

MAINE STATE LEGISLATURE

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**STATE OF MAINE
119TH LEGISLATURE
SECOND REGULAR SESSION**

**Final Report
of the**

**COMMITTEE TO STUDY
FURTHER DECRIMINALIZATION
OF THE CRIMINAL LAWS OF MAINE**

December 2000

Members:

**Senator Robert E. Murray, Jr., Chair
Representative Charles C. LaVerdiere, Chair
Senator Jill M. Goldthwait
Representative David R. Madore
Representative Charles E. Mitchell**

Staff:

**Marion Hylan Barr, Esq. Margaret J. Reinsch, Esq.
Legislative Analyst Principal Analyst
Office of Policy & Legal Analysis
13 State House Station.
Augusta, Maine 04333
(207) 287-1670**

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EXECUTIVE SUMMARY

The Committee to Study Further Decriminalization of the Criminal Laws of Maine was created pursuant to Joint Order, House Paper 1914, as amended by Senate Amendment "A" (S-722) during the Second Regular Session of the 119th Legislature. The committee's charge was to study further decriminalization of the criminal laws of Maine, and in determining whether or not to decriminalize criminal laws, the committee considered: whether it is appropriate to classify specific prohibited conduct as criminal, especially as compared to other prohibited conduct; whether the penalties and punishments are proportioned to the offense as required under the Constitution of Maine; and the consequences of decriminalizing specific crimes.

The committee, which consisted of 5 legislators, met 3 times and heard presentations by and consulted with the Department of Inland Fisheries and Wildlife; the Department of Marine Resources; the Department of Agriculture, Food and Rural Resources; the Department of Professional and Financial Regulation; the Department of Conservation; and the Department of Environmental Protection.

The committee makes the following general and statutory recommendations.

General recommendations

- **Decriminalization of certain statutes.** The committee recommends that a number of crimes be decriminalized, including violations in the Department of Inland Fisheries and Wildlife statutes; the Department of Agriculture, Food and Rural Resources statutes; the Department of Professional and Financial Regulations statutes; and the Department of Marine Resources statutes. The committee also reviewed crimes in the Department of Conservation and the Department of Environmental Protection statutes but decided not to decriminalize any violations in these statutes at this time. The committee discussed the decriminalization of rules adopted by the Department of Conservation, Bureau of Parks and Lands, postponing action until the bureau can complete its review.

- **Statute of limitations for civil violations.** The committee recommends creating a 3-year statute of limitations for bringing a prosecution for a civil violation.

- **Prosecution by District Attorneys.** The committee recommends that the laws governing district attorneys specifically define the responsibility for prosecuting civil violations.

- **Mens rea/culpable state of mind.** The committee does not recommend that all civil violations resulting from the decriminalization of crimes be amended to include a culpable state of mind if they did not have one as a crime. However, to address the problem that arises if a statute does not include reference to the defendant's specific culpable state of mind or mens rea and does not specifically state that a culpable state of mind is not required, the committee recommends enacting a general provision that would apply to all civil violations. The general provision applying to civil violations should make two things clear: first, the Legislature can enact a civil violation in which specific elements have no applicable culpable state of mind; and second, the Legislature can enact a civil violation for which the State is not required to prove a culpable state of mind as to any of the elements.

- **Restitution.** The committee recommends that a general restitution statute, not unlike that applicable to crimes, be created to apply to civil violations.

- **License suspension.** The committee recommends that a general license suspension statute be created to allow for license suspension in cases of adjudication for civil violations as well as in cases of convictions for crimes.

- **Jury trials.** At this time the committee cannot definitively state whether the Maine Constitution requires that a jury trial is available for decriminalized offenses, so the committee makes no recommendation regarding jury trials for civil violations.

- **Review process for new crimes.** The committee recommends that the 120th Legislature consider options for creating a uniform review process to provide consistent

and comprehensive review of each new crime that is proposed to become part of the Maine Revised Statutes.

- **Enforcement of civil violations.** The committee recommends that when the Legislature considers the recommendations of this report that the Legislature also create a mechanism to ensure that persons who commit civil violations are held accountable if they do not pay the assessed forfeiture or appear in court. Public Law 1999 chapter 743 provides courts with the ability, after finding a defendant guilty of contempt for failure to pay a fine for a civil violation, to suspend Marine Resources and Inland Fisheries and Wildlife licenses; watercraft, snowmobile and all-terrain vehicle registrations; and motor vehicle licenses or permits and the right to operate a motor vehicle in this state. Although chapter 243 increases the court's enforcement abilities, the application of the law is most effective against Maine residents. Tools for enforcement for violators from out-of-state and out-of-country need to be developed.

Specific statutory recommendations

- **Department of Inland Fisheries and Wildlife.** The committee recommends that a number of violations be decriminalized throughout Title 12, including statutes governing fishing, hunting, motorboats, snowmobiles, all-terrain vehicles and field dog training and that the commissioner's power to suspend licenses upon conviction is extended to situations in which the licensee has been adjudicated as having committed a civil violation of the inland fisheries and wildlife laws.

- **Department of Marine Resources.** The committee recommends that a number of crimes be decriminalized and that the commissioner's power to suspend licenses upon conviction is extended to situations in which the licensee has been adjudicated as having committed a civil violation of the marine resources laws.

- **Department of Agriculture, Food and Rural Resources.** The committee recommends decriminalizing a number of specific crimes and revising the general

penalty provision (Title 7, section 16) to provide that, unless otherwise specified, a violation of a provision of a statute or rule is a civil violation.

- **Department of Professional and Financial Regulation.** Although the Department of Professional and Financial Regulation has not reviewed all of its boards' statutes, the committee recommends that several of its crimes be decriminalized and that the department continue the review process.

- **Department of Conservation.** The committee recommends that the department continue to work on its review of rules identified for potential decriminalization and report its progress and any proposed decriminalization legislation to the First Regular Session of the 120th Legislature.

I. INTRODUCTION

A. Study Creation

The Committee to Study Further Decriminalization of the Criminal Laws of Maine was created during the Second Regular Session of the 119th Legislature by Joint Order, House Paper 1914, as amended by Senate Amendment "A" (S-722). Although the order was not referred to a committee, it was an outgrowth of the Judiciary Committee's work on LD 260, An Act to Enhance the Enforcement of Civil and Criminal Violations, finally enacted as Public Law 1999, chapter 771. Chapter 771 took the initial step of decriminalizing several offenses within the fish and wildlife laws, the marine resources laws and the motor vehicle laws. The Committee Amendment to LD 260 included an expansion of the jurisdiction of the District Court Violations Bureau to include all civil violations, not just traffic violations, but the costs of staff and computer programming were seen as prohibitive and the expansion portion was deleted from the legislation. House Paper 1914 was introduced by the House Chair of the Judiciary Committee to create an avenue for continuation of the decriminalization work.

B. Study Process

The Committee to Study Further Decriminalization of the Criminal Laws of Maine consisted of five legislators: two Senators appointed by the Senate President and three Representatives, appointed by the Speaker of the House of Representatives. Senator Robert E. Murray, Jr., was appointed the Senate Chair and Representative Charles C. LaVerdiere was appointed the House Chair. Also serving on the committee were Senator Jill M. Goldthwait, Representative Charles E. Mitchell and Representative David R. Madore.

The committee met three times, starting in September. The committee reviewed information about existing crimes and focused its attention on identifying Class D and E crimes in which the prohibited conduct would be more appropriately treated as civil violations. The committee invited a number of people to present information regarding the violations and the processing and prosecuting of civil violations. Assistant Attorney General Charles K. Leadbetter provided the committee with a basic foundation in the theories underlying the Maine Criminal

Code, which took effect in 1976, and led a discussion in the distinctions between criminal and civil violations. District Court Clerk Judy Pellerin, from the Waterville District Court, helped the committee understand how the District Court and the Violations Bureau handle the processing of civil and criminal violations. Representatives from several departments also discussed the criminal statutes within their jurisdictions and suggested offenses that would be more appropriately treated as civil violations. Department representatives who participated in meetings and discussions and prepared proposals for discussion included: Shelley Doak, Director, Animal Health and Industry, Department of Agriculture, Food and Rural Resources; Dawn Gallagher, Deputy Commissioner, Department of Conservation; Jim Dusch, Office of the Commissioner, Director of Procedures and Enforcement, Department of Environmental Protection; Colonel Tim Peabody, Warden Service, Department of Inland Fisheries and Wildlife; Colonel Joe Fessenden, Marine Patrol and Penn Estabrook, Deputy Commissioner, Department of Marine Resources; and Kristine Ossenfort, Assistant to the Commissioner, Department of Professional and Financial Regulation.

The committee wishes to thank all those who participated in the study process. The committee recognizes that this is the first step in an on-going process to look comprehensively at existing crimes and to review proposed crimes to ensure that the laws denoted as crimes comprise a consistent body of law that metes out punishment that includes the possibility of imprisonment only where appropriate. The committee looks forward to the continuing cooperation of future Legislatures, state agencies and their policy makers to further this process.

BACKGROUND

A. History of Recent Decriminalization Efforts

This study on the further decriminalization of criminal laws involved examining existing criminal laws to determine whether the offenses that are currently crimes would be more appropriately treated as civil violations. The study looked at whether it is appropriate to classify specific prohibited conduct as criminal, especially as compared to other prohibited conduct. The

study also reviewed whether the prohibited conduct's penalties and punishments are proportioned to the offense as required under the Constitution of Maine.¹ A related question is whether criminal justice system resources are being used appropriately with regard to the level of severity of the violations prosecuted. Is there a more efficient and constitutionally sound way of ensuring compliance with and enforcement of Maine laws to satisfy the ultimate goal of protecting the health, safety and welfare of the people of the State of Maine?

Interest in examining whether statutory prohibitions are appropriately designated as criminal began with fish and wildlife violations. Concerns were raised in 1996 by judges, prosecuting attorneys and legislators about the use of criminal justice system resources to handle what seemed to be minor infractions. Criticism was initially targeted at the resources necessary to handle what appear to be minor fish and wildlife infractions.² Because the vast majority of fish and wildlife violations are criminal, each citation involves an arrest. These arrests are made in the field, often necessitating that the warden bring the person into the nearest court for a very minor violation. This process uses not only court and prosecutorial resources, but also takes the warden out of the field where he or she is needed. Where bringing an arrestee to court is not practical because of the great distance from the courthouse, wardens do have another option. The statute allows a warden, after arresting a violator, to accept cash bail, equal to the amount of the fine set for the violation, from the arrestee. (12 MRSA §7053, sub-§ 2, ¶(C)) The arrestee is then released on personal recognizance and the warden sends the money to the court. Many arrestees, especially if they are from out of state, do not attend the court hearing on the violation. If the arrestee fails to show up for the court hearing, the bail money is forfeited, the person is found guilty by default and the forfeited bail is applied to pay the fine.

The proposal set forth in 1996 instead would have wardens issue civil citations, similar to the Violations Summons and Complaint issued for traffic violations, and the process would track the traffic violation process. The "ticket" would identify the amount of the civil forfeiture for that offense and would include an envelope addressed to the District Court's Violation Bureau.

¹ "[A]ll penalties and punishments shall be proportioned to the offense;" Me. Const., art. I, §9.

² See Decriminalization History in Appendix C.

A person receiving the “ticket” could choose to pay the amount and mail it to the Violations Bureau or to contest the citation. If the Violations Bureau did not receive payment by the deadline, the Violations Bureau staff would schedule a court date for the person, and the case would proceed as any other civil violation to be prosecuted in court. The thinking behind this proposal was that more people simply would accept responsibility for the civil violation and not contest it because the violation would not be treated as a criminal conviction on the person’s permanent record. Civil violators would send the money to the Violations Bureau, which would quickly and efficiently process the payment and eliminate the need for additional court time. A bill outlining the proposal was submitted to the 118th Legislature and covered not just fish and wildlife laws but marine resources violations and traffic violations as well.³

The enforcement community became concerned that, without the power of arrest, wardens would have fewer tools to use to deal with lawbreakers in the woods. What would happen to the hunter or snowmobiler from out of state who accepts the ticket but never sends in the money? Maine residents could be tracked down, but what ensures that the out-of-state violator pays what is due? The wardens were very concerned about losing their ability to arrest and bail, and therefore collect the appropriate fine money for the violation. Inability to enforce the law could result in total disrespect and disregard for the law.

To address the enforcement concern, the Legislature considered the idea of suspending the person’s motor vehicle operator’s license if the person did not pay the fine or civil forfeiture that was due.⁴ Significant arguments were made against this proposal, including the problem of lack of reciprocity with other states for non-motor vehicle related license suspensions. The entire issue was examined by a task force established by Resolve 1997, chapter 127. The final resolution of the process was a bill supported by a majority of the Judiciary Committee: LD

³ See LD 1478, An Act to Decriminalize Various Marine Resource Violations and Enhance Collectibility of Associated Penalties; LD 1479, An Act to Decriminalize Various Fish and Game Violations and Enhance Collectibility of Associated Penalties; LD 1480, An Act to Decriminalize Various Traffic Violations and Enhance Collectibility of Associated Penalties; and LD 1482, An Act to Expand the Duties of the Violations Bureau and Enhance the Enforcement of Civil Violations. All were introduced in the 118th Maine Legislature, First Regular Session by Senator S. Peter Mills III.

⁴ See LD 1481, An Act to Impose License Suspensions and Other Sanctions on Those Who Fail to Pay Fines and Other Penalties, introduced in the 118th Maine Legislature, First Regular Session by Senator S. Peter Mills III.

1557, An Act to Expand a Judge's Powers for Contemptuous Failure to Pay, enacted as Public Law 1999, chapter 743. This Act gives the court additional powers to suspend any license, registration, certification or other credential extended by the State when the court finds a person in contempt for failure to pay any court-imposed fine, forfeiture, penalty, assessment or restitution.

B. Civil Offenses v. Criminal Offenses

The purpose of criminal and civil penalties is to regulate conduct in order to prevent harm and protect the public health, safety and welfare. The State does this through its police power under the 10th Amendment. To properly exercise that police power, the State must address a harm based upon the injury or risk of injury. In distinguishing between crimes and civil violations the State must evaluate the extent of the seriousness of the harm.

For years prohibited conduct was penalized by application of the common law and a patchwork of criminal statutes. Seeking a more consistent and reasoned approach, the Maine Legislature enacted the Maine Criminal Code in 1975 and classified serious anti-social conduct in one of the following 6 ways:

- Murder, punishable by 25 years to life imprisonment;
- Class A crime, punishable by up to 20 years to a possible 40 years imprisonment;⁵
- Class B crime, punishable by up to 10 years imprisonment;
- Class C crime, punishable by up to 5 years imprisonment;
- Class D crime, punishable by less than one year imprisonment; or
- Class E crime, punishable by up to 6 months imprisonment.

⁵ The cap for a Class A crime was raised from a maximum of 20 years to a possible 40 years imprisonment in 1988. The court may consider a serious criminal history of a defendant and impose more than 20 years imprisonment if warranted by the nature and seriousness of the crime alone or the nature and seriousness of the crime coupled with the serious criminal history of the defendant.

The Legislature has determined that other prohibited conduct that is unacceptable but not so anti-social as to warrant punishment by imprisonment is distinguished from crimes and treated as civil violations. Sanctions for civil violations may be either “forfeitures,” which are fines of \$1,000 or less, and “penalties,” which are fines of more than \$1,000. Civil violations also may result in the loss of certain licenses.

In addition to identifying the injury or risk of injury, there are a number of factors properly considered in determining whether prohibited conduct should be a crime or a civil violation.

1. Enforcement

For purposes of enforcement, the criminal law focuses on a penalty or retribution of some kind, while for civil violations the primary focus is not on meting out a punishment but instead achieving compliance with the law. The State must ensure that certain constitutional requirements are met in order to utilize criminal laws. Specifically, the enforcement of criminal laws is characterized by the following components.

Right to jury trial; right to counsel. The defendant has the right to a jury trial in a criminal case for all crimes in Maine, except if the court is punishing the defendant for contempt. The defendant also has a right to counsel; this right is absolute for a defendant who can afford to pay for counsel, and if the defendant cannot pay for counsel, the State must pay in a case where the court is considering imprisonment as a penalty. Whether these same rights to a jury trial and counsel exist for a defendant whose prohibited conduct is decriminalized requires scrutiny.

Both the U.S. Constitution⁶ and the Maine Constitution⁷ secure the right to a jury trial in criminal cases. The right to a jury trial in civil cases is also addressed by

⁶ U.S. Const. art. 3, §2, cl. 3 and Amend. VI.

⁷ Me. Const. art. I, §6.

both Constitutions, being guaranteed on the federal side for suits at common law in which the amount in controversy exceeds twenty dollars.⁸ The Maine Constitution provides a right to a jury trial in all civil suits and in all controversies concerning property, except in cases where it was otherwise practiced prior to adoption of the Constitution.⁹ Although first interpreted to provide a jury trial in only those civil cases in which the right to a jury trial existed as of 1820,¹⁰ the Law Court has since revised its interpretation of section 20: There is a right to a jury trial in all civil actions except in types of cases that were decided without a jury under common law and Massachusetts statutory law that existed prior to adoption of the Maine Constitution.¹¹ The Law Court found there was a right to a jury trial in a civil prosecution for violating a city obscenity ordinance, for which a civil forfeiture was sought.¹² In contrast, the Law Court found there was no right to a jury trial in a civil environmental prosecution by the State in which the State was seeking both an injunction and a civil penalty, the calculation of which was based on the number of days the defendant was not in compliance.¹³

Mens rea. Different from a civil case, in a criminal case the State must meet stricter standards and discovery is more complex. Specifically, for most crimes the State must prove that the defendant acted with a culpable mental state (i.e., intentionally, knowingly, recklessly or with criminal negligence). Generally, no such culpable mental state is required in civil violations.

⁸ U.S. Const., Amend, VII.

⁹ Me. Const., art. I, §20.

¹⁰ State v. Anton, 463 A.2d 703 (Me. 1983).

¹¹ State v. One 1981 Chevrolet Monte Carlo, 728 A.2d, 1259 (Me. 1999); Kennebec Federal Sav. & Loan Ass'n v. Kueter, 695 A.2d 1201 (Me. 1997); City of Portland v. DePaolo, 532 A.2d 669 (Me. 1987).

¹² DePaolo, footnote 11.

¹³ Department of Environmental Protection v. Emerson, 616 A.2d 1268 (Me. 1992).

Burden of proof. The State's burden of proof also differs for crimes and civil violations. In a criminal case the State has the burden of proving the defendant committed each element of the crime beyond a reasonable doubt, making the risk of error by the fact finder almost entirely that of the State's. In a civil case the State need only prove that the defendant committed the civil violation by a preponderance of the evidence or that it is more likely than not that the defendant committed the act, making the risk of error one shared virtually evenly by the State and the defense.

Charging instrument. Civil cases also differ from criminal cases where the defendant may face one year or more in prison, which gives the defendant the right to a grand jury. No such right exists for a person charged with a civil violation.

2. Costs

The cost to society also is a factor that distinguishes the criminal law from the civil law. It is expensive for society to utilize the criminal system and its ultimate sanction of imprisonment, while civil violations are much less expensive to administer and enforce.

3. The morality factor

In order for conduct to be criminal, the conduct also must have an aspect that makes it deserve to be condemned morally. A criminal conviction is a true handicap that does not disappear and may negatively affect one's ability to enlist in the armed services, secure employment and receive financial aid for higher education. Therefore, a criminal conviction should not be characteristic of what is not criminal in theory.

