

**Maine Revised Statute Title 12, Chapter 605:  
GENERAL DEPARTMENT ACTIVITIES**

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## Subchapter 1: GENERAL ACTIVITIES

### 12 §6051. GENERAL DEPARTMENT ACTIVITIES

The department, under the direction of the commissioner, may conduct or sponsor programs for research and development of commercial, marine recreational and anadromous fishery resources and other marine resources of the State which may include biological, chemical, technological, hydrological, processing, depuration, marketing, financial, economic and promotional research and development. The department may carry out these programs within the department, in cooperation with other state agencies, and federal, regional and local governmental entities, or with private institutions or persons. [1987, c. 599, §1 (AMD).]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1987, c. 599, §1 (AMD).

### 12 §6052. SPECIFIC DEPARTMENT ACTIVITIES

The department, under the direction of the commissioner, may also: [1977, c. 661, §5 (NEW).]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 2003, c. 660, Pt. A, §2 (AMD) .]

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

A. Providing information on stock levels and environments of commercially and recreationally valuable marine and anadromous fish organisms; [1987, c. 599, §2 (AMD).]

B. Solving particular problems that relate to the State's commercial, marine recreational and anadromous fishing industry; [1991, c. 285, §1 (AMD).]

C. Providing technical and scientific information and support for all department activities; and [1991, c. 285, §2 (AMD).]

D. Establishing a marine research revolving fund for soliciting and receiving funds for conducting marine research. A marine research fund established under this paragraph may be used only for research purposes set forth under paragraphs A and B and may not be used for research specific to any one company; and [2003, c. 60, §3 (AMD).]

[ 2003, c. 60, §3 (AMD) .]

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

[ 2003, c. 60, §4 (NEW) .]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1987, c. 599, §2 (AMD). 1991, c. 285, §§1-3 (AMD). 2003, c. 60, §§2-4 (AMD). 2003, c. 660, §A2 (AMD).

## 12 §6053. GENERAL PENALTY

A violation of any provision of this chapter is a civil violation, unless another penalty has been expressly provided. [2005, c. 92, §1 (NEW).]

#### SECTION HISTORY

2005, c. 92, §1 (NEW).

### Subchapter 2: LEASES AND SPECIAL LICENSES

## 12 §6071. IMPORTING OF CERTAIN MARINE ORGANISMS

**1. Live importing for introduction into coastal waters.** Except for Atlantic salmon imported by the Atlantic Salmon Commission under Part 9, it is unlawful to import for introduction, possess for purposes of introduction or introduce into coastal waters a live marine organism without a permit issued by the commissioner pursuant to subsection 2.

[ 2007, c. 695, Pt. C, §2 (AMD) .]

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

[ 1997, c. 153, §1 (AMD) .]

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

[ 1997, c. 153, §1 (NEW) .]

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

A. The organism or product is introduced to coastal waters in violation of this section and the commissioner determines that the organism or product is of unsound quality, contains any filthy, decomposed or putrid substance, may be poisonous or deleterious to health or is otherwise unsafe; [1997, c. 153, §1 (NEW).]

B. The organism or product is intended for introduction to coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment; or [1997, c. 153, §1 (NEW).]

C. Handling of the organism or product could result in the introduction of that organism or product to the coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment. [1997, c. 153, §1 (NEW).]

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

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

[ 1997, c. 153, §1 (AMD) .]

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

[ 2007, c. 240, Pt. QQ, §3 (AMD) .]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1989, c. 205, §1 (AMD). 1991, c. 381, §2 (AMD). 1991, c. 390, §1 (AMD). 1993, c. 562, §1 (AMD). 1995, c. 406, §§4,5 (AMD). 1997, c. 153, §1 (AMD). 1999, c. 401, §BB3 (AMD). 2007, c. 240, Pt. QQ, §3 (AMD). 2007, c. 695, Pt. C, §2 (AMD).

## 12 §6071-A. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 212, §1 (NEW).]

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

[ 2007, c. 212, §1 (NEW) .]

#### SECTION HISTORY

2007, c. 212, §1 (NEW).

## 12 §6072. RESEARCH AND AQUACULTURE LEASES

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

[ 2003, c. 247, §2 (AMD) .]

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

A. [1997, c. 231, §2 (RP).]

B. A person operating a facility in the coastal waters of the State, on or before the effective date of this subsection, for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1992 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1992. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State. [1999, c. 567, §1 (AMD).]

B-1. A person operating a facility in the coastal waters of the State for the suspended culture of a marine organism other than shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1994 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1994. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State. [1999, c. 567, §1 (AMD) .]

C. The commissioner may not consider an application for a lease under this section on an area registered under paragraph B or B-1 from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B or B-1. [1999, c. 567, §1 (AMD) .]

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

[ 1999, c. 567, §1 (AMD) .]

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

A. A lease shall not exceed a term of 10 years; [1977, c. 661, §5 (NEW) .]

B. [1997, c. 138, §1 (RP) .]

C. [1987, c. 453, §1 (RP) .]

D. [1981, c. 609, §2 (RP) .]

E. Except as provided in subsection 13-A, the lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 500 acres; and [2005, c. 535, §1 (AMD) .]

F. No single lease may exceed 100 acres in size. [1987, c. 453, §1 (NEW) .]

[ 2005, c. 535, §1 (AMD) .]

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

[ 1999, c. 267, §1 (AMD) .]

**4. Applications.** The application shall:

A. Be written on forms supplied by the commissioner; [1977, c. 661, §5 (NEW).]

B. Describe the location of the proposed lease area by coordinates or metes and bounds; [1997, c. 138, §2 (AMD).]

C. Identify the species to be cultivated; [1977, c. 661, §5 (NEW).]

D. [1987, c. 453, §1 (RP).]

D-1. Characterize the physical and ecological impact of the project on existing uses of the site and any adverse effects on the existing uses of the area, as defined by regulation promulgated by the Commissioner of Marine Resources; [1987, c. 453, §1 (NEW).]

D-2. [1997, c. 138, §3 (RP).]

E. Describe the degree of exclusive use required by the project; [1977, c. 661, §5 (NEW).]

F. Include written permission of every riparian owner whose land to the low water mark will be actually used; [1987, c. 453, §1 (AMD).]

G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners as listed in the municipal tax records; [1987, c. 453, §1 (AMD).]

H. Include an environmental evaluation of the site upon which the decision to seek a lease was made. The evaluation shall include, but not be limited to, bottom characteristics, resident flora, fauna and hydrography of the site if appropriate for the proposed lease; [1987, c. 453, §1 (NEW).]

I. Describe the proposed source of organisms to be grown at the site; and [1987, c. 453, §1 (NEW).]

J. Include a nonrefundable application fee of at least \$100, but not more than \$2,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application. [2003, c. 660, Pt. A, §4 (AMD).]

[ 2003, c. 660, Pt. A, §4 (AMD) .]

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

[ 1997, c. 231, §3 (NEW) .]

**5. Application review.** The commissioner shall review the application and set a hearing date if the commissioner is satisfied that the written application is complete, the application indicates that the lease could be granted and the applicant has the financial and technical capability to carry out the proposed activities. When the commissioner has determined that the application is complete, the commissioner shall forward a

copy of the completed application and notice of hearing to the known riparian owners within 1,000 feet of the proposed lease and to the municipality or municipalities in which or adjacent to which the lease is proposed. A municipality must be granted intervenor status upon written request.

[ 1999, c. 591, §1 (AMD) . ]

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

[ 2003, c. 660, Pt. A, §5 (AMD) . ]

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

A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing shall be required to be given only to the lessee and the known riparian owners, the municipal officials of the municipality or municipalities in which or adjacent to which the lease is located and any interested parties that have provided a written request for notification. [1987, c. 453, §1 (AMD) . ]

B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public. [1977, c. 661, §5 (NEW) . ]

C. The Department of Environmental Protection, the Department of Conservation and the Department of Inland Fisheries and Wildlife must be notified of all lease applications. [1997, c. 138, §5 (AMD) . ]

D. [2003, c. 247, §3 (RP) . ]

[ 2003, c. 247, §3 (AMD) . ]

## **7. Decision.**

[ 1987, c. 453, §1 (RP) . ]

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

A. The lease will not unreasonably interfere with the ingress and egress of riparian owners. [ 2003, c. 660, Pt. A, §6 (AMD) . ]

B. The lease will not unreasonably interfere with navigation. [2003, c. 660, Pt. A, §6 (AMD) . ]

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

subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years. [2003, c. 660, Pt. A, §6 (AMD).]

D. The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna. [2003, c. 660, Pt. A, §6 (AMD).]

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site. [2003, c. 660, Pt. A, §6 (AMD).]

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

The Executive Department, State Planning Office shall maintain a list of conserved lands. The commissioner shall request this information from the State Planning Office prior to holding a preapplication proceeding. [2003, c. 660, Pt. A, §6 (AMD).]

G. The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site. [2003, c. 660, Pt. A, §6 (AMD).]

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass. [2003, c. 247, §4 (NEW).]

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

[ 2003, c. 660, Pt. A, §6 (AMD) .]

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

[ 2003, c. 247, §5 (AMD) .]

