

CHAPTER 609**ENFORCEMENT****§6201. Prosecution by district attorney**

Each district attorney shall prosecute all violations of marine resources' laws occurring within the district attorney's county when requested by the commissioner, a marine patrol officer or other person authorized to enforce any provision of marine resources' laws. [RR 2021, c. 2, Pt. B, §36 (COR).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 541, §B73 (AMD). RR 2021, c. 2, Pt. B, §36 (COR).

§6202. Jurisdiction

The District Court shall have concurrent original jurisdiction with the Superior Court in all prosecutions under the marine resources' laws. [PL 1977, c. 661, §5 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW).

§6203. Court procedure

The provisions of Titles 14 and 15 relating to court procedure shall apply in all prosecutions under the marine resources' laws. [PL 1977, c. 661, §5 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW).

§6204. General penalty

A violation of any provision of marine resources' laws is a Class D crime, unless another penalty has been expressly provided. Except as otherwise specifically provided, these crimes are strict liability crimes as defined in Title 17-A, section 34, subsection 4-A. [PL 2003, c. 452, Pt. F, §7 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 2003, c. 248, §6 (AMD). PL 2003, c. 452, §F7 (AMD). PL 2003, c. 452, §X2 (AFF).

§6205. Certificate as evidence

A certificate of the commissioner, deputy commissioner or Chief of the Bureau of Marine Patrol stating what the records of the department show is admissible as evidence in all courts as proof of the department records. A certificate stating that the records do not show that a person held a license is prima facie evidence that the person did not hold the license on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of an officer that the officer received the certificate after requesting it by telephone or otherwise from the department. A further foundation is not necessary for the admission of the certificate. [RR 2021, c. 2, Pt. B, §37 (COR).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 541, §B73 (AMD). RR 2021, c. 2, Pt. B, §37 (COR).

§6206. Fees and forms for libel proceedings

This section applies to the libel proceedings authorized in section 6207. [PL 1977, c. 661, §5 (NEW).]

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

- A. For the libel and order of notice, \$5; [PL 1977, c. 661, §5 (NEW).]
 - B. For the entry of the libel, \$2; [PL 1977, c. 661, §5 (NEW).]
 - C. For the hearing, \$5; [PL 1977, c. 661, §5 (NEW).]
 - D. For posting the notices, and the officer's return of service, \$10; [PL 1977, c. 661, §5 (NEW).]
 - E. For the delivery or restoration of the items, \$10; and [PL 1977, c. 661, §5 (NEW).]
 - F. For all the officer's travel in connection with the entire proceeding, as provided under Title 5, section 8. [PL 1977, c. 661, §5 (NEW).]
- [PL 1977, c. 661, §5 (NEW).]

2. Forms. These forms, with such changes as adapt them to the particular court, locality and circumstances of the case, shall be sufficient in law:

- A. Form of libel:

STATE OF MAINE

County of SS

To the Honorable

Clerk
, Judge
 Justice of the Peace

of

Court.

Your libelant, of, Maine, a warden,

states that on the day of, 20 .., at

in this county, the libelant seized certain fish, shellfish, lobsters, or other marine species, or parts thereof, or certain equipment, described as follows:

.....

That the items seized and described were either taken, bought, sold, shipped, transported, possessed or used in violation of a provision of the Maine Revised Statutes, Title 12, chapters 601 to 627, or in violation of a rule authorized by those chapters. The specific violation of statute or rule is

.....

Wherefore the libelant prays for a decree of forfeiture of these items in accordance with the provisions of the Maine Revised Statutes, Title 12, section 6207.

Signed at

in this county, this day of, 20..

(Signed)....

Warden [RR 2021, c. 2, Pt. B, §38 (COR).]

B. Form for order of notice:

STATE OF MAINE

(L.S.)

County of SS

To all persons interested in the libel of made part of this order of notice:

You are hereby notified to appear before me at the time and place appointed for the hearing in this order of notice, and show cause, why the items described in the libel should not be declared forfeited to the State.

It is ordered that the hearing be held on, 19.., at (a.m., p.m.) at in of (county).