4. Statute of limitations

Another difference between crimes and civil violations is that, unless otherwise specified, all crimes have a statute of limitations or a period of time in which a prosecution for that crime must be commenced. For Class A, B and C crimes the statute of limitations is 6 years after the crime has been committed, and for Class D and E crimes the statute of limitations is 3 years after the crime has been committed. Civil violations have no statute of limitations; therefore, a prosecution may be commenced at any time after the violation occurred. Pursuant to the Model Penal Code, Article 1, §1.06, there are several reasons for imposing statutes of limitations for the prosecution of crimes, including:

- The desirability that prosecutions be based upon reasonably fresh evidence (with the passage of time, witnesses die and disappear, memories fade and physical evidence becomes more difficult to obtain and preserve -- erroneous convictions are minimized when prosecution is prompt);
- If the actor refrains from further criminal activity for a long period of time, the greater the chance that the actor is reformed and there is less need for criminal sanctions -- protection of society becomes less compelling as the years go by;
- After a long period the retributive impulse of society lessens;
- Reducing the possibility of blackmail based upon a threat to prosecute or to disclose evidence to law enforcement is desirable; and
- Statutes of limitations promote repose by giving security and stability to human affairs.

III. RECOMMENDATIONS

The Committee to Study Further Decriminalization of the Criminal Laws of Maine makes the following recommendations.

A. General Recommendations

1. Decriminalization of certain statutes

In reviewing laws to determine whether or not to decriminalize certain crimes, the Committee to Study Further Decriminalization of the Criminal Laws of Maine recognizes and asserts that decriminalizing a crime does not decrease the importance of the violation or the harm it protects against. Prosecutions and enforcement of civil violations should continue to receive the same level of attention as criminal prosecutions. Rather, in its review and analysis that included participation of the departments, the committee concluded that certain prohibited conduct is unacceptable but not so anti-social in nature as to warrant a potential penalty of imprisonment. On that basis, the committee recommends decriminalizing several crimes, including violations in the Department of Inland Fisheries and Wildlife statutes, the Department of Agriculture, Food and Rural Resources statutes, the Department of Professional and Financial Regulation statutes and the Department of Marine Resources statutes. The committee also reviewed crimes in the Department of Conservation and the Department of Environmental Protection statutes but decided not to recommend decriminalization of violations in these statutes at this time. In addition, the committee discussed the decriminalization of rules adopted by the Department of Conservation, Bureau of Parks and Lands but postponed recommendations regarding decriminalization until the bureau can complete a review of its rules.

2. Statute of limitations for civil violations

Because the committee is recommending decriminalizing a number of crimes for which a statute of limitations currently applies and for many of the same reasons

mentioned above, it appears appropriate that the prosecution of civil violations be limited to a certain time period. The committee recommends creating a 3-year statute of limitations for bringing a prosecution for a civil violation. This is consistent with the current statute of limitations applicable to Class D and E crimes.

3. Prosecution by District Attorneys

If the number of civil violations is increased by decriminalizing certain crimes, prosecution of these violations must be considered. Because the district attorneys currently prosecute traffic infractions without trials and other civil cases with or without jury trials, the committee recommends that district attorneys be responsible for prosecuting the decriminalized violations. The committee recommends that the laws governing district attorneys specifically define the responsibility for prosecuting civil violations, as the law now does for the prosecution of motor vehicle violations. It may be appropriate in the future to revisit the question of who should be responsible for prosecuting civil violations; certain violations may lend themselves to being prosecuted by qualified department personnel rather than the district attorneys.

4. Mens rea /culpable mental state

The committee does not recommend that all civil violations resulting from the decriminalization of crimes be amended to include a culpable state of mind if they currently do not have one as a crime. However, to address the problem that arises if a statute does not include reference to the defendant's specific culpable state of mind or mens rea and does not specifically state that a culpable state of mind is not required, the committee recommends enacting a general provision that would apply to all civil violations. Such a provision was enacted in the Criminal Code in 1999 to alleviate confusion regarding whether the lack of a culpable state of mind in a criminal statute alone clearly indicated that the statute was of a strict liability nature.

The general provision applying to civil violations should make two things clear: first, the Legislature can enact a civil violation in which specific elements have no applicable culpable state of mind; and second, the Legislature can enact a civil violation for which the State is not required to prove a culpable state of mind as to any of the elements.

5. Restitution

The committee also recommends that a general restitution statute, not unlike that applicable to crimes, be created to apply to civil violations. Without specific statutory authority, it is unclear that a court has the power to order restitution in a civil prosecution.

6. License suspension

The committee recommends that a department suspend a license, permit or certificate of a person who is adjudicated or convicted of violating a law administered by that department. Departments suspending a license, permit or certificate shall follow appropriate notice and hearing procedures.

7. Jury trials

At this time the committee makes no recommendation regarding jury trials for civil violations. The committee cannot definitively conclude that the Maine Constitution requires that a jury trial is available for decriminalized offenses. Each violation will have to be reviewed to determine if the action or a similar action existed in 1820. If so, there must be a determination of whether the defendant was entitled to a jury to try that action.¹⁴ If the defendant were entitled to a jury, then a jury would have to be available. On the other hand, if no such action or similar action existed, then it will be important

¹⁴ The Law Court in DePaolo noted that at the time the Maine Constitution was adopted, criminal defendants in obscenity prosecutions were entitled to a trial by jury *de novo* on appeal. DePaolo, footnote 11.

whether the remedy is only a money recovery, such as a civil forfeiture, in which case the right to a jury trial would most likely exist. If the main import of the consequences is an injunction or other equitable remedy, then no right to a jury trial would exist. Currently, there is no list of all actions in which a jury trial is available, although the information sometimes can be gleaned on an individual basis from case law.¹⁵

8. Review process for new crimes

The committee recognizes a real need to identify a process to provide consistent and comprehensive review of each new crime that is proposed to become part of the Maine Revised Statutes. At this time the committee is unsure what the best method for that review is, whether it may be to create a new entity or name an existing entity such as the Criminal Law Advisory Commission to ensure that proposed crimes are drafted to include the necessary elements and that the penalties for the new prohibited conduct are comparable to penalties of other existing crimes. The committee recommends that the 120th Legislature consider options for creating such a uniform review process.

¹⁵ Case law instructs that there is a right to a jury trial for the following types of cases: party-in-interest to an in rem civil forfeiture proceeding (One 1981 Chevrolet Monte Carlo, footnote 11); plaintiff seeking damages as full compensation for injury (DesMarais v. Desjardins, 664 A.2d 840 (Me. 1995)); suit under forcible entry and detainer statute to evict tenant (North School Congregate Housing v. Merrithew, 558 A.2d 1189 (Me. 1989)); tenant seeking damages for illegal eviction (King v. King, 507 A.2d 1057 (Me. 1986)); small claims action for breach of contract (Ela v. Pelletier, 495 A.2d 1225 (Me. 1995)); third-party damages under Coastal Conveyance Act (Portland Pipe Line Corp. v. Environmental Imp. Com'n, 307 A.2d 1 (Me. 1973), appeal dismissed 94 S.Ct. 532, 414 U.S. 1035, 38 L.Ed.2d 326)).

There is no right to a jury trial in the following actions: equitable actions (DiCentes v. Michaud, 719 A.2d 509 (Me. 1998)); trespass action (Gelinas v. Marcel Motors, 475 A.2d 1124 (Me. 1984)); assess damages for property taken by eminent domain (Ingram v. Maine Water Co., 98 Me. 566, 57 A. 893 (1904)); traffic infraction (State v. Anton, 463 A.2d 03 (Me. 1983)); bill for restitution of bonds, stock certificates and the safety deposit box key (Farnsworth v. Whiting, 106 Me. 430, 76 A. 909 (1910)); termination of parental rights (In re Shane, 544 A.2d 1295 (Me. 1988)); libelee in a libel to annul a marriage (Coffin v. Coffin, 55 Me. 361 (1868)).

9. Enforcement of civil violations

The committee recommends that when the Legislature considers the recommendations of this report that the Legislature also create a mechanism to ensure that persons who commit civil violations are held accountable if they do not pay the assessed forfeiture or appear in court. Public Law 1999 chapter 743 provides courts with the ability, after finding a defendant guilty of contempt for failure to pay a fine for a civil violation, to suspend Marine Resources and Inland Fisheries and Wildlife licenses; watercraft, snowmobile and all-terrain vehicle registrations; and motor vehicle licenses or permits and the right to operate a motor vehicle in this state. Although chapter 243 increases the court's enforcement abilities, the application of the law is most effective against Maine residents. Tools for enforcement for violators from out-of-state and out-of-country need to be developed.

B. Specific Statutory Recommendations

1. Department of Inland Fisheries and Wildlife

For several years the Department of Inland Fisheries and Wildlife has been discussing the decriminalization of many of its statutes with the Executive and the Legislature. The process has been thoughtful and cautious to ensure proper consideration of the statutes and the purposes of certain penalties. During the Second Regular Session of the 119th Legislature, the Joint Standing Committee on Judiciary reported out LD 260, An Act to Enhance the Enforcement of Civil and Criminal Violations. LD 260 became Public Law 1999, chapter 771 and included a number of provisions that decriminalized some Department of Inland Fisheries and Wildlife's statutes. Public Law 1999, chapter 771 decriminalized certain water-skiing, motorboat, airmobile, snowmobile, ATV and field dog-training violations. During the decriminalization review process, the Department of Inland Fisheries and Wildlife has maintained the philosophy that

violations that directly affect fish and wildlife resources and matters of public safety should remain criminal, while procedural and technical violations may be decriminalized.

Working with the Committee to Study Further Decriminalization of the Criminal Laws of Maine, the department identified many more violations that may be decriminalized. In identifying these violations, the department continued to rely upon its philosophy that violations that directly affect resources and matters of public safety should remain criminal, while procedural and technical violations may be decriminalized. See proposed legislation and Appendix D for crimes that the committee and department recommend be decriminalized.

2. Department of Marine Resources

The Department of Marine Resources has also discussed the possibility of decriminalizing violations within its jurisdiction, and supported converting several criminal offenses into civil violations last year. The department and the district attorneys have been grappling with the difficulties in enforcing some of the laws and in prosecuting cases in which evidence can quickly be made to disappear before law enforcement officers can seize it. The department explained to the committee that for many violators, the fines and even possibility of jail time are just a cost of doing business; the real deterrent for commercial marine resources license holders is the potential for license suspension by the commissioner. The department therefore suggested the decriminalization of several violations, as long as license suspension can still be a possible sanction.

Currently, the department has two avenues to pursue in suspending a marine resources license.¹⁶ First, it can follow the Administrative Procedure Act and ask the

¹⁶ Title 12, chapter 617. A few statutes require the commissioner to suspend the license upon conviction, e.g., 12 §§6402, 6402-A and 6402-B. The court has inherent equitable power to suspend a license for violation of the law even if it is not specifically provided. Title 14, section 3142 authorizes the court to suspend any license, permit, etc. issued by the State when a person has been found in contempt for failure to pay any fine, penalty, fee, restitution, etc. assessed by the court.

Administrative Court to suspend a license. The department rarely if ever follows this route. Second, the statutes give the commissioner the authority to suspend a license based on a conviction for violating marine resources laws.

The Department of Marine Resources suggested that the following crimes be decriminalized, as long as the commissioner's power to suspend licenses upon conviction is extended to situations in which the licensee has been adjudicated as having committed a civil violation of the marine resources' laws:

- molesting aquaculture, lobster or elver gear (12 MRSA §§6072-C, 6434 and 6575-D);
- surimi violations (12 MRSA §§6112 and 6113);
- lobster and crab license violations (12 MRSA §§6421, 6854, 6857 and 6862);
- lobster trap limits (12 MRSA §§6431-A);
- fishing without Monhegan trap tags (12 MRSA §6474);
- commercial fishing violations (12 MRSA §6501);
- nonresident tuna permit violations (12 MRSA §6502);
- elver and eel fishing, harvesting, gear and dealer violations (12 MRSA §§6505-A, 6505-B, 6505-C and 6864);
- sea urchin and scallop license violations (12 MRSA §§6535, 6536, 6701, 6702, 6748, 6748-A and 6748-D);
- shellfish license violations (12 MRSA §§6601, 6731, 6732, 6745 and 6746);
- marine worm license violations (12 MRSA §§6751 and 6853);
- seaweed violations (12 MRSA §6803);
- commercial shrimp license violations (12 MRSA §6804);
- wholesale and retail seafood license violations (12 MRSA §§6851 and 6852);
- seafood transportation license violations (12 MRSA §6855); and
- dragging in cable area violations (as long as restitution language is added) (12 MRSA §§6954 and 6954-A).

3. Department of Agriculture, Food and Rural Resources

The Department of Agriculture, Food and Rural Resources reviewed the criminal statutes within its jurisdiction at the request of the committee. The department proposed amending statutes governing pulling events (7 MRSA §75), the Hazardous Substances Labeling Act (7 MRSA §512), egg storage (7 MRSA §643), feeds (7 MRSA §722), marketing potatoes (10 MRSA, §1066) and the Potato Lien Law (10 MRSA §3331). The committee also recommended, and the department agreed, to recommend revision of the general penalty provision (7 MRSA, §16) that requires that unless otherwise specified, a violation of a provision of a statute or rule is a Class E crime. The department believes there would be no decrease in enforcement capability if the general penalty provision requires that, unless otherwise specified, a violation of a provision of a statute or rule is a civil violation for which a forfeiture may be adjudged.

4. Department of Environmental Protection

The Department of Environmental Protection has authority to seek a forfeiture from a person who commits a civil violation or to criminally prosecute a person who intentionally, knowingly, recklessly or with criminal negligence commits a violation of its statutes. Cases that are prosecuted as criminal are treated as Class E crimes. All criminal cases are investigated and prosecuted in Superior Court by the Office of the Attorney General on behalf of the department. In addition to the general option of prosecuting violations as crimes if the necessary culpable mental state is present, Department of Environmental Protection statutes also include several Class E crimes, including regulation of hazardous waste and transportation of scrap tires. Upon reviewing its statutory violations, the department recommends that prohibited conduct that is criminal in current law is appropriately sanctioned as criminal. The committee recommends no changes to the Department of Environmental Protection statutes.

5. Department of Professional and Financial Regulation

Although the Department of Professional and Financial Regulation has not reviewed all of its boards' statutes, the department made several recommendations for decriminalization of certain statutes and will continue the review process. Those recommendations include decriminalizing the following:

- violation of provisions governing tie-in sales of insurance (Title 24-A, section 2168-A);
- misrepresentation of information related to fraternal benefit societies' insurance contracts (Title 24-A, section 4138); and
- the general penalty statutes for:
 - architects and landscape architects (Title 32, section 228);
 - dentists and dental hygienists (Title 32, section 1094);
 - engineers (Title 32, section 1256);
 - hearing aid dealers and fitters (Title 32, section 1660-E);
 - nurses (Title 32, section 2106);
 - geologists and soil scientists (Title 32, section 4919);
 - speech pathologists (Title 32, section 6031);
 - real estate brokers (Title 32, section 13005);
 - counseling professionals (Title 32, section 13854);
 - real estate appraisers (Title 32, section 14006); and
 - massage therapists (Title 32, section 14309).

6. Department of Conservation

The Department of Conservation has been undertaking a review of its rules adopted under the authority of the Bureau of Parks and Lands. The bureau's enforcement policies are distinguishable from other agencies in that violations and enforcement are limited to state operated facilities and do not apply statewide. In addition, the bureau

enforces the laws and rules of other agencies at state parks and lands. Currently, violations of park rules and regulations are Class E crimes. To provide consistency of laws throughout the state regardless of whether the violation takes place on private or public land, it is necessary for the bureau to compare the class and level of violations of its laws and rules with that of other agencies. For example, park rules permit open fires only in authorized fireplaces on authorized campsites. To be consistent with Maine Forest Service statutes, the Bureau of Parks and Lands must consider that a violation of a similar Maine Forest Service law is a Class E crime. Similarly, removing artifacts within the Allagash Wilderness Waterway zone is prohibited and is a Class E crime. Before considering to decriminalize the rule, the bureau must consider whether removing artifacts from other lands is a civil or criminal violation. The review process is time consuming and involves substantial analysis.

In early summer, the bureau began a review process of its rules and regulations with an emphasis on decriminalizing statutes where it made sense to do so. The bureau expects to complete its review and comparison with other state agency laws by the end of this year. The bureau also is exploring the most efficient method of administering civil violations, including instituting a system of issuing tickets with fixed fines that could be mailed directly to the court system unless the individual chose to contest the violation. This practice may be preferable over issuing summonses that require agency personnel to appear in court, especially given the large number of park staff who are seasonal employees. It may also be preferable over court cases in that violations of some park rules, such as having a dog off a leash, seem too minor to prosecute through the court system.

Decriminalizing violations will require statutory changes and coordination with the courts to institute a process for paying fines. Although the bureau is uncertain whether the process can be accomplished during the 120th legislative session, the bureau has committed to moving forward with its efforts. The bureau offers the following list of rules and regulations tentatively identified for decriminalization.

Park Rule Number	<u>Rule</u>
2	Feeding or touching wild animals
3	Violating park hours
4	Using metal detectors without a permit
5	Consuming alcoholic beverages in the park
7	Pets off leash
8	Parking violations
10	Littering
11	Soliciting
12	Not registering at the campground
13	Camping hours
14	Campsite occupancy limits
16	Disturbing the nighttime quiet time
17	Being on closed trail
18	Using generator during banned times
19	Using floatation devices at surf beaches
3.3	Group size restrictions
3.7	Using watercraft restrictions
3.8	Swimming and diving restrictions
3.9	Snowmobile access rules
3.13	Watercraft storage

The proposed list of rules to be decriminalized represents almost 75% of the general park rules. The bureau expects that a review of the campsite, boat launch, bear baiting, public lands and other specialty area rules will result in many more violations being decriminalized.

The committee recommends that the Department of Conservation submit its recommendations to decriminalize specific rules to the joint standing committee of the

First Regular Session of the 120th Legislature to whom the legislation resulting from this study is referred.

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APPENDIX A
Authorizing Legislation

M
P. O. R.

H.P. 1914

DATE: April 24, 2000

(Filing No. S-722)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to H.P. 1914, "Joint Study Order to Create a Committee to Study Further Decriminalization of the Criminal Laws of Maine"

Amend the order by striking out everything from the first indented paragraph to the end and inserting in its place the following:

'ORDERED, the Senate concurring, that the Committee to Study the Further Decriminalization of the Criminal Laws of Maine is established as follows.

1. **Committee established.** The Committee to Study Further Decriminalization of the Criminal Laws of Maine, referred to in this order as the "committee," is established.

2. **Membership.** The committee consists of 5 members appointed as follows:

A. Two members of the Senate, appointed by the President of the Senate; and

B. Three members of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. **Appointments; chairs; convening of committee.** All appointments must be made no later than 30 days following the effective date of this order. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. The first-named Senate member is the Senate chair and the first-named House member is the House

Page 1-LR4155(2)

SENATE AMENDMENT

SENATE AMENDMENT "A" to H.P. 1914

chair. When the appointment of all members is complete, the committee chairs shall call and convene the first meeting of the committee no later than June 30, 2000.

4. Duties. The committee shall study further decriminalization of the criminal laws of Maine. In determining whether to decriminalize criminal laws, the committee shall consider:

A. Whether it is appropriate to classify the specific prohibited conduct as criminal, especially as compared to other prohibited conduct;

B. Whether the penalties and punishments are proportioned to the offense as required under the Constitution of Maine; and

C. The consequences of decriminalizing specific crimes.

5. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the committee.

