S T A T E O F N E W Y O R K

845

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. YOUNG, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the agriculture and markets law, in relation to the regulation of aquaculture; to amend the environmental conservation law and the state finance law, in relation to making technical changes thereto; and to repeal certain provisions of the environmental conservation law relating to the regulation of aquaculture

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 11-1909 of the environmental conservation law is REPEALED.

S 2. Sections 13-0301, 13-0305, 13-0309, 13-0311, 13-0313, 13-0315, 13-0319, 13-0321, 13-0323, 13-0325 and 13-0327 of the environmental conservation law are REPEALED.

S 3. Paragraph a of subdivision 1 of section 11-1319 of the environmental conservation law, as amended by chapter 193 of the laws of 1992, is amended to read as follows:

a. This section governs possession, transportation and sale of all fish taken in waters of the state, including the marine and coastal district except (1) trout and black bass raised under permit from the department and identified as provided in section [11-1909] 96-Z-41 OF THE AGRICULTURE AND MARKETS LAW, (2) fish taken from a farm fish pond licensed as provided in section 11-1911, and (3) fish taken from licensed fishing preserve waters as provided in section 11-1913.

S 4. Subdivision 1 of section 11-1501 of the environmental conservation law, as amended by chapter 193 of the laws of 1992, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1. This title 15 of the Fish and Wildlife Law and regulations adopted pursuant hereto do not apply to (a) the taking of fish by angling as permitted in title 13; (b) the taking of fish or the use of nets in the marine and coastal district as defined in section 13-0103, or in a trout or black bass hatchery operated under permit from the department as provided in section [11-1909] 96-Z-41 OF THE AGRICULTURE AND MARKETS LAW, or in a farm fish pond licensed as provided in section 11-1911 or in a fishing preserve licensed as provided in section 11-1913; (c) the sale or taking for sale of bait fish named in section 11-1315.

S 5. The agriculture and markets law is amended by adding a new article 5-E to read as follows:

ARTICLE 5-E
REGULATION OF AQUACULTURE

SECTION 96-Z-40. LEGISLATIVE INTENT.
96-Z-41. PRIVATE TROUT AND BLACK BASS HATCHERIES.
96-Z-42. SHELLFISH REGULATIONS.
96-Z-43. AQUACULTURE TASK FORCE.
96-Z-44. LEASE OF STATE-OWNED UNDERWATER LANDS FOR SHELLFISH CULTIVATION.
96-Z-45. MARKING LANDS PROHIBITED; INJURY TO MONUMENTS.
96-Z-46. TAKING, HANDLING AND IMPORTATION OF SHELLFISH; GENERAL PROVISIONS.
96-Z-47. SHELLFISH GROWERS; DEFINITION; BED PERMIT.
96-Z-47-A. SHELLFISH SHIPPER'S AND PROCESSOR'S PERMIT.
96-Z-48. DIGGER'S PERMIT TO TAKE SHELLFISH FOR COMMERCIAL PURPOSES; WHEN NOT REQUIRED.
96-Z-49. TAKING AND IMPORTATION OF SHELLFISH FOR TRANSPLANTING AND OTHER PURPOSES.
96-Z-50. OYSTERS; PROHIBITED ACTS.
96-Z-51. CLAMS; PROHIBITED ACTS.
96-Z-52. SCALLOPS; PROHIBITED ACTS.
96-Z-53. COMMERCIAL LICENSES; LIMITED ENTRY.

S 96-Z-40. LEGISLATIVE INTENT. THE LEGISLATURE FINDS AND DECLARES THAT AQUACULTURE IS AMONG THE FASTEST GROWING SEGMENTS OF THE GLOBAL AGRICULTURE MARKETS, WITH NEW YORK'S FISH-FARMING INDUSTRY SUPPLYING FISH TO A VARIETY OF MARKETS, AND THAT THIS BODY SHOULD SEEK WAYS TO DEVELOP THE FISH-FARMING BUSINESS AS AN ALTERNATIVE CASH CROP FOR FARMS ACROSS THE STATE.

S 96-Z-41. PRIVATE TROUT AND BLACK BASS HATCHERIES. 1. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE TO ANY PERSON A HATCHERY PERMIT, VALID DURING THE CALENDAR YEAR OF ISSUE, TO PROPAGATE, RAISE AND SELL TROUT. THE DEPARTMENT SHALL ESTABLISH BY ORDER REGULATIONS GOVERNING THE IDENTIFICATION AND TRANSPORTATION OF TROUT RAISED UNDER SUCH A PERMIT, OTHER THAN BY INDIVIDUAL TAGGING, WHICH ARE OFFERED FOR SALE, SOLD OR TRANSPORTED.

2. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE TO ANY PERSON A HATCHERY PERMIT, VALID DURING THE CALENDAR YEAR OF ISSUE, TO PROPAGATE, RAISE AND SELL BLACK BASS. THE DEPARTMENT SHALL ESTABLISH BY ORDER REGULATIONS GOVERNING THE IDENTIFICATION AND TRANSPORTATION OF BLACK BASS RAISED UNDER SUCH A PERMIT, OTHER THAN BY INDIVIDUAL TAGGING, WHICH ARE OFFERED FOR SALE, SOLD OR TRANSPORTED.

S 96-Z-42. SHELLFISH REGULATIONS. THE DEPARTMENT MAY ADOPT REGULATIONS WITH RESPECT TO THE HARVESTING, TRANSPLANTING, RELAYING, RECEIVING, POSSESSING, TRANSPORTING, IMPORTING, EXPORTING, PROCESSING, BUYING, SELLING OF OR OTHERWISE TRAFFICKING IN SHELLFISH; THE LABELING OR TAGGING THEREOF; THE KEEPING OF RECORDS OF SHELLFISH RECEIVED, TRANS-

PORTED AND DISTRIBUTED; AND THE CONSTRUCTION, OPERATION AND MAINTENANCE OF ALL SHELLFISH HANDLING, PROCESSING AND DISTRIBUTING ESTABLISHMENTS, INCLUDING FACILITIES AND EQUIPMENT AND THE CLEANING, CLEANSING AND WATER STORAGE OF SHELLFISH. THE PROVISIONS OF THIS SECTION RELATING TO TRANSPLANTING AND RELAYING SHALL INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF SHELLFISH FROM UNCERTIFIED GROWING AREAS AND TRANSPLANTING TO CERTIFIED AREAS FOR SUBSEQUENT HARVEST FOR MARKET PURPOSES AND TRANSPLANTING OF SCALLOPS PURSUANT TO SECTION 96-Z-49 OF THIS ARTICLE. SUCH REGULATIONS MAY PROVIDE FOR PAYMENT OF THE REASONABLE COSTS OF THE DEPARTMENT OF SUPERVISION OF REMOVAL OF SHELLFISH FROM UNCERTIFIED AREAS, EXCEPT WHERE SUCH REMOVAL IS BEING UNDERTAKEN BY A MUNICIPALITY OR POLITICAL SUBDIVISION. SUCH REGULATIONS SHALL BE DRAWN IN SUCH A MANNER AS TO PROVIDE ADEQUATE SANITARY CONTROL OVER ALL SHELLFISH OFFERED FOR SALE AND DISTRIBUTION IN THE STATE. SUCH REGULATIONS SHALL NOT BE LESS RESTRICTIVE THAN THE MINIMUM REQUIREMENTS OF ANY FEDERAL AGENCY REGULATING THE INTER-STATE SHIPMENT OF SHELLFISH.

S 96-Z-43. AQUACULTURE TASK FORCE. 1. AN AQUACULTURE TASK FORCE IS HEREBY ESTABLISHED TO DETERMINE THE VIABILITY OF ADOPTING A REGULATORY SYSTEM WITH PROMOTION AND PROTECTION OF THE AQUACULTURE INDUSTRY AS ITS GOAL FOR THE STATE.

2. THE TASK FORCE SHALL CONSIST OF TEN MEMBERS, EACH TO SERVE FOR A TERM OF TWO YEARS, TO BE APPOINTED AS FOLLOWS: TWO SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND TWO BY THE MINORITY LEADER OF THE SENATE; TWO SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY AND TWO BY THE MINORITY LEADER OF THE ASSEMBLY; AND TWO SHALL BE APPOINTED BY THE GOVERNOR. THE MEMBERS SHALL BE BROADLY REPRESENTATIVE OF THE GEOGRAPHIC AREAS OF THE STATE AND INCLUDE REPRESENTATIVES OF THE AQUACULTURE INDUSTRY, ETHNIC POPULATIONS, LOCAL GOVERNMENTS AND THE PUBLIC AT LARGE. NO MORE THAN FOUR APPOINTEES SHALL BE LEGISLATORS. THE COMMISSIONER AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL SERVE AS EX-OFFICIO MEMBERS. VACANCIES IN THE MEMBERSHIP OF THE COMMISSION AND AMONG ITS OFFICERS SHALL BE FILLED IN THE MANNER PROVIDED FOR ORIGINAL APPOINTMENTS.

3. THE TASK FORCE MAY EMPLOY AND AT PLEASURE REMOVE SUCH PERSONNEL AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE THEREFOR.

4. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES HEREUNDER.

5. TO THE MAXIMUM EXTENT FEASIBLE, THE TASK FORCE SHALL BE ENTITLED TO REQUEST AND RECEIVE AND SHALL UTILIZE AND BE PROVIDED WITH SUCH FACILITIES, RESOURCES, AND DATA OF ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION, OR AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AS IT MAY REASONABLY REQUEST TO CARRY OUT PROPERLY ITS POWERS AND DUTIES HEREUNDER.