**8. Preference.** Except as provided in subsection 8-A, if more than one person applies to lease an area, preference must be given as follows:

A. First, to the department; [1977, c. 661, §5 (NEW).]

B. Second, to the riparian owner of the intertidal zone within the leased area; [1977, c. 661, §5 (NEW) .]

C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and [1997, c. 231, §4 (AMD).]

D. Fourth, to the riparian owner within 100 feet of leased coastal waters. [1977, c. 661, §5 (NEW) .]

[ 1997, c. 231, §4 (AMD) .]

**8-A. Preference for limited-purpose lease areas.** If more than one person applies to lease an area for which a person has been granted a limited-purpose lease under section 6072-A and the person who holds that limited-purpose lease is an applicant to lease that area under this section and that application was submitted before the expiration of that limited-purpose lease, preference must be given as follows:

- A. First, to the person who holds a limited-purpose lease for the area; [1997, c. 231, §5 (NEW).]
- B. Second, to the department; [1997, c. 231, §5 (NEW).]
- C. Third, to the riparian owner of the intertidal zone in which the leased area is located; [1997, c. 231, §5 (NEW).]
- D. Fourth, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and [1997, c. 231, §5 (NEW).]
- E. Fifth, to the riparian owner within 100 feet of leased coastal waters. [1997, c. 231, §5 (NEW).]

[ 1997, c. 231, §5 (NEW) .]

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

[ 2003, c. 660, Pt. A, §7 (AMD) .]

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

- A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located; [2003, c. 247, §6 (RPR).]
- B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained; [2003, c. 247, §6 (RPR).]
- C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and [2003, c. 247, §6 (RPR).]
- D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered proprietary information for the purposes of section 6077, subsection 4. [2009, c. 240, §8 (AMD).]

[ 2003, c. 247, §6 (RPR); 2009, c. 240, §8 (AMD) .]

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

[ 2003, c. 247, §7 (AMD) .]

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

A. When a lease under this section has been terminated by the lessee or has been revoked by the commissioner and all appeals have been exhausted, the commissioner may lease the same site on the same terms and conditions to a new lessee for the amount of time remaining in the term of the previous lease, subject to the requirements of this section. A lease that has been terminated or revoked may be assigned pursuant to this subsection at any time before its term expires. A lease assignment pursuant to this subsection is not an adjudicatory proceeding. [2009, c. 229, §1 (NEW).]

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

- (1) The application is complete, using forms provided by the commissioner;
- (2) The change in lessee would not violate any of the standards in subsection 7-A;
- (3) The assignment is not intended to circumvent the intent of subsection 8;
- (4) The assignment is not for speculative purposes; and
- (5) Except as provided in subsection 13-A, the assignment will not cause the assignee to be a tenant of any kind in leases covering an aggregate of more than 500 acres. [2009, c. 229, §1 (NEW).]

C. The commissioner shall consider the eligible proposals under paragraph B and shall either:

- (1) Select for assignment the proposal that is best suited to the lease site and in the best interests of the State;
- (2) Declare all proposals unsuitable and solicit new proposals; or
- (3) Suspend the assignment process for the lease site in question. [2009, c. 229, §1 (NEW).]

D. After a proposal is selected pursuant to paragraph C, but before the lease is assigned, the commissioner shall give notice of the pending assignment to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an opportunity to submit written comments on the proposed lease assignment within 14 days. The commissioner may decline to assign the lease and may select another proposal for assignment or proceed as described in paragraph C, subparagraph (2) or (3). [2009, c. 229, §1 (NEW).]

E. A decision by the commissioner to assign a lease or to decline to assign a lease to an applicant whose proposal was selected pursuant to paragraph C must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner to assign or not to assign a lease is a final decision. [2009, c. 229, §1 (NEW).]

F. The commissioner shall establish by rule the fee for assigning a lease under this subsection, which may not exceed \$5,000, based on the type of aquaculture conducted and the size of the lease. The assignee must pay the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 229, §1 (NEW).]

[2009, c. 229, §1 (NEW).]

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

A. The commissioner receives, at least 90 days prior to the termination of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term; [2003, c. 247, §8 (NEW).]

B. The lessee has complied with the lease agreement during the term of the lease; [2003, c. 247, §8 (NEW).]

C. The commissioner determines that renewal of the lease is in the best interest of the State; [ 2003 , c. 247 , §8 (NEW) . ]

D. Except as provided in subsection 13-A, the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 500 acres; and [ 2005 , c. 535 , §2 (AMD) . ]

E. The lease is not being held for speculative purposes. [ 2003 , c. 247 , §8 (NEW) . ]

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

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

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

[ 2005 , c. 535 , §2 (AMD) . ]

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

A. An application to transfer a lease pursuant to this subsection must be made on forms provided by the commissioner. When the commissioner determines that the application is complete, the commissioner shall give notice of the proposed transfer to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an opportunity to submit written comments on the proposed lease transfer within 14 days. [ 2009 , c. 229 , §2 (AMD) . ]

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

- (1) The change in lessee does not violate any of the standards in subsection 7;
- (2) The transfer is not intended to circumvent the intent of subsection 8;
- (3) The transfer is not for speculative purposes; and
- (4) Except as provided in subsection 13-A, the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.

A decision by the commissioner on an application to transfer a lease must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner on the transfer application is a final decision. [ 2009 , c. 229 , §2 (AMD) . ]

C. The commissioner shall establish by rule the fee for transferring a lease under this subsection, which may not exceed \$5,000, based on the type of aquaculture conducted and the size of the lease. The transferee must pay the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [ 2009 , c. 229 , §2 (AMD) . ]

[ 2009 , c. 229 , §2 (AMD) . ]

**12-B. Extension of lease.** If a person who holds a lease pursuant to this section submits a completed renewal application pursuant to subsection 12 for that lease area before the expiration of that lease, the lease remains in effect until the commissioner makes a decision pursuant to subsection 12.

[ 2005 , c. 92 , §2 (NEW) . ]

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

A. Establishing minimum standards for maintaining leases; [1981, c. 609, §4 (NEW).]

B. For procedures to issue, transfer, review, assign or revoke leases; [2009, c. 229, §3 (AMD).]

C. For notices and hearings to the extent that those procedures are not established by this section or the Maine Administrative Procedure Act, Title 5, chapter 375; [1987, c. 453, §1 (AMD).]

D. For regulating the harvest of wild organisms to be cultured on aquaculture leases; [1987, c. 453, §1 (NEW).]

E. For establishing and revaluing fees and rents related to aquaculture; [1993, c. 525, §1 (AMD).]

F. For defining application requirements, an application review process and decision criteria; [2003, c. 660, Pt. A, §11 (AMD).]

G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species on the lease site; and [2003, c. 660, Pt. A, §12 (AMD).]

H. For establishing fallowing requirements and procedures. [2003, c. 660, Pt. A, §13 (NEW).]

[ 2003, c. 660, Pt. A, §§11-13 (AMD); 2009, c. 229, §3 (AMD) .]

**13-A. Lease acreage increase; fallowing.** The commissioner may require a person to submit an annual fallowing plan and a reassessment schedule for that plan to the commissioner that identifies lease sites that have been actively operated during the lease period and that will be fallowed. The commissioner shall review the plan and reassessment schedule and may approve them, reject them or request changes. Revisions to the plan must be submitted in accordance with the reassessment schedule unless the commissioner authorizes an exception due to extraordinary circumstances.

A. Except as provided in paragraph B, a person may not be a tenant of any kind in leases covering an aggregate of more than 500 acres including fallowed leases at any time. [2005, c. 535, §4 (NEW).]

B. The commissioner may by rule authorize leases in excess of the 500-acre limit if the commissioner determines that the increase is beneficial for the management of aquaculture and is environmentally and economically appropriate. The commissioner may not authorize a person to be a tenant of any kind in leases covering an aggregate of more than 1,500 acres. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 535, §4 (NEW).]

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

[ 2005, c. 535, §4 (RPR) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1987, c. 453, §1 (NEW) .]

**16. Lease-by-rule; small-scale finfish and suspended shellfish operations.**

[ 1997, c. 138, §7 (RP) .]

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

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and [2005, c. 92, §3 (NEW).]

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment. [2005, c. 92, §3 (NEW).]

[ 2005, c. 92, §3 (NEW) .]

## SECTION HISTORY

1977, c. 661, §5 (NEW). 1981, c. 609, §§1-4 (AMD). 1983, c. 301, §§1-4 (AMD). 1987, c. 453, §1 (AMD). 1987, c. 891, (AMD). 1991, c. 381, §§3,4 (AMD). 1993, c. 409, §1 (AMD). 1993, c. 525, §§1,2 (AMD). 1995, c. 383, §§1-3 (AMD). 1995, c. 502, §E30 (AMD). 1997, c. 138, §§1-7 (AMD). 1997, c. 231, §§2-5 (AMD). 1997, c. 609, §§1-3 (AMD). 1999, c. 267, §§1,2 (AMD). 1999, c. 567, §1 (AMD). 1999, c. 591, §§1,2 (AMD). 2003, c. 247, §§2-8 (AMD). 2003, c. 660, §§A3-14 (AMD). 2005, c. 92, §§2,3 (AMD). 2005, c. 535, §§1-4 (AMD). 2009, c. 229, §§1-3 (AMD). 2009, c. 240, §8 (AMD).

