

# HOUSE . . . . . No. 663

---

## 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 adoption of the accompanying bill:

An Act to establish the department of marine fisheries and resources.

---

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/18/2013</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>1/22/2013</i>

# HOUSE . . . . . No. 663

---

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 663) of Antonio F. D. Cabral, Bruce E. Tarr and Ann-Margaret Ferrante for legislation to establish the department of marine fisheries and resources. Environment, Natural Resources and Agriculture.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Thirteen  
\_\_\_\_\_

An Act to establish the department of marine fisheries and resources.

*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 2010 official edition,  
2 is 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 FISHERIES AND RESOURCES Section 1. In this  
7 chapter, unless the context otherwise requires, the following words shall have the following  
8 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  
11 processing, freezing, or refrigeration, and packed in a container impervious to contamination and  
12 so sealed 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  
14 clam.

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

16          "Coastal waters", all waters of the commonwealth within the rise and fall of the tide and  
17 the marine limits of the jurisdiction of the commonwealth, but not waters within or above any

fishway or dam nor waters above any jurisdictional boundary legally established pursuant to section five of chapter one hundred and thirty in rivers and streams flowing into the sea.

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

"Dealer", any person who commercially handles fish.

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

"Division of law enforcement", the office of law enforcement within the executive office of energy and environmental affairs, established in Section 10A of Chapter 21A.

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

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

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

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

"Marine fisheries", all fisheries in coastal waters.

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

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

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

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

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

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

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

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

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

"Seed quahaug", a quahaug of a size less than the minimum prescribed in section seventy-one and useable for planting purposes only.

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

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

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

"Territorial waters", the same as coastal waters.

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

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

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

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

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

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

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

91           Section 3. There shall be in the department a commission to be known as the marine  
92 fisheries advisory commission hereinafter called the commission, which shall consist of nine  
93 members, who shall represent to the extent possible the various segments of the fishing industry,  
94 including geographic diversity, types of catch, business size, employment and type and stage of  
95 production, from fishing to processing to wholesale and retail trade. The members shall be  
96 appointed by the governor for a term of three years. No member of the commission shall hold  
97 any other position in the department while serving as such.

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

108           Section 4. Licenses, permits and certificates of registration issued by the commissioner or  
109 his agent shall not, except as otherwise provided in this chapter, be transferable and shall be  
110 produced for examination upon demand of any authorized person.

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

113           Unless otherwise specifically provided by law or regulations promulgated by the  
114 department, every license, permit or certificate issued under any provision of this chapter or any

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

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

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

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

Section 5. Whoever loses or by mistake or accident destroys a license, permit or certificate issued under any provision of this chapter may, upon application to the commissioner, accompanied by a fee of three dollars and an affidavit setting forth the circumstances of said loss, receive a duplicate thereof.

Section 6. The commissioner or his agent shall make a record, in books kept therefor, of all licenses, permits or certificates issued by him under the authority of this chapter, and shall date each license, permit or certificate as of the date of issue; and except as hereinafter provided no other date shall be placed on such license, permit or certificate. Such books shall be subject at

all times to audit and inspection by the state auditor or by the comptroller or by their respective agents.

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

Section 7. In a city or town bordering on coastal waters, a police officer employed on a full time, provisional or reserve basis shall, for the enforcement of the provisions of this chapter have the authority granted to an environmental police officer, subject to such rules and regulations as the commissioner is hereby authorized to adopt.

Section 8. The commissioner, chiefs of enforcement, deputy chiefs of enforcement and all environmental police officers and deputy environmental police officers or a member of the state police may, without a warrant, search any boat, vessel, fish car, bag, box, locker, package, crate, any building other than a dwelling house, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property in which he has reasonable cause to believe, and does believe, that fish taken, held, kept, possessed, transported or held for transportation or sale in violation of law, may be found, and may seize any such fish there found, and may seize any boat, vessel, fish car, bag, box, locker, package, crate, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property used in a violation of the laws relative to marine fisheries and hold the same for forfeiture.

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

Section 9. A court or official authorized to issue warrants in criminal cases shall, upon a sworn complaint that the complainant believes that any fish unlawfully taken or possessed are concealed in any boat, vehicle, fish car, box, locker, crate, package, building or other particular place, other than a dwelling house, within its or his jurisdiction, if satisfied that there is reasonable cause for such belief, issue a warrant to search therefor. The warrant shall designate and describe the place to be searched and the articles for which search is to be made and, if possible, the person by whom the articles are believed to be owned, kept or possessed, and shall be directed to any officer within the division of law enforcement commanding him to search the place where the fish for which he is required to search are believed to be concealed, and to seize such fish.

Section 10. All fish unlawfully taken, held, possessed or dealt with contrary to any provision of this chapter or of any rule or regulation made under authority thereof, and all boats, vehicles and apparatus used therein, may, in addition to any or all of the penalties contained therein, be seized, libeled and forfeited to the commonwealth.

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

200 Section 11. The commissioner, the chiefs of enforcement, deputy chiefs of enforcement  
201 and all environmental police officers and deputy environmental police officers, or any member  
202 of the state police may request any person whom he has cause to believe is engaged in  
203 unlawfully fishing, or to be unlawfully in possession of fish, or to be in possession of fish  
204 unlawfully taken, to forthwith display for inspection all fish then in his possession, and may  
205 arrest without warrant a person refusing or failing to comply with such request.

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

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

212 Section 12. Actions and prosecutions under the laws relative to fish or marine fisheries  
213 shall, unless otherwise expressly provided, be commenced within one year after the time when  
214 the cause of action accrued or the offence was committed.

215 Section 13. Any game protector, fish and game warden, coastal warden, conservation  
216 officer or other person who is empowered to make arrests for violations of the conservation or  
217 marine fishing laws of the state of New Hampshire or of the state of Rhode Island may pursue  
218 any person found fishing in the coastal waters of such state in violation of the marine fishing  
219 laws thereof onto adjacent coastal waters of this commonwealth and there arrest him and take  
220 him into such other state for the purpose of prosecuting him for such violation; provided, that  
221 such other state shall have enacted legislation giving substantially similar authority to the  
222 environmental police officers of the division of law enforcement including deputy environmental  
223 police officers and other appropriate officers of this commonwealth relative to persons found



224 fishing in the coastal waters of this commonwealth in violation of the marine fishing laws  
225 thereof.

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

228 Section 14. The commissioner may:

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

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

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

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

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

243 (6) Occupy, use and control not exceeding ten ponds and estuaries, creeks or other arms  
244 of the sea, within the coastal waters, and the necessary land thereto adjoining, for the propagation  
245 and 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 commissioner at the nearest points to said ponds and estuaries,  
249 creeks or other arms of the sea, and shall be recorded in the registry of deeds in the county or  
250 district where they are situated.

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

256 (8) With the approval of the governor, receive in trust for the commonwealth any grant or  
257 devise of real property or any gift or bequest of personal property for the purpose of aiding in the

enhancement and protection of any marine resources; provided, that, unless approved by the general court, no obligation shall be imposed on the commonwealth to expend in carrying out any such trust an amount greater than the income of the trust property, or greater than the income and the principal thereof, if by the terms of such trust the principal may be expended. Any such gift or bequest of money or securities shall be transferred forthwith to the state treasurer, who shall administer it as provided in section sixteen of chapter ten.

(9) Notwithstanding any contrary provision of law, with the exception of chapter 130 of the General Laws of the Commonwealth of Massachusetts, adopt, amend, or repeal all rules and regulations, with the approval of the Governor, necessary for the maintenance, preservation and protection of all marine fisheries resources between the mean high water mark of the commonwealth and a straight line extension of the lateral boundaries of the commonwealth drawn seaward to a distance of 200 miles or to a point where the water depth reaches 100 fathom, whichever is the greatest. Any person, firm or corporation convicted of violating any rule or regulation authorized under the provisions of this paragraph shall be punished by a fine not to exceed ten thousand dollars (\$10,000). Violations may be prosecuted in any superior court within the Commonwealth of Massachusetts.

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

(11) Authorize agents to sell certain permits issued pursuant to section 84 and authorize agents who are not employed by the commonwealth to charge an administrative fee for such permits not to exceed \$1.50 for each permit.

(12) Conduct, coordinate or oversee fish counts and fish stock analyses or other fisheries research for fish species important to Massachusetts fishermen or processors or to the Massachusetts economy.

(13) Enter into agreements with public or private entities, including the University of Massachusetts, to perform fish counts and fish stock analyses or other fisheries research.

(14) Publish reports or recommendations based on fish counts, fish stock analyses or other fisheries research.

(15) Advise the Governor of the potential impact of regulation on the fishing industry.

Section 15. Upon petition signed by any interested party or upon his own motion, the commissioner shall submit to the marine fisheries advisory commission proposals relating to the management of the marine fisheries. After public hearing, notice of which shall be published in a

newspaper of general distribution in the areas affected, the commission shall in writing approve or disapprove such proposals. If any proposal is so approved, the commissioner shall in accordance with such approval adopt, amend or repeal rules and regulations, subject to the approval of the secretary, which shall govern the following activities only:

(1) The manner of taking fish;

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

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

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

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

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

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

Section 17. (a) The commissioner shall establish a state recreational saltwater fishing permit program to comply with the state exemption requirements of section 401 (g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1881 (g)(2) and may promulgate regulations implementing the state program in accordance with sections 14 and 15.