It is further ordered that a true copy of this libel and this order of notice, attested by a warden, be posted in two conspicuous places in the of(county), municipality where said items were seized, at least 10 days before the day of hearing.

Ordered this day of, 19.. by me, Judge of the Court.

Judge

[PL 1977, c. 661, §5 (NEW).]

C. Form for officer's return of service:

STATE OF MAINE

..... SS

....., 19..

I have this day made service of the within libel and order of notice, by posting a true copy of each, attested by me, in two conspicuous places in, as follows: one at, and one at, in accordance with said order of notice.

The fees which may be taxed for my services, if any, are as follows:

Posting notices and return of service,.... \$10.00

Travel

Total \$.....

.....
Date

(Signed)
Warden

[PL 1977, c. 661, §5 (NEW).]

D. Form for order of forfeiture:

STATE OF MAINE

(LS)

..... SS

To, a warden or any warden:

Whereas it appears that the libel and notice were properly made, which libel and order of notice are made a part of this order of forfeiture,

And whereas it appears that service was properly made,

And whereas hearing was held at the time and place, fixed in the order of notice,

And whereas one of did appear and claim the by filing a written claim and after a full hearing it appeared to me that the claimant was not therefore entitled to any item claimed, judgement is rendered against the claimant and for the State. The state's costs are taxed as dollars and cents.

(Or in substitute of the above paragraph the following paragraph if it is applicable:)

(And whereas no person appeared at said hearing or filed a written claim;)

It is therefor ordered by me, that all items described in the libel be forfeited to the State.

You are hereby ordered to turn the forfeited items over to the Commissioner of Marine Resources.

Dated, this day of A.D. 19..

(Signed).....
Judge

[PL 1977, c. 661, §5 (NEW).]

[RR 2021, c. 2, Pt. B, §38 (COR).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1987, c. 736, §7 (AMD). RR 2021, c. 2, Pt. B, §38 (COR).

§6207. Seizure and disposition of equipment and organisms

Any marine organism that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of marine resources laws and all currency that is used in violation of any provision of marine resources laws is contraband and is subject to forfeiture in accordance with this section and section 6206. All equipment and vehicles used or possessed in violation of any provision of marine resources laws are contraband and are subject to forfeiture. [PL 2019, c. 163, §1 (AMD).]

1. May be seized without warrant; marine patrol officer's duty to libel; contents of libel.
Whenever a marine patrol officer seizes any organism or equipment and does not return them to the

owner, the marine patrol officer shall within a reasonable time file a libel with a judge. The marine patrol officer shall insert the following information in the libel:

- A. The description of the items seized by the marine patrol officer; [RR 2021, c. 2, Pt. B, §39 (COR).]
 - B. A statement of the date and place of seizure; [PL 1977, c. 661, §5 (NEW).]
 - C. A statement of the violation that causes the seizure; and [PL 1977, c. 661, §5 (NEW).]
 - D. A prayer for a decree of forfeiture of those items. [PL 1977, c. 661, §5 (NEW).]
- [RR 2021, c. 2, Pt. B, §39 (COR).]

2. Items which need not be libeled. The following items need not be libeled:

- A. If the aggregate value of all items seized is less than \$200, unless there is reasonable doubt as to their ownership; and [PL 2013, c. 468, §2 (AMD).]
 - B. All marine organisms of illegal size, shellfish taken from polluted areas, shellfish or shellfish products embargoed, condemned or ordered destroyed by the commissioner, female egg-bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, female lobsters which have had the eggs removed by other means than natural hatching, and any other marine organism, the possession of which is unlawful throughout the State. [PL 1981, c. 433, §4 (AMD).]
- [PL 2013, c. 468, §2 (AMD).]