6. Reimbursement. The committee members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the committee.

7. Report. The committee shall submit its report with any accompanying legislation to the First Regular Session of the 120th Legislature by November 1, 2000. If the committee requires a limited extension of time to conclude its study and make its report, it may apply to the Legislative Council, which may grant the extension.

8. Committee budget. The committee chairs, with assistance from the committee staff, shall administer the committee budget. Within 10 days after its first meeting, the committee shall present a work plan and proposed budget to the Legislative Council for approval. The committee may not incur expenses that would result in the committee's exceeding its approved budget.'

SUMMARY

This amendment replaces the joint order. It changes the date when the Committee to Study Further Decriminalization of the

SENATE AMENDMENT

SENATE AMENDMENT "A" to H.P. 1914

Criminal Laws of Maine must convene from no later than May 1,
2000 to June 30, 2000.

SPONSORED BY:

(Senator PINGREE)

Sen Chellie Pingree
AB

COUNTY: Knox

SENATE AMENDMENT

APPENDIX B
Committee Membership

**COMMITTEE TO STUDY FURTHER DECRIMINALIZATION OF THE
CRIMINAL LAWS OF MAINE**

Joint Order/HP 1914

Membership 2000

Appointment(s) by the President

Sen. Robert E. Murray, Jr. **Chair**
340 Center Street
Bangor, ME 04401

Sen. Jill M. Goldthwait
22 Albert Meadow
Bar Harbor, ME 04609

Appointment(s) by the Speaker

Rep. Charles C. LaVerdiere **Chair**
P.O. Box 670
Wilton, ME 04294

Rep. David R. Madore
197 Northern Avenue
Augusta, ME 04330

Rep. Charles E. Mitchell
RR 3 Box 6520
Vassalboro, ME 04989

APPENDIX C
Decriminalization History

**COMMITTEE TO STUDY FURTHER DECRIMINALIZATION
OF THE CRIMINAL LAWS OF MAINE**

DECRIMINALIZATION HISTORY

1996

- Initial proposal to decriminalize certain fish and game violations

1997

- Legislation introduced (118th Legislature, 1st Regular Session)

5 bills:

- Marine Resources violations
- Fisheries and Wildlife violations
- Traffic violations
- License suspensions
- Violations Bureau

None of the recommendations were adopted, but the license suspension bill was transformed into a Study Resolve (Resolve 1997, chapter 103) to look at:

1. Decriminalization
2. License suspension and nonrenewal for nonpayment of fines, etc.
3. Expansion of the Violations Bureau

1998

- Report – result of Resolve 1997, chapter 103

Recommendations:

- Agencies and departments to identify violations to be decriminalized
- Expand jurisdiction of Violations Bureau to include civil violations
- Agencies and departments to assess impact of changes

1999

- LD 260 introduced (119th Legislature, 1st Regular Session) to carry out recommendations of Report (carried over)

2000

- LD 260 reported out of JUD unanimously:
 - Expansion of Violations Bureau (deleted because of costs)
 - Decriminalization of certain violations:
 1. Marine Resources violations
 2. Fisheries and Wildlife violations
 3. Traffic violations

September 2000

- Committee to Study Further Decriminalization of the Criminal Laws of Maine convened.

APPENDIX D
IFW Crimes and Civil Violations
Recommended for Decriminalization

**Department of Inland Fisheries and Wildlife Crimes and Rule Violations
Recommended for Decriminalization**

The Committee to Further Study the Decriminalization of the Criminal Laws of recommends that the following crimes and rule violations be decriminalized:

- trapping by certain department employees (12 MRSA §7036, sub-§5);
- illegal disposal of offal or littering (12 MRSA §7064);
- mandatory fishing license revocation for certain violations (12 MRSA §7077, sub-§1-B);
- introducing fish into inland waters without a permit (12 MRSA §7371, sub-§3 as it applies to 12 MRSA §7203, sub-§1);
- civil violations of chapter 707, subchapter X-A (except that the following continue to be Class E crimes: operation of a commercial whitewater trip without a license (12 MRSA §7365); operation of a commercial whitewater trip on the river in violation of safety requirements (12 MRSA §7367, sub-§1);
- guide license restriction violation (12 MRSA §7371, sub-§1);
- guide license privilege violation (12 MRSA §7371, sub-§2);
- guide client in violation (12 MRSA §7371-A, sub-§1);
- guide fails to report violation by client (12 MRSA §7371-A, sub-§2);
- guide party of more than 12 on inland waters (12 MRSA §7371-A, sub-§3);
- purchase of live smelts from unlicensed dealer (12 MRSA §7371-B);
- unlawfully hiring a guide (12 MRSA §7376-A);
- shooting at or near wildfowl decoys (12 MRSA §7406, sub-§11);
- hunting without hunter orange clothing (12 MRSA §7406, sub-§12);
- allowing a junior hunter to hunt without adult supervision (12 MRSA §7406, sub-§21);

- trapping near compact, built-up portion of city or village (12 MRSA §7432, sub-§6);
- failure to label traps as described (12 MRSA §7432, sub-§9);
- hunting or trapping bear near dumps (12 MRSA §7452, sub-§5);
- leaving a bear (12 MRSA §7452, sub-§8);
- failure to attach bear tag to bear (12 MRSA §7452, sub-§11);
- illegally transporting bear (12 MRSA §7452, sub-§13);
- transporting bear out-of-state (12 MRSA §7452, sub-§14);
- hunting migratory game birds without certification (12 MRSA §7456, sub-§1-A);
- hunting waterfowl on Haley Pond (12 MRSA §7456, sub-§2);
- transporting deer out of state (12 MRSA §7458, sub-§12);
- hunting deer with .22 caliber rimfire cartridge (12 MRSA §7458, sub-§13);
- use of firearm in Southport (12 MRSA §7458, sub-§14);
- transporting wild hares or rabbits out of state (12 MRSA §7462, sub-§3);
- possessing or transporting wild hares or rabbits (12 MRSA §7462, sub-§4);
- failure to attach moose tag to moose (12 MRSA §7464, sub-§6);
- use of illegal firearms (12 MRSA §7464, sub-§8-A);
- illegal hunting methods (12 MRSA §7464, sub-§8-C);
- failure to attach wild turkey tag to wild turkey (12 MRSA §7469, sub-§7);
- use of illegal weapons or ammunition (12 MRSA §7469, sub-§11);
- taking of snakes and turtles from the wild for commercial purposes (12 MRSA §7471);

- failure to report accident with deer, moose or bear (12 MRSA §7505, sub-§1);
- removing portion of carcass (12 MRSA §7505, sub-§2);
- transportation of wild animal or bird (12 MRSA §7535, sub-§1);
- interference with taking (12 MRSA §7541, sub-§1);
- disturbing wild animals, wild birds or fish (12 MRSA §7541, sub-§2);
- taking or possessing sport fish in violation of bag, weight and size limits (12MRSA §7604, as it relates to trout, salmon, togue and black bass, whenever the violation involves twice the bag and possession limit adopted by rule by the commissioner for that species of fish in that body of water);
- taking fish by jigging (12 MRSA §7607);
- importing live bait fish or smelts (12 MRSA §7613);
- buying or selling freshwater sport fish (12 MRSA §7615);
- taking fish by explosive, poisonous or stupefying substances (12 MRSA § 7617);
- sale of bait or baitfish in polystyrene foam containers (12 MRSA §7606, sub-§1-A);
- failure to label baitfish traps or baitfish holding boxes (12 MRSA §7606, sub-§2);
- failure to check baitfish traps (12 MRSA §7606-B);
- possession of illegal implements and devices (12 MRSA §7609);
- illegal use of helicopter (12 MRSA §7610);
- purchase or sale of certain fish (12 MRSA §7615);
- illegal importation or sale of certain fresh or frozen fish (12 MRSA §7616);
- advance baiting (12 MRSA §7622);
- failure to label fish (12 MRSA §7625);
- night ice fishing (12 MRSA §7626);

- leaving ice fishing shack (12 MRSA §7627);
- illegally placing ice fishing shack (12 MRSA §7627-A);
- failure to label ice fishing shack (12 MRSA §7628);
- violation of ice fishing restriction (12 MRSA §7629);
- using a motorboat within Merrymeeting Bay Game Sanctuary (12 MRSA §7654, sub-§4);
- carrying loaded firearm on the bounds of Limington, Hollis and Waterboro Sanctuary (Title 12 §7654, sub-§5);
- carrying loaded firearm on the bounds of Standish Sanctuary (12 MRSA §7654, sub-§6);
- fishing in Carleton Pond (12 MRSA §7654, sub-§7);
- prohibited acts in violation of rules or regulations of the Maine Indian Tribal-State Commission (12 MRSA §7655);
- tampering with screen (12 MRSA §7674, sub-§1);
- tampering with fishway (12 MRSA §7702, sub-§1);
- building dam without notice (12 MRSA §7702, sub-§2);
- tampering with dam (12 MRSA §7702, sub-§3);
- keeping wild animal in captivity (12 MRSA §7736, sub-§1);
- hunting on state game farm (12 MRSA §7736, sub-§2);
- hunting in licensed wildlife exhibit (12 MRSA §7736, sub-§3);
- certain stocking of alewives (12 MRSA §7775, sub-§1);
- operating a motorboat without identification number or validation stickers (12 MRSA §7801, sub-§2);
- violation of license, permit or certificate restriction (12 MRSA §7801, sub-§3);
- holding regatta, race, boat exhibition or water-ski exhibition without permit (12 MRSA §7801, sub-§4);

- unlawfully crossing the area of authorized regatta, race, boat exhibition or water-ski exhibition (12 MRSA §7801, sub-§5);
- operating a motorboat carrying passengers for hire without a certificate of number (12 MRSA §7801, sub-§6);
- operating a motorboat carrying passengers for hire without an operator's license to carry passengers for hire (12 MRSA §7801, sub-§7);
- reckless operation of watercraft (12 MRSA §7801, sub-§8);
- imprudent operation of a watercraft (12 MRSA §7801, subsection 11-A);
- operating a motorboat in bathing areas (12 MRSA §7801, sub-§12);
- operating a watercraft to molest wild animals or wild birds (12 MRSA §7801, sub-§14);
- failure to report a watercraft accident (12 MRSA §7801, sub-§19);
- illegally operating a motorboat in prohibited area (12 MRSA §7801, sub-§20);
- unlawfully operating a watercraft within the water safety zone (12 MRSA §7801, sub-§32);
- reckless operation of a snowmobile (12 MRSA §7827, sub-§8);
- failure to report an accident (12 MRSA §7827, sub-§22);
- unlawful issuance of snowmobile registration (12 MRSA §7827, sub-§24);
- reckless operation of an all-terrain vehicle (12 MRSA §7857, sub-§9);
- failure to report an ATV accident (12 MRSA §7857, sub-§22);
- operating an ATV on cropland or pastureland (12 MRSA §7857, sub-§23);
- possessing firearm while training dogs (12 MRSA §7863, sub-§1);
- a violation of a rule regulating open water fishing and ice fishing (except that a violation of a rule governing the number, amount, size or weight of fish is a Class E crime);
- violation of a rule regulating State-owned wildlife management areas;

- violation of a rule regulating scientific collection permits;
- violation of a rule regulating snowmobiles;
- violation of a rule regulating the protection and safety of spectators at snowmobile races;
- violation of a rule regulating all terrain vehicles;
- violation of a rule regulating watercraft;
- violation of a rule regulating commercial whitewater rafting. (except that violation of a rule establishing safety restrictions for whitewater trips adopted pursuant to section 7367, subsection 1 is a Class E crime);
- violation of a rule regulating State game farms;
- violation of a rule regulating the operation of motor vehicles on public water supplies;
- violation of a rule regulating taxidermy;
- violation of a rule regulating hunting and fishing license agents;
- violation of a rule regulating camp trip leader permits and course instructor certificates; and
- violation of a rule regulating licensed guides.

APPENDIX E
Recommended Legislation

**AN ACT TO IMPLEMENT THE RECOMMENDATIONS
OF THE
COMMITTEE TO STUDY FURTHER DECRIMINALIZATION OF THE
CRIMINAL LAWS OF MAINE**

Be it enacted by the People of the State of Maine:

PART A

Sec. A-1. 14 MRSA Part 6-A is enacted to read:

**PART 6-A
CIVIL VIOLATION PROCEEDINGS**

**CHAPTER 621
GENERAL PROVISIONS**

§5601. Statute of limitations

1. Three year period of limitation. A prosecution for a civil violation must be commenced within 3 years after the civil violation is committed. It is a defense that prosecution of a civil violation was commenced after the expiration of the applicable 3-year period of limitation.

2. Limitations on period of limitation. The periods of limitations may not run:

A. During any time when the accused is absent from the State, but in no event may this provision extend the period of limitation otherwise applicable by more than 5 years;

B. During any time when a prosecution against the accused for the same civil violation based on the same conduct is pending in this State; or

C. During any time when a prosecution against the accused for the corresponding juvenile crime based on the same conduct is pending in the Juvenile Court.

3. Definitions. For purposes of this section:

A. A civil violation is committed when every element of the civil violation has occurred, or if the civil violation consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated; and

B. A prosecution is commenced whenever a complaint is filed.

C. For purposes of this section, pending includes any appeal period and, if an appeal is taken, any period pending its final disposition.

§5602. Culpable state of mind as an element

1. Culpable state of mind required. A person is not guilty of a civil violation unless that person acted intentionally, knowingly, recklessly, negligently or culpably, as the law defining the civil violation specifies, with respect to each other element of the civil violation, except as provided in subsection 5. When the state of mind required to establish an element of a civil violation is specified as "willfully," "corruptly," "maliciously" or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. Culpable states of mind defined. Culpable states of mind are defined as follows.

A. "Intentionally" has the meaning set forth in Title 17-A, section 35, subsection 1.

B. "Knowingly" has the meaning set forth in Title 17-A, Section 35, subsection 2.

C. "Recklessly" has the meaning set forth in Title 17-A, section 35, subsection 3.

D. A person acts negligently:

(1) With respect to a result of that person's conduct when the person fails to be aware of a risk that the conduct will cause such a result; and

(2) With respect to attendant circumstances when the person fails to be aware of a risk that such circumstances exist.

For purposes of this paragraph, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

E. A person acts culpably when the person acts with the intention, knowledge, recklessness or negligence as is required.

3. Application. When the definition of a civil violation specifies the state of mind sufficient for the commission of that civil violation, but without distinguishing among the elements thereof, the specified state of mind applies to all the other elements of the civil violation, except as provided in subsection 5.

4. Included culpable state of mind. When the law provides that negligence is sufficient to establish an element of a civil violation, that element is also established if, with

respect thereto, a person acted intentionally, knowingly or recklessly. When the law provides that recklessness is sufficient to establish an element of a civil violation, that element is also established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of the civil violation, that element is also established if, with respect thereto, a person acted intentionally.

5. Culpable state of mind not required. Unless otherwise expressly provided, a culpable state of mind need not be proved with respect to:

A. Any fact that is solely a basis for sentencing classification;

B. Any element of the civil violation as to which it is expressly stated that it must "in fact" exist;

C. Any element of the civil violation as to which the statute expressly provides that a person may be guilty without a culpable state of mind as to that element;

D. Any element of the civil violation as to which a legislative intent to impose liability without a culpable state of mind as to that element otherwise appears;

E. Any civil violation statute as to which it is expressly stated to be a "strict liability violation" or otherwise expressly reflects a legislative intent to impose liability without proof by the State of a culpable state of mind with respect to any of the elements of the crime; or

F. Any civil violation statute as to which a legislative intent to impose liability without a culpable state of mind as to any of the elements of the civil violation otherwise appears.

6. Strict liability. As used in this section, "strict liability violation" means a civil violation that, as legally defined, does not include a culpable state of mind element with respect to any of the elements of the civil violation and thus proof by the State of a culpable state of mind as to that crime is not required.

§5603. Restitution

The court may order a person adjudicated as having committed a civil violation to pay restitution as part of the judgment. Title 17-A, chapter 54 applies to the determination, ordering, payment and enforcement of an order of restitution.

§5604. License suspension

1. Grounds for suspension. A department may suspend a license, permit or certificate issued by that department if the person issued the license, permit or certificate is convicted or adjudicated of violating a law or rule administered by that department.

2. Effective date of suspensions. For violations having a minimum statutory suspension period, a suspension is effective upon conviction or adjudication and the license, permit or certificate holder must surrender the license, permit or certificate immediately to the department. For violations that do not have a minimum statutory suspension period, a suspension is effective upon written notification of suspension by the department. That person must surrender that license, permit or certificate to the department upon receipt of a notice of suspension and is entitled to a hearing under subsection 3.

3. Hearings. A person receiving a notice of suspension under subsection 2 may request a hearing on that suspension. A request for a hearing must be in writing and must be made not later than 30 days after receipt of the suspension notice required under subsection 2. The department shall notify the person of the date and location of the hearing.

A. A person may present evidence at a hearing concerning the violation that might justify reinstatement of the license, permit or certificate or the reduction of the suspension period. If the petitioner denies any of the facts contained in the record, the petitioner has the burden of proof.

B. Decisions of the department must be in writing. Except as provided in paragraph C, the department may reinstate the license, permit or certificate or reduce the suspension period if the department finds that the person has not been convicted or adjudicated, or that reinstatement of the license, permit or certificate or reduction of the suspension period would be in the best interests of justice.

C. The department may not waive or reduce any mandatory minimum suspension period established in statute.

4. Supplement. The authority conferred by this section is in addition to the authority a department has under other provisions of law.

Sec. A-2. 30-A MRSA §282, sub-§3-A is enacted to read:

3-A. Civil violations. Unless otherwise provided by law, the district attorney shall prosecute all civil violations in any county within the district attorney's prosecutorial district and shall be present at the trial of any such case.

PART B

Sec. B-1. 7 MRSA §16 is repealed and replaced with the following:

§16. Penalties

Unless a specific penalty has otherwise been provided, a person, firm, partnership or corporation that violates a provision of this title or a rule or regulation adopted pursuant to this title commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-2. 7 MRSA §75 is repealed and replaced with the following:

§75. Pulling events between animals; application

1. Permits. A person, firm, corporation or unincorporated society or association may not conduct a public or private pulling event between animals or pairs of animals within the State without a permit from the commissioner.

2. Application. A person shall make an application for a permit in writing to the commissioner at least 10 days prior to the date on which a pulling event is contemplated and shall give the name of the person, firm, corporation or unincorporated society or association holding the event and the date and place the event is to be held. One application and one permit may include one or more separate events when specified. Permits granted under this section are not transferable.

3. Fees. The commissioner shall charge a permit fee of \$10 per pull day, up to a maximum of \$50 for pulls held on consecutive days at the same location. All revenue derived from the permit fees must be deposited in the General Fund.

4. Statutory rules. A permit may not be issued unless the sponsor has adopted the following rules governing the conduct of each contest.

A. All teamsters who are to compete in contests shall have their teams ready at the published starting time. All classes must be closed after the positions are drawn. Classes must start as nearly as possible to the published time.

B. Check weighing will be allowed prior to the official weigh-in. All weighing must be done in the forenoon if possible. Teams must have on halters. Horses and ponies must have on shoes.

C. Measuring must be in a straight line to the nearest point on the drag. Line-to-line measuring is allowed. The front of the drag must touch the line before turning. To get the full-line measure, the drag must be turned more than 1/2 way or the back of the drag must be over the line.

D. Teams must stay hooked to the drag at all times. Unhitching and rehitching are not allowed.

E. An actual separation, breaking or bending of equipment constitutes a breakdown. Any team breaking down may take the distance pulled or return to the last position and pull over. Only one breakdown is allowed.