6. THE APPOINTING AUTHORITIES SHALL APPOINT THE MEMBERS OF THE TASK FORCE WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS SECTION AND THE TASK FORCE SHALL CONVENE ITS FIRST MEETING WITHIN SIXTY DAYS THEREAFTER.

7. THE TASK FORCE SHALL MAKE A PRELIMINARY REPORT TO THE GOVERNOR AND THE LEGISLATURE OF ITS FINDINGS, CONCLUSIONS AND RECOMMENDATIONS ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE AND A FINAL REPORT OF ITS FINDINGS, CONCLUSIONS AND RECOMMENDATIONS NOT LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, AND SHALL SUBMIT WITH ITS REPORTS SUCH LEGISLATIVE PROPOSALS AS IT DEEMS NECESSARY TO IMPLEMENT ITS RECOMMENDATIONS.

S 96-Z-44. LEASE OF STATE-OWNED UNDERWATER LANDS FOR SHELLFISH CULTIVATION. 1. LEASES. A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE DEPARTMENT MAY LEASE STATE-OWNED UNDERWATER LANDS WITHIN THE MARINE AND COASTAL DISTRICT FOR THE CULTIVATION OF SHELLFISH. THE WRITTEN APPROVAL OF THE OFFICE OF GENERAL SERVICES SHALL BE OBTAINED FOR THE LEASE OF LAND WITHIN FIVE HUNDRED FEET OF THE HIGH WATER MARK.

B. THE FOLLOWING LANDS UNDERWATER SHALL NOT BE LEASED: (I) LANDS WHERE THERE IS AN INDICATED PRESENCE OF SHELLFISH IN SUFFICIENT QUANTITY AND QUALITY AND SO LOCATED AS TO SUPPORT SIGNIFICANT HAND RAKING OR TONGING HARVESTING; (II) LANDS WHERE THE LEASING WILL RESULT IN A SIGNIFICANT REDUCTION TO ESTABLISHED COMMERCIAL FINFISH OR CRUSTACEAN FISHERIES; (III) LANDS WHERE BAY SCALLOPS ARE PRODUCED REGULARLY ON A COMMERCIAL BASIS; AND (IV) LANDS UNDERWATER OF GARDINER'S AND PECONIC BAYS AND THE TRIBUTARIES THEREOF BETWEEN THE WESTERLY SHORE OF GREAT PECONIC BAY AND AN EASTERLY LINE RUNNING FROM THE MOST EASTERLY POINT OF PLUM ISLAND TO GOFF POINT AT THE ENTRANCE OF NAPEAQUE HARBOR.

2. REGULATIONS. A. REGULATIONS ADOPTED BY THE DEPARTMENT FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION SHALL INCLUDE REGULATIONS WITH RESPECT TO LEASING FORMS AND PROCEDURES; PUBLIC NOTICE OF LEASING; EXECUTION OF LEASES; MINIMUM RENTAL FEES; BIDDING PROCEDURES; POSTING AND FORFEITURE OF FINANCIAL SECURITY, RENEWALS, TERMINATION AND ASSIGNMENT OF LEASES; MARKING AND TESTING OF GROUNDS; MAINTENANCE OF BOUNDARY MARKERS; COLLECTION OF RENTAL AND RECORDING FEES; SUBMISSION AND APPROVAL OF CULTIVATION PLANS; HARVESTING GEAR; AND ACREAGE OF LANDS TO BE LET AND TERM OF LEASES AND OTHER MATTERS PERTINENT TO UNDERWATER LAND USE AND SHELLFISH CULTIVATION.

B. REGULATIONS ADOPTED BY THE DEPARTMENT FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION SHALL INCLUDE THE FOLLOWING REQUIREMENTS: (I) LEASES SHALL BE AWARDED AFTER PUBLIC AUCTION FOLLOWING DUE NOTICE; (II) LEASES SHALL BE AWARDED TO THE HIGHEST RESPONSIBLE BIDDER; (III) BIDDERS SHALL PROVIDE A DETAILED CULTIVATION PLAN; AND (IV) CULTIVATION OF SHELLFISH SHALL COMMENCE WITHIN ONE YEAR OF THE AWARD OF THE LEASE.

3. SUMMARY PROCEEDINGS. UPON FAILURE TO PAY THE RENTAL ON ANY DATE DUE UNDER THE TERMS OF A LEASE OR UPON REVOCATION, THE DEPARTMENT MAY, AFTER WRITTEN NOTICE TO THE LESSEE, DECLARE THE LEASE CANCELLED AS OF THE DATE SET FORTH IN SUCH NOTICE, AND MAY IMMEDIATELY THEREAFTER EVICT THE LESSEE FROM SUCH LANDS. THE PROVISIONS OF ARTICLE SEVEN OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SHALL APPLY AND GOVERN THE PROCEDURE IN SUCH CASES.

4. LIMITATIONS. THE COMMISSIONER OF GENERAL SERVICES SHALL NOT GRANT OR LEASE LANDS FOR SHELLFISH CULTIVATION. THE PUBLIC SHALL NOT BE EXCLUDED FROM THE TAKING OF SHELLFISH FROM UNDERWATER LANDS GRANTED OR LEASED BY SUCH COMMISSIONER FOR OTHER PURPOSES; PROVIDED, HOWEVER, THAT SHOULD ANY GRANT OR LEASE MADE BY SUCH COMMISSIONER FOR SUCH OTHER PURPOSES INCLUDE LANDS LEASED BY THE DEPARTMENT FOR SHELLFISH CULTIVATION THE LESSEE FOR SHELLFISH CULTIVATION SHALL HAVE THE EXCLUSIVE RIGHT TO USE AND TAKE SHELLFISH FROM SUCH LEASED LANDS FOR A PERIOD OF TWO YEARS FROM THE DATE OF THE GRANT OR LEASE BY SUCH COMMISSIONER OR UNTIL THE EXPIRATION OF THE SHELLFISH CULTIVATION LEASE, WHICHEVER IS THE EARLIEST, AND MAY PRIOR TO THE EXPIRATION OF SUCH PERIOD, REMOVE AND TRANSPLANT THE SHELLFISH FROM SUCH LANDS TO OTHER LANDS LEASED, OWNED OR CONTROLLED BY SUCH LESSEE.

S 96-Z-45. MARKING LANDS PROHIBITED; INJURY TO MONUMENTS. 1. NO PERSON OTHER THAN THE LESSEE OR THE DEPARTMENT SHALL MARK OUT OR ENCLOSE IN ANY MANNER, ANY STATE-OWNED LANDS UNDER WATER FOR THE PURPOSE OF PLANTING SHELLFISH THEREON OR EXCLUDING THE GENERAL PUBLIC THEREFROM.

2. NO PERSON SHALL WILFULLY INJURE OR REMOVE ANY MONUMENT, STAKE OR BOUNDARY MARKER OF ANY KIND, PLACED FOR THE PURPOSE OF DELINEATING OR LOCATING STATE OWNED SHELLFISH LANDS EXCEPT BY AUTHORITY OF THE DEPARTMENT.

S 96-Z-46. TAKING, HANDLING AND IMPORTATION OF SHELLFISH; GENERAL PROVISIONS. 1. A. SHELLFISH SHALL NOT BE TAKEN FROM UNCERTIFIED LANDS, EXCEPT AS PROVIDED IN SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTICLE.

B. SHELLFISH FROM UNCERTIFIED LANDS OF OTHER STATES SHALL NOT BE POSSESSED, TRANSPORTED OR TRAFFICKED IN WITHIN THIS STATE, EXCEPT PURSUANT TO PERMIT AS PROVIDED IN SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTICLE.

C. SHELLFISH SHALL NOT BE SHIPPED OR TRANSPORTED INTO THIS STATE, EXCEPT AS PROVIDED IN SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTICLE, UNLESS SUCH SHELLFISH ARE HARVESTED FROM CERTIFIED SHELLFISH LANDS WHOSE QUALITY IS EQUIVALENT TO OR BETTER THAN THAT DESCRIBED IN REGULATIONS PROMULGATED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE.

2. A. SHELLFISH SHALL NOT BE TAKEN FROM SUNSET TO SUNRISE FROM ANY SHELLFISH LANDS OF THIS STATE.

B. DURING THE PERIOD FROM ONE HOUR AFTER SUNSET UNTIL SUNRISE, NO PERSON, EXCEPT PURSUANT TO A PERMIT ISSUED BY THE DEPARTMENT, SHALL POSSESS ON BOARD A VESSEL, OR OFF-LOAD FROM A VESSEL, MORE THAN THE QUANTITIES OF SHELLFISH ALLOWED TO BE POSSESSED PURSUANT TO SUBDIVISION FIVE OF SECTION 96-Z-48 OF THIS ARTICLE. POSSESSION OF SHELLFISH DURING THE PERIOD FROM ONE HOUR AFTER SUNSET UNTIL SUNRISE IN QUANTITIES EXCEEDING THOSE SET FORTH IN SUBDIVISION FIVE OF SECTION 96-Z-48 OF THIS ARTICLE SHALL BE PRESUMPTIVE EVIDENCE OF A VIOLATION OF PARAGRAPH A OF THIS SUBDIVISION.