3. Order of notice; contents. The judge to whom the libel is directed shall fix a time for the hearing of the libel. The judge shall issue an order of notice to all persons interested. The judge shall insert in the order of notice the following:

- A. A citation to all persons interested to appear at the time and place appointed for the hearing and show cause, if any, why the items described in the libel should not be declared forfeited to the State; [PL 1977, c. 661, §5 (NEW).]
 - B. The time and the place fixed for the hearing; and [PL 1977, c. 661, §5 (NEW).]
 - C. An order that a true copy of the libel and the order of the notice, attested by the marine patrol officer, be mailed to the person from whom the items were seized at that person's last known address and posted in 2 conspicuous places in the municipality, or place where the items were seized, at least 10 days before the day set for the hearing. [PL 2013, c. 468, §3 (AMD).]
- [RR 2021, c. 2, Pt. B, §40 (COR).]

4. Sale or disposition of marine organisms prior to libel. Any marine organism seized pursuant to this section may be sold prior to being libeled under this section by any marine patrol officer. The proceeds of the sale must be libeled in accordance with this section.

- A. The officer may sell organisms at public or private sale and hold any proceeds of the sale until the libel is completed. [PL 2013, c. 468, §4 (RPR).]
 - B. [PL 2013, c. 468, §4 (RP).]
 - C. All money received from the sale of marine organisms sold in accordance with this subsection must be in the form of a certified or cashier's check made out to the Department of Marine Resources. [PL 2013, c. 468, §4 (NEW).]
- [PL 2013, c. 468, §4 (RPR).]

5. Items or proceeds forfeited if no court appearance. If no claimant appears at the time of the hearing on the libel, on return of service of the officer in compliance with the order of notice, the judge shall declare the items forfeited to the State.

A. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds over to the commissioner, who shall deposit them in the Marine Science, Management and Enforcement Fund established under subsection 12. [PL 2013, c. 468, §5 (AMD).]
[PL 2013, c. 468, §5 (AMD).]

6. Duty of claimant to file written claim on or before hearing day; contents. Any person who claims title or the right to possession of any item listed in the libel shall file a written claim with the judge on or before the day set for hearing. The claim shall contain the following:

A. A statement of the claimant's claimed title or right and its foundation; [RR 2021, c. 2, Pt. B, §41 (COR).]

B. A statement of the specific items claimed; [PL 1977, c. 661, §5 (NEW).]

C. A statement of the date and place of the seizure, and the name of the officer by whom they were seized; [PL 1977, c. 661, §5 (NEW).]

D. A statement that the items claimed were not held in possession or use, with the claimant's knowledge or consent, in violation of any provision of marine resources' laws; [RR 2021, c. 2, Pt. B, §42 (COR).]

E. A statement of the claimant's business and place of residence; and [RR 2021, c. 2, Pt. B, §43 (COR).]

F. The claimant shall sign and make oath to the claim before the judge. [RR 2021, c. 2, Pt. B, §44 (COR).]

[RR 2021, c. 2, Pt. B, §§41-44 (COR).]

7. Claimant admitted as party; hearing. If a person makes claim as provided in subsection 6, the judge shall admit the claimant as a party to the process, shall proceed to determine the truth of the allegations in the claim and libel and shall hear any relevant evidence offered by the libelant or the claimant.

[RR 2021, c. 2, Pt. B, §45 (COR).]

8. Court order if claimant found entitled to any item claimed. If the judge upon hearing is satisfied that an item listed in the claimant's claim was not, with the claimant's knowledge or consent, used or possessed in violation of a provision of marine resources' laws, and that the claimant has title or is entitled to possession of that item, the judge shall give the claimant an order in writing. The judge shall direct the order to the libelant commanding the libelant to deliver the item to the claimant, or, if the item has been sold, to deliver the proceeds of the sale to the claimant, within 48 hours after the demand.

[RR 2021, c. 2, Pt. B, §46 (COR).]

9. Forfeiture; executions for cost; appeal; recognizance. If the judge finds that the claimant is not entitled to any item claimed, the judge shall render judgment against the claimant for the State for costs to be taxed as in civil cases before the judge. The judge shall issue an execution for the costs as in civil cases. The judge shall declare the articles forfeited to the State. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds of the sale over to the commissioner, who shall deposit them in the Marine Science, Management and Enforcement Fund established under subsection 12.

