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Rhode Island State Regulations:

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Environmental Protection and Boating Safety

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Module III

Harbormaster Reference Series

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Module III

RHODE ISLAND STATE REGULATIONS: Environment Protection and Boating Safety

Harbormaster Reference Series

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PREFACE

Throughout the country, coastal municipalities are under increasing pressure to effectively manage shoreline resources and a wide range of water-related activities. The ability to accomplish this improves with the presence of a qualified harbormaster. He or she is primarily responsible for ensuring that the rules and regulations are properly enforced, that information and assistance is provided to all waterway users, and that waterfront safety is achieved. These public servants often find themselves at the center of complex management decisions, involving difficult issues and active special interest groups.

In order to assist harbormasters in meeting their expanding roles, the University of Rhode Island's Coastal Resources Center and Rhode Island Sea Grant, in conjunction with the Rhode Island Harbormaster Association, developed an educational program specifically for municipal harbormasters. This program consists of forty hours of basic training in a wide array of topics including first aid, law enforcement, boating safety, seamanship, mooring management, harbor planning, environmental awareness and liability mitigation. Individual reference materials were developed for each topic. Combined, they create a comprehensive reference guide for harbormasters. The complete reference series consists of six modules, which are intended to be used as reference material to assist harbormasters in carrying out their official responsibilities. It can be used to provide answers to questions from the users of local waters and waterfronts; it can help harbormasters make better informed management decisions for the activities within their jurisdiction; and it can give harbormasters a better understanding of their role in implementing coastal management policies.

A brief summary of each module follows.

MODULE I

Public Rights to Coastal Waters: Applying the Public Trust Doctrine

Part of the expanding role of today's harbormaster is to balance private use of shoreline areas with public demands for greater coastal access. Private control or riparian ownership takes many forms ranging from filling submerged land to the placement of moorings. Public interest extends from getting to the shoreline to the harvesting of the fishery resources. This module is the Executive Summary of a national report on the Public Trust Doctrine by David Slade et al. It provides an overview of the legal status of tidelands held in trust by each state for public use and is intended to provide guidance to coastal managers on the application of the Public Trust Doctrine to trust lands, waters and living resources.

MODULE II

Federal Regulations: Coastal Structures, Environmental Protection and Boating Safety

Harbormasters are required to perform work in the coastal zone and on coastal waters which are subject to a wide assortment of federal rules, regulations and policies. Federal regulations which are most pertinent for harbormasters are presented in this module. The first section presents the federal guidelines for the placement of objects or structures in navigable waters as regulated by the Army Corps of Engineers. The second section presents elements of the Federal Code of Regulations, which are administered by the Coast Guard, pertaining to boating safety and water quality impacted by boating.

MODULE III

Rhode Island State Regulations: Environmental Protection and Boating Safety

Harbormasters are the primary front line enforcement people for water dependent uses. Although the authority to enforce conservation laws varies from state to state, harbormasters, at the very least, have

the ability to monitor the taking of shell and finfish and report any illegal activity to the proper authorities. In addition to protecting the aquatic resources of a state, harbor masters are responsible for enforcing boating safety regulations. The need for active on-the-water patrols and enforcement of boating rules and regulations has increased proportionally to the number of boaters operating on local rivers, harbors, and embayments. This module presents those Rhode Island state laws governing fisheries, water quality and boating safety. It is applicable only to Rhode Island and is intended to be substituted with appropriate laws for other states.

MODULE IV

Municipal Mooring Area Management

Pressures to use surface waters for moorings and docks has increased as the boating population swells. In order to meet this demand, harbor masters are looking for safe techniques for increasing mooring density. The first section of this module presents suggestions for efficient management of harbor surface areas.

The second section, through diagrams, reviews the standard mooring assembly for a single point mooring as used throughout the United States. Proper mooring sets, winterization and inspection processes are also discussed.

MODULE V

Harbormaster Liability: Reducing Risk

Each time a harbor master goes out on patrol or makes a mooring placement decision, the municipality for which he or she works incurs some liability. This module provides the harbor master and the city or town with basic information on how to limit liability by reducing risks which occur during routine harbor patrols including medical response, mooring management, towing, hazard mitigation.

MODULE VI

Multi-use Harbor Management: A Case Study for Local Harbor Masters

Local harbor management has become a key element in state coastal planning, allowing home-rule decision making and management. In many instances the harbor master is quickly becoming the person responsible for local coastal management. This module presents a case study which explains the expanding role of harbor masters and examples of effective interaction with local decision makers and harbor users.

Mark Amaral and Virginia Lee
July 1992

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We are grateful for the care with which Annette Burgess, of the URI Coastal Resources Center, painstakingly reproduced government regulations and worked on layout and cover design.

The majority of the information contained in Module III was copied directly from Rhode Island General Laws. The assistance of Joseph Migliore and Michael Scanlon at the Department of Environmental Management is gratefully acknowledged.

In addition to the general laws we have also provided some information on enforcement procedures in the two Appendices. The first was written by Scott MaNamee, Division of Enforcement, Rhode Island Department of Environmental Management. The second was provided by the Division of Water Resources, Rhode Island Department of Environmental Management. The information was compiled using U.S. Coast Guard reference material.

Mark Amaral and Virginia Lee
July 1992

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INTRODUCTION

In Rhode Island harbormasters are empowered by state legislation to enforce specific sections of the General Laws. Powers are also conferred to the municipalities of Rhode Island allowing them to regulate waterways within their jurisdiction, impose fines and appoint harbormasters (§46-4). These authorities and powers enable towns and cities to, in most instances, directly participate in enforcement activities.

This module is a compilation of the Rhode Island General Laws which are pertinent to harbormasters and their responsibilities. It is divided into two broad sections, Environmental Protection and Boating Safety. Each section provides the applicable laws which pertain to issues harbormasters often encounter during the daily execution of their duties. It is important to note that harbormasters do not implicitly have the authority to enforce all state laws. For instance, harbormasters are not empowered to enforce state fishery laws. This can only be done by state conservation officers. The scope of local authority can be found by reviewing the "Enforcement" section of each chapter. Regardless of whether a harbormaster can enforce state laws, they should be familiar with all those regulations which have impact on the activities or resources found in their jurisdiction.

NOTE: Rhode Island General Laws are subject to change depending on the issues and concerns of the time. Therefore, it is necessary that the reader ensure that this module is updated on an annual basis, incorporating any new changes. This can be achieved by procuring revised copies of §46-12, §20-1, 6, 7, 8.1, and 10, §46-22 from the Rhode Island State House Library or the Department of Environmental Management, Division of Enforcement.

Water Quality

Recreational boating activity, as do most water-dependent uses, relies on good water quality. Local waterfront managers play a key role in maintaining acceptable water quality levels. Although they may not be able to directly regulate large sources of pollution, such as CSOs and industrial discharge, they can enforce local and some state laws which regulate smaller pollution sources.

One of these sources is recreational boats. In 1991 the state of Rhode Island passed a new law amending §46-12 which created the same enforceable policies as presented in Section 312 of the Clean Water Act. This enables State and local enforcement officials to prosecute those boaters who illegally discharge sewage into Rhode Island waters. This amendment provides another means for harbormasters to ensure water quality in Narragansett Bay continues to improve.

Fisheries

Fisheries, as a commercial and recreational industry, is extremely important to Narragansett Bay. Within many harbormaster's jurisdictional areas are valuable natural resources such as shellfishing beds, spawning and nursery grounds, active finfish zones and other critical habitat areas. Local harbors are also homeport to the commercial fishing fleets which harvest these resources, especially in the case of shellfishing.

Because the resources are vitally important, the State of Rhode Island does have extensive regulations protecting and managing them. The rules range from legal size and catch limits to placement of fishing

traps. The state also monitors water quality very closely and often restricts shellfishing from certain Bay areas during periods of wet weather.

Although the State of Rhode Island does not give harbor masters the ability to enforce state conservation laws, it is imperative that they are familiar with them. The standard course of action harbor masters are advised to take if a conservation law is being violated is to contact DEM via phone or marine radio. Enforcement officers will respond to the scene and proceed with the necessary enforcement action. In some cases, State enforcement officers will be unable to respond immediately, in which case the harbor master may have to detain the violator until the proper authorities arrive.

Boating Safety

One of the basic responsibilities of today's harbor master is boating safety enforcement. The need for active on-the-water patrols and steady enforcement of boating rules and regulations has increased proportionally with the number of boaters operating on local rivers, harbors, and embayments. The pressure on the local harbor master to carry out this mission has been intensified as federal and state boating officials face significant cutbacks restricting their ability to provide broad enforcement coverage. This has also resulted in the harbor master being the primary local waterway enforcement agent responsible for vessel boarding, safety inspections and, where necessary, for issuing citations.

The foundation for this enforcement activity in Rhode Island is based on state boating safety laws which specifically detail the operational, equipment and personnel requirements for recreational boats. These state laws are, in most cases, enforceable by municipal governments through local ordinances. A clear understanding of the powers and enforceability of state and local boating laws will simplify the harbor master's task and greatly increase waterway safety.

Two appendices have also been included, providing some information on basic techniques for enforcement of boating safety and marine sanitation device laws.

CHAPTER 12

WATER POLLUTION

SECTION.	SECTION.
46-12-1. Definitions.	46-12-24.1. State grants and loans for pollution prevention facilities to nongovernmental entities.
46-12-2. Administration.	46-12-24.2. Rhode Island Clean Water Act environmental trust fund.
46-12-2.1. [Repealed.]	46-12-24.3. [Repealed.]
46-12-3. Powers and duties of the director.	46-12-25. Report required by owners or lessees of solid waste disposal areas.
46-12-3.1. [Transferred.]	46-12-25.1. Wells in proximity to solid waste disposal areas.
46-12-4. Pollution monitoring system.	46-12-26. Penalty for failure to report.
46-12-5. Prohibitions.	46-12-27. Penalty for falsification of report.
46-12-6. Investigation and hearing.	46-12-28. Protection of groundwaters.
46-12-7. Subpoena of witnesses — Enforcement.	46-12-29. Effective date of chapter.
46-12-8. Expert assistance in investigations and prosecutions.	46-12-30. Underground storage tank replacement revolving loan fund.
46-12-9. Notices of violation and compliance orders.	46-12-30.1. Legislative findings and intent.
46-12-10. Emergency powers.	46-12-30.2. Definitions.
46-12-11. Service of orders.	46-12-30.3. Underground storage tank replacement revolving loan fund.
46-12-12. Modification or revocation of order.	46-12-30.4. Administration of the fund.
46-12-13. Civil penalties.	46-12-30.5. Bonds authorized.
46-12-14. Criminal penalties.	46-12-31 — 46-12-36. [Transferred.]
46-12-15. Inspection powers — Rules and regulations.	46-12-37. Waste from seagoing vessels.
46-12-16. Prosecution of violations.	46-12-38. Licensing of underground storage tank testers.
46-12-17. Proceedings for enforcement.	46-12-39. Discharge of sewage from boats.
46-12-18. Records of operation.	46-12-40. Penalty for violations.
46-12-19. Public access to information.	46-12-41. Enforcement.
46-12-20. Rules — Proceedings.	
46-12-21. Liability.	
46-12-22. Access of enforcement officers to premises.	
46-12-23. Town and city expenditures for pollution control.	
46-12-24. State grants and loans for pollution prevention facilities to governmental entities.	

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). References in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

P.L. 1983, ch. 149, § 1 made various amendments, repeals and transfers of section designations throughout this chapter. The effect of this act on the former section designations in this chapter is reflected in the following table:

<i>Former Section</i>	<i>Present Section</i>
46-12-1	46-12-1
46-12-2	46-12-2

<i>Former Section</i>	<i>Present Section</i>
46-12-2.1	Repealed
46-12-3	46-12-3
46-12-3.1 —	46-12-4 —
46-12-8	46-12-9
46-12-9	Repealed
46-12-10 —	46-12-10 —
46-12-15	46-12-15
46-12-17	46-12-16
46-12-19	Repealed
46-12-21 —	Repealed
46-12-25	
46-12-26	46-12-18
46-12-28	Repealed
46-12-29 —	46-12-20 —
46-12-36	46-12-27
46-12-37	46-12-29

P.L. 1983, ch. 149, § 1 also added present sections 46-12-17, 46-12-19 and 46-12-28.

46-12-1. Definitions. — As used in this chapter the following terms shall, where the context permits, be construed as follows:

(a) The term "boat" means any vessel or water craft whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating upon the water whether or not capable of self locomotion, including house boats, barges and similar floating objects.

(b) The term "director" shall be held to mean the director of the department of environmental management or any subordinate or subordinates to whom the director has delegated the powers and duties vested in him or her by this chapter.

Wherever reference is made in this chapter to any order of the director and the order shall have been modified by the court, the order referred to shall be taken to be the order of the director as so modified.

(c) The term "discharge" means the addition of any pollutant to the waters from any point source.

(d) The term "effluent limitation" means any restriction or prohibitions, established in accord with the provisions of this chapter or under the federal Clean Water Act [33 U.S.C. § 1251 et seq.], on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged into the waters.

(e) The term "fecal coliform bacteria" means organisms within the intestines of warm-blooded animals that indicate the presence of fecal material, and the potential presence of organisms capable of causing disease in humans.

(f) The term "groundwaters" shall include all underground waters of whatever nature.

(g) The term "Marine Sanitation Device-Type I" means a marine toilet which, under prescribed test conditions, will produce an effluent that will not exceed a fecal coliform bacteria count of one thousand (1,000) parts per one hundred (100) milliliters and have no visible solids.

(h) The term "Marine Sanitation Device-Type II" means a marine toilet which, under prescribed test conditions will produce an effluent that does not exceed a fecal coliform bacteria count of two hundred (200) parts per one hundred (100) milliliters, and have suspended solids not greater than one hundred and fifty (150) milligrams per liter.