**12 §6072-A. LIMITED-PURPOSE LEASE FOR COMMERCIAL OR SCIENTIFIC RESEARCH**

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

[ 2003, c. 247, §9 (AMD) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 2009, c. 229, §4 (AMD) .]

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

[ 2003, c. 247, §10 (AMD) . ]

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

[ 1997, c. 231, §6 (NEW) . ]

**7. Notice of public hearing.** The commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing.

[ 2003, c. 247, §11 (AMD) . ]

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

[ 2001, c. 122, §1 (AMD) . ]

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

[ 1997, c. 231, §6 (NEW) . ]

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

[ 1997, c. 231, §6 (NEW) . ]

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

[ 1997, c. 231, §6 (NEW) .]

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

A. First, to the department; [1997, c. 231, §6 (NEW) .]

B. Second, to the riparian owner of the intertidal zone in which the leased area is located; [1997, c. 231, §6 (NEW) .]

C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and [1997, c. 231, §6 (NEW) .]

D. Fourth, to the riparian owner within 100 feet of leased coastal waters. [1997, c. 231, §6 (NEW) .]

[ 1997, c. 231, §6 (NEW) .]

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

A. Will not unreasonably interfere with the ingress and egress of riparian owners; [1997, c. 231, §6 (NEW) .]

B. Will not unreasonably interfere with navigation; [1997, c. 231, §6 (NEW) .]

C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area; [1997, c. 231, §6 (NEW) .]

D. Will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; [1997, c. 231, §6 (NEW) .]

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; and [1997, c. 231, §6 (NEW) .]

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, state-owned or federally owned beaches and parks or municipally owned, state-owned or federally owned docking facilities. [1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 2003, c. 660, Pt. A, §15 (AMD) .]

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

[ 1997, c. 231, §6 (NEW) .]

**17. Actions required of lease holder.**

[ 2003, c. 247, §12 (RP) .]

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

A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained; [2003, c. 247, §13 (NEW) .]

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; [2009, c. 240, §9 (AMD) .]

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A; and [2009, c. 240, §10 (AMD) .]

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered proprietary information for the purposes of section 6077, subsection 4. [2009, c. 240, §11 (NEW) .]

[ 2003, c. 247, §13 (NEW); 2009, c. 240, §§9-11 (AMD) .]

**18. Scientific lease renewal.** A limited-purpose lease for scientific research may be renewed. The commissioner must hold a public hearing before deciding upon the request for renewal. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease; [1997, c. 231, §6 (NEW) .]

B. Research has not been conducted during the term of the lease; or [1997, c. 231, §6 (NEW) .]

C. It is not in the best interest of the State to renew the limited-purpose lease. [1997, c. 231, §6 (NEW) .]

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

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

[ 1997, c. 231, §6 (NEW) .]

### **21. Monitoring lease.**

[ 2003, c. 247, §14 (RP) .]

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

[ 2003, c. 247, §15 (NEW) .]

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

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and [2005, c. 92, §4 (NEW) .]

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment. [2005, c. 92, §4 (NEW) .]

[ 2005, c. 92, §4 (NEW) .]

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 231, §6 (NEW) .]

#### SECTION HISTORY

1997, c. 231, §6 (NEW). 2001, c. 122, §1 (AMD). 2003, c. 247, §§9-15 (AMD). 2003, c. 660, §A15 (AMD). 2005, c. 92, §4 (AMD). 2009, c. 229, §4 (AMD). 2009, c. 240, §§9-11 (AMD).

## **12 §6072-B. EMERGENCY AQUACULTURE LEASE FOR SHELLFISH**

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

[ 1997, c. 231, §6 (NEW) .]

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

A. The applicant holds a lease pursuant to section 6072 or 6072-A; [1997, c. 231, §6 (NEW) .]

B. The applicant demonstrates to the commissioner that the health and safety of shellfish at the leased area are threatened; and [1997, c. 231, §6 (NEW) .]

C. The commissioner determines the relocation of those shellfish to an emergency aquaculture lease area would not threaten the water quality of the receiving waters or the health of marine organisms in those waters. [1997, c. 231, §6 (NEW).]

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

**7. Extension of emergency aquaculture lease.** If a person who holds an emergency aquaculture lease submits an application under section 6072 or 6072-A for that lease area within 60 days of being granted the emergency aquaculture lease, and if the commissioner's decision under section 6072 or 6072-A occurs after the expiration of that emergency aquaculture lease, the emergency aquaculture lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the commissioner denies that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the commissioner's decision.

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

A. Record the lease in the registry of deeds of each county in which the leased area is located; and  
[1997, c. 231, §6 (NEW).]

B. Mark the leased area in a manner prescribed by the commissioner. [1997, c. 231, §6 (NEW) .]

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

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

[ 1997, c. 231, §6 (NEW) .]

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 231, §6 (NEW).]

#### SECTION HISTORY

1997, c. 231, §6 (NEW).

## 12 §6072-C. LIMITED-PURPOSE AQUACULTURE LICENSE

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

[ 2001, c. 421, Pt. B, §10 (AMD); 2001, c. 421, Pt. C, §1 (AFF) .]

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

A. The proposed activity generates no discharge into coastal waters; [1999, c. 567, §2 (NEW) .]

B. The applicant proposes to utilize aquaculture gear and markings approved by the commissioner in rules adopted pursuant to subsection 8; [1999, c. 567, §2 (NEW) .]

C. The gear, excluding mooring equipment, does not cover more than 400 square feet of area and the gear does not present an unreasonable impediment to safe navigation; [1999, c. 567, §2 (NEW) .]

D. The proposed activity does not unreasonably interfere with the ingress and egress of riparian owners; [1999, c. 567, §2 (NEW) .]

E. The proposed activity does not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases and licensed aquaculture activities in that area; [2009, c. 229, §5 (AMD) .]

F. The applicant holds no more than 3 other limited-purpose aquaculture licenses issued under this section; and [2009, c. 229, §5 (AMD) .]

G. The consent of the riparian landowner is obtained if the proposed activity is located above the mean low-water mark. [2009, c. 229, §5 (NEW).]

[ 2009, c. 229, §5 (AMD) .]

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

[ 2009, c. 229, §6 (AMD) .]

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

[ 1999, c. 567, §2 (NEW) .]

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

A. Be written on forms supplied by the commissioner; [1999, c. 567, §2 (NEW) .]

B. Identify the species to be cultivated; [1999, c. 567, §2 (NEW) .]

C. Describe the proposed source of organisms to be grown in the approved aquaculture gear; [1999, c. 567, §2 (NEW) .]

D. Describe the location of the approved aquaculture gear deployment by coordinates or metes and bounds; [1999, c. 567, §2 (NEW) .]

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

(1) A location plan with an overhead plan view showing the aquaculture gear deployed at the proposed location. The area occupied by the gear must be drawn to scale on the plan. The location plan must include a north arrow, ebb and flood directions, any federal or local channels and anchorages, any nearby structures and property lines for all riparian owners within 300 feet; and

(2) Two gear drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear; [1999, c. 567, §2 (NEW) .]

F. Include documentation that riparian landowners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and [1999, c. 567, §2 (NEW) .]

G. Include documentation that the municipal harbor master or appropriate municipal officers have been notified of the license application and proposed activity. [1999, c. 567, §2 (NEW) .]

[ 1999, c. 567, §2 (NEW) .]

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

[ 2009, c. 229, §7 (AMD) .]

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

A. [2001, c. 421, Pt. C, §1 (AFF); 2001, c. 421, Pt. B, §11 (RP) .]

B. [2001, c. 421, Pt. C, §1 (AFF); 2001, c. 421, Pt. B, §11 (RP).]

[ 2001, c. 421, Pt. B, §11 (AMD); 2001, c. 421, Pt. C, §1 (AFF) .]

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

[ 1999, c. 567, §2 (NEW) .]

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

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and [2001, c. 421, Pt. B, §12 (NEW); 2001, c. 421, Pt. C, §1 (AFF).]

B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment. [2001, c. 421, Pt. B, §12 (NEW); 2001, c. 421, Pt. C, §1 (AFF).]

[ 2005, c. 92, §5 (AMD) .]

#### SECTION HISTORY

1999, c. 567, §2 (NEW). 2001, c. 421, §§B10-12 (AMD). 2001, c. 421, §C1 (AFF). 2003, c. 247, §16 (AMD). 2005, c. 92, §5 (AMD). 2007, c. 212, §2 (AMD). 2009, c. 229, §§5-7 (AMD).

## 12 §6072-D. AQUACULTURE MANAGEMENT FUND

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

[ 2003, c. 660, Pt. A, §16 (NEW) .]

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

[ 2003, c. 660, Pt. A, §16 (NEW) .]

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

[ 2003, c. 660, Pt. A, §16 (NEW) .]

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

[ 2003, c. 660, Pt. A, §16 (NEW) .]

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

[ 2003, c. 660, Pt. A, §16 (NEW) .]

#### SECTION HISTORY

2003, c. 660, §A16 (NEW).