(b) No person shall engage in the recreational activity of finfishing, or take or land finfish for recreational purposes in or from the coastal waters of the commonwealth without first obtaining a saltwater recreational fishing permit from the commissioner. The permit process shall require the applicant to submit, in addition to any other information required by the commissioner, the applicant's name, address, telephone number and date of birth. A permit shall not be required in the following circumstances:

(1) a non-resident holding a valid recreational saltwater fishing permit from a coastal state; provided, however, that the commissioner shall determine that: the requirements of such other state permit are substantially the same as the commonwealth's permit requirements; and the

privileges granted under law to the resident of the other coastal state are similar to those permitted by the commonwealth;

(2) a person under 16 years of age;

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

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

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

(d) The commissioner may establish categories of recreational saltwater fishing permits, including, but not limited to, individual permits, age-related permits and for-hire permits, and may charge a separate annual fee for each category of permits. The amounts of such fees shall be established by the secretary of administration and finance under section 3B of chapter 7; provided, however, that the commissioner or authorized agents may not charge a fee to individuals requesting a permit who, at the time of permit application, are 60 years of age or older or less than 16 years of age. The commissioner shall develop a fee schedule for all classes of permits and submit such schedule to the clerks of the house of representatives and senate not less than 30 days before the schedule is to take effect.

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

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

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

recreational fisheries. The panel members shall be appointed by the commissioner for terms not to exceed 3 years. Any member shall be eligible for reappointment. The panel shall meet at least twice annually and shall also meet at the request of the commissioner. Three of the members shall constitute a quorum and the affirmative vote of a majority of members present at a duly called meeting where a quorum is present shall be necessary for any action to be taken by the panel.

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

Section 19. The Commissioner shall aid in the promotion and development of the commercial fishing industry; investigate improved methods of marketing and distributing commercial fish products; and establish standards and design labels for the identification of commercial fish products processed, prepared or packed for distribution and for retail sales.

Section 20. In addition to the Division of Coastal Management, established in Section 25E of the general laws, the commissioner shall organize the department into divisions and shall assign to said divisions their functions. The commissioner, with the approval of the board, may appoint a director to each division to have charge of the work of the division and may, with like approval, remove such directors. The compensations of the directors shall be fixed by the commissioner with the approval of the board. The commissioner, with the approval of the board, shall appoint such scientific experts as the work of the department may require, and may assign them to divisions, may transfer and remove them.

Section 21. Whoever without right enters in or upon any building or other structure or any area of land, flats or water, set apart and used by or under authority of the commissioner for conducting scientific experiments or investigations or for propagation or protection of fish, or whoever contrary to regulations fishes in waters so set apart and used after the commissioner has caused printed notices of such occupation and use and the purposes thereof to be placed in a conspicuous position upon any such building or other structure or adjacent to any such area of land, flats or water, and whoever injures or defaces any such building or other structure or any notice posted as aforesaid, or injures or destroys any property used in such experiments or investigations or for such purposes, or otherwise interferes therewith, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than six months.

Section 22. The commissioner shall assist and co-operate with coastal cities and towns for the purpose of increasing the supply of shellfish and exterminating the enemies thereof within their borders, and for this purpose may expend such sums as may be appropriated therefor. The expenditure of any funds so appropriated shall be apportioned by the commissioner among said

399 coastal cities and towns in such amounts as will, in his opinion, effect the greatest amount of  
400 relief and assistance to the shellfish industry; provided, that no money shall be expended  
401 hereunder in any such city or town for the purpose of such relief or assistance unless such city or  
402 town, within one year prior to the date of such expenditure, shall have expended an amount equal  
403 to at least one fourth of the total cost of such work, or shall have contributed services or material  
404 of a value, as determined by the commissioner, equal to such proportion. The work of increasing  
405 the supply of shellfish and exterminating the enemies thereof in coastal cities and towns aided  
406 hereunder shall be done and expenditures therefor shall be made in such manner as the  
407 commissioner may determine and in accordance with rules and regulations which the  
408 commissioner shall make with respect thereto, which rules and regulations he is hereby  
409 authorized to make and enforce.

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

418         The commissioner, acting on behalf of the commonwealth and with the approval of the  
419 governor and council, may enter into contracts or agreements with agencies of the federal  
420 government or any private institute or corporation for carrying out research and laboratory work  
421 necessary for purposes of the treatment or purification of shellfish and the propagation of  
422 shellfish in the coastal areas of the commonwealth, and may expend such sums as may be  
423 appropriated for the purpose.

424         Section 23. The commissioner shall assist and cooperate with coastal cities and towns for  
425 the purpose of establishing and maintaining a program of self-help to said cities and towns for  
426 the cultivation, propagation and protection of shellfish. Funds to carry out the purposes of this  
427 section shall annually be appropriated from the Tourism and Industrial Promotion Fund. The  
428 commissioner may expend such sums as may be appropriated from said fund, but such sums as  
429 are expended therefor shall be conditional upon the expenditure of an equal amount of money by  
430 said cities and towns.

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

434         The commissioner shall certify to the state treasurer on an annual basis all sums pledged  
435 to the aforesaid purpose by said cities and towns. Family use areas and recreational shellfish

436 areas set aside pursuant to section fifty-four which are cultivated, propagated or protected under  
437 the funding or provisions of this section shall be open to all inhabitants of the commonwealth  
438 upon payment of a reasonable fee.

439         Section 24. The commissioner shall devise a system of statistical information useful to  
440 the commercial and recreational fishing industry of the commonwealth and may collect and  
441 compile fishery statistics obtained thereunder. He may require for such purposes statistical  
442 reporting from all fishermen, wholesale and retail fish dealers and fish processors on such forms  
443 and at such time to be determined by him. Said statistical reports shall be signed and submitted  
444 under the pains and penalties of perjury and subject to chapter sixty-six and chapter sixty-six A,  
445 shall be held strictly confidential by the commissioner and shall not be disclosed except in  
446 compliance with a valid court order. The commissioner may, by regulation, prescribe such  
447 procedures as may be necessary to preserve such confidentiality, except that the commissioner  
448 may release or make public any such statistics in any aggregate or summary form which does not  
449 directly or indirectly disclose the identity or business of any person who submits such statistics.

450         Any license, permit or certificate issued by the department to any person who refuses or  
451 fails to submit, or knowingly submits a false statistical report shall be suspended and surrendered  
452 to the commissioner. Persons who fail to submit, or knowingly file a false report shall not have  
453 issued to them a new license, permit or certificate until an accurate statistical report is submitted  
454 to the commissioner.

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

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

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

466         Section 25. The proprietors of lands upon which a pond is created and maintained by  
467 excavating and enclosing the same and by the artificial flowing of same with coastal waters, for  
468 the purpose of cultivating and maintaining fish thereon, shall have the exclusive rights to  
469 cultivate and the exclusive ownership and control of, all fish thereon or therein, whether  
470 artificially or naturally propagated; provided, that no fish determined by the commissioner to be  
471 injurious may be cultivated or maintained thereon or therein, and that no fish may be taken  
472 therefrom of a size, of an age, at a season, or for a purpose, prohibited by law; and provided,

further, that before any such excavation shall be made plans for an artificial flowage of the same with coastal waters shall be approved by the director and the department of environmental protection.

Section 26. The aldermen or city council of a city or the selectmen of a town lying upon coastal waters may, in writing, and upon blanks, supplied by the commissioner, authorize any person to construct weirs, pound nets or fish traps in tidewater in locations where no harbor lines exist and also in locations beyond established harbor lines, within the limits of such city or town, for a term not exceeding five years, upon such conditions and subject to such regulations as the aldermen, city council or the selectmen may impose; but no authority so given shall be valid unless approved in writing as to location and construction by the department and the commissioner, and subject to such conditions as it and he may impose; nor until such authorization, together with such approval, has been filed with the commissioner.

Section 27. Any person who constructs or maintains any weir, pound net or fish trap after having received written approval therefor as provided in section twenty-six shall at all times while such structure is maintained have the same plainly marked with the number of such approval painted or printed on a sign or flag in figures at least six inches in height and conspicuously displayed on the inshore and offshore ends of such structure. Violation of the provisions of this section shall be punished by a fine of not more than twenty-five dollars.

Section 28. Whoever without the consent of the owner takes or uses or destroys, injures or molests any weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear, or any fish car or other contrivance used for the purpose of storing fish, including any such fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, or takes fish therefrom without the consent of the owner, shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment for two months, or both.

Section 29. The owner of any fishing gear mentioned in section twenty-seven which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the event such fishing gear shall not be so recovered within such period or recovered by other legal means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the manner provided in chapter one hundred and thirty-four.

Section 30. The owner of every boat, and the owner of every pound net, fish trap, weir, fyke net or similar contrivance, fishing pier, seine, drag or gill net, lobster or crab pot or trap or other fishing gear, hereinafter referred to as devices, used for fishing purposes, and every licensee under section thirty-six shall annually, before January thirty-first, make a written report,



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

Section 31. Whoever, between March fifteenth and the following June fifteenth, catches or takes any smelt from the waters of the commonwealth, or whoever buys, receives, sells or offers or exposes for sale, transports or has in his possession a smelt so taken, shall for a first offence be punished by a fine of one dollar for every such smelt or by imprisonment for not more than six months and for a subsequent offence by both said fine and imprisonment. Any wholesale or retail dealer who sells, offers or exposes for sale or has in his possession any smelt between the said dates must have in his possession a tag or bill of lading or other paper showing that such smelt was taken from waters outside the commonwealth, and the possession of a smelt between said dates by a person other than a wholesale or retail dealer holding such a certificate shall be prima facie evidence of violation of this section.

Section 32 . Whoever takes or attempts to take a smelt in any other manner than by angling shall be punished by a fine of not less than ten nor more than fifty dollars and shall in addition thereto forfeit one dollar for each smelt if any so taken, but this section shall not apply to smelt inadvertently taken in a seine or net during the time and in the manner in which fishing is allowed for perch, herring or alewives; provided, that such smelt so taken shall be immediately liberated alive in the waters from which taken.

Possession of any net, seine, trap or device for catching fish, other than a naturally or artificially baited hook, in or upon the harbors, rivers or tributaries of the commonwealth, or on the banks of the same, if adapted to and apparently intended for the present catching of smelt, shall be prima facie evidence of a violation of this section and the possession in or upon said harbors, rivers or tributaries, or on the banks of the same, of any fresh smelt, between sunset and

sunrise, or under other circumstances reasonably indicating the catching of the same otherwise than by angling, shall be prima facie evidence that said smelt were caught or intended to be caught contrary to such provisions by the person in whose possession they are found.

