authorized and directed to investigate and study methods for the treatment  
390 or purification of shellfish taken from areas determined under section seventy-four to be  
391 contaminated. The commissioner, in the course of such investigation, shall confer with the state  
392 department of public health and may expend for expert, clerical and other services and expenses  
393 such sums as may be appropriated therefor. The commissioner shall, before exercising the  
394 authority to assist and co-operate as provided in this section, receive the advice of the biologist  
395 of the department and a written opinion from him thereon.

396 The commissioner, acting on behalf of the commonwealth and with the approval of the governor  
397 and council, may enter into contracts or agreements with agencies of the federal government or  
398 any private institute or corporation for carrying out research and laboratory work necessary for

399 purposes of the treatment or purification of shellfish and the propagation of shellfish in the  
400 coastal areas of the commonwealth, and may expend such sums as may be appropriated for the  
401 purpose.

402 Section 21. The commissioner shall assist and cooperate with coastal cities and towns for the  
403 purpose of establishing and maintaining a program of self-help to said cities and towns for the  
404 cultivation, propagation and protection of shellfish. Funds to carry out the purposes of this  
405 section shall annually be appropriated from the Tourism and Industrial Promotion Fund. The  
406 commissioner may expend such sums as may be appropriated from said fund, but such sums as  
407 are expended therefor shall be conditional upon the expenditure of an equal amount of money by  
408 said cities and towns.

409 The treasurer of each participating city or town shall certify to the commissioner annually the  
410 amounts so appropriated by said city or town, which for the purposes of this act shall be equal to  
411 the total shellfish department budget.

412 The commissioner shall certify to the state treasurer on an annual basis all sums pledged to the  
413 aforesaid purpose by said cities and towns. Family use areas and recreational shellfish areas set  
414 aside pursuant to section fifty-two which are cultivated, propagated or protected under the  
415 funding or provisions of this section shall be open to all inhabitants of the commonwealth upon  
416 payment of a reasonable fee.

417 Section 23. The commissioner shall devise a system of statistical information useful to the  
418 commercial and recreational fishing industry of the commonwealth and may collect and compile  
419 fishery statistics obtained thereunder. He may require for such purposes statistical reporting from  
420 all fishermen, wholesale and retail fish dealers and fish processors on such forms and at such

421 time to be determined by him. Said statistical reports shall be signed and submitted under the  
422 pains and penalties of perjury and subject to chapter sixty-six and chapter sixty-six A, shall be  
423 held strictly confidential by the director and shall not be disclosed except in compliance with a  
424 valid court order. The commissioner may, by regulation, prescribe such procedures as may be  
425 necessary to preserve such confidentiality, except that the commissioner may release or make  
426 public any such statistics in any aggregate or summary form which does not directly or indirectly  
427 disclose the identity or business of any person who submits such statistics.

428 Any license, permit or certificate issued by the department to any person who refuses or fails to  
429 submit, or knowingly submits a false statistical report shall be suspended and surrendered to the  
430 commissioner. Persons who fail to submit, or knowingly file a false report shall not have issued  
431 to them a new license, permit or certificate until an accurate statistical report is submitted to the  
432 director.

433 The commissioner may enter into cooperative agreements with local, state or federal authorities  
434 for the purpose of joint conservation and management of marine fisheries and for the  
435 implementation and enforcement of rules and regulations relative thereto, and may, subject to  
436 chapter thirty A, implement any regulations as developed and recommended by the Atlantic  
437 States Marine Fisheries Commission.

438 The commissioner shall, from to time, prepare and distribute bulletins and reports embodying  
439 statistical and other information relative to marine fisheries. He shall also assist and cooperate  
440 with local authorities in the promulgation of rules and regulations for the protection and  
441 conservation of marine fisheries.

442 Whoever violates any provisions of this act shall be fined not less than one hundred dollars nor  
443 more than one thousand dollars.

444 Section 24. The proprietors of lands upon which a pond is created and maintained by excavating  
445 and enclosing the same and by the artificial flowing of same with coastal waters, for the purpose  
446 of cultivating and maintaining fish thereon, shall have the exclusive rights to cultivate and the  
447 exclusive ownership and control of, all fish thereon or therein, whether artificially or naturally  
448 propagated; provided, that no fish determined by the director to be injurious may be cultivated or  
449 maintained thereon or therein, and that no fish may be taken therefrom of a size, of an age, at a  
450 season, or for a purpose, prohibited by law; and provided, further, that before any such  
451 excavation shall be made plans for an artificial flowage of the same with coastal waters shall be  
452 approved by the director and the department of environmental protection.

453 Section 25. The aldermen or city council of a city or the selectmen of a town lying upon coastal  
454 waters may, in writing, and upon blanks, supplied by the commissioner, authorize any person to  
455 construct weirs, pound nets or fish traps in tidewater in locations where no harbor lines exist and  
456 also in locations beyond established harbor lines, within the limits of such city or town, for a  
457 term not exceeding five years, upon such conditions and subject to such regulations as the  
458 aldermen, city council or the selectmen may impose; but no authority so given shall be valid  
459 unless approved in writing as to location and construction by the department and the  
460 commissioner, and subject to such conditions as it and he may impose; nor until such  
461 authorization, together with such approval, has been filed with the commissioner.

462 Section 26. Any person who constructs or maintains any weir, pound net or fish trap after having  
463 received written approval therefor as provided in section twenty-nine shall at all times while such

464 structure is maintained have the same plainly marked with the number of such approval painted  
465 or printed on a sign or flag in figures at least six inches in height and conspicuously displayed on  
466 the inshore and offshore ends of such structure. Violation of the provisions of this section shall  
467 be punished by a fine of not more than twenty-five dollars.

468 Section 27. Whoever without the consent of the owner takes or uses or destroys, injures or  
469 molests any weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear,  
470 or any fish car or other contrivance used for the purpose of storing fish, including any such  
471 fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon  
472 the shore, beaches or flats, whether public or private, or takes fish therefrom without the consent  
473 of the owner, shall be punished by a fine of not less than five hundred nor more than one  
474 thousand dollars or by imprisonment for two months, or both.

475 Section 28. The owner of any fishing gear mentioned in section twenty-eight which is swept  
476 ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats,  
477 whether public or private, may recover the same within thirty days from the time of such deposit  
478 without liability for trespass; provided, that such owner in so doing does not commit any  
479 unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the  
480 event such fishing gear shall not be so recovered within such period or recovered by other legal  
481 means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the  
482 manner provided in chapter one hundred and thirty-four.

483 Section 29. The owner of every boat, and the owner of every pound net, fish trap, weir, fyke net  
484 or similar contrivance, fishing pier, seine, drag or gill net, lobster or crab pot or trap or other  
485 fishing gear, hereinafter referred to as devices, used for fishing purposes, and every licensee



486 under section thirty-four shall annually, before January thirty-first, make a written report, on  
487 oath, to the director, of the number of pounds and the value of each kind of edible fish caught by  
488 him with such boat or such devices and the number of lobsters and edible crabs taken by him in  
489 pots or traps for the twelve months ending on the preceding December thirty-first, and the  
490 number and value of the devices, if any, used in such catching or taking, and the number of  
491 persons, if any, employed therein; and for such purpose the commissioner shall annually, on or  
492 before March fifteenth, provide him, upon his application, with suitable blank forms for such  
493 reports, so arranged that each month's catch may be separately recorded thereon; and, in filling  
494 out such reports, such owner shall give, so far as practicable, the above required results of each  
495 month's fishing. In lieu of said annual report the commissioner may require such owner to  
496 submit a monthly report of such facts listed herein as the commissioner may deem advisable.  
497 Such owner shall apply to the commissioner for such blank forms. The owner of any fish cars or  
498 other contrivances used for keeping fish, lobsters or edible crabs shall have his name and  
499 residence legibly marked thereon. The license, permit or certificate of any person to take such  
500 fish, lobsters or edible crabs who refuses, or knowingly or wilfully neglects to make the report  
501 required hereby or knowingly or wilfully makes a false report shall be suspended and he shall not  
502 receive a new license, certificate or permit until such report is made. Whoever knowingly and  
503 wilfully violates any provision of this section shall be punished by a fine of not less than ten nor  
504 more than one hundred dollars.

505 Section 30. Whoever, between March fifteenth and the following June fifteenth, catches or takes  
506 any smelt from the waters of the commonwealth, or whoever buys, receives, sells or offers or  
507 exposes for sale, transports or has in his possession a smelt so taken, shall for a first offence be  
508 punished by a fine of one dollar for every such smelt or by imprisonment for not more than six

509 months and for a subsequent offence by both said fine and imprisonment. Any wholesale or retail  
510 dealer who sells, offers or exposes for sale or has in his possession any smelt between the said  
511 dates must have in his possession a tag or bill of lading or other paper showing that such smelt  
512 was taken from waters outside the commonwealth, and the possession of a smelt between said  
513 dates by a person other than a wholesale or retail dealer holding such a certificate shall be prima  
514 facie evidence of violation of this section.

515 Section 31. Whoever takes or attempts to take a smelt in any other manner than by angling shall  
516 be punished by a fine of not less than ten nor more than fifty dollars and shall in addition thereto  
517 forfeit one dollar for each smelt if any so taken, but this section shall not apply to smelt  
518 inadvertently taken in a seine or net during the time and in the manner in which fishing is  
519 allowed for perch, herring or alewives; provided, that such smelt so taken shall be immediately  
520 liberated alive in the waters from which taken.

521 Possession of any net, seine, trap or device for catching fish, other than a naturally or artificially  
522 baited hook, in or upon the harbors, rivers or tributaries of the commonwealth, or on the banks of  
523 the same, if adapted to and apparently intended for the present catching of smelt, shall be prima  
524 facie evidence of a violation of this section and the possession in or upon said harbors, rivers or  
525 tributaries, or on the banks of the same, of any fresh smelt, between sunset and sunrise, or under  
526 other circumstances reasonably indicating the catching of the same otherwise than by angling,  
527 shall be prima facie evidence that said smelt were caught or intended to be caught contrary to  
528 such provisions by the person in whose possession they are found.

529 Section 32. For the purpose of protecting smelt and their spawn the director may close such  
530 portions of streams flowing into the coastal waters during the spawning season of such fish as he

531 may deem necessary and may forbid the entrance into such portions of said streams by posting  
532 on or near such closed areas notices of such closing, giving the bounds thereof; provided  
533 however, that such closing and such prohibition of entrance shall not be for a period longer than  
534 sixty days in any one year. Whoever violates the provisions of this section or molests or disturbs  
535 smelt or their spawn within such closed areas shall be punished by a fine of not less than ten nor  
536 more than fifty dollars or imprisonment for not more than thirty days, or both.

537 Section 33. No person, either as principal, agent or employee, shall at any time catch lobsters or  
538 edible crabs in, or take them from, the coastal waters or place, set, keep, maintain, supervise, lift,  
539 raise or draw in or from the said waters, or cause to be placed, set, kept, maintained, supervised,  
540 lifted, raised or drawn in or from the said waters, any pot, trap or other contrivance designed for,  
541 or adapted to, the taking of lobsters or edible crabs, unless licensed so to do under section thirty-  
542 four.

543 No person shall at any time take from any waters under the jurisdiction of the commonwealth  
544 any lobsters by spearing, dipping or dragging.

545 In the waters of Gosnold in the county of Dukes County, no such pot, trap or other contrivance  
546 shall be buoyed otherwise than separately and plainly.

547 Violation of any provision of this section shall be punished by a fine of not less than two hundred  
548 nor more than five hundred dollars, or by imprisonment for not more than three months, or both.  
549 Nothing in this section or section thirty-four shall be construed to prohibit or regulate the taking  
550 of crabs other than edible crabs solely for bait purposes, or for the taking of edible crabs for use  
551 of one's immediate family; provided, that the number of such edible crabs so taken by any one  
552 person shall not exceed fifty in one day and such edible crabs shall not be taken by pots or traps.

553 Section 34. Any person may take green crabs, more specifically known as the species *Carcinides*  
554 *Maenas*, provided, that such person (a) gives written notice to such effect to the director, (b)  
555 marks all traps, gear and buoys in a uniform manner in accordance with requirements set forth by  
556 said director, and (c) files an annual report with the commissioner setting forth the approximate  
557 number of bushels of said crabs taken each month of the year and whether such crabs were  
558 destroyed or used for bait purposes in the commonwealth. Any person subject to the provisions  
559 of this section shall comply with regulations which the commissioner is hereby authorized to  
560 promulgate from time to time.