(i) The term "Marine Sanitation Device-Type III" means a marine toilet which is designed to prevent the discharge from the boat of any treated or untreated sewage, or any waste derived from sewage.

(j) The term "marine toilet" means any toilet on or within any boat as that term is defined herein.

(k) The term "no discharge zone" means an environmentally sensitive area of the waters of the state which has been declared by the department of environmental management pursuant to the Clean

Water Act to be an area in which any discharge of sewage is prohibited.

(D) The term "person" shall include an individual, trust, firm, joint stock company, corporation (including a quasi government corporation) partnership, association, syndicate, municipality, municipal or state agency, fire district, club, nonprofit agency, or any subdivision, commission, department, bureau, agency, or department of state or federal government (including any quasi government corporation) or of any interstate body.

(m) The term "point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(n) The term "pollutant" means any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, cellar dirt or industrial, municipal, agricultural, or other waste petroleum or petroleum products, including but not limited to oil.

(o) The term "polluting" shall be held to mean the causing of pollution.

(p) The term "pollution" means the man made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.

(q) The term "publicly owned treatment works" means any facility for the treatment of pollutants owned by the state or any political subdivision thereof, municipality, or other public entity, including any quasi government corporation.

(r) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions, or operations, leading to compliance with an effluent limitation or any other limitation, prohibition, or standard.

(s) The term "sewage" means fecal material and human waste, or wastes from toilets and other receptacles intended to receive or retain body waste, and any wastes, including wastes from human households, commercial establishments, and industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

(t) The term the "Clean Water Act" refers to the federal law enacted under 33 U.S.C. § 1251 et seq., and all amendments thereto.

(u) The term "underground storage tank" shall mean any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of petroleum product or hazardous materials, and the volume of which (including the

volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.

(v) The term "waters" shall include all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond, or lake, and wetlands.

History of Section.

P.L. 1920, ch. 1914, § 1; G.L. 1923, ch. 125, § 1; G.L. 1938, ch. 634, § 1; G.L. 1956, § 46-12-1; P.L. 1963, ch. 89, § 1; P.L. 1966, ch. 261, §§ 1, 16; P.L. 1980, ch. 239, § 1; P.L. 1981, ch. 253, § 1; P.L. 1983, ch. 149, § 1; P.L. 1990, ch. 320, § 1; P.L. 1990, ch. 324, § 1; P.L. 1991, ch. 332, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "state or federal government" for "state of federal government" in subdivision (d), and "director and the order" for "director and such order" near the beginning of subdivision (h); and made minor punctuation and capitalization changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) arranged the subdivisions in alphabetical order, thereby redesignating the subdivision designations: inserted the word "any" preceding "quasi government" in subdivisions (l) and (q); inserted a comma preceding and following "but not limited to" in subdivi-

sion (m); and made several stylistic changes throughout the section.

Compiler's Notes. This section was amended by two Acts (P.L. 1990, ch. 320, § 1; P.L. 1990, ch. 324, § 1) passed by the 1990 General Assembly. Inasmuch as the two Acts do not appear to be in conflict with each other, the section as set forth above incorporates the amendments by both Acts.

This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

The terms defined in this section were redesignated to keep them in alphabetical order, in light of the new definitions added by P.L. 1991, ch. 332.

Comparative Legislation. Water pollution control:

Conn. Gen. Stat. §§ 22a-416 — 22a-483.
Mass. Ann. Laws ch. 21, §§ 26-53.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Sewage.

1. Constitutionality.

This chapter is not unconstitutional on the ground that it is an ex post facto law contrary to U. S. Const., Art. 1, § 9 or R. I. Const., Art. 1, § 12, since chapter has purpose of discontinuing practices dangerous to the public health and looks to the future rather than to the past. *Board of Purification of Waters v. Town of East Providence*, 47 R.I. 431, 133 A. 812 (1926).

This chapter does not violate R. I. Const., Art. 1, § 15 on the ground that town is deprived of trial by jury since a town has no constitutional right to trial by jury. *Board of Purification of Waters v. Town of East Providence*, 47 R.I. 431, 133 A. 812 (1927).

2. Sewage.

While the term sewage does not include

storm water where the city's sewerage system commingles sewage and storm waters so that the total effluent is discharged into the project, it must of necessity be metered in its totality to determine assessment placed upon city, such higher assessment being not the result of an unreasonable rate but due to the design of its own sewerage system. *City of Central Falls v. Halloran*, 94 R.I. 189, 179 A.2d 570 (1962).

Preliminary injunctive relief is warranted where defendants are in violation of the federal and state Clean Water Acts, Rhode Island common law of nuisance, and an Order from the Rhode Island Department of Environmental Management, such violations having been based on defendants' release of raw sewage from their septic system into the Sakonnet River without a permit. *Friends of Sakonnet v. Dutra*, 738 F. Supp. 623 (D.R.I. 1990).

Collateral References. Class action for relief against air and water pollution, 47 A.L.R.3d 769.

Liability for pollution of stream by oil, water or the like flowing from well, 19 A.L.R.2d 1033.

Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

Pollution of subterranean waters as nuisance, 38 A.L.R.2d 1285.

Validity and construction of anti-water pollution statutes, 32 A.L.R.3d 215.

46-12-2. Administration. — (a) It shall be the responsibility of the director of environmental management to administer this chapter. Within the department of environmental management, the director may employ personnel who shall come within the classified service in accordance with the laws of this state for the purposes of this chapter, and may delegate to a subordinate or subordinates any or all the powers and duties vested in the director hereunder. The general assembly shall annually appropriate such sums as it may deem necessary for the expenses of administering this chapter.

(b) The department of environmental management is hereby designated as the state water pollution control agency for this state for all purposes of the Clean Water Act, as amended [33 U.S.C. 1251], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that act.

(c) The department of environmental management is hereby designated to operate the underground injection control program under the federal Safe Drinking Water Act, as amended, [42 U.S.C. 300f, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that program.

History of Section.

P.L. 1920, ch. 1914, § 2; P.L. 1921, ch. 2090, § 1; G.L. 1923, ch. 125, § 2; P.L. 1935, ch. 2250, §§ 115, 149; G.L. 1938, ch. 634, § 2; impl. am. P.L. 1939, ch. 660, § 180; G.L. 1956, § 46-12-2; P.L. 1963, ch. 89, § 2; P.L. 1966, ch. 261, § 2; P.L. 1971, ch. 103, § 4; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "may em-

ploy personnel" for "may employ such personnel" near the middle of the first sentence of subsection (a), and "42 U.S.C. 300f" for "42 U.S.C. 300(f)" near the middle of subsection (c), and made minor capitalization changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "environmental protection branch" near the beginning of the second sentence in subsection (a).

46-12-2.1. [Repealed.]

Repealed Sections. This section (P.L. 1963, ch. 89, § 4; P.L. 1966, ch. 261, § 3), concerning references to the former division

of sanitary engineering, was repealed by P.L. 1983, ch. 149, § 1.

46-12-3. Powers and duties of the director. — In addition to the other powers granted the director of environmental management herein, the director shall have and may exercise the following powers and duties:

(a) To exercise general supervision of the administration and enforcement of this chapter, and all rules and regulations and orders promulgated hereunder;

(b) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of this state;

(c) To advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in the furtherance of the purposes of this chapter;

(d) To accept and administer loans and grants from the federal government and from other sources, public or private, for the carrying out of any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(e) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and its causes, prevention, control, and abatement thereof, as he or she may deem advisable and necessary for the discharge of his or her duties under this chapter;

(f) To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;

(g) To promulgate standards of water quality adopted by the environmental standards board and to classify the waters of the state accordingly;

(h) To administer state grants to municipalities and political subdivisions for the construction of sewage treatment works;

(i) To hold hearings, to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, and to administer oaths and to take testimony, that he or she may deem necessary;

(j) To approve, pursuant to standards adopted by the environmental standards board, the construction, modification, and operation of discharge systems or any parts thereof, and to require the prior submission of plans, specifications, and other data relative to discharge systems and to require that the plans, specifications, or other data be certified by a professional engineer registered in Rhode Island, and to inspect the systems either under construction or in operation;

(k) To issue a permit for the discharge of any pollutant or combination of pollutants or to issue a general permit authorizing a category of discharges within a geographical area upon conditions as may be necessary to carry out the purposes of this chapter and of the Clean Water Act [33 U.S.C. § 1251 et seq.], which may include, but not be limited to, providing for specific effluent limitations and levels of treatment technology, monitoring, recording, and reporting standards, or to deny a permit or general permit;

(l) To renew, revoke, modify, or suspend in whole or in part any permit, order, or schedule of compliance pursuant to the provisions of this chapter, and any rules and regulations promulgated thereunder;

(m) To approve the discharge of pollutants into the waters of this state pursuant to standards adopted by the environmental standards board;

(n) To require publicly owned treatment works to adopt and implement requirements regarding the pretreatment of pollutants consistent with existing federal requirements, and to require compliance by all persons with pretreatment requirements;

(o) To issue such orders as may be necessary to prevent the unauthorized construction, modification, or operation of discharge systems and the discharge of pollutants into the waters of this state;

(p) To require proper maintenance and operation of discharge systems;

(q) To consult the advisory council on environmental affairs on the policies and plans for the control and abatement of pollution;

(r) To make, issue, amend, and revoke reasonable rules and regulations for the prevention, control, and abatement of pollution and the enforcement of orders issued hereunder, including public notice and comment requirements;

(s) To exercise all incidental powers necessary to carry out the purposes of this chapter; and

(t) To approve the operation of treatment facilities, pursuant to the provisions of chapters 3, 11, and 18 of title 44.

(u) To promulgate and enforce rules and regulations to govern the location, design, construction, maintenance, and operation of underground storage facilities used for storing petroleum products or hazardous materials to prevent, abate, and remedy the discharge of petroleum products and hazardous materials into the waters of the state; provided that all underground storage tanks and associated piping installed after September 1, 1991 shall provide for secondary containment in a manner approved by the director; and provided that the installation of underground storage tanks is prohibited at sites located within wellhead protection areas as designated by the director and consistent with chapter 46-13.1. This prohibition shall not apply to the replacement or upgrading of existing underground storage tanks installed prior to July 1, 1991, provided that such activity take place in accordance with all applicable state and federal regulations;

(v) To promulgate and enforce rules and regulations to govern the installation, construction, operation, and abandonment of monitoring wells.

History of Section.

P.L. 1920, ch. 1914, § 2; P.L. 1921, ch. 2090, § 1; G.L. 1923, ch. 125, § 2; G.L. 1938, ch. 634, § 20; impl. am. P.L. 1951, ch. 2727, art. 1, § 2; G.L. 1956, § 46-12-3; P.L. 1963, ch. 89, § 3; P.L. 1966, ch. 261, § 4; P.L. 1977, ch. 182, § 16; P.L. 1983, ch. 149, § 1; P.L. 1990, ch. 320, § 2; P.L. 1991, ch. 366, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "demonstrations relating to water" for "demonstration relating to water" in subdivision (e), and "testimony, that he may deem" for "testi-

mony, as he may deem" near the end of subdivision (i); inserted "and" at the end of subdivision (s); made several substitutions for the word "such"; and made minor punctuation changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted the word "and" preceding "to administer" near the end of subdivision (i); near the end of subdivision (j), substituted "the plans" for "such plans" and "the systems" for "such systems"; and made several punctuation changes throughout the section.

Compiler's Notes. This section as it ap-

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appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment

changes, see the reenactment note above.

In 1991, the compiler substituted a semicolon for the period at the end of subsection (a), as amended by P.L. 1991, ch. 366, § 1.

DECISIONS UNDER PRIOR LAW

1. Disposal Systems.

Although plaintiff suffered some inconvenience, his constitutional rights were not violated by facts that he was required to obtain the approval of both the Rhode Island Department of Health (now Director of Environmental Management) and Coastal Resources Management Council prior to instal-

lation of an Individual Sewage Disposal System (ISDS) on land adjoining coastal water region and that department of health approved the ISDS but council rejected it. *Milardo v. Coastal Resources Mgt. Council*, 434 A.2d 266 (R.I. 1981) (decided under former § 46-12-3).

46-12-3.1. [Transferred.]

Transferred Sections. This section was redesignated § 46-12-4 by P.L. 1983, ch. 149, § 1.

46-12-4. Pollution monitoring system. — The director shall establish a pollution monitoring system, and a fee system for point source dischargers who discharge sewage into the surface waters of the state. Monies derived from the fee system shall be used by the director to develop and operate a pollution monitoring program. The director shall monitor the levels of conventional and hazardous pollutants especially toxic pollutants discharged into the surface waters and shall assess the impact thereof.

History of Section.

P.L. 1982, ch. 370, § 1; P.L. 1983, ch. 149, § 1; G.L. 1956, § 46-12-3.1; P.L. 1983, ch. 182, § 1; P.L. 1984, ch. 300, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma

following "pollution monitoring system" near the middle of the first sentence.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-4.1. Fees — Limits — Recovery of costs. — The fee established by the director pursuant to § 46-12-4 shall be based on the individual discharger's need for monitoring and the effluent's potential for environmental degradation as determined by the director; provided, however, that any fees charged dischargers shall be in addition to and not substituted for funds appropriated by or monitoring required by the state or federal government for similar purposes; and further provided:

(a) The director shall annually adopt by regulation, in accordance with the provisions of chapter 35 of title 42, the maximum cost of the monitoring program for the next fiscal year. The fee charged any discharger shall not exceed the actual cost of the pollution monitoring program of that discharger.

(b) The operating authority for any publicly owned treatment facility is hereby empowered to recover any costs incurred under the

provisions of this chapter, including administrative costs, by levying an assessment on their customers. Monies derived from the fees shall be deposited into a restricted receipt account for use by the director to carry out the requirements of § 46-12-4 and shall be usable to match any federal funds appropriated for these purposes.