Section 33. For the purpose of protecting smelt and their spawn the commissioner may close such portions of streams flowing into the coastal waters during the spawning season of such fish as he may deem necessary and may forbid the entrance into such portions of said streams by posting on or near such closed areas notices of such closing, giving the bounds thereof; provided however, that such closing and such prohibition of entrance shall not be for a period longer than sixty days in any one year. Whoever violates the provisions of this section or molests or disturbs smelt or their spawn within such closed areas shall be punished by a fine of not less than ten nor more than fifty dollars or imprisonment for not more than thirty days, or both.

Section 34. No person, either as principal, agent or employee, shall at any time catch lobsters or edible crabs in, or take them from, the coastal waters or place, set, keep, maintain, supervise, lift, raise or draw in or from the said waters, or cause to be placed, set, kept, maintained, supervised, lifted, raised or drawn in or from the said waters, any pot, trap or other contrivance designed for, or adapted to, the taking of lobsters or edible crabs, unless licensed so to do under section thirty-six.

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

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

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

Section 35. Any person may take green crabs, more specifically known as the species *Carcinides Maenas*, provided, that such person (a) gives written notice to such effect to the commissioner, (b) marks all traps, gear and buoys in a uniform manner in accordance with requirements set forth by said commissioner, and (c) files an annual report with the commissioner setting forth the approximate number of bushels of said crabs taken each month of the year and whether such crabs were destroyed or used for bait purposes in the commonwealth. Any person subject to the provisions of this section shall comply with regulations which the commissioner is hereby authorized to promulgate from time to time.

586           Section 36. A person shall not fish for or take lobsters or edible crabs in coastal waters or  
587 land the same in the commonwealth without a permit issued by the commissioner or his agent. A  
588 noncommercial lobster and crab permit shall authorize the holder and the members of holder's  
589 immediate family residing in the same residence as the holder to fish for, take or land by the use  
590 of pots only lobsters and edible crabs for consumption, and not for sale, by himself and the  
591 members of his immediate family residing in the same residence as the holder; provided,  
592 however, that the holder and such other persons shall not use more than ten traps for such fishing  
593 at any one time; and provided, further, that only one license shall be issued to one family in a  
594 single household in any calendar year; and provided, further, that for the purpose of this section  
595 the term "immediate family" shall mean the spouse, children, parents, grandparents, brothers and  
596 sisters of the holder. A commercial fisherman permit (lobster) authorizes the holder thereof to  
597 fish for, take and land lobsters and edible crabs for commercial purposes. No person holding a  
598 commercial fisherman permit (lobster) need at the same time hold a noncommercial lobster and  
599 crab permit. Upon application to the commissioner, and endorsement on his license, the holder of  
600 a commercial fisherman permit (lobster) may have the privilege afforded the holder of any type  
601 of commercial fisherman permit issued under section 81. A commercial fisherman permit  
602 (lobster) shall be issued to an individual but it may be endorsed for use on fishing vessels, in  
603 which case it shall cover all persons, except skin or scuba divers, on board such vessel. An  
604 individual skin or scuba diver may be granted a commercial fisherman permit (lobster);  
605 provided, however, no skin or scuba diver shall be allowed to dive for lobster and edible crabs by  
606 authority granted by a commercial fisherman permit endorsed for use on fishing vessels. The  
607 holder of a commercial fisherman permit (lobster) shall carry on his person or post on his vessel  
608 said permit at all times while engaging in fishing. In addition to the above noncommercial lobster  
609 and crab permit and the commercial fisherman permit (lobster) there shall be a seasonal  
610 commercial fisherman permit (lobster). Such a permit shall be issued to full-time students only,  
611 after such verification of student status as the commissioner may determine, and shall allow the  
612 holder to take and sell lobster during the period June fifteen to September fifteen and shall limit  
613 the holder to the use of not more than twenty-five pots. Except as hereinafter provided, such  
614 licenses to catch or take both lobsters and edible crabs shall be granted only to individuals who  
615 are citizens of the commonwealth and who have resided therein for at least one year next  
616 preceding the date of such license, but no such license shall be issued to a minor under seventeen  
617 years of age except with the written consent of his parent, guardian or custodian and at the  
618 discretion of the commissioner.

619           A nonresident of the commonwealth who is a citizen of the United States or who is an  
620 alien who possesses an alien registration receipt card issued to him by the United States  
621 Department of Justice, Immigration and Naturalization Service, temporarily residing or intending  
622 temporarily to reside in any coastal city or town, and who owns more than five thousand dollars  
623 in real estate within the commonwealth as determined by tax records may, in any year, upon  
624 payment of the fee required by this section obtain a license to take lobsters or edible crabs during  
625 June, July, August and September of such year, for consumption only by the licensee and his

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

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

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

Section 37. No person or persons shall take or attempt to take, by diving, lobsters, or edible crabs from the coastal waters, unless he displays his lobster license number upon his air tank, and for each person diving alone or for each group of divers upon the surface of said waters, in the area where the person or persons is taking or attempting to take lobsters and edible crabs, a floating marker shall be displayed with the license number of each person diving alone or in the case of any group of divers the license number of every person taking or attempting to take lobsters shall be displayed. Said number on a floating marker shall be displayed in the form of a single panel not less than twelve inches in height and width and shall be buoyed in an upright position. The marker shall have a white background with the licensee's number, or in the case of a group the licensees' numbers, displayed on both sides thereof by black numerals of a size prescribed by regulation of the commissioner.

No person shall take or attempt to take with the aid and use of a boat any lobsters or edible crabs by pots, traps or other contrivances designed or adapted to the taking of lobsters or edible crabs without first displaying the buoy colors used by him in accordance with his license by painting the color or colors (a) on each side of the hull or upon panels attached to each side of the hull, or (b) upon both sides of a single panel which is attached to the boat on top of the bow, or by mounting a buoy, not less than eleven inches in length, and four inches in diameter, with his color scheme thereon, in an upright position at least six inches above the roof of the boat. Color schemes painted on the hull of the boat or upon panels shall be displayed as a solid colored strip four inches high and eighteen inches long, each strip abutting another on the longest side, if more than one color, to form a rectangle or square. The rectangle or square thus formed shall have a black border all the way around at least one inch wide. All color schemes so displayed shall be clearly visible from both sides of the boat.

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

Section 38. All applicants issued a commercial fishermen permit for the taking of lobsters in coastal waters shall document their catch and sale of lobsters at such times and upon such forms as may be determined by the commissioner. Individual catch data so documented shall be confidential and shall not be disclosed except in aggregate form. The commissioner may develop such forms and require such information as he deems necessary in the administration of this section. All such forms shall be signed by the applicant under the pains and penalties of perjury. Failure to submit complete forms as required by this section or falsification of any such form or any application as required by this section may result in a fine of not less than five hundred nor more than one thousand dollars and suspension of eligibility for issuance of a commercial permit for a period not to exceed three years. Any permit not renewed as required by this section by July first of each year may be subject to revocation by the department.

Each year between December first and March first the commissioner shall renew an existing commercial fishermen permit for the taking of lobsters in coastal waters held by any qualified person during the previous year. The commissioner may renew permits to those individuals who have been previously engaged in commercial lobstering and can document that due to personal medical incapacity or other unforeseen circumstances, were unable to renew their commercial lobster permit during the prescribed renewal period. The marine fisheries advisory commission shall promulgate regulations establishing the criteria in which such renewals may take place.

Any commercial fishermen permit for the taking of lobsters in coastal waters may be transferred between members of an immediate family subject to the approval of the commissioner. Permits may be transferred to other qualified applicants subject to regulations promulgated by the marine fisheries advisory commission. Said regulations shall set forth the

specific criteria and process in which permits may be transferred and shall address the following concerns:—

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

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

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

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

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

Any applicant for the transfer of any existing permit described in this section aggrieved by the decision of the commissioner may appeal that decision to the secretary or his designee whose decision upon appeal shall be final. The secretary's decision, however, shall be governed by the criteria contained in this section.

Section 39. No person shall tend, lift, raise or draw a lobster or crab pot or trap, or take lobsters or edible crabs from such a pot or trap, or catch or take lobsters from the coastal waters by any means, except during the period from one half hour before sunrise until one half hour after sunset, except that traps may be taken up by the owner or by his employee or agent, if licensed under section thirty-six, at any time when they are endangered by storms, and except that the commissioner, deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement, environmental police officers and deputy environmental police officers may at any time lift, raise or draw such pot or trap with its contents, if any, for the purpose of inspection provided in this chapter. Violation of the provisions of this section shall be punished by a fine of not less than ten nor more than fifty dollars.

Section 40. No person, either as principal, agent or employee, shall between January first and the following April thirtieth, both dates inclusive, take or catch edible crabs, by the use of traps or otherwise, from the coastal waters. Violation of the provisions of this section shall be punished by a fine of not less than ten nor more than fifty dollars.

Section 41. Any person who takes, sells or has in possession any female lobster bearing externally attached eggs shall be punished for the first offense by a fine of not less than \$150 nor more than \$500 for every such lobster and for a subsequent offense by a fine of not less than \$500 nor more than \$1,000 for every such lobster, or by imprisonment for not less than 60 days nor more than six months, or both such fine and imprisonment. A person who takes any such lobster and immediately returns it alive to the waters from which it was taken shall not be subject to such penalty. This section shall not apply to lobsters extruding eggs in fish cars or pounds if

they are immediately liberated alive in the coastal waters, nor to the taking or possession of lobsters as provided in section forty-four.