561 Section 35. A person shall not fish for or take lobsters or edible crabs in coastal waters or land  
562 the same in the commonwealth without a permit issued by the commissioner or his agent. A  
563 noncommercial lobster and crab permit shall authorize the holder and the members of holder's  
564 immediate family residing in the same residence as the holder to fish for, take or land by the use  
565 of pots only lobsters and edible crabs for consumption, and not for sale, by himself and the  
566 members of his immediate family residing in the same residence as the holder; provided,  
567 however, that the holder and such other persons shall not use more than ten traps for such fishing  
568 at any one time; and provided, further, that only one license shall be issued to one family in a  
569 single household in any calendar year; and provided, further, that for the purpose of this section  
570 the term "immediate family" shall mean the spouse, children, parents, grandparents, brothers and  
571 sisters of the holder. A commercial fisherman permit (lobster) authorizes the holder thereof to  
572 fish for, take and land lobsters and edible crabs for commercial purposes. No person holding a  
573 commercial fisherman permit (lobster) need at the same time hold a noncommercial lobster and  
574 crab permit. Upon application to the director, and endorsement on his license, the holder of a  
575 commercial fisherman permit (lobster) may have the privilege afforded the holder of any type of

576 commercial fisherman permit issued under section 79. A commercial fisherman permit (lobster)  
577 shall be issued to an individual but it may be endorsed for use on fishing vessels, in which case it  
578 shall cover all persons, except skin or scuba divers, on board such vessel. An individual skin or  
579 scuba diver may be granted a commercial fisherman permit (lobster); provided, however, no skin  
580 or scuba diver shall be allowed to dive for lobster and edible crabs by authority granted by a  
581 commercial fisherman permit endorsed for use on fishing vessels. The holder of a commercial  
582 fisherman permit (lobster) shall carry on his person or post on his vessel said permit at all times  
583 while engaging in fishing. In addition to the above noncommercial lobster and crab permit and  
584 the commercial fisherman permit (lobster) there shall be a seasonal commercial fisherman permit  
585 (lobster). Such a permit shall be issued to full-time students only, after such verification of  
586 student status as the director may determine, and shall allow the holder to take and sell lobster  
587 during the period June fifteen to September fifteen and shall limit the holder to the use of not  
588 more than twenty-five pots. Except as hereinafter provided, such licenses to catch or take both  
589 lobsters and edible crabs shall be granted only to individuals who are citizens of the  
590 commonwealth and who have resided therein for at least one year next preceding the date of such  
591 license, but no such license shall be issued to a minor under seventeen years of age except with  
592 the written consent of his parent, guardian or custodian and at the discretion of the  
593 commissioner.

594 A nonresident of the commonwealth who is a citizen of the United States or who is an alien who  
595 possesses an alien registration receipt card issued to him by the United States Department of  
596 Justice, Immigration and Naturalization Service, temporarily residing or intending temporarily to  
597 reside in any coastal city or town, and who owns more than five thousand dollars in real estate  
598 within the commonwealth as determined by tax records may, in any year, upon payment of the

599 fee required by this section obtain a license to take lobsters or edible crabs during June, July,  
600 August and September of such year, for consumption only by the licensee and his family who are  
601 so residing. Licenses hereunder, except those granted to nonresidents, shall expire on December  
602 thirty-first next succeeding the granting of the same unless sooner made void as provided in this  
603 chapter. Each applicant for a license under this section shall state the color scheme of the buoys  
604 desired to be used by him, which, if approved by the commissioner, shall be set forth in his  
605 license, and all buoys used by him shall be marked accordingly, and all buoys, pots, traps, and  
606 lobster cars used by him shall be marked with the licensee's number assigned to him by the  
607 commissioner, which shall be burned or cut into the surface thereof. The size of said numbers  
608 shall be prescribed by regulation of the commissioner. All buoys, pots, traps, and lobster cars  
609 that are not marked as required shall be removed from the coastal waters by any officer who is  
610 empowered to enforce this section and shall be held for up to six months. If the owner of any  
611 such buoy, pot, trap or lobster car fails to claim same within said six months it shall be  
612 permanently confiscated and disposed of by the director of law enforcement or his designee for  
613 the best interest of the commonwealth. Said commissioner, designee, or officer shall in no way  
614 be liable for such removal, confiscation or disposal. Before any buoy, pot, trap or lobster car is  
615 transferred, sold or given away the owner shall burn or cut the letter "T" into the buoy, pot, trap  
616 or lobster car, after his number, to indicate that the buoy, pot, trap or lobster car has been  
617 transferred and the new owner shall burn or cut his number into the buoy, pot, trap or lobster car.  
618 It shall be prima facie evidence of a violation of this section if a person has in his possession or  
619 uses any buoy, pot, trap or lobster car, that has had the license number removed, altered or  
620 defaced. No person shall use wooden lobster buoys in the coastal waters after January first,  
621 nineteen hundred and seventy-four.

622 A permittee shall at all times, while acting in pursuance of his permit, exhibit his permit upon the  
623 demand of any officer qualified to serve criminal process, and upon failure to do so shall be  
624 punished by a fine of not less than twenty-five nor more than one hundred dollars or  
625 imprisonment for one month or both.

626 The commissioner shall state in his annual report the number of licenses of each kind granted  
627 under this section.

628 Section 36. No person or persons shall take or attempt to take, by diving, lobsters, or edible crabs  
629 from the coastal waters, unless he displays his lobster license number upon his air tank, and for  
630 each person diving alone or for each group of divers upon the surface of said waters, in the area  
631 where the person or persons is taking or attempting to take lobsters and edible crabs, a floating  
632 marker shall be displayed with the license number of each person diving alone or in the case of  
633 any group of divers the license number of every person taking or attempting to take lobsters shall  
634 be displayed. Said number on a floating marker shall be displayed in the form of a single panel  
635 not less than twelve inches in height and width and shall be buoyed in an upright position. The  
636 marker shall have a white background with the licensee's number, or in the case of a group the  
637 licensees' numbers, displayed on both sides thereof by black numerals of a size prescribed by  
638 regulation of the director.

639 No person shall take or attempt to take with the aid and use of a boat any lobsters or edible crabs  
640 by pots, traps or other contrivances designed or adapted to the taking of lobsters or edible crabs  
641 without first displaying the buoy colors used by him in accordance with his license by painting  
642 the color or colors (a) on each side of the hull or upon panels attached to each side of the hull, or  
643 (b) upon both sides of a single panel which is attached to the boat on top of the bow, or by

644 mounting a buoy, not less than eleven inches in length, and four inches in diameter, with his  
645 color scheme thereon, in an upright position at least six inches above the roof of the boat. Color  
646 schemes painted on the hull of the boat or upon panels shall be displayed as a solid colored strip  
647 four inches high and eighteen inches long, each strip abutting another on the longest side, if more  
648 than one color, to form a rectangle or square. The rectangle or square thus formed shall have a  
649 black border all the way around at least one inch wide. All color schemes so displayed shall be  
650 clearly visible from both sides of the boat.

651 Whoever violates any provision of this section shall be punished by a fine of not less than one  
652 hundred nor more than two hundred dollars.

653 Section 37. All applicants issued a commercial fishermen permit for the taking of lobsters in  
654 coastal waters shall document their catch and sale of lobsters at such times and upon such forms  
655 as may be determined by the director. Individual catch data so documented shall be confidential  
656 and shall not be disclosed except in aggregate form. The commissioner may develop such forms  
657 and require such information as he deems necessary in the administration of this section. All  
658 such forms shall be signed by the applicant under the pains and penalties of perjury. Failure to  
659 submit complete forms as required by this section or falsification of any such form or any  
660 application as required by this section may result in a fine of not less than five hundred nor more  
661 than one thousand dollars and suspension of eligibility for issuance of a commercial permit for a  
662 period not to exceed three years. Any permit not renewed as required by this section by July first  
663 of each year may be subject to revocation by the department.

664 Each year between December first and March first the commissioner shall renew an existing  
665 commercial fishermen permit for the taking of lobsters in coastal waters held by any qualified



666 person during the previous year. The commissioner may renew permits to those individuals who  
667 have been previously engaged in commercial lobstering and can document that due to personal  
668 medical incapacity or other unforeseen circumstances, were unable to renew their commercial  
669 lobster permit during the prescribed renewal period. The marine fisheries advisory commission  
670 shall promulgate regulations establishing the criteria in which such renewals may take place.

671 Any commercial fishermen permit for the taking of lobsters in coastal waters may be transferred  
672 between members of an immediate family subject to the approval of the director. Permits may be  
673 transferred to other qualified applicants subject to regulations promulgated by the marine  
674 fisheries advisory commission. Said regulations shall set forth the specific criteria and process in  
675 which permits may be transferred and shall address the following concerns:—

676 (a) the maintenance and stability of a healthy lobster population;

677 (b) the economic viability of lobstering as a vocation and way of life;

678 (c) the needs of retiring lobstermen to sell or transfer their business interests;

679 The director may maintain a list of potential applicants for the transfer of said permits.

680 Upon the recommendation of the marine fisheries advisory commission, the secretary of the  
681 executive office of administration and finance shall set such fees as he deems appropriate to the  
682 administration of this section.

683 Any applicant for the transfer of any existing permit described in this section aggrieved by the  
684 decision of the director may appeal that decision to the commissioner whose decision upon  
685 appeal shall be final. The commissioner's decision, however, shall be governed by the criteria  
686 contained in this section.

687 Section 38. No person shall tend, lift, raise or draw a lobster or crab pot or trap, or take lobsters  
688 or edible crabs from such a pot or trap, or catch or take lobsters from the coastal waters by any  
689 means, except during the period from one half hour before sunrise until one half hour after  
690 sunset, except that traps may be taken up by the owner or by his employee or agent, if licensed  
691 under section thirty-four, at any time when they are endangered by storms, and except that the  
692 director, deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement,  
693 environmental police officers and deputy environmental police officers may at any time lift, raise  
694 or draw such pot or trap with its contents, if any, for the purpose of inspection provided in this  
695 chapter. Violation of the provisions of this section shall be punished by a fine of not less than ten  
696 nor more than fifty dollars.

697 Section 39. No person, either as principal, agent or employee, shall between January first and the  
698 following April thirtieth, both dates inclusive, take or catch edible crabs, by the use of traps or  
699 otherwise, from the coastal waters. Violation of the provisions of this section shall be punished  
700 by a fine of not less than ten nor more than fifty dollars.

701 Section 40. Any person who takes, sells or has in possession any female lobster bearing  
702 externally attached eggs shall be punished for the first offense by a fine of not less than \$150 nor  
703 more than \$500 for every such lobster and for a subsequent offense by a fine of not less than  
704 \$500 nor more than \$1,000 for every such lobster, or by imprisonment for not less than 60 days  
705 nor more than six months, or both such fine and imprisonment. A person who takes any such  
706 lobster and immediately returns it alive to the waters from which it was taken shall not be subject  
707 to such penalty. This section shall not apply to lobsters extruding eggs in fish cars or pounds if  
708 they are immediately liberated alive in the coastal waters, nor to the taking or possession of  
709 lobsters as provided in section forty-two.

710 Section 41. Any person who takes, sells or has in his possession any female lobster from which  
711 the eggs have been removed by means other than natural hatching, shall be punished for the first  
712 offense by a fine of not less than \$250 nor more than \$1,000 for every such lobster and for a  
713 subsequent offense by a fine of not less than \$1,000 nor more than \$2,000 for every such lobster,  
714 or by imprisonment for not less than 90 days nor more than one year, or both such fine and  
715 imprisonment. Detection on a female lobster of any substance capable of removing attached eggs  
716 or of physical evidence that attached eggs have been removed by a method other than by natural  
717 hatching shall be prima facie evidence that a violation of this section has occurred. Any  
718 environmental police officer, deputy environmental police officer or the commissioner or his  
719 designee may, in the performance of his duties, remove one or more appendages from any  
720 lobster for testing purposes.