3. NO DREDGE OR SCRAPE OR OTHER DEVICE OPERATED BY POWER OR BY BOATS PROPELLED BY MOTOR OR OTHER MECHANICAL MEANS MAY BE USED FOR THE TAKING OF SHELLFISH FROM PUBLIC OR UNLEASED LANDS UNDER WATER, EXCEPT THAT:

A. SEA SCALLOPS (PECTEN MAGELLANICUS) MAY BE TAKEN FROM THE WATERS OF THE ATLANTIC OCEAN BY ANY MEANS.

B. IN THE TAKING OF SOFT CLAMS (MYA ARENARIA) ON LANDS BELOW LOW TIDE, THE PRACTICE OF CHURNING WITH A PROPELLER MAY BE EMPLOYED.

C. SURF, SEA, HEN OR SKIMMER CLAMS (SPISULA SOLIDISSIMA; SPISULA POLYNYMA) AND OCEAN QUAHOGS (ARCTICA ISLANDICA) MAY BE TAKEN BY MECHANICAL MEANS FROM THE WATERS OF THE MARINE AND COASTAL DISTRICT, EXCEPT AS LIMITED BY ANY REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION.

D. THE DEPARTMENT MAY PERMIT THE TAKING OF SHELLFISH FOR PURPOSES OF TRANSPLANTING ONLY PURSUANT TO SECTION 96-Z-49 OF THIS ARTICLE, BY MECHANICAL MEANS, EXCEPT THAT IN THE WATERS OF RICHMOND COUNTY THE DEPARTMENT MAY PERMIT SUCH TAKING IN WATERS AT A MEAN LOW WATER MARK OF THIRTY FEET OR MORE.

E. SUBJECT TO THE PROVISIONS OF SECTION 96-Z-52 OF THIS ARTICLE, BAY SCALLOPS (PECTEN IRRADIANS) MAY BE TAKEN WITH A DREDGE OR SCRAPE, HAVING AN OPENING AT THE MOUTH NOT TO EXCEED THIRTY-SIX INCHES IN WIDTH, WHEN TOWED BY A BOAT OPERATED BY MECHANICAL POWER, OR OTHER MEANS PROVIDED THAT SUCH DREDGE OR SCRAPE IS BROUGHT ABOARD BY HAND POWER WITHOUT THE USE OF A MECHANICAL DEVICE.

F. THE DEPARTMENT MAY ISSUE PERMITS FOR THE TAKING OF MUSSELS (MYTILUS EDULIS) FROM UNDERWATER LANDS AS PROVIDED IN THIS PARAGRAPH BY MEANS OF DREDGES NOT TO EXCEED THIRTY-SIX INCHES IN WIDTH, WHICH MAY BE EQUIPPED TO BE RETURNED TO BOATSIDE BY MEANS OF POWER OR MECHANICAL DEVICES. MUSSELS (MYTILUS EDULIS) MAY BE TAKEN BY SUCH MEANS IN THE FOLLOWING AREAS:

(I) IN LONG ISLAND SOUND GENERALLY EASTERLY OF A LINE EXTENDING DUE NORTH FROM HEROD POINT ON LONG ISLAND INCLUDING THOSE WATERS SURROUNDING FISHERS ISLAND.

(II) IN THE ATLANTIC OCEAN EASTERLY OF A LINE EXTENDING DUE SOUTH FROM THE ROCK JETTY ON THE EAST SIDE OF SHINNECOCK INLET.

(III) IN THE BAYS WITH STATE-OWNED BOTTOMLAND EASTERLY FROM THE TOWN OF RIVERHEAD TO AND INCLUDING BLOCK ISLAND SOUND.

(IV) THE LIMIT ON MUSSELS (MYTILUS EDULIS) TAKEN IN SUCH A MANNER IS FIFTEEN BUSHELS PER PERSON PER DAY, NOT TO EXCEED THIRTY BUSHELS TAKEN PER BOAT PER DAY. POSSESSION OF OTHER SHELLFISH OR POSSESSION OF MUSSELS ON A VESSEL POSSESSING A DREDGE IS PRESUMPTIVE EVIDENCE THAT SUCH SHELLFISH OR MUSSELS WERE TAKEN BY SUCH DREDGE.

G. IN THE TAKING OF HARD CLAMS (MERCENARIA MERCENARIA), A POT HAULER MAY BE USED ONBOARD A VESSEL TO ASSIST IN HAULING OR RETRIEVING A CLAM RAKE FROM THE WATER, PROVIDED THAT THE BASKET ATTACHED TO THE CLAM RAKE SHALL NOT EXCEED TWENTY-SIX INCHES IN WIDTH. FOR THE PURPOSES OF THIS SECTION, "POT HAULER" SHALL MEAN A MECHANICALLY OPERATED DEVICE, INCLUDING BUT NOT LIMITED TO A WINCH, REEL, WINDLASS OR CAPSTAN, WHICH IS USED TO HAUL OR RETRIEVE A CLAM RAKE FROM THE WATER AND RETURN IT TO THE HARVEST VESSEL.

4. NO PERSON SHALL TAKE, CARRY AWAY, INTERFERE WITH OR DISTURB SHELLFISH OF ANOTHER, LAWFULLY POSSESSED, PLANTED OR CULTIVATED; NOR REMOVE ANY STAKES, BUOYS OR BOUNDARY MARKS OF LAWFULLY POSSESSED, PLANTED OR CULTIVATED LANDS. THE POSSESSION OF DREDGES, RAKES OR TONGS OVERBOARD ON ANY SUCH LANDS SHALL BE DEEMED PRESUMPTIVE EVIDENCE OF A VIOLATION OF THIS SUBDIVISION.

5. ALL BOATS, HOUSES AND OTHER PLACES, CONTAINERS AND EQUIPMENT USED IN THE HANDLING OF SHELLFISH SHALL BE MAINTAINED IN A SANITARY CONDITION AS PROVIDED IN SECTION 96-Z-42 OF THIS ARTICLE.

6. SHELLFISH SHALL NOT BE TREATED BY THE PROCESS KNOWN AS DRINKING, FLOATING, PLUMPING OR SWELLING, AND SHELLFISH SO TREATED SHALL NOT BE POSSESSED, BOUGHT, SOLD OR EXPOSED FOR SALE; PROVIDED, HOWEVER, THAT SHELLFISH MAY BE RETAINED IN WATER STORAGE AS PROVIDED IN SECTION 96-Z-42 OF THIS ARTICLE AND PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION SHALL BE DEEMED TO PROHIBIT OR RENDER UNLAWFUL THE PRACTICE OF OFF-BOTTOM CULTURE OF SHELLFISH UNDER PERMIT ISSUED PURSUANT TO SECTION 13-0316 OF THE ENVIRONMENTAL CONSERVATION LAW.

7. SHELLFISH IN THE SHELL, OR SHUCKED, SHALL NOT BE WASHED PREPARATORY TO MARKETING EXCEPT BY THE USE OF WATER FROM A WATER SUPPLY APPROVED BY THE DEPARTMENT.

8. THE OPERATION, USE OR PLACING, FOR WHATEVER PURPOSE, OF DREDGES, RAKES, TONGS OR OTHER DEVICES FOR THE TAKING OF SHELLFISH IN UNCERTIFIED SHELLFISH LANDS, EXCEPT AS PROVIDED IN SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTICLE IS PROHIBITED. THE DEPARTMENT MAY SUSPEND OR CANCEL THE DIGGER'S PERMIT OF ANY PERSON WHO IS CONVICTED OF A VIOLATION OF THIS SUBDIVISION OR WHO SIGNS AN ACKNOWLEDGMENT OF A VIOLATION OF THIS SUBDIVISION FOR THE PURPOSE OF EFFECTING A SETTLEMENT BY CIVIL COMPROMISE OR BY STIPULATION.

9. NO PERSON SHALL IN ANY WAY ALTER, DAMAGE, MUTILATE, MOVE OR CARRY AWAY ANY BUOY OR MARKER PLACED BY THE DEPARTMENT THAT IS USED TO DESIGNATE, MARK OR DEFINE THE UNCERTIFIED WATERS OF THE STATE.

10. THE DEPARTMENT MAY ISSUE PERMITS FOR THE POSSESSION OF A STICK DREDGE FOR PURPOSES IT MAY DEEM NECESSARY. NO PERSON WITHOUT A PERMIT FROM THE DEPARTMENT SHALL POSSESS A STICK DREDGE IN NASSAU COUNTY, SUFFOLK COUNTY OR IN THE MARINE AND COASTAL DISTRICT. FOR THE PURPOSE OF THIS SECTION, A "STICK DREDGE" SHALL BE ANY TOOTH-BASKET COMBINATION

DREDGING DEVICE WHOSE CONSTRUCTION SHALL ALLOW FOR THE INSTALLATION OF A STICK OR STICKS OF ANY TYPE MATERIAL WHOSE PURPOSE IS TO PERMIT THE DIRECTION OF FORCE UPON SUCH DEVICE AND WHICH IS COMMONLY USED FOR THE TAKING OF MERCENARIA MERCENARIA BY BEING TOWED EITHER DIRECTLY OR INDIRECTLY BY A MOTORBOAT WHICH HAS ITS ENGINE ENGAGED.

11. NO PERSON WITHOUT A PERMIT FROM THE DEPARTMENT SHALL POSSESS RAKES OR TONGS, OF THE TYPE AND DESIGN NORMALLY USED BY SHELLFISH HARVESTERS FOR HARVESTING SHELLFISH FROM SHELLFISH LANDS, IN NASSAU COUNTY, SUFFOLK COUNTY OR THE MARINE AND COASTAL DISTRICT EXCEPT:

A. HAND OPERATED TONGS HAVING TEETH IN THE HEADS SPACED NOT LESS THAN ONE INCH APART AND THE BASKET ATTACHED TO SUCH TONGS HAVING BARS NOT LESS THAN FIFTEEN-SIXTEENTHS OF AN INCH APART, OR

B. HAND OPERATED RAKES HAVING TEETH SPACED NOT LESS THAN ONE INCH APART AND THE BASKET ATTACHED TO SUCH RAKE HAVING BARS NOT LESS THAN FIFTEEN-SIXTEENTHS OF AN INCH APART.

