

2690

2013-2014 Regular Sessions

I N S E N A T E

January 23, 2013

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:

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2 REPEALED.

3 S 2. Sections 13-0301, 13-0305, 13-0309, 13-0311, 13-0313, 13-0315,
4 13-0319, 13-0321, 13-0323, 13-0325 and 13-0327 of the environmental
5 conservation law are REPEALED.

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

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

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

19 1. This title 15 of the Fish and Wildlife Law and regulations adopted
20 pursuant hereto do not apply to (a) the taking of fish by angling as

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

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1 permitted in title 13; (b) the taking of fish or the use of nets in the
 2 marine and coastal district as defined in section 13-0103, or in a trout
 3 or black bass hatchery operated under permit from the department as
 4 provided in section [11-1909] 96-Z-41 OF THE AGRICULTURE AND MARKETS
 5 LAW, or in a farm fish pond licensed as provided in section 11-1911 or
 6 in a fishing preserve licensed as provided in section 11-1913; (c) the
 7 sale or taking for sale of bait fish named in section 11-1315.

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

10 ARTICLE 5-E

11 REGULATION OF AQUACULTURE

- 12 SECTION 96-Z-40. LEGISLATIVE INTENT.
 13 96-Z-41. PRIVATE TROUT AND BLACK BASS HATCHERIES.
 14 96-Z-42. SHELLFISH REGULATIONS.
 15 96-Z-43. AQUACULTURE TASK FORCE.
 16 96-Z-44. LEASE OF STATE-OWNED UNDERWATER LANDS FOR SHELLFISH
 17 CULTIVATION.
 18 96-Z-45. MARKING LANDS PROHIBITED; INJURY TO MONUMENTS.
 19 96-Z-46. TAKING, HANDLING AND IMPORTATION OF SHELLFISH; GENER-
 20 AL PROVISIONS.
 21 96-Z-47. SHELLFISH GROWERS; DEFINITION; BED PERMIT.
 22 96-Z-47-A. SHELLFISH SHIPPER'S AND PROCESSOR'S PERMIT.
 23 96-Z-48. DIGGER'S PERMIT TO TAKE SHELLFISH FOR COMMERCIAL
 24 PURPOSES; WHEN NOT REQUIRED.
 25 96-Z-49. TAKING AND IMPORTATION OF SHELLFISH FOR TRANSPLANTING
 26 AND OTHER PURPOSES.
 27 96-Z-50. OYSTERS; PROHIBITED ACTS.
 28 96-Z-51. CLAMS; PROHIBITED ACTS.
 29 96-Z-52. SCALLOPS; PROHIBITED ACTS.
 30 96-Z-53. COMMERCIAL LICENSES; LIMITED ENTRY.

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

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

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

50 S 96-Z-42. SHELLFISH REGULATIONS. THE DEPARTMENT MAY ADOPT REGU-
 51 LATIONS WITH RESPECT TO THE HARVESTING, TRANSPLANTING, RELAYING, RECEIV-
 52 ING, POSSESSING, TRANSPORTING, IMPORTING, EXPORTING, PROCESSING, BUYING,
 53 SELLING OF OR OTHERWISE TRAFFICKING IN SHELLFISH; THE LABELING OR
 54 TAGGING THEREOF; THE KEEPING OF RECORDS OF SHELLFISH RECEIVED, TRANS-
 55 PORTED AND DISTRIBUTED; AND THE CONSTRUCTION, OPERATION AND MAINTENANCE
 56 OF ALL SHELLFISH HANDLING, PROCESSING AND DISTRIBUTING ESTABLISHMENTS,