721 Section 42. The commissioner shall, to the extent of appropriation or appropriations therefor,  
722 establish and maintain a plant or plants for the propagation of lobsters by rearing them from the  
723 time of hatching to the bottom crawling stages. Lobsters from which the eggs are to be obtained  
724 for such hatching and rearing shall be taken and disposed of in accordance with section forty-  
725 three. The commissioner, in his budget estimates, filed pursuant to section three of chapter  
726 twenty-nine, shall include a statement of appropriation or appropriations recommended by him  
727 for the purpose of carrying this section into effect.

728 Section 43. Between March first and October thirty-first, both dates inclusive, in any year, the  
729 commissioner may authorize the taking or possession of egg-bearing lobsters by any person  
730 licensed under section thirty-four to catch or take lobsters and edible crabs, upon the condition  
731 that such egg-bearing lobsters shall be taken, held or delivered in accordance with the  
732 instructions of the director to a plant for the propagation of lobsters established and maintained

733 for rearing them from the time of hatching to the bottom crawling stages or for such other  
734 disposition as the director may deem for the best interests of the commonwealth. If the eggs from  
735 the lobsters so obtained shall be hatched the young therefrom shall be reared to the bottom  
736 crawling stages. Lobsters from which eggs have been so hatched, and the young lobsters so  
737 reared, shall be liberated, as nearly as possible, in the areas from which such egg-bearing lobsters  
738 were obtained and in the same proportion. Nothing in this section shall be so construed as to  
739 prevent the commissioner from otherwise disposing of lobsters from which eggs have been so  
740 removed, or young lobsters so reared, when in the opinion of the commissioner by so doing  
741 depleted or non-productive areas may be benefited.

742 Section 44. Whoever sells, or offers for sale, or has in possession for a period longer than is  
743 necessary for immediate measuring, or for any purpose other than legally disposing of same, a  
744 lobster measuring in length less than the minimum size prescribed by this section, alive or dead,  
745 cooked or uncooked, measured from the rear of the eye socket along a line parallel to the center  
746 line of the body shell to the rear end of the body shell, shall be punished for the first offense by a  
747 fine of not less than one hundred nor more than five hundred dollars for every such lobster and  
748 for a subsequent offense by a fine of not less than five hundred nor more than one thousand  
749 dollars for every such lobster or by imprisonment for not less than one nor more than three  
750 months or both, and such lobster shall be seized and forfeited, and shall be disposed of by the  
751 commissioner to the best interest of the commonwealth.

752 Beginning on January 1, 1989, the minimum size shall be 3 1/4 inches. Thereafter, the  
753 commissioner may, by regulation approved by the marine fisheries advisory commission,  
754 increase the minimum size, and may establish different minimum sizes in separate geographic

755 areas, if he determines that such increases are necessary to achieve compliance with the Atlantic  
756 States Marine Fisheries Commission Fisheries Management Plan for American lobster.

757 If the measurement of any such lobster taken from one or the other eye sockets is of the required  
758 length, such lobster shall be deemed to be a legal lobster. In all prosecutions under this section  
759 any mutilation of any lobster which affects its measurement as aforesaid shall be prima facie  
760 evidence that the lobster was or is less than the required length; provided, however, that the  
761 commissioner shall, by regulation approved by the marine fisheries advisory commission, permit  
762 the possession and on-shore processing of shell-on frozen lobster tails by wholesale dealers;  
763 provided, further, that possession of lobster tails at sea, or at any location where processing is not  
764 being conducted, shall be prohibited and shall be subject to the penalties provided in the first  
765 paragraph; and provided, further, that said processing shall be conducted only by wholesale  
766 dealers who have been issued a special permit by the commissioner and whose facilities are  
767 certified as U.S.D.C. Type I or the equivalent thereof. This section shall not apply to common  
768 carriers having lobster in possession for the purpose of transportation.

769 Section 45. The commissioner may, by regulation approved by the marine fisheries advisory  
770 commission and promulgated pursuant to chapter thirty A, establish a program to protect V-  
771 notched lobsters. For purposes of this section, the term "V-notched lobster" means a female egg-  
772 bearing lobster from which a V-shaped piece of tail has been cut from the first right flipper next  
773 to the middle flipper by a person holding or covered by a permit issued pursuant to section thirty-  
774 four.

775 Section 46. No commercial fishing vessel landing lobsters taken by any method other than by  
776 pots or traps shall land for the purpose of sale or distribution any lobsters or any part thereof at

777 any location within the jurisdiction of the commonwealth in excess of one hundred lobsters for a  
778 fishing trip of one twenty-four hour day or less duration, with a maximum limit of five hundred  
779 lobsters within a period of seven consecutive days. The commissioner, with approval of the  
780 marine fisheries advisory commission, shall promulgate rules to implement this section within  
781 ninety days of its effective date.

782 The commissioner shall monitor the performance of vessels taking and landing lobsters in the  
783 commonwealth taken by other than pots and traps. If landings by vessels landing lobsters taken  
784 by other than by pots or traps exceed six percent of total lobster landings in any year, the director  
785 shall implement regulations, subject to the approval of said marine fisheries advisory  
786 commission, to limit lobster landings in subsequent years by vessels using other than pots or  
787 traps to no more than six percent of total lobster landings in the commonwealth.

788 The provisions of this section governing the landing of lobsters by vessels fishing with other than  
789 pots or traps, shall be superseded by the development or implementation subsequent to the  
790 effective date of this act of either a federal or interstate fishery management plan governing the  
791 taking or landing of lobsters under the jurisdiction of the federal government.

792 Section 47. All barrels, boxes or other containers containing lobsters, or lobster meat after the  
793 same has been taken from the shell, shall, before being delivered to any carrier, be marked by the  
794 shipper in a plain and legible manner on the outside thereof "Lobsters" or "Lobster Meat", as the  
795 case may be, in capital letters at least one inch in length, together with the full name and address  
796 of the shipper, and, in the case of such lobster meat, also with the words, "removed under permit  
797 No.     ", followed by the number of the permit under which the same was taken from the shell;  
798 and, unless in barrels, boxes or other containers so marked, no lobster or lobster meat shall be

799 transported. Any such barrels, boxes or other containers delivered to or transported by any carrier  
800 without being marked as above required, and the lobsters or lobster meat therein, shall be seized  
801 and forfeited. Violation of any provision of this section shall be punished by a fine of not less  
802 than five hundred nor more than one thousand dollars. This section and section forty-nine shall  
803 not apply to lobsters or lobster meat passing through the commonwealth under authority of the  
804 laws of the United States.

805 Section 48. In case of seizure by any duly authorized officer of any lobsters or lobster meat  
806 contained in any barrel, box or other container which is not marked as provided in section forty-  
807 four, or of any lobster measuring less than the length prescribed by section forty-five, such  
808 lobsters as are alive and measure less than such prescribed length shall be liberated by the  
809 director, and all other such lobsters and all such lobster meat found in such barrel, box or other  
810 container shall be held and disposed of as provided in section fifty-one.

811 Section 49. Any carrier who knowingly receives or carries from place to place any lobster or  
812 lobster meat in barrels, boxes or other containers not marked as provided in section forty-six  
813 shall be punished by a fine of not more than five hundred dollars.

814 Section 50. When any lobster or lobster meat is seized for the violation of any provision of  
815 section forty-eight, the officer making the seizure shall immediately notify the shipper thereof, if  
816 known, and shall proceed to enforce the forfeiture of such lobsters as he is not required to  
817 liberate, or of such lobster meat, in accordance with section nine.

818 Section 51. No person shall sell, or represent for the purpose of sale, any lobster as a native  
819 lobster unless the same shall have been originally caught or taken in the coastal waters; nor shall  
820 any person so sell, or represent for the purpose of sale, any crustacean as a lobster unless the

821 same is of the species known as *Homarus americanus*; nor shall any person so sell, or represent  
822 for the purpose of sale, any meat as lobster meat unless such meat is wholly from crustaceans of  
823 such species. Violations of any provision of this section shall be punished by a fine of not less  
824 than fifty nor more than five hundred dollars.

825 Section 52. No retail establishment or person shall sell or represent for the purpose of sale, any  
826 item as crabmeat unless the same is from crustaceans of any species of crab, so-called. A retail  
827 establishment or person selling a product which contains crabmeat in any proportion shall list  
828 separately the names and percentages of all noncrabmeat substances contained therein. A  
829 violation of any provision of this section shall be punishable by a fine of not less than fifty nor  
830 more than five hundred dollars

831 Section 53. The selectmen of a town bordering upon coastal waters, if so authorized by their  
832 town, and the board of aldermen or the city council of any city so situated may control, regulate  
833 or prohibit the taking of eels and any or all kinds of shellfish and sea worms within such cities  
834 and towns and may, from time to time, without other or special authority therefor, make any  
835 regulations not contrary to law in regard to said fisheries as they deem expedient, including the  
836 times, places, methods, purposes, uses, sizes, quantities and any other particulars of such taking,  
837 and may grant permits, and establish the fees therefor, subject to any such regulation, then or  
838 thereafter in force. Any such authorizations to said selectmen hereunder shall continue in force  
839 until subsequent action of such town shall repeal the same. Any regulations made under authority  
840 of this section shall continue in force until the board of aldermen, city council, or selectmen, as  
841 the case may be, shall alter, amend, rescind or repeal the same, or the authority of the selectmen  
842 to make and enforce such regulations shall be repealed. No city or town shall require a person to



843 be licensed to take shellfish who is accompanying or operating a boat for a person so licensed  
844 and who is not otherwise actively engaged in or assisting in such fishing.

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

858 If any city or town bordering on the coastal waters neglects or refuses to take the control of the  
859 shellfish, sea worms or eels within its boundaries as provided in this section, such control shall  
860 be temporarily exercised by the commissioner for the benefit of such city or town and such  
861 authority shall continue until such time as the aldermen or city council of such city or the  
862 selectmen under authority of a vote of such town shall take over such control. Nothing in this  
863 paragraph shall be construed as authorizing the director to take control of or exercise the  
864 authority provided in this section over the taking of clams from any areas leased from the  
865 commonwealth by cities or towns in Essex county as provided in chapter seven hundred and ten

866 of the acts of nineteen hundred and twelve and amendments thereto nor shall such authority  
867 extend to the issuance of private shellfish grants as provided in section fifty-eight.

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

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

886 For purposes of this section and of section fifty-four, the term shellfish shall not include the  
887 commercial harvest of those species of shellfish known as sea clams (*spilosa solidissima*) and

888 ocean quahogs (*artica islandica*); provided, however, that the commissioner may authorize the  
889 commercial management of sea clams and ocean quahogs by regional management of cities and  
890 towns, if in his opinion regional management will be in the best interests of the commonwealth.  
891 Regional management shall be based upon a regional plan developed by the cities and towns  
892 concerned and approved by the commissioner. The commissioner is authorized to promulgate  
893 rules and regulations for the development, approval and implementation of all regional plans.

894 Section 54. All permits issued under section fifty-two shall be issued in the name of the body  
895 authorizing the issuing of the same; but, under a vote of such body, any such permit shall be  
896 valid if issued bearing the signature of any one member thereof, or of the city or town clerk. A  
897 record of the name, residence and address of every person to whom such a permit is issued, with  
898 any special details relating to such permit, shall be entered by the officer issuing the same in a  
899 book kept in his office for that purpose.

900 Section 55. Cities by a vote of the board of aldermen, or city council, and towns by a vote at a  
901 town meeting, may appropriate money for the cultivation, propagation and protection of  
902 shellfish. The board of aldermen, or city council, or selectmen when so authorized by their town  
903 may from time to time declare a close season for any or all kinds of shellfish for not more than  
904 three years in such waters, flats or creeks, not then the subject of a private grant, within the limits  
905 of their respective cities and towns, as they deem proper, and may plant, grow and protect  
906 shellfish in such waters, flats or creeks; provided, that no private rights are impaired; and  
907 provided, further, that when any close season, declared as aforesaid, shall have ended, such flats,  
908 waters or creeks shall not within two years thereafter be licensed for the private cultivation of  
909 shellfish.