History of Section.

P.L. 1983, ch. 182, § 2; P.L. 1984, ch. 300, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "The fee" for "Such fee" at the beginning of the section and "for these purposes" for "for such purposes" at the end of subdivision (b), and made

a minor stylistic change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the monitoring program" for "such monitoring program" near the end of the first sentence in subdivision (a), and made a stylistic change near the beginning of the first sentence in subdivision (b).

46-12-5. Prohibitions. — (a) It shall be unlawful for any person to place any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk, or debris of any kind whatsoever, organic or non organic, in any waters.

(b) It shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of this chapter and any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.

(c) It shall be unlawful to construct or install any industrial, commercial, or other establishment, to make any modification or addition thereto, or to undertake any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director.

History of Section.

P.L. 1920, ch. 1914, § 3; G.L. 1923, ch. 125, § 3; G.L. 1938, ch. 634, § 3; P.L. 1966, ch. 261, § 5; G.L. 1956, § 46-12-4; P.L. 1970, ch. 88, § 1; P.L. 1971, ch. 236, § 1; P.L. 1983, ch. 182, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) changed a former reference to the effective date of the enactment.

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "establishment, to make" for "establishment, or make" near the beginning of subsection (c) and "unless the discharge" for "unless such discharge" near the end of

subsection (c); and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made a stylistic change near the end of subsection (a).

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

Cross References. Fishing grounds, protection, §§ 20-3-1 — 20-3-4.

Interstate water pollution control commission, §§ 46-16-1, 46-16-2.

Shellfish grounds and packing houses, §§ 21-14-1 — 21-14-15.

NOTES TO DECISIONS

ANALYSIS

1. Eminent domain.
2. Joint or separate pollution.
3. Effect of special laws.

1. Eminent Domain.

This chapter does not relate to the exercise

of the right of eminent domain, since no taking of private property is involved as no right to pollute waters can be acquired. *Board of Purification of Waters v. Town of East Providence*, 47 R.I. 431, 133 A. 812 (1926).

2. Joint or Separate Pollution.

Either joint or separate pollution may be

stopped. Board of Purification of Waters v. Town of East Providence, 47 R.I. 431, 133 A. 812 (1926).

3. Effect of Special Laws.

Board of purification of waters could order town to cease discharge of sewage into public waters since this chapter impliedly repealed

authority under 1901 law to convey sewage and such authority was not revived by 1929 validation of appropriation for sewage purposes. Board of Purification of Waters v. Town of Bristol, 51 R.I. 243, 153 A. 879 (1931).

46-12-6. Investigation and hearing. — (1) If the director shall have cause to believe that any person is violating any provision of this chapter, or any regulation, permit, or order of the department of environmental management adopted in accordance therewith, it shall be the director's duty to cause the matter to be investigated. The director may schedule a hearing, receive evidence, and hear witnesses in behalf of the persons believed to be in violation.

(2) The director shall maintain records concerning all investigations undertaken and findings made pursuant to this section. The records shall be made available for public inspection and shall include the following information:

- (a) The names and addresses of persons investigated;
- (b) The date or dates of any hearing or hearings conducted with respect to those persons and the time and place of the hearings;
- (c) Any findings made by the director after the conclusion of the hearings.

History of Section.

P.L. 1920, ch. 1914, § 4; P.L. 1921, ch. 2090, § 2; G.L. 1923, ch. 125, § 4; G.L. 1938, ch. 634, § 4; G.L. 1956, § 46-12-5; P.L. 1966, ch. 261, § 6; P.L. 1970, ch. 88, § 2; P.L. 1970, ch. 289, § 2; P.L. 1977, ch. 140, § 1; P.L. 1983, ch. 149, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 73) substituted "department of environmental management" for "department of health."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) inserted the subsection (1) and (2) desig-

nations; made several substitutions for the word "such"; and made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) divided the former single continuous provisions of subsection (2) into the present introductory paragraph and subdivisions, thereby making related capitalization and stylistic changes.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

NOTES TO DECISIONS

1. Public Access to Records.

Where state official in charge of preventing water pollution had 3,586 reports of alleged pollution, out of which all but 70 of said reports had been checked out, there were 3,516 instances where said official was custodian of records that are open to the public notwithstanding that in 1,153 instances of this number corrective action was ordered and the public was also entitled to know the number of complaints yet unchecked and the dates when they were received. *Providence Journal Co. v. Shea*, 110 R.I. 342, 292 A.2d 856 (1972).

Although state official in charge of preventing water pollution is not required to

make known the names of persons regarding whom allegations of pollution have been made until he has an opportunity to acquire personal knowledge of the facts, he is required to make known the facts ascertained as well as such further steps that he is taking and this means that there are records which are open for public inspection, even though corrective measures are still being explored. *Providence Journal Co. v. Shea*, 110 R.I. 342, 292 A.2d 856 (1972).

Complaints, accusations and allegations that this or that person is polluting the waters of the state, are not, until checked out, cause to believe that the person complained of is in fact polluting or apt to pollute waters

of the state but such a complaint does place on the state official charged with preventing water pollution the burden of determining what the facts are, and having made this determination, make a record of the same that is then open to the public regardless of whether the complaint was found to be valid or totally lacking in merit. *Providence Journal Co. v. Shea*, 110 R.I. 342, 292 A.2d 856 (1972).

Statute making investigation records of water pollution open to public inspection was never intended to cloak the director with standing to withhold informative records by the simple expedient of resolving all reports of pollution without the formality of hearings. *Providence Journal Co. v. Shea*, 110 R.I. 342, 292 A.2d 856 (1972).

46-12-7. Subpoena of witnesses — Enforcement. — All subpoenas shall be served as subpoenas in civil cases in superior court, and witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as are provided witnesses in civil cases in superior court. In cases of contumacy or refusal to obey the command of the subpoena so issued, the superior court shall have jurisdiction upon application of the director, with proof by affidavit of the fact, to issue a rule or order returnable in not less than two (2) nor more than five (5) days directing the person to show cause why he or she should not be adjudged in contempt. Upon return of the order, the justice before whom the matter is brought for hearing shall examine under oath the person, and the person shall be given an opportunity to be heard, and if the justice shall determine that the person has refused without reasonable cause or legal excuse to be examined or to answer a legal or pertinent question, the justice may impose a fine upon the offender or forthwith commit the offender to the adult correctional institutions, there to remain until the offender submits to do the act which the offender was so required to do, or is discharged according to law.

History of Section.

P.L. 1920, ch. 1914, § 4; G.L. 1923, ch. 125, § 4; G.L. 1938, ch. 634, § 4; impl. am. P.L. 1956, ch. 3721, § 1; G.L. 1956, § 46-12-6; P.L. 1966, ch. 261, § 7; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change near the middle of the second sentence and substituted "the" for the word "such" throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) inserted a comma following "superior court" near the beginning of the first sentence, substituted "examine under oath the person" for "examine under oath such person" near the beginning of the last sentence, and inserted a comma following "correctional institutions" near the end of the last sentence.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-8. Expert assistance in investigations and prosecutions. — The director may employ any professional or expert services that the director may deem desirable in making any investigation or in conducting any prosecution for the violation of the provisions of this chapter, within the limit of the amount appropriated therefor by the general assembly.

History of Section.

P.L. 1920, ch. 1914, § 4; P.L. 1921, ch. 2090, § 2; G.L. 1923, ch. 125, § 4; G.L. 1938, ch. 634, § 4; G.L. 1956, § 46-12-7; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "any pro-

fessional" for "such professional" and "services that the director" for "services as the director" near the beginning of the section.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-9. Notices of violation and compliance orders. — (a) The director shall follow the procedures provided in § 42-17.1-10(g) in issuing any notice of violation or compliance order authorized pursuant to this chapter or any rules, regulations, or permits promulgated thereunder.

(b) Where an order of the director does not specify the system or means to be adopted, the person against whom an order is entered shall, before proceeding to install a system or means, submit to the director a plan or statement describing the system or means which the person proposes to adopt.

History of Section.

P.L. 1920, ch. 1914, § 5; P.L. 1921, ch. 2090, § 3; G.L. 1923, ch. 125, § 5; G.L. 1938, ch. 634, § 5; G.L. 1956, § 46-12-8; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change near the end of subsection (a), and made several substitutions for "such" and "any such" throughout subsection (b).

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) substituted "§ 42-17.1-10(g)" for "§ 42-17.1-2(u)" in subsection (a), as the procedures provided in former § 42-17.1-2 are now provided in § 42-17.1-10.

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 5; P.L. 1921, ch. 2090, § 3; G.L. 1923, ch. 125, § 5; G.L. 1938, ch. 634, § 5; G.L. 1956, § 46-12-9; P.L. 1966, ch. 261, § 16), concerning time allowed for adoption of the system, was repealed by P.L. 1983, ch. 149, § 1.

46-12-10. Emergency powers. — Notwithstanding any other provision of this chapter, the director, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where that endangerment is, to the livelihood of those persons, or to protect the environment, may, without prior notice of violation or hearing, take such action as the director deems necessary to protect the public health or safety or the environment. The actions may include, but shall not be limited to, the following:

(a) Issuing an immediate compliance order stating the existence of the violation and the action that the director deems necessary. Any order issued under this section without notice and prior hearing shall be effective no longer than forty-five (45) days, provided, however, that for good cause shown an order may be extended one additional period of up to forty-five (45) days; and/or

(b) Obtaining injunctive relief or other order from the superior court.

History of Section.

P.L. 1920, ch. 1914, § 5; P.L. 1921, ch. 2090, § 3; G.L. 1923, ch. 125, § 5; G.L. 1938,

ch. 634, § 5; G.L. 1956, § 46-12-10; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment

P.L. 1988, ch. 84, § 1) substituted "public health or safety" for "public health, safety" near the end of the first sentence in the introductory paragraph; and made several substitutions for the word "such" and several minor stylistic changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) inserted a comma following "where that endangerment is" near the middle of the first sentence in the introductory paragraph, and inserted the word "the" preceding "superior court" at the end of subdivision (b).

46-12-11. Service of orders. — A copy of each order entered by the director shall be sent to the person or persons affected thereby by certified or registered mail, return receipt requested, by personal service, or by any other form of service now or hereafter authorized in a civil action under the laws of the state.

History of Section.

P.L. 1920, ch. 1914, § 5; P.L. 1921, ch. 2090, § 3; G.L. 1923, ch. 125, § 5; G.L. 1938,

ch. 634, § 5; G.L. 1956, § 46-12-11; P.L. 1966, ch. 261, § 8; P.L. 1983, ch. 149, § 1.

46-12-12. Modification or revocation of order. — Any order of the director may at any time, or from time to time, after at least twenty (20) days' notice in writing to the person or persons affected thereby, and after a hearing, if so requested by the affected person or persons, be modified or revoked by an order duly entered by the director.

History of Section.

P.L. 1920, ch. 1914, § 5; P.L. 1921, ch. 2090, § 3; G.L. 1923, ch. 634, § 5; G.L. 1956, § 46-12-12; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change near the middle of the section.

46-12-13. Civil penalties. — Except as specified in §§ 46-12-26 and 46-12-27, any person who shall violate the provisions of this chapter, or of any permit, rule, regulation, or order issued pursuant thereto, shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day during which the violation occurs. In an action for enforcement brought in the superior court pursuant to this chapter or chapters 12.3, 12.4, or 12.5 of this title, the court also may order any person to pay to the director any and all costs incurred in the investigation, cleanup, and restoration of areas affected by pollutants in connection with any violation. Nothing herein contained shall be construed to limit the amount of monetary relief which the court can award in any action brought pursuant to any other provision of the general laws or pursuant to common law.

History of Section.

P.L. 1920, ch. 1914, § 6; P.L. 1921, ch. 2090, § 4; G.L. 1923, ch. 125, § 6; G.L. 1938, ch. 634, § 6; G.L. 1956, § 46-12-13; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1; P.L. 1990, ch. 324, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made two punctuation changes near the middle of the section, and

substituted "the violation" for "such violation" near the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "this title" for "this chapter" following "12.5" near the beginning of the second sentence, which substitution was previously made in 1990 by the compiler; inserted a comma following "chapters 12.3, 12.4" near the beginning of the second sen-

tence; and inserted a comma following the word "cleanup" near the end of the second sentence.

46-12-14. Criminal penalties. — (a) Except as specified in §§ 46-12-26 and 46-12-27, any person who shall be found guilty of violating, willfully or with criminal negligence, any of the provisions of this chapter, or of any permit, rule, or regulation issued pursuant thereto, or an order of the director, shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment; and every person shall be deemed guilty of a separate and distinct offense for each day during which the violation shall be repeated or continued.

(b) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter, shall, upon conviction, be punished by a fine of not more than \$5,000 for each instance of violation or by imprisonment for not more than thirty (30) days or by both such fine and imprisonment.

History of Section.

P.L. 1920, ch. 1914, § 7; G.L. 1923, ch. 125, § 7; G.L. 1938, ch. 634, § 7; P.L. 1947, ch. 1834, § 1; P.L. 1954, ch. 3334, § 1; G.L. 1956, § 46-12-14; P.L. 1958, ch. 170, § 1; P.L. 1966, ch. 261, § 9; P.L. 1970, ch. 88, § 3; P.L. 1971, ch. 236, § 1; P.L. 1977, ch. 140, § 1; P.L. 1983, ch. 149, § 1; P.L. 1990, ch. 324, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "such fine and imprisonment" for "such fine or imprisonment" near the end of subsection (a) and at the end of subsection (b), and made several punctuation changes throughout the section.