1 INCLUDING FACILITIES AND EQUIPMENT AND THE CLEANING, CLEANSING AND WATER
2 STORAGE OF SHELLFISH. THE PROVISIONS OF THIS SECTION RELATING TO TRANS-
3 PLANTING AND RELAYING SHALL INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL
4 OF SHELLFISH FROM UNCERTIFIED GROWING AREAS AND TRANSPLANTING TO CERTI-
5 FIED AREAS FOR SUBSEQUENT HARVEST FOR MARKET PURPOSES AND TRANSPLANTING
6 OF SCALLOPS PURSUANT TO SECTION 96-Z-49 OF THIS ARTICLE. SUCH REGU-
7 LATIONS MAY PROVIDE FOR PAYMENT OF THE REASONABLE COSTS OF THE DEPART-
8 MENT OF SUPERVISION OF REMOVAL OF SHELLFISH FROM UNCERTIFIED AREAS,
9 EXCEPT WHERE SUCH REMOVAL IS BEING UNDERTAKEN BY A MUNICIPALITY OR POLI-
10 TICAL SUBDIVISION. SUCH REGULATIONS SHALL BE DRAWN IN SUCH A MANNER AS
11 TO PROVIDE ADEQUATE SANITARY CONTROL OVER ALL SHELLFISH OFFERED FOR SALE
12 AND DISTRIBUTION IN THE STATE. SUCH REGULATIONS SHALL NOT BE LESS
13 RESTRICTIVE THAN THE MINIMUM REQUIREMENTS OF ANY FEDERAL AGENCY REGULAT-
14 ING THE INTER-STATE SHIPMENT OF SHELLFISH.

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

19 2. THE TASK FORCE SHALL CONSIST OF TEN MEMBERS, EACH TO SERVE FOR A
20 TERM OF TWO YEARS, TO BE APPOINTED AS FOLLOWS: TWO SHALL BE APPOINTED BY
21 THE TEMPORARY PRESIDENT OF THE SENATE AND TWO BY THE MINORITY LEADER OF
22 THE SENATE; TWO SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY AND
23 TWO BY THE MINORITY LEADER OF THE ASSEMBLY; AND TWO SHALL BE APPOINTED
24 BY THE GOVERNOR. THE MEMBERS SHALL BE BROADLY REPRESENTATIVE OF THE
25 GEOGRAPHIC AREAS OF THE STATE AND INCLUDE REPRESENTATIVES OF THE AQUA-
26 CULTURE INDUSTRY, ETHNIC POPULATIONS, LOCAL GOVERNMENTS AND THE PUBLIC
27 AT LARGE. NO MORE THAN FOUR APPOINTEES SHALL BE MEMBERS OF THE LEGISLA-
28 TURE. THE COMMISSIONER AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVA-
29 TION SHALL SERVE AS EX-OFFICIO MEMBERS. VACANCIES IN THE MEMBERSHIP OF
30 THE COMMISSION AND AMONG ITS OFFICERS SHALL BE FILLED IN THE MANNER
31 PROVIDED FOR ORIGINAL APPOINTMENTS.

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

35 4. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR
36 THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
37 INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE.

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

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

47 7. THE TASK FORCE SHALL MAKE A PRELIMINARY REPORT TO THE GOVERNOR AND
48 THE LEGISLATURE OF ITS FINDINGS, CONCLUSIONS AND RECOMMENDATIONS ON OR
49 BEFORE APRIL FIRST, TWO THOUSAND FOURTEEN AND A FINAL REPORT OF ITS
50 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS NOT LATER THAN DECEMBER THIR-
51 TY-FIRST, TWO THOUSAND FOURTEEN, AND SHALL SUBMIT WITH ITS REPORTS SUCH
52 LEGISLATIVE PROPOSALS AS IT DEEMS NECESSARY TO IMPLEMENT ITS RECOMMENDA-
53 TIONS.

54 S 96-Z-44. LEASE OF STATE-OWNED UNDERWATER LANDS FOR SHELLFISH CULTI-
55 VATION. 1. LEASES. A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDI-
56 VISION, THE DEPARTMENT MAY LEASE STATE-OWNED UNDERWATER LANDS WITHIN THE

1 MARINE AND COASTAL DISTRICT FOR THE CULTIVATION OF SHELLFISH. THE WRIT-
2 TEN APPROVAL OF THE OFFICE OF GENERAL SERVICES SHALL BE OBTAINED FOR THE
3 LEASE OF LAND WITHIN FIVE HUNDRED FEET OF THE HIGH WATER MARK.