RAKES OR TONGS HAVING WIRE NETTING OR OTHER MATERIAL BETWEEN THE TEETH OR BARS SHALL NOT BE USED.

12. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR RULE OR REGULATION, THE DEPARTMENT SHALL FIX BY REGULATIONS OPEN SEASONS, HARVEST AREAS, SIZE LIMITS, CATCH LIMITS, MANNER OF TAKING AND POSSESSION, TRANSPORTATION, IDENTIFICATION, SALE AND PERMIT REQUIREMENTS FOR SURF, SEA, HEN AND SKIMMER CLAMS (SPISULA SOLIDISSIMA, SPISULA POLYNYMA) AND OCEAN QUAHOGS (ARCTICA ISLANDICA). SUCH REGULATION MAY PROVIDE FOR, BUT NOT BE LIMITED TO THE FOLLOWING:

A. A DAILY CATCH LIMIT FOR SURF CLAMS NOT TO EXCEED EIGHT HUNDRED NINETY-SIX BUSHELS OR TWENTY-EIGHT CAGES PER VESSEL AND A DAILY CATCH LIMIT FOR OCEAN QUAHOGS NOT TO EXCEED EIGHT HUNDRED NINETY-SIX BUSHELS OR TWENTY-EIGHT CAGES PER VESSEL, REGARDLESS OF THE NUMBER OF PERMITTEES ABOARD SUCH VESSEL;

B. REQUIREMENTS WITH RESPECT TO NUMBER OF VESSELS WHICH MAY PARTICIPATE IN THE SURF CLAM AND OCEAN QUAHOG FISHERY;

C. LIMITATIONS ON HARVEST WITHIN SPECIFIED PERIODS OF TIME, SUCH AS WEEKLY AND DAILY HARVEST LIMITS, DESIGNED TO MINIMIZE THE NUMBER OF AND THE DURATION OF CLOSURES;

D. QUALIFICATION OF APPLICANTS AND VESSELS TO PARTICIPATE IN THE SURF CLAM AND OCEAN QUAHOG FISHERY;

E. THE REGULATIONS SHALL TAKE INTO CONSIDERATION AND ATTEMPT TO MAINTAIN THE ECONOMIC VIABILITY OF THOSE PORTIONS OF THE SURF CLAM HARVESTING AND PROCESSING INDUSTRY THAT HAVE A LONGSTANDING INVESTMENT IN THE DOMESTIC SURF CLAM INDUSTRY; AND

F. THE REGULATIONS SHALL TAKE INTO CONSIDERATION AND ATTEMPT TO MAINTAIN THE ECONOMIC VIABILITY OF THE TRADITIONAL ESTABLISHED NEW YORK BASED COMMERCIAL SURF CLAM/OCEAN QUAHOG HARVESTING INDUSTRY, PROCESSORS AND PACKERS THAT RELY ON THIS FISHERY.

13. POSSESSION OF SHELLFISH ON A VESSEL EQUIPPED WITH A DREDGE, SCRAPE OR OTHER DEVICE OPERATED BY POWER AND CAPABLE OF BEING USED FOR THE TAKING OF SHELLFISH, EXCEPT A SCALLOP DREDGE AS DEFINED IN PARAGRAPH E OF SUBDIVISION THREE OF THIS SECTION, IS PRESUMPTIVE EVIDENCE THAT SUCH SHELLFISH WERE TAKEN BY THE USE OF SUCH DREDGE, SCRAPE OR OTHER DEVICE.

14. THE DEPARTMENT, UNTIL APRIL FIRST, TWO THOUSAND THIRTEEN, SHALL BE ENTITLED TO COLLECT FIFTEEN CENTS PER BUSHEL OF SURF CLAMS AND TEN CENTS PER BUSHEL OF OCEAN QUAHOGS TAKEN FROM ALL CERTIFIED WATERS TO BE DEPOSITED IN THE SURF CLAM/OCEAN QUAHOG ACCOUNT AS PROVIDED IN SECTION EIGHTY-THREE OF THE STATE FINANCE LAW.

15. UNLESS AND UNTIL REGULATIONS ARE ADOPTED IMPLEMENTING A COMPREHENSIVE LONG-TERM MANAGEMENT PLAN FOR THE PROTECTION OF SURF CLAMS AND

OCEAN QUAHOGS IN NEW YORK WATERS PREPARED IN CONJUNCTION WITH THE SURF CLAM/OCEAN QUAHOG MANAGEMENT ADVISORY BOARD PURSUANT TO SECTION 13-0308 OF THE ENVIRONMENTAL CONSERVATION LAW, THE FOLLOWING RESTRICTIONS SHALL APPLY IN ADDITION TO ANY CONSISTENT REGULATIONS ADOPTED PRIOR TO THE DATE UPON WHICH SUCH SECTION SHALL TAKE EFFECT:

A. A WEEKLY CATCH LIMIT NOT TO EXCEED TWENTY-EIGHT CAGES;

B. AN ANNUAL CATCH LIMIT IN CERTIFIED WATERS OF THE ATLANTIC OCEAN FOR SURF CLAMS NOT TO EXCEED FIVE HUNDRED THOUSAND BUSHELS IN THE AGGREGATE;

C. AN ANNUAL CATCH LIMIT IN CERTIFIED WATERS OTHER THAN THE ATLANTIC OCEAN FOR SURF CLAMS NOT TO EXCEED FIFTY THOUSAND BUSHELS IN THE AGGREGATE; AND

D. REQUIRING PERMITTEES TO REPORT ON A WEEKLY BASIS THE NUMBER OF BUSHELS HARVESTED IN THE PREVIOUS SEVEN DAY PERIOD, AND PROVIDE THAT THE FAILURE TO FILE SUCH WEEKLY REPORT MAY RESULT IN THE REVOCATION OF SUCH PERSON'S PERMIT BY THE DEPARTMENT.

S 96-Z-47. SHELLFISH GROWERS; DEFINITION; BED PERMIT. 1. ANY PERSON RESIDENT IN THIS STATE ONE YEAR OR MORE MAY ENGAGE IN THE CULTIVATION AND MARKETING OF SHELLFISH SUBJECT TO THE PROVISIONS OF SECTION 13-0307 OF THE ENVIRONMENTAL CONSERVATION LAW, AND SECTIONS 96-Z-42, 96-Z-46 AND 96-Z-48 OF THIS ARTICLE AND SHALL BE KNOWN AS A GROWER.

2. A GROWER SHALL NOT TAKE SHELLFISH, FOR SHIPPING OR MARKETING FROM LANDS OWNED, LEASED OR RENTED BY HIM OR HER EXCEPT UPON PERMIT OF THE DEPARTMENT WHICH SHALL CERTIFY THAT SUCH LANDS LIE WITHIN CERTIFIED AREAS. THE DEPARTMENT SHALL PRESCRIBE AND FURNISH FORMS FOR APPLICATION FOR SUCH PERMITS.

3. THE FEE FOR SUCH PERMIT SHALL BE TWENTY-FIVE CENTS FOR EACH ACRE FROM WHICH SHELLFISH ARE TO BE TAKEN; PROVIDED, HOWEVER, THAT THE MINIMUM FEE SHALL BE FIVE DOLLARS. SUCH CERTIFICATES SHALL EXPIRE ON DECEMBER THIRTY-FIRST OF THE YEAR OF ISSUE.

4. IF IT APPEARS IN THE PUBLIC INTEREST, THE DEPARTMENT MAY SUSPEND OR CANCEL ANY SUCH PERMIT.

5. WHERE LANDS FOR WHICH SUCH PERMIT HAS BEEN ISSUED ARE FOUND TO BE IN PART WITHIN AN UNCERTIFIED AREA, THE DEPARTMENT SHALL ISSUE WITHOUT FEE, A NEW PERMIT COVERING THE REMAINING PORTION OF SUCH LANDS.

6. IN CASE OF ASSIGNMENT OR TRANSFER OF RIGHTS OR OWNERSHIP OF ANY PRIVATE OR LEASED LANDS UNDER WATER, OR PARTS THEREOF, A NEW PERMIT SHALL BE REQUIRED.

S 96-Z-47-A. SHELLFISH SHIPPER'S AND PROCESSOR'S PERMIT. 1. PRIOR TO THE PROCESSING, TRANSPORTATION OR SHIPMENT OF SHELLFISH, EITHER IN INTRA-STATE OR INTER-STATE COMMERCE, AN APPROPRIATE PERMIT TO DO SO SHALL BE OBTAINED FROM THE DEPARTMENT. SUCH PERMIT SHALL BE REQUIRED OF ALL SHIPPERS AND DEALERS IN FRESH AND FROZEN SHELLFISH WITHIN THE STATE, EXCEPT RETAIL DEALERS, AND SHALL CERTIFY THAT THE HOLDER THEREOF HAS COMPLIED WITH ALL THE REQUIREMENTS OF SECTIONS 96-Z-42, 96-Z-46, 96-Z-47 AND 96-Z-48 OF THIS ARTICLE, SECTION 13-0317 OF THE ENVIRONMENTAL CONSERVATION LAW, AND RULES AND REGULATIONS ADOPTED PURSUANT THERETO.