F. Time limits are a maximum of 5 minutes. Time starts when the drag is moved. The time limit to hook on in distance pulls is 3 minutes.

G. On horses, the very light use of the reins on the hind quarters only is allowed and over and under is not allowed. Whips, brads or goads are not allowed. Reins may not be doubled up. Electrical or electronic devices are not allowed. Open bridles are not allowed. Ponies may not be struck except in a sweepstakes when they may be struck with a cap or bare open hand.

On oxen, the use of the goad must be very light. The goad may not have a brad in it, only a plain yoke and chain or pole that may be pulled, except that a rope may be allowed in children's classes as provided in rules adopted pursuant to subsection 8. All chains must be covered to the hook. Plastic goads are not allowed. The goad stick may not be over 4 feet long unless approved by the pull superintendent and may not exceed 1/2 inch in diameter on the small end. The goad stick may be taped with friction tape but not weighted. The stick may be used lightly on the face to control the oxen but not around the eyes.

H. Any number of helpers is allowed to help hitch. After hitch-on, there may be no more than 2 helpers. The helpers shall stay behind the drag unless needed to help the teamster. The helpers may not have a stick. This paragraph applies to distance pulls only.

I. All participants must be properly dressed. Proper language must be used at all times. Any participant under the influence of liquor must be disqualified from the contest. Tests may be made to determine intoxication. The drinking of intoxicating beverages by participants in and around the ring is prohibited.

J. The fair association or other sponsor decides the splitting of teams.

K. Heading of horses or oxen is not allowed. One inch pulled constitutes a hitch. Stepping over the rail counts as a hitch and 5 minutes are allowed for hitching. Three attempts may be made within that period. Time taken out to position the drag for the next pull may not be counted. Teamsters may not be changed after the first load is pulled. A team deliberately driven over the rail is disqualified from the contest. In case of a tie on the longest distance, the 2nd longest distances already pulled will take first place. Evener people shall remain quiet after hitching on. This paragraph does not apply to distance pulls.

L. There may not be heading of horses after a pull starts unless there is a mix-up, snarl or breakdown.

M. A substantial barrier must be maintained at the end of the ring toward which the pull is proceeding to prevent or substantially impede runaways. A teamster losing control of the team is disqualified immediately.

N. There is 100 pounds tolerance on draft steers and oxen on and after Labor Day weekend.

O. Any animal that is thin, dehydrated, shows open sores or is lame is disqualified.

P. Before a team is allowed to pull, the owner shall provide a certificate of liability insurance in the amount of \$300,000.

5. Pull superintendents. Each sponsor of a pulling event shall appoint a pull superintendent who is certified by the commissioner under this section. The name of the superintendent must be submitted in conjunction with the application for a permit to conduct each event. Only those listed on the application as superintendent or assistant superintendent may officiate. A superintendent may not officiate as superintendent for a class in a pull event in which that superintendent is participating as a competitor. An assistant superintendent may not officiate as superintendent for a class in a pull event in which that assistant superintendent is participating as a competitor. The Pull Events Commission shall adopt rules for the qualifications required to be a pull superintendent or assistant pull superintendent. Rules must be adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

6. Pull Events Commission. The Pull Events Commission is established pursuant to this subsection.

A. The Pull Events Commission, as authorized by Title 5, chapter 379, is established to develop rules for the certification of pull superintendents and for actions to be taken in the event of violation of pull laws and rules.

B. The Pull Events Commission consists of 11 members appointed as follows:

(1) Two members appointed by a statewide association representing owners of draft horses and oxen who participate in pulling events, one member appointed by an association representing owners of oxen who participate in pulling events and one member appointed by an association representing owners of ponies who participate in pulling events;

(2) An agricultural fair coordinator from the department;

(3) One Fair Superintendent appointed by the Maine Association of Agricultural Fairs;

(4) Two representatives appointed by Maine humane organizations;

(6) The commissioner or a designated representative;

(7) One member appointed by the commissioner representing the general public;
and

(8) One member appointed by the commissioner representing the animal pulling industry.

C. The Pull Events Commission shall elect one of its members as chair. The chair serves a 2-year term and may not serve as chair for consecutive terms. The commission shall meet a minimum of twice annually.

D. With the exception of the commissioner and the fair coordinator, appointments must be for terms of 2 years. The appointing authority fills a vacancy for a full 2-year term. The appointing authority may remove a commission member for cause, which includes poor attendance. The chair shall make recommendations to the appointing authority concerning a removal.

E. Commission members may receive expenses but not per diem.

F. The commission shall:

(1) Develop qualifications for the certifying of pull superintendents and guidelines for dealing with violations of this section;

(2) Periodically review the rules for pulls as contained in subsection 2 and recommend to the Legislature such changes as necessary;

(3) Hold hearings as required on its rule-making activities and on individual violations. These hearings must be held in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

(4) Give advice and recommendations to the commissioner on request or as the commission considers necessary; and

(5) Coordinate, develop and conduct pulling superintendent training seminars.

7. Enforcement. The superintendent shall enforce the laws and rules governing pull events and shall report pullers who are disqualified, violations of the law and other matters, as appropriate, to the Pull Events Commission. The commission shall send a copy of any such

report to the sponsor whose name appears on the application for the pulling event and to the person whose conduct has been reported to the commission.

Humane agents shall promptly report to the pull superintendent any pulling event actions that violate this chapter, any portion of the animal welfare laws in this title or any rule enacted by the department. If the superintendent fails or refuses to take corrective action, the humane agent shall take action to enforce the animal welfare laws and make a written report to the commission concerning all violations.

8. Rules. Following the Maine Administrative Procedure Act, Title 5, chapter 375, and with the advice of the Pull Events Commission, the commissioner may adopt rules necessary to carry out the purposes of this chapter.

9. Civil violations. A person, firm, corporation or unincorporated association or society that conducts or causes to be conducted a public or private pulling event between animals or pairs of animals within the State without a permit from the commissioner commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

A person, firm, corporation or unincorporated association or society that within the previous 5 years has been convicted of a violation of Title 17, section 1031 or has been adjudicated to have committed a civil violation of section 4011, and that participates as an animal owner, handler or in any other capacity, directly or indirectly, in a pulling event required to have a permit pursuant to this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

10. Permit revocation. A person, firm, corporation or unincorporated association or society required to obtain a permit under this section to conduct a pulling event may not allow, after having received notice from the Department of Agriculture, Food and Rural Resources, a person, firm, corporation or unincorporated association or society that has been convicted within 5 years of violation of Title 17, section 1031, or that has been adjudicated within 5 years to have committed a civil violation of section 4011 to participate as an owner, handler or in any other capacity, directly or indirectly, in a pulling event. A violation of this provision is grounds, upon compliance with appropriate provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, for revocation or nonrenewal of a permit issued under this section.

Sec. B-3. 7 MRSA §512 is amended to read:

§512. Penalties

Any ~~A~~ person who ~~violating~~ violates any of the ~~a~~ provisions provision of this subchapter is guilty of a Class E crime commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. ~~No~~ ~~A~~ person ~~shall~~ may not be subject to the penalties provided in this section if ~~such~~ the person establishes a written guarantee or undertaking in which is furnished the name and address of the manufacturer or distributor, and the statement that ~~he~~

the person received ~~such~~ the products in good faith in reliance upon the manufacturer or distributor to the effect that such products were manufactured and labeled in compliance with this subchapter or with such Federal Acts ~~which~~ that may relate to the regulations of the distribution of hazardous substances covered by this subchapter.

Sec. B-4. 7 MRSA §643 is amended to read:

§643. Violations

~~Any A person, firm or corporation who that~~ violates any provision of sections 640 to 642 shall be guilty of a Class E crime, and the commissioner is expressly empowered to enforce those sections and to be vigilant in discovering violations thereof, and making complaint to the proper authorities commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-5. 7 MRSA §722 is amended to read:

§722. Penalties

~~Any A person, violating who violates any of the provisions a provision~~ of this subchapter or who shall impede, hinder or otherwise prevent, or attempt to prevent impedes, hinders or otherwise prevents the commissioner, or ~~his~~ the commissioner's duly authorized agent, in the performance of ~~his~~ the commissioner's duty in connection with this subchapter, commits a civil violation for which a forfeiture of not less than \$100 ~~nor~~ and not more than \$200 ~~shall~~ may be adjudged for the first violation and for which a forfeiture of not less than \$200 ~~nor~~ and not more than \$500 ~~shall~~ may be adjudged for each subsequent violation.

Nothing in this subchapter ~~shall~~ may be construed as requiring the commissioner, ~~or his representative~~ the commissioner's agent, to cause suit to be brought or institute seizure proceedings or issue a withdrawal from distribution order, as a result of minor violations of this subchapter, or when ~~he~~ the commissioner believes that the public interest will best be served by suitable notice of warning in writing.

~~It shall be the duty of these~~ The authorities to whom ~~any~~ a violation is reported to shall cause appropriate proceedings to be instituted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for suit to be brought, the distributor must have an opportunity ~~shall be given the distributor~~ to present ~~his~~ the distributor's view to the commissioner.

The commissioner is authorized to apply for and the court to grant a temporary or permanent injunction restraining ~~any~~ a person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter notwithstanding the existence of other remedies at law. This injunction ~~shall~~ must be issued without bond.

~~Any~~ A person adversely affected by an act, order or ruling made pursuant to this subchapter may within 45 days thereafter bring action in the Superior Court in the county ~~where~~ of the enforcement official has his official's office for judicial review of ~~such~~ the actions. The form of the proceeding ~~shall~~ must be any ~~which~~ that may be provided by statutes of this State to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

~~Any~~ A person who uses to that person's ~~his~~ own advantage, or reveals to other than the commissioner or officers of the Maine Department of Agriculture Food and Rural Resources, or to the courts when relevant in any judicial proceeding, ~~any~~ information acquired under the authority of this subchapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, ~~is guilty of a Class E crime~~ commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. This prohibition ~~shall~~ may not be deemed as prohibiting the commissioner or ~~his~~ the commissioner's duly authorized agent from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

Sec. B-6. 7 MRSA §1006 is amended to read:

§1006. Penalties

~~Violation of~~ A person who violates ~~any of the provisions~~ a provision of sections 991 to 1006 or ~~any~~ a provision of ~~any~~ a marketing order duly issued by the commissioner ~~thereunder~~, ~~is a Class E crime~~ commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. Each day during which any of the violations above referred to continues ~~shall continue~~ constitutes a separate offense.

Sec. B-7. 10 MRSA §3331 is repealed and the following enacted in its place:

§3331. Violations and penalty

1. Violation. A processor ~~to~~ may not remove any farm product that is delivered to the processor, or any processed form of the farm product, from this State or beyond the processor's ownership or control upon which any of the liens that are provided for in this chapter are attached, except any farm product or processed form of the product as may be in excess of a quantity that is on hand of a value that is sufficient to satisfy all existing liens, provided, that neither this section and the penalties provided herein or any other provision of this chapter may affect, impede or restrict the rights and remedies of a lienor or holder of a security interest having priority under section 3325 to enforce its liens or security interests against the inventory of a processor, and the proceeds and products thereof and the lienor or security interest holder or any person cooperating or acting in accordance with the request of the lienor or security interest holder may not be in violation of this section.

2. Penalty. A person who ~~of~~ violates a provision of this chapter commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-8. 12 MRSA §6072-C, sub-§1, as enacted by PL 1999, c. 567, §2, is amended to read:

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

Sec. B-9. 12 MRSA §6072-C, sub-§7, as enacted by PL 1999, c. 567, §2, is amended to read:

7. Prohibition; molesting gear. It is unlawful for a person other than a marine patrol officer, the licensed owner of the gear or the licensed owner's assistant, with written permission from the licensed owner, to utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear that is deployed under a current limited-purpose aquaculture license.

~~A. If a person violates this subsection by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall, upon finding a violation of this subsection:~~

~~(1) Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and~~

~~(2) Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.~~

~~B. A penalty imposed under this subsection is in addition to any penalty imposed under section 6204.~~

Sec. B-10. 12 MRSA §6072-C, sub-§9 is enacted to read:

9. Violation; restitution. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. If a person violates subsection 7 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall also:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

Sec. B-11. 12 MRSA §6112 is amended to read:

§6112. Labeling of food products containing surimi

A food product may not be sold in this State consisting of or containing surimi unless the packaging containing the food product is clearly and conspicuously labeled or, if there is no packaging, unless a sign is conspicuously displayed, indicating that the product is "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department is sufficient to notify the public that the product contains surimi. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-12. 12 MRSA §6113 is amended to read:

§6113. Serving food containing surimi

~~No food~~ Food containing surimi or a surimi product may not be served in any eating establishment in the State whether for consumption on or off the premises, unless on the menu and all notices advertising the food it is clearly and conspicuously labeled as "imitation lobster," "imitation crab," "imitation" followed by the name of the seafood imitated, "processed seafood," "surimi," "lobster-processed seafood salad," "crab-processed seafood salad" or other terms as approved by the Department of Marine Resources through rules adopted in accordance with Title 5, chapter 375, subchapter II. Any term approved by that department shall be sufficient to notify the public that the product contains surimi. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-13. 12 MRSA §6351 is repealed and the following enacted in its place:

§6351. Suspension based on criminal conviction or civil adjudication

1. Grounds for suspension. Any of the following is grounds for suspension of a license or certificate issued under this Part:

A. A conviction for a violation of a marine resources' law;

B. A conviction for a violation of Title 17-A, chapter 31;

C. A conviction for a criminal offense against a marine patrol officer while that officer is engaged in the performance of official duty; or

D. A civil adjudication of having violated a marine resources' law.

2. Suspension procedure. In order to suspend a license or certificate because of a conviction or adjudication, the commissioner must follow the procedures of this Article.

Sec. B-14. 12 MRSA §6401 is amended to read:

§6401. Suspension based on criminal conviction or civil adjudication

1. Violation of marine resources' laws. The commissioner may suspend any and all licenses or certificates issued under this Part if a person is convicted or adjudicated in court of violating any section of the marine resources' laws.

2. Length of suspension. The suspension of a license or certificate may not exceed the following:

A. One year from the date of the first conviction or adjudication;

B. Two years from the date of the 2nd conviction or adjudication; and

C. Three years from the date of the 3rd or subsequent conviction or adjudication.

3. Applicable standards. Any conviction or adjudication occurring more than 7 years before the last conviction ~~shall~~ may not be counted in determining lengths of suspension.

Sec. B-15. 12 MRSA §6402 is amended to read:

§6402. Suspension based on ~~conviction~~ adjudication of molesting

The commissioner shall suspend the lobster and crab fishing license of a license holder ~~convicted~~ adjudicated in court of violating section 6434. This suspension is for 3 years from the date of ~~conviction~~ adjudication.

1. ~~Convictions~~ Adjudications for cutting lobster trap lines. A person ~~convicted~~ adjudicated under section 6434 of molesting lobster gear by cutting a lobster trap line shall, upon making full payment as ordered by the court under section 6434, subsection 4, paragraph A, provide the commissioner with proof of that payment. If the commissioner does not receive that

proof within 3 years after the date of ~~conviction~~ adjudication, the commissioner shall continue that license suspension until such time as that proof is received.

Sec. B-16. 12 MRSA §6402-A is amended to read:

§6402-A. Suspension based on ~~conviction~~ adjudication of dragging in cable area

For ~~any a~~ a person ~~convicted~~ adjudicated in court of violating section 6954 or 6954-A, the commissioner shall suspend the license authorizing the activity in which the person was engaged at the time of the violation. The suspension shall be for one year from the date of the ~~conviction~~ adjudication. If the person was ordered by the court to pay restitution as provided in section 6954 or 6954-A, however, the commissioner shall continue the license suspension longer than one year until the person has made payment in full and provides the commissioner with proof of that payment.

Sec. B-17. 12 MRSA §6404-A is amended to read:

§6404-A. Suspension based on ~~conviction~~ adjudication of molesting elver gear

The commissioner shall suspend the elver fishing license of any license holder ~~convicted~~ adjudicated in court of violating section 6575-D. This suspension must be for one year from the date of ~~conviction~~ adjudication.

Sec. B-18. 12 MRSA §6421 is amended to read:

§6421. Lobster and crab fishing licenses

1. License required. ~~It is unlawful for any A~~ person to ~~may not~~ engage in the activities authorized ~~by this license~~ under this section without a current Class I, Class II, Class III, apprentice, student or noncommercial lobster and crab fishing license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a Class I, Class II, Class III, apprentice or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

2-A. Licensed activity; noncommercial license. The holder of a noncommercial lobster and crab fishing license may fish for, take, possess, ship or transport within the State

lobsters or crabs the license holder has taken. The license does not authorize the license holder to sell lobsters or to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat.

3-A. License limitation. A license authorizes activities by individuals as follows.

A. A Class I license authorizes the licensed activities under subsection 2 by the individual who is named in the license. Any individual assisting or helping a Class I license holder in these activities must also be licensed.

B. A Class II license authorizes the license holder to engage in the licensed activities under subsection 2. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

C. A Class III license authorizes the license holder to engage in the licensed activities under subsection 2. A Class III license holder may engage 2 unlicensed crew members to assist in the licensed activities under the direct supervision of the Class III license holder.

D. An apprentice lobster and crab fishing license authorizes the apprentice so licensed to engage in the licensed activities under subsection 2 on that apprentice's sponsor's vessel when the apprentice's sponsor is on board the vessel. A person who holds an apprentice lobster and crab fishing license may not tend any traps unless the traps are fished by the sponsor of the apprentice so licensed. An applicant for an apprentice lobster and crab fishing license may designate up to 3 sponsors. For the purpose of this paragraph, "apprentice's sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

E. A student license authorizes the license holder to engage in the licensed activities under subsection 2. A person issued a student license may not submerge at any one time more than 150 lobster traps in the coastal waters of the State. An applicant for a student license shall designate a sponsor. A person issued a student license is enrolled in the apprentice program under section 6422. For the purpose of this paragraph, "sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

F. A noncommercial lobster and crab fishing license authorizes the license holder to engage in the licensed activities under subsection 2-A. A person issued a noncommercial lobster and crab fishing license may not submerge at any one time more than 5 lobster traps in the coastal waters of the State.

4. Exception. A license is not required to take or catch crabs with bare hands or hook and line.

5. Eligibility. A Class I, Class II, Class III, apprentice, noncommercial or student lobster and crab fishing license may only be issued to an individual ~~and~~ who is a resident licensee. A Class I, Class II or Class III license may be issued to a person only if the person:

- A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year;
- C. Meets the requirements of the apprentice program under section 6422 or section 6475;
- F. Is 65 years of age or older and has held a lobster and crab fishing license; or
- H. Has held a student lobster and crab fishing license in 3 consecutive years and:
 - (1) Is 18 years of age or older; or
 - (2) Is a high school graduate.

This paragraph is repealed December 31, 2001.

5-A. Student license eligibility. A student license may only be issued to a person who, at the time of application, is a full-time student not more than 22 years of age. For the purposes of this subsection, "full-time student" means "student" as defined in Title 39-A, section 102, subsection 8, paragraph C.

6. Buoy colors. Each license applicant must describe, on the application, a single color design of the applicant's buoys.

7-A. Fee. Except as provided in subsection 8, the fee for the license is:

- A. Forty-six dollars for a Class I license for applicants under 18 years of age;
- B. Ninety-three dollars for a Class I license for applicants 18 years of age or older;
- C. One hundred eighty-six dollars for a Class II license;
- D. Two hundred seventy-nine dollars for a Class III license;
- E. Forty-six dollars for an apprentice lobster and crab fishing license for applicants under 18 years of age;
- F. Ninety-three dollars for an apprentice lobster and crab fishing license for applicants 18 years of age or older;
- G. Forty-six dollars for a student lobster and crab fishing license; and

H. Forty-six dollars for a noncommercial lobster and crab fishing license.

8. Exception. The fee for a Class I or an apprentice lobster and crab fishing license for applicants 70 years of age or older is \$46.

9. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-19. 12 MRSA §6431-A is amended to read:

§6431-A. Trap limit

1. Limit. Before March 1, 2000, the holder of a Class I, Class II or Class III license issued under section 6421 may not submerge more than 1,000 traps. After February 29, 2000, the holder of a Class I, Class II or Class III license issued under section 6421 may not submerge more than 800 traps. If a lower trap limit is adopted by rule for a zone pursuant to section 6446, a license holder who fishes in that zone may not submerge a number of traps that exceeds the lower limit.

The number of traps fished from a vessel may not exceed the applicable trap limit established in this subsection, regardless of the number of license holders fishing from that vessel.

4. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-20. 12 MRSA §6434 is amended to read:

§6434. Molesting lobster gear

~~No~~ A person may not raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car except as provided in this section.

1. Permitted activities. Lobster traps, warps, buoys and cars may be raised, lifted, transferred, possessed or otherwise molested by the following:

- A. A marine patrol officer;
- B. The licensed owner;
- C. Any person having written permission from the licensed owner; and
- D. Any person authorized by rule pursuant to subsection 2.

2. Promulgation Adoption of rules required. The commissioner shall ~~promulgate~~ adopt rules, no later than January 1, 1990, authorizing the removal of traps, warps, buoys or cars that are washed up above the mean low tide mark or are otherwise abandoned or lost.

3. Prohibition. ~~Traps~~ A person other than the licensed owner may not use for fishing traps, warps, buoys or cars may not be used for fishing by any person other than the licensed owner unless except with written permission from the licensed owner.

4. Additional penalty. ~~If the holder of a lobster and crab fishing license violates this section by cutting a lobster trap line, the court shall:~~

~~A. Order that person to pay to the owner of the trap line that was cut an amount equal to twice the replacement value of all traps lost as a result of that cutting; and~~

~~B. Direct that person to provide proof of payment of that restitution to the Commissioner of Marine Resources as required by section 6402, subsection 1.~~

~~A penalty imposed under this subsection is in addition to any penalty imposed under section 6204.~~

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged. If the holder of a lobster and crab fishing license violates this section by cutting a lobster trap line, the court shall also:

A. Order that person to pay to the owner of the trap line that was cut an amount equal to twice the replacement value of all traps lost as a result of that cutting; and

B. Direct that person to provide proof of payment of that restitution to the Commissioner of Marine Resources as required by section 6402, subsection 1.

Sec. B-21. 12 MRSA §6474 is amended to read:

§6474. Fishing without Monhegan trap tags prohibited

1. Prohibition. ~~It is unlawful for a~~ A person to ~~may not~~ submerge a lobster trap in the Monhegan Lobster Conservation Area unless a lobster trap tag designated for use in the Monhegan Lobster Conservation Area is affixed to the trap. The commissioner shall charge fees and deposit those fees for Monhegan Lobster Conservation Area trap tags in accordance with section 6431-B.

2. Trap tag expiration. Trap tags issued for use during a Monhegan Lobster Conservation Area open season expire upon the closing of that season.

3. Trap tag eligibility for the 1998-99 open season. The commissioner may not issue Monhegan Lobster Conservation Area trap tags to a person between the effective date of this section and June 25, 1999 unless that person:

- A. Possesses a Class I, Class II or Class III lobster and crab fishing license;
- B. Registered with the commissioner for harvesting lobsters during the January 1, 1997 to June 25, 1997 open season under rules that established the Monhegan Island Area Lobster Trap Regulation; and
- C. Documents to the commissioner that that person harvested lobsters at any time between January 1, 1997 and June 25, 1997 under rules that established the Monhegan Island Area Lobster Trap Regulation.

A person eligible to obtain trap tags under this section is deemed registered for the purpose of obtaining Monhegan Lobster Conservation Area trap tags for the 1998-99 open season, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

4. Trap tag eligibility after July 31, 1999. Except as provided under subsection 5, the commissioner may not issue Monhegan Lobster Conservation Area trap tags to a person after July 31, 1999 unless that person:

- A. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that the person harvested lobsters from the Monhegan Lobster Conservation Area in the prior open season and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season;
- B. Registered with the commissioner to purchase Monhegan Lobster Conservation Area trap tags for the prior open season, documents to the commissioner that that person did not harvest lobsters from the Monhegan Lobster Conservation Area in the prior open season because of an illness or medical condition and registers with the commissioner during the period between June 26th and August 1st immediately following the prior open season for Monhegan Lobster Conservation Area trap tags for the subsequent open season; or
- C. Becomes registered for trap tag registration pursuant to section 6475.

5. License suspension and eligibility. A person eligible to register for Monhegan Lobster Conservation Area trap tags under subsection 4, paragraph A if not for the suspension of that person's Class I, Class II or Class III lobster and crab fishing license may not, for the purpose of admitting new registrants, be considered to have failed to register pursuant to section 6475, subsection 1, paragraph C, subparagraph (3). Upon reinstatement of that person's license, that

person is deemed registered and the commissioner may issue trap tags to that person, unless that person notifies the commissioner before reinstatement that the person chooses to not be registered.

6. Limit on number of registrants. The total number of individuals registered to obtain Monhegan Lobster Conservation Area trap tags may not exceed the number of individuals initially eligible pursuant to subsection 3, paragraphs A, B and C.

7. Periods of registration. Monhegan Lobster Conservation Area trap tag registrations are valid as follows.

A. A person registered under subsection 3 is registered for the entire period from the effective date of this section until July 31, 1999, unless that person notifies the commissioner by November 30, 1998 that the person chooses to not be registered.

B. A person registered under subsection 4, paragraph A or B is registered for the entire period from August 1st of the year of registration until the following July 31st.

C. A person registered under subsection 4, paragraph C is registered for the entire period from the date of registration until the following July 31st.

D. A person registered under section 5 through the reinstatement of a suspended license is registered for the entire period from the date of license reinstatement until the following July 31st.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-22. 12 MRSA §6501 is amended to read:

§6501. Commercial fishing license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized by this license under this section without a current commercial fishing license or other license under this Part authorizing the activities.

2. Licensed activity. The holder of a commercial fishing license may fish for or take fish or possess, ship, transport or sell fish ~~which he~~ that the holder has taken. The license shall also authorize crew members aboard the licensee's boat when it is engaged in commercial fishing to undertake these activities, if the license provides for crew members.

3. Exemptions. The following shall be exempted from this licensing requirement.

A. ~~Any~~ A person may fish for, take, possess or transport any species of fish if they have been taken by speargun, harpoon, minnow trap, hand dip net or hook and line and are only for personal use.

B. ~~Any~~ A person may fish for, take, possess or transport halibut if they have been taken by tub trawl and are only for personal use.

C. ~~Any~~ A person may fish for, take, possess, ship, transport, or sell smelts if they have been taken by hook and line through the ice.

4. Eligibility. A commercial fishing license ~~shall only~~ may be issued only to an individual.

5. Fees. Fees for commercial fishing licenses are:

A. Thirty-three dollars for resident operator;

B. Eighty-nine dollars for resident operator and all crew members; and

C. Three hundred thirty-four dollars for nonresident operator and all crew members.

6. Definition. For the purposes of this chapter, "fish" means all marine finfish and squid or other marine animals, except lobsters, crabs, sea urchins, shellfish, scallops, marine worms, elvers, eels or shrimp.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-23. 12 MRSA §6502 is amended to read:

§6502. Nonresident special tuna permit

A nonresident individual may fish for, take, possess, ship, transport or sell tuna ~~which he~~ that the individual has taken, without a ~~commercial~~ commercial fishing license, if ~~he the~~ the individual has a current special tuna permit.

1. Eligibility. A special tuna permit may be issued to a nonresident individual who is a registered participant in a tuna tournament which is sponsored and operated by a nonprofit association or corporation that has existed for at least one year prior to the tournament. ~~No~~ An individual ~~shall~~ may not be issued more than one permit in any one calendar year.

2. Authorized activity. A special tuna permittee may fish for, take for sale and sell only one tuna in any one calendar year. The permit ~~shall be~~ is valid for the length of the tournament plus one day or for 7 days from the date of issue, whichever is shorter.

3. Fee. The permit fee is \$84, which may be credited against the license fee for a commercial fishing license, if it is issued to the permittee within 30 days of the issuing of the permit.

4. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-24. 12 MRSA §6505-A is amended to read:

§6505-A. Elver fishing license

1. License required. ~~It is unlawful for a~~ A person to ~~may not~~ fish for or take elvers or possess, ship, transport or sell elvers that the person has taken unless the person is issued an elver fishing license under this section.

2. Eligibility. An elver fishing license may be issued only to an individual who:

C. Possessed an elver fishing license in the previous calendar year; or

D. Becomes eligible to obtain an elver fishing license pursuant to a lottery under subsection 2-A.

The department may not issue more than 827 elver fishing licenses each elver fishing season.

2-A. Elver license lottery. The commissioner shall establish a lottery system under which a person who did not hold an elver fishing license in the previous calendar year may become eligible to obtain that license. The number of persons awarded eligibility in a lottery may not cause the total number of elver fishing licenses issued to exceed 827.

A. A person is eligible to enter the lottery for a 2000 elver fishing license if that person held an elver fishing license issued under this section for at least 2 of the 3 years of 1996, 1997 and 1998. An eligible person wishing to enter the lottery for 2000 shall submit a lottery application no later than March 10, 2000 on forms provided by the commissioner. The commissioner shall hold the lottery by March 15, 2000 and the lottery must be a public drawing by random selection from all eligible applicants. The number of persons awarded 2000 elver fishing licenses in the lottery may not exceed 86.

B. Beginning with the 2001 elver fishing season and in subsequent years, any person is eligible to enter the lottery, except that a person who is issued a license pursuant to subsection 2, paragraph C may not enter the lottery. The commissioner shall adopt rules to implement a lottery system beginning with the 2001 elver fishing season under which a person who did not hold an elver fishing license in the previous calendar year may become eligible to obtain that license. The rules for a lottery system must include

provisions for the method and administration of a lottery. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Limits on issuance. The department may not issue an elver fishing license during the open season for elver fishing.

4. Fees. Fees for elver fishing licenses are:

A. For a person who is a resident, \$83; and

B. For a person who is a nonresident, \$384.

Fifty dollars of each license fee collected under this subsection accrue to the Eel and Elver Management Fund established in section 6505-D.

5. Gear. Except as prohibited by section 6575-B, subsection 2-B, a person issued a license under this section may utilize one elver fyke net, one Sheldon eel trap or one dip net to fish for or take elvers without paying the fee required for a first net or trap pursuant to section 6505-B. A license issued under this section must identify the number and types of nets that the license holder may use pursuant to this section and section 6505-B.

6. Minimum age. ~~It is unlawful for a~~ A person who is under 15 years of age ~~to~~ may not fish for or take elvers.

7. Nonresident licenses; reciprocity with other states. A nonresident is eligible to purchase an elver fishing license only if the nonresident documents to the commissioner that the nonresident's state of residence allows Maine residents to purchase an elver license and fish for elvers in that state.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-25. 12 MRSA §6505-B is amended to read:

§6505-B. Elver gear fees

1. Elver fyke net and Sheldon eel trap fee. ~~It is unlawful for a~~ A person ~~to~~ may not submerge an elver fyke net or a Sheldon eel trap in the waters of the State to fish for or take elvers unless the net or trap owner pays annually the following fees:

A. Fifty dollars per net or trap for the use of a an elver fyke net or Sheldon eel trap, except that the fee under this paragraph does not apply to an elver fyke or Sheldon eel trap a person utilizes pursuant to section 6505-A, subsection 5.

2. Tags for elver fyke net and Sheldon eel trap. ~~It is unlawful for a A person to~~ may not submerge an elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless a tag issued by the department is affixed to the shoreside wing of the net or trap and is clearly visible. The department may issue a replacement tag when an owner issued a tag documents that a net or trap has been damaged or lost.

3. Dip net fee. ~~It is unlawful for a A person to~~ may not utilize a dip net to fish for or take elvers without paying a fee of \$50 per dip net annually.

This subsection does not apply to a dip net a person utilizes pursuant to section 6505-A, subsection 5.

4. Payment with license. The fees required under subsections 1 and 3 must be paid upon application for an elver fishing license under section 6505-A.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D.

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-26. 12 MRSA §6505-C is amended to read:

§6505-C. Eel harvesting license

1. License required. ~~It is unlawful for a A person to~~ may not fish for or take eels in the coastal waters of the State or possess, ship, transport or sell eels that the person has taken in the coastal waters of the State without an eel harvesting license.

2. Exemptions. A person may fish for or take for personal use an eel in the coastal waters of the State by speargun, harpoon, trap or hook and line and may possess or transport that eel.

3. Eligibility. An eel harvesting license may ~~only~~ be issued only to an individual.

4. Fees. The fee for an eel harvesting license is \$100.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$33 must accrue to the General Fund for each license sold under this section.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-27. 12 MRSA §6535 is amended to read:

§6535. Sea urchin and scallop diving tender license

1. License required. ~~It is unlawful for a~~ A person ~~to~~ may not operate a boat as a platform for the harvesting of sea urchins and scallops by hand, ~~to~~ act as a diving tender on a boat engaged as a platform for the harvesting of sea urchins and scallops by hand or ~~to~~ possess, ship, transport or sell scallops or sea urchins unless that person is licensed under this section, section 6701 or section 6748.

2. Licensed activity. A person licensed under this section may tend divers who harvest sea urchins and scallops by hand and operate a boat as a platform for the harvesting of sea urchins and scallops by hand and may possess, ship, transport and sell sea urchins and scallops harvested by licensed harvesters the tender has tended. A sea urchin and scallop diving tender license does not authorize the holder to harvest sea urchins and scallops.

2-A. Thirty-day temporary license. A person may be issued a 30-day temporary sea urchin and scallop diving tender license. A person may be issued a license only one time under this subsection. A license issued under this subsection may not be renewed.

3. Eligibility. A sea urchin and scallop diving tender license and a 30-day temporary sea urchin and scallop diving tender license may be issued only to an individual ~~and are~~ who is a resident ~~licenses~~.

4. Fee. Fees for licenses issued under this section are as follows:

A. For a sea urchin and scallop diving tender license, \$89; and

B. For a 30-day temporary sea urchin and scallop diving tender license, \$25.

5. Prima facie evidence. The failure of at least one person on board the boat operated as a platform during periods of diving to harvest scallops or sea urchins to have a license issued under section 6701 or 6748 is prima facie evidence of a violation of this section.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-28. 12 MRSA §6536 is amended to read:

§6536. Scallop diving tender license

1. License required. ~~It is unlawful for a~~ A person to ~~may not~~ operate a boat as a platform for the harvesting of scallops by hand, ~~to~~ act as a diving tender on a boat engaged as a platform for the harvesting of scallops by hand or ~~to~~ possess, ship, transport or sell scallops unless that person is licensed under this section, section 6535, section 6701 or section 6748.

2. Licensed activity. A person licensed under this section may tend divers who harvest scallops by hand and operate a boat as a platform for the harvesting of scallops by hand and may possess, ship, transport and sell scallops harvested by licensed harvesters the tender has tended. A scallop diving tender license does not authorize the holder to harvest scallops.

3. Eligibility. A scallop diving tender license may be issued only to an individual ~~and~~ who is a resident ~~license~~.

4. Fee. The fee for a scallop diving tender license is \$89.

5. Prima facie evidence. The failure of at least one person on board the boat operated as a platform during periods of diving to harvest scallops to have a license issued under section 6701 is prima facie evidence of a violation of this section.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-29. 12 MRSA §6575-D is amended to read:

§6575-D. Molesting elver fishing gear

1. Prohibition. A person other than a marine patrol officer or the license holder issued a tag for an elver fyke net or a Sheldon eel trap may not utilize, transfer, alter, possess or in any manner handle the net or trap unless that person has been issued an elver fishing license under section 6505-A and:

B. Is issued written permission by a marine patrol officer to tend the net or trap of a license holder issued a tag. A marine patrol officer may issue a person written permission for the person to tend the license holder's net or trap only for the purpose of releasing captured elvers into the waters of the State if the license holder can not tend the net or trap because of a disability or personal or family medical condition. If the license holder is unable to tend the net or trap for more than 2 weeks, the net or trap must be removed from the water.

2. Penalty Violation. ~~A violation of person who violates this section is a Class D crime, except that the court shall impose a minimum fine of \$500 for each violation~~ commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-30. 12 MRSA §6601 is amended to read:

§6601. Shellfish license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a current shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a shellfish license may fish for or take shellfish or possess, ship or transport within the state limits or sell shellstock the holder has taken. The holder may also shuck, in the holder's home, shellfish the holder has taken and sell those shucked shellfish from that home in the retail trade. This license ~~shall~~ does not authorize the holder to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671.

3. Eligibility. A shellfish license ~~shall only~~ may be issued only to an individual ~~and shall be who is~~ a resident ~~license~~.

4. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-31. 12 MRSA §6701 is amended to read:

§6701. Scallop license

1. License required. ~~It is unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a current hand fishing scallop license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a hand fishing scallop license may take scallops by hand or possess, ship, transport or sell scallops ~~he~~ the holder has taken.

3. Eligibility. A scallop license ~~shall only~~ may be issued only to an individual ~~and shall be who is~~ a resident ~~license~~.

4. Exception. In any one day, ~~any a~~ person licensed pursuant to section 6703 may take or possess not more than 2 bushels of shell scallops or 4 quarts of shucked scallops for personal use without a scallop license under this section.

5. Fee. The fee for a scallop license is \$89.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-32. 12 MRSA §6702 is amended to read:

§6702. Scallop boat license

1. License required. ~~It is unlawful for any~~ A person to may not use a boat for dragging for scallops unless that boat carries a scallop boat license issued by the commissioner.

2. Licensed activity. A boat licensed under this section may be used for dragging for scallops and to possess, ship, sell or transport scallops taken under the license. The license also authorizes the captain and crew members aboard the licensed boat when engaged in dragging for scallops to undertake these activities.

3. Eligibility. A scallop boat license ~~shall only~~ may be issued only to an individual ~~and shall be who~~ is a resident ~~license~~.

4. Exception. In any one day, ~~any~~ a person licensed pursuant to section 6703 may take or possess not more than 2 bushels of shell scallops or 4 quarts of shucked scallops for personal use without a scallop license under this section.

5. Fee. The fee for a scallop boat license is \$89.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-33. 12 MRSA §6732 is amended to read:

§6731. Mahogany quahogs

1. License required. Except as provided in subsection 3, ~~it is unlawful for any~~ a person ~~to~~ may not engage in the activities authorized under this section without a current mahogany quahog license.

2. Licensed activities. The holder of a mahogany quahog license may:

A. Fish for or take mahogany quahogs in any harvesting area indicated on the license;

B. Possess, ship or transport mahogany quahogs within the State; or

C. Sell mahogany quahogs that the holder has taken.

The license authorizes crew members aboard the licensee's boat to undertake these activities when engaged in dragging for mahogany quahogs if the licensee is present.

3. Personal use exception. ~~Any~~ A person may take or possess no more than 3 bushels of mahogany quahogs for personal use in one day without a license.

4. Fee. The fee for a mahogany quahog license is \$89. Fees collected pursuant to this section must be deposited in the General Fund.