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

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

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

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

37 4. LIMITATIONS. THE COMMISSIONER OF GENERAL SERVICES SHALL NOT GRANT
38 OR LEASE LANDS FOR SHELLFISH CULTIVATION. THE PUBLIC SHALL NOT BE
39 EXCLUDED FROM THE TAKING OF SHELLFISH FROM UNDERWATER LANDS GRANTED OR
40 LEASED BY SUCH COMMISSIONER FOR OTHER PURPOSES; PROVIDED, HOWEVER, THAT
41 SHOULD ANY GRANT OR LEASE MADE BY SUCH COMMISSIONER FOR SUCH OTHER
42 PURPOSES INCLUDE LANDS LEASED BY THE DEPARTMENT FOR SHELLFISH CULTI-
43 VATION THE LESSEE FOR SHELLFISH CULTIVATION SHALL HAVE THE EXCLUSIVE
44 RIGHT TO USE AND TAKE SHELLFISH FROM SUCH LEASED LANDS FOR A PERIOD OF
45 TWO YEARS FROM THE DATE OF THE GRANT OR LEASE BY SUCH COMMISSIONER OR
46 UNTIL THE EXPIRATION OF THE SHELLFISH CULTIVATION LEASE, WHICHEVER IS
47 THE EARLIEST, AND MAY PRIOR TO THE EXPIRATION OF SUCH PERIOD, REMOVE AND
48 TRANSPLANT THE SHELLFISH FROM SUCH LANDS TO OTHER LANDS LEASED, OWNED OR
49 CONTROLLED BY SUCH LESSEE.

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

54 2. NO PERSON SHALL WILFULLY INJURE OR REMOVE ANY MONUMENT, STAKE OR
55 BOUNDARY MARKER OF ANY KIND, PLACED FOR THE PURPOSE OF DELINEATING OR

1 LOCATING STATE OWNED SHELLFISH LANDS EXCEPT BY AUTHORITY OF THE DEPART-
2 MENT.

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

6 B. SHELLFISH FROM UNCERTIFIED LANDS OF OTHER STATES SHALL NOT BE
7 POSSESSED, TRANSPORTED OR TRAFFICKED IN WITHIN THIS STATE, EXCEPT PURSU-
8 ANT TO PERMIT AS PROVIDED IN SECTIONS 96-Z-42 AND 96-Z-49 OF THIS ARTI-
9 CLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 6. SHELLFISH SHALL NOT BE TREATED BY THE PROCESS KNOWN AS DRINKING,
31 FLOATING, PLUMPING OR SWELLING, AND SHELLFISH SO TREATED SHALL NOT BE
32 POSSESSED, BOUGHT, SOLD OR EXPOSED FOR SALE; PROVIDED, HOWEVER, THAT
33 SHELLFISH MAY BE RETAINED IN WATER STORAGE AS PROVIDED IN SECTION 96-Z-
34 42 OF THIS ARTICLE AND PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION
35 SHALL BE DEEMED TO PROHIBIT OR RENDER UNLAWFUL THE PRACTICE OF OFF-BOT-
36 TOM CULTURE OF SHELLFISH UNDER PERMIT ISSUED PURSUANT TO SECTION 13-0316
37 OF THE ENVIRONMENTAL CONSERVATION LAW.

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

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

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

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

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

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

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

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

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

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

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

30 B. REQUIREMENTS WITH RESPECT TO NUMBER OF VESSELS WHICH MAY PARTIC-
31 IPATE IN THE SURF CLAM AND OCEAN QUAHOG FISHERY;

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

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

37 E. THE REGULATIONS SHALL TAKE INTO CONSIDERATION AND ATTEMPT TO MAIN-
38 TAIN THE ECONOMIC VIABILITY OF THOSE PORTIONS OF THE SURF CLAM HARVEST-
39 ING AND PROCESSING INDUSTRY THAT HAVE A LONGSTANDING INVESTMENT IN THE
40 DOMESTIC SURF CLAM INDUSTRY; AND

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

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

50 14. THE DEPARTMENT, UNTIL APRIL FIRST, TWO THOUSAND FIFTEEN, SHALL BE
51 ENTITLED TO COLLECT FIFTEEN CENTS PER BUSHEL OF SURF CLAMS AND TEN CENTS
52 PER BUSHEL OF OCEAN QUAHOGS TAKEN FROM ALL CERTIFIED WATERS TO BE DEPOS-
53 ITED IN THE SURF CLAM/OCEAN QUAHOG ACCOUNT AS PROVIDED IN SECTION EIGHT-
54 Y-THREE OF THE STATE FINANCE LAW.