2. A SHELLFISH SHIPPER'S AND/OR PROCESSOR'S PERMIT SHALL BE ISSUED ONLY TO A PERSON EIGHTEEN YEARS OR OLDER. THE DEPARTMENT SHALL PRESCRIBE AND FURNISH FORMS FOR APPLICATION FOR SUCH PERMIT.

3. APPLICANTS SHALL PAY, AND THE DEPARTMENT SHALL BE ENTITLED TO RECEIVE, FEES ACCORDING TO THE TYPE OF PERMIT ISSUED, AS FOLLOWS:

A. CLASS A PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF AND ANY PERSON IN THE EMPLOY OF THE PERMIT HOLDER, IN ACCORDANCE WITH REGULATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE, TO: (I) RESHIP SHELLFISH PREVIOUSLY SHIPPED BY THE HOLDER OF A CLASS A, B, C, D OR E PERMIT ISSUED PURSUANT TO THIS SECTION, OR SIMILAR PERMIT ISSUED BY

THE SHELLFISH SANITATION CONTROL AGENCY OF ANOTHER STATE OR FOREIGN COUNTRY; (II) PACK OR REPACK SHELLSTOCK RECEIVED FROM THE HOLDER OF A DIGGER'S PERMIT, PURSUANT TO SECTION 96-Z-48 OF THIS ARTICLE; OR (III) PACK OR REPACK SHELLSTOCK FROM THE HOLDER OF A CLASS A, B, C, D OR E PERMIT ISSUED PURSUANT TO THIS SECTION, OR SIMILAR PERMIT ISSUED BY THE SHELLFISH SANITATION CONTROL AGENCY OF ANOTHER STATE OR FOREIGN COUNTRY. THE FEE FOR A CLASS A PERMIT SHALL BE THREE HUNDRED DOLLARS.

B. CLASS B PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF AND ANY PERSON IN THE EMPLOY OF THE PERMIT HOLDER TO ENGAGE IN THE ACTIVITIES AUTHORIZED BY A CLASS A PERMIT, AS DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION, AND TO OTHERWISE PROCESS SHELLFISH AS AUTHORIZED BY REGULATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE. THE FEE FOR A CLASS B PERMIT SHALL BE SIX HUNDRED DOLLARS.

C. CLASS C PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF AND ANY PERSON IN THE EMPLOY OF THE PERMIT HOLDER, IN ACCORDANCE WITH REGULATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE, TO RESHIP SHELLFISH PREVIOUSLY SHIPPED BY THE HOLDER OF A CLASS A, B, C, D OR E PERMIT ISSUED PURSUANT TO THIS SECTION, OR SIMILAR PERMIT ISSUED BY THE SHELLFISH SANITATION CONTROL AGENCY OF ANOTHER STATE OR FOREIGN COUNTRY. THE FEE FOR A CLASS C PERMIT SHALL BE TWO HUNDRED DOLLARS.

D. CLASS D PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF, IN ACCORDANCE WITH REGULATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE, TO SHIP SHELLSTOCK WHICH THE HOLDER HAS LEGALLY HARVESTED FROM SHELLFISH LANDS OF THE STATE. THE FEE FOR A CLASS D PERMIT SHALL BE SEVENTY-FIVE DOLLARS.

E. CLASS E PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF, MEMBERS OF THE PERMIT HOLDER'S IMMEDIATE FAMILY AND NOT MORE THAN TWO EMPLOYEES OF THE PERMIT HOLDER, IN ACCORDANCE WITH REGULATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE, TO SHUCK AND PACK BAY SCALLOPS WHICH HAVE BEEN RECEIVED FROM THE HOLDER OF A DIGGER'S PERMIT, PURSUANT TO SECTION 96-Z-48 OF THIS ARTICLE, AND TO SHIP SUCH SCALLOPS IN THE FORM OF FRESH SHUCKED STOCK ONLY IN INTRASTATE COMMERCE. THE FEE FOR A CLASS E PERMIT SHALL BE FIFTY DOLLARS.

F. ALL PERMITS ISSUED PURSUANT TO THIS SECTION SHALL EXPIRE ON THE THIRTY-FIRST OF DECEMBER OF THE YEAR OF ISSUE. THE DEPARTMENT MAY SUSPEND OR REVOKE ANY SUCH PERMIT AT ANY TIME ON FAILURE OF THE HOLDER THEREOF TO COMPLY WITH THE CONDITIONS THEREOF.

S 96-Z-48. DIGGER'S PERMIT TO TAKE SHELLFISH FOR COMMERCIAL PURPOSES; WHEN NOT REQUIRED. 1. SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A PERSON MAY TAKE SHELLFISH FROM UNDER WATER LANDS IN THE STATE FOR COMMERCIAL PURPOSES, INCLUDING THE CULLING, SORTING OR TAGGING OF SUCH SHELLFISH, ONLY UPON FIRST OBTAINING A DIGGER'S PERMIT FROM THE DEPARTMENT, PROVIDED, HOWEVER, THAT THE APPLICATION FOR SUCH PERMIT BY A PERSON SIXTEEN YEARS OF AGE OR UNDER SHALL BE SIGNED BY HIS PARENT OR LEGAL GUARDIAN, WHO SHALL THEREBY CONSENT TO THE ISSUANCE OF THE PERMIT.

2. THE DEPARTMENT SHALL PRESCRIBE AND FURNISH FORMS FOR APPLICATION FOR SUCH PERMIT.

3. THE FEE FOR SUCH PERMIT SHALL BE FIFTY DOLLARS FOR A PERSON DOMICILED WITHIN THE STATE. THE FEE FOR PERSONS NOT DOMICILED WITHIN THE STATE SHALL BE ONE HUNDRED FIFTY DOLLARS. SUCH PERMIT SHALL EXPIRE ON DECEMBER THIRTY-FIRST OF THE YEAR OF ISSUE. IF IT APPEARS IN THE PUBLIC INTEREST, THE DEPARTMENT MAY, AFTER HEARING HELD ON TEN DAYS' NOTICE, SUSPEND OR CANCEL SUCH PERMITS, EXCEPT THAT IN CASE OF A TAKING FROM AN UNCERTIFIED AREA SUCH SUSPENSION OR CANCELLATION MAY BE WITHOUT PRIOR NOTICE.

4. THE HOLDER OF SUCH PERMIT SHALL NOT SHIP OR SELL SHELLFISH, EXCEPT TO A HOLDER OF A VALID CLASS A, B, OR E SHIPPER'S PERMIT, ISSUED PURSUANT TO SECTION 96-Z-47-A OF THIS ARTICLE, WHO HAS A PLACE OF BUSINESS IN THE COUNTY OF NASSAU OR SUFFOLK, WITHOUT FIRST OBTAINING A SHIPPER'S PERMIT AS PROVIDED IN SUBDIVISION ONE OF SECTION 96-Z-47-A OF THIS ARTICLE.

5. SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A PERSON MAY, WITHOUT PERMIT, TAKE NOT MORE THAN A TOTAL OF FOUR PECKS (ONE BUSHEL) OF SHELLFISH OTHER THAN BAY SCALLOPS AND NOT MORE THAN FOUR PECKS OF BAY SCALLOPS (ARGOPECTEN IRRADIANS) IN ANY ONE DAY FOR THE USE OF SUCH PERSON OR SUCH PERSON'S FAMILY. WITHIN THE ONE BUSHEL TOTAL LIMIT OF SPECIES, OTHER THAN BAY SCALLOPS, WHICH MAY BE TAKEN IN ONE DAY THE FOLLOWING SPECIES-SPECIFIC LIMITS SHALL APPLY:

A. HARD CLAMS (MERCENARIA MERCENARIA). NOT MORE THAN ONE HUNDRED INDIVIDUAL ORGANISMS.

B. BLUE MUSSELS (MYTILUS EDULIS). NOT MORE THAN TWO PECKS.

C. OYSTERS (CRASSOSTREA VIRGINICA). NOT MORE THAN TWO PECKS.

D. SOFT CLAMS (MYA ARENARIA). NOT MORE THAN TWO PECKS.

6. THE HOLDER OF SUCH DIGGER'S PERMIT SHALL CARRY THE PERMIT ASSIGNED TO SUCH HOLDER WHILE ENGAGED IN THE PERMITTED ACTIVITIES, AND THE FAILURE BY SUCH HOLDER TO EXHIBIT THE PERMIT TO ANY SHELLFISH INSPECTOR, ENVIRONMENTAL CONSERVATION OFFICER, HEALTH OFFICIAL, PEACE OFFICER, ACTING PURSUANT TO SUCH OFFICERS' SPECIAL DUTIES, POLICE OFFICER OR MAGISTRATE SHALL BE PRESUMPTIVE EVIDENCE THAT NO VALID DIGGER'S PERMIT HAS BEEN ISSUED TO THE PERSON WHO FAILS TO PRODUCE SUCH PERMIT.

7. NO PERSON SHALL TAKE SHELLFISH OR ASSIST ANOTHER IN THE TAKING OF SHELLFISH IN ANY QUANTITY, INCLUDING THE CULLING, SORTING OR TAGGING OF SUCH SHELLFISH, DURING THE TIME THAT SUCH PERSON'S DIGGER'S PERMIT PRIVILEGES HAVE BEEN REVOKED OR SUSPENDED.