A. The claimant may appeal to the Superior Court next to be held within the county where the judge's court is located, and, if the claimant appeals, the judge may order the claimant to recognize with sureties as on appeals in civil cases. [PL 2013, c. 468, §6 (AMD).]

B. The judge may order that the items or proceeds of sale remain in the custody of the officer pending the appeal. [PL 1977, c. 661, §5 (NEW).]

[PL 2013, c. 468, §6 (AMD).]

10. Disposition of forfeited items. The officer shall turn over any articles declared forfeited to the commissioner who shall dispose of them.

[PL 1977, c. 661, §5 (NEW).]

11. Report to commissioner. The officer making any seizure under this section shall, within 10 days thereafter, report to the commissioner all the particulars of the seizure, the sale or other disposition, the court action taken and all expenses involved.

[PL 1979, c. 541, Pt. B, §73 (AMD).]

12. Science, management and enforcement fund. The Marine Science, Management and Enforcement Fund, referred to in this subsection as "the fund," is established within the department. The fund receives all funds deposited by the commissioner pursuant to this section. All money received by the fund must be used to fund scientific research, management or enforcement activities related to marine resources. Unexpended balances in the fund at the end of a fiscal year do not lapse but must be carried forward to the next fiscal year to be used for the purposes of the fund. Any interest earned on the money in the fund must be credited to the fund. To the extent practicable, funds received from the sale of items or articles forfeited under this section as a result of a violation of law relating to a particular species must be used for scientific research, management or enforcement activities related to that species.

[PL 2013, c. 468, §7 (NEW).]

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1979, c. 541, §B73 (AMD). PL 1981, c. 433, §4 (AMD). PL 1989, c. 742, §3 (AMD). PL 2013, c. 468, §§2-7 (AMD). PL 2019, c. 163, §1 (AMD). RR 2021, c. 2, Pt. B, §§39-46 (COR).

§6208. Marine resources' citation form

1. Form. The commissioner shall designate the Uniform Summons and Complaint as the citation form to be used by the Bureau of Marine Patrol, except that the commissioner may permit the use of any citation forms approved by the Chief Judge of the District Court before May 1, 1991 that are in current stock as of May 1, 1991 until those stocks are depleted.

[PL 1991, c. 459, §1 (AMD).]

2. Responsibility for issuance and disposition. Responsibility for issuance and disposition is as follows.

A. The commissioner is responsible for all marine resources' citation forms approved by the Chief Judge of the District Court prior to May 1, 1991. The Department of Public Safety is responsible for all Uniform Summons and Complaint forms issued by the Bureau of Marine Patrol. The commissioner or the commissioner's designee is responsible for the further issuance of Uniform Summons and Complaint books to individual law enforcement officers and the proper disposition of those books. [PL 1991, c. 459, §1 (AMD).]

B. [PL 1991, c. 459, §1 (RP).]

[PL 1991, c. 459, §1 (AMD).]

3. Illegal disposition; prohibited act. It is unlawful and official misconduct for any marine patrol officer or other public employee to dispose of an official citation form or Uniform Summons and Complaint, except in accordance with law and as provided for in any applicable official policy or procedure of the Bureau of Marine Patrol.

[PL 1991, c. 459, §1 (AMD).]

4. When a lawful complaint. If the citation provided for in this section or a Uniform Summons and Complaint is duly sworn to as required by law and otherwise legally sufficient in respect to the form of a complaint and charging an offense, it may be filed in a court having jurisdiction and

constitutes a lawful complaint for the purpose of the commencement of any criminal prosecution or civil violation proceeding.

[PL 1991, c. 459, §1 (AMD).]

5. When a lawful summons. A citation as provided for in this section or a Uniform Summons and Complaint, when served upon a person by a law enforcement officer, acts as a summons to appear in court or to otherwise respond in accordance with law on or before the date specified in the summons. Any person who fails to appear in court as directed by the summons or to otherwise respond in accordance with law on or before the date specified in the summons commits a Class E crime. Upon that person's failure to appear or to respond in accordance with law, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this subsection that the failure to appear or to respond resulted from just cause.