46-12-15. Inspection powers — Rules and regulations. — The director shall have full powers to inspect, and make orders regulating and directing all methods, means, and devices employed on any steamer or other vessel in the waters of the state, or at any installation on land, in receiving, carrying, storing, heating, handling or discharging any petroleum, gasoline, kerosene, tar, oil, or any product or mixture thereof; and the director may by order establish all rules and regulations to prevent the discharge or escape of any of the substances into the waters of the state.

History of Section.

P.L. 1920, ch. 1914, § 8; G.L. 1923, ch. 125, § 8; G.L. 1938, ch. 634, § 8; P.L. 1947, ch. 1834, § 1; P.L. 1954, ch. 3334, § 1; G.L. 1956, § 46-12-15; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change near the beginning of the section, and substituted "the substances" for "said substances" near the end of the section.

46-12-16. Prosecution of violations. — The director, without being required to enter into any recognizance or to give surety for costs, may institute civil or criminal proceedings for the violation of any provision of this chapter or of any permit, rule, regulation, or order issued pursuant thereto. It shall be the duty of the attorney general to carry out all proceedings brought by the director.

History of Section.

P.L. 1920, ch. 1914, § 9; G.L. 1923, ch. 125, § 9; G.L. 1938, ch. 634, § 9; P.L. 1947, ch. 1834, § 1; P.L. 1954, ch. 3334, § 1; G.L. 1956, § 46-12-17; P.L. 1966, ch. 261, § 16; P.L. 1970, ch. 88, § 4; P.L. 1974, ch. 274, § 4; P.L. 1977, ch. 182, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment

(P.L. 1988, ch. 84, § 1) made a punctuation change near the beginning of the section and made several substitutions for the words "said" and "such" throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma preceding and following "rule, regulation" near the end of the first sentence.

46-12-17. Proceedings for enforcement. — The superior court for Providence County shall have jurisdiction to enforce the provisions of this chapter and any rule, regulation, permit, or order issued pursuant thereto. Proceedings for enforcement may be instituted and prosecuted in the name of the director, and in any proceedings in which injunctive relief is sought, it shall not be necessary for the director to show that without the relief, the injury which will result will be irreparable or that the remedy at law is inadequate. Proceedings provided in this section shall be in addition to and may be utilized in lieu of other administrative or judicial proceedings authorized by this chapter.

History of Section.

P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change in the first sentence, and substituted "any proceedings" for "any such proceedings"

and "without the relief" for "without such relief" in the second sentence.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-18. Records of operation. — The director may, by regulation, order, permit, or otherwise, require any person who discharges to the waters or who discharges to a publicly owned treatment works to:

- (a) Establish and maintain such records;
- (b) Make such reports;
- (c) Install, calibrate, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods);
- (d) Sample such discharges (in accordance with such methods, at such locations, at such intervals, and in a manner as the director shall prescribe); and
- (e) Provide such other information relating to discharges into the waters or into a publicly owned treatment works as the director may reasonably require.

History of Section.

G.L. 1938, ch. 634, § 14; P.L. 1950, ch. 2542, § 1; G.L. 1956, § 46-12-26; P.L. 1966, ch. 261, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "in a manner" for "in such manner" in subdivision (d),

and made a punctuation change near the middle of the introductory paragraph and near the beginning of subdivision (c).

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "or otherwise" in the introductory language.

46-12-19. Public access to information. — (a) Any permit, permit application, or effluent data shall be available to the public for inspection and copying.

(b) Other records, reports, or information obtained under this chapter also may be made available to the public for inspection and copying; provided, that upon a showing, satisfactory to the director by any person, that the records, reports, or information or any part thereof, except as provided in subsection (a) of this section, would if made public divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider, treat, and protect the record, report, or information, or part thereof, as confidential; provided, however, that the record, report, or information accorded confidential treatment may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or of the United States concerned with carrying out this chapter or, when relevant, in any proceeding under this chapter.

History of Section.

P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for "such", "or", "paragraph", and "any such" and several punctuation changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) made punctuation changes near the beginning and near the end of subsection (b).

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 11; G.L. 1923, ch. 125, § 11; G.L. 1938, ch. 634, § 11; G.L. 1956, § 46-12-19; P.L. 1966, ch. 261, § 16; P.L. 1970, ch. 88, § 6; impl. am. P.L. 1974, ch. 274, § 4), concerning proceedings for enforcement, was repealed by P.L. 1983, ch. 149, § 1.

46-12-20. Rules — Proceedings. — In establishing any rule or regulation hereunder or in the conduct of proceedings or in any appeal from an order of the director provided for by this chapter, the provisions of chapter 35 of title 42 shall apply.

History of Section.

P.L. 1920, ch. 1914, § 16; G.L. 1923, ch. 125, § 16; G.L. 1938, ch. 634, § 16; G.L. 1956, § 46-12-29; P.L. 1966, ch. 261, § 14; P.L. 1983, ch. 149, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "this chapter" near the end of the section.

46-12-21. Liability. — Any person who shall negligently or intentionally pollute groundwater shall be liable to any other person who is damaged by that pollution.

History of Section.

P.L. 1920, ch. 1914, § 16; G.L. 1923, ch. 125, § 16; G.L. 1938, ch. 634, § 16; G.L. 1956, § 46-12-30; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "that pollution" for "such pollution" at the end of the section.

Repealed Sections. The former section P.L. 1920, ch. 1914, § 12; P.L. 1921, ch. 2090, § 5; G.L. 1923, ch. 125, § 12; G.L. 1938, ch. 634, § 12; G.L. 1956, § 46-12-21; P.L. 1966, ch. 261, § 16), concerning the effect of

an order of the director pending appeal, was repealed by P.L. 1983, ch. 149, § 1.

Collateral References. Pollution of subterranean waters as nuisance, 38 A.L.R.2d 1285.

46-12-22. Access of enforcement officers to premises. — The attorney general, the director of environmental management, and their agents, while in the performance of their duties, may at all reasonable times enter any premises, buildings, plant, or equipment, or other places belonging to, or controlled by, any person who is believed to be discharging to the waters or who is believed to be discharging to a publicly owned treatment works, and inspect the same or any part thereof, have access to and copy any records required to be maintained, inspect any monitoring equipment or monitoring method which is required, and have access to and sample any discharges. Any person obstructing, hindering, or in any way causing to be obstructed or hindered the director of the department of environmental management, the attorney general, or any of their agents in the performance of his or her duties, or who shall refuse to permit the director, the attorney general, or any of their agents entrance into any premises, buildings, plant, or equipment, or other places belonging to or controlled by the person, in the performance of his or her duties as such, shall be subject to the civil and criminal penalties set forth in §§ 46-12-13 and 46-12-14 of this chapter.

History of Section.

P.L. 1920, ch. 1914, § 21; P.L. 1921, ch. 2090, § 6; G.L. 1923, ch. 125, § 18; G.L. 1938, ch. 634, § 18; G.L. 1956, § 46-12-31; P.L. 1966, ch. 261, §§ 15, 16; P.L. 1977, ch. 182, § 16; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for "or", "said", and "any such" and several punctuation changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) near the middle of the first sentence, inserted a comma following the word "plant" and following "treatment works", and inserted a comma following "her duties" near the middle of the second sentence.

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 12; P.L. 1921, ch. 2090, § 5; G.L. 1923, ch. 125, § 12; G.L. 1938, ch. 634, § 12; G.L. 1956, § 46-12-22; P.L. 1966, ch. 261, 16), concerning a transcript as evidence on appeal, was repealed by P.L. 1983, ch. 149, § 1.

46-12-23. Town and city expenditures for pollution control. — The town council of every town and city council of every city are hereby authorized to make available sufficient money to pay for the proper control of the pollution of waters in their respective towns or cities, and the towns and cities may raise the money by the issue of interest bearing notes of the town or city, which notes shall not be considered in determining whether the indebtedness of the town or city is in excess of the statutory limitation; provided, however, that before any notes or any other evidences of indebtedness are issued, any and all plans and specifications for the proper control of the pollution of the waters shall be submitted to and receive the approval of the state department of environmental management.

History of Section.

P.L. 1940, ch. 952, § 1; G.L. 1956, § 46-12-32; 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "the" for "such", "said" and "any such" throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) inserted a comma following "towns or cities" near the beginning of the section.

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 12; P.L. 1921, ch. 2090, § 5; G.L. 1923, ch. 125, § 12; G.L. 1938, ch. 634; § 12; G.L. 1956, § 46-12-23; P.L. 1966, ch. 261, § 16), concerning the introduction of new evidence on appeal, was repealed by P.L. 1983, ch. 149, § 1.

46-12-24. State grants and loans for pollution prevention facilities to governmental entities. — The director is authorized, within any limits of funds made available therefor, to make grants and loans to any municipality, intermunicipal agency, municipal sewer district, or state district or agency for the construction of necessary facilities to prevent the discharge of untreated or inadequately treated pollutants into the waters of the state, and for the preparation of reports, plans, and specifications required in connection therewith under the following terms:

(a) The grant or loan shall be made only in connection with a project which has or would be eligible for a grant or loan under the Clean Water Act [33 U.S.C. § 1251 et seq.], as amended from time to time.

(b) The amount of the grant or loan shall be in an amount necessary to assure the recipient of the maximum federal aid that it can anticipate qualifying for under the Clean Water Act, or to supplement federal aid when the maximum federal aid, for which the project is eligible, is not currently available, or to provide state assistance for projects which are eligible under the Clean Water Act but which may not receive such federal assistance.

(c) The plans and specifications for the project must be approved by the director in accordance with this chapter.

(d) The grant or loan shall be made available to the applicant in partial payments on a time schedule similar to that followed by the United States environmental protection agency, the payments to be proportioned in a similar manner except that the director may reimburse applicants for eligible projects that have already been initiated, but not yet completed, and for which only partial federal and/or state aid was provided.

(e) No grant or loan shall be made for any project until the applicant has made provision satisfactory to the director for assuring its proper and efficient operation and maintenance.

(f) An applicant for a grant or loan must file such executed forms and provide such information as may be required by the director.

History of Section.

G.L. 1956, § 46-12-33; P.L. 1967, ch. 198, § 14; P.L. 1983, ch. 149, § 1; P.L. 1986, ch. 289, art. 1, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "federal aid that it can" for "federal aid it can" near

the beginning of subdivision (b), and made several minor stylistic changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) near the beginning of the introductory language, inserted a comma following "is authorized" and following "available therefor".

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 13; G.L. 1923, ch. 125, § 13; G.L. 1938, ch. 634, § 13; G.L. 1956, § 46-12-24; P.L. 1966, ch. 261, § 16), concerning consultation with persons dis-

charging sewage, was repealed by P.L. 1983, ch. 149, § 1.

Federal Act References. The bracketed United States Code reference in subsection (a) was inserted by the compiler.

46-12-24.1. State grants and loans for pollution prevention facilities to nongovernmental entities. — The director is authorized within any limits of funds made available therefor, to make grants and loans to any nongovernmental entities in Rhode Island for the construction of necessary facilities to prevent the discharge of untreated or inadequately treated pollutants into the waters of the state, and for the preparation of reports, plans, and specifications required in connection therewith under the following terms:

(a) The plans and specifications for the project must be approved by the director in accordance with this chapter.

(b) No grant or loan shall be made for any project until the applicant has made provision satisfactory to the director for assuring its proper and efficient operation and maintenance.

(c) An applicant for a grant or loan must file such executed forms and provide such information as may be required by the director.

History of Section.

P.L. 1986, ch. 289, art. 1, § 2.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "preparation of reports, plans," for "preparation of reports, and plans" near the end of the introductory paragraph.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) corrected a misspelling of the word

"therefor" near the beginning of the introductory language, which correction was previously made in 1986 by the compiler; and near the beginning of the introductory language, inserted a comma preceding and following "within any limits of funds made available therefor" and deleted a comma following "Rhode Island".

46-12-24.2. Rhode Island Clean Water Act environmental trust fund. — (a) *Findings.*

(1) Protecting the ground and surface water of the state from pollution is vital to the health and general welfare of the citizens of the state;

(2) Construction, rehabilitation, and maintenance of modern and efficient waste water treatment systems and facilities is essential to protecting and improving the state's water quality and to the state's development;

(3) Significant nonpoint sources of pollution and combinations of sewerage and storm water runoff collection systems exist in the state and contribute to pollution;

(4) Certain areas of the state continue to be served by septic systems even though those areas should be served by interceptors to carry pollutants to waste water treatment facilities;

(5) Federal funds available to the state in the form of grants pursuant to the federal Clean Water Act [33 U.S.C. § 1251 et seq.], are currently inadequate to permit Rhode Island governmental entities to achieve secondary treatment within a five (5) year period, and the anticipated reduction in federal funds available to the state and its

governmental units may make it difficult to achieve the goal of improvement to the state's water quality;

(6) A fund should be established to provide sufficient continuing financial resources so that the state may achieve its water quality goals by providing for loans and grants to governmental entities and others.

(b) *Creation of fund.* There is hereby created the Rhode Island Clean Water Act environmental trust fund (hereinafter referred to as "the fund" or the Trust Fund) into which shall be deposited with the general treasurer of the state of Rhode Island:

(1) Proceeds from the sale of bonds and notes, including any premiums and accrued interest, issued under or advances pursuant to, article III of the Public Laws 1987, chapter 289;

(2) State appropriations;

(3) Repayment of loans from entities which have been qualified to receive loans by the director;

(4) Federal grants and loans; and

(5) Unless otherwise specified by the director, all other monies including gifts, bequests, administrative, and civil and criminal penalties received in connection with the enforcement of this chapter, or other funds from any public or private sources which monies are intended to improve water quality.