8. ENDORSED VESSELS. A. UPON APPLICATION TO THE DEPARTMENT ON FORMS FURNISHED BY THE DEPARTMENT, A SHELLFISH DIGGER'S PERMIT MAY BE ENDORSED FOR USE ON A VESSEL, IN WHICH CASE SUCH PERMIT SHALL AUTHORIZE ALL PERSONS ON BOARD SUCH VESSEL TO ENGAGE IN THE TAKING OF HARD CLAMS (MERCENARIA MERCENARIA) AND OYSTERS (CRASSOSTREA VIRGINICA), INCLUDING THE CULLING, SORTING, AND TAGGING OF SUCH SHELLFISH. EACH APPLICATION SHALL INCLUDE A COPY OF ONE OF THE FOLLOWING DOCUMENTS AS PROOF OF VESSEL LENGTH: THE CERTIFICATE OF DOCUMENTATION FOR THE VESSEL ISSUED BY THE UNITED STATES GOVERNMENT, OR THE REGISTRATION FOR THE VESSEL ISSUED BY ANY STATE GOVERNMENT WITHIN THE UNITED STATES.

B. THE FEE FOR ENDORSING A SHELLFISH DIGGER'S PERMIT TO A VESSEL SHALL BE FIFTY DOLLARS FOR A VESSEL THAT IS FORTY FEET OR LESS IN REGISTERED LENGTH, AND ONE HUNDRED DOLLARS FOR A VESSEL THAT IS GREATER THAN FORTY FEET IN REGISTERED LENGTH. SUCH FEE SHALL BE IN ADDITION TO THE PERMIT FEE PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION.

C. NOT MORE THAN ONE RAKE, TONG OR OTHER SHELLFISH HARVESTING DEVICE SHALL BE USED FOR THE TAKING OF HARD CLAMS AND OYSTERS AT ANY GIVEN TIME PURSUANT TO A DIGGER'S PERMIT WHICH HAS BEEN ENDORSED TO A VESSEL.

D. A SHELLFISH DIGGER'S PERMIT WHICH HAS BEEN ENDORSED TO A VESSEL SHALL NOT COVER ANY PERSON WHOSE SHELLFISH DIGGER'S PERMIT PRIVILEGES HAVE BEEN REVOKED OR SUSPENDED.

E. THE HOLDER OF A SHELLFISH DIGGER'S PERMIT WHICH HAS BEEN ENDORSED TO A VESSEL SHALL BE ON BOARD SUCH VESSEL AT ALL TIMES WHEN THE VESSEL IS BEING USED FOR THE TAKING OF HARD CLAMS AND OYSTERS.

S 96-Z-49. TAKING AND IMPORTATION OF SHELLFISH FOR TRANSPLANTING AND OTHER PURPOSES. 1. SHELLFISH MAY BE TAKEN FROM UNCERTIFIED SHELLFISH LANDS FOR TRANSPLANTING OR OTHER PURPOSES AS THE DEPARTMENT MAY DEEM

ADVISABLE SUBJECT TO SUPERVISION AND REGULATION AS PROVIDED IN SECTION 96-Z-42 OF THIS ARTICLE.

2. PRIOR TO THE TAKING FROM UNCERTIFIED SHELLFISH LANDS OF THIS STATE FOR TRANSPLANTING OR OTHER PURPOSES, A PERMIT SHALL BE OBTAINED FROM THE DEPARTMENT AND SHALL BE ISSUED FOR THE TAKING OF SHELLFISH FROM A SPECIFIC AREA. SUCH PERMIT SHALL BE VALID ONLY DURING THE PERIOD OF OPERATIONS IN THE UNCERTIFIED LAND FOR WHICH THE PERMIT WAS ISSUED. THE HOLDER OF SUCH PERMIT MAY NOT RECEIVE, SELL, OFFER FOR SALE, TRANSPORT, OR SHIP ANY SHELLFISH TAKEN PURSUANT TO THIS PERMIT, EXCEPT AS PROVIDED BY REGULATIONS MADE PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE.

3. SHELLFISH FROM CERTIFIED OR UNCERTIFIED LANDS WITHOUT THE STATE SHALL NOT BE TRANSPLANTED IN THIS STATE OR IMPORTED INTO THIS STATE FOR SUCH PURPOSES UNLESS A PERMIT THEREFOR HAS BEEN OBTAINED FROM THE DEPARTMENT.

S 96-Z-50. OYSTERS; PROHIBITED ACTS. 1. NO PERSON SHALL SELL OR OFFER FOR SALE, ANY OYSTERS, OR LABEL OR BRAND ANY PACKAGES CONTAINING OYSTERS FOR SHIPMENT OR SALE UNDER THE NAME OF BLUE POINT OYSTERS, OTHER THAN OYSTERS WHICH HAVE BEEN PLANTED AND CULTIVATED AT LEAST THREE MONTHS IN THE WATERS OF GREAT SOUTH BAY.

2. IN NO CASE SHALL OYSTERS OTHER THAN THE SPECIES CRASSOSTREA VIRGINICA BE PLANTED OR TRANSPLANTED IN NEW YORK WATERS WITHOUT PROCURING A PERMIT FROM THE DEPARTMENT.

3. THE DEPARTMENT MAY, UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN, FIX BY REGULATION MEASURES FOR THE MANAGEMENT OF OYSTERS (FAMILY OSTREIDAE) INCLUDING SIZE LIMITS, CATCH AND POSSESSION LIMITS, OPEN AND CLOSED SEASONS, CLOSED AREAS, RESTRICTIONS ON THE MANNER OF TAKING AND LANDING, REQUIREMENTS FOR PERMITS AND ELIGIBILITY THEREFOR, RECORDKEEPING AND IDENTIFICATION REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND TYPE OF FISHING EFFORT AND GEAR, AND REQUIREMENTS RELATING TO TRANSPORTATION, POSSESSION AND SALE, PROVIDED THAT SUCH REGULATIONS ARE NO LESS RESTRICTIVE THAN REQUIREMENTS SET FORTH IN THIS ARTICLE AND IN THE ENVIRONMENTAL CONSERVATION LAW.

S 96-Z-51. CLAMS; PROHIBITED ACTS. 1. EXCEPT FOR TRANSPLANTING AS PROVIDED IN SECTION 96-Z-49 OF THIS ARTICLE, NO PERSON SHALL TAKE, HARVEST, POSSESS, SELL, OFFER FOR SALE OR OTHERWISE TRAFFIC IN HARD CLAMS (MERCENARIA MERCENARIA) MEASURING LESS THAN ONE INCH IN THICKNESS.

2. HARD CLAMS LESS THAN ONE INCH IN THICKNESS MAY BE TAKEN BY SHELLFISH GROWERS FROM LEASED OR PRIVATELY OWNED LANDS OTHER THAN TOWN LANDS CURRENTLY UNDER CULTIVATION BY THE GROWER FOR TRANSPLANTING TO OTHER SUCH LANDS BEING CULTIVATED BY THE SAME GROWER, AND IMPORTED FROM ANOTHER STATE BY A SHELLFISH GROWER FOR TRANSPLANTING TO PUBLIC OR PRIVATE OR LEASED LANDS UNDER CULTIVATION, PROVIDED A PERMIT FOR EACH SEPARATE TRANSPLANTING OPERATION IS ISSUED BY THE DEPARTMENT SUBJECT TO PROVISIONS OF SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTICLE. THE PERMIT, PROVIDING FOR TRANSPLANTING HARD CLAMS LESS THAN ONE INCH IN THICKNESS, SHALL BE ISSUED WITHOUT FEE. SUCH CLAMS SHALL NOT BE TRANSPORTED TO A POINT WITHOUT THE STATE.

3. SOFT OR STEAMER CLAMS (MYA ARENARIA) LESS THAN ONE AND ONE-HALF INCHES IN THE LONGEST DIAMETER SHALL NOT BE TAKEN, POSSESSED, BOUGHT, SOLD OR OTHERWISE TRAFFICKED IN.

4. A. SURF, SEA, HEN OR SKIMMER CLAMS (SPISULA SOLIDISSIMA; SPISULA POLYNYMA) LESS THAN THREE INCHES IN THE LONGEST DIAMETER SHALL NOT BE TAKEN, POSSESSED, BOUGHT, SOLD OR OTHERWISE TRAFFICKED IN EXCEPT THAT SUCH CLAMS LESS THAN FOUR INCHES IN THE LONGEST DIAMETER SHALL NOT BE TAKEN FROM THE WATERS OF THE ATLANTIC OCEAN FOR USE AS FOOD.

B. ALL SURF, SEA, HEN OR SKIMMER CLAMS AND OCEAN QUAHOGS TAKEN FROM THE WATERS OF THE MARINE AND COASTAL DISTRICT SHALL BE LANDED IN THE STATE OF NEW YORK.

C. BOATS OF NONRESIDENTS MAY BE LICENSED TO TAKE SURF, SEA, HEN OR SKIMMER CLAMS AND OCEAN QUAHOGS FROM THE WATERS OF THE ATLANTIC OCEAN WITHIN THE MARINE AND COASTAL DISTRICT IN ACCORDANCE WITH PARAGRAPH C OF SUBDIVISION THREE OF SECTION 96-Z-46 OF THIS ARTICLE, PROVIDED THAT THE BOAT IS REGISTERED IN A STATE WHICH ACCORDS RECIPROCAL CLAMMING PRIVILEGES TO RESIDENTS OF THIS STATE AND PROVIDED THAT THE OWNER IS A CITIZEN OF THE UNITED STATES AND A RESIDENT OF A STATE ACCORDING RECIPROCAL PRIVILEGES TO RESIDENTS OF THIS STATE. THE LICENSE SHALL BE ISSUED IN THE NAME OF THE BOAT AND SHALL BE ON BOARD DURING ALL LICENSED OPERATIONS. THE FEE FOR SAID LICENSE SHALL BE FIVE HUNDRED DOLLARS PER BOAT. EACH LICENSE SHALL EXPIRE ON THE THIRTY-FIRST DAY OF DECEMBER NEXT SUCCEEDING ITS ISSUE, AND IF IT APPEARS IN THE PUBLIC INTEREST THE DEPARTMENT MAY SUSPEND OR CANCEL SUCH LICENSE ON TEN DAYS' NOTICE IN WRITING TO THE HOLDER THEREOF, EXCEPT THAT IN CASE OF A TAKING FROM AN UNCERTIFIED AREA, SUCH SUSPENSION OR CANCELLATION MAY BE WITHOUT PRIOR NOTICE.