Section 42. Any person who takes, sells or has in his possession any female lobster from which the eggs have been removed by means other than natural hatching, shall be punished for the first offense by a fine of not less than \$250 nor more than \$1,000 for every such lobster and for a subsequent offense by a fine of not less than \$1,000 nor more than \$2,000 for every such lobster, or by imprisonment for not less than 90 days nor more than one year, or both such fine and imprisonment. Detection on a female lobster of any substance capable of removing attached eggs or of physical evidence that attached eggs have been removed by a method other than by natural hatching shall be prima facie evidence that a violation of this section has occurred. Any environmental police officer, deputy environmental police officer or the commissioner or his designee may, in the performance of his duties, remove one or more appendages from any lobster for testing purposes.

Section 43. The commissioner shall, to the extent of appropriation or appropriations therefor, establish and maintain a plant or plants for the propagation of lobsters by rearing them from the time of hatching to the bottom crawling stages. Lobsters from which the eggs are to be obtained for such hatching and rearing shall be taken and disposed of in accordance with section forty-four. The commissioner, in his budget estimates, filed pursuant to section three of chapter twenty-nine, shall include a statement of appropriation or appropriations recommended by him for the purpose of carrying this section into effect.

Section 44. Between March first and October thirty-first, both dates inclusive, in any year, the commissioner may authorize the taking or possession of egg-bearing lobsters by any person licensed under section thirty-six to catch or take lobsters and edible crabs, upon the condition that such egg-bearing lobsters shall be taken, held or delivered in accordance with the instructions of the commissioner to a plant for the propagation of lobsters established and maintained for rearing them from the time of hatching to the bottom crawling stages or for such other disposition as the commissioner may deem for the best interests of the commonwealth. If the eggs from the lobsters so obtained shall be hatched the young therefrom shall be reared to the bottom crawling stages. Lobsters from which eggs have been so hatched, and the young lobsters so reared, shall be liberated, as nearly as possible, in the areas from which such egg-bearing lobsters were obtained and in the same proportion. Nothing in this section shall be so construed as to prevent the commissioner from otherwise disposing of lobsters from which eggs have been so removed, or young lobsters so reared, when in the opinion of the commissioner by so doing depleted or non-productive areas may be benefited.

Section 45. Whoever sells, or offers for sale, or has in possession for a period longer than is necessary for immediate measuring, or for any purpose other than legally disposing of same, a lobster measuring in length less than the minimum size prescribed by this section, alive or dead, cooked or uncooked, measured from the rear of the eye socket along a line parallel to the center

line of the body shell to the rear end of the body shell, shall be punished for the first offense by a fine of not less than one hundred nor more than five hundred dollars for every such lobster and for a subsequent offense by a fine of not less than five hundred nor more than one thousand dollars for every such lobster or by imprisonment for not less than one nor more than three months or both, and such lobster shall be seized and forfeited, and shall be disposed of by the commissioner to the best interest of the commonwealth.

Beginning on January 1, 1989, the minimum size shall be 3 1/4 inches. Thereafter, the commissioner may, by regulation approved by the marine fisheries advisory commission, increase the minimum size, and may establish different minimum sizes in separate geographic areas, if he determines that such increases are necessary to achieve compliance with the Atlantic States Marine Fisheries Commission Fisheries Management Plan for American lobster.

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

Section 46. The commissioner may, by regulation approved by the marine fisheries advisory commission and promulgated pursuant to chapter thirty A, establish a program to protect V-notched lobsters. For purposes of this section, the term "V-notched lobster" means a female egg-bearing lobster from which a V-shaped piece of tail has been cut from the first right flipper next to the middle flipper by a person holding or covered by a permit issued pursuant to section thirty-six.

Section 47. No commercial fishing vessel landing lobsters taken by any method other than by pots or traps shall land for the purpose of sale or distribution any lobsters or any part thereof at any location within the jurisdiction of the commonwealth in excess of one hundred lobsters for a fishing trip of one twenty-four hour day or less duration, with a maximum limit of five hundred lobsters within a period of seven consecutive days. The commissioner, with approval of the marine fisheries advisory commission, shall promulgate rules to implement this section within ninety days of its effective date.



810           The commissioner shall monitor the performance of vessels taking and landing lobsters in  
811 the commonwealth taken by other than pots and traps. If landings by vessels landing lobsters  
812 taken by other than by pots or traps exceed six percent of total lobster landings in any year, the  
813 commissioner shall implement regulations, subject to the approval of said marine fisheries  
814 advisory commission, to limit lobster landings in subsequent years by vessels using other than  
815 pots or traps to no more than six percent of total lobster landings in the commonwealth.

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

820           Section 48. All barrels, boxes or other containers containing lobsters, or lobster meat after  
821 the same has been taken from the shell, shall, before being delivered to any carrier, be marked by  
822 the shipper in a plain and legible manner on the outside thereof "Lobsters" or "Lobster Meat", as  
823 the case may be, in capital letters at least one inch in length, together with the full name and  
824 address of the shipper, and, in the case of such lobster meat, also with the words, "removed  
825 under permit No.     ", followed by the number of the permit under which the same was taken  
826 from the shell; and, unless in barrels, boxes or other containers so marked, no lobster or lobster  
827 meat shall be transported. Any such barrels, boxes or other containers delivered to or transported  
828 by any carrier without being marked as above required, and the lobsters or lobster meat therein,  
829 shall be seized and forfeited. Violation of any provision of this section shall be punished by a  
830 fine of not less than five hundred nor more than one thousand dollars. This section and section  
831 fifty shall not apply to lobsters or lobster meat passing through the commonwealth under  
832 authority of the laws of the United States.

833           Section 49. In case of seizure by any duly authorized officer of any lobsters or lobster  
834 meat contained in any barrel, box or other container which is not marked as provided in section  
835 forty-eight, or of any lobster measuring less than the length prescribed by section forty-five, such  
836 lobsters as are alive and measure less than such prescribed length shall be liberated by the  
837 commissioner, and all other such lobsters and all such lobster meat found in such barrel, box or  
838 other container shall be held and disposed of as provided in section fifty-one.

839           Section 50. Any carrier who knowingly receives or carries from place to place any lobster  
840 or lobster meat in barrels, boxes or other containers not marked as provided in section forty-eight  
841 shall be punished by a fine of not more than five hundred dollars.

842           Section 51. When any lobster or lobster meat is seized for the violation of any provision  
843 of section forty-eight, the officer making the seizure shall immediately notify the shipper thereof,  
844 if known, and shall proceed to enforce the forfeiture of such lobsters as he is not required to  
845 liberate, or of such lobster meat, in accordance with section eight.

Section 52. No person shall sell, or represent for the purpose of sale, any lobster as a native lobster unless the same shall have been originally caught or taken in the coastal waters; nor shall any person so sell, or represent for the purpose of sale, any crustacean as a lobster unless the same is of the species known as *Homarus americanus*; nor shall any person so sell, or represent for the purpose of sale, any meat as lobster meat unless such meat is wholly from crustaceans of such species. Violations of any provision of this section shall be punished by a fine of not less than fifty nor more than five hundred dollars.

Section 53. No retail establishment or person shall sell or represent for the purpose of sale, any item as crabmeat unless the same is from crustaceans of any species of crab, so-called. A retail establishment or person selling a product which contains crabmeat in any proportion shall list separately the names and percentages of all noncrabmeat substances contained therein. A violation of any provision of this section shall be punishable by a fine of not less than fifty nor more than five hundred dollars

Section 54. The selectmen of a town bordering upon coastal waters, if so authorized by their town, and the board of aldermen or the city council of any city so situated may control, regulate or prohibit the taking of eels and any or all kinds of shellfish and sea worms within such cities and towns and may, from time to time, without other or special authority therefor, make any regulations not contrary to law in regard to said fisheries as they deem expedient, including the times, places, methods, purposes, uses, sizes, quantities and any other particulars of such taking, and may grant permits, and establish the fees therefor, subject to any such regulation, then or thereafter in force. Any such authorizations to said selectmen hereunder shall continue in force until subsequent action of such town shall repeal the same. Any regulations made under authority of this section shall continue in force until the board of aldermen, city council, or selectmen, as the case may be, shall alter, amend, rescind or repeal the same, or the authority of the selectmen to make and enforce such regulations shall be repealed. No city or town shall require a person to be licensed to take shellfish who is accompanying or operating a boat for a person so licensed and who is not otherwise actively engaged in or assisting in such fishing.

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

884 the instructions to the selectmen, or a copy thereof attested by the town clerk, shall be prima  
885 facie evidence of such instructions.

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

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

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

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

922           Section 55. All permits issued under section fifty-four shall be issued in the name of the  
923 body authorizing the issuing of the same; but, under a vote of such body, any such permit shall  
924 be valid if issued bearing the signature of any one member thereof, or of the city or town clerk. A  
925 record of the name, residence and address of every person to whom such a permit is issued, with  
926 any special details relating to such permit, shall be entered by the officer issuing the same in a  
927 book kept in his office for that purpose.

928           Section 56. Cities by a vote of the board of aldermen, or city council, and towns by a vote  
929 at a town meeting, may appropriate money for the cultivation, propagation and protection of  
930 shellfish. The board of aldermen, or city council, or selectmen when so authorized by their town  
931 may from time to time declare a close season for any or all kinds of shellfish for not more than  
932 three years in such waters, flats or creeks, not then the subject of a private grant, within the limits  
933 of their respective cities and towns, as they deem proper, and may plant, grow and protect  
934 shellfish in such waters, flats or creeks; provided, that no private rights are impaired; and  
935 provided, further, that when any close season, declared as aforesaid, shall have ended, such flats,  
936 waters or creeks shall not within two years thereafter be licensed for the private cultivation of  
937 shellfish.

938           Section 57. No permit for the taking of shellfish for commercial purposes, except in the  
939 city of New Bedford, shall be issued by the aldermen or councilmen of any city or the selectmen  
940 of any town to an alien unless he has resided in such city or town for at least five years next  
941 preceding the date of his application therefor, or has been a resident of the county in which such  
942 city or town lies for at least five years next preceding the date of such application and has taken  
943 shellfish commercially therefrom for such period.