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

1 OCEAN QUAHOGS IN NEW YORK WATERS, THE FOLLOWING RESTRICTIONS SHALL APPLY
2 IN ADDITION TO ANY CONSISTENT REGULATIONS ADOPTED PRIOR TO THE DATE UPON
3 WHICH SUCH SECTION SHALL TAKE EFFECT:

- 4 A. A WEEKLY CATCH LIMIT NOT TO EXCEED TWENTY-EIGHT CAGES;
5 B. AN ANNUAL CATCH LIMIT IN CERTIFIED WATERS OF THE ATLANTIC OCEAN FOR
6 SURF CLAMS NOT TO EXCEED FIVE HUNDRED THOUSAND BUSHELS IN THE AGGREGATE;
7 C. AN ANNUAL CATCH LIMIT IN CERTIFIED WATERS OTHER THAN THE ATLANTIC
8 OCEAN FOR SURF CLAMS NOT TO EXCEED FIFTY THOUSAND BUSHELS IN THE AGGRE-
9 GATE; AND
10 D. REQUIRING PERMITTEES TO REPORT ON A WEEKLY BASIS THE NUMBER OF
11 BUSHELS HARVESTED IN THE PREVIOUS SEVEN DAY PERIOD, AND PROVIDE THAT THE
12 FAILURE TO FILE SUCH WEEKLY REPORT MAY RESULT IN THE REVOCATION OF SUCH
13 PERSON'S PERMIT BY THE DEPARTMENT.

14 S 96-Z-47. SHELLFISH GROWERS; DEFINITION; BED PERMIT. 1. ANY PERSON
15 RESIDENT IN THIS STATE ONE YEAR OR MORE MAY ENGAGE IN THE CULTIVATION
16 AND MARKETING OF SHELLFISH SUBJECT TO THE PROVISIONS OF SECTION 13-0307
17 OF THE ENVIRONMENTAL CONSERVATION LAW, AND SECTIONS 96-Z-42, 96-Z-46 AND
18 96-Z-48 OF THIS ARTICLE AND SHALL BE KNOWN AS A GROWER.

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

24 3. THE FEE FOR SUCH PERMIT SHALL BE TWENTY-FIVE CENTS FOR EACH ACRE
25 FROM WHICH SHELLFISH ARE TO BE TAKEN; PROVIDED, HOWEVER, THAT THE MINI-
26 MUM FEE SHALL BE FIVE DOLLARS. SUCH CERTIFICATES SHALL EXPIRE ON DECEM-
27 BER THIRTY-FIRST OF THE YEAR OF ISSUE.

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

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

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

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

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

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

50 A. CLASS A PERMIT. THIS PERMIT SHALL ALLOW THE HOLDER THEREOF AND ANY
51 PERSON IN THE EMPLOY OF THE PERMIT HOLDER, IN ACCORDANCE WITH REGU-
52 LATIONS ADOPTED PURSUANT TO SECTION 96-Z-42 OF THIS ARTICLE, TO: (I)
53 RESHIP SHELLFISH PREVIOUSLY SHIPPED BY THE HOLDER OF A CLASS A, B, C, D
54 OR E PERMIT ISSUED PURSUANT TO THIS SECTION, OR SIMILAR PERMIT ISSUED BY
55 THE SHELLFISH SANITATION CONTROL AGENCY OF ANOTHER STATE OR FOREIGN
56 COUNTRY; (II) PACK OR REPACK SHELLSTOCK RECEIVED FROM THE HOLDER OF A