910 Section 56. No permit for the taking of shellfish for commercial purposes, except in the city of  
911 New Bedford, shall be issued by the aldermen or councilmen of any city or the selectmen of any  
912 town to an alien unless he has resided in such city or town for at least five years next preceding  
913 the date of his application therefor, or has been a resident of the county in which such city or  
914 town lies for at least five years next preceding the date of such application and has taken  
915 shellfish commercially therefrom for such period.

916 Section 57. Whenever under the authority of any law two or more municipalities have joint  
917 property in, or the right of joint control of, any marine fisheries referred to in section fifty-three,  
918 the board of aldermen or city council of the city, or the selectmen of the town if so authorized by  
919 the town, in which such fisheries lie may exclusively exercise all the rights, privileges and  
920 authority conferred by said section with respect to such fisheries, make appropriations therefor as  
921 provided in section fifty-five and exercise such other control, privileges and responsibilities as  
922 are granted in other sections of this chapter pertinent thereto, as though such joint control or  
923 property did not exist; provided that in the exercise of such rights, privileges, responsibilities and  
924 authority such board of aldermen, city council or selectmen shall grant to the citizens of such  
925 other municipalities the same rights and privileges as are granted to the citizens of their city or  
926 town.

927 Section 58. The city council or mayor of any city, or the selectmen of any town, may upon  
928 written application, accompanied by plans sufficient to show the intended project and project  
929 area to be licensed, and after public notice and hearing pursuant to section sixty-one, grant to any  
930 person a shellfish aquaculture license.

931 Said license shall authorize said licensee in such city or town at all times of the year, in, upon, or  
932 from a specific portion of coastal waters of the commonwealth, of tidal flats or land under  
933 coastal waters: (1) to plant and grow shellfish, bottom/off bottom culture; (2) to place shellfish in  
934 or under protective devices affixed directly to the tidal flats or land under coastal waters, such as  
935 boxes, trays, pens, bags, or nets; (3) to harvest and take legal shellfish; (4) to plant cultch for the  
936 purpose of catching shellfish seed; and (5) to grow shellfish by means of racks, rafts or floats.

937 After receipt of a written application by the city council or selectmen, and after the notice and  
938 public hearing requirements of this section are satisfied and the licensing authority approves the  
939 application, the director shall, after inspection of the intended project area, certify that issuance  
940 of a shellfish aquaculture license and operation thereunder will cause no substantial adverse  
941 effect on the shellfish or other natural resources of the city or town. Upon such certification by  
942 the director, the city council or selectmen may issue the license, provided, however, that no  
943 license shall be issued for any areas then or within two years prior thereto, closed for municipal  
944 cultivation under the provisions of section fifty-five. Failure of the director to so certify shall be  
945 deemed a denial of the shellfish aquaculture license. The commissioner's certification or refusal  
946 to certify shall be reviewable in accordance with section fourteen of chapter thirty A.

947 Licenses under this section shall be granted or denied in writing within sixty days after receipt of  
948 the written application and shall be issued upon forms supplied by such cities and towns and  
949 upon such terms and conditions and subject to such terms, conditions or regulations as the city  
950 council or selectmen issuing the same shall deem proper, but not so as to impair the private rights  
951 of any person or to materially obstruct navigable waters, and said license shall describe by metes  
952 and bounds the waters, flats or creeks covered thereby. Shellfish aquaculture licenses pursuant to  
953 this section shall be subject to any rules and regulations promulgated by the director, including

954 those concerning the use and scope of predator controls in the intertidal zone, and said licenses  
955 may be further conditioned by the director as he deems necessary and appropriate, including  
956 species to be propagated and the source and movement of seed shellfish.

957 Said license shall be for a period of not more than ten years and may be renewed for similar  
958 periods. Said license may be revoked by the city council, selectmen or the director for failure to  
959 comply with any terms, conditions or regulations set forth by these entities, or for lack of  
960 substantial use of the licensed area. Said licensee shall have the right to the exclusive use of the  
961 lands and waters for the purposes of growing shellfish thereon, and the licensee shall plainly  
962 mark the boundaries of said area. The selectmen or city council shall permit, as a condition of the  
963 license, such public uses of said waters and lands as are compatible with the aquacultural  
964 enterprise.

965 Whoever without the consent of the licensee, unless otherwise permitted by the terms and  
966 conditions of said license: (1) takes shellfish from the licensed lands or waters or from said  
967 racks, rafts or floats; (2) disturbs the licensed area or the growth of the shellfish thereon in any  
968 way; (3) discharges any substance which may directly or indirectly injure the shellfish; (4)  
969 willfully injures, defaces, destroys, removes or trespasses upon said racks, rafts, or floats; or (5)  
970 willfully injures, defaces, destroys, removes or trespasses upon said protective devices affixed  
971 directly to the tidal flats, such as boxes, trays, pens, bags, or nets shall be liable in tort for treble  
972 damages and costs to the licensee injured by such act.

973 Nothing in this section shall be deemed to affect the validity, conditions, or terms of any license  
974 granted under the corresponding provisions of earlier laws and in full force upon the effective  
975 date of this section. Nothing in this section shall excuse the licensee from complying with other

976 laws of the commonwealth, including environmental laws and laws concerning interference with  
977 navigation.

978 Said shellfish aquaculture license may be transferred pursuant to section fifty-nine and all rights  
979 and privileges enjoyed by the licensee shall be assumed by the transferee.

980 Any license issued under the provisions of this section shall, upon the death of the licensee,  
981 continue in full force and effect, subject to the same terms, conditions, and regulations imposed  
982 upon the original license, for the balance of the unexpired term, or one year whichever is longer,  
983 for the use of the members of the immediate family of the deceased licensee. For the purposes of  
984 this section, immediate family shall mean the spouse, son, daughter, mother, father, brother and  
985 sister of said deceased licensee.

986 Nothing in this section shall be deemed to affect the validity, conditions, or term of any license  
987 granted under corresponding provisions of earlier laws and in full force upon the effective date  
988 of this section.

989 Section 59. Any license granted under section fifty-seven or corresponding provisions of earlier  
990 laws may be transferred with the approval of the city council or selectmen to any person to  
991 whom it might originally have been granted, and, whether or not so transferred, may, within two  
992 years before the expiration of its then current term, be renewed from the expiration of the  
993 original term for a further term or terms, each term not to exceed fifteen years. The provisions of  
994 this chapter or of corresponding provisions of earlier laws applicable to the original issuance of  
995 such license shall, so far as apt, apply to a transfer or a renewal thereof hereunder.

996 Section 60. Any person, firm or corporation qualified as provided in section fifty-seven and  
997 desiring to obtain a license thereunder shall present to the city council or selectmen a written

998 application setting forth the name and residence of the applicant, a definite description made by  
999 reference to a survey conducted by the applicant, and a request that such license be granted to the  
1000 applicant.

1001 Section 61. No license referred to in section fifty-eight shall be granted, transferred or renewed  
1002 until after a public hearing, due notice of which has been posted in three or more public places,  
1003 and published in a newspaper, if any, published in the city or town where the territory described  
1004 in the application is situated at least ten days before the time fixed for the hearing, stating the  
1005 name and residence of the applicant or transferee, as the case may be, the date of the filing of the  
1006 application for such license, transfer or renewal, and the location, area and description of said  
1007 territory.

1008 Section 62. The licensee upon receiving his license shall cause the territory covered thereby to be  
1009 plainly marked out by monuments, marks or ranges and by stakes or buoys, with the number of  
1010 his license painted in figures at least two inches in height in a conspicuous place on each of said  
1011 stakes or buoys or on flags attached thereto, which shall be maintained by him or his transferee  
1012 during the term of the license or of any renewal thereof. Failure to place or reasonably to  
1013 maintain the same shall be sufficient cause for revocation of the license.

1014 Section 63. The aldermen, city council or selectmen shall keep in their offices plans showing all  
1015 such licensed areas, and, in a book devoted to that purpose only, a record of each license granted  
1016 and of all transfers or renewals thereof, which shall include the name and residence of the  
1017 licensee or transferee, the dates of issue, transfer, renewal and expiration thereof, and a copy of  
1018 the description of the licensed areas as the same appears in the license. Each license, and all  
1019 transfers or renewals thereof, shall forthwith after the granting or approval thereof be transmitted



1020 by the board so granting or approving the same to the city or town clerk, who shall record the  
1021 same in a book kept especially therefor in his office. The licensee or transferee shall within thirty  
1022 days after such issue or approval pay to said clerk for each license or renewal issued or transfer  
1023 approved one dollar for such recording, and for each license issued shall also pay four dollars as  
1024 reimbursement of said city or town for the cost incurred in granting said license, a record of  
1025 which payment shall forthwith be entered upon said record by said clerk, and such license,  
1026 transfer or renewal shall not take effect until said fees are paid and entry thereof made as  
1027 aforesaid. Said records shall be open to public inspection at all reasonable times. Forms for such  
1028 license and for the transfer or renewal of the same shall be provided by the aldermen, city  
1029 council or selectmen at the expense of their city or town.

1030 Section 64. The licensee or transferee, or his legal representatives, shall, for the purposes set  
1031 forth in section fifty-seven and in accord with the terms set forth in said license, have during the  
1032 term of the license or of any renewal thereof the exclusive use of the waters, flats or creeks  
1033 described in the license, and the exclusive right to take all shellfish therefrom during the time  
1034 therein specified, notwithstanding any regulations made by the aldermen, city council or  
1035 selectmen of the city or town, subsequent to the issuance of such license or to the renewal  
1036 thereof, as the case may be; provided, that this section shall not be construed to authorize any  
1037 taking prohibited by law. The licensee or transferee, or his legal representatives, may in tort  
1038 recover treble damages of any person who without his or their consent, unless otherwise  
1039 authorized by law or by lawful regulation so to do, digs or takes shellfish of any kind, or shells,  
1040 from such waters, flats or creeks, or disturbs the same thereon, during the continuance of the  
1041 license or of any renewal thereof.

1042 Section 65. Every such licensee or transferee shall pay to the city or town, on or before a date to  
1043 be fixed by the aldermen, city council or selectmen, an annual fee of not less than five nor more  
1044 than twenty-five dollars per acre, or part thereof. If any such fee is not paid within six months  
1045 after it becomes due the license shall thereupon be forfeited.

1046 Section 66. Every licensee or transferee of a license referred to in section fifty-seven shall submit  
1047 on oath on or before December thirty-first in each year to the director and to the city council or  
1048 selectmen of the city or town wherein the licensed area is situated a report of the total number of  
1049 each kind of shellfish planted, produced or marketed during the preceding year upon or from  
1050 such licensed area, and an estimate of the total number of each kind of shellfish at the time of  
1051 such report planted or growing thereon. The city council or selectmen may specify a reasonable  
1052 yearly market value to be produced by each shellfish project licensed pursuant to section fifty-  
1053 eight. Failure of the licensed shellfish project to meet such a value for any three consecutive  
1054 years thereafter may result in a forfeit of the shellfish aquaculture license and licensed area.

1055 Section 67. Whoever willfully injures, defaces, destroys or removes any mark or bound used to  
1056 define the extent of any shellfish license or grant, or places any unauthorized mark thereon, or  
1057 ties or fastens any boat or vessel thereto, shall be punished by a fine of not less than three nor  
1058 more than twenty dollars and shall be liable in tort for double damages and costs to the licensee  
1059 or transferee injured by such act.

1060 Section 68. Whoever works a dredge, oyster tongs or rakes, or any other implement for the  
1061 taking of shellfish of any description upon any shellfish grounds or beds covered by a license  
1062 granted under section fifty-seven or corresponding provisions of earlier laws, or in any way  
1063 disturbs the growth of the shellfish thereon, or whoever discharges any substance which may

1064 directly or indirectly injure the shellfish upon any such grounds or beds, without the consent of  
1065 the licensee or transferee, as the case may be, or whoever, while upon or sailing over any such  
1066 grounds or beds, casts, hauls, or has overboard any such dredge, tongs, rake or other implement  
1067 for the taking of shellfish of any description, under any pretence or for any purpose whatever,  
1068 without the consent of the licensee or transferee, as the case may be, shall for the first offense be  
1069 punished by a fine of not more than twenty dollars or by imprisonment for not more than one  
1070 month, and for a subsequent offence by a fine of not more than fifty dollars or by imprisonment  
1071 for not more than six months.