## 12 §6073. EXCLUSIVITY; PROHIBITION OR INTERFERENCE

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

A. Is a grower licensed under section 6863, an employee of a licensed grower or an agent of a licensed grower; or [1991, c. 876, §1 (NEW).]

B. Is in the possession of a bill of sale or a bill of lading that includes the license number of the grower. [1991, c. 876, §1 (NEW).]

[ 1991, c. 876, §1 (NEW) .]

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

[ 2007, c. 212, §3 (NEW) .]

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

[ 1995, c. 157, §1 (AMD) .]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1991, c. 284, (AMD). 1991, c. 876, §1 (AMD).  
1995, c. 157, §1 (AMD). 2007, c. 212, §3 (AMD).

### **12 §6073-A. SEASON AND MINIMUM SIZE EXEMPTION; AQUACULTURE**

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

[2007, c. 522, §1 (AMD).]

#### SECTION HISTORY

1991, c. 381, §5 (NEW). 1999, c. 156, §1 (AMD). 1999, c. 575, §1 (AMD).  
2005, c. 92, §6 (AMD). 2007, c. 522, §1 (AMD).

### **12 §6073-B. HARVESTER LICENSE EXEMPTION; AQUACULTURE**

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6421, 6501, 6748, 6748-A, 6748-D, 6751, 6801-A and 6803 to hold a separate license for the removal, possession, transport or sale of the cultured organisms, except for molluscan bivalve shellfish, from the leased area or the licensed gear. [2007, c. 522, §2 (NEW) .]

*§6073-B. Harvester license exemption; scallop aquaculture*

*(As enacted by PL 2007, c. 607, Pt. A, §1 is REALLOCATED TO TITLE 12, SECTION 6073-C)*

#### SECTION HISTORY

2007, c. 522, §2 (NEW). 2007, c. 607, Pt. A, §1 (NEW).

### **12 §6073-C. HARVESTER LICENSE EXEMPTION; SCALLOP AQUACULTURE (REALLOCATED FROM TITLE 12, SECTION 6073-B)**

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

[2007, c. 2, §4 (RAL).]

#### SECTION HISTORY

RR 2007, c. 2, §4 (RAL).

## 12 §6073-D. SEASON AND SIZE EXEMPTION

A person who is in possession of a marine organism raised by means of aquaculture and lawfully obtained under the laws of the State is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement, except that this section does not apply to the requirements for lobsters, sturgeon and striped bass. This exemption applies to aquaculture products that do not meet the legal size or season requirements for wild-caught marine organisms of the same species. [2009, c. 229, §8 (NEW).]

The person possessing the marine organism must maintain sufficient documentation to prove the aquacultural origin of the marine organism, including, but not limited to, documents indicating the point of origin, quantity and dates of production or purchase of all cultured marine organisms exempted by this section, and the holder must present the documentation for inspection to department personnel upon request. A consumer in possession of such a marine organism may present a valid sales receipt to satisfy this requirement. It is prima facie evidence of possession of a marine organism in violation of the law if the person possessing the marine organism cannot present sufficient evidence to prove its aquacultural origin. [2009, c. 229, §8 (NEW).]

This section does not exempt the possessor of the marine organism from any requirement to hold a lease or license pursuant to section 6072, 6072-A, 6072-B, 6072-C or 6085 to engage in the culture of marine organisms. [2009, c. 229, §8 (NEW).]

### SECTION HISTORY

2009, c. 229, §8 (NEW).

## 12 §6074. SPECIAL LICENSE

The commissioner may issue a special license for research, aquaculture or education that exempts the holder from one or more marine resources' laws as to the time, place, length, condition, amount and manner of taking or possessing a marine organism. Except as provided in subsection 8, the commissioner may not issue a special license unless the application for that license is approved by the advisory council. [1995, c. 567, §1 (AMD).]

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

A. [1999, c. 156, §2 (RP).]

B. Any species grown in a hatchery for stock enhancement or resale for purposes of cultivation or stock enhancement. [1999, c. 156, §3 (NEW).]

[1999, c. 156, §§2, 3 (AMD).]

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

[1977, c. 661, §5 (NEW).]

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

[2003, c. 513, Pt. N, §1 (AMD).]

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

[ 1977, c. 713, §2 (AMD) .]

**5. Fees.** At the time of the initial issuance of a special license, and each year upon renewal, an annual fee must be paid. The annual fee for a special license for no more than 2 individuals is \$50. An annual fee for a special license for more than 2 individuals but no more than 10 individuals is \$100. Additional individuals may be included in a special license in groups up to 10 for an additional \$100 per group. The fee may be waived for research activity by institutions or organizations financed in whole or in part by state funding. A license fee may not be required from a municipality for a special license for using a hydraulic dredge under section 6623. A license fee may not be required for employees of the department when they are acting in their capacity as employees under the direction of the commissioner or the commissioner's designated representative.

[ 2003, c. 513, Pt. N, §2 (AMD) .]

#### **6. Renewal.**

A. The initial issuance of each special license must specify the number of times the license may be renewed after the initial issuance. Each license may be renewed at least 4 times. The commissioner, with the advice and consent of the advisory council, may authorize renewals if the necessary investment in the research or aquaculture requires additional renewals. [2003, c. 513, Pt. N, §3 (AMD).]

B. The commissioner shall annually renew the license on request for the authorized number of renewals, unless the license holder has not complied with the conditions of the license or the commissioner finds that renewal is not in the best interest of the State. Renewals do not require a new application or filing fee and do not require the advice and consent of the advisory council. [2003, c. 513, Pt. N, §3 (AMD).]

[ 2003, c. 513, Pt. N, §3 (AMD) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

- A. An employee of the department when the employee is acting under the direction of the commissioner or the commissioner's designated representative; [1995, c. 567, §2 (NEW).]
- B. A person who operates an aquarium; [1995, c. 567, §2 (NEW).]
- C. A person who operates a festival; [1995, c. 567, §2 (NEW).]
- D. A person who undertakes a public service activity; [2003, c. 104, §1 (AMD).]
- E. A municipality that operates a hydraulic or mechanical soft-shell clam dredge for municipal transplanting projects under section 6623; or [2003, c. 104, §1 (AMD).]

F. A teacher who is providing a primary or secondary school program. [2003, c. 104, §2 (NEW).]

[ 2003, c. 104, §§1, 2 (AMD) .]

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

[ 2003, c. 513, Pt. N, §4 (NEW) .]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1977, c. 713, §2 (AMD). 1979, c. 412, (AMD). 1979, c. 622, §§1,2 (AMD). 1981, c. 189, (AMD). 1983, c. 662, §§2-4 (AMD). 1989, c. 204, §§1,2 (AMD). 1995, c. 567, §§1,2 (AMD). 1999, c. 156, §§2,3 (AMD). 2003, c. 104, §§1,2 (AMD). 2003, c. 513, §§N1-4 (AMD).

## 12 §6075. PATHOLOGY PROGRAM

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

[ 1983, c. 559, §1 (NEW) .]

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

[ 1983, c. 559, §1 (NEW) .]

#### SECTION HISTORY

1983, c. 559, §1 (NEW).

## 12 §6076. MARINE SHELLFISH TOXINS MONITORING PROGRAM

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

[ 1989, c. 205, §2 (AMD) .]

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

[ 1985, c. 784, §1 (NEW) .]

#### SECTION HISTORY

1985, c. 784, §1 (NEW). 1989, c. 205, §2 (AMD).

## 12 §6077. AQUACULTURE MONITORING PROGRAM

The department may establish and maintain an information base pertaining to the siting, development and operation of finfish aquaculture facilities within the State. [2003, c. 660, Pt. A, §17 (AMD).]

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

[ 1991, c. 381, §6 (NEW) .]

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

- A. Geophysical site characteristics, including currents and bathymetry; [1991, c. 381, §6 (NEW) .]
- B. Benthic habitat characteristics and effects, including changes in community structure and function; [1991, c. 381, §6 (NEW).]
- C. Water column effects, including water chemistry and plankton; [1991, c. 381, §6 (NEW).]
- D. Feeding and production data sufficient to estimate effluent loading; [1991, c. 381, §6 (NEW) .]
- E. Smolt and broodstock introduction and transfer data; [1991, c. 381, §6 (NEW).]
- F. Disease incidence and use of chemical therapeutics; and [1991, c. 381, §6 (NEW).]
- G. Other ancillary information as the commissioner may find necessary. [1991, c. 381, §6 (NEW) .]

[ 2003, c. 660, Pt. A, §18 (AMD) .]

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

[ 2003, c. 660, Pt. A, §18 (AMD) .]

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

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

- A. Information submitted to the department under this section may be designated by the submitter as proprietary information and being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility

is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. Information that has been designated by the submitter as proprietary information may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph. [2009, c. 240, §12 (AMD).]

B. The commissioner may not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal. [1991, c. 381, §6 (NEW).]

C. Any information that is collected by any other state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under paragraph A. [1991, c. 381, §6 (NEW).]

D. The commissioner may adopt rules to carry out the purposes of this section. The rules must be consistent with the provisions of Title 1, chapter 13, subchapter I. [1991, c. 381, §6 (NEW).]