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

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

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

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

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

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

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

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

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

54 4. THE HOLDER OF SUCH PERMIT SHALL NOT SHIP OR SELL SHELLFISH, EXCEPT
55 TO A HOLDER OF A VALID CLASS A, B, OR E SHIPPER'S PERMIT, ISSUED PURSU-
56 ANT TO SECTION 96-Z-47-A OF THIS ARTICLE, WHO HAS A PLACE OF BUSINESS IN

1 THE COUNTY OF NASSAU OR SUFFOLK, WITHOUT FIRST OBTAINING A SHIPPER'S
2 PERMIT AS PROVIDED IN SUBDIVISION ONE OF SECTION 96-Z-47-A OF THIS ARTI-
3 CLE.

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

11 A. HARD CLAMS (MERCENARIA MERCENARIA). NOT MORE THAN ONE HUNDRED INDI-
12 VIDUAL ORGANISMS.

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

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

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

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

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

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

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

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

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

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

51 S 96-Z-49. TAKING AND IMPORTATION OF SHELLFISH FOR TRANSPLANTING AND
52 OTHER PURPOSES. 1. SHELLFISH MAY BE TAKEN FROM UNCERTIFIED SHELLFISH
53 LANDS FOR TRANSPLANTING OR OTHER PURPOSES AS THE DEPARTMENT MAY DEEM
54 ADVISABLE SUBJECT TO SUPERVISION AND REGULATION AS PROVIDED IN SECTION
55 96-Z-42 OF THIS ARTICLE.

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

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

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

18 2. IN NO CASE SHALL OYSTERS OTHER THAN THE SPECIES CRASSOSTREA VIRGI-
19 NICA BE PLANTED OR TRANSPLANTED IN NEW YORK WATERS WITHOUT PROCURING A
20 PERMIT FROM THE DEPARTMENT.

21 3. THE DEPARTMENT MAY, UNTIL DECEMBER THIRTY-FIRST, TWO THOUSAND
22 FIFTEEN, FIX BY REGULATION MEASURES FOR THE MANAGEMENT OF OYSTERS (FAMI-
23 LLY OSTREIDAE) INCLUDING SIZE LIMITS, CATCH AND POSSESSION LIMITS, OPEN
24 AND CLOSED SEASONS, CLOSED AREAS, RESTRICTIONS ON THE MANNER OF TAKING
25 AND LANDING, REQUIREMENTS FOR PERMITS AND ELIGIBILITY THEREFOR, RECORD-
26 KEEPING AND IDENTIFICATION REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND
27 TYPE OF FISHING EFFORT AND GEAR, AND REQUIREMENTS RELATING TO TRANSPOR-
28 TATION, POSSESSION AND SALE, PROVIDED THAT SUCH REGULATIONS ARE NO LESS
29 RESTRICTIVE THAN REQUIREMENTS SET FORTH IN THIS ARTICLE AND IN THE ENVI-
30 RONMENTAL CONSERVATION LAW.

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

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

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

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

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

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

17 D. ANY INDIVIDUAL, WHILE PARTICIPATING IN THE OPERATION OF A LICENSED
18 BOAT, SHALL BE EXEMPT FROM THE REQUIREMENTS OF SECTION 96-Z-48 OF THIS
19 ARTICLE BUT SHALL NOT SHIP OR SELL SHELLFISH TAKEN BY SUCH BOAT WITHOUT
20 FIRST OBTAINING A SHELLFISH SHIPPER'S PERMIT AS PROVIDED FOR IN SECTION
21 96-Z-47-A OF THIS ARTICLE.

22 5. CLAMS SHALL BE CULLED WHEN TAKEN IN ACCORDANCE WITH RULES AND REGU-
23 LATIONS PROMULGATED BY THE COMMISSIONER. CLAMS WHICH MAY NOT BE TAKEN,
24 POSSESSED, OFFERED FOR SALE, SOLD OR OTHERWISE TRAFFICKED IN PURSUANT TO
25 THE PROVISIONS OF SUBDIVISION ONE, THREE OR FOUR OF THIS SECTION MAY
26 COMPOSE NOT TO EXCEED THREE PER CENTUM OF ANY BUSHEL, PACKAGE OR
27 CONTAINER, WHEN UNAVOIDABLY TAKEN. SUCH THREE PER CENTUM SHALL BE DETER-
28 MINED BY THE MEASUREMENT OF ANY BUSHEL, OR OTHER PACKAGE OR CONTAINER OF
29 DIFFERENT MEASUREMENT OF CLAMS TAKEN FROM THE CATCH OR IN THE POSSESSION
30 OF THE PERSON OFFERING THE SAME FOR SALE.