944           Section 58. Whenever under the authority of any law two or more municipalities have  
945 joint property in, or the right of joint control of, any marine fisheries referred to in section fifty-  
946 four, the board of aldermen or city council of the city, or the selectmen of the town if so  
947 authorized by the town, in which such fisheries lie may exclusively exercise all the rights,  
948 privileges and authority conferred by said section with respect to such fisheries, make  
949 appropriations therefor as provided in section fifty-six and exercise such other control, privileges  
950 and responsibilities as are granted in other sections of this chapter pertinent thereto, as though  
951 such joint control or property did not exist; provided that in the exercise of such rights,  
952 privileges, responsibilities and authority such board of aldermen, city council or selectmen shall  
953 grant to the citizens of such other municipalities the same rights and privileges as are granted to  
954 the citizens of their city or town.

955           Section 59. The city council or mayor of any city, or the selectmen of any town, may  
956 upon written application, accompanied by plans sufficient to show the intended project and  
957 project area to be licensed, and after public notice and hearing pursuant to section sixty-two,  
958 grant to any person a shellfish aquaculture license.

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

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

Licenses under this section shall be granted or denied in writing within sixty days after receipt of the written application and shall be issued upon forms supplied by such cities and towns and upon such terms and conditions and subject to such terms, conditions or regulations as the city council or selectmen issuing the same shall deem proper, but not so as to impair the private rights of any person or to materially obstruct navigable waters, and said license shall describe by metes and bounds the waters, flats or creeks covered thereby. Shellfish aquaculture licenses pursuant to this section shall be subject to any rules and regulations promulgated by the commissioner, including those concerning the use and scope of predator controls in the intertidal zone, and said licenses may be further conditioned by the commissioner as he deems necessary and appropriate, including species to be propagated and the source and movement of seed shellfish.

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

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

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

Said shellfish aquaculture license may be transferred pursuant to section sixty and all rights and privileges enjoyed by the licensee shall be assumed by the transferee.

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

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

Section 60. Any license granted under section fifty-nine or corresponding provisions of earlier laws may be transferred with the approval of the city council or selectmen to any person to whom it might originally have been granted, and, whether or not so transferred, may, within two years before the expiration of its then current term, be renewed from the expiration of the original term for a further term or terms, each term not to exceed fifteen years. The provisions of this chapter or of corresponding provisions of earlier laws applicable to the original issuance of such license shall, so far as apt, apply to a transfer or a renewal thereof hereunder.

Section 61. Any person, firm or corporation qualified as provided in section fifty-nine and desiring to obtain a license thereunder shall present to the city council or selectmen a written application setting forth the name and residence of the applicant, a definite description made by reference to a survey conducted by the applicant, and a request that such license be granted to the applicant.

Section 62. No license referred to in section fifty-nine shall be granted, transferred or renewed until after a public hearing, due notice of which has been posted in three or more public places, and published in a newspaper, if any, published in the city or town where the territory described in the application is situated at least ten days before the time fixed for the hearing, stating the name and residence of the applicant or transferee, as the case may be, the date of the filing of the application for such license, transfer or renewal, and the location, area and description of said territory.

Section 63. The licensee upon receiving his license shall cause the territory covered thereby to be plainly marked out by monuments, marks or ranges and by stakes or buoys, with the number of his license painted in figures at least two inches in height in a conspicuous place on each of said stakes or buoys or on flags attached thereto, which shall be maintained by him or his transferee during the term of the license or of any renewal thereof. Failure to place or reasonably to maintain the same shall be sufficient cause for revocation of the license.

Section 64. The aldermen, city council or selectmen shall keep in their offices plans showing all such licensed areas, and, in a book devoted to that purpose only, a record of each license granted and of all transfers or renewals thereof, which shall include the name and residence of the licensee or transferee, the dates of issue, transfer, renewal and expiration thereof, and a copy of the description of the licensed areas as the same appears in the license. Each license, and all transfers or renewals thereof, shall forthwith after the granting or approval thereof be transmitted by the board so granting or approving the same to the city or town clerk, who shall record the same in a book kept especially therefor in his office. The licensee or transferee shall within thirty days after such issue or approval pay to said clerk for each license or renewal issued or transfer approved one dollar for such recording, and for each license issued shall also pay four dollars as reimbursement of said city or town for the cost incurred in granting said license, a record of which payment shall forthwith be entered upon said record by said clerk, and such license, transfer or renewal shall not take effect until said fees are paid and entry thereof made as aforesaid. Said records shall be open to public inspection at all reasonable times. Forms for such license and for the transfer or renewal of the same shall be provided by the aldermen, city council or selectmen at the expense of their city or town.

Section 65. The licensee or transferee, or his legal representatives, shall, for the purposes set forth in section fifty-nine and in accord with the terms set forth in said license, have during the term of the license or of any renewal thereof the exclusive use of the waters, flats or creeks described in the license, and the exclusive right to take all shellfish therefrom during the time therein specified, notwithstanding any regulations made by the aldermen, city council or selectmen of the city or town, subsequent to the issuance of such license or to the renewal thereof, as the case may be; provided, that this section shall not be construed to authorize any taking prohibited by law. The licensee or transferee, or his legal representatives, may in tort recover treble damages of any person who without his or their consent, unless otherwise authorized by law or by lawful regulation so to do, digs or takes shellfish of any kind, or shells,

1071 from such waters, flats or creeks, or disturbs the same thereon, during the continuance of the  
1072 license or of any renewal thereof.

1073         Section 66. Every such licensee or transferee shall pay to the city or town, on or before a  
1074 date to be fixed by the aldermen, city council or selectmen, an annual fee of not less than five nor  
1075 more than twenty-five dollars per acre, or part thereof. If any such fee is not paid within six  
1076 months after it becomes due the license shall thereupon be forfeited.

1077         Section 67. Every licensee or transferee of a license referred to in section fifty-nine shall  
1078 submit on oath on or before December thirty-first in each year to the commissioner and to the  
1079 city council or selectmen of the city or town wherein the licensed area is situated a report of the  
1080 total number of each kind of shellfish planted, produced or marketed during the preceding year  
1081 upon or from such licensed area, and an estimate of the total number of each kind of shellfish at  
1082 the time of such report planted or growing thereon. The city council or selectmen may specify a  
1083 reasonable yearly market value to be produced by each shellfish project licensed pursuant to  
1084 section fifty-nine. Failure of the licensed shellfish project to meet such a value for any three  
1085 consecutive years thereafter may result in a forfeit of the shellfish aquaculture license and  
1086 licensed area.

1087         Section 68. Whoever willfully injures, defaces, destroys or removes any mark or bound  
1088 used to define the extent of any shellfish license or grant, or places any unauthorized mark  
1089 thereon, or ties or fastens any boat or vessel thereto, shall be punished by a fine of not less than  
1090 three nor more than twenty dollars and shall be liable in tort for double damages and costs to the  
1091 licensee or transferee injured by such act.

1092         Section 69. Whoever works a dredge, oyster tongs or rakes, or any other implement for  
1093 the taking of shellfish of any description upon any shellfish grounds or beds covered by a license  
1094 granted under section fifty-nine or corresponding provisions of earlier laws, or in any way  
1095 disturbs the growth of the shellfish thereon, or whoever discharges any substance which may  
1096 directly or indirectly injure the shellfish upon any such grounds or beds, without the consent of  
1097 the licensee or transferee, as the case may be, or whoever, while upon or sailing over any such  
1098 grounds or beds, casts, hauls, or has overboard any such dredge, tongs, rake or other implement  
1099 for the taking of shellfish of any description, under any pretence or for any purpose whatever,  
1100 without the consent of the licensee or transferee, as the case may be, shall for the first offense be  
1101 punished by a fine of not more than twenty dollars or by imprisonment for not more than one  
1102 month, and for a subsequent offence by a fine of not more than fifty dollars or by imprisonment  
1103 for not more than six months.

1104         Section 70. No person shall dig, take or carry away any shellfish or shells between one  
1105 half hour after sunset and one half hour before sunrise, by any method whatever, from any  
1106 waters, flats or creeks as to which a license under section fifty-nine or corresponding provisions  
1107 of earlier laws is outstanding. A licensee or transferee of such a license violating this section



1108 shall, in addition to all other penalties provided, forfeit his license and the shellfish remaining on  
1109 the licensed premises.

1110         Whoever violates any provision of this section, or whoever, without the consent of the  
1111 licensee or transferee, digs or takes any shellfish or shells from any waters, flats or creeks  
1112 described in any license granted under section fifty-nine, or corresponding provisions of earlier  
1113 laws, during the continuance of such license or of any renewal thereof, shall be punished by a  
1114 fine of not more than one hundred dollars or by imprisonment for not less than one nor more than  
1115 six months, or both.

1116         Section 71. Whoever takes or has in his possession quahaugs or soft shelled clams or  
1117 oysters smaller than the minimum size established by the commissioner through regulations,  
1118 hereinafter referred to as seed quahaugs, seed clams and seed oysters, to the amount of more than  
1119 five percent of any batch, shall be punished in accordance with section four; provided, however,  
1120 that it shall not be unlawful to take seed quahaugs, seed clams or seed oysters or have the same  
1121 in possession under authority of a permit therefor, which the commissioner is hereby authorized  
1122 to grant, for a replanting in waters or flats within the commonwealth.