1072 Section 69. No person shall dig, take or carry away any shellfish or shells between one half hour  
1073 after sunset and one half hour before sunrise, by any method whatever, from any waters, flats or  
1074 creeks as to which a license under section fifty-eight or corresponding provisions of earlier laws  
1075 is outstanding. A licensee or transferee of such a license violating this section shall, in addition to  
1076 all other penalties provided, forfeit his license and the shellfish remaining on the licensed  
1077 premises.

1078 Whoever violates any provision of this section, or whoever, without the consent of the licensee  
1079 or transferee, digs or takes any shellfish or shells from any waters, flats or creeks described in  
1080 any license granted under section fifty-eight, or corresponding provisions of earlier laws, during  
1081 the continuance of such license or of any renewal thereof, shall be punished by a fine of not more  
1082 than one hundred dollars or by imprisonment for not less than one nor more than six months, or  
1083 both.

1084 Section 70. Whoever takes or has in his possession quahaugs or soft shelled clams or oysters  
1085 smaller than the minimum size established by the director through regulations, hereinafter

1086 referred to as seed quahaugs, seed clams and seed oysters, to the amount of more than five  
1087 percent of any batch, shall be punished in accordance with section two; provided, however, that  
1088 it shall not be unlawful to take seed quahaugs, seed clams or seed oysters or have the same in  
1089 possession under authority of a permit therefor, which the director is hereby authorized to grant,  
1090 for a replanting in waters or flats within the commonwealth.

1091 Section 71. No person shall take from the flats or coastal waters of the commonwealth scallops  
1092 other than adult scallops, or sell or offer for sale or have in possession such scallops. For the  
1093 purposes of this section an adult scallop shall be a scallop with a well-defined raised annual  
1094 growth line, and any scallop without such line shall be deemed a "seed" scallop. Scallops taken  
1095 from the coastal waters shall immediately be culled when taken, and all scallops other than adult  
1096 scallops shall forthwith be returned alive to the coastal waters whence taken; but it shall not be  
1097 unlawful to sell or have in possession scallops other than adult scallops unavoidably left in the  
1098 catch after it has been culled, to the amount of not more than five per cent of the total catch  
1099 remaining. All scallops taken in accordance with this section shall be taken ashore in the shell.  
1100 This and section seventy-one shall not apply to seed and adult scallops carried by storm or tide  
1101 from the natural beds and deposited on beaches and flats where, in the opinion of the  
1102 commissioner, they cannot survive, but the taking of said seed scallops and the taking and sale of  
1103 said adult scallops may be authorized by him at any season of the year. The commissioner shall  
1104 promulgate rules and regulations governing the taking and sale of said seed and adult scallops by  
1105 special permits, which he is empowered to issue without fee, or otherwise so as to prevent the  
1106 sale of seed scallops at any time, or the sale of adult scallops between April first and the  
1107 following October first, except as authorized herein. Whoever violates any provision of this

1108 section shall be fined not less than ten nor more than fifty dollars and imprisonment for thirty  
1109 days or both.

1110 Section 72. Except as provided in sections seventy and seventy-three, no person shall take  
1111 scallops between April first and the following October first from the flats or coastal waters of the  
1112 commonwealth, or buy or sell or have in possession scallops so taken. Whoever violates any  
1113 provision of this section shall be punished by a fine of not less than ten nor more than fifty  
1114 dollars and imprisonment for thirty days or both.

1115 Section 73. No person shall for any purpose take more than a total of ten bushels of scallops,  
1116 including shells, in one day, unless authorized by the director under sections seventy-one and  
1117 seventy-four so to do. Whoever violates any provision of this section shall be punished by a fine  
1118 of not less than ten nor more than fifty dollars and imprisonment for thirty days or both.

1119 Section 74. The provisions of sections seventy-two and seventy-three in respect to the open and  
1120 close season, and in respect to the number of scallops that may be taken, may be temporarily  
1121 modified if, on petition of the aldermen, city council or selectmen to the director, the  
1122 commissioner after investigation, determines that, owing to unusual circumstances, such  
1123 modification is expedient. In that case, he may authorize, for a prescribed period, the aldermen,  
1124 city council or selectmen to issue permits to inhabitants of their respective cities or towns to take  
1125 scallops in such quantities and at such times as he deems expedient.

1126 Section 75. The department shall examine from time to time as conditions may require, or upon  
1127 request of the commissioner of public health, the mayor or city manager of a city, or the  
1128 selectmen or town manager of a town, the coastal waters and flats of the commonwealth and  
1129 samples of shellfish therein or thereon in order to determine what areas thereof are so

1130 contaminated that shellfish obtained therefrom are unfit for food and dangerous to the public  
1131 health. The department fisheries shall forward the results of all tests as directed by the  
1132 commissioner of public health. If, after such examination, either the department of public health  
1133 or the department determines that such contamination exists, it shall, by written order,  
1134 promulgate definite bounds of the area or areas so determined to be contaminated, and may  
1135 specify the period of time during which such determination shall be in effect. Before such  
1136 determination shall be in effect, such department or division making the determination shall:

1137 (1) Publish the results of its determination thereof in a newspaper published in each city and  
1138 town in which or adjacent to which any contaminated area is situated.

1139 (2) File in the office of the clerk of every such city or town the results of the determination.

1140 (3) Cause to be posted at points on or near every such area a description thereof, specifying said  
1141 bounds and a statement that such an area is contaminated.

1142 (4) If the department of public health makes the determination, notify the commissioner and the  
1143 director of the division of law enforcement of its determination by filing with them properly  
1144 authenticated copies, certified by the secretary of state, of its determination, publication, filing  
1145 and posting.

1146 (5) If the department makes the determination, notify the director of the division of law  
1147 enforcement of its determination by filing with him properly authenticated copies, certified by  
1148 the secretary of state, of its determination, publication, filing and posting.

1149 Whenever, as a result of a subsequent examination of an area or areas determined by the  
1150 department or the department of public health to be contaminated, such department determines

1151 that the shellfish in such area or areas are safe to use as food, notice of such determination shall  
1152 be published immediately, and provided to the commissioner and to the director of the division  
1153 of law enforcement, in the case of a determination by the department of public health, and to the  
1154 director of the division of law enforcement in the case of a determination by the department;  
1155 provided, however, that if the department of public health or the department has specified a  
1156 period of time during which the determination of pollution shall be in effect, such publication  
1157 and notice shall not be required if such period has expired. The record of any examination  
1158 hereunder and the bacteriological counts made therein shall be subject to inspection upon  
1159 request.

1160 Personnel at the department of public health and the department in the performance of their  
1161 duties under this section, may enter upon and pass through or over private lands or property  
1162 whether or not covered by water.

1163 The presentation in evidence by any officer of the commonwealth empowered to enforce this  
1164 chapter of a document attested to by the commissioner of the department of public health or the  
1165 commissioner or either of their designees to the effect that the provisions of this section have  
1166 been complied with shall be prima facie evidence that an effective determination has been made.

1167 The department of public health and the department, acting jointly, after consultation with the  
1168 department of environmental protection, can promulgate rules and regulations establishing  
1169 standards and criteria for the classification of all shellfish growing areas within the  
1170 commonwealth. Such standards and criteria shall conform at a minimum to those established by  
1171 the national shellfish sanitation program.

1172 This section shall not apply to scallops or conch unless scallops or conch are specifically  
1173 included in such determination.

1174 Section 76. Both the department of public health and the department shall have the authority  
1175 immediately to designate shellfish areas as contaminated and that shellfish obtained therefrom  
1176 are unfit for food and dangerous to the public health, in the event of an emergency as determined  
1177 by either the department of public health or the department. Such designation shall be reported to  
1178 the division of law enforcement, and, in the case of a determination by the department of public  
1179 health, to the department, who shall take the necessary action to prevent the taking of shellfish  
1180 from such area for human consumption and so notify local authorities in each instance. Such  
1181 determination shall be in effect until subsequent examination, initiated not more than thirty days  
1182 after the emergency has been determined, shows the shellfish from such area to be safe for  
1183 human consumption and the said department which designated the emergency declares it to be  
1184 over. In the event that the department of public health determines that there is an emergency, the  
1185 commissioner of public health shall have the power to direct the activities of all employees of the  
1186 division of marine fisheries who are regularly engaged in monitoring the condition of shellfish  
1187 during that emergency.

1188 This section shall not apply to scallops or conch unless scallops or conch are specifically  
1189 included in such determination.

1190 Section 77. The commissioner may grant, and may revoke, written permits for the digging or  
1191 taking of shellfish from an area determined under section seventy-five or corresponding  
1192 provisions of earlier laws to be contaminated while such determination is in force, every such  
1193 permit to be upon the express condition, which shall be set forth therein, that all shellfish dug or



1194 taken from the area or areas covered by such permit by the holder thereof shall, before being  
1195 used or disposed of for consumption as food, be purified at a plant, or by a method, approved in  
1196 writing by the commissioner of public health and upon such further conditions and regulations as  
1197 will, in the opinion of the director, most effectively prevent the use of said shellfish as food until  
1198 so purified. For the purpose of this paragraph the director, upon receipt of the proper fees, may  
1199 issue the following classes of permits:—a master digger’s permit for an individual who digs or  
1200 takes shellfish from such areas for such purification; a digger’s permit for an individual who digs  
1201 shellfish for the holder of a master digger’s permit; and a bait permit for an individual who digs  
1202 and takes shellfish from such areas for bait purposes only; provided, that no person shall be  
1203 eligible for a bait permit hereunder who has a digger’s permit or who sells shellfish for food  
1204 purposes. In order to assure full compliance with said conditions and regulations, the  
1205 commissioner shall require a bond to be obtained by a master digger in a sum not to exceed one  
1206 thousand dollars for a master digger whose record includes no prior judicial or administrative  
1207 convictions related to this chapter; not to exceed twenty-five hundred dollars for a master digger  
1208 whose record includes one prior judicial or administrative conviction, related to this chapter; and,  
1209 not to exceed five thousand dollars for a master digger whose record includes two or more prior  
1210 judicial or administrative convictions related to this chapter. The commissioner may require  
1211 forfeiture of all or part of such bond for any violation of said conditions and regulations. Any  
1212 city or town may develop a shellfish conservation and management plan containing such  
1213 information as the director may require and shall submit said plan to the director for his  
1214 approval. Any city or town having a plan approved by the director may require permits for the  
1215 taking of shellfish from areas determined under section seventy-five to be contaminated,  
1216 provided that all other permits and licenses required by law are obtained. Fees shall be

1217 reasonable and commensurate with the services provided by the city or town. If at any time the  
1218 director finds any city or town in violation of any provision of its approved shellfish  
1219 conservation and management plan he may forthwith withdraw his approval of such plan. No  
1220 city or town permit shall be required by any master digger or subordinate on any mildly  
1221 contaminated area where the commissioner has withdrawn his approval of that city or town's  
1222 shellfish conservation and management plan as provided herein until such plan is deemed  
1223 approved by the commissioner. In evaluating the plan for approval, the commissioner shall take  
1224 into consideration the city or town's efforts to fairly administer the distribution of, and fees for,  
1225 local permits to be issued to residents and nonresidents.

1226 Whoever, without a permit as provided in this section or contrary to the provisions of such  
1227 permit, digs or takes shellfish for any purpose from any area determined under section seventy-  
1228 five or section seventy-five or under corresponding provisions of earlier laws to be contaminated,  
1229 while such determination is in force, or knowingly transports or causes to be transported or has  
1230 in his possession shellfish so dug or taken, shall be punished, if the violation occurred between  
1231 one-half hour before sunrise and one-half hour after the following sunset, by a fine of not less  
1232 than three hundred nor more than one thousand dollars or three times the value of such shellfish,  
1233 whichever is greater, or by imprisonment for not more than two years in a jail or house of  
1234 correction, or both, and if the violation occurred between one-half hour after sunset and one-half  
1235 hour before the following sunrise, by a fine of not less than five hundred nor more than two  
1236 thousand dollars, or three times the value of such shellfish, whichever is greater, or by  
1237 imprisonment for not more than three years in the state prison, or both. Any licensed wholesaler  
1238 or retailer found in violation of this section shall be punished by a fine of not less than one  
1239 hundred nor more than ten thousand dollars or by imprisonment for not more than three years, or

1240 both. The superior court shall have jurisdiction in equity to enforce this section and the rules and  
1241 regulations of the director made hereunder and to restrain the violation thereof. In any  
1242 prosecution for a violation of this section, the possession by a digger, licensed wholesaler or  
1243 retail dealer, but not by a common carrier, of shellfish taken in apparent violation of this section  
1244 shall be prima facie evidence of a violation thereof.