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

- (1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.
- (2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.
- (3) In any action under this paragraph, the court shall first declare that the information is proprietary information. [2009, c. 240, §13 (AMD).]

F. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [2009, c. 240, §14 (NEW).]

[ 2003, c. 247, §17 (AMD); 2009, c. 240, §§12-14 (AMD) .]

#### SECTION HISTORY

1991, c. 381, §6 (NEW). 2003, c. 247, §17 (AMD). 2003, c. 660, §§A17,18 (AMD). 2009, c. 240, §§12-14 (AMD).

## **12 §6078. SALMON AQUACULTURE MONITORING, RESEARCH AND DEVELOPMENT FUND**

*(REPEALED)*

#### SECTION HISTORY

1991, c. 381, §7 (NEW). 1993, c. 562, §2 (AMD). 1995, c. 176, §3 (AFF). 1995, c. 176, §1 (RP). 1995, c. 609, §2 (RPR). RR 1995, c. 2, §§21,22 (COR). 1997, c. 189, §1 (AMD). 1999, c. 156, §4 (AMD). 2003, c. 247, §18 (RP).

## 12 §6078-A. AQUACULTURE MONITORING, RESEARCH AND DEVELOPMENT FUND

**1. Fund established.** The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered proprietary information for the purposes of section 6077, subsection 4.

[ 2009, c. 240, §15 (AMD) .]

### 2. Fees.

[ 2005, c. 92, §7 (RP) .]

**3. Expenditures; purpose.** The commissioner may make expenditures from the fund to develop effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data and process lease applications. The commissioner shall expend the fund amounts in proportion to the amounts of revenue from finfish sources and shellfish sources. In developing a program of expenditures, the commissioner shall consult with the Aquaculture Advisory Council established under Title 5, section 12004-I, subsection 57-C. The commissioner may contract for services privately or under memoranda of agreement with other state agencies.

[ 2003, c. 247, §19 (NEW) .]

### 4. Additional revenues.

[ 2005, c. 92, §8 (RP) .]

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

[ 2003, c. 247, §19 (NEW) .]

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

[ 2003, c. 247, §19 (NEW) .]

#### SECTION HISTORY

2003, c. 247, §19 (NEW). 2003, c. 660, §§A19,20 (AMD). 2005, c. 92, §§7,8 (AMD). 2009, c. 240, §15 (AMD).

## 12 §6079. AQUACULTURAL USE OF ANTIBIOTICS; NOTICE (REPEALED)

### SECTION HISTORY

1991, c. 381, §7 (NEW). 1997, c. 231, §7 (AMD). 2009, c. 229, §9 (RP).

## 12 §6080. AQUACULTURE ADVISORY COUNCIL

**1. Appointment; composition.** The Aquaculture Advisory Council, referred to in this section as the "council" and established by Title 5, section 12004-I, subsection 57-C, consists of 5 members. The commissioner or the commissioner's designee is a nonvoting, ex officio member of the council. The commissioner shall appoint 4 members from the State's aquaculture industry. No more than 2 of the appointed members may represent similar segments of the State's aquaculture industry.

[ 2003, c. 247, §20 (AMD) .]

**2. Term.** Council members serve for 3 years and continue serving until a successor is duly appointed and qualified. In the case of a vacancy, the commissioner shall promptly fill the vacancy.

[ 1995, c. 609, §3 (NEW) .]

**3. Purpose.** The council shall make recommendations to the commissioner concerning expenditures from the Aquaculture Management Fund for the purposes described under section 6072-D and concerning other matters of interest to the aquaculture industry.

[ 2005, c. 92, §9 (AMD) .]

**4. Chair and officers.** The council annually shall choose one of its members to serve as chair for a one-year term. The council may select other officers and designate their duties.

[ 1995, c. 609, §3 (NEW) .]

**5. Meetings.** The council shall meet at least once each year. It may also meet at other times at the call of the chair or the chair's designee or the commissioner or the commissioner's designee. The council may conduct a meeting by means of a conference call linking 2 or more members of the council.

[ 2003, c. 247, §20 (AMD) .]

### 6. Repeal.

[ 1999, c. 156, §5 (RP) .]

### SECTION HISTORY

1995, c. 609, §3 (NEW). RR 1995, c. 2, §23 (COR). 1997, c. 189, §2 (AMD). 1999, c. 156, §5 (AMD). 2003, c. 247, §20 (AMD). 2005, c. 92, §9 (AMD).

## 12 §6081. AQUACULTURE RESEARCH FUND

The Aquaculture Research Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund within the department. In addition to the fees derived from the limited-purpose aquaculture license, the commissioner may receive on behalf of the fund funds from any source. The commissioner

shall use all money received into the fund for research and management related to the aquaculture industry. Unexpended balances in the fund at the end of the fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund. [1999, c. 567, §3 (NEW).]

SECTION HISTORY

1999, c. 567, §3 (NEW).

## 12 §6082. CONFIDENTIALITY PROVISIONS FOR AQUACULTURE INFORMATION FROM OTHER JURISDICTIONS

Information obtained from other state, federal or foreign government agencies about aquaculture operations in other states, foreign countries or the exclusive economic zone that is designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt must be kept confidential by the department. Such information is not a public record as defined in Title 1, section 402, subsection 3. This section does not apply to aquaculture operations conducted in Maine. [2007, c. 212, §4 (NEW).]

SECTION HISTORY

2007, c. 212, §4 (NEW).

## 12 §6083. LEASE OPTION

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

[ 2009, c. 229, §10 (NEW) .]

**2. Other claims of preference.** A lease option under this section does not supersede the provisions for application preference in section 6072, subsection 8 and section 6072-A, subsection 12. Competing aquaculture lease applications from persons claiming preference under section 6072, subsection 8 or section 6072-A, subsection 12 must be evaluated by the department to determine if the claim of preference is valid and, if it is found to be valid, the holder of the lease option may cancel the lease option and receive a fee refund prorated for the remainder of the term of the lease option.

[ 2009, c. 229, §10 (NEW) .]

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

[ 2009, c. 229, §10 (NEW) .]

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

[ 2009, c. 229, §10 (NEW) . ]

SECTION HISTORY

2009, c. 229, §10 (NEW).

## 12 §6084. NONPAYMENT OF AQUACULTURE LEASE FEES

If a holder of an aquaculture lease or license under this subchapter fails to pay any related fees or charges, the commissioner may refuse to renew or issue any marine resources license or permit to the holder of the aquaculture lease or license. [2009, c. 229, §11 (NEW).]

SECTION HISTORY

2009, c. 229, §11 (NEW).

## 12 §6085. MARINE ORGANISM AQUACULTURE LICENSE

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

[ 2009, c. 229, §12 (NEW) . ]

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

[ 2009, c. 229, §12 (NEW) . ]

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

A. Risk of accidental or intentional introduction of marine organisms or marine organism products into the coastal waters of the State; [2009, c. 229, §12 (NEW) . ]

B. Risk of the introduction or spread of disease within the State; and [2009, c. 229, §12 (NEW) . ]

C. Interference with the enforcement of possession, size or season limits for wild marine organisms. [2009, c. 229, §12 (NEW) . ]

[ 2009, c. 229, §12 (NEW) . ]

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

[ 2009, c. 229, §12 (NEW) . ]

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

[ 2009, c. 229, §12 (NEW) . ]

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

[ 2009, c. 229, §12 (NEW) . ]

#### SECTION HISTORY

2009, c. 229, §12 (NEW) .

## 12 §6086. ABANDONED AQUACULTURE EQUIPMENT AND STOCK

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

A. "Abandoned aquaculture equipment" or "equipment" means any equipment associated with the operation of an aquaculture lease or license pursuant to section 6072, 6072-A, 6072-B or 6072-C that has been left by the aquaculture lease or license holder in coastal waters without intention of removal. "Abandoned aquaculture equipment" includes, but is not limited to, rafts, pens, barges, skiffs, nets, lines, mooring systems, cages, trays, racks, upwellers and other equipment used in the operation of an aquaculture site. [2009, c. 229, §13 (NEW) .]

B. "Abandoned aquaculture stock" or "stock" means cultured marine organisms, including, but not limited to, fish, shellfish, sea urchins and algae, that have been left by the owner in coastal waters without intention of removal. [2009, c. 229, §13 (NEW) .]

[ 2009, c. 229, §13 (NEW) . ]

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

A. The aquaculture lease or license holder has indicated in writing to the department that the holder wishes to terminate the aquaculture lease or license with which the abandoned equipment or stock is associated; the department has revoked the lease pursuant to section 6072, subsection 11 or section 6072-A, subsection 22; or the term of the lease or license has expired; [2009, c. 229, §13 (NEW) .]

B. The equipment or stock remains in the area of the lease or license site and the equipment or stock is not legally permitted to remain by another authority, such as a municipal mooring permit; and [2009, c. 229, §13 (NEW) .]

C. The aquaculture lease or license holder has not entered into an agreement with the department to accomplish timely removal of the equipment or stock. [2009, c. 229, §13 (NEW) .]