1123         Section 72. No person shall take from the flats or coastal waters of the commonwealth  
1124 scallops other than adult scallops, or sell or offer for sale or have in possession such scallops. For  
1125 the purposes of this section an adult scallop shall be a scallop with a well-defined raised annual  
1126 growth line, and any scallop without such line shall be deemed a "seed" scallop. Scallops taken  
1127 from the coastal waters shall immediately be culled when taken, and all scallops other than adult  
1128 scallops shall forthwith be returned alive to the coastal waters whence taken; but it shall not be  
1129 unlawful to sell or have in possession scallops other than adult scallops unavoidably left in the  
1130 catch after it has been culled, to the amount of not more than five per cent of the total catch  
1131 remaining. All scallops taken in accordance with this section shall be taken ashore in the shell.  
1132 This and section seventy-three shall not apply to seed and adult scallops carried by storm or tide  
1133 from the natural beds and deposited on beaches and flats where, in the opinion of the  
1134 commissioner, they cannot survive, but the taking of said seed scallops and the taking and sale of  
1135 said adult scallops may be authorized by him at any season of the year. The commissioner shall  
1136 promulgate rules and regulations governing the taking and sale of said seed and adult scallops by  
1137 special permits, which he is empowered to issue without fee, or otherwise so as to prevent the  
1138 sale of seed scallops at any time, or the sale of adult scallops between April first and the  
1139 following October first, except as authorized herein. Whoever violates any provision of this  
1140 section shall be fined not less than ten nor more than fifty dollars and imprisonment for thirty  
1141 days or both.

1142         Section 73. Except as provided in sections seventy-two and seventy-five, no person shall  
1143 take scallops between April first and the following October first from the flats or coastal waters  
1144 of the commonwealth, or buy or sell or have in possession scallops so taken. Whoever violates

1145 any provision of this section shall be punished by a fine of not less than ten nor more than fifty  
1146 dollars and imprisonment for thirty days or both.

1147         Section 74. No person shall for any purpose take more than a total of ten bushels of  
1148 scallops, including shells, in one day, unless authorized by the commisisoner under sections  
1149 seventy-two and seventy-six so to do. Whoever violates any provision of this section shall be  
1150 punished by a fine of not less than ten nor more than fifty dollars and imprisonment for thirty  
1151 days or both.

1152         Section 75. The provisions of sections seventy-three and seventy-four in respect to the  
1153 open and close season, and in respect to the number of scallops that may be taken, may be  
1154 temporarily modified if, on petition of the aldermen, city council or selectmen to the  
1155 commissioner, the commissioner after investigation, determines that, owing to unusual  
1156 circumstances, such modification is expedient. In that case, he may authorize, for a prescribed  
1157 period, the aldermen, city council or selectmen to issue permits to inhabitants of their respective  
1158 cities or towns to take scallops in such quantities and at such times as he deems expedient.

1159         Section 76. The department shall examine from time to time as conditions may require, or  
1160 upon request of the commissioner of public health, the mayor or city manager of a city, or the  
1161 selectmen or town manager of a town, the coastal waters and flats of the commonwealth and  
1162 samples of shellfish therein or thereon in order to determine what areas thereof are so  
1163 contaminated that shellfish obtained therefrom are unfit for food and dangerous to the public  
1164 health. The department shall forward the results of all tests as directed by the commissioner of  
1165 public health. If, after such examination, either the department of public health or the department  
1166 determines that such contamination exists, it shall, by written order, promulgate definite bounds  
1167 of the area or areas so determined to be contaminated, and may specify the period of time during  
1168 which such determination shall be in effect. Before such determination shall be in effect, such  
1169 department making the determination shall:

1170             (1) Publish the results of its determination thereof in a newspaper published in each city  
1171 and town in which or adjacent to which any contaminated area is situated.

1172             (2) File in the office of the clerk of every such city or town the results of the  
1173 determination.

1174             (3) Cause to be posted at points on or near every such area a description thereof,  
1175 specifying said bounds and a statement that such an area is contaminated.

1176             (4) If the department of public health makes the determination, notify the commissioner  
1177 and the director of the division of law enforcement of its determination by filing with them  
1178 properly authenticated copies, certified by the secretary of state, of its determination, publication,  
1179 filing and posting.

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

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

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

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

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

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

Section 77. Both the department of public health and the department shall have the authority immediately to designate shellfish areas as contaminated and that shellfish obtained therefrom are unfit for food and dangerous to the public health, in the event of an emergency as determined by either the department of public health or the department. Such designation shall be reported to the division of law enforcement, and, in the case of a determination by the department of public health, to the department, who shall take the necessary action to prevent the taking of shellfish from such area for human consumption and so notify local authorities in each instance. Such determination shall be in effect until subsequent examination, initiated not more than thirty days after the emergency has been determined, shows the shellfish from such area to

be safe for human consumption and the said department which designated the emergency declares it to be over. In the event that the department of public health determines that there is an emergency, the commissioner of public health shall have the power to direct the activities of all employees of the department who are regularly engaged in monitoring the condition of shellfish during that emergency.

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

Section 78. The commissioner may grant, and may revoke, written permits for the digging or taking of shellfish from an area determined under section seventy-six or corresponding provisions of earlier laws to be contaminated while such determination is in force, every such permit to be upon the express condition, which shall be set forth therein, that all shellfish dug or taken from the area or areas covered by such permit by the holder thereof shall, before being used or disposed of for consumption as food, be purified at a plant, or by a method, approved in writing by the commissioner of public health and upon such further conditions and regulations as will, in the opinion of the commissioner, most effectively prevent the use of said shellfish as food until so purified. For the purpose of this paragraph the commissioner, upon receipt of the proper fees, may issue the following classes of permits:—a master digger’s permit for an individual who digs or takes shellfish from such areas for such purification; a digger’s permit for an individual who digs shellfish for the holder of a master digger’s permit; and a bait permit for an individual who digs and takes shellfish from such areas for bait purposes only; provided, that no person shall be eligible for a bait permit hereunder who has a digger’s permit or who sells shellfish for food purposes. In order to assure full compliance with said conditions and regulations, the commissioner shall require a bond to be obtained by a master digger in a sum not to exceed one thousand dollars for a master digger whose record includes no prior judicial or administrative convictions related to this chapter; not to exceed twenty-five hundred dollars for a master digger whose record includes one prior judicial or administrative conviction, related to this chapter; and, not to exceed five thousand dollars for a master digger whose record includes two or more prior judicial or administrative convictions related to this chapter. The commissioner may require forfeiture of all or part of such bond for any violation of said conditions and regulations. Any city or town may develop a shellfish conservation and management plan containing such information as the commissioner may require and shall submit said plan to the commissioner for his approval. Any city or town having a plan approved by the commissioner may require permits for the taking of shellfish from areas determined under section seventy-six to be contaminated, provided that all other permits and licenses required by law are obtained. Fees shall be reasonable and commensurate with the services provided by the city or town. If at any time the commissioner finds any city or town in violation of any provision of its approved shellfish conservation and management plan he may forthwith withdraw his approval of such plan. No city or town permit shall be required by any master digger or subordinate on any mildly contaminated area where the commissioner has withdrawn his

approval of that city or town's shellfish conservation and management plan as provided herein until such plan is deemed approved by the commissioner. In evaluating the plan for approval, the commissioner shall take into consideration the city or town's efforts to fairly administer the distribution of, and fees for, local permits to be issued to residents and nonresidents.

Whoever, without a permit as provided in this section or contrary to the provisions of such permit, digs or takes shellfish for any purpose from any area determined under section seventy-six or section seventy-seven or under corresponding provisions of earlier laws to be contaminated, while such determination is in force, or knowingly transports or causes to be transported or has in his possession shellfish so dug or taken, shall be punished, if the violation occurred between one-half hour before sunrise and one-half hour after the following sunset, by a fine of not less than three hundred nor more than one thousand dollars or three times the value of such shellfish, whichever is greater, or by imprisonment for not more than two years in a jail or house of correction, or both, and if the violation occurred between one-half hour after sunset and one-half hour before the following sunrise, by a fine of not less than five hundred nor more than two thousand dollars, or three times the value of such shellfish, whichever is greater, or by imprisonment for not more than three years in the state prison, or both. Any licensed wholesaler or retailer found in violation of this section shall be punished by a fine of not less than one hundred nor more than ten thousand dollars or by imprisonment for not more than three years, or both. The superior court shall have jurisdiction in equity to enforce this section and the rules and regulations of the commissioner made hereunder and to restrain the violation thereof. In any prosecution for a violation of this section, the possession by a digger, licensed wholesaler or retail dealer, but not by a common carrier, of shellfish taken in apparent violation of this section shall be prima facie evidence of a violation thereof.

Section 79. The commissioner may construct and operate shellfish purification plants for the treatment of shellfish taken from areas determined under section seventy-six or any corresponding provisions of earlier laws, to be contaminated, and may operate such existing purification plants to serve such areas as he may deem necessary for these purposes. Said commissioner or his designee shall have sole authority over the acceptance, treatment and discharge of shellfish at such plants, subject to the rules and regulations, which the department of public health is hereby authorized and directed to adopt, relative to the protection of the public health in the consumption of such shellfish.

Section 80. For the purpose of partially defraying the costs of the operation and maintenance of shellfish purification plants, the department shall charge the users of said service an amount which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

Section 81. Except as permitted in sections thirty-six and seventy-eight, no person shall fish for or take fish for commercial purposes in the coastal waters, or land raw fish, whether frozen or unfrozen, in the commonwealth, for the purpose of sale unless he is the holder of a

commercial fisherman permit. A commercial fisherman permit may be issued to an individual or it may be issued in the name or number of a vessel, in which case it shall be valid for all persons on board said vessel. A vessel permit may be transferred upon application to the commissioner. Notwithstanding any contrary provisions contained in this section and except as provided in section seventy-eight, a person shall not dig or take shellfish or marine worms for commercial purposes unless he is the holder of a commercial fisherman permit (shellfish) or unless he is the holder of a commercial fisherman permit which has been specially endorsed, at no additional charge, for the taking of such shellfish or marine worms; a person holding a permit issued under section seventy-eight shall not hold a permit issued under this section for the taking or digging of shellfish or marine worms. Notwithstanding any contrary provision contained in this section, a person who has in his possession a commercial fisherman permit for rod and reel may take by rod and reel or by diving and sell fin fish lawfully taken from the coastal waters.