(c) *Use of fund; purposes.* All monies in the fund shall be expended in accordance with the general laws of the state of Rhode Island, and are hereby specifically restricted to providing grants and loans, and required state share or related expenses for the Narragansett Bay study, consistent with the provisions of this chapter and with the provisions of the Clean Water Act [33 U.S.C. § 1251 et seq.], as it may be amended from time to time. Proceeds from the sale of bonds and notes deposited into the fund shall be expended in accordance with the proposition approved by the people. Any proceeds from the sale of bonds or notes approved by the people after 1988, may also be expended for the Narragansett Bay study to develop and implement a conservation and management plan, and by the department of environmental management to implement a management program for the control of water pollution from nonpoint sources, including all necessary administrative costs. With respect to the fund, the state controller is authorized and directed to draw his or her orders upon the general treasurer for the payment out of the fund of such sum or sums as may be required from time to time upon receipt by him or her of properly authenticated vouchers approved by the director (as hereinafter defined) or his or her delegate. Expenses of issue of the bonds and notes issued under article III of Public Laws 1987, chapter 289, may be paid from the fund.

(d) *Administration of fund.* All monies in the fund shall be expended under the direction and supervision of the director and the director or the director's delegate, as the case may be, shall be vested with all power and authority necessary and incidental to the purposes of this chapter, and these powers and authorities granted to

the director or the director's delegate, as the case may be, shall be in addition to and not in substitution for all other power provided by law.

(e) *Investment of monies in fund.* All monies in the fund not immediately required for payment pursuant to the provisions of this section may be invested by the state investment commission as established by chapter 10 of title 35, provided, however, that the securities in which the fund is invested shall remain part of the fund until exchanged for other securities, and provided, further, that the income from any investments shall remain as part of the fund, unless prohibited by applicable federal law.

(f) *Advances from general fund.* The general treasurer is authorized from time to time with the approval of the governor and the director of administration in anticipation of the receipts of funds enumerated in subsection (b) of this section to advance sums to the fund for the purposes specified in subsection (c) of this section, any funds of the state not specifically held for any particular purposes, provided, however, that any advances made to the fund shall be returned to the general fund forthwith upon receipt by the fund of monies to the extent of the advances.

(g) *Termination of fund.* Upon a finding by the director that the fund is no longer needed for its purposes, the fund shall be terminated and shall be audited. Ninety (90) days following the final audit of the fund by the state auditor general, the fund shall cease to exist and any unobligated monies in the fund shall be transferred to the state's general fund and shall be applied to the payment of debt service charges of the state.

History of Section.

P.L. 1986, ch. 289, art. 11, § 1; P.L. 1988, ch. 84, § 114; P.L. 1988, ch. 238, art. 1, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several capitalization changes in the catchline; inserted "of Public Laws 1987, chapter 289," following "article III" in subsection (b)(1) and in the last sentence of subsection (c); substituted "the state investment" for "the investment" near the middle of subsection (e); inserted "of this section" in two places near the middle of

subsection (f); and made several substitutions for "such", "said", "all such", and "of such" and several minor stylistic changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made a stylistic change at the beginning of subsection (a)(1), made two capitalization changes in subsection (b)(1), substituted "this chapter" for "this act" near the middle of subsection (d), and made several punctuation changes throughout the section.

46-12-24.3. [Repealed.]

Repealed Sections. Former § 46-12-24.3 (P.L. 1988, ch. 238, art. 2, § 1), concerning the Rhode Island water pollution revolving

loan fund, was repealed by P.L. 1989, ch. 303, § 1, effective July 7, 1989.

46-12-25. Report required by owners or lessees of solid waste disposal areas. — If any person, firm, or corporation continuously uses any area for the disposal of solid waste which is located within two hundred feet (200') of any water course, then the owner of the land or lessee, if leased land, where the area is located must submit to the director a written report every sixty (60) days or more frequently if required by the director. The report shall contain among other things the content of dissolved oxygen, the biological oxygen demand, chlorides, iron, and a coliform bacteria count, from sites tested immediately upstream and downstream of the landfill area at locations prescribed by the director.

History of Section.

P.L. 1973, ch. 207, § 1; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change near the beginning and near the end of the section, and substituted "the area" for "said area" near the middle of the first sentence.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present section heading for the former section heading which read

"Solid waste disposal areas", and near the middle of the first sentence, made a stylistic change and inserted a comma following "water course" and following "or lessee".

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 14; G.L. 1923, ch. 125, § 14; G.L. 1938, ch. 634, § 14; P.L. 1947, ch. 1835, § 1; P.L. 1950, ch. 2542, § 1; G.L. 1956, § 46-12-25; P.L. 1966, ch. 261, §§ 12, 16), concerning submission of plans of existing sewage purification drains, was repealed by P.L. 1983, ch. 149, § 1.

46-12-25.1. Wells in proximity to solid waste disposal areas. — No building or other permit shall be issued for any structure or use of land requiring an on site drinking water supply or well which is located within one thousand feet (1,000') of or abuts any public or private solid waste disposal facility, unless and until the water source serving the well or on site water supply shall have been sampled and analyzed and found free of any harmful quantities of pollutants, chemicals, solid waste disposal area leachate, or other hazardous substances. The director of the department of health shall promulgate regulations setting drinking water quality standards to be met in order for water test results to be considered free from harmful quantities of pollutants, chemicals, solid waste disposal area leachate, or other hazardous substances under the terms of this section.

History of Section.

P.L. 1988, ch. 546, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) near the middle of

the first sentence, inserted a comma following "disposal facility" and made two stylistic changes, and inserted a comma following "area leachate".

46-12-26. Penalty for failure to report. — Any person, firm, or corporation who shall fail to submit reports as required by § 46-12-25, shall be punished by a fine of four hundred dollars (\$400) per day for each day that a report is not filed.

History of Section.

P.L. 1973, ch. 207, § 1; G.L. 1956, § 46-12-35; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "each day that a report" for "each day a report" near the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following the word "firm" and following "by § 46-12-25".

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-27. Penalty for falsification of report. — Any person, firm, or corporation who shall falsify any report required by § 46-12-25, shall be punished by a fine not exceeding four hundred dollars (\$400) or by imprisonment of not more than one year, or both.

History of Section.

P.L. 1973, ch. 207, § 1; G.L. 1956, § 46-12-36; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation

change near the beginning and near the end of the section.

The 1991 Reenactment (P.L. 1991 ch. 354, § 1) inserted a comma following "by § 46-12-25".

46-12-28. Protection of groundwaters. — Groundwaters shall be and shall be deemed to be waters of the state and shall be protected pursuant to the provisions of this chapter with respect to the following activities, which shall be regulated by the director in accordance with the provisions of this chapter:

(a) In-ground or surface discharge or disposal of industrial or commercial pollutants.

(b) Nonindustrial and noncommercial subsurface disposal systems only to the minimum extent required to conform to the requirements of the underground injection control program under the federal Safe Drinking Water Act, as amended [42 U.S.C. § 300f et seq.].

History of Section.

P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "Safe Drinking" for "State Drinking" near the end of subdivision (b), and made several minor stylistic changes throughout the section.

Repealed Sections. The former section (P.L. 1920, ch. 1914, § 14; G.L. 1923, ch. 125, § 14; G.L. 1938, ch. 634, § 14; P.L. 1947, ch.

1835, § 1; P.L. 1950, ch. 2542, § 1; G.L. 1956, § 46-12-28; P.L. 1966, ch. 261, §§ 13, 16), concerning the penalty for violations as to reports and records, was repealed by P.L. 1983, ch. 149, § 1.

Collateral References. Pollution of subterranean waters as nuisance, 38 A.L.R.2d 1285.

46-12-29. Effective date of chapter. — This chapter shall take effect on September 15, 1983, except that prior to that date the director of the department of environmental management may conduct any hearings necessary to carry out the purposes of this chapter, and file with the secretary of state any rules and regulations authorized by this chapter to take effect on or after that date.

History of Section.

P.L. 1981, ch. 253, § 1; G.L. 1956, § 46-12-37; P.L. 1983, ch. 149, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "that date" for "said date" near the beginning and

at the end of the section, and made several capitalization changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present section heading for the former section heading which read

"Liberal construction—Severability", and inserted a comma following "this chapter" near the end of the section.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-30. Underground storage tank replacement revolving loan fund. — There is established a separate fund within the general fund to be called "the underground storage tank replacement revolving loan fund" which shall be administered by the general treasurer in accordance with the same laws and fiscal procedures as the general funds of the state.

History of Section.

P.L. 1985, ch. 486, § 1

Compiler's Notes. P.L. 1985, ch. 486, §§ 5-14 contains uncodified provisions concerning bonds and proceeds of the under-

ground storage tank replacement capital development program.

Transferred Sections. For redesignation of former section, see the compiler's notes at the beginning of this chapter.

46-12-30.1. Legislative findings and intent. — It is the finding of this general assembly that the health, safety, and welfare of many people of the state is being jeopardized by the failure of underground storage tanks and the consequent contamination of private drinking wells and endangering of the public health and safety by the leaking of toxic substances into groundwater and the seepage of toxic fumes that result from such leaks into residences and into the atmosphere. To assist in the replacement of tanks that are leaking, or are of an age at which they are found to be statistically likely to leak, or are of a design that has proven to be especially susceptible to leaks, is a public purpose that is deserving of remedy. It is, therefore, the intent of this general assembly to establish a fund to be called "the underground storage tank replacement revolving loan fund" and that the fund be used to provide the money necessary to remedy leaking underground tanks and tanks that are judged by the director of the department of environmental management to be likely to leak.

History of Section.

P.L. 1985, ch. 486, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "ground storage tank" for "ground storage and" and "the fund" for "said fund" near the middle of the last sentence.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) near the beginning of the second sentence, inserted a comma following "are leaking" and following "susceptible to leaks".

46-12-30.2. Definitions. — All definitions and guidelines for replacement of tanks will be developed by the director of the department of environmental management in conjunction with the director's efforts to promulgate regulations for underground storage facilities used for petroleum products and hazardous materials, to be promulgated under the authority of this chapter and chapters 17.1 and 35 of title 42, as amended.

History of Section.

P.L. 1985, ch. 486, § 1; P.L. 1988, ch. 84, § 62.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "chapters 17.1" for "chapters 17" and deleted "of the

general laws of Rhode Island, 1956" following "title 42" near the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "hazardous materials" near the end of the section.

46-12-30.3. Underground storage tank replacement revolving loan fund. — (a) There is hereby created a restricted fund within the general fund to be called "the underground storage tank replacement revolving loan fund" which shall be administered by the general treasurer in accordance with the same laws and fiscal procedures as the general funds of the state. The fund shall consist of such funds as the state may from time to time appropriate, as well as monies received from the repayment of loans by residential owners and by businesses which have been qualified to receive these loans by the director of the department of environmental management, federal grants, gifts, bequests, donations, or other funds from any public or private source, which monies are intended to replace underground tanks which are leaking or are otherwise eligible for replacement and funding as determined by standards promulgated by the director of the department of environmental management.

(b) All monies placed in the fund shall be made available immediately, and are hereby specifically appropriated to the department of environmental management for the purpose of making low interest loans (at least two (2) points below the six (6) month treasury bill rate as certified by the general treasurer on the effective date of the transaction) to residential and commercial owners of tanks that are declared eligible under rules and regulations promulgated by the director of the department of environmental management.

(c) Loans made under the provisions of this section may be made directly or in cooperation with other lenders or any agency, department, or bureau of the federal government or state of Rhode Island. The proceeds received from the repayment of any loans made from this fund shall be deposited in and returned to the underground storage tank replacement revolving loan fund to constitute a revolving fund for the purpose listed above.

History of Section.

P.L. 1985, ch. 486, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "The fund" for "Such fund" at the beginning of the second sentence in subsection (A); made a punctuation change near the middle of the second sentence in subsection (A) and near the end of the first sentence in subsection (C); and made a minor stylistic change near the middle of subsection (b).

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted subsection designations (a) through (c) for former subsection designations (A) through (C); and inserted a comma following "public or private source" near the end of the second sentence in subsection (a).

Compiler's Notes. P.L. 1985, ch. 486, §§ 5-14 contains uncodified provisions concerning bonds and proceeds of the underground storage tank replacement capital development program.

46-12-30.4. Administration of the fund. — The department of environmental management shall develop the criteria by rule and regulation necessary for defining eligible projects and recipients, and shall prepare and adopt rules and regulations with respect to loan generation, disbursement, payback period, and mortgage covenants.

History of Section.

P.L. 1985, ch. 486, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "projects and recipients" near the middle of the section; and corrected a mis-

spelling of the word "covenants" at the end of the section, which correction was previously made in 1985 by the compiler.

Compiler's Notes. As enacted by P.L. 1985, ch. 486, § 1, the word "covenants" contained a misspelling.

46-12-30.5. Bonds authorized. — The general treasurer is hereby authorized and empowered, with the approval of the governor and in accordance with the requirements of law, to issue from time to time bonds in the name and on behalf of the state and in such amounts as may be specified in an amount not to exceed one million five hundred thousand dollars (\$1,500,000).

History of Section.

P.L. 1985, ch. 486, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a punctuation change and substituted "and on behalf" for "and behalf" near the middle of the section.

Compiler's Notes. P.L. 1985, ch. 486, §§ 5-14 contains uncodified provisions concerning bonds and proceeds of the underground storage tank replacement capital development program.

46-12-31 — 46-12-36. [Transferred.]

Transferred Sections. For redesignation of these sections, see the compiler's notes at the beginning of this chapter.

46-12-37. Waste from seagoing vessels. — The owners and/or agents of any seagoing vessel entering the waters or waterways of this state which intends to transfer or discharge any type of waste or bilge at a certified shore facility or terminal pursuant to the Resource and Conservation Recovery Act (RCRA) [42 U.S.C. § 6901 et seq.], shall first file a performance bond or other evidence of financial responsibility with the director in the amount of at least fifty thousand dollars (\$50,000) payable to the state of Rhode Island and Providence Plantations. In the event the vessel causes damage to the environment, the bond shall be forfeited to the extent of the costs incurred by the state to rectify and clean up the damage to the environment and natural resources of the state and to the extent of any fine levied for violations of water pollution abatement laws. Any seagoing vessel transferring any type of waste or bilge without coverage shall be fined not more than five thousand dollars (\$5,000).