5. Conditions. Each licensee may participate in the monitoring program established in section 6731-A within the harvest area indicated on the license. The holder of a mahogany quahog license shall comply with all other conditions of licensing established by the commissioner.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-34. 12 MRSA §6732 is amended to read:

§6732. Other quahogs

1. License required. ~~It is unlawful for any~~ A person ~~to~~ may not engage in the activities authorized under this section without a current shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a shellfish license may fish for or take quahogs, other than mahogany quahogs, or possess, ship or transport within the state limits or sell quahogs he has taken.

3. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-35. 12 MRSA §6745 is amended to read:

§6745. Hand-raking mussel license

1. License required. ~~It is unlawful for any~~ A person ~~to~~ may not engage in the activities authorized under this section without a current mussel license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a hand-raking mussel license may take mussels by hand raking or possess, ship, transport or sell mussels ~~he~~ the holder has taken.

3. Eligibility. A hand-raking mussel license ~~shall only~~ may be issued only to an individual ~~and shall be~~ who is a resident licensee.

4. Exception. In any one day, ~~any~~ a person may take or possess not more than 2 bushels of shell mussels for personal use without a mussel license.

5. Fee. The fee for a hand-raking mussel license is \$63.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-36. 12 MRSA §6746 is amended to read:

§6746. Mussel boat license

1. License required. ~~It is unlawful for any~~ A person ~~to~~ may not use a boat for dragging for mussels unless that boat carries a current mussel boat license issued by the commissioner.

2. Licensed activity. A boat license under this section may be used for dragging for mussels. The license ~~shall also authorize~~ authorizes the captain and crew members aboard the licensed boat when engaged in dragging for mussels to undertake these activities.

3. Eligibility. A mussel boat license ~~shall only~~ may be issued only to an individual who is a resident.

4. Exception. In any one day, ~~any~~ a person may take or possess not more than 2 bushels of shell mussels for personal use without a mussel license.

5. Fee. The fee for a mussel boat license is \$130.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-37. 12 MRSA §6748 is amended to read:

§6748. Handfishing sea urchin license

1. License required. ~~It is unlawful for a~~ A person ~~to~~ may not engage in the activities authorized ~~by the license~~ under this section without a current handfishing sea urchin license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a handfishing sea urchin license may take sea urchins by hand or possess, ship, transport or sell sea urchins taken by that licensee.

3. Eligibility. A handfishing sea urchin license may be issued only to an individual ~~and~~ who is a resident ~~licensee~~.

4. **Fee.** The fee for a handfishing sea urchin license is \$89.

5. **Violation.** A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-38. 12 MRSA §6478-A is amended to read:

§6748-A. Sea urchin draggers license

1. **License required.** ~~It is unlawful for a~~ A person to ~~may not~~ use a boat for dragging for sea urchins unless that boat carries a sea urchin dragging license issued by the commissioner.

2. **Licensed activity.** A boat licensed under this section may be used for dragging for sea urchins. The license also authorizes the captain and crew members aboard the licensed boat to drag for and possess, ship, transport and sell sea urchins.

3. **Eligibility.** A sea urchin dragging license may be issued only to an individual ~~and~~ who is a resident ~~licensee~~.

4. **Fee.** The fee for a sea urchin dragging license is \$89.

5. **Violation.** A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-39. 12 MRSA §6748-D is amended to read:

§6748-D. Sea urchin hand-raking and trapping license

1. **License required.** ~~It is unlawful for a~~ A person to ~~may not~~ engage in the activities authorized under this section without a current sea urchin hand-raking and trapping license.

2. **Licensed activity.** The holder of a sea urchin hand-raking and trapping license may take sea urchins by hand-raking or by trap and may possess, ship, transport or sell sea urchins taken by that licensee.

3. **Eligibility.** A sea urchin hand-raking and trapping license may be issued only to an individual ~~and~~ who is a resident ~~licensee~~.

4. **Fee.** The fee for a sea urchin hand-raking and trapping license is \$89.

5. **Violation.** A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-40. 12 MRSA §6751 is amended to read:

§6751. Marine worm digger's license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a current marine worm digger's license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm digger's license may fish for or take marine worms or possess, ship, transport or sell within the State worms he has taken.

3. Eligibility. A marine worm digger's license ~~shall only~~ may be issued only to an individual ~~and shall be~~ who is a resident ~~license~~.

4. Fee. The fee for a marine worm digger's license is \$43.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-41. 12 MRSA §6803 is amended to read:

§6803. Seaweed permit

1. Permit required. ~~It is unlawful for any A person to~~ may not harvest, possess, ship, transport or sell seaweed without a current seaweed permit, except that an employee or immediate relation of a seaweed permit holder may harvest, possess or transport seaweed for commercial purposes with a supplemental seaweed permit.

2. Exceptions. The ~~requirement of~~ following are not required to have a permit shall not apply to:

- A. The holder of a current marine worm dealer's license;
- B. The holder of a current wholesale seafood license;
- C. ~~Any A~~ person who harvests, possesses, ships or transports no more than 50 pounds of seaweed a day for noncommercial purposes;
- D. Charitable or municipal organizations that harvest, possess, ship or transport seaweed for noncommercial use by that organization; or

E. Anyone harvesting, possessing, shipping, transporting or selling seaweed which has detached naturally and is dead.

3. Fees. The fee schedule for seaweed permits is as follows:

A. Fifty dollars for a resident seaweed permit;

B. Two hundred dollars for a nonresident seaweed permit;

C. Twenty-five dollars for a resident supplemental seaweed permit; and

D. Fifty dollars for a nonresident supplemental seaweed permit.

4. Disposition of fees. All fees collected under this section accrue to the Seaweed Management Fund established in section 6806.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-42. 12 MRSA §6804 is amended to read:

§6804. Commercial shrimp license

1. License required. ~~It is unlawful for a~~ A person to ~~may not~~ engage in the activities authorized ~~by this license~~ under this section without a current commercial shrimp license.

2. Licensed activities. The holder of a commercial shrimp license may fish for or take shrimp or possess, ship, transport or sell shrimp that the license holder has taken. A license issued under subsection 7, paragraph B or C also authorizes unlicensed crew members aboard the vessel declared by the license holder to engage in these activities.

3. Boat declaration. The license holder shall declare the name of the vessel to be used for fishing under the commercial shrimp license at the time of application for the license and may not change that declaration during the license year unless the original vessel is sold and replaced, has been damaged and will be under repair for not less than one month or has been destroyed or lost.

4. Reporting. The commissioner shall adopt rules regarding data that the holder of a commercial shrimp license must submit to the department. The commissioner may deny an application for the renewal of a license issued under this section if the license holder fails to report the information required pursuant to this subsection.

5. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport shrimp only for personal use.

6. Eligibility. A commercial shrimp license may be issued only to an individual.

7. Fees. Fees for the commercial shrimp license are as follows:

A. Thirty-three dollars for a resident license that authorizes the license holder to engage in the licensed activities under subsection 2;

B. Eighty-nine dollars for a resident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2; and

C. Three hundred and thirty-four dollars for a nonresident license that authorizes the license holder and crew members to engage in the licensed activities under subsection 2.

8. Disposition of fees. All fees for commercial shrimp licenses must be deposited in the Shrimp Management Fund established in section 6805.

9. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-43. 12 MRSA §6851 is amended to read:

§6851. Wholesale seafood license; wholesale seafood license with lobster permit; wholesale seafood license with urchin permit; wholesale seafood license with shrimp permit

1. License required. ~~It is unlawful for any~~ A person to ~~may not~~ engage in the activities authorized ~~by this license~~ under this section without a current wholesale seafood license or other license issued under this Part authorizing the activities.

2. License activities. The holder of a wholesale seafood license may, in the wholesale or retail trade:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts, except lobsters, sea urchins and shrimp;

B. Within or beyond the state limits, buy, sell, shuck, pack, ship or, within the state limits, transport fresh or frozen shellfish, except lobsters, to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856; or

D. Buy, sell, process, ship or, within the state limits, transport crayfish.

2-A. Wholesale seafood license with lobster permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a lobster permit. A person holding a wholesale seafood license with a lobster permit may engage in all the activities in subsection 2

and may buy, sell, process, ship or transport lobster or properly permitted or lawfully imported lobster meat or parts anywhere within the state limits. A license under this subsection does not authorize a person to remove lobster meat from the shell unless a permit under section 6857 is held.

2-B. Wholesale seafood license with a sea urchin buyer's permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a sea urchin buyer's permit. A person holding a wholesale seafood license with a sea urchin buyer's permit may engage in all the activities in subsection 2 and may buy, sell, ship or transport whole sea urchins. A license under this subsection does not authorize a person to engage in the processing of sea urchins or to buy, sell, ship or transport sea urchin parts.

2-C. Wholesale seafood license with a sea urchin processor's permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a sea urchin processor's permit. A person holding a wholesale seafood license with a sea urchin processor's permit may engage in all the activities in subsection 2 and may buy, sell, process, ship or transport whole sea urchins or sea urchin parts.

2-D. Wholesale seafood license with shrimp permit. At the request of the applicant, the commissioner shall issue a wholesale seafood license with a shrimp permit. A person holding a wholesale seafood license with a shrimp permit may engage in all of the activities in subsection 2 and may buy, sell, ship or transport shrimp.

The commissioner shall adopt rules regarding data that the holder of a wholesale seafood license with a shrimp permit must submit to the department. The commissioner may deny an application for the renewal of a wholesale seafood license with a shrimp permit if the license holder fails to report the information required pursuant to this subsection.

3. Exceptions. This section does not apply to smoked herring or alewives.

4. License limited. A license under this section ~~only~~ authorizes activities at only one establishment or with only one vehicle, but not on a vessel rigged to fish, provided that this license also authorizes the sale and transportation of scallops from any vessel.

5. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

6. Fees. The fees are as follows:

A. Two hundred seventeen dollars for a wholesale seafood license or a wholesale seafood license with a lobster permit, sea urchin buyer's permit, shrimp permit or sea urchin processor's permit; and

B. Forty-three dollars for each supplemental license.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-44. 12 MRSA §6852 is amended to read:

§6852. Retail seafood license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a retail seafood license or other license issued under this Part authorizing the activities.

2. License activity. The holder of a retail seafood license may, in the retail trade within the state limits, buy, sell, transport, ship or serve:

- A. Shellstock or lobsters;
- B. Shucked shellfish, if they are bought from a wholesale seafood license holder certified under section 6856;
- C. Lobster parts or meat, if they are properly permitted under section 6857, or have been lawfully imported; or
- D. Crayfish.

3. License limited. A license ~~shall only authorize~~ authorizes these activities at only one establishment or with only one vehicle.

4. Fee. The fee for a retail seafood license is \$85.

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-45. 12 MRSA §6853 is amended to read:

§6853. Marine worm dealer's license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a current marine worm dealer's or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a marine worm dealer's license may buy, possess, ship, transport or sell marine worms.

3. License limited. A license ~~shall only authorize~~ authorizes these activities at only one establishment or with only one vehicle.

4. Supplemental license. A supplemental license ~~shall~~ must be obtained for each additional establishment or vehicle.

5. Eligibility. The marine worm dealer's license ~~shall be~~ is a resident license.

6. Fee. The fee for a marine worm dealer's license is \$55 and the fee for a supplemental license is \$22.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-46. 12 MRSA §6854 is amended to read:

§6854. Lobster transportation license

1. License required. ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized under ~~this license~~ by this section without a lobster transportation license.

2. License activity. The holder of a lobster transportation license may buy from a licensed wholesale seafood dealer and transport beyond the state limits lobsters or their parts or meat. Lobster parts or meat may ~~only~~ be transported only if they are properly permitted under section 6857 or lawfully imported.

3. License limitations. A license ~~shall only authorize~~ authorizes these activities with only one vehicle, which is owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license ~~shall~~ must be obtained for each additional vehicle.

5. Information required. Each application ~~shall identify~~ must identify each vehicle or other mode of transportation to be used for transporting lobster.

6. Fees. The fee for a lobster transportation license is \$217 and the fee for a supplemental license is \$43.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-47. 12 MRSA §6855 is amended to read:

§6855. Shellfish transportation license

1. **License required.** ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized under this ~~license by this section~~ without a shellfish transportation license.

2. **License activity.** The holder of a shellfish transportation license may buy certified shellfish and transport them beyond the state limits, to the extent these activities are expressly authorized by a shellfish certificate or its equivalent from another state.

3. **License limitations.** All shellfish transported under this license ~~shall~~ must be procured from a wholesale seafood licensee certified under section 6856. A license ~~shall only authorize~~ authorizes these activities with only one vehicle, which is owned, leased or rented by the license holder.

4. **Supplemental license.** A supplemental license ~~shall~~ must be obtained for each additional vehicle.

5. **Information required.** Each application ~~shall~~ must identify each vehicle or other mode of transportation to be used for transporting shellfish.

6. **Fees.** The fee for a shellfish transportation license is \$259 and the fee for a supplemental license is \$85.

7. **Violation.** A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-48. 12 MRSA §6857 is amended to read:

§6857. Lobster meat permit

1. **Permit required.** ~~It shall be unlawful for any A person to~~ may not engage in the activities authorized ~~by this license~~ under this section without a current lobster meat permit.

2. **Permitted activity.** A lobster meat permit authorizes a wholesale seafood license holder or a retail seafood license holder to remove lobster meat from the shell for sale, under the following conditions.

A. The meat ~~shall only~~ may be removed from the shell only at the establishment named in the permit.

B. The meat ~~shall only~~ may come from only legal sized lobsters.

C. Tail sections ~~shall~~ must be removed from the shell whole and intact and ~~shall~~ must be maintained in that state.

D. All containers in which lobster meat is packed after removal and which are to be sold, shipped or transported ~~shall~~ must be clearly labeled with the lobster meat permit number of the packer.

3. Exception. ~~No A permit shall be~~ is not required to remove lobster meat for serving in hotels and restaurants ~~provided~~ if the meat is removed from the shell in a hotel or restaurant for serving on the premises.

4. License limitation. A permit ~~shall only authorize~~ authorizes these activities at only one location or place of business.

5. Fee. The fee for a lobster meat permit is \$110.

6. Prima facie evidence meat removed for sale. If any lobster meat ~~which that~~ that has been removed from the shell is found on the premises of any establishment ~~which that~~ that is engaged in the selling, serving, processing or transporting of food in any form for human consumption, it ~~shall be~~ is prima facie evidence that the meat was removed for sale.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-49. 12 MRSA §6862 is amended to read:

§6862. Lobster tail permit

1. Current lobster tail permit. ~~It is unlawful for any A person to~~ may not engage in the activities authorized ~~by a permit issued~~ under this section without a current lobster tail permit.

2. Permitted activity. A lobster tail permit authorizes a wholesale seafood license holder to remove a lobster tail from a lobster and to process that whole lobster tail or portions of that lobster tail under the following conditions.

A. The lobster tail or lobster tail portions may be processed only at the establishment named in the permit.

B. The lobster tail or lobster tail portions may ~~only~~ come from only a legal sized lobster, as defined in section 6431.

C. All containers in which lobster tails or lobster tail portions are packed to be sold, shipped or transported must be clearly labeled with the name, address and permit number of the packer.

3. Permit limitation. A permit ~~may only authorize~~ authorizes these activities at only one location or place of business.

4. Regulations. The commissioner, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, may adopt ~~such regulations as are determined~~ rules necessary for implementation and enforcement of this section. These ~~regulations~~ rules may include provisions for determining that lobster tails or lobster tail portions processed by a wholesale seafood license holder under this section were removed by that wholesale seafood license holder from legal sized lobsters and other provisions as may be determined necessary.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-50. 12 MRSA §6864 is amended to read:

§6864. Elver dealer's license

1. License required. ~~It is unlawful for a~~ A person to ~~may not~~ buy, possess, ship, transport or sell elvers without an elver dealer's license.

2. License limited. An elver dealer's license authorizes the licensed activities at only one establishment or with only one vehicle.

3. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

4. Fee. The fee for an elver dealer's license is \$1,000 and the fee for each supplemental license is \$43.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$217 accrues to the General Fund for each elver dealer's license sold under this section and \$43 accrues to the General Fund for each supplemental license sold under this section.

6. Reporting. The commissioner shall require the holder of an elver dealer's license to submit monthly reports to the department with data on the harvest of elvers. The commissioner may deny an application for the renewal of an elver dealer's license if the dealer fails to report the information required pursuant to this subsection.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

Sec. B-51. 12 MRSA §6954 is amended to read:

§6954. Dragging in cable area

1. ~~Violation~~ Towing a drag or trawl in cable area. ~~It is unlawful to~~ A person may not operate any watercraft when towing a drag or trawl in any waters that are identified or marked as underwater cable or pipeline areas, either as shown on the most recently published United States Government nautical chart or as shown or described by rule adopted by the commissioner. The commissioner may make rules showing or describing the locations of underwater cables or pipelines that are not identified on the most recent United States Government nautical charts. A drag or trawl must be lifted out of the water to transit the cable area.

2. ~~Penalty~~ Violation. ~~A violation of person who violates this section is a Class D crime, except that the minimum fine shall be~~ commits a civil violation for which a forfeiture of not less than \$500 and may not be suspended be adjudged. If a person violates subsection 1, the court may also:

A. Order that person to pay to the owner of any cable or pipeline that was cut or damaged an amount equal to the replacement value of the cable or pipeline that was cut or damaged, along with the costs of replacement or repair;

B. Order that person to pay consequential damages to any person injured by the interruption in service caused by the cutting of or damage to the cable or pipeline; and

C. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

Sec. B-52. 12 MRSA §6954-A is amended to read:

§6954-A. Dragging and scalloping prohibited in the Frenchboro area

1. ~~Violation~~ Tow drag or trawl in Frenchboro area. Unless permitted by rules adopted under subsection 1-A, ~~it is unlawful to~~ a person may not take scallops by any means or to operate any watercraft when towing a drag or trawl within the following area: starting at the easternmost point on Red Point, Swan's Island; thence in an easterly direction to the southernmost point of the western Sister's Island; thence in a southeasterly direction to the southernmost point of Crow Island; thence in a southerly direction to the northernmost point of Harbor Island, Frenchboro, Long Island; thence southerly to the state ferry terminal located on the eastern side of Lunt's Harbor, Frenchboro, Long Island, and then starting at the westernmost point of Gooseberry Point on Frenchboro, Long Island; westerly to the northeast point of John's Island; thence northwest to the easternmost point of the largest of the Baker Islands; thence northwesterly to the northeastern point of Harbor Island, Swan's Island; thence northerly to Quarry Wharf, Minturn, Swan's Island. A drag or trawl must be lifted out of the water to transit the cable area.

1-A. Scalloping permitted by rule. The commissioner may adopt and amend rules permitting the taking of scallops in the Frenchboro area, as defined in subsection 1, except that the rules may not permit the use of drags more than 30 inches wide and may not permit the use of drag ropes more than 3/8 inch in diameter.

2. Penalty Violation. ~~A violation of person who violates this section is a Class D crime~~ commits a civil violation for which a forfeiture of not less than, ~~except that the minimum fine shall be \$500 and may not be suspended~~ may be adjudged. If a person violates subsection 1, the court may also:

A. Order that person to pay to the owner of any cable that was cut or damaged an amount equal to the replacement value of the cable that was cut or damaged, along with the costs of replacement or repair;

B. Order that person to pay consequential damages to any person injured by the interruption in service caused by the cutting of or damage to the cable; and

C. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

Sec. B-53. 12 MRSA §7061 is repealed.