1245 Section 78. The commissioner may construct and operate shellfish purification plants for the  
1246 treatment of shellfish taken from areas determined under section seventy-five or any  
1247 corresponding provisions of earlier laws, to be contaminated, and may operate such existing  
1248 purification plants to serve such areas as he may deem necessary for these purposes. Said  
1249 commissioner or his designee shall have sole authority over the acceptance, treatment and  
1250 discharge of shellfish at such plants, subject to the rules and regulations, which the department of  
1251 public health is hereby authorized and directed to adopt, relative to the protection of the public  
1252 health in the consumption of such shellfish.

1253 Section 79. For the purpose of partially defraying the costs of the operation and maintenance of  
1254 shellfish purification plants, the department shall charge the users of said service an amount  
1255 which shall be determined annually by the commissioner of administration under the provision  
1256 of section three B of chapter seven.

1257 Section 80. Except as permitted in sections thirty-four and seventy-seven, no person shall fish for  
1258 or take fish for commercial purposes in the coastal waters, or land raw fish, whether frozen or  
1259 unfrozen, in the commonwealth, for the purpose of sale unless he is the holder of a commercial  
1260 fisherman permit. A commercial fisherman permit may be issued to an individual or it may be  
1261 issued in the name or number of a vessel, in which case it shall be valid for all persons on board

1262 said vessel. A vessel permit may be transferred upon application to the commissioner.  
1263 Notwithstanding any contrary provisions contained in this section and except as provided in  
1264 section seventy-eight, a person shall not dig or take shellfish or marine worms for commercial  
1265 purposes unless he is the holder of a commercial fisherman permit (shellfish) or unless he is the  
1266 holder of a commercial fisherman permit which has been specially endorsed, at no additional  
1267 charge, for the taking of such shellfish or marine worms; a person holding a permit issued under  
1268 section seventy-seven shall not hold a permit issued under this section for the taking or digging  
1269 of shellfish or marine worms. Notwithstanding any contrary provision contained in this section, a  
1270 person who has in his possession a commercial fisherman permit for rod and reel may take by  
1271 rod and reel or by diving and sell fin fish lawfully taken from the coastal waters.

1272 A person shall not for commercial purposes acquire, handle, store, distribute, process, fillet, ship  
1273 or sell raw fish, whether frozen or unfrozen in bulk or for resale, without first obtaining a  
1274 wholesale dealer permit issued jointly by the department and the department of public health;  
1275 provided, however, that the holder of a valid commercial fisherman permit who catches fish or  
1276 takes lobsters and sells such fish or lobsters to wholesale or retail dealers exclusively shall be  
1277 exempt from obtaining a wholesale dealer permit; and provided, further, that the holder of a  
1278 wholesale dealer permit shall not procure raw fish, whether frozen or unfrozen, from any person  
1279 who does not hold a valid commercial fisherman permit. A person shall not sell raw fish at retail,  
1280 whether frozen or unfrozen without first obtaining a retail dealer permit issued jointly by the  
1281 department and the department of public health; provided, however, that the holder of a valid  
1282 wholesale dealer permit may sell fish at retail at one location which shall be named on the  
1283 permit; and provided, further, that the holder of a retail dealer permit shall not procure raw fish,  
1284 whether frozen or unfrozen, from any person who does not hold a valid commercial fisherman

1285 permit or a valid wholesale dealer permit. Upon application to the director and endorsement on  
1286 the permit the holder of a retail dealer permit may take bait for sale under said permit.

1287 A person shall not for commercial purposes shuck shellfish, or pack or repack shucked shellfish,  
1288 or dig, take, pack or buy shellfish within this commonwealth for shipment outside the  
1289 commonwealth, without the approval of the director which shall be endorsed on the certificate or  
1290 permit held by such person at no additional cost.

1291 No person shall take or sell fish from a fishery regulated by the commissioner without a  
1292 regulated marine fishery permit, in addition to any other permit that may be required by this  
1293 chapter.

1294 The commissioner shall promulgate rules and regulations relative to the form, contents, and use  
1295 of all permits issued under this chapter except the form, contents and use of wholesale and retail  
1296 seafood dealer permits which shall be subject to rules and regulations promulgated by the  
1297 commissioner and the commissioner of public health. The commissioner shall revoke and cancel  
1298 and require the surrender of any permit issued under this chapter if, in his opinion, after a  
1299 hearing, after due notice by him or some person designated by him, the holder has violated any  
1300 rule or regulation of the commissioner or of any provision of this section or section seventy-  
1301 seven, or upon a change in the facts and conditions set forth in such permit or certificate. The  
1302 commissioner of public health shall also have the authority to revoke and cancel and require the  
1303 surrender of any wholesale dealer or retail dealer permit issued under this chapter if, in his  
1304 opinion, after a hearing, after due notice by him or some person designated by him, the holder  
1305 has violated any rule or regulation of the department of public health or any general or specific  
1306 law pertaining to fish or the sale thereof, or upon a change in the facts and conditions set forth in

1307 such permit. Pending the hearing, the certificate may be suspended. Whoever violates any  
1308 provision of this section shall be punished by a fine of not less than ten dollars nor more than ten  
1309 thousand dollars or by imprisonment for not more than three years, or both.

1310 Section 81. No person shall transport, or cause to be transported, into this commonwealth for  
1311 consumption as food any shellfish taken or dug from areas outside the commonwealth, or sell,  
1312 cause to be sold, or keep, offer or expose for sale for consumption as aforesaid any shellfish so  
1313 taken or dug, unless such person has been certified by the regulatory authority in the United  
1314 States or foreign country under the uniform sanitation requirements of the cooperative program  
1315 for the certification of interstate shellfish shippers, nor shall any person transport or cause to be  
1316 transported within this commonwealth any shellfish for consumption as food, unless the  
1317 container of such shellfish shall, at all times while in such transportation, bear a label or tag  
1318 legibly marked with the name and address of the producer and of the shipper thereof and the  
1319 numbers of such certificates, and the name of the place where and the date when taken, nor shall  
1320 any person counterfeit, alter, deface or tamper with any label or tag, and absence of such label or  
1321 tag so marked or failure to allow an inspection shall be prima facie evidence of violation of this  
1322 section; provided, that the foregoing provisions relative to transportation shall not apply to  
1323 common carriers, their servants or agents.

1324 Whoever violates any provision of this section shall be punished by a fine of not less than one  
1325 hundred nor more than ten thousand dollars or by imprisonment for not more than three years, or  
1326 both. The provisions of this section shall be enforced by the department of public health, local  
1327 boards of health, the director and all officers qualified to serve criminal process; provided, that  
1328 the provisions of this section and of section eighty-three shall not apply to shellfish taken from

1329 an area declared to be contaminated under the provisions of section seventy-four or  
1330 corresponding provisions of earlier laws.

1331 Section 82. No wholesale or retail dealer in shellfish, and no person holding a victualler's  
1332 license, shall receive any shellfish unless the same bears a label or tag legibly marked with the  
1333 source of supply, the date when taken, and either the certificate or permit number or the name  
1334 and address of the producer or shipper, and all shellfish in transit shall bear such label or tag so  
1335 marked. If such shellfish have been processed at a shellfish purification plant operated under the  
1336 provisions of section seventy-six, the label or tag shall be so marked, and shall contain such other  
1337 information as the director may by rule or regulation require. He shall for sixty days after receipt  
1338 of such shellfish keep in his place of business a record of the markings on such tag or label,  
1339 which record shall at all reasonable times be open to inspection by any representative of the  
1340 department or of the department of public health. Whoever violates any provision of this section  
1341 or fails or neglects to furnish the required label or tag or furnishes such a label or tag bearing  
1342 false or misleading information or counterfeits, alters, defaces, or tampers with any label or tag  
1343 shall be punished by a fine of not less than one hundred nor more than ten thousand dollars or by  
1344 imprisonment for not more than three years, or both.

1345 Section 83. For the purposes of defraying the costs of the department's research, management  
1346 and other activities including administrative and operating expenses, and the cost of issuing the  
1347 following resident and nonresident permits and any inspections relative thereto, resident and  
1348 nonresident permit fees, the amounts which shall be determined by the secretary of  
1349 administration and finance under the provisions of section three B of chapter seven for the filing  
1350 thereof, shall be paid to the commissioner or his agent by the person to whom the same is issued  
1351 for any calendar year or part thereof.

- 1352 A. Commercial Fisherman (For the taking of fish for sale)
- 1353 Individual (For named individual only)
- 1354 Shellfish
- 1355 Rod and Reel — Unlimited (For the sale of fin fish lawfully taken by rod and reel or by diving)
- 1356 Boat (100 feet or more in total length) (60 to 99 feet in total length) (Up to 59 feet in total length)
- 1357 Lobster (For the taking of lobsters for sale)
- 1358 Seasonal Lobster
- 1359 B. Wholesale Dealer (Any wholesaler dealing in fresh or raw fish)
- 1360 C. Retail Dealer (Any retailer dealing in fresh or raw fish)
- 1361 D. Special Permits
- 1362 Non-Commercial Lobster and Crab (Up to 10 pots and/or diving privileges)
- 1363 Master Digger
- 1364 Subordinate Digger
- 1365 Regulated Fishery (For fishing in special areas)
- 1366 Domestic Processing Vessel
- 1367 Foreign Processing Vessel
- 1368 Other — Miscellaneous



1369 E. Duplicate (Replacing Original).

1370 Section 84. No person shall sell, exchange, transport or deliver, or offer or expose for sale,  
1371 exchange or deliver, or have in his custody or possession with intent to sell, exchange, transport  
1372 or deliver, any scallops which have been soaked, or any scallops not in the shell unless such  
1373 scallops are in a box, carton, tray or other container plainly and conspicuously stamped, labelled  
1374 or marked with (a) the word “Massachusetts”, followed by the name of the town or of the  
1375 locality where taken, if taken from waters or flats within the commonwealth; or (b) the name of  
1376 the state, country or province where taken, if taken from waters or flats outside the  
1377 commonwealth; or (c) the words “Sea Scallops”, if of the species commonly so known. Said box,  
1378 carton, tray or container shall also be marked in the same manner with the number of the  
1379 certificate under which said scallops were removed or with such other identification as may be  
1380 required by the commissioner by rule or regulation, which he is hereby authorized to adopt.

1381 Whoever fails to comply with any provision of this section, or whoever falsely stamps, labels or  
1382 marks such a box, carton, tray or other container, or whoever falsely advertises any of the  
1383 shellfish herein referred to, shall be punished by a fine of not less than fifty nor more than five  
1384 hundred dollars or imprisonment for thirty days or both.

1385 This section shall not apply to common carriers having scallops in possession for the purpose of  
1386 transportation.

1387 Section 85. A town may open ditches, sluiceways or canals into any pond within its limits not  
1388 then in private possession for the introduction and propagation in such pond or in any part  
1389 thereof of herring, alewives or other swimming marine food fish, and for the creation of fisheries

1390 for the same. A town creating such fishery shall own it, may make regulations concerning it, and  
1391 may lease it for terms of not more than five years, on conditions mutually agreed upon.

1392 Section 86. The board of aldermen or the city council of any city wherein there is a public  
1393 fishery for alewives, or the selectmen of a town, wherein there is such a fishery, if so authorized  
1394 by their town, may petition the commissioner for the right to control and regulate such fishery  
1395 within their city or town and the director shall forthwith, after due notice and after a hearing held  
1396 in such city or town, determine whether such control would be proper and reasonable and if the  
1397 public interests therein would be best served thereby, and may thereupon deny the petition or  
1398 grant it under such terms, subject to such regulations or restrictions not contrary to law as he may  
1399 deem expedient.