History of Section.

P.L. 1986, ch. 96, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) inserted "42 U.S.C. § 6901 et seq.," following "(RCRA)," near the middle of the first sentence; substituted "the bond" for "said bond" near the beginning of

the second sentence; and made a minor stylistic change near the end of the first sentence, in the second sentence, and in the last sentence.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) deleted the word "such" preceding "coverage shall be fined" in the last sentence.

46-12-38. Licensing of underground storage tank testers. —

(a) *Definitions.* As used in this section and in conjunction with this chapter these terms shall be construed to mean:

(1) "Tank tightness test" means a test capable of detecting a .05 gallon per hour leak from any portion of an underground storage tank (including but not limited to piping) that routinely contains petroleum products or hazardous materials while accounting for the effects of thermal expansion or contraction of the petroleum product or hazardous materials, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(2) "Tank tightness tester" means a person who performs tightness tests on underground storage tanks.

(b) *Authority of the director.* The director shall promulgate rules and regulations consistent with this chapter and with chapter 13.1 of title 46 entitled "Groundwater Protection" for the licensing of tank tightness testers. Nothing in this section shall limit the director's powers and duties as set forth in this chapter.

(c) *License requirement and fee.* (1) No person shall perform tightness tests on underground storage tanks without a license that the director has issued in accordance with this section.

(2) The director of environmental protection shall charge an annual fee of \$100 to each tank tightness tester to whom he or she issues a license. The director shall deposit the fees collected into the water protection program account created pursuant to § 42-17.1-2(z).

(3) No license shall be valid unless the tank tightness tester has paid the license fee, and test results submitted to the director by a tank tightness tester who has not paid the fee shall be considered null and void. The owner or operator of an underground storage tank of the affected facility shall have the tightness test repeated at the expense of the unlicensed tester.

(d) *Revocation of license.* The director shall revoke the license of any tank tightness tester who fails to comply with this section or with the rules and regulations promulgated hereunder after the director has notified the tank precision tester and has afforded the tester the opportunity to be heard.

History of Section.

P.L. 1990, ch. 320, § 3.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the director of the department of the environment" for "the director" in subsection (b), pursuant

to § 42-17.1-9(h); substituted "§ 42-17.1-9(h)(8)" for "§ 42-17.1-2(z)" at the end of the second sentence in subsection (c)(2), as the fee schedules governed by former § 42-17.1-2(z) are now governed by § 42-17.1-9(h)(8); substituted "the fees" for

"said fees" in subsections (c)(2) and (c)(3); capitalization and stylistic changes throughout the section. substituted "the tester" for "said tester" near the end of subsection (d), and made several

46-12-39. Discharge of sewage from boats. — (a) It shall be unlawful to discharge any sewage from a boat into the waters of the state unless discharged via a marine toilet which is either a marine sanitation device-type I, or a marine sanitation device-type II, in proper working condition.

(b) It shall be unlawful to discharge any sewage from a boat into the waters of the state in an area which has been declared to be a no discharge zone.

(c) It shall be unlawful to operate or moor in the waters of the state, a boat which is equipped with a marine toilet which is not a type approved pursuant to the Clean Water Act [33 U.S.C. § 1251 et seq.] and that is in proper working condition.

(d) It shall be unlawful to operate or moor in the waters of the state in an area declared to be a no discharge zone, a boat which is equipped with a marine toilet which is not properly sealed to prevent discharge of sewage into the water.

(e) No discharge zones shall be identified by the department of environmental management. The department of environmental management shall utilize criteria established under the Federal Water Pollution Control Act of 1972 (Water Quality Act) [33 U.S.C. § 1251 et seq.] and 40 CFR 140.4 in identifying such areas, and shall be the sole agency of the state in seeking federal designation of such areas; it shall seek the advice and comment of the Coastal Resources Management Council (CRMC). Municipalities of the state may nominate areas for designation as no discharge zones only as an element of a Harbor Management Plan (HMP) approved by the CRMC in accordance with established regulation.

History of Section.

P.L. 1991, ch. 332, § 2.

Compiler's Notes. As enacted by P.L. 1991, ch. 332, § 2, the second sentence in subsection (e) contained the word "establish-

ment", which has been changed to "established" by the compiler.

Federal Act References. The bracketed United States Code references in this section were inserted by the compiler.

46-12-40. Penalty for violations. — Every person in violation of § 46-12-39, or owning, operating or causing to be operated, upon the waters of the state, a boat in violation of the provisions of § 46-12-39, or aiding in so doing, shall for the first offense be punished by a fine of not more than five hundred dollars (\$500) or be imprisoned for not more than one year in the adult correctional institutions, or both such fine and imprisonment, and for a second and each subsequent offense shall be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than one year in the adult correctional institutions, or both such fine and imprisonment, in the discretion of the court. If a municipality assists in the prosecution of a violation of § 46-12-39, any fine imposed for that

violation shall be paid one-half (1/2) thereof to the general treasurer of the state and one-half (1/2) thereof to the treasurer of the town or city where the offense occurred.

History of Section.

P.L. 1991, ch. 332, § 2.

46-12-41. Enforcement. — The department of environmental management, harbor masters, assistant harbor masters, police officers authorized to make arrests, and employees of the department of environmental management authorized to enforce the provisions of chapter 22 of this title shall have the authority to enforce the provisions of § 46-12-39 and in the exercise thereof shall have the authority to stop and board any vessel subject to this chapter.

History of Section.

P.L. 1991, ch. 332, § 2.

CHAPTER 12.3

THE ENVIRONMENTAL INJURY COMPENSATION ACT

SECTION.

- 46-12.3-1. Proceedings for enforcement.
- 46-12.3-2. Strict liability.
- 46-12.3-3. Action on negligence.
- 46-12.3-4. Recovery for economic loss.
- 46-12.3-5. Attorney general — Suits *parentis patriae*.

SECTION.

- 46-12.3-6. Severability.
- 46-12.3-7. Remedies cumulative.
- 46-12.3-8. Liability of nondischargers rendering assistance.

Compiler's Notes. Section 2 of P.L. 1990, ch. 198 provides, in pertinent part, that the enactment of this chapter shall apply to all causes of action pending on or after September 30, 1990, regardless of when the violation and/or act of negligence occurred, as long as suit was commenced within the applicable statute of limitations.

P.L. 1990, ch. 461, reorganizes the depart-

ment of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). References in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-12.3-1. Proceedings for enforcement. — The superior court shall have jurisdiction to enforce the provisions of this chapter. Venue shall exist in the county where the plaintiff is located or in Providence County, at the election of the plaintiff. A civil action may be instituted by the attorney general or by any person, corporation, partnership, or other business entity for damages sustained as a result of a violation of the provisions of chapter 9 or 9.1 of title 46, regarding the obligation of a vessel to have a licensed pilot on board prior to entering a navigable waterway of the state, or chapter 12 of title 46, regarding water pollution, or any violation of any permit, rule, regulation, or order issued pursuant thereto by the owner, operator, and/or his or her or its agent of a seagoing vessel, as defined in § 46-9-2, or as a result of the negligence of the owner, operator, or agent.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the

owner" for "such owner" near the end of the second sentence, and made several punctuation changes throughout the second sentence.

46-12.3-2. Strict liability. — The owner, operator, and/or his or her or its agent of any seagoing vessel, as defined in § 46-9-2, entering the waters or waterways of this state who shall violate the provisions of chapter 9 or 9.1 of title 46, regarding the obligation of a vessel to have a licensed pilot on board prior to entering a navigable waterway of the state or chapter 12 of title 46, regarding water pollution or any violation of any permit, rule, regulation, or order issued pursuant thereto, shall be strictly liable for any injury or damage resulting from the violation, including, but not limited to, damage or injury to the environment or natural resources of the state, injury to the person, property damage, or economic loss to any individual, corporation, partnership, or other business entity.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the vio-

lation" for "such violation" near the end of the section, and made several punctuation changes throughout the section.

46-12.3-3. Action on negligence. — Any person who sustains personal injury, property damage, or economic loss as a result of the negligent act of any owner, operator, and/or his or her or its agent of any seagoing vessel as defined in § 46-9-2, entering the waters or waterways of this state, shall be entitled to maintain an action to recover the damages pursuant to the provisions of § 46-12.3-1.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the

damages" for "said damages" near the end of the section, and made several punctuation changes throughout the section.

46-12.3-4. Recovery for economic loss. — (a) A person shall be entitled to recover for economic loss, pursuant to §§ 46-12.3-2 and 46-12.3-3, if the person can demonstrate the loss of income or diminution of profit to a person or business as a result of damage to the natural resources of the state of Rhode Island caused by the violation of any provision of chapter 9 or 9.1 of title 46, regarding the obligation of a vessel to have a licensed pilot on board prior to entering a navigable waterway of the state, or chapter 12 of title 46, regarding water pollution, or any violation of any permit, rule, regulation, or order issued pursuant thereto by the owner or operator and/or their agents of the seagoing vessel and/or caused by the negligence of the owner or operator and/or their agents of the seagoing vessel.

(b) In any suit brought to recover economic loss it shall not be necessary to prove that the loss was sustained as a result of physical injury to the person or damage to his or her property, nor shall it be a defense to any claim that the defendant owed no special duty to the plaintiff or that the loss was the result of governmental action taken in response to the violation and/or negligence of the defendant.

(c) Without limiting the generality of the foregoing, persons engaged in commercial fishing or shellfishing and/or the processors of fish or shellfish, who can demonstrate that they have sustained a loss of income or profit as a result of damage to the environment resulting from violations of chapter 9 or 9.1 of title 46, regarding the obligation of a vessel to have a licensed pilot on board prior to entering a navigable waterway of the state, or chapter 12 of title 46, regarding water pollution or any violation of any permit, rule, regulation or order pursuant thereto by the owner or operator and/or their agents of a seagoing vessel and/or caused by the negligence of the owner and/or agent of a seagoing vessel, shall have a cause of action for economic loss. Persons employed by, or who operate businesses, who have sustained a loss of income or profit as a result of a decrease in the volume of business caused by the damage to the environment shall also be entitled to maintain an action for economic loss.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present section heading for the former section

heading which read "Economic loss", and made several substitutions for the words "such" and "said" and several punctuation changes throughout the section.

46-12.3-5. Attorney general — Suits parens patriae. — (a) The attorney general may bring a civil action in superior court in the name of the state, as parens patriae on behalf of persons residing in this state, to secure monetary relief as provided in this chapter for injuries sustained by persons to their person, property, or economic loss by reason of any violation of this chapter. The court shall exclude from the amount of monetary relief awarded in an action any amount of monetary relief:

(1) Which duplicates amounts which have been awarded for the same injury under state or federal law; or

(2) Which is properly allocable to persons who have excluded their claims pursuant to subsection (c)(2) of this section.

(b) The court shall award the state as monetary relief twofold the total damage sustained as described in subsection (a) of this section, and the costs of suit, including a reasonable attorney's fee.

(c)(1) In any action brought under subsection (a) of this section the attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication.

(2) Any person on whose behalf an action is brought under subsection (a) may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to him or her by filing notice of the election with the court within such time as specified in the notice given pursuant to subsection (c)(1).

(3) The final judgment in an action under subsection (a) shall be res judicata as to any claim under §§ 46-12.3-2, 46-12.3-3, and 46-12.3-4 by any person on behalf of whom the action was brought and who fails to give notice within the period specified in the notice given pursuant to subsection (c)(1).

(d) An action under subsection (a) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given by publication at such times, in such manner, and with such content as the court may direct.

(e) In any action under subsection (a),

(1) The amount of the plaintiff's attorney's fees, if any, shall be determined by the court, and any attorney's fees awarded to the attorney general shall be deposited with the state as general revenues; and

(2) Monetary relief recovered in an action under this section shall:

(A) Be distributed in such manner as the court in its discretion may authorize; or

(B) Be deemed a civil penalty by the court and deposited with the state as general revenues; subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his or her appropriate portion of the net monetary relief.

(f) In any action under this section the fact that a person or public body has not dealt directly with the defendant or that the defendant owed no special duty to the plaintiff or that the loss was the result of governmental action in response to the violation and/or negligence of the defendant shall not bar or otherwise limit recovery. Provided, however, the court shall exclude from the amount of monetary relief awarded in an action any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made several substitutions for the words "such" and "said" and

several punctuation and stylistic changes throughout the section.

Compiler's Notes. In 1990, the compiler substituted a comma for a dash at the end of the introductory language of subsection (e).

46-12.3-6. Severability. — If any provision of this chapter or the application thereof to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

History of Section.

P.L. 1990, ch. 198, § 1.

46-12.3-7. Remedies cumulative. — The remedies provided for in this chapter are in addition to all other remedies available in law or in equity.

History of Section.

P.L. 1990, ch. 198, § 1.

46-12.3-8. Liability of nondischargers rendering assistance. — (a) Nothing in this chapter shall be construed to hold persons, other than those responsible for the discharge, who render care, assistance, or advice with respect to the discharge of a pollutant into the waters of the state, regarding the amelioration of environmental damage caused by the discharge, strictly liable for their acts or omissions.

(b)(1) Any nonprofit entity, incorporated as such, which is authorized by the director of the department of environmental management or its successor agency or an agency of the federal government to render assistance in containing or removing petroleum or petroleum products from the waters of this state shall not be liable for costs, expenses, and/or damages, unless the costs, expenses, and damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of the authorized entity.