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

36 7. IT SHALL BE UNLAWFUL TO KNOWINGLY:

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

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

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

54 S 96-Z-52. SCALLOPS; PROHIBITED ACTS. THE DEPARTMENT MAY, UNTIL
55 DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN, ADOPT BY REGULATION MEAS-
56 URES FOR THE MANAGEMENT OF SCALLOPS (FAMILY PECTINIDAE) INCLUDING SIZE

1 LIMITS, CATCH AND POSSESSION LIMITS, OPEN AND CLOSED SEASONS, CLOSED
2 AREAS, RESTRICTIONS ON THE MANNER OF TAKING AND LANDING, REQUIREMENTS
3 FOR PERMITS AND ELIGIBILITY THEREFOR, RECORDKEEPING AND IDENTIFICATION
4 REQUIREMENTS, REQUIREMENTS ON THE AMOUNT AND TYPE OF FISHING EFFORT AND
5 GEAR, AND REQUIREMENTS RELATING TO TRANSPORTATION, POSSESSION AND SALE,
6 PROVIDED THAT SUCH REGULATIONS ARE NO LESS RESTRICTIVE THAN REQUIREMENTS
7 SET FORTH IN THIS ARTICLE AND IN THE ENVIRONMENTAL CONSERVATION LAW.

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

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

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

15 3. LICENSES MAY BE ISSUED TO INDIVIDUALS ONLY;

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

18 5. LICENSES SHALL BE ISSUED ONLY TO PERSONS WHO DEMONSTRATE IN A
19 MANNER ACCEPTABLE TO THE DEPARTMENT THAT THEY RECEIVED AN AVERAGE OF AT
20 LEAST FIFTEEN THOUSAND DOLLARS OR MORE THAN FIFTY PERCENT OF THEIR ANNU-
21 AL EARNED INCOME OVER THREE CONSECUTIVE YEARS FROM COMMERCIAL FISHING OR
22 FISHING, OR WHO SUCCESSFULLY COMPLETE A COMMERCIAL SHELLFISH APPRENTICE-
23 SHIP PURSUANT TO SUBDIVISION SEVEN OF SECTION 13-0328 OF THE ENVIRON-
24 MENTAL CONSERVATION LAW. AS USED IN THIS SUBDIVISION, "COMMERCIAL FISH-
25 ING" MEANS THE TAKING AND SALE OF MARINE RESOURCES INCLUDING FISH,
26 SHELLFISH, CRUSTACEA OR OTHER MARINE BIOTA AND "FISHING" MEANS COMMER-
27 CIAL FISHING AND CARRYING FISHING PASSENGERS FOR HIRE. INDIVIDUALS WHO
28 WISH TO QUALIFY BASED ON INCOME FROM "FISHING" MUST HOLD A VALID MARINE
29 AND COASTAL DISTRICT PARTY AND CHARTER BOAT LICENSE. NO MORE THAN TEN
30 PERCENT OF THE LICENSES ISSUED EACH YEAR BASED ON INCOME ELIGIBILITY
31 PURSUANT TO THIS SECTION SHALL BE ISSUED TO APPLICANTS WHO QUALIFY BASED
32 SOLELY UPON INCOME DERIVED FROM OPERATION OF OR EMPLOYMENT BY A PARTY OR
33 CHARTER BOAT.