Sec. B-54. 12 MRSA §7077, sub-§1 is amended to read:

1. Conviction or adjudication of violation. Any conviction or adjudication for a violation of chapters 701 to 721 is grounds for suspension of any license or permit issued under this Part. Except where provided by law, the commissioner shall determine the suspension period. To suspend a license or permit based upon a conviction or adjudication, the commissioner shall follow the procedures under section 7077-B. Suspensions and revocations of a license by the Administrative Court are subject to the provisions of section 7101, subsection 8.

Sec. B-55. 12 MRSA §7077, sub-§1-B is amended to read:

1-B. Mandatory fishing license revocation for certain violations. The commissioner shall suspend a person's fishing license for at least one year and may suspend any other license issued under this Part and held by that person if that person is convicted or adjudicated of a violation of one of the following:

A. Introducing fish into inland waters without a permit in violation of section 7371, subsection 3 as it applies to section 7203, subsection 1;

B. Taking or possessing sport fish in violation of bag, weight and size limits in violation of section 7604, as it relates to trout, salmon, togue and black bass, whenever the

violation involves twice the bag and possession limit adopted by rule by the commissioner for that species of fish in that body of water;

C. Taking fish by jigging, in violation of section 7607;

D. Importing live bait fish or smelts, in violation of section 7613;

E. Buying or selling freshwater sport fish, in violation of section 7615; and

F. Taking fish by explosive, poisonous or stupefying substances, in violation of section 7617.

Sec. B-56. 12 MRSA §7077-B, sub-§1 is amended to read:

1. For mandatory suspensions. For violations having a minimum statutory suspension period, a suspension is effective upon conviction or adjudication and the license holder must surrender the license immediately to the commissioner. That person is not entitled to a hearing under section 7077-D if the suspension period does not exceed the minimum period of suspension required by law. In addition to any suspension period ordered by the commissioner, a person whose license is suspended for a violation having a mandatory suspension must successfully complete an outdoor ethics course conducted or endorsed by the department prior to being eligible to have that license reinstated.

Sec. B-57. 12 MRSA §7077-C is amended to read:

§7077-C. Notice of suspension

A decision by the commissioner to suspend a license of a person convicted or adjudicated of a violation that does not carry a mandatory suspension must be made within 60 days after that conviction. The commissioner shall give written notice of all suspensions immediately following a decision to suspend. A notice of suspension must state the license or permit that is suspended and the effective date and length of the suspension and must inform the person of any applicable hearing provisions under section 7077-D.

Sec. B-58. 12 MRSA §7077-D, sub-§2 is amended to read:

2. Decisions. Decisions of the commissioner must be in writing. Except as provided in subsection 3, the commissioner may reinstate the license or permit or reduce the suspension period if the commissioner finds that the person has not been convicted or adjudicated or that reinstatement of the license or permit or reduction of the suspension period would be in the best interests of justice.

Sec. B-59. 12 MRSA §7078 is amended to read:

§7078. Refusal to issue license or permit

If any person is convicted or adjudicated of a violation of any provision of chapters 701 to 721 and is not the holder of a valid license or permit issued under chapters 701 to 721, the commissioner may refuse to issue a related license or permit to that person for up to 5 years following the date of conviction or adjudication, except when the killing or wounding of a human being has occurred, in which case the commissioner may revoke the license or permit for a period of not less than 5 years.

Sec. B-60. 12 MRSA §7079, sub-§1 is amended to read:

1. Conviction or adjudication of violation. If ~~any a~~ habitual violator, as defined in section 7001, subsection 13-A, is convicted or adjudicated of a violation of any provision of chapters 701 to 721, the commissioner shall revoke all licenses and permits held by that person. ~~No~~ A license may not be granted to that person for a period to be determined by the commissioner, but not less than 3 years from the date of revocation.

2. Hearing provisions.

A. ~~Any~~ A person whose licenses and permits have been revoked under this section may, within 30 days of the effective date of the revocation, petition for a hearing before the commissioner to show cause why ~~his~~ the licenses and permits should not have been revoked.

B. If, after the hearing, the commissioner finds that the ~~person's~~ petitioner's record does not bring ~~him~~ the petitioner within the definition of ~~an~~ a habitual violator, the commissioner shall rescind the revocation ~~shall be rescinded~~. If the commissioner finds that the ~~person's~~ petitioner's record does bring ~~him~~ the petitioner within the definition of ~~an~~ a habitual violator, the revocation ~~shall~~ must remain in effect. If the petitioner denies any of the facts contained in the record, ~~he~~ the petitioner has ~~shall have~~ the burden of proof.

Sec. B-61. 12 MRSA §7365, sub-§1 is amended to read:

1. Requirement. A commercial whitewater outfitter's license is required for all commercial whitewater outfitters. ~~Operation of a commercial whitewater trip by an~~ An outfitter may not operate a commercial whitewater trip without a license ~~is prohibited, and is subject to penalty under section 7370-A.~~

Sec. B-62. 12 MRSA § 7368, sub-§2 is amended to read:

2. Reporting. Each outfitter shall report monthly to the department the number of passengers carried each day on each rapidly flowing river. This report must be accurate and submitted by the 30th day of the month following the month in which the passengers were carried. ~~Inaccurate reporting or failure to report may subject the outfitter to the penalties in section 7370-A.~~

Sec. B-63. 12 MRSA §7370-A is repealed.

Sec. B-64. 12 MRSA §7406, sub-§3 is amended to read:

3. Hunting while under the influence of intoxicating liquor or drugs. A person commits the crime of hunting while under the influence of intoxicating liquor or drugs if that person hunts wild animals or wild birds:

- A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- B. For a person 21 years of age or older, while having 0.08% or more by weight of alcohol in that person's blood; or
- C. For a person less than 21 years of age, while having any amount of alcohol in the blood.

~~Hunting while under the influence of intoxicating liquor or drugs is a Class D crime.~~

Sec. B-65. 12 MRSA §7456-B is repealed.

Sec. B-66. 12 MRSA §7801, sub-§9 is amended to read:

9. Operating watercraft while under the influence of intoxicating liquor or drugs. A person commits the crime of operating a watercraft while under the influence of intoxicating liquor or drugs if that person operates or attempts to operate any watercraft:

- A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- B. For a person 21 years of age or older, while having 0.08% or more by weight of alcohol in that person's blood; or
- C. For a person less than 21 years of age, while having any amount of alcohol in the blood.

~~Operating a watercraft while under the influence of intoxicating liquor or drugs is a Class D crime.~~

Sec. B-67. 12 MRSA §7801, sub-§28 is amended to read:

28. Failure to display an excise tax decal. ~~An~~ The owner of a watercraft ~~who fails to shall~~ display the excise tax decal, as required by Title 36, chapter 112, ~~commits a civil violation for which a forfeiture, payable to the municipality where the watercraft is subject to excise tax, of not less than \$25 nor more than \$250 shall be adjudged.~~ In all cases where the owner of a watercraft fails to display an excise tax decal as required under Title 36, chapter 112, the law enforcement officer discovering the failure shall notify the tax collector of the owner's residence or, in the case of nonresidents, partnerships or corporations, foreign or domestic, the tax collector of the municipality where the watercraft is principally moored, docked or located or has its established base of operations.

Sec. B-68. 12 MRSA §7801, sub-§29 is amended to read:

29. Failure to maintain a list or to make lists available. ~~Where a~~ A marina or boat yard owner ~~fails to shall~~ maintain the list required by Title 36, section 1504, subsection 9, ~~or fails to and~~ make that list available as required by that section, ~~he commits a civil violation for which a forfeiture of not less than \$25 nor more than \$250 shall be adjudged.~~

Sec. B-69. 12 MRSA §7827, sub-§9 is amended to read:

9. Operating a snowmobile while under the influence of intoxicating liquor or drugs. A person commits the crime of operating a snowmobile while under the influence of intoxicating liquor or drugs if that person operates or attempts to operate any snowmobile:

- A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- B. For a person 21 years of age or older, while having 0.08% or more by weight of alcohol in that person's blood; or
- C. For a person less than 21 years of age, while having any amount of alcohol in the blood.

~~Operating a snowmobile while under the influence of intoxicating liquor or drugs is a Class D crime.~~

Sec. B-70. 12 MRSA §7857, sub-§10 is amended to read:

10. Operating an ATV while under the influence of intoxicating liquor or drugs. A person commits the crime of operating an ATV while under the influence of intoxicating liquor or drugs if that person operates or attempts to operate any ATV:

- A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- B. For a person 21 years of age or older, while having 0.08% or more by weight of alcohol in that person's blood; or
- C. For a person less than 21 years of age, while having any amount of alcohol in the blood.

~~Operating an ATV while under the influence of intoxicating liquor or drugs is a Class D crime.~~

Sec. B-71. 12 MRSA §7901 is repealed and replaced with the following:

§7901-A. Penalties

A violation of a prohibited act in chapters 701 to 721 is a Class E crime, except as provided in this section.

1. Violations of chapter 703. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

- A. Defacement of notices as described in section 7036, subsection 2; and
- B. Trapping by certain department employees as described in section 7036, subsection 5.

2. Violations of chapter 705, subchapter III. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

- A. Illegal disposal of offal or littering as described in section 7064.

3. Civil violations of chapter 707, subchapter X-A. Violations of chapter 707, subchapter X-A are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged, except that the following are Class E crimes:

- A. Operation of a commercial whitewater trip without a license as described in section 7365; and
- B. Operation of a commercial whitewater trip on the river in violation of the safety requirements of section 7367, subsection 1.

The penalties for failure to comply with, or for providing false information under, chapter 707, subchapter X-A include nonrenewal, revocation or suspension of an outfitter's or guide's license or an allocation or both, subject to the procedures of the Maine Administrative Procedure Act, Title 5, chapter 375.

4. Civil violations of chapter 707, subchapter XI. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

- A. Guide license restriction violation as described in section 7371, subsection 1;
- B. Guide license privilege violation as described in section 7371, subsection 2;
- C. Guide client in violation as described in section 7371-A, subsection 1;
- D. Guide fails to report violation by client as described in section 7371-A, subsection 2;
- E. Guide party of more than 12 on inland waters, as described in section 7371-A, subsection 3;
- F. Purchase of live smelts from unlicensed dealer as described in section 7371-B; and
- G. Unlawfully hiring a guide as described in section 7376-A.

5. Criminal violations of chapter 707, subchapter XI. The following violations are criminal violations.

- A. Failure to have license or permit as described in section 7371, subsection 3, as it applies to section 7203, subsection 1 is a Class E crime, except that, notwithstanding Title 17-A, section 1301, the fine may not be less than \$1,000 and not more than \$10,000.
- B. Guiding without a license as described in section 7371, subsection 3, as it applies to section 7311, subsection 1, is a Class D crime for which the court shall impose a sentencing alternative involving a term of imprisonment of 3 days, none of which may be suspended. The court shall also impose a fine of \$1,000, none of which may be suspended.
- C. Failure to have a license or permit as described in section 7371, subsection 3, is a Class E crime for which the minimum fine is \$50 plus an amount equal to twice the applicable license fee, none of which may be suspended.

6. Civil violations of chapter 709. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged, unless otherwise specified:

A. Subchapter I violations:

- (1) Shooting at or near wildfowl decoys as described in section 7406, subsection 11;

(2) Hunting without hunter orange clothing as described in section 7406, subsection 12; and

(3) Allowing a junior hunter to hunt without adult supervision as described in section 7406, subsection 21;

B. Subchapter II violations:

(1) Trapping near compact, built-up portion of city or village as described in section 7432, subsection 6; and

(2) Failure to label traps as described in section 7432, subsection 9;

C. Subchapter III violations:

(1) Hunting or trapping bear near dumps as described in section 7452, subsection 5;

(2) Leaving a bear as described in section 7452, subsection 8;

(3) Failure to attach bear tag to bear as described in section 7452, subsection 11;

(4) Illegally transporting bear as described in section 7452, subsection 13;

(5) Transporting bear out-of-state as described in section 7452, subsection 14;

(6) Hunting migratory game birds without certification as described in section 7456, subsection 1-A;

(7) Hunting waterfowl on Haley Pond as described in section 7456, subsection 2;

(8) Transporting deer out of state as described in section 7458, subsection 12;

(9) Hunting deer with .22 caliber rimfire cartridge as described in section 7458, subsection 13;

(10) Use of firearm in Southport as described in section 7458, subsection 14;

(11) Transporting wild hares or rabbits out of state as described in section 7462, subsection 3;

(12) Possessing or transporting wild hares or rabbits as described in section 7462, subsection 4;

- (13) Failure to attach moose tag to moose as described in section 7464, subsection 6;
- (14) Use of illegal firearms as described in section 7464, subsection 8-A;
- (15) Illegal hunting methods as described in section 7464, subsection 8-C;
- (16) Failure to attach wild turkey tag to wild turkey as described in section 7469, subsection 7;
- (17) Use of illegal weapons or ammunition as described in section 7469, subsection 11; and
- (18) Taking of snakes and turtles from the wild for commercial purposes as described in section 7471;

D. Subchapter IV violations:

- (1) Failure to report accident with deer, moose or bear as described in section 7505, subsection 1;
- (2) Removing portion of carcass as described in section 7505, subsection 2; and
- (3) Failure to restrain or control nuisance dog as described in section 7505, subsection 3; and

E. Subchapter V violations:

- (1) Transportation of wild animal or bird as described in section 7535, subsection 1;
- (2) Interference with taking as described in section 7541, subsection 1; and
- (3) Disturbing wild animals, wild birds or fish as described in section 7541, subsection 2.

7. Criminal violations of chapter 709. The following violations are criminal violations.

A. A person is guilty of buying or selling wild birds or wild animals if that person:

- (1) Buys or sells bear in violation of section 7452, subsection 9;
- (2) Sells wild birds in violation of section 7456, subsection 5;
- (3) Buys or sells deer in violation of section 7458, subsection 3;

(4) Buys or sells moose in violation of section 7464, subsection 8; or

(5) Buys or sells wild turkey in violation of section 7469, subsection 9.

Buying or selling wild birds or wild animals is a Class D crime for which the court shall impose a sentencing alternative involving a term of imprisonment for not less than 10 days for a first offense, none of which may be suspended, and not less than 20 days for each succeeding offense, none of which may be suspended. The court also shall impose a fine of not less than \$1,000, none of which may be suspended.

B. Failure to aid injured person as described in 7406, subsection 15 is a Class C crime.

C. The following crimes are Class D crimes for which the court shall impose a sentencing alternative involving a term of imprisonment not to exceed 180 day; the court also shall impose a fine of not less than \$1,000, none of which may be suspended:

(1) Hunting a bear during the closed season or possessing a bear taken during the closed season as described in section 7406, subsection 1;

(2) Hunting or trapping a bear after having killed one, as described in section 7452, subsection 3; and

(3) Exceeding the bag limit on bears as described in section 7452, subsection 4.

D. The following crimes are Class D crimes for which the court shall impose a sentencing alternative of not less than 3 days for the first offense, none of which may be suspended, and for not less than 10 days for each succeeding offense, none of which may be suspended; the court also shall impose a fine of not less than \$1,000, none of which may be suspended:

(1) Hunting a deer during the closed season or possessing a deer taken during the closed season as described in section 7406, subsection 1;

(2) Night hunting for wild animals or wild birds as described in section 7406, subsection 5;

(3) Illegally possessing wild animals or wild birds as described in section 7406, subsection 10 when the wild animal or bird was taken in violation of section 7406, subsection 5;

(4) Exceeding the bag limit on deer as described in section 7458, subsection 1;

(5) Hunting deer after having killed one as described in section 7458, subsection 2;

(6) Illegally hunting moose as described in section 7464, subsection 1; and

(7) Illegally possessing moose as described in section 7464, subsection 2,

E. The following are Class E crimes for which the court shall impose a fine of not less than \$500, none of which may be suspended:

(1) Illegally hunting wild turkeys as described in section 7469, subsection 1; and

(2) Illegally possessing wild turkeys as described in section 7469, subsection 2.

The court also shall impose a fine of \$500 for each turkey illegally possessed or killed, none of which may be suspended.

8. Civil violations of chapter 711. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

A. Sale of bait or baitfish in polystyrene foam containers as described in section 7606, subsection 1-A;

B. Failure to label baitfish traps or baitfish holding boxes as described in section 7606, subsection 2;

C. Failure to check baitfish traps as described in section 7606-B;

D. Possession of illegal implements and devices as described in section 7609;

E. Illegal use of helicopter as described in section 7610;

F. Purchase or sale of certain fish as described in section 7615;

G. Illegal importation or sale of certain fresh or frozen fish as described in section 7616;

H. Advance baiting as described in section 7622;

I. Failure to label fish as described in section 7625;

J. Night ice fishing as described in section 7626;

K. Leaving ice fishing shack as described in section 7627;

L. Illegally placing ice fishing shack as described in section 7627-A;

M. Failure to label ice fishing shack as described in section 7628; and

N. Violation of ice fishing restriction as described in section 7629.

9. Criminal violations of chapter 711. The following violations of are criminal violations.

A. Except as provided in subsection 8, a fishing violation as described in chapter 711, subchapter III is a Class E crime. The court also shall impose a fine of \$20 for each fish illegally possessed, none of which may be suspended. If the violation is illegal fishing of Atlantic salmon, in violation of section 7603, the court also shall impose a fine of \$500 per fish, none of which may be suspended.

10. Civil violations of chapter 713. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

A. Subchapter I violations:

(1) Using a motorboat within Merymeeting Bay Game Sanctuary as described in section 7654, subsection 4;

(2) Carrying loaded firearm on the bounds of Limington, Hollis and Waterboro Sanctuary as described in section 7654, subsection 5;

(3) Carrying loaded firearm on the bounds of Standish Sanctuary as described in section 7654, subsection 6;

(4) Fishing in Carleton Pond as described in section 7654, subsection 7; and

(5) Prohibited acts in violation of rules or regulations of the Maine Indian Tribal-State Commission as described in section 7655;

B. Subchapter II violations:

(1) Tampering with screen as described in section 7674, subsection 1;

C. Subchapter III violations:

(1) Tampering with fishway as described in section 7702, subsection 1;

(2) Building dam without notice as described in section 7702, subsection 2; and

(3) Tampering with dam as described in section 7702, subsection 3;

D. Subchapter I violations:

- (1) Keeping wild animal in captivity as described in section 7736, subsection 1;
- (2) Hunting on state game farm as described in section 7736, subsection 2; and
- (3) Hunting in licensed wildlife exhibit as described in section 7736, subsection 3; and

E. Subchapter VI violations:

- (1) Certain stocking of alewives prohibited as described in section 7775, subsection 1.