D. ANY INDIVIDUAL, WHILE PARTICIPATING IN THE OPERATION OF A LICENSED BOAT, SHALL BE EXEMPT FROM THE REQUIREMENTS OF SECTION 96-Z-48 OF THIS ARTICLE BUT SHALL NOT SHIP OR SELL SHELLFISH TAKEN BY SUCH BOAT WITHOUT FIRST OBTAINING A SHELLFISH SHIPPER'S PERMIT AS PROVIDED FOR IN SECTION 96-Z-47-A OF THIS ARTICLE.

5. CLAMS SHALL BE CULLED WHEN TAKEN IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. CLAMS WHICH MAY NOT BE TAKEN, POSSESSED, OFFERED FOR SALE, SOLD OR OTHERWISE TRAFFICKED IN PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE, THREE OR FOUR OF THIS SECTION MAY COMPOSE NOT TO EXCEED THREE PER CENTUM OF ANY BUSHEL, PACKAGE OR CONTAINER, WHEN UNAVOIDABLY TAKEN. SUCH THREE PER CENTUM SHALL BE DETERMINED BY THE MEASUREMENT OF ANY BUSHEL, OR OTHER PACKAGE OR CONTAINER OF DIFFERENT MEASUREMENT OF CLAMS TAKEN FROM THE CATCH OR IN THE POSSESSION OF THE PERSON OFFERING THE SAME FOR SALE.

6. EACH BUSHEL, OR OTHER PACKAGE OR CONTAINER OF DIFFERENT MEASUREMENT CONTAINING AN EXCESS OF THREE PER CENTUM OF CLAMS WHICH MAY NOT BE TAKEN, POSSESSED, OFFERED FOR SALE, SOLD OR OTHERWISE TRAFFICKED IN PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE, THREE OR FOUR OF THIS SECTION DETERMINED BY COUNT SHALL CONSTITUTE A SEPARATE VIOLATION.

7. IT SHALL BE UNLAWFUL TO KNOWINGLY:

A. TRANSPORT, CONCEAL OR CONVEY HARD SHELL CLAMS OBTAINED OR POSSESSED IN CONTRAVENTION OF THE PROVISIONS OF THIS ARTICLE IN, UPON OR BY MEANS OF ANY VEHICLE, VESSEL OR AIRCRAFT; OR

B. CONCEAL OR POSSESS HARD SHELL CLAMS OBTAINED OR POSSESSED IN CONTRAVENTION OF THE PROVISIONS OF THIS ARTICLE IN OR UPON ANY VEHICLE, VESSEL OR AIRCRAFT.

8. THE DEPARTMENT MAY, UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, ADOPT BY REGULATION MEASURES FOR THE MANAGEMENT OF HARD CLAMS (MERCENARIA MERCENARIA), SOFT OR STEAMER CLAMS (MYA ARENARIA), AND RAZOR CLAMS (ENSIS SP.), INCLUDING SIZE LIMITS, CATCH AND POSSESSION LIMITS, OPEN AND CLOSED SEASONS, CLOSED AREAS, RESTRICTIONS ON THE MANNER OF TAKING AND LANDING, REQUIREMENTS FOR PERMITS AND ELIGIBILITY THEREFOR, RECORDKEEPING AND IDENTIFICATION REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND TYPE OF FISHING EFFORT AND GEAR, AND REQUIREMENTS RELATING TO TRANSPORTATION, POSSESSION AND SALE, PROVIDED THAT SUCH REGULATIONS ARE NO LESS RESTRICTIVE THAN REQUIREMENTS SET FORTH IN THIS ARTICLE AND IN THE ENVIRONMENTAL CONSERVATION LAW.

S 96-Z-52. SCALLOPS; PROHIBITED ACTS. THE DEPARTMENT MAY, UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN, ADOPT BY REGULATION MEASURES FOR THE MANAGEMENT OF SCALLOPS (FAMILY PECTINIDAE) INCLUDING SIZE LIMITS, CATCH AND POSSESSION LIMITS, OPEN AND CLOSED SEASONS, CLOSED AREAS, RESTRICTIONS ON THE MANNER OF TAKING AND LANDING, REQUIREMENTS FOR PERMITS AND ELIGIBILITY THEREFOR, RECORDKEEPING AND IDENTIFICATION REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND TYPE OF FISHING EFFORT AND GEAR, AND REQUIREMENTS RELATING TO TRANSPORTATION, POSSESSION AND SALE, PROVIDED THAT SUCH REGULATIONS ARE NO LESS RESTRICTIVE THAN REQUIREMENTS SET FORTH IN THIS ARTICLE AND IN THE ENVIRONMENTAL CONSERVATION LAW.

S 96-Z-53. COMMERCIAL LICENSES; LIMITED ENTRY. COMMERCIAL SHELLFISH LICENSES. COMMERCIAL SHELLFISH LICENSES SHALL BE ISSUED AS FOLLOWS:

1. FOR THE NUMBER OF RESIDENTIAL COMMERCIAL SHELLFISH LICENSES AND THE NUMBER OF NON-RESIDENTIAL COMMERCIAL SHELLFISH LICENSES SHALL NOT EXCEED ONE THOUSAND;

2. LICENSES SHALL BE ISSUED IN THE ORDER IN WHICH THE APPLICATIONS WERE RECEIVED;

3. LICENSES MAY BE ISSUED TO INDIVIDUALS ONLY;

4. LICENSES SHALL BE ISSUED TO APPLICANTS WHO ARE SIXTEEN YEARS OF AGE OR OLDER AT THE TIME OF THE APPLICATION; AND

5. LICENSES SHALL BE ISSUED ONLY TO PERSONS WHO DEMONSTRATE IN A MANNER ACCEPTABLE TO THE DEPARTMENT THAT THEY RECEIVED AN AVERAGE OF AT LEAST FIFTEEN THOUSAND DOLLARS OR MORE THAN FIFTY PERCENT OF THEIR ANNUAL EARNED INCOME OVER THREE CONSECUTIVE YEARS FROM COMMERCIAL FISHING OR FISHING, OR WHO SUCCESSFULLY COMPLETE A COMMERCIAL SHELLFISH APPRENTICESHIP PURSUANT TO SUBDIVISION SEVEN OF SECTION 13-0328 OF THE ENVIRONMENTAL CONSERVATION LAW. AS USED IN THIS SUBDIVISION, "COMMERCIAL FISHING" MEANS THE TAKING AND SALE OF MARINE RESOURCES INCLUDING FISH, SHELLFISH, CRUSTACEA OR OTHER MARINE BIOTA AND "FISHING" MEANS COMMERCIAL FISHING AND CARRYING FISHING PASSENGERS FOR HIRE. INDIVIDUALS WHO WISH TO QUALIFY BASED ON INCOME FROM "FISHING" MUST HOLD A VALID MARINE AND COASTAL DISTRICT PARTY AND CHARTER BOAT LICENSE. NO MORE THAN TEN PERCENT OF THE LICENSES ISSUED EACH YEAR BASED ON INCOME ELIGIBILITY PURSUANT TO THIS SECTION SHALL BE ISSUED TO APPLICANTS WHO QUALIFY BASED SOLELY UPON INCOME DERIVED FROM OPERATION OF OR EMPLOYMENT BY A PARTY OR CHARTER BOAT.

S 6. Subdivision 5 of section 13-0303 of the environmental conservation law is amended to read as follows:

5. Franchises not transferable. Franchised lands under water held for shellfish cultivation when returned to the state by default in payment of taxes may not be assigned, reassigned, or transferred to a new owner or owners. Such lands may be leased by the department for shellfish cultivation as provided in section [13-0301] 96-Z-44 OF THE AGRICULTURE AND MARKETS LAW.

S 7. Subdivision 9 of section 71-0921 of the environmental conservation law, as added by chapter 640 of the laws of 1977, is amended to read as follows:

9. Failure to give the department the prompt notification [required under subdivision 10 of section 13-0301 of this chapter], when [the] specified buoys or markers are destroyed. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such imprisonment and fine.

S 8. Subparagraphs (i) and (ii) of paragraph 2 of subdivision (a) of section 83 of the state finance law, subparagraph (i) as amended by chapter 512 of the laws of 1994 and subparagraph (ii) as amended by

section 2 of part A of chapter 82 of the laws of 2002, are amended to read as follows:

(i) Moneys collected pursuant to sections [13-0301, 13-0311 and 13-0315 of the environmental conservation law] 96-Z-44, 96-Z-47-A AND 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW and all fines and penalties collected pursuant to article seventy-one of [such] THE ENVIRONMENTAL CONSERVATION law for illegal acts relating to shellfish shall be deposited in a special account within the conservation fund, to be known as the marine resources account, and shall be available to the department of environmental conservation, after appropriation, for the care, management, protection and enlargement of marine fish and shellfish resources.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, moneys arising out of the application of subdivision fourteen of section [13-0309 of the environmental conservation] 96-Z-46 OF THE AGRICULTURE AND MARKETS law, shall be deposited in a special account within the conservation fund, to be known as the surf clam/ocean quahog account, and shall be available to the department of environmental conservation, including contracts for such purposes with a New York state institution of higher education currently involved in local marine research, after appropriation, for the research and stock assessment of surf clams and ocean quahogs. The department shall, at a minimum, undertake two stock assessments and issue reports detailing the findings of such assessments to the governor and legislature. The first stock assessment shall be due no later than December thirty-first, two thousand two. The second stock assessment shall be due no later than December thirty-first, two thousand four, and shall be conducted in an area to be determined in consultation with the surf clam/ocean quahog management advisory board.