[ 2009, c. 229, §13 (NEW) . ]

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

A. The department shall investigate reports of abandoned aquaculture equipment or abandoned aquaculture stock and review terminated, expired or revoked aquaculture leases and licenses to determine if there is abandoned aquaculture equipment or abandoned aquaculture stock and give notice

to the aquaculture lease or license holder. The department shall also give notice to any person who has declared to the department, in writing, a property interest in the equipment or stock and to any person the lease or license holder has, in writing, identified as having a property interest in the equipment or stock. The notice must require the lease or license holder and anyone with a property interest to respond within 15 days and to remove the equipment or stock from the coastal waters within 60 days of notification by the department or, if the equipment or stock is icebound, within 60 days of ice-out in the body of water where the equipment or stock is located. If the persons to whom the department has given notice cannot be contacted or do not respond to the notice and remove the equipment or stock within the time period specified, the department may initiate removal of the equipment or stock. [2009, c. 229, §13 (NEW).]

B. The department may authorize a 3rd party to remove abandoned aquaculture equipment or abandoned aquaculture stock if the department is satisfied that the work will be completed. [2009, c. 229, §13 (NEW).]

C. Notwithstanding the time periods for removal by a lease or license holder or person with a property interest specified in paragraph A, if the department determines at any time that abandoned aquaculture equipment or abandoned aquaculture stock is a human health or safety hazard or is an immediate threat to the marine environment, the department may immediately remove the equipment or stock from the coastal waters. [2009, c. 229, §13 (NEW).]

D. If the department removes abandoned aquaculture equipment or abandoned aquaculture stock from coastal waters under this subsection, the department may sell the equipment or stock. Any proceeds from the sale must first be applied to the costs to the State directly related to the expense of removal of the equipment or stock. Any money that remains may be applied to any liens against the equipment or stock. Money that finally remains must accrue to the Aquaculture Management Fund established under section 6072-D. [2009, c. 229, §13 (NEW).]

E. Abandoned aquaculture equipment or abandoned aquaculture stock located on intertidal land may not be removed by the department without the permission of the landowner unless the department determines that the equipment or stock is a human health or safety hazard or is an immediate threat to the marine environment. [2009, c. 229, §13 (NEW).]

F. The department may adopt rules governing abandoned aquaculture equipment and abandoned aquaculture stock, including, but not limited to, rules requiring the disclosure of property interests in abandoned aquaculture equipment and abandoned aquaculture stock. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 229, §13 (NEW).]

[ 2009, c. 229, §13 (NEW) .]

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

[ 2009, c. 229, §13 (NEW) .]

#### SECTION HISTORY

2009, c. 229, §13 (NEW).

### Subchapter 3: INSPECTION AND QUALITY CONTROL

## 12 §6101. VOLUNTARY FISH PRODUCTS INSPECTION PROGRAM

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

[ 1989, c. 57, §2 (AMD) .]

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

[ 1989, c. 57, §2 (AMD) .]

**3. Regulations.** The commissioner may adopt or amend regulations not inconsistent with the National Shellfish Sanitation Program and National Marine Fisheries Services regulations for the voluntary inspection of fishery products.

[ 1989, c. 57, §2 (AMD) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

[ 1977, c. 661, §5 (NEW) .]

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

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

[ 1977, c. 661, §5 (NEW) .]

### SECTION HISTORY

1977, c. 661, §5 (NEW). 1989, c. 57, §2 (AMD).

## 12 §6102. MANDATORY QUALITY CONTROL PROGRAM

The commissioner may, in accordance with the most modern public health and food protection practices, establish and maintain effective surveillance and inspection of all segments of the state's fishing industries. He may establish a program to carry out this responsibility. The program may include provisions similar to those of section 6856, shellfish sanitation and certificate, and section 6101, voluntary fish products inspection program, including any additional inspection, licensing and certification requirements that are necessary to insure proper sanitation and quality control. The commissioner may adopt or amend regulations prescribing the minimum standards for establishments and for sanitation and quality control of the processing of any marine organism or its products. Each set of regulations shall be based on the particular operational requirements of the species or phase of industry being regulated, and shall conform to the latest state or federal sanitation standards. [1981, c. 705, Pt. C, §1 (AMD).]

### SECTION HISTORY

1977, c. 661, §5 (NEW). 1979, c. 672, §A50 (AMD). 1981, c. 705, §C1 (AMD).

## 12 §6103. IMPLEMENTATION OF FISHERY PRODUCT OR SHELLFISH INSPECTION PROGRAMS

The Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Marine Resources shall cooperate in developing and implementing any fishery product or shellfish inspection programs. Those programs must meet the standards established by the Commissioner of Agriculture, Food and Rural Resources under the Maine Food Law. [2005, c. 434, §2 (AMD).]

### SECTION HISTORY

1981, c. 705, §C2 (NEW). 1989, c. 57, §3 (AMD). 1991, c. 784, §4 (AMD). 2005, c. 434, §2 (AMD).

## Subchapter 3-A: SURIMI OR SURIMI PRODUCTS

### 12 §6111. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 254, (NEW).]

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

[ 1985, c. 622, §1 (RPR) .]

**2. Surimi-based analogue.**

[ 1985, c. 622, §2 (RP) .]

### SECTION HISTORY

1985, c. 254, (NEW). 1985, c. 622, §§1,2 (AMD).

## 12 §6112. LABELING OF FOOD PRODUCTS CONTAINING SURIMI

A food product may not be sold in this State consisting of or containing surimi unless the packaging containing the food product is clearly and conspicuously labeled or, if there is no packaging, unless a sign is conspicuously displayed, indicating that the product is "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood

salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department is sufficient to notify the public that the product contains surimi. [1991, c. 378, (AMD).]

## SECTION HISTORY

1985, c. 254, (NEW). 1985, c. 622, §3 (RPR). 1991, c. 378, (AMD).

## 12 §6113. SERVING FOOD CONTAINING SURIMI

No food containing surimi or a surimi product may be served in any eating establishment in the State whether for consumption on or off the premises, unless on the menu and all notices advertising the food it is clearly and conspicuously labeled as "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department shall be sufficient to notify the public that the product contains surimi. [1985, c. 622, §4 (RPR).]

## SECTION HISTORY

1985, c. 254, (NEW). 1985, c. 622, §4 (RPR).

## 12 §6114. VIOLATION; ENFORCEMENT

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

[ 2001, c. 421, Pt. B, §13 (AMD); 2001, c. 421, Pt. C, §1 (AFF) .]

## SECTION HISTORY

1985, c. 254, (NEW). 2001, c. 421, §B13 (AMD). 2001, c. 421, §C1 (AFF).

### Subchapter 4: FISHWAYS

## 12 §6121. FISHWAYS IN EXISTING DAMS OR ARTIFICIAL OBSTRUCTIONS

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

[ 1983, c. 388, §1 (RPR) .]

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

[ 2001, c. 190, §1 (AMD) .]

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

A. Fish passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous fish; or [1983, c. 388, §1 (RPR).]

B. Fish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species. [1983, c. 388, §1 (RPR).]

[ 1983, c. 388, §1 (RPR) .]

#### **4. Adjudicatory proceedings.**

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

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

(2) Notice to the public, in newspapers of general circulation in the areas affected, notifying the public of the initiation of the proceedings and of the public's opportunity to request a hearing. [1983, c. 388, §1 (RPR).]

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

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

(2) The owner, lessee or other person in control of the dam or artificial obstruction requests a public hearing. [1983, c. 388, §1 (RPR).]

C. The commissioner shall accept testimony from the dam owner, lessee or other person in control of the dam or artificial obstruction on alternate fishway designs to those proposed by the commissioner for that dam or artificial obstruction. [1983, c. 388, §1 (RPR).]

[ 1983, c. 388, §1 (RPR) .]

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

A. One or more species of anadromous or migratory fish can be restored in substantial numbers to the watershed by construction, alteration, repair or maintenance of a fishway, and habitat anywhere in the watershed above the dam or obstruction is sufficient and suitable to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish; or [1983, c. 388, §1 (RPR).]

B. The construction, alteration, repair or maintenance of a fishway is necessary to protect or enhance rare, threatened or endangered fish species. [1983, c. 388, §1 (RPR).]

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

[ 1983, c. 388, §1 (RPR) . ]

### **6. Compliance.**

A. The owner, lessee or other person in control of the dam or other artificial obstruction shall be jointly and severally liable for the costs of fishway design, construction, repair, alteration or maintenance and for full compliance with a decision issued pursuant to subsection 5. If the owner, lessee or other person in control of the dam or other artificial obstruction refuses to comply or does not fully comply with the commissioner's decision, the commissioner shall initiate a civil action to enjoin the owner, lessee or person in control of the dam to comply fully with the commissioner's order or to restrain the violation of an order. In the proceeding, the court shall not review the legality of the commissioner's order, except when the owner, lessee or person in control of the dam or artificial obstruction has brought a timely petition for judicial review pursuant to Title 5, chapter 375, subchapter VII. [1983, c. 388, §1 (RPR) . ]

B. The court may render judgment against and order the sale of the dam or other artificial obstruction, the land on which it stands and a right-of-way to the dam or artificial obstruction in order to secure the costs of fishway construction, repair, alteration or maintenance and costs of the court-ordered sale and the costs incurred by the department for fishway design. The purchaser of the dam or other obstruction shall be subject to the commissioner's decision. [1983, c. 388, §1 (RPR) . ]

[ 1983, c. 388, §1 (RPR) . ]

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

[ 2001, c. 190, §2 (AMD) . ]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1979, c. 127, §84 (AMD). 1983, c. 388, §1 (RPR). 2001, c. 190, §§1,2 (AMD).