11. Violations of chapter 715. The following violations of chapter 715, subchapter I are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged, unless otherwise provided:

A. Subchapter I violations:

- (1) Operating a motorboat without a certificate of number as described in section 7801, subsection 1;
- (2) Operating a motorboat without identification number or validation stickers as described in section 7801, subsection 2;
- (3) Illegal operation of watercraft on inland waters without a holding tank or with a holding tank with through-hull fittings as described in section 7801, subsection 2-A;
- (4) Violation of license, permit or certificate restriction as described in section 7801, subsection 3;
- (5) Holding regatta, race, boat exhibition or water-ski exhibition without permit as described in section 7801, subsection 4;
- (6) Unlawfully crossing the area of authorized regatta, race, boat exhibition or water-ski exhibition as described in section 7801, subsection 5;
- (7) Operating a motorboat carrying passengers for hire without a certificate of number as described in section 7801, subsection 6;
- (8) Leasing or renting a motorboat without a certificate of number as described in section 7801, subsection 6-A;
- (9) Operating a motorboat carrying passengers for hire without an operator's license to carry passengers for hire as described in section 7801, subsection 7;

- (10) Imprudent operation of a watercraft as described in section 7801, subsection 11-A;
- (11) Operating a motorboat in bathing areas as described in section 7801, subsection 12;
- (12) Operating a motorboat while underage as described in section 7801, subsection 13;
- (13) Operating a watercraft to molest wild animals or wild birds as described in section 7801, subsection 14;
- (14) Operating a motorboat without a muffler as described in section 7801, subsection 15;
- (15) Operating a watercraft without proper safety equipment as described in section 7801, subsection 16;
- (16) Failure to report a watercraft accident as described in section 7801, subsection 19;
- (17) Illegally operating a motorboat in prohibited area as described in section 7801, subsection 20;
- (18) Operating an airmobile upon a public way as described in section 7801, subsection 21;
- (19) Failure to stop an airmobile before entering a public way as described in section 7801, subsection 22;
- (20) Failure to yield right-of-way while operating an airmobile as described in section 7801, subsection 23;
- (21) Operating an airmobile that exceeds the noise limit as described in section 7801, subsection 24;
- (22) Operating an airmobile on railroad tracks as described in section 7801, subsection 25;
- (23) Operating an airmobile too close to certain buildings as described in section 7801, subsection 26;
- (24) Failure to display an excise tax decal as described in section 7801, subsection 28, except that the forfeiture may not be less than \$25 and not more

than \$250 and must be paid to the municipality where the watercraft is subject to excise tax;

(25) Failure to maintain a list or make list available as described in section 7801, subsection 29, except that the forfeiture may not be less than \$25 and not more than \$250;

(26) Failure to comply with additional safety requirements while operating a personal watercraft as described in section 7801, subsection 30;

(27) Unlawfully permitting operation of a watercraft as described in section 7801, subsection 31; and

(28) Unlawfully operating a watercraft within the water safety zone as described in section 7801, subsection 32;

B. Subchapter II violations:

(1) Operating an unregistered snowmobile as described in section 7827, subsection 1;

(2) Operating a snowmobile upon a controlled access highway as described in section 7827, subsection 2;

(3) Unlawfully operating a snowmobile on a plowed road as described in section 7827, subsection 3;

(4) Operating a snowmobile on a public way as described in section 7827, subsection 4;

(5) Unlawfully operating a vehicle on a snowmobile trail as described in section 7827, subsection 4-A;

(6) Failure to stop a snowmobile before entering a public way as described in section 7827, subsection 5;

(7) Failure to yield the right-of-way while operating a snowmobile as described in section 7827, subsection 6;

(8) Crossing a closed bridge, culvert, overpass or underpass with a snowmobile as described in section 7827, subsection 7;

(9) Unlawfully operating a snowmobile while underage as described in section 7827, subsection 12;

- (10) Permitting an unaccompanied child to operate a snowmobile as described in section 7827, subsection 13;
- (11) Operating a snowmobile that exceeds the noise limit as described in section 7827, subsection 14;
- (12) Unlawfully modifying a snowmobile as described in section 7827, subsection 15;
- (13) Operating a snowmobile with insufficient lights as described in section 7827, subsection 16;
- (14) Failure to use snowmobile lights as described in section 7827, subsection 17;
- (15) Unlawfully operating a snowmobile on railroad tracks as described in section 7827, subsection 18;
- (16) Operating a snowmobile in a cemetery as described in section 7827, subsection 19;
- (17) Operating a snowmobile too close to certain buildings as described in section 7827, subsection 20;
- (18) Unlawfully permitting operation of a snowmobile as described in section 7827, subsection 21;
- (19) Failure to report an accident as described in section 7827, subsection 22;
- (20) Unlawful issuance of snowmobile registration as described in section 7827, subsection 24;
- (21) Renting or leasing a snowmobile as described in section 7827, subsection 26; and
- (22) Renting or leasing a personal watercraft as described in section 7827, subsection 27;

C. Subchapter IV violations:

- (1) Operating an unregistered ATV as described in section 7857, subsection 1;
- (2) Failure to display ATV registration numbers as described in section 7857, subsection 1-A;

- (3) Operating an ATV upon a controlled access highway as described in section 7857, subsection 2;
- (4) Unlawfully operating an ATV on a snowmobile trail as described in section 7857, subsection 3;
- (5) Unlawfully operating an ATV on a private road as described in section 7857, subsection 4;
- (6) Operating an ATV on a public way as described in section 7857, subsection 5;
- (7) Failure to stop an ATV before entering a public way as described in section 7857, subsection 6;
- (8) Failure to yield the right-of-way while operating an ATV as described in section 7857, subsection 7;
- (9) Crossing a closed bridge, culvert, overpass or underpass with an ATV as described in section 7857, subsection 8;
- (10) Operating ATV while under age as described in section 7857, subsection 13;
- (11) Operating ATV without certificate of training as described in section 7857, subsection 13-A;
- (12) Operating ATV without protective headgear as described in section 7857, subsection 13-B;
- (13) Carrying a passenger on an ATV without headgear as described in section 7857, subsection 13-C;
- (14) Permitting unaccompanied child to operate ATV as described in section 7857, subsection 14 ;
- (15) Permitting a child under 10 years of age to operate an ATV as described in section 7857, subsection 14-A;
- (16) Operating an ATV without a muffler as described in section 7857, subsection 15;
- (17) Operating an ATV with insufficient lights as described in section 7857, subsection 16;
- (18) Failure to use ATV lights as described in section 7857, subsection 17;

(19) Unlawfully operating an ATV on railroad tracks as described in section 7857, subsection 18;

(20) Operating an ATV too close to certain buildings as described in section 7857, subsection 20;

(21) Unlawfully permitting operation of ATV as described in section 7857, subsection 21;

(22) Failure to report an ATV accident as described in section 7857, subsection 22;

(23) Operating an ATV in a prohibited area as described in section 7857, subsection 22-A; and

(24) Operating an ATV on cropland or pastureland as described in section 7857, subsection 23.

12. Criminal violations of chapter 715. The following violations are Class D crimes:

A. Reckless operation of watercraft as described in section 7801, subsection 8;

B. Reckless operation of a snowmobile as described in section 7827, subsection 8; and

C. Reckless operation of an all-terrain vehicle as described in section 7857, subsection 9.

13. Civil violations of chapter 717. The following violations are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

A. Possessing firearm while training dogs as described in section 7863, subsection 1;

B. Hunting on a licensed dog training area as described in section 7863, subsection 2;

C. Misuse of a licensed dog training area as described in section 7863, subsection 3; and

D. Illegal use of a firearm during training or field trials as described in section 7863, subsection 4.

14. Penalties for hunting or attempting to hunt and operating or attempting to operate a watercraft, snowmobile or all-terrain vehicle while under the influence of intoxicating liquor or drugs. The offenses defined in section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; and section 7857, subsection 10 are Class D crimes. In determining an appropriate sentence, refusal to submit to a chemical test must in every case be an aggravating factor. In the following cases the following minimum penalties apply.

A. In the case of a person having no previous convictions of a violation of section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; or section 7857, subsection 10 within the previous 6-year period, the fine may not be less than \$400. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol test under section 7408, 7805, 7828 or 7860, the fine may not be less than \$500. A conviction under this paragraph must include a period of incarceration of not less than 48 hours, which penalties may not be suspended, when the person:

(1) Was tested as having a blood-alcohol level of 0.15% or more;

(2) Failed or refused to stop upon request or signal of an officer in uniform, as defined in section 6953 or 7060, during the operation that resulted in prosecution for operating under the influence or with a blood-alcohol level of 0.08% or more;
or

(3) Failed to submit to a chemical test to determine that person's blood-alcohol level or drug concentration, at the request of a law enforcement officer on the occasion that resulted in the conviction.

B. In the case of a person having one previous conviction of a violation of section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; or section 7857, subsection 10 within the previous 6-year period, the fine may not be less than \$600. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol or drug concentration test under section 7408, 7805, 7828 or 7860, the fine may not be less than \$800. A conviction under this paragraph must include a period of incarceration of not less than 7 days, which penalties may not be suspended.

C. In the case of a person having 2 or more previous convictions of violations of section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; and section 7857, subsection 10 within the previous 6-year period, the fine may not be less than \$1,000. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol or drug concentration test under section 7408, 7805, 7828 or 7860, the fine may not be less than \$1,300. A conviction under this paragraph must include a period of incarceration of not less than 30 days, which penalties may not be suspended.

D. In addition to the penalties provided under paragraphs C and D, the court may order the defendant to participate in the alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the Office of Substance Abuse, as defined in Title 5, chapter 521.

E. The penalties provided under paragraphs B, C and D may not be suspended by the court.

F. If the State pleads and proves that, while hunting or operating a snowmobile, ATV or watercraft in violation of this section, the defendant in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offenses in section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; and section 7857, subsection 10 are Class C crimes. The minimum penalties specified in this subsection apply, unless a longer minimum period otherwise applies.

Any alternatives defined in section 7406, subsection 3; section 7801, subsection 9, paragraphs A and B; section 7827, subsection 9; and section 7857, subsection 10 may be pleaded in the alternative. The State may, but is not required to, elect prior to submission to the fact finder.

For purposes of this subsection, a prior conviction has occurred within the 6-year period if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct that is penalized or for which the penalty is or may be enhanced.

In determining the appropriate sentence, the court shall consider the defendant's record of convictions for hunting or operating a snowmobile, ATV or watercraft while under the influence of intoxicating liquor or drugs and for failure to comply with the duty to submit. The court may rely upon oral representations based on records maintained by the courts, by the State Bureau of Identification, by the Secretary of State, including telecommunications of records maintained by the Secretary of State, or by the Department of Inland Fisheries and Wildlife. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication, the court shall grant a continuance for the purposes of determining the accuracy of the record.

References in this Title to this subsection are determined also to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph E and to the disposition, including a suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3, except as otherwise provided or when the context clearly requires otherwise.

15. Penalties for failure to comply with duty to submit. The offenses defined in section 7406, subsection 3-A; section 7801, subsection 9-A; section 7827, subsection 9-A and section 7857, subsection 10-A are civil violations for which a forfeiture of up to \$500 may be adjudged.

16. Habitual violators. When a habitual violator, as defined in section 7001, subsection 13-A, is convicted of a crime in chapters 701 to 721 the court shall impose a sentencing alternative involving not less than 3 days imprisonment, none of which may be suspended, and a fine of not less than \$500, none of which may be suspended.

17. Rule violations. The following violations of rules adopted pursuant to chapters 701 to 721 are civil violations for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged:

A. A violation of a rule regulating open water fishing and ice fishing, except that a violation of a rule governing the number, amount, size or weight of fish is a Class E crime;

B. A violation of a rule regulating State-owned wildlife management areas;

C. A violation of a rule regulating scientific collection permits;

D. A violation of a rule regulating snowmobiles;

E. A violation of a rule regulating the protection and safety of spectators at snowmobile races;

F. A violation of a rule regulating all terrain vehicles;

G. A violation of a rule regulating watercraft;

(1) Violation of rules adopted pursuant to section 7792, subsection 2 concerning:

(i) Operation of watercraft without lights;

(ii) Towing of a water-skier without an observer; and

(iii) Violating the water safety zone;

(2) Violation of rules adopted pursuant to section 7792, subsection 3 concerning inadequate personal flotation devices;

H. A violation of a rule regulating commercial whitewater rafting, except that violation of a rule establishing safety restrictions for whitewater trips adopted pursuant to section 7367, subsection 1 is a Class E crime;

I. A violation of a rule regulating State game farms;

J. A violation of a rule regulating the operation of motor vehicles on public water supplies;

K. A violation of a rule regulating taxidermy;

L. A violation of a rule regulating hunting and fishing license agents;

M. A violation of a rule regulating camp trip leader permits and course instructor certificates; and

N. A violation of a rule regulating licensed guides.

Sec. B-72. 24-A MRSA § 2168, sub-§ 3 is amended to read:

3. ~~Any A person violating~~ who violates this section ~~shall be punished by a fine of not more than \$100 or by imprisonment of not more than 60 days, or by both; and if he holds a license from the superintendent, he shall forfeit the same.~~ commits a civil violation and is subject to civil penalties and other remedies as provided in section 12-A. The Superior Court, on complaint by any person that this section is being violated, may issue an injunction against ~~such~~ the violation and may hold in contempt and punish therefor in case of disregard of ~~such~~ the injunction.

Sec. B-73. 24-A MRSA §4138 is amended to read:

§4138. Misrepresentation

~~No~~ A person shall ~~may not~~ cause or permit to be made, issued or circulated in any form:

1. Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in this State, or the financial condition of any society;
2. Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or
3. Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:
 - A. The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and
 - B. Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or if it omits from consideration:
 - C. Any benefit or value provided in the contract;
 - D. Any differences as to amount or period of rates; or
 - E. Any differences in limitations or conditions or provisions ~~which~~ that directly or indirectly affect the benefits. In any determination of the incompleteness or misleading

character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

~~Any~~ A person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation commits a ~~Class E crime~~ civil violation and is subject to civil penalties and other remedies as provided in section 12-A. ~~and is in~~ In addition, the person is liable for a civil penalty in the amount of 3 times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for that person's or society's own use and benefit in accordance with the provisions of civil practice.

Sec. B-74. 32 MRSA § 228 is amended to read:

Architects, landscape architects and interior designers
§228. Penalties

~~Violation of~~ A person who violates any provision of this chapter for which a penalty has not been prescribed shall be a Class E crime punishable by a fine commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500, or by imprisonment for not more than 3 months, or by both \$1000 may be adjudged.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-75. 32 MRSA §1094 is amended to read:

Dentists and dental hygienists
§1094. Penalties

A person who violates a provision of this chapter, for the violation of which a penalty has not been prescribed, commits a ~~Class E crime~~ civil violation for which a forfeiture of not more than \$1000 may be adjudged. ~~The several prosecuting officers of this State, on notice from a member of the board, shall institute prosecutions for offenses under this chapter.~~

Sec. B-76. 32 MRSA §1256 is amended to read:

Engineers
§1256. Violations; penalties; injunction

A person who practices or offers to practice the profession of engineering in this State without being registered or exempted in accordance with this chapter, or a person presenting or attempting to use the certificate of registration or the seal of another, or a person who gives a

false or forged evidence of any kind to the board or to a member of the board in obtaining a certificate of registration, or a person who falsely impersonates any other registrant of like or different name, or a person who attempts to use an expired or revoked certificate of registration, or a person who violates any of the provisions of this chapter for which a penalty has not been prescribed commits a Class E crime civil violation for which a forfeiture of not more than \$1000 may be adjudged.

The State may bring an action in Superior Court to enjoin a person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

~~It is the duty of all duly constituted officers of the law of this State or any political subdivision of this State to enforce this chapter and to prosecute any persons violating the provisions of this chapter. The Attorney General or a designated assistant shall act as legal adviser of the board and render such legal assistance as may be necessary in carrying out this chapter.~~

Sec. B-77. 32 MRSA §1660-E is amended to read:

Hearing aid dealers and fitters

§1660-E. Violations

~~Any A~~ person who violates any provision of this chapter or any of the rules of the board is guilty of a Class E crime for which a penalty has not been prescribed commits a civil violation for which a forfeiture of not more than \$1000 may be adjudged.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-78. 32 MRSA §2106 is amended to read:

Nurses

§2106. Violations Criminal violations; penalties

It is a crime for any person, including a corporation, or association or individual, to:

1. Fraudulent diploma or record. Sell or fraudulently obtain or furnish a nursing diploma, license, renewal or record or provide aid in doing so;

2. Fraudulent license. Practice nursing as defined by this chapter under cover of a diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

3. Practice without license. Practice professional nursing or practical nursing as defined by this chapter unless licensed to do so;

4. Implying license. Use in connection with the person's name a designation tending to imply that the person is a licensed registered nurse or a licensed practical nurse unless so licensed under this chapter;

5. License suspended or revoked. Practice professional nursing or practical nursing during the time the person's license issued under this chapter is suspended or revoked; or

~~**6. Violation of chapter.** Otherwise violate provisions of this chapter.~~

A person who violates this section commits a Class E crime.

The District Court has original and concurrent jurisdiction with the Superior Court over all prosecutions for violation of this chapter. All fines and forfeitures collected under this chapter must accrue to the county where the offense is prosecuted. It is necessary to prove in a prosecution or hearing under this section only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. These crimes are prosecuted by the district attorney.

Sec. B-79. 32 MRSA §2106-A is enacted to read:

§2106-A. Civil violations; penalties.

A person who violates any provision of this chapter for which a penalty is not prescribed commits a civil violation for which a forfeiture of not more than \$1000 may be adjudged.

Sec. B-80. 32 MRSA §4919 is amended to read:

Geologists and soil scientists
§4919. Penalties; injunction

A person who violates any of the provisions of this chapter is guilty of a Class E crime for which a penalty has not been prescribed commits a civil violation for which a forfeiture of not more than \$1000 may be adjudged.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-81. 32 MRSA §6031 is amended to read:

Audiologists
§6031. Penalty

~~Every A person found guilty of violating a~~ who violates any provision of this chapter is guilty of a Class E crime for which a penalty has not been prescribed commits a civil violation for which a forfeiture of not more than \$1000 may be adjudged.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-82. 32 MRSA §13005 is amended to read:

Real estate brokers
§13005. Penalties

~~Any A person or entity violating~~ who violates any provision of this chapter shall be punished, upon conviction, by a fine of commits a civil violation for which a forfeiture of not more than \$2,000 for each violation may be adjudged, plus the amount of compensation received in the subject transaction, ~~by imprisonment for not more than 6 months, or by both.~~ Any officer or agent of an entity, who ~~shall personally participate~~ participates in or ~~be~~ is accessory to ~~any a~~ violation of this chapter, ~~shall be~~ is subject to the penalties prescribed under this section. Any court of competent jurisdiction shall have full power to try any violation of this chapter and, upon conviction, the court may at its discretion revoke or suspend the license of the person or entity so convicted. All fines and penalties over and above the cost of court proceedings ~~shall~~ inure to the commission. A violation of this chapter includes performing or attempting to perform those acts ~~which~~ that constitute prohibited practices.

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in Administrative Court or whether criminal proceedings may have been instituted.~~

Sec. B-83. 32 MRSA § 13854 is amended to read:

Counseling professionals
§13854. Licensing

1. Licensing. Effective October 1, 1992, ~~no~~ a person may not, unless specifically exempted by this chapter, profess to be a clinical professional counselor, professional counselor,

marriage and family therapist, licensed pastoral counselor or conditional license holder unless licensed in accordance with this chapter.

2. Individual licensing. Only an individual may be licensed under this chapter.

3. Violation; injunction. ~~Any~~ A person who violates any provision of this chapter is guilty of a Class E crime for which as penalty is not specifically provided commits a civil violation for which a forfeiture of not more than \$1000 may be adjudged. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-84. 32 MRSA §14006 is amended to read:

Real estate appraisers

§14006. Violation; injunction

A person who violates any violation of this chapter for which a penalty has not been prescribed commits a ~~Class E crime~~ civil violation for which a forfeiture of not more than \$1000 may be adjudged. The State may bring action in Superior Court to enjoin a person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted ~~in the Administrative Court or whether criminal proceedings have been or may be instituted.~~

Sec. B-85. 32 MRSA §14309 is amended to read:

Massage therapists

§14309. Penalty; injunction

~~Any~~ A person who violates any provision of this chapter for which a penalty has not been prescribed commits a ~~Class E crime~~ civil violation for which a forfeiture of not more than \$1000 may be adjudged. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.