S 9. Subdivision 9 of section 13-0308 of the environmental conservation law, as added by chapter 512 of the laws of 1994, is amended to read as follows:

9. Nothing shall prohibit the department from adopting pursuant to subdivision twelve of section [13-0309 of this article] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW, interim or emergency regulations pending the preparation of the comprehensive long-term management plan and adoption of regulations consistent with such plan, provided that such interim or emergency regulations consider and maintain the economic viability of the traditional established New York based commercial surf clam/ocean quahog harvesting industry participants and New York surf clam/ocean quahog processors and packers that rely on this fishery. For the purposes of this section "traditional" shall mean prior to nineteen hundred eighty-nine.

S 10. Subparagraph 4 of paragraph f of subdivision 4 of section 71-0907 of the environmental conservation law is amended to read as follows:

(4) Any rakes, tongs, dredges, or device other than a boat or vehicle used, or in possession for purpose of use, for the taking of shellfish in violation of subdivisions [1 or 2] ONE OR TWO of section [13-0309] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW. For the purposes of this paragraph "device" includes a bird, dog, or other animal used in or as an aid in taking fish or wildlife, any jack light, spot light or other artificial light other than a headlight attached in proper position to a motor vehicle, any hunting appliance or apparatus and any fishing or netting gear or tackle. This paragraph does not limit any power of seizure pursuant to warrant.

S 11. Subdivisions 4 and 5 of section 71-0921 of the environmental conservation law, as added by chapter 417 of the laws of 1996, subparagraphs 2 and 3 of paragraph b of subdivision 4 as amended by chapter 347 of the laws of 2007, are amended to read as follows:

4. a. Violations of:

(1) subdivision one of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the taking of shellfish from uncertified shellfish lands, or the possession, transportation, sale or trafficking in shellfish so taken;

(2) subdivision two of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the taking of shellfish between sunset and sunrise;

(3) subdivision ten of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the possession of a stick dredge after one prior conviction under such subdivision for such activity;

(4) subdivision one of section [13-0311 of this chapter] 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW involving the taking of shellfish without the required digger's permit;

(5) subdivision seven of section [13-0311 of this chapter] 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW involving the taking of shellfish while one's digger's permit is suspended or revoked;

(6) subdivision one of section [13-0315 of this chapter] 96-Z-47-A OF THE AGRICULTURE AND MARKETS LAW involving the processing, transportation, shipment or sale of shellfish without the required shipper's or processor's permit;

(7) regulations promulgated by the department pursuant to section [13-0319 of this chapter] 96-Z-42 OF THE AGRICULTURE AND MARKETS LAW involving the failure to tag or seal shellfish or the falsifying of any information required on any tag or seal required by said regulations;

(8) subdivision five of section [13-0325 of this chapter] 96-Z-51 OF THE AGRICULTURE AND MARKETS LAW, regarding the taking of undersized clams, where the taking involves more than twenty-four percentum of clams of less than legal size;

(9) [subdivision two of] section [13-0327 of this chapter] 96-Z-52 OF THE AGRICULTURE AND MARKETS LAW, regarding the taking of undersized scallops, where the taking involves more than twenty-four percentum of scallops of less than legal size; and

(10) section 13-0344 of this chapter involving the dumping of objects into the water after being signaled by a police officer or peace officer to stop for inspection.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than sixty days, a fine of not less than two hundred fifty dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than ninety days, a fine of not less than five hundred dollars nor more than twenty-five hundred dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than ten thousand dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(4) Provided, further, that all equipment or conveyances used to harvest, transport or traffic in such illegal shellfish may be forfeited for any third or subsequent conviction of the above violations, in addition to such penalties or imprisonment. Such forfeiture shall be in addition to any forfeiture authorized by section 71-0909 of this article.

5. a. Violations of:

(1) subdivision three of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the illegal use of dredges, scrapes or other devices operated by power or by boats propelled by motor or other mechanical means for the purpose of taking shellfish;

(2) subdivision eight of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the operation, use or placing, for whatever purpose, of dredges, rakes, tongs or other devices for the taking of shellfish in uncertified shellfish lands after a prior conviction under such subdivision for such activity;

(3) subdivision nine of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW involving the altering, damaging, mutilating, moving or carrying away of buoys or markers used to designate the uncertified waters of the state;

(4) subdivision five of section [13-0325 of this chapter] 96-Z-51 OF THE AGRICULTURE AND MARKETS LAW regarding the taking of undersized clams, where the taking involves between ten and twenty-four percentum of clams of less than legal size; and

(5) [subdivision two of] section [13-0327 of this chapter] 96-Z-52 OF THE AGRICULTURE AND MARKETS LAW, regarding the taking of undersized scallops, where the taking involves between ten and twenty-four percentum of scallops of less than legal size.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction of any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than thirty days, a fine of not less than two hundred fifty dollars nor more than five hundred dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment not to exceed sixty days, a fine of not less than five hundred dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than five thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

S 12. Subdivision 6 of section 71-0923 of the environmental conservation law, as added by chapter 417 of the laws of 1996, is amended to read as follows:

6. A first conviction for a violation of subdivision eight of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW, involving devices for taking shellfish in uncertified lands, or a violation of subdivision ten of section [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW, involving possession of a stick dredge, shall be punishable as a violation under this section.

S 13. Subdivisions 7-a, 7-b and 8 of section 71-0925 of the environmental conservation law, subdivision 7-a as amended by chapter 284 of the laws of 2004 and subdivision 7-b as added by chapter 441 of the laws of 1977 and as renumbered by chapter 284 of the laws of 2004, are amended to read as follows:

7-a. If the violation was a violation of subdivision [1 or 2] ONE OR TWO of section [13-0309, or section 13-0323 or 13-0327] 96-Z-46, OR SECTION 96-Z-50 OR 96-Z-52 OF THE AGRICULTURE AND MARKETS LAW, or section 13-0344 OF THIS CHAPTER, not less than two hundred fifty dollars nor more than one thousand dollars for each offense;

7-b. If the violation was a violation of subdivision one or two of section [13-0325 of this chapter] 96-Z-51 OF THE AGRICULTURE AND MARKETS LAW there shall be a minimum penalty of twenty-five dollars and a maximum of two hundred fifty dollars per container or bushel involved in the violation.

8. If a violation of subdivisions [1 or 2] ONE OR TWO of section [13-0309] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW occurs during the time when a permit or license to take shellfish has been suspended or revoked pursuant to the provisions of subdivision [3] THREE of section [13-0311] 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW or subparagraph [(3)] 3 of paragraph b of subdivision 1 of section 11-0719 OF THIS CHAPTER, not less than five hundred dollars nor more than fifteen hundred dollars for each offense, and in addition the forfeiture to the state of the tongs, rakes, dredges or devices other than boats used by or in connection with such illegal taking;

S 14. Subdivisions 1 and 4 of section 71-0927 of the environmental conservation law, subdivision 1 as amended by chapter 284 of the laws of 2004 and subdivision 4 as added by chapter 315 of the laws of 1992 and as renumbered by chapter 284 of the laws of 2004, are amended to read as follows:

1. Anyone convicted of violating the prohibition against harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 3 of section 71-0924 OF THIS TITLE; or anyone convicted two or more times within five years of violating the prohibition against harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 2 of section 71-0924 OF THIS TITLE, [or of violating subdivision 1 or 2, paragraph e or f of subdivision 3, subdivision 6, 8, 9, 10, 11, or 13 of section 13-0309,] section 13-0317, [subdivision 2 of section 13-0323, section 13-0325, subdivision 3 or 5 of section 13-0327,] or section 13-0344 of this chapter, OR OF VIOLATING SUBDIVISION ONE OR TWO, PARAGRAPH E OR F OF SUBDIVISION THREE, SUBDIVISION SIX, EIGHT, NINE, TEN, ELEVEN OR THIRTEEN OF SECTION 96-Z-46 OR SUBDIVISION TWO OF SECTION 96-Z-50, SECTION 96-Z-51 OR SECTION 96-Z-52 OF THE AGRICULTURE AND MARKETS LAW shall have his license to take and land shellfish revoked and shall not be relicensed for a minimum of five years

thereafter, in addition to any other sanction imposed pursuant to this article.

4. The provisions of this section shall be in addition to the ability of the department to suspend licenses pursuant to section [13-0309, 13-0311 or] 13-0329 of this chapter, OR 96-Z-46 OR 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW or any other provision of law. Revocations pursuant to this section shall be automatic upon the second conviction and shall not require any hearing for the revocation.

S 15. Section 13-0317 of the environmental conservation law is amended to read as follows:

S 13-0317. Shipping tags.

All persons transporting, importing, exporting or otherwise distributing shellfish shall label or tag the same as provided under section [13-0319] 96-Z-42 OF THE AGRICULTURE AND MARKETS LAW.

S 16. This act shall take effect immediately.