A person shall not for commercial purposes acquire, handle, store, distribute, process, fillet, ship or sell raw fish, whether frozen or unfrozen in bulk or for resale, without first obtaining a wholesale dealer permit issued jointly by the department and the department of public health; provided, however, that the holder of a valid commercial fisherman permit who catches fish or takes lobsters and sells such fish or lobsters to wholesale or retail dealers exclusively shall be exempt from obtaining a wholesale dealer permit; and provided, further, that the holder of a wholesale dealer permit shall not procure raw fish, whether frozen or unfrozen, from any person who does not hold a valid commercial fisherman permit. A person shall not sell raw fish at retail, whether frozen or unfrozen without first obtaining a retail dealer permit issued jointly by the department and the department of public health; provided, however, that the holder of a valid wholesale dealer permit may sell fish at retail at one location which shall be named on the permit; and provided, further, that the holder of a retail dealer permit shall not procure raw fish, whether frozen or unfrozen, from any person who does not hold a valid commercial fisherman permit or a valid wholesale dealer permit. Upon application to the commissioner and endorsement on the permit the holder of a retail dealer permit may take bait for sale under said permit.

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

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

The commissioner shall promulgate rules and regulations relative to the form, contents, and use of all permits issued under this chapter except the form, contents and use of wholesale and retail seafood dealer permits which shall be subject to rules and regulations promulgated by

the commissioner and the commissioner of public health. The commissioner shall revoke and cancel and require the surrender of any permit issued under this chapter if, in his opinion, after a hearing, after due notice by him or some person designated by him, the holder has violated any rule or regulation of the commissioner or of any provision of this section or section seventy-eight, or upon a change in the facts and conditions set forth in such permit or certificate. The commissioner of public health shall also have the authority to revoke and cancel and require the surrender of any wholesale dealer or retail dealer permit issued under this chapter if, in his opinion, after a hearing, after due notice by him or some person designated by him, the holder has violated any rule or regulation of the department of public health or any general or specific law pertaining to fish or the sale thereof, or upon a change in the facts and conditions set forth in such permit. Pending the hearing, the certificate may be suspended. Whoever violates any provision of this section shall be punished by a fine of not less than ten dollars nor more than ten thousand dollars or by imprisonment for not more than three years, or both.

Section 82. No person shall transport, or cause to be transported, into this commonwealth for consumption as food any shellfish taken or dug from areas outside the commonwealth, or sell, cause to be sold, or keep, offer or expose for sale for consumption as aforesaid any shellfish so taken or dug, unless such person has been certified by the regulatory authority in the United States or foreign country under the uniform sanitation requirements of the cooperative program for the certification of interstate shellfish shippers, nor shall any person transport or cause to be transported within this commonwealth any shellfish for consumption as food, unless the container of such shellfish shall, at all times while in such transportation, bear a label or tag legibly marked with the name and address of the producer and of the shipper thereof and the numbers of such certificates, and the name of the place where and the date when taken, nor shall any person counterfeit, alter, deface or tamper with any label or tag, and absence of such label or tag so marked or failure to allow an inspection shall be prima facie evidence of violation of this section; provided, that the foregoing provisions relative to transportation shall not apply to common carriers, their servants or agents.

Whoever violates any provision of this section shall be punished by a fine of not less than one hundred nor more than ten thousand dollars or by imprisonment for not more than three years, or both. The provisions of this section shall be enforced by the department of public health, local boards of health, the commissioner and all officers qualified to serve criminal process; provided, that the provisions of this section and of section eighty-three shall not apply to shellfish taken from an area declared to be contaminated under the provisions of section seventy-six or corresponding provisions of earlier laws.

Section 83. No wholesale or retail dealer in shellfish, and no person holding a victualler's license, shall receive any shellfish unless the same bears a label or tag legibly marked with the source of supply, the date when taken, and either the certificate or permit number or the name and address of the producer or shipper, and all shellfish in transit shall bear such label or tag so marked. If such shellfish have been processed at a shellfish purification plant operated under the

provisions of section seventy-nine, the label or tag shall be so marked, and shall contain such other information as the commissioner may by rule or regulation require. He shall for sixty days after receipt of such shellfish keep in his place of business a record of the markings on such tag or label, which record shall at all reasonable times be open to inspection by any representative of the department or of the department of public health. Whoever violates any provision of this section or fails or neglects to furnish the required label or tag or furnishes such a label or tag bearing false or misleading information or counterfeits, alters, defaces, or tampers with any label or tag shall be punished by a fine of not less than one hundred nor more than ten thousand dollars or by imprisonment for not more than three years, or both.

Section 84. For the purposes of defraying the costs of the department's research, management and other activities including administrative and operating expenses, and the cost of issuing the following resident and nonresident permits and any inspections relative thereto, resident and nonresident permit fees, the amounts which shall be determined by the secretary of administration and finance under the provisions of section three B of chapter seven for the filing thereof, shall be paid to the commissioner or his agent by the person to whom the same is issued for any calendar year or part thereof.

A. Commercial Fisherman (For the taking of fish for sale)

Individual (For named individual only)

Shellfish

Rod and Reel — Unlimited (For the sale of fin fish lawfully taken by rod and reel or by diving)

Boat (100 feet or more in total length) (60 to 99 feet in total length) (Up to 59 feet in total length)

Lobster (For the taking of lobsters for sale)

Seasonal Lobster

B. Wholesale Dealer (Any wholesaler dealing in fresh or raw fish)

C. Retail Dealer (Any retailer dealing in fresh or raw fish)

D. Special Permits

Non-Commercial Lobster and Crab (Up to 10 pots and/or diving privileges)

Master Digger

Subordinate Digger



1402 Regulated Fishery (For fishing in special areas)

1403 Domestic Processing Vessel

1404 Foreign Processing Vessel

1405 Other — Miscellaneous

1406 E. Duplicate (Replacing Original).

1407 Section 85. No person shall sell, exchange, transport or deliver, or offer or expose for  
1408 sale, exchange or deliver, or have in his custody or possession with intent to sell, exchange,  
1409 transport or deliver, any scallops which have been soaked, or any scallops not in the shell unless  
1410 such scallops are in a box, carton, tray or other container plainly and conspicuously stamped,  
1411 labelled or marked with (a) the word “Massachusetts”, followed by the name of the town or of  
1412 the locality where taken, if taken from waters or flats within the commonwealth; or (b) the name  
1413 of the state, country or province where taken, if taken from waters or flats outside the  
1414 commonwealth; or (c) the words “Sea Scallops”, if of the species commonly so known. Said box,  
1415 carton, tray or container shall also be marked in the same manner with the number of the  
1416 certificate under which said scallops were removed or with such other identification as may be  
1417 required by the commissioner by rule or regulation, which he is hereby authorized to adopt.

1418 Whoever fails to comply with any provision of this section, or whoever falsely stamps,  
1419 labels or marks such a box, carton, tray or other container, or whoever falsely advertises any of  
1420 the shellfish herein referred to, shall be punished by a fine of not less than fifty nor more than  
1421 five hundred dollars or imprisonment for thirty days or both.

1422 This section shall not apply to common carriers having scallops in possession for the  
1423 purpose of transportation.

1424 Section 86. A town may open ditches, sluiceways or canals into any pond within its limits  
1425 not then in private possession for the introduction and propagation in such pond or in any part  
1426 thereof of herring, alewives or other swimming marine food fish, and for the creation of fisheries  
1427 for the same. A town creating such fishery shall own it, may make regulations concerning it, and  
1428 may lease it for terms of not more than five years, on conditions mutually agreed upon.

1429 Section 87. The board of aldermen or the city council of any city wherein there is a public  
1430 fishery for alewives, or the selectmen of a town, wherein there is such a fishery, if so authorized  
1431 by their town, may petition the commissioner for the right to control and regulate such fishery  
1432 within their city or town and the commissioner shall forthwith, after due notice and after a  
1433 hearing held in such city or town, determine whether such control would be proper and  
1434 reasonable and if the public interests therein would be best served thereby, and may thereupon  
1435 deny the petition or grant it under such terms, subject to such regulations or restrictions not  
1436 contrary to law as he may deem expedient.

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

Section 88. Whoever takes, kills or hauls onshore or disturbs, injures, hinders or obstructs the passage of any herring, alewives or other swimming marine food fish in a fishery created by a city or town, without its permission or that of its lessees, or in a fishery legally created by a corporation, without the permission of such corporation, or in a public fishery regulated and controlled by a city or town, contrary to its regulations, shall be punished by a fine of not less than five nor more than fifty dollars. Prosecutions under this section shall be commenced within thirty days after the commission of the offence.

Section 89. Sections eighty-six, eighty-seven and eighty-eight shall not impair the private rights of any person under any law passed before April twenty-fifth, eighteen hundred and sixty-six, or under any contract existing on said date, or authorize a town to enter upon or build canals or sluiceways into a pond which is private property. Whenever in section eighty-six or section eighty-seven authority is granted to lease alewife fisheries, such leasing shall be made at public auction, held in such city or town, each of such fisheries to be leased separately, and no such lease shall authorize the operation of any fishery thereunder subsequent to June fifteenth in any year. Notices of any auction hereunder shall be published and posted as provided by law for notices of town meetings, and every such lease shall terminate on June fifteenth.