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

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

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

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

51 S 8. Subparagraphs (i) and (ii) of paragraph 2 of subdivision (a) of
52 section 83 of the state finance law, subparagraph (i) as amended by
53 chapter 512 of the laws of 1994 and subparagraph (ii) as amended by
54 section 2 of part A of chapter 82 of the laws of 2002, are amended to
55 read as follows:

1 (i) Moneys collected pursuant to sections [13-0301, 13-0311 and
2 13-0315 of the environmental conservation law] 96-Z-44, 96-Z-47-A AND
3 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW and all fines and penalties
4 collected pursuant to article seventy-one of [such] THE ENVIRONMENTAL
5 CONSERVATION law for illegal acts relating to shellfish shall be depos-
6 ited in a special account within the conservation fund, to be known as
7 the marine resources account, and shall be available to the department
8 of environmental conservation, after appropriation, for the care,
9 management, protection and enlargement of marine fish and shellfish
10 resources.

11 (ii) Notwithstanding the provisions of subparagraph (i) of this para-
12 graph, moneys arising out of the application of subdivision fourteen of
13 section [13-0309 of the environmental conservation] 96-Z-46 OF THE AGRI-
14 CULTURE AND MARKETS law, shall be deposited in a special account within
15 the conservation fund, to be known as the surf clam/ocean quahog
16 account, and shall be available to the department of environmental
17 conservation, including contracts for such purposes with a New York
18 state institution of higher education currently involved in local marine
19 research, after appropriation, for the research and stock assessment of
20 surf clams and ocean quahogs. The department shall, at a minimum, under-
21 take two stock assessments and issue reports detailing the findings of
22 such assessments to the governor and legislature. The first stock
23 assessment shall be due no later than December thirty-first, two thou-
24 sand two. The second stock assessment shall be due no later than Decem-
25 ber thirty-first, two thousand four, and shall be conducted in an area
26 to be determined in consultation with the surf clam/ocean quahog manage-
27 ment advisory board.

28 S 9. Subparagraph 4 of paragraph f of subdivision 4 of section 71-0907
29 of the environmental conservation law is amended to read as follows:

30 (4) Any rakes, tongs, dredges, or device other than a boat or vehicle
31 used, or in possession for purpose of use, for the taking of shellfish
32 in violation of subdivisions [1 or 2] ONE OR TWO of section [13-0309]
33 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW. For the purposes of this
34 paragraph "device" includes a bird, dog, or other animal used in or as
35 an aid in taking fish or wildlife, any jack light, spot light or other
36 artificial light other than a headlight attached in proper position to a
37 motor vehicle, any hunting appliance or apparatus and any fishing or
38 netting gear or tackle. This paragraph does not limit any power of
39 seizure pursuant to warrant.

40 S 10. Subdivisions 4 and 5 of section 71-0921 of the environmental
41 conservation law, as added by chapter 417 of the laws of 1996, subpara-
42 graphs 2 and 3 of paragraph b of subdivision 4 as amended by chapter 347
43 of the laws of 2007, are amended to read as follows:

44 4. a. Violations of:

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

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

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

1 (4) subdivision one of section [13-0311 of this chapter] 96-Z-48 OF
2 THE AGRICULTURE AND MARKETS LAW involving the taking of shellfish with-
3 out the required digger's permit;

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

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

11 (7) regulations promulgated by the department pursuant to section
12 [13-0319 of this chapter] 96-Z-42 OF THE AGRICULTURE AND MARKETS LAW
13 involving the failure to tag or seal shellfish or the falsifying of any
14 information required on any tag or seal required by said regulations;

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

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

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

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

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

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

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

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

52 5. a. Violations of:

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

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

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

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

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

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

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

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

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

38 S 11. Subdivision 6 of section 71-0923 of the environmental conserva-
39 tion law, as added by chapter 417 of the laws of 1996, is amended to
40 read as follows:

41 6. A first conviction for a violation of subdivision eight of section
42 [13-0309 of this chapter] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW,
43 involving devices for taking shellfish in uncertified lands, or a
44 violation of subdivision ten of section [13-0309 of this chapter] 96-Z-
45 46 OF THE AGRICULTURE AND MARKETS LAW, involving possession of a stick
46 dredge, shall be punishable as a violation under this section.