(2) Provided, however, if the nonprofit entity is authorized by the person alleged to be responsible for the discharge or a designee thereof, that person shall be liable for those costs, expenses, and/or damages which are a proximate result of the nonprofit entity's acts or omissions.

History of Section.

P.L. 1990, ch. 198, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present section heading for the former section

heading which read "Responder's liability"; assigned the subsection and subdivision designations and made several substitutions for the words "such" and "said" and several punctuation changes throughout the section.

CHAPTER 12.5

OIL POLLUTION CONTROL

SECTION	SECTION
46-12.5-1. Definitions.	46-12.5-9. Proceedings for enforcement.
46-12.5-2. Powers and duties of the director.	46-12.5-10. Criminal penalties.
46-12.5-3. Prohibitions against oil pollution.	46-12.5-11. Emergency powers.
46-12.5-4. Ballast water discharge.	46-12.5-12. Notices of violations and compliance orders.
46-12.5-5. Discharge reporting.	46-12.5-13. Remedies cumulative.
46-12.5-6. Civil penalties for discharge of oil.	46-12.5-14. Inspections.
46-12.5-7. Damages.	46-12.5-15. Oil discharge cleanup personnel, equipment, expenses.
46-12.5-8. Reimbursement for cleanup expenses — Deposit of monies.	46-12.5-16. Compacts authorized.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present chapter designation for former chapter designation 12.3 of this title, as P.L. 1990, ch. 198, § 1 already enacted a chapter designated as chapter 12.3 and as P.L. 1990, ch. 197, § 1 enacted a chapter designated as chapter 12.4, which substitution was previously made in 1990 by the law revision officer of the joint committee on legislative services pursuant to § 43-2-2.1.

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). References in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-12.5-1. Definitions. — As used in this chapter these terms shall, where the context permits, be construed to mean:

(a) "Containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, the restoration of the environment to its former state, and all incidental administrative costs;

(b) "Department" means the department of environmental management or its successor;

(c) "Director" means the director of the department of environmental management;

(d) "Oil" means oil of any kind and in any form, whether crude, refined, or a petroleum byproduct, including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(e) "Oil pollution" means discharging, causing to be discharged, or permitting the discharge of oil into or upon the waters of this state, or to construct or install any industrial, commercial, or other estab-

ishment, to make any modification or addition thereto, or to undertake any development which may result in the discharge of oil into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director;

(f) "Operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities including, but not limited to, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(g) "Person" shall include an individual, trust, firm, joint stock company, corporation (including a quasi government corporation), municipality, municipal or state agency, fire district, club, nonprofit agency, or country;

(h) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(i) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, whether self propelled or otherwise, and shall include barges and tugs;

(j) "Waters of the state" shall include all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond or lake, and all ground waters and wetlands of the state of Rhode Island.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) arranged the subdi-

visions in alphabetical order, thereby redesignating the subdivision designations and made several punctuation and stylistic changes throughout the section.

46-12.5-2. Powers and duties of the director. — In addition to the other powers granted the director of environmental management, the director shall have and may exercise these powers and duties:

(a) To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated hereunder;

(b) To promulgate rules and regulations for the transportation of oil on the waters and over the land of this state; for the emergency response for the containment, cleanup, and abatement of a discharge of oil; for the assessment of penalties and recovery of costs and of damages as set forth in this chapter; and for any other procedures necessary for the implementation of this chapter.

(c) To promulgate rules and regulations for oil discharge contingency plans. The rules and regulations may at the minimum:

(1) Prohibit the transfer of oil to or from a tank vessel or oil barge without an oil discharge contingency plan that the appropriate authority has approved;

(2) Require proof of financial responsibility by the owner or operator of the tank vessel or oil barge; and

(3) Address catastrophic oil discharges.

(d) To exercise all incidental powers necessary to carry out the purposes of this chapter.

(e) Nothing in this chapter shall be construed to abridge the powers and duties of the director over water pollution, including the discharge of oil, as established in this title, or in chapter 17.1 or 35 of title 42, or in title 23.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) deleted the word "herein" following "department of the environment" in the introductory language; sub-

stituted "The rules" for "Such rules" in the second sentence of the introductory paragraph in subdivision (c); made capitalization changes at the beginning of subdivisions (c)(1) through (c)(3); and made stylistic changes near the end of subdivision (e).

46-12.5-3. Prohibition against oil pollution. — (a) No person shall discharge, cause to be discharged, or permit the discharge of oil into, or upon the waters or land of the state except by regulation or by permit from the director.

(b) Any person who violates any provision of this chapter or any rule or regulation or order of the director issued pursuant to this chapter shall be strictly liable to the state.

History of Section.

P.L. 1990, ch. 324, § 2.

46-12.5-4. Ballast water discharge. — (a) Except as provided in subsection (b) of this section, no person shall cause or permit the discharge of contaminated ballast water from a vessel into the water of the state. A tank vessel may not take on oil or a petroleum product or by-product as cargo unless the master of the vessel certifies that the vessel has arrived in port without having discharged contaminated ballast into the waters of the state.

(b) The master of a vessel may discharge contaminated ballast water from a vessel only if it is necessary for the safety of the vessel and no alternative action is feasible to ensure the safety of the vessel.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) inserted the word "subsection" preceding "(b) of this section" in the first sentence of subsection (a).

46-12.5-5. Discharge reporting. — A person in charge of a facility, operation, or vessel, as soon as the person has knowledge of any discharge from the facility, operation, or vessel in violation of this chapter shall, in a timely fashion, notify the department of the discharge.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) inserted a comma following both occurrences of the word "operation".

46-12.5-6. Civil penalties for discharge of oil. — (a) The legislature finds that:

(1) Oil is important as an energy source to the people of the state; however, the discharge of oil in any quantity may have a substantial permanent or negative impact on the public health and environment and the economy of this state in that it contaminates the land and water supplies and renders land unfit for use and water unfit for use and consumption; degrades, damages, and destroys the abundant natural beauty of the state; and kills marine and aquatic organisms at all stages of development;

(2) The citizens of this state should not have to bear the burdens of the cleanup and the losses of economic livelihood that result from the discharge of oil in any degree; and

(3) Substantial civil penalties should be imposed in order to provide an incentive to ensure the safe handling of oil and to prevent the discharge of oil onto the land or into the waters of the state;

(b) The director shall promulgate rules and regulations pursuant to the Administrative Procedures Act, as set forth in chapter 35 of title 42, that establish administrative penalties for discharges of oil, which penalties shall not exceed the sum of twenty-five thousand dollars (\$25,000) for each day during which the violation occurs. In determining the administrative penalty for the discharge of oil, the director shall consider several factors, including, but not limited to:

(1) The type of environment that the discharge oil enters, such as, but not limited to, a stream or tributary thereto that is capable of or has historically supported anadromous fish; a freshwater environment with significant or substantial aquatic resources; or an estuarine, intertidal, or salt water environment;

(2) The amount of oil spilled;

(3) The type of oil spilled;

(4) The toxicity, degradability, and dispersal characteristics of the oil spilled; and

(5) Any mitigating action that the vessel master or the facility owner or operator may have taken to stop or to control the discharge of oil.

(c) The entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. If mitigating circumstances are proven by a preponderance of the evidence, the director may reduce or eliminate the penalty, in accordance with the purposes of this section.

(d) A person otherwise liable for administrative penalties under subsection (e) of this section shall not be liable if the person demon-

strates, by a preponderance of the evidence, that the discharge occurred solely as a result of:

- (1) An act of God;
 - (2) An act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under this section;
 - (3) A negligent or intentional act of the United States; or
 - (4) An act of war.
- (e) Nothing in this section shall preclude the director from assessing additional penalties for the discharge of oil as set forth in chapters 12 of this title, 17.1 and 17.6 of title 42, and 19.1 of title 23.
- (f) Nothing in this section shall preclude the state or any private party from seeking damages and/or penalties in an action brought pursuant to any other provisions of the general laws or pursuant to common law or to limit the damages which can be awarded in such an action.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) corrected a typographical error in the word "ensure" in subsection (a)(3), which correction was previously made in 1990 by the compiler; inserted

a comma preceding and following "as set forth in chapter 35 of title 42" in the first sentence of subsection (b); inserted the word "subsection" preceding "(e) of this section" in the introductory language of subsection (d); and made several capitalization and stylistic changes throughout the section.

46-12.5-7. Damages. — (a) In addition to penalties established in this chapter, any person who violates or causes or permits to be violated a provision of this chapter or rule, regulation, or order pursuant thereto, shall be strictly liable to the state for these costs and expenses:

(1) Compensation for any adverse environmental effects caused by the violation, which the court shall determine according to the toxicity, degradability, and dispersal characteristics of the substance discharged, the nature and sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) Costs that the state has incurred in detection, investigation, and correction of the violation;

(3) The economic advantage that the person realized in not complying with the requirements and provisions of this chapter.

(b) Liability for damages under subsection (a) of this section includes an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or degraded resource, or to otherwise restore the environment of the state to its condition before the injury.

(c) Nothing in this section shall preclude the state or any private party from seeking additional damages and/or penalties in a civil action, brought pursuant to any other provision of the general laws or pursuant to common law, or to limit the damages which can be awarded in such an action.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following the word "degradability" in subsection (a)(1), inserted the word "subsection" fol-

lowing "damages under" near the beginning of subsection (b), in subsection (c), inserted a comma following "civil action" and following "common law", and made capitalization changes at the beginning of subsections (a)(1) through (a)(3).

46-12.5-8. Reimbursement for cleanup expenses — Deposit of monies. — (a) The department shall promptly seek reimbursement under this chapter or from an applicable federal fund, for the expenses it incurs in the cleanup, containment, or abatement of a discharge of oil. If the department obtains reimbursement for a portion of its expenses from a federal fund, the remainder of the expenses incurred may be recovered as set forth in this chapter.

(b) There is hereby established an account within the general fund to be called the oil release response fund. All monies collected pursuant to this chapter shall be deposited into this fund, which shall be administered in accordance with chapter 12.7 of this title.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "chapter 12.7" for "chapter 12.5" in subsection (b), as

chapter 12.5 of title 46 was redesignated as chapter 12.7 of title 46, which substitution was previously made in 1990 by the law revision officer of the joint committee on legislative services pursuant to § 43-2-2.1.

46-12.5-9. Proceedings for enforcement. — The superior court shall have the jurisdiction to enforce the provisions of this chapter and any rule, regulation, or order issued pursuant thereto. Proceedings for enforcement may be instituted by the attorney general or the director, and in any proceedings in which the attorney general or the director seeks injunctive relief, it shall not be necessary to show that without the relief, the injury that will result will be irreparable or that the remedy at law is inadequate. Proceedings provided in this section shall be in addition to other administrative or judicial proceedings authorized by this chapter or pursuant to any other provision of the general laws or common law.

History of Section.

P.L. 1990, ch. 324, § 2.

46-12.5-10. Criminal penalties. — (a) Except as provided in subsections (c) and (d) of this section, a person who violates a provision of this chapter, or of a rule or regulation promulgated under this chapter, or order of the director issued under this chapter, shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or by imprisonment for not more than five (5) years, or by both a fine and imprisonment; and every person shall be deemed guilty of a separate and distinct offense for each day during which the violations shall be repeated or continued.

(b) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or

other document filed or required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each instance of violation or by imprisonment for not more than five (5) years or by both a fine and imprisonment.

(c) Notwithstanding subsection (a) of this section, a person who fails to provide or falsely states information required under § 46-12.5-4 shall be guilty of a misdemeanor.

(d) Any person convicted under this chapter shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or by imprisonment for not more than five (5) years, or by both. Each unlawful act constitutes a separate offense.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) in subsection (a), inserted the word "subsections" preceding "(c) and (d)" near the beginning of the subsection, substituted "a fine" for "such fine" near the end of the subsection, and made several punctuation changes near the middle of the subsection; substituted "a fine" for "such fine"

near the end of subsection (b); inserted the word "subsection" preceding "(a) of this section" near the beginning of subsection (c); and substituted "§ 46-12.5-4" for "§ 46-12.3-4" in subsection (c) in order to reflect the redesignation of chapter 12.3 of title 46 as chapter 12.5 of this title, which substitution was previously made in 1990 by the law revision officer of the joint committee on legislative services pursuant to § 43-2-2.1.

46-12.5-11. Emergency powers. — The director shall have all emergency powers and procedures set forth in § 46-12-10.

History of Section.

P.L. 1990, ch. 324, § 2.

46-12.5-12. Notices of violations and compliance orders. — (a) The director shall follow the procedures provided in § 42-17.1-2(u) in issuing any notice of violation or compliance order authorized pursuant to this chapter or any rules, regulations, or permits promulgated thereunder.

(b) Where an order of the director does not otherwise specify, the person against whom an order is entered shall, within seventy-two (72) hours of the receipt of the order and before proceeding to install a system or means to contain, abate, control, and remove the discharged oil, submit to the director a plan or a statement describing the system or means that the person intends to implement.

History of Section.

P.L. 1990, ch. 324, § 2.

46-12.5-13. Remedies cumulative. — All remedies provided by this chapter, or chapter 12.6 or 12.7 of this title, are cumulative, and the securing of relief, whether injunctive, civil, or criminal, under a section of this chapter, or chapter 12.6 or 12.7 of this title does not stop the state or any person from obtaining relief under any other section of this chapter, or chapter 12.6 or 12.7 of this title, or pursuant to any other provision of the general laws or the common law.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following the word "civil" near the beginning of the section and following "this title" near the end of the section; substituted "chapter 12.6 or chapter 12.7" for "chapter 12.4 or chapter 12.5" throughout the section to reflect the redesignation of chapters 12.4 and 12.5 of title 46 as chapters 12.6 and 12.7 of title 46, respectively, which substitution was previously made in 1990 by the law revision

officer of the joint committee on legislative services pursuant to § 43-2-2.1; and made several stylistic changes throughout the section.