## **12 §6122. CONSTRUCTION OF NEW DAMS OR OTHER ARTIFICIAL OBSTRUCTIONS**

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

[ 1983, c. 388, §2 (RPR) . ]

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

[ 1983, c. 388, §2 (RPR) .]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1983, c. 388, §2 (RPR).

## 12 §6123. OBSTRUCTING FISHWAYS

A person who tampers with, damages, destroys or closes to fish migration or introduces foreign objects into any fishway without the authority of the commissioner commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. [1999, c. 771, Pt. B, §1 (AMD); 1999, c. 771, Pt. D, §§1,2 (AFF).]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1999, c. 771, §B1 (AMD). 1999, c. 771, §§D1,2 (AFF).

## 12 §6124. VIOLATIONS; PENALTY

A person who improperly operates a fishway required pursuant to this subchapter commits a civil violation for which a forfeiture equivalent to the value of the fish killed but not more than \$10,000 for each day of that violation may be adjudged. [1999, c. 771, Pt. B, §2 (AMD); 1999, c. 771, Pt. D, §§1,2 (AFF).]

#### SECTION HISTORY

1989, c. 275, §1 (NEW). 1999, c. 771, §B2 (AMD). 1999, c. 771, §§D1,2 (AFF).

## 12 §6125. RULES

The Department of Marine Resources and the Department of Inland Fisheries and Wildlife shall jointly make rules defining "fish kill." [1989, c. 275, §1 (NEW).]

#### SECTION HISTORY

1989, c. 275, §1 (NEW).

### Subchapter 5: MISCELLANEOUS ACTIVITIES

## 12 §6131. ALEWIFE FISHING RIGHTS

The commissioner is authorized to develop, manage or lease alewife fishing rights as follows. [1977, c. 661, §5 (NEW).]

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

A. Any municipality that has had the right to take alewives, exclusive or otherwise, or is granted that right by the commissioner, shall take action through its legislative body and file a copy of this action with the commissioner prior to April 20th or lose that right for the remaining part of that year; [1977, c. 661, §5 (NEW).]

B. Municipal rights that are not exercised for 3 consecutive years lapse; [ 2009, c. 17, §1 (AMD) . ]

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

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

(2) Whether the municipal rights to take alewives will be sold by the municipal officers or committee; and [1977, c. 661, §5 (NEW) . ]

D. Harvesting plans shall be developed as follows.

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

(2) The commissioner, after consultation with the appropriate municipal officers, shall approve or modify the harvesting plan as he deems necessary for the conservation of alewives and other anadromous fish, and shall file a copy of the approved plan with the clerk of the municipality. [1977, c. 661, §5 (NEW) . ]

[ 1977, c. 661, §5 (NEW); 2009, c. 17, §1 (AMD) . ]

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

A. It is unlawful to take alewives from 6 a.m. each Thursday morning until 6 a.m. Sunday morning. Municipalities that make other provisions for escape of spawning alewives, which are approved by the commissioner, are exempt from this limit. [2009, c. 17, §2 (AMD) . ]

B. It shall be unlawful for any municipality or purchaser or lessee of the municipal right to take alewives in any manner except as provided in the approved alewife harvesting plan. [1977, c. 661, §5 (NEW) . ]

[ 1987, c. 513, §2 (AMD); 2009, c. 17, §2 (AMD) . ]

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

[ 1993, c. 731, §1 (AMD) . ]

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

[ 1977, c. 661, §5 (NEW) . ]

**5. Leasing of rights.** The commissioner:

A. When the commissioner decides to manage or lease any alewife fishing rights where a municipality has had those rights and has failed to act as provided in subsection 1, shall so notify the clerk of the municipality in writing. After the notice, the commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and

signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices; and [2009, c. 17, §3 (NEW).]

B. May manage or lease alewife fishing rights in any river or stream where a municipality does not have those rights. The commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and approved and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the alewives may be taken, all in accordance with good conservation practices. [2009, c. 17, §3 (NEW).]

[2009, c. 17, §3 (RPR).]

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

[1977, c. 661, §5 (NEW).]

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

[1977, c. 661, §5 (NEW).]

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

A. To build fishways for alewives and other migratory fish; [1977, c. 661, §5 (NEW).]

B. For construction of other facilities for improving the environment of alewives and other migratory fish; [1977, c. 661, §5 (NEW).]

C. For general propagation and conservation of alewives and other migratory fish; [2009, c. 17, §4 (AMD).]

D. For research to enhance the fishing industry based on alewives and other migratory fish; and [2009, c. 17, §4 (AMD).]

E. For management measures required to maintain or enhance alewife populations or populations of other migratory fish. [2009, c. 17, §4 (NEW).]

The Migratory Fish Fund does not lapse.

[2009, c. 17, §4 (AMD).]

#### SECTION HISTORY

1977, c. 661, §5 (NEW). 1977, c. 661, §5 (NEW). 1981, c. 433, §3 (AMD). 1987, c. 513, §2 (AMD). 1993, c. 731, §1 (AMD). 2009, c. 17, §§1-4 (AMD).

## 12 §6132. NATURAL FISH DIE-OFF CLEAN-UP PROGRAM

Upon the request of any affected municipality, the Department of Marine Resources shall assess the extent and severity of public nuisance and potential threats to public health posed by natural fish die-offs. The department shall provide technical advice and, subject to the limits of available funding, financial assistance to the affected municipalities in the conduct of any cleanup or other mitigating measures. [1987, c. 459, (AMD).]

#### SECTION HISTORY

1985, c. 786, (NEW). 1987, c. 459, (AMD).

## 12 §6133. INSPECTION OF DOCUMENTS AND WATERCRAFT

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

[ 1987, c. 713, §1 (NEW) .]

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

A. Specify safety requirements for watercraft subject to inspection. Requirements may be incorporated by reference to other state or federal watercraft safety laws, rules or regulations; and [1987, c. 713, §1 (NEW).]

B. Define the procedure for a safety inspection. [1987, c. 713, §1 (NEW).]

[ 1987, c. 713, §1 (NEW) .]

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

[ 1987, c. 713, §1 (NEW) .]

### SECTION HISTORY

1987, c. 713, §1 (NEW).

## 12 §6134. ALEWIVES PASSAGE; FISHWAYS ON THE ST. CROIX RIVER

This section governs the passage of alewives on the Woodland Dam and the Grand Falls Dam located on the St. Croix River. [2007, c. 587, §1 (RPR).]

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

[ 2007, c. 587, §1 (NEW) .]

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

[ 2007, c. 587, §1 (NEW) .]

### SECTION HISTORY

1995, c. 48, §1 (NEW). 2007, c. 587, §1 (RPR).

## 12 §6135. MAINE GROUND FISH FUND

The Maine Groundfish Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing fund within the department. Unexpended balances in the fund at the end of the fiscal year may not lapse and must be carried forward to the next fiscal year and used for the purposes of this section. [2003, c. 673, Pt. GGG, §1 (NEW).]

The fund may receive money from any source for the purposes of this section. Revenues may be used for support of the groundfish industry including research, development and economic assistance to maintain access, capacity and infrastructure along the entire coast. The commissioner shall select activities and projects that will be most beneficial to the commercial groundfish industry of the State. [2003, c. 673, Pt. GGG, §1 (NEW).]

## SECTION HISTORY

2003, c. 673, §GGG1 (NEW).

## 12 §6136. MAINE COAST ENVIRONMENTAL TRUST FUND

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

[ 2005, c. 641, §1 (NEW) .]

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

[ 2005, c. 641, §1 (NEW) .]

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

A. Gifts, bequests and donations to the trust from private individuals or corporations desiring to protect and improve the marine environment through applied research; [2005, c. 641, §1 (NEW).]

B. Grants to the trust from private or public foundations desiring to protect and improve the marine environment through applied and basic research; [2005, c. 641, §1 (NEW).]

C. Funds stipulated for deposit in the trust as part of the terms of settlement of legal actions against corporations, partnerships or individuals for violations of environmental laws, rules or regulations; [2005, c. 641, §1 (NEW).]

D. Funds for research received under any federal oil spill trust fund; [2005, c. 641, §1 (NEW) .]

E. Revenues that may be from time to time realized through public bond issues; [2005, c. 641, §1 (NEW) .]

F. Federal grants and loans; and [2005, c. 641, §1 (NEW) .]

G. Appropriations and transfers authorized by the Legislature. [2005, c. 641, §1 (NEW) .]

[ 2005, c. 641, §1 (NEW) .]

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

A. Unless otherwise specified by the source of a contribution to the trust, 50% of a contribution to the trust must be deposited in a principal account and maintained as a permanent endowment. The income earned on funds held in this account, combined with the remaining 50% of funds contributed to the trust, must be deposited in an operating account and made available for disbursement as grants to accomplish the purposes of this section and as expenditures for purposes of administering the trust. [2005, c. 641, §1 (NEW) .]