47 S 12. Subdivisions 7-a, 7-b and 8 of section 71-0925 of the environ-
48 mental conservation law, subdivision 7-a as amended by chapter 284 of
49 the laws of 2004 and subdivision 7-b as added by chapter 441 of the laws
50 of 1977 and as renumbered by chapter 284 of the laws of 2004, are
51 amended to read as follows:

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

1 7-b. If the violation was a violation of subdivision one or two of
2 section [13-0325 of this chapter] 96-Z-51 OF THE AGRICULTURE AND MARKETS
3 LAW there shall be a minimum penalty of twenty-five dollars and a maxi-
4 mum of two hundred fifty dollars per container or bushel involved in the
5 violation.

6 8. If a violation of subdivisions [1 or 2] ONE OR TWO of section
7 [13-0309] 96-Z-46 OF THE AGRICULTURE AND MARKETS LAW occurs during the
8 time when a permit or license to take shellfish has been suspended or
9 revoked pursuant to the provisions of subdivision [3] THREE of section
10 [13-0311] 96-Z-48 OF THE AGRICULTURE AND MARKETS LAW or subparagraph
11 [(3)] 3 of paragraph b of subdivision 1 of section 11-0719 OF THIS CHAP-
12 TER, not less than five hundred dollars nor more than fifteen hundred
13 dollars for each offense, and in addition the forfeiture to the state of
14 the tongs, rakes, dredges or devices other than boats used by or in
15 connection with such illegal taking;

16 S 13. Subdivisions 1 and 4 of section 71-0927 of the environmental
17 conservation law, subdivision 1 as amended by chapter 284 of the laws of
18 2004 and subdivision 4 as added by chapter 315 of the laws of 1992 and
19 as renumbered by chapter 284 of the laws of 2004, are amended to read as
20 follows:

21 1. Anyone convicted of violating the prohibition against harvesting,
22 taking, possessing or transporting shellfish under facts and circum-
23 stances meeting the criteria for imposition of sanctions pursuant to
24 subdivision 3 of section 71-0924 OF THIS TITLE; or anyone convicted two
25 or more times within five years of violating the prohibition against
26 harvesting, taking, possessing or transporting shellfish under facts and
27 circumstances meeting the criteria for imposition of sanctions pursuant
28 to subdivision 2 of section 71-0924 OF THIS TITLE, [or of violating
29 subdivision 1 or 2, paragraph e or f of subdivision 3, subdivision 6, 8,
30 9, 10, 11, or 13 of section 13-0309,] section 13-0317, [subdivision 2 of
31 section 13-0323, section 13-0325, subdivision 3 or 5 of section
32 13-0327,] or section 13-0344 of this chapter, OR OF VIOLATING SUBDIVI-
33 SION ONE OR TWO, PARAGRAPH E OR F OF SUBDIVISION THREE, SUBDIVISION SIX,
34 EIGHT, NINE, TEN, ELEVEN OR THIRTEEN OF SECTION 96-Z-46 OR SUBDIVISION
35 TWO OF SECTION 96-Z-50, SECTION 96-Z-51 OR SECTION 96-Z-52 OF THE AGRI-
36 CULTURE AND MARKETS LAW shall have his license to take and land shellf-
37 ish revoked and shall not be relicensed for a minimum of five years
38 thereafter, in addition to any other sanction imposed pursuant to this
39 article.

40 4. The provisions of this section shall be in addition to the ability
41 of the department to suspend licenses pursuant to section [13-0309,
42 13-0311 or] 13-0329 of this chapter, OR 96-Z-46 OR 96-Z-48 OF THE AGRI-
43 CULTURE AND MARKETS LAW or any other provision of law. Revocations
44 pursuant to this section shall be automatic upon the second conviction
45 and shall not require any hearing for the revocation.

46 S 14. Section 13-0317 of the environmental conservation law is amended
47 to read as follows:

48 S 13-0317. Shipping tags.

49 All persons transporting, importing, exporting or otherwise distribut-
50 ing shellfish shall label or tag the same as provided under section
51 [13-0319] 96-Z-42 OF THE AGRICULTURE AND MARKETS LAW.

52 S 15. This act shall take effect immediately.