1400 Whenever such petition shall be granted said aldermen, city council or selectmen, as the case  
1401 may be, may regulate and control such fishery and may lease it for terms of not more than five  
1402 years on conditions mutually agreed upon, notwithstanding the provisions of special laws  
1403 relating to such fishery in that particular locality but not contrary to terms, regulations or  
1404 restrictions contained in the order of the director in granting such petition; provided, that any  
1405 other city or town which deems that its fisheries are adversely affected by such an order may so  
1406 petition the director, who shall thereupon stay the operation of his original order until he has  
1407 considered the petition and shall thereafter, in a writing stating his reasons therefor, confirm,  
1408 alter, amend or rescind such original order.

1409 Section 87. Whoever takes, kills or hauls onshore or disturbs, injures, hinders or obstructs the  
1410 passage of any herring, alewives or other swimming marine food fish in a fishery created by a  
1411 city or town, without its permission or that of its lessees, or in a fishery legally created by a

1412 corporation, without the permission of such corporation, or in a public fishery regulated and  
1413 controlled by a city or town, contrary to its regulations, shall be punished by a fine of not less  
1414 than five nor more than fifty dollars. Prosecutions under this section shall be commenced within  
1415 thirty days after the commission of the offence.

1416 Section 88. Sections eighty-five, eighty-six and eighty-seven shall not impair the private rights of  
1417 any person under any law passed before April twenty-fifth, eighteen hundred and sixty-six, or  
1418 under any contract existing on said date, or authorize a town to enter upon or build canals or  
1419 sluiceways into a pond which is private property. Whenever in section eighty-five or section  
1420 eighty-six authority is granted to lease alewife fisheries, such leasing shall be made at public  
1421 auction, held in such city or town, each of such fisheries to be leased separately, and no such  
1422 lease shall authorize the operation of any fishery thereunder subsequent to June fifteenth in any  
1423 year. Notices of any auction hereunder shall be published and posted as provided by law for  
1424 notices of town meetings, and every such lease shall terminate on June fifteenth.

1425 Section 89. In each city and town bordering on coastal waters the mayor or the selectmen, as the  
1426 case may be, shall appoint a person or persons, qualified by training and experience in the field  
1427 of shellfishery management, as shellfish constables or deputy shellfish constables. A person  
1428 having successfully completed the shellfish wardens training course at the Massachusetts  
1429 Maritime Academy as certified by said academy, shall be considered qualified by training and  
1430 experience in the field of shellfishery management and shall be eligible for appointment as a  
1431 shellfish constable or deputy shellfish constable. Such shellfish constables and deputy shellfish  
1432 constables shall be appointed for terms of three years, and may be reappointed. They shall,  
1433 subject to the appointing authority, initiate, promote and manage shellfisheries in such city or  
1434 town and shall make or cause to be made such studies as may be necessary to enhance the value

1435 of such shellfisheries. They shall enforce all statutes, ordinances, by-laws, rules and regulations  
1436 relative to shellfish in such city or town. They shall, for the enforcement of sections twenty-  
1437 seven, thirty-eight, forty-two, forty-four and forty-five, have the authority granted to natural  
1438 resource officers, subject to written rules and regulations of the commissioner. In the  
1439 performance of his duties, a shellfish constable or deputy shellfish constable may request any  
1440 person who he has cause to believe is engaged in unlawful shellfishing, is in unlawful possession  
1441 of shellfish, or is in possession of shellfish unlawfully taken, to display forthwith for inspection  
1442 all shellfish in his possession, and he may arrest without a warrant any person refusing or failing  
1443 to comply with such request.

1444 Upon the appointment of a shellfish constable or deputy shellfish constable under this section,  
1445 the appointing authority shall forthwith notify the director of the division of marine fisheries and  
1446 the director of the division of law enforcement.

1447 Section 90. Whoever, other than a common carrier, carries out of the commonwealth in any  
1448 vessel or smack owned without the commonwealth any fish, except oysters, taken within the  
1449 coastal waters, and whoever in any such vessel or smack takes any fish within the coastal waters  
1450 for the purpose of carrying them out of the commonwealth, shall be punished by a fine of fifty  
1451 dollars, and all fish so taken or carried shall be forfeited to the commonwealth and disposed of  
1452 by the director for the best interests of the commonwealth.

1453 Section 91. No person shall take or attempt to take eels, *Anguilla rostrata*, by any contrivance  
1454 other than by nets, pots, spears, or angling. The commissioner is hereby authorized to establish  
1455 rules and regulations governing the size, shape, mesh size, and manner of marking such nets or  
1456 pots.

1457 It shall be unlawful for a person to take or possess elvers or eels of a size less than four inches  
1458 total length.

1459 Whoever violates any provision of this section shall be punished by a fine of not less than one  
1460 hundred dollars or by imprisonment for not more than thirty days, or both.

1461 Section 92. No person shall willfully detain, hunt, kill or injure a gray seal (*halichoerus gryphus*),  
1462 also called a Nantucket horsehead. Whoever violates any provision of this section shall be  
1463 punished by a fine not to exceed five hundred dollars.

1464 Section 93. No person shall take by mechanical means Irish moss or kelp, marine plants of the  
1465 species *chondrus crispus*, except with the written approval of the director and in accordance with  
1466 such rules and regulations relative thereto as he may adopt.

1467 Section 94. Whoever catches or takes from, the coastal waters any starfish, or winkles and their  
1468 egg strings, or cockles shall deposit the same at some place above high water mark or at some  
1469 suitable place designated by the selectmen of the town wherein such disposition is made.

1470 Whoever violates any provision of this section shall be punished by a fine of five dollars and, in  
1471 addition thereto, all permits or licenses issued to such person under authority of this chapter shall  
1472 be void and no new permit or license shall be issued to him under such authority within the six  
1473 months next following the date of his conviction, except upon approval of the commissioner.

1474 Section 95. This chapter shall not be deemed to affect any privileges granted in any special  
1475 statute relating to fisheries in any particular place, except such provisions thereof as relate to  
1476 shellfish and shellfisheries, to alewife fisheries, and to those activities which are the subject of  
1477 rules and regulations under section seventeen A.

1478 SECTION 3. (a) Notwithstanding any general or special law to the contrary, this section shall  
1479 facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and  
1480 legal obligations and functions of state government from the division of marine fisheries to the  
1481 department of marine resources and fisheries, as transferee agency.

1482 (b) Subject to appropriation, the employees of the transferor agency, including those who  
1483 immediately before the effective date of this act held permanent appointment in positions  
1484 classified under chapter 31 of the General Laws or have tenure in their positions as provided by  
1485 section 9A of chapter 30 of the General Laws or did not hold such tenure, or held confidential  
1486 positions, are hereby transferred to the transferee agency, without interruption of service within  
1487 the meaning of section 9A of chapter 30, without impairment of seniority, retirement or other  
1488 rights of the employee, and without reduction in compensation or salary grade, notwithstanding  
1489 any change in title or duties resulting from such reorganization, and without loss of accrued  
1490 rights to holidays, sick leave, vacation and benefits, and without change in union representation  
1491 or certified collective bargaining unit as certified by the state labor relations commission or in  
1492 local union representation or affiliation. Any collective bargaining agreement in effect  
1493 immediately before the transfer date shall continue in effect and the terms and conditions of  
1494 employment therein shall continue as if the employees had not been so transferred. The  
1495 reorganization shall not impair the civil service status of any such reassigned employee who  
1496 immediately before the effective date of this act either held a permanent appointment in a  
1497 position classified under chapter 31 of the General Laws or had tenure in a position by reason of  
1498 section 9A of chapter 30 of the General Laws.

1499 (c) Notwithstanding any general or special law to the contrary, all such employees shall continue  
1500 to retain their right to bargain collectively pursuant to chapter 150E of the General Laws and  
1501 shall be considered employees for the purposes of chapter 150E.

1502 Nothing in this section shall confer upon any employee any right not held immediately before the  
1503 date of the transfer, or to prohibit any reduction of salary grade, transfer, reassignment,  
1504 suspension, discharge or layoff not prohibited before such date; nor shall anything in this section  
1505 prohibit the abolition of any management position within the division of marine fisheries after  
1506 transfer to the department.

1507 (d) All petitions, requests, investigations, filings and other proceedings appropriately and duly  
1508 brought before the transferor agency, or pending before it before the effective date of this act,  
1509 shall continue unabated and remain in force, but shall be assumed and completed by the  
1510 transferee agency.

1511 (e) All orders, advisories, findings, rules and regulations duly made and all approvals duly  
1512 granted by the transferor agency, which are in force immediately before the effective date of this  
1513 act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded  
1514 or canceled, in accordance with law, by the transferee agency.

1515 (f) All books, papers, records, documents, equipment, buildings, facilities, cash and other  
1516 property, both personal and real, including all such property held in trust, which immediately  
1517 before the effective date of this act are in the custody of the transferor agency, shall be  
1518 transferred to the transferee agency.

1519 (g) All duly existing contracts, leases and obligations of the transferor agency, shall continue in  
1520 effect but shall be assumed by the transferee agency. No such existing right or remedy of any  
1521 character shall be lost, impaired or affected by this act.

1522 (h) Whenever the term “division of marine fisheries” appears in any statute, regulation, contract  
1523 or other document, it shall be taken to mean the department of marine resources and fisheries.

1524 SECTION 4. The general laws are hereby amended by inserting after chapter 25D the  
1525 following:--

1526 CHAPTER 25E.

1527 DIVISION OF COASTAL MANAGEMENT

1528 Section 1. In this chapter, unless the context otherwise requires, the definitions contained in  
1529 Chapter 25D shall apply.

1530 Section 2. The division of coastal management shall be within the department of marine  
1531 resources and fisheries, wildlife and environmental law enforcement in the executive office of  
1532 environmental affairs and shall be under the administrative supervision of a director who shall be  
1533 called the director of coastal management. The director of the division of coastal management  
1534 shall be appointed and may be removed by the commissioner of the department of marine  
1535 resources and fisheries. The said division of coastal management shall administer all the laws  
1536 relating to coastal management as appearing in chapter one hundred and thirty and any other  
1537 general or special laws, except as pertain to the enforcement thereof. Said division shall co-  
1538 operate with all departments, boards, officials and institutions of the commonwealth or its  
1539 subdivisions that may be concerned in any way with matters under its supervision. It shall co-



1540 operate with adjoining states and with the United States of America, or any agency thereof, with  
1541 foreign countries, and any other agency, as may be authorized by the general court, and receive  
1542 and dispense such funds from any of such agencies, states or governments as may be authorized  
1543 by the general court.

1544 Section 3. The director shall from time to time determine and establish the jurisdictional  
1545 boundaries of each agency in rivers and streams flowing into the sea. Said jurisdictional  
1546 boundaries may be based upon existing, man-made, natural, geographic or other known  
1547 landmarks, or determined and established by other appropriate methods or means. The  
1548 determination and establishment of any jurisdictional boundary made pursuant to this section  
1549 shall serve solely to distinguish the jurisdiction of the division from the department for purposes  
1550 of fisheries management authority, shall be prima facie evidence of the jurisdiction of each  
1551 respective agency, and shall have no other independent legal significance. The director may  
1552 prepare plans and maps delineating said jurisdictional boundaries, and shall file a copy thereof  
1553 with the secretary of state and the director of the division of law enforcement.

1554 Section 4. In a city or town bordering on coastal waters, a police officer employed on a full time,  
1555 provisional or reserve basis shall, for the enforcement of the provisions of the chapter have the  
1556 authority granted to an environmental police officer, subject to such rules and regulations as the  
1557 director with the approval of the commissioner are hereby authorized to adopt.

1558 Section 5. Except in the case of emergency imperiling life or property or an unavoidable accident  
1559 or except in accordance with the terms of a permit issued pursuant to state or federal water  
1560 pollution control laws, whoever from any source puts, throws, discharges or suffers or permits to  
1561 be discharged or to escape into any coastal waters, any oil, poisonous or other injurious

1562 substance, including but not limited to, sawdust, shavings, garbage, ashes, acids, sewage and  
1563 dye-stuffs, whether simple, mixed or compound, or heated effluent, which directly or indirectly  
1564 materially injure fish, fishspawn or seed therein, or takes any such fish by such means, or  
1565 whoever kills or destroys fish in such waters by the use of dynamite or other explosives, or takes  
1566 any such fish in such waters by such means, or explodes dynamite or other explosive in such  
1567 waters, shall be punished by a fine of not less than \$5,000 nor more than \$25,000 or by  
1568 imprisonment for not more than one year or both.