B. An executive agency is not eligible to receive funding from the trust unless the agency jointly undertakes a research proposal with another entity that is not an executive agency. [2005, c. 641, §1 (NEW).]

C. The department shall give preference to institutions, organizations and entities located and operated in the State. [2005, c. 641, §1 (NEW).]

D. Principal, or interest earned from principal, with special instructions from contributors must be awarded in accordance with the contributors' instructions. [2005, c. 641, §1 (NEW).]

E. All money in the trust not immediately required for payment, pursuant to the provisions of this section, must be invested by the Treasurer of State as authorized by Title 5, section 138, except that the securities in which the trust money is invested must remain part of the trust until exchanged for other securities and the income from all investments must remain a part of the trust unless prohibited by federal law. [2005, c. 641, §1 (NEW).]

[ 2005, c. 641, §1 (NEW) .]

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

A. The department shall report to the Legislature on a biennial basis concerning the activities of the trust. [2005, c. 641, §1 (NEW).]

B. In the event the department determines that the provisions of the trust should be amended, the department shall make appropriate recommendations to the Legislature in its biennial report. [2005, c. 641, §1 (NEW).]

C. The department may recommend in its biennial report that the trust be terminated if termination is determined to be appropriate. In the event that the Legislature terminates the trust, the principal and operating funds must be disbursed in a manner consistent with the purpose of the trust. [2005, c. 641, §1 (NEW).]

[ 2005, c. 641, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 641, §1 (NEW).

## 12 §6137. ATLANTIC SALMON COMMISSION

**1. Commission established; purposes.** The Atlantic Salmon Commission, referred to in this subchapter as "the commission," is established to provide policy direction for Atlantic salmon programs within the department. The purposes of the commission are to protect, preserve, enhance, restore and manage the Atlantic salmon and its habitat; to secure a sustainable recreational fishery in the State; and to conduct and coordinate all projects involving research, planning, management, restoration or propagation of the Atlantic salmon. In fulfillment of its purposes, the commission may conduct research, publish and disseminate information and plan, report and implement programs necessary for the purposes of managing Atlantic salmon and its habitat.

[ 2007, c. 240, Pt. QQ, §4 (NEW) .]

**2. Commission powers and responsibilities.** The commission has the responsibility of working with other agencies in the executive branch of State Government and with the Legislature, federal and international agencies and the private sector in carrying out the purposes under subsection 1. The commission has the sole authority to introduce Atlantic salmon into the inland waters, other than in commercial aquaculture facilities. The commission has the sole authority to limit or prohibit the taking of Atlantic salmon, and may adopt rules establishing the time, place and manner of Atlantic salmon fishing in all waters of the State.

[ 2007, c. 240, Pt. QQ, §4 (NEW) .]

**3. Rules.** The commission may adopt rules necessary to manage the Atlantic salmon fishery and to promote the conservation and propagation of the Atlantic salmon. Rules adopted by the commission must be enforced by the department, the Department of Inland Fisheries and Wildlife and other public officials authorized by law to enforce marine resource laws or inland fisheries and wildlife laws. The department and the Department of Inland Fisheries and Wildlife retain exclusive jurisdiction over rules pertaining to species other than Atlantic salmon that are designed to promote the conservation and propagation of Atlantic salmon. The departments shall consult with the commission and the Sea Run Fisheries and Habitat Advisory Council, established in section 6139, in adopting such rules.

[ 2007, c. 240, Pt. QQ, §4 (NEW) .]

**4. Staff.** The department shall provide staff to carry out the purposes of the commission.

[ 2007, c. 240, Pt. QQ, §4 (NEW) .]

Notwithstanding this section, the department has the sole responsibility to regulate Atlantic salmon that are raised by means of aquaculture. [ 2007, c. 240, Pt. QQ, §4 (NEW) .]

#### SECTION HISTORY

2007, c. 240, Pt. QQ, §4 (NEW).

## **12 §6138. MEMBERS; APPOINTMENT; COMPOSITION; TERM; COMPENSATION; MEETINGS**

The commission consists of 3 members: the commissioner, the Commissioner of Inland Fisheries and Wildlife and an at-large public member who must be well informed on the subject of Atlantic salmon and its conservation. The Governor shall appoint the at-large public member, subject to review by the joint standing committee of the Legislature having jurisdiction over marine resources matters and to confirmation by the Senate. The public member is appointed for a 3-year term and is entitled to compensation as provided in Title 5, chapter 379. An appointed member may not serve for more than 2 consecutive 3-year terms. The appointed member serves until a successor is appointed. A vacancy must be filled in the same manner as for an original member for the unexpired portion of the term. The commission shall select one member as chair. The chair or a majority of the commission may call meetings. A majority of the commission constitutes a quorum to transact business. The commission shall meet at least quarterly to receive reports from staff, to consider and act upon recommendations from the staff and to conduct other business. [ 2007, c. 240, Pt. QQ, §5 (NEW) .]

#### SECTION HISTORY

2007, c. 240, Pt. QQ, §5 (NEW).

## **12 §6139. SEA RUN FISHERIES AND HABITAT ADVISORY COUNCIL**

**1. Appointment; composition; term; compensation.** The Sea Run Fisheries and Habitat Advisory Council, referred to in this section as "the council," is established and consists of 7 members appointed by the commissioner. All council members must have a demonstrated interest in the restoration and recovery of diadromous species. A majority of the council members must have interest and experience in the management of Atlantic salmon. One member of the council must represent interests in the southern coastal area, one member must represent interests in the midcoast area, one member must represent interests in the Downeast area, one member must represent interests in the northern part of the State, one member must represent interests from the Penobscot watershed and one member must represent interests in the Kennebec watershed.

In addition the council must have one member who represents tribal interests. Members must be appointed to 3-year terms and may serve 2 consecutive terms. Members are compensated as provided in Title 5, chapter 379.

[ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

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

A. The chair shall call and preside at all meetings of the council. [ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

B. The vice-chair shall call and preside at all meetings of the council in the chair's absence. [ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

C. The secretary shall cause records to be taken and preserved of all meetings of the council. [ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

[ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

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

[ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

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

[ 2007, c. 240, Pt. QQ, §6 (NEW) . ]

#### SECTION HISTORY

2007, c. 240, Pt. QQ, §6 (NEW) .

## 12 §6140. ATLANTIC SALMON LICENSE

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) . ]

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) . ]

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

A. The fee for an Atlantic salmon license is \$15 for a resident. [ 2007, c. 240, Pt. QQ, §7 (NEW) . ]

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

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

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

(3) For a license for a nonresident under 16 years of age, \$5. [2007, c. 240, Pt. QQ, §7 (NEW).]

C. Members of Indian tribes in this State and residents of this State under 16 years of age are exempt from any fee. [2007, c. 240, Pt. QQ, §7 (NEW).]

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

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

A. Tagged with a New Brunswick, Quebec, Nova Scotia, Prince Edward Island or Newfoundland-Labrador Atlantic salmon tag if imported from those Canadian provinces; [2007, c. 240, Pt. QQ, §7 (NEW).]

B. Identified by a sales receipt less than 24 hours old; [2007, c. 615, §7 (AMD).]

C. For wholesale and retail seafood dealers, identified by a bill of sale indicating numbers of fish purchased, dates of purchase and point of origin of all fish purchased; or [2007, c. 615, §7 (AMD).]

D. Tagged with a tag that conforms to rules adopted by the commissioner and identifies the fish as having been legally obtained from a private fee pond licensed pursuant to section 12508. Fish obtained in this manner may not be resold. [2007, c. 615, §7 (NEW).]

[ 2007, c. 615, §7 (AMD) .]

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

**9. Fishing in inland waters.** When fishing in inland waters, the holder of a license authorized under this section is subject to all the provisions of Part 13.

[ 2007, c. 240, Pt. QQ, §7 (NEW) .]

SECTION HISTORY

2007, c. 240, Pt. QQ, §7 (NEW). 2007, c. 615, §7 (AMD).

## 12 §6140-A. ATLANTIC SALMON; METHOD OF FISHING; SEASON

Unless more restrictive rules are adopted by the commission, the following restrictions apply to methods of fishing and the season for Atlantic salmon. [2007, c. 240, Pt. QQ, §8 (NEW).]

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

[ 2007, c. 240, Pt. QQ, §8 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §8 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §8 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §8 (NEW) .]

SECTION HISTORY

2007, c. 240, Pt. QQ, §8 (NEW).

## 12 §6140-B. UNLAWFUL FISHING, POSSESSION OR SALE OF ATLANTIC SALMON

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

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

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

A. Atlantic salmon imported from outside the State; [2007, c. 240, Pt. QQ, §9 (NEW).]

B. Atlantic salmon imported by taxidermists solely for taxidermy purposes; and [2007, c. 240, Pt. QQ, §9 (NEW).]

C. Atlantic salmon raised by means of aquaculture. [2007, c. 240, Pt. QQ, §9 (NEW).]

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

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

[ 2007, c. 240, Pt. QQ, §9 (NEW) .]

SECTION HISTORY

2007, c. 240, Pt. QQ, §9 (NEW).

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