Section 90. In each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables. A person having successfully completed the shellfish wardens training course at the Massachusetts Maritime Academy as certified by said academy, shall be considered qualified by training and experience in the field of shellfishery management and shall be eligible for appointment as a shellfish constable or deputy shellfish constable. Such shellfish constables and deputy shellfish constables shall be appointed for terms of three years, and may be reappointed. They shall, subject to the appointing authority, initiate, promote and manage shellfisheries in such city or town and shall make or cause to be made such studies as may be necessary to enhance the value of such shellfisheries. They shall enforce all statutes, ordinances, by-laws, rules and regulations relative to shellfish in such city or town. They shall, for the enforcement of sections twenty-seven, thirty-four, forty-one, forty-four and forty-five, have the authority granted to natural resource officers, subject to written rules and regulations of the commissioner. In the

performance of his duties, a shellfish constable or deputy shellfish constable may request any person who he has cause to believe is engaged in unlawful shellfishing, is in unlawful possession of shellfish, or is in possession of shellfish unlawfully taken, to display forthwith for inspection all shellfish in his possession, and he may arrest without a warrant any person refusing or failing to comply with such request.

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

Section 91. Whoever, other than a common carrier, carries out of the commonwealth in any vessel or smack owned without the commonwealth any fish, except oysters, taken within the coastal waters, and whoever in any such vessel or smack takes any fish within the coastal waters for the purpose of carrying them out of the commonwealth, shall be punished by a fine of fifty dollars, and all fish so taken or carried shall be forfeited to the commonwealth and disposed of by the commissioner for the best interests of the commonwealth.

Section 92. No person shall take or attempt to take eels, *Anguilla rostrata*, by any contrivance other than by nets, pots, spears, or angling. The commissioner is hereby authorized to establish rules and regulations governing the size, shape, mesh size, and manner of marking such nets or pots.

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

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

Section 93. No person shall willfully detain, hunt, kill or injure a gray seal (*halichoerus gryphus*), also called a Nantucket horsehead. Whoever violates any provision of this section shall be punished by a fine not to exceed five hundred dollars.

Section 94. No person shall take by mechanical means Irish moss or kelp, marine plants of the species *chondrus crispus*, except with the written approval of the commissioner and in accordance with such rules and regulations relative thereto as he may adopt.

Section 95. Whoever catches or takes from, the coastal waters any starfish, or winkles and their egg strings, or cockles shall deposit the same at some place above high water mark or at some suitable place designated by the selectmen of the town wherein such disposition is made. Whoever violates any provision of this section shall be punished by a fine of five dollars and, in addition thereto, all permits or licenses issued to such person under authority of this chapter shall be void and no new permit or license shall be issued to him under such authority within the six months next following the date of his conviction, except upon approval of the commissioner.

Section 96. This chapter shall not be deemed to affect any privileges granted in any special statute relating to fisheries in any particular place, except such provisions thereof as relate to shellfish and shellfisheries, to alewife fisheries, and to those activities which are the subject of rules and regulations under section fifteen.

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

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

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

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

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

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

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

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

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

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

#### CHAPTER 25E.

#### DIVISION OF COASTAL MANAGEMENT

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

Section 2. The division of coastal management shall be within the department of marine fisheries and resources in the executive office of environmental affairs and shall be under the administrative supervision of a director who shall be called the director of coastal management. The director of the division of coastal management shall be appointed and may be removed by the commissioner of the department of marine fisheries and resources. The said division of coastal management shall administer all the laws relating to coastal management as appearing in chapter one hundred and thirty and any other general or special laws, except as pertain to the enforcement thereof. Said division shall co-operate with all departments, boards, officials and institutions of the commonwealth or its subdivisions that may be concerned in any way with matters under its supervision. It shall co-operate with adjoining states and with the United States of America, or any agency thereof, with foreign countries, and any other agency, as may be authorized by the general court, and receive and dispense such funds from any of such agencies, states or governments as may be authorized by the general court.

Section 3. The director shall from time to time determine and establish the jurisdictional boundaries of each agency in rivers and streams flowing into the sea. Said jurisdictional

boundaries may be based upon existing, man-made, natural, geographic or other known landmarks, or determined and established by other appropriate methods or means. The determination and establishment of any jurisdictional boundary made pursuant to this section shall serve solely to distinguish the jurisdiction of the division from the department for purposes of fisheries management authority, shall be prima facie evidence of the jurisdiction of each respective agency, and shall have no other independent legal significance. The director may prepare plans and maps delineating said jurisdictional boundaries, and shall file a copy thereof with the secretary of state and the director of the division of law enforcement.

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

Section 5. Except in the case of emergency imperiling life or property or an unavoidable accident or except in accordance with the terms of a permit issued pursuant to state or federal water pollution control laws, whoever from any source puts, throws, discharges or suffers or permits to be discharged or to escape into any coastal waters, any oil, poisonous or other injurious substance, including but not limited to, sawdust, shavings, garbage, ashes, acids, sewage and dye-stuffs, whether simple, mixed or compound, or heated effluent, which directly or indirectly materially injure fish, fishspawn or seed therein, or takes any such fish by such means, or whoever kills or destroys fish in such waters by the use of dynamite or other explosives, or takes any such fish in such waters by such means, or explodes dynamite or other explosive in such waters, shall be punished by a fine of not less than \$5,000 nor more than \$25,000 or by imprisonment for not more than one year or both.

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

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

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

1619           Section 7. The entrance or discharge into the coastal waters, or the tributaries of such  
1620 waters, of sewage or any other substance which might be injurious to the public health or might  
1621 tend to contaminate any shellfish areas or shellfish therein which may be determined by the  
1622 director to be of commercial value, or injuriously affect the fisheries therein, is hereby  
1623 prohibited; provided, that this section shall not be deemed to interfere with the exercise of any  
1624 right of drainage which had been approved by the department of public health prior to January  
1625 first, nineteen hundred and forty-two, or in any drainage thereafter approved by said department  
1626 or the department of environmental protection; provided further, that before granting such new  
1627 approval the commissioner of environmental protection shall have consulted with the director as  
1628 to the value of the marine fisheries involved. The provisions of this section shall not apply to any  
1629 such entrance or discharge of heated effluent authorized under the terms of a permit for such  
1630 entrance or discharge issued pursuant to state or federal water pollution control laws.

1631           Section 8. The supreme judicial court or any justice thereof, and the superior court or any  
1632 justice thereof, shall have jurisdiction in equity to enforce sections five, six or seven.  
1633 Proceedings to enforce the same may be instituted and prosecuted by the attorney general at the  
1634 request of the commissioner.

1635           Section 9. Whoever, contrary to any provision of section seven, himself, or by his agent  
1636 or servant, permits the entrance or discharge into or on any part of said coastal waters or  
1637 tributaries of such waters, sewage, heated effluent, or any other substance injurious to public  
1638 health or tending to contaminate any shellfish area or shellfish therein, within the limits of a city  
1639 or town, shall be punished by a fine of not less than one hundred and fifty nor more than five  
1640 thousand dollars or by imprisonment for not more than one year or both and shall be liable in  
1641 tort, to said city or town, in triple the amount of damage thereby done.

1642           Whoever, contrary to any provision of section seven, himself, or by his agent or servant,  
1643 permits the entrance or discharge into or on any part of said coastal waters or tributaries of such  
1644 waters, sewage, heated effluent, or any other substance injurious to public health or causing  
1645 injury or damage to any fishery resource, with the exception of shellfish located within the limits  
1646 of a city or town, within the marine boundaries of the commonwealth, shall be punished by a fine  
1647 of not less than one hundred and fifty dollars nor more than five thousand dollars or by  
1648 imprisonment for not more than one year or both and shall be liable in tort to the commonwealth,  
1649 in triple the amount of damage thereby done.

1650           Whoever, contrary to any provision of section seven, himself, or by his agent or servant,  
1651 permits the entrance or discharge into or on any part of said coastal waters or tributaries of such  
1652 waters, sewage, heated effluent, or any other substance injurious to public health or causing  
1653 injury or damage to any private fishery resource within the boundaries of the commonwealth  
1654 shall be liable in tort, to the owners or lessees of any private rights therein, in triple the amount  
1655 of damage thereby done.

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

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

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

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

Any person having an ownership interest, any lessees holding a lease of twenty-five years length or more and any mortgagor having an interest in land affected by any such order, may, within ninety days after receiving notice thereof, petition the superior court to determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefor an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such findings shall not affect any other land than that of the petitioner. The commissioner of environmental protection shall cause a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is registered, in the registry district of the land court. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation



shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any person have a right to petition for the assessment of damages under chapter seventy-nine by reason of the adoption of any such order.

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

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

No order adopted hereunder shall apply to any area under the control of the metropolitan district commission and the Massachusetts Water Resources Authority. No order adopted hereunder shall permit the construction in coastal wetlands of access driveways to unrestricted land except in a manner which allows the flow of the tide.

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

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

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

(b) Subject to appropriation, the employees of the transferor agency, including those who immediately before the effective date of this act held permanent appointment in positions

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

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

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

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

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

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

1765 (g) All duly existing contracts, leases and obligations of the transferor agency, shall  
1766 continue in effect but shall be assumed by the transferee agency. No such existing right or  
1767 remedy of any character shall be lost, impaired or affected by this act.

1768 SECTION 5. The general laws are hereby amended by striking chapter 130, as appearing  
1769 in the 2010 official edition.

1770 SECTION 6. Section 1 of chapter 131 of the general laws is hereby amended in lines 19  
1771 and 20, by deleting the definition of “Commissioner” and inserting in place thereof the  
1772 following:--

1773 ““Commissioner”, the commissioner of freshwater fisheries, wildlife and environmental  
1774 law enforcement.’

1775 SECTION 7. Section 1 of chapter 131 of the general laws is hereby amended in lines 23  
1776 and 24, by deleting the definition of “Department” and inserting in place thereof the following:--

1777 ““Department”, the department of freshwater fisheries, wildlife and environmental law  
1778 enforcement.’

1779 SECTION 8. Section 1 of chapter 131 of the general laws is hereby amended in line 27,  
1780 by deleting the definition of “Director” and inserting in place thereof the following:--

1781 ““Director”, the director of freshwater fisheries, wildlife and environmental law  
1782 enforcement.’