1569 Section 6. Whoever, contrary to any provision of section five, himself, or by his agent or servant,  
1570 does, or allows or suffers to be done, any act causing damage to the shellfish resources within the  
1571 limits of a city or town shall be liable to said city or town in tort, in triple the amount of damage  
1572 thereby done.

1573 Whoever, contrary to any provision of section five, himself, or by his agent or servant, does, or  
1574 allows or suffers to be done, any act causing damage to any fishery resource, with the exception  
1575 of shellfish located within the limits of a city or town, within the marine boundaries of the  
1576 commonwealth, shall be liable to the commonwealth in tort, in triple the amount of damage  
1577 thereby done.

1578 Whoever, contrary to any provision of section five, himself, or by his agent or servant, does, or  
1579 allows or suffers to be done, any act causing damage to any private fishery resource within the  
1580 marine boundaries of the commonwealth, shall be liable in tort, in triple the amount of the  
1581 damage, to any person owning or leasing such private fishery rights.

1582 Section 7. The entrance or discharge into the coastal waters, or the tributaries of such waters, of  
1583 sewage or any other substance which might be injurious to the public health or might tend to

1584 contaminate any shellfish areas or shellfish therein which may be determined by the director to  
1585 be of commercial value, or injuriously affect the fisheries therein, is hereby prohibited; provided,  
1586 that this section shall not be deemed to interfere with the exercise of any right of drainage which  
1587 had been approved by the department of public health prior to January first, nineteen hundred  
1588 and forty-two, or in any drainage thereafter approved by said department or the department of  
1589 environmental protection; provided further, that before granting such new approval the  
1590 commissioner of environmental protection shall have consulted with the director as to the value  
1591 of the marine fisheries involved. The provisions of this section shall not apply to any such  
1592 entrance or discharge of heated effluent authorized under the terms of a permit for such entrance  
1593 or discharge issued pursuant to state or federal water pollution control laws.

1594 Section 8. The supreme judicial court or any justice thereof, and the superior court or any justice  
1595 thereof, shall have jurisdiction in equity to enforce sections five, six or seven. Proceedings to  
1596 enforce the same may be instituted and prosecuted by the attorney general at the request of the  
1597 commissioner.

1598 Section 9. Whoever, contrary to any provision of section seven, himself, or by his agent or  
1599 servant, permits the entrance or discharge into or on any part of said coastal waters or tributaries  
1600 of such waters, sewage, heated effluent, or any other substance injurious to public health or  
1601 tending to contaminate any shellfish area or shellfish therein, within the limits of a city or town,  
1602 shall be punished by a fine of not less than one hundred and fifty nor more than five thousand  
1603 dollars or by imprisonment for not more than one year or both and shall be liable in tort, to said  
1604 city or town, in triple the amount of damage thereby done.

1605 Whoever, contrary to any provision of section seven, himself, or by his agent or servant, permits  
1606 the entrance or discharge into or on any part of said coastal waters or tributaries of such waters,  
1607 sewage, heated effluent, or any other substance injurious to public health or causing injury or  
1608 damage to any fishery resource, with the exception of shellfish located within the limits of a city  
1609 or town, within the marine boundaries of the commonwealth, shall be punished by a fine of not  
1610 less than one hundred and fifty dollars nor more than five thousand dollars or by imprisonment  
1611 for not more than one year or both and shall be liable in tort to the commonwealth, in triple the  
1612 amount of damage thereby done.

1613 Whoever, contrary to any provision of section seven, himself, or by his agent or servant, permits  
1614 the entrance or discharge into or on any part of said coastal waters or tributaries of such waters,  
1615 sewage, heated effluent, or any other substance injurious to public health or causing injury or  
1616 damage to any private fishery resource within the boundaries of the commonwealth shall be  
1617 liable in tort, to the owners or lessees of any private rights therein, in triple the amount of  
1618 damage thereby done.

1619 Section 10. The commissioner of environmental protection may from time to time, for the  
1620 purpose of promoting the public safety, health and welfare, and protecting public and private  
1621 property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating,  
1622 restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal  
1623 wetlands. In this section "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or  
1624 other low land subject to tidal action or coastal storm flowage and such contiguous land as said  
1625 commissioner reasonably deems necessary to affect by any such order in carrying out the  
1626 purposes of this section.

1627 The commissioner of environmental protection shall, before adopting, amending, modifying or  
1628 repealing any such order, hold a public hearing thereon in the municipality in which the coastal  
1629 wetlands to be affected are located, giving notice thereof to the state reclamation board, the  
1630 department of highways and the department of environmental management and each assessed  
1631 owner of such wetlands by mail at least twenty-one days prior thereto.

1632 Upon the adoption of any such order or any order amending, modifying or repealing the same,  
1633 the commissioner of environmental protection shall cause a copy thereof, together with a plan of  
1634 the lands affected and a list of the assessed owners of such lands, to be recorded in the proper  
1635 registry of deeds or, if such lands are registered, in the registry district of the land court, and shall  
1636 mail a copy of such order and plan to each assessed owner of such lands affected thereby. Such  
1637 orders shall not be subject to the provisions of chapter one hundred and eighty-four. Any person  
1638 who violates any such order, (a) shall be punished by a fine of not less than one hundred nor  
1639 more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both  
1640 such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five  
1641 thousand dollars per violation. Each day such violation continues shall constitute a separate  
1642 offense.

1643 The superior court shall have jurisdiction to restrain violations of such orders.

1644 Any person having an ownership interest, any lessees holding a lease of twenty-five years length  
1645 or more and any mortgagor having an interest in land affected by any such order, may, within  
1646 ninety days after receiving notice thereof, petition the superior court to determine whether such  
1647 order so restricts the use of his property as to deprive him of the practical uses thereof and is  
1648 therefor an unreasonable exercise of the police power because the order constitutes the

1649 equivalent of taking without compensation. If the court finds the order to be an unreasonable  
1650 exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not  
1651 apply to the land of the petitioner; provided, however, that such findings shall not affect any  
1652 other land than that of the petitioner. The commissioner of environmental protection shall cause  
1653 a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is  
1654 registered, in the registry district of the land court. The method provided in this paragraph for the  
1655 determination of the issue of whether any such order constitutes a taking without compensation  
1656 shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any  
1657 person have a right to petition for the assessment of damages under chapter seventy-nine by  
1658 reason of the adoption of any such order.

1659 The department of environmental management may, after a finding has been entered that such  
1660 order shall not apply to certain land as provided in the preceding paragraph, take the fee or any  
1661 lesser interest in such land in the name of the commonwealth by eminent domain under the  
1662 provisions of chapter seventy-nine and hold the same for the purposes set forth in this section.

1663 No action by the commissioner of environmental protection or the department of environmental  
1664 protection under this section shall prohibit, restrict or impair the exercise or performance of the  
1665 powers and duties conferred or imposed by law in the department of highways, the  
1666 Massachusetts Water Resources Authority, the state reclamation board or any mosquito control  
1667 or other project operating under or authorized by chapter two hundred and fifty-two.

1668 No order adopted hereunder shall apply to any area under the control of the metropolitan district  
1669 commission and the Massachusetts Water Resources Authority. No order adopted hereunder

1670 shall permit the construction in coastal wetlands of access driveways to unrestricted land except  
1671 in a manner which allows the flow of the tide.

1672 Section 11. There is hereby established within the division of coastal management a coastal zone  
1673 management office which shall be administered by a director who shall be appointed and may be  
1674 removed by the secretary. The director shall be a person of skill and experience in the field of  
1675 coastal zone management. The director shall appoint all necessary employees within his office,  
1676 except as may be otherwise provided by law. The positions of director and of any employees of  
1677 the office shall not be subject to the provisions of chapter thirty-one or section nine A of chapter  
1678 thirty.

1679 The director shall direct the coastal zone management office, consistent with state law, to adopt,  
1680 and from time to time amend rules, regulations, procedures, standards, guidelines, and policies  
1681 which shall constitute the Massachusetts coastal zone management program. The purpose of the  
1682 program shall be to secure for the inhabitants of the commonwealth the objectives and benefits  
1683 of the federal Coastal Zone Management Act, 16 USC 1451 et seq.

1684 SECTION 5. (a) Notwithstanding any general or special law to the contrary, this section shall  
1685 facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and  
1686 legal obligations and functions of the office of coastal zone management from the executive  
1687 office of environmental affairs to the department of marine resources and fisheries, as transferee  
1688 agency.

1689 (b) Subject to appropriation, the employees of the transferor agency, including those who  
1690 immediately before the effective date of this act held permanent appointment in positions  
1691 classified under chapter 31 of the General Laws or have tenure in their positions as provided by

1692 section 9A of chapter 30 of the General Laws or did not hold such tenure, or held confidential  
1693 positions, are hereby transferred to the transferee agency, without interruption of service within  
1694 the meaning of section 9A of chapter 30, without impairment of seniority, retirement or other  
1695 rights of the employee, and without reduction in compensation or salary grade, notwithstanding  
1696 any change in title or duties resulting from such reorganization, and without loss of accrued  
1697 rights to holidays, sick leave, vacation and benefits, and without change in union representation  
1698 or certified collective bargaining unit as certified by the state labor relations commission or in  
1699 local union representation or affiliation. Any collective bargaining agreement in effect  
1700 immediately before the transfer date shall continue in effect and the terms and conditions of  
1701 employment therein shall continue as if the employees had not been so transferred. The  
1702 reorganization shall not impair the civil service status of any such reassigned employee who  
1703 immediately before the effective date of this act either held a permanent appointment in a  
1704 position classified under chapter 31 of the General Laws or had tenure in a position by reason of  
1705 section 9A of chapter 30 of the General Laws.

1706 (c) Notwithstanding any general or special law to the contrary, all such employees shall continue  
1707 to retain their right to bargain collectively pursuant to chapter 150E of the General Laws and  
1708 shall be considered employees for the purposes of chapter 150E.

1709 Nothing in this section shall confer upon any employee any right not held immediately before the  
1710 date of the transfer, or to prohibit any reduction of salary grade, transfer, reassignment,  
1711 suspension, discharge or layoff not prohibited before such date; nor shall anything in this section  
1712 prohibit the abolition of any management position within the office of coastal zone management  
1713 after transfer to the department.



1714 (d) All petitions, requests, investigations, filings and other proceedings appropriately and duly  
1715 brought before the transferor agency, or pending before it before the effective date of this act,  
1716 shall continue unabated and remain in force, but shall be assumed and completed by the  
1717 transferee agency.

1718 (e) All orders, advisories, findings, rules and regulations duly made and all approvals duly  
1719 granted by the transferor agency, which are in force immediately before the effective date of this  
1720 act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded  
1721 or canceled, in accordance with law, by the transferee agency.

1722 (f) All books, papers, records, documents, equipment, buildings, facilities, cash and other  
1723 property, both personal and real, including all such property held in trust, which immediately  
1724 before the effective date of this act are in the custody of the transferor agency, shall be  
1725 transferred to the transferee agency.

1726 (g) All duly existing contracts, leases and obligations of the transferor agency, shall continue in  
1727 effect but shall be assumed by the transferee agency. No such existing right or remedy of any  
1728 character shall be lost, impaired or affected by this act.

1729 SECTION 5. The general laws are hereby amended by striking chapter 130, as appearing in the  
1730 2008 official edition.

1731 SECTION 6. Section 1 of chapter 131 of the general laws is hereby amended in lines 19 and 20,  
1732 by deleting the definition of “Commissioner” and inserting in place thereof the following:--

1733 ““Commissioner”, the commissioner of freshwater fisheries, wildlife and environmental law  
1734 enforcement.’

1735 SECTION 7. Section 1 of chapter 131 of the general laws is hereby amended in lines 23 and 24,  
1736 by deleting the definition of “Department” and inserting in place thereof the following:--

1737 ““Department”, the department of freshwater fisheries, wildlife and environmental law  
1738 enforcement.’

1739 SECTION 8. Section 1 of chapter 131 of the general laws is hereby amended in line 27, by  
1740 deleting the definition of “Director” and inserting in place thereof the following:--

1741 ““Director”, the director of freshwater fisheries, wildlife and environmental law enforcement.’