[PL 1991, c. 459, §1 (AMD).]

6. Refusal to sign; prohibited act. Any person who refuses to sign a citation or Uniform Summons and Complaint after having been ordered to do so by a law enforcement officer commits a Class E crime.

[PL 1991, c. 459, §1 (AMD).]

SECTION HISTORY

PL 1985, c. 481, §A37 (NEW). PL 1987, c. 513, §3 (AMD). PL 1991, c. 459, §1 (AMD).

§6209. Commissioner to keep records

The commissioner shall collect and maintain criminal history record information pertinent to violations of chapters 601 to 627. The commissioner may collect and maintain other records and information pertinent to other functions of the department, including the enforcement of civil violations.

[RR 2021, c. 2, Pt. B, §47 (COR).]

SECTION HISTORY

PL 1987, c. 281, §1 (NEW). RR 2021, c. 2, Pt. B, §47 (COR).

§6210. Procedure for administrative assessment of penalty for pecuniary gain

The department in an adjudicatory proceeding may impose an administrative penalty for a violation of section 6575-K or section 6864, subsection 7-A equal to the pecuniary gain from that violation in accordance with this section. [PL 2013, c. 485, §1 (AMD).]

1. Definition. As used in this section, unless the context otherwise indicates, "pecuniary gain" means the amount of money or the value of property at the time a person violates section 6575-K or section 6864, subsection 7-A that the person derives from the violation.

[PL 2013, c. 485, §1 (AMD).]

2. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of section 6575-K or section 6864, subsection 7-A has been committed, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. The notice must state that the person may request a hearing in writing within 10 days of the notice. The notice is deemed received 3 days after the mailing.

[PL 2015, c. 172, §2 (AMD).]

3. Hearing. If a hearing is requested pursuant to subsection 2, it must be held within 30 business days after receipt by the commissioner of the request for a hearing, except that a hearing may be held more than 30 business days after the request if the delay is requested by the person requesting the

hearing and mutually agreed to in writing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing committed a violation of section 6575-K or section 6864, subsection 7-A; and [PL 2013, c. 485, §1 (AMD).]

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing. The presiding officer must be the commissioner or the commissioner's designee. [PL 2013, c. 468, §8 (NEW).]

Any decision to impose an administrative penalty under this section must be based on evidence in the record of the pecuniary gain, which may include evidence of the fair market value of any elvers illegally possessed by the person at the time the violation was committed. The penalty may be based on evidence of the amount of money or value of property the person received for elvers sold in violation of section 6575-K or section 6864, subsection 7-A.

[PL 2013, c. 485, §1 (AMD).]

4. Appeal. A decision of the commissioner or the commissioner's designee to assess an administrative penalty for pecuniary gain pursuant to this section may be appealed to the Superior Court if the appeal is filed with the court within 30 days of the decision.

[PL 2013, c. 468, §8 (NEW).]

5. Request for hearing on penalty amount; place of hearing. The license holder may request a hearing regarding the amount of the administrative penalty assessed under this section. A hearing must be requested in writing within 10 days from the receipt of the notice of the penalty. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to by the commissioner or the commissioner's designee and the license holder who requests the hearing in writing. The hearing must be conducted in the Augusta area.

[PL 2013, c. 468, §8 (NEW).]

6. Disposition of penalty. The commissioner shall deposit any payments for administrative penalties collected pursuant to this section into the Eel and Elver Management Fund established under section 6505-D.

[PL 2013, c. 468, §8 (NEW).]

7. Renewal of licenses. If a holder of a license issued under section 6302-A, 6505-A or 6864 fails to make payment of a pecuniary gain penalty assessed under this section, the commissioner may refuse to renew that holder's license until the holder complies with the payment requirements.

[PL 2015, c. 172, §3 (NEW).]

SECTION HISTORY

PL 2013, c. 468, §8 (NEW). PL 2013, c. 485, §1 (AMD). PL 2015, c. 172, §§2, 3 (AMD).

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