Compiler's Notes. In 1990, the compiler substituted "chapter 12.6 or chapter 12.7" for "chapter 12.4 or chapter 12.5" throughout the section to reflect the redesignation of chapters 12.4 and 12.5 of title 46 as chapters 12.6 and 12.7 of title 46, respectively, by the law revision officer of the joint committee on legislative services, pursuant to § 43-2-2.1.

46-12.5-14. Inspections. — (a) The master of any vessel requiring a pilot shall, prior to entry into water of the state of Rhode Island, furnish to the pilot a copy of the coast guard certificate of compliance which shall be filed by the pilot with the director.

(b) Failure of the master to furnish the certificate of compliance or discrepancies therein shall empower the director to board and inspect the vessel.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) assigned the subsec-

tion designations, and inserted a comma following "pilot shall" near the beginning of subsection (a).

46-12.5-15. Oil discharge cleanup personnel, equipment, expenses. — In the absence of an alternative, the department, when feasible, shall enter into contracts with persons or private organizations to provide the personnel, equipment, or other services or supplies which may be required to carry out this chapter. Contracts under this section are governed by chapter 2 of title 37. When private contracting is not feasible, the department may establish and maintain at ports, harbors, or other locations in the state, the cleanup personnel, equipment, and supplies which, in its judgment, are necessary to carry out this chapter.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) inserted a comma following "absence of an alternative" near the beginning of the first sentence.

46-12.5-16. Compacts authorized. — The governor may execute supplementary agreements, reciprocal arrangements, or compacts with any other state or country, subject to the approval, if required by the United States Constitution, of the Congress of the United States, for the purpose of implementing this chapter.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) inserted a comma following "subject to the approval" near the middle of the section.

CHAPTER 1 GENERAL PROVISIONS

SECTION.

- 20-1-1. Legislative findings.
- 20-1-2. Authority over fish and wildlife.
- 20-1-3. Definitions.
- 20-1-4. Rules and regulations.
- 20-1-5. General enforcement powers.
- 20-1-6. Appointment and delegation of powers to conservation officers.
- 20-1-7. Deputy wardens.
- 20-1-8. Enforcement powers of director and conservation officers.
- 20-1-8.1. Procedures for seizure and forfeiture.
- 20-1-9. Operation of patrol boats.
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SECTION.

- command of a patrol boat.
- 20-1-11. Prosecution of violations.
- 20-1-12. Fixing of seasons and bag limits.
- 20-1-13. Publication and effective date of seasons and bag limits.
- 20-1-14. Control of fishing in Wallum Lake, Central Pond, and the James V. Turner Reservoir.
- 20-1-15. Entry of private property.
- 20-1-16. Penalty for violations.
- 20-1-17. Cooperation with other states.
- 20-1-18. Collector's permits.
- 20-1-19. Powers of enforcement of officers in waters between states.
- 20-1-20. Power to require reports.

SECTION.
20-1-21. Severability.

SECTION.
20-1-22, 20-1-23. [Repealed.]

20-1-1. Legislative findings. — The general assembly finds that the animal life inhabiting the lands of the state, its lakes, ponds, streams, and rivers, and the marine waters within its territorial jurisdiction, are a precious, renewable, natural resource of the state which, through application of enlightened management techniques, can be developed, preserved, and maintained for the beauty and mystery that wild animals bring to our environment.

The general assembly further finds that the management of fish and wildlife through the establishment of hunting and fishing seasons, the setting of size, catch, possession, and bag limits, the regulation of the manner of hunting and fishing, and the establishment of conservation policies should be pursued utilizing modern scientific techniques, having regard for the fluctuations of species populations, the effect of management practices on fish and wildlife, and the conservation and perpetuation of all species of fish and wildlife.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor changes in capitalization and punctuation throughout the section.

Repealed Sections. Former §§ 20-1-1 — 20-1-23 (G.L. 1896, ch. 170, § 3; P.L. 1899, ch. 678, §§ 2-4; P.L. 1901, ch. 809, § 39; P.L. 1901, ch. 853, §§ 2, 3, 5, 6; P.L. 1901, ch. 927, § 1; P.L. 1903, ch. 1098, § 1; P.L. 1909, ch. 381, § 9; G.L. 1909, ch. 136, §§ 21-23; G.L. 1909, ch. 203, §§ 2, 4, 6, 7; P.L. 1912, ch. 851, § 1; P.L. 1916, ch. 1385, § 2; P.L. 1917, ch. 1535, §§ 1, 2; G.L. 1923, ch. 137, §§ 19-21, 39; G.L. 1923, ch. 139, § 9; G.L. 1923, ch. 230, §§ 2, 4, 6, 7; G.L. 1923, ch. 235, § 55; P.L. 1934, ch. 2117, § 1; P.L. 1935, ch. 2250, § 149; P.L. 1936, ch. 2348, § 1; G.L. 1938, ch. 230, §§ 2-12; G.L. 1938, ch. 254, § 9; P.L. 1939, ch. 660, §§ 163, 168; P.L. 1939, ch. 718, § 11; P.L. 1940, ch. 908, § 1; P.L. 1949, ch. 2301, § 1; P.L. 1949, ch. 2357, § 1; P.L. 1953,

ch. 3157, § 1; P.L. 1954, ch. 3302, § 1; P.L. 1954, ch. 3358, §§ 1, 2; P.L. 1954, ch. 3400, § 1; G.L. 1956, §§ 20-1-22, 20-1-23; R.P.L. 1957, ch. 62, § 1; P.L. 1960, ch. 160, § 1; P.L. 1963, ch. 83, § 1; P.L. 1965, ch. 134, §§ 11, 12; P.L. 1967, ch. 184, § 4; P.L. 1969, ch. 169, § 1; P.L. 1972, ch. 37, § 1; P.L. 1973, ch. 11, § 1; P.L. 1978, ch. 229, § 2; P.L. 1979, ch. 133, § 1; P.L. 1980, ch. 208, § 2), general provisions, were repealed by P.L. 1981, ch. 197, § 2, effective January 1, 1982, and the present chapter on the same subject substituted therefor.

Section 7 of P.L. 1981, ch. 197 reads: "All rules and regulations or standards adopted, modified or repealed by the department of environmental management or the marine fisheries council and in effect on or before the effective date of this act [January 1, 1982] shall continue in full force and effect until subsequent action of the director of the marine fisheries council and shall be enforceable by the director."

20-1-2. Authority over fish and wildlife. — The general assembly hereby vests in the director of the department of environmental management authority and responsibility over the fish and wildlife of the state and, together with the marine fisheries council as hereinafter set forth, over the fish, lobsters, shellfish, and other biological resources of marine waters of the state.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor

changes in capitalization and punctuation throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. State fish and game commissioner:

Conn. Gen. Stat. § 26-3.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Immunity of director.

1. Constitutionality.

This section is not in violation of the due process clause for vagueness and overbroad-

ness. *Healey v. Bendick*, 628 F. Supp. 681 (D.R.I. 1986).

2. Immunity of Director.

The director of the department of environmental management is immune from injunctive or monetary actions for damages for action taken in his official capacity. *Healey v. Bendick*, 628 F. Supp. 681 (D.R.I. 1986).

20-1-3. Definitions. — (a) When used in this title, the following words and phrases shall have the following meanings, unless the context shall indicate another meaning:

(1) "Bushel" means a standard U.S. bushel, 2,150.4 cubic inches capacity.

(2) "Hinge width" means the distance between the convex apex of the right shell and the convex apex of the left shell.

(3) "Peck" means one-fourth ($\frac{1}{4}$) of a bushel.

(4) "Person" means an individual, corporation, partnership, or other legal entity.

(5) "Possession" means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. Such a decision must be made at the first practical opportunity.

(6) "Quart" means one thirty-second ($\frac{1}{32}$) of a bushel.

(7) "Resident" means an individual who has had his or her actual place of residence and has lived in the state of Rhode Island for a continuous period of not less than six (6) months.

(b) When used in this title, the following common names shall mean the animals designated by the following scientific names:

Alewife — *Pomolobus* or *Alosa pseudoharengus*

Bay quahaug — *Mercenaria mercenaria*

Bay scallop — *Argopecten irradians*

Blue crab — *Callinectes sapidus*

Blue mussel — *Mytilus edulis*

Conch/channel whelk — *Busycon canaliculatum*

Conch/nob whelk — *Busycon carica*

Deer — Virginia white tail deer, *Odocoileus virginianus*

Eel — *Anguilla rostrata*

Green crabs — *Carcinus maenas*

Jonah/northern crab — *Cancer borealis*

Lobster — *Homarus americanus*

Menhaden — *Brevoortia tyrannus*

Ocean quahaug — *Arctica islandica*

Oyster — *Crassostrea virginica*, *Ostrea edulis*

Rock crab — *Cancer irroratus*
 Smelt — *Osmerus mordax*
 Soft shell clam — *Mya arenaria*
 Striped bass — *Morone saxatilis*
 Surf clam or sea clam — *Spisula solidissima*.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1988, ch. 165, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) divided the section into two subsections, in order to separate the ordinary definitions from the list of common and scientific names; added the introductory

paragraph in subsection (b); inserted "or Alosa", and corrected the misspelling of "whelk" twice, in subsection (b); and made several minor changes in capitalization, punctuation, and style throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-4. Rules and regulations. — The director is authorized to promulgate, adopt, and enforce any and all rules and regulations deemed necessary to carry out duties and responsibilities under this title.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punc-

tuation change near the middle of the section.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-5. General enforcement powers. — The director and his duly authorized agents, employees, and designees shall protect the wild birds, wild animals, fisheries, and shell fisheries throughout the state and shall administer and enforce the provisions of this title and the rules and regulations adopted pursuant thereto and shall prosecute violations of these laws and rules and regulations.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "these laws" for "such laws" near the end of the section, and made two minor punctuation changes.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Cross References. Enforcement powers of director and conservation officers, § 20-1-8.

20-1-6. Appointment and delegation of powers to conservation officers. — The director shall appoint such a number of conservation officers as he or she may deem necessary for the detection and prosecution of any violations of the laws of this state enumerated in § 20-1-8. The director may delegate any and all of his or her powers and duties to each of these conservation officers who shall serve at the director's pleasure.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "a" following "such" in the first sentence, and made substitutions for the words "Said" and "such" in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Appointment of conservation officers:

Conn. Gen. Stat. § 26-5.

20-1-7. Deputy wardens. — The director may appoint such a number of deputy wardens as he or she may deem necessary. The deputy wardens shall not be authorized to carry pistols or revolvers but shall be authorized to detect violators of the laws of this state enumerated in § 20-1-8. Such detection shall be reported to the director who may proceed with the prosecution. Deputy wardens shall be given an identification badge by the director and shall serve at the director's pleasure.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "a" following "such" in the first sentence, and substi-

tuted "the director" for "said director" in the last sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-8. Enforcement powers of director and conservation officers. — The director, and each conservation officer, shall have the power:

- (a) To enforce all laws, rules, and regulations of this state pertaining to:
 - (1) Fish, wildlife, and all vertebrates, invertebrates and plants;
 - (2) Fresh water wetlands, dams, and resources;
 - (3) Areas and activities subject to the jurisdiction of the coastal resources management council;
 - (4) State parks, reservations, management areas, hatcheries, and game preserves, and any law of the state within state parks, reservations, management areas, and game preserves;
 - (5) Solid and hazardous waste transportation, storage, and disposal and any other laws of the state regarding solid and/or hazardous wastes;
 - (6) Boating safety, water safety, and drowning prevention;
 - (7) Water and air pollution and open burning;
 - (8) Firearms;
 - (9) Littering;
 - (10) Trees and forests, forestry, and protection of forests from fire hazards and trespass;
 - (11) Agriculture, farmland, and pest control;
- (b) To issue summonses and to execute all warrants and search warrants for the violation of the laws, rules, and regulations enumerated in subdivision (a) or (i) of this section;
- (c) To serve subpoenas issued for the trial or hearing of all offenses against the law, rules, and regulations enumerated in subdivision (a) or (i) of this section;
- (d) To arrest without a warrant any person found violating any law, rule, or regulation enumerated in subdivision (a) of this section, take that person before a court of competent jurisdiction, and detain that person in custody at the expense of the state until arraignment except when a summons can be issued in accordance with § 12-7-11;
- (e) To seize and take possession of all fish, shellfish, crustaceans, marine mammals, amphibians, reptiles, birds, and mammals in pos-

session or under control of any person or which have been shipped or are about to be shipped, at any time, in any manner, or for any purpose contrary to the laws of this state, and dispose of them at the discretion of the director;

(f) To seize all fishing tackle, firearms, shooting and hunting paraphernalia, hunting, fishing, or trapping licenses, traps, decoys, tongs, bullrakes, dredges, or other implements or appliances used in violation of any law, rule, or regulation relating to fish, shellfish, crustaceans, marine mammals, amphibians, reptiles, birds, and mammals; or any equipment, materials, tools, implements, samples of substances, or any other item used in the violation of any other law, rule, or regulation enumerated in subdivision (i) of this section, when making an arrest as found in the execution of a search warrant, and hold the seized item or items at owner's expense until the fine and costs imposed for the violation have been paid in full;

(g)(1) To go on board any boat or vessel engaged or believed to be engaged in fishing and examine any fishing, shellfish, scallop, lobster, multipurpose, or other license issued under this title.

(2) To go on board any boat or vessel engaged or believed to be engaged in fishing and to inspect that boat or vessel for compliance with the provisions of this title and any rules relative to the taking of fish, shellfish, crustacean marine mammals, amphibians, and reptiles. In the absence of probable cause to believe that a crime relative to the taking of such marine species has been, or is being, committed, any evidence obtained as the result of a boarding (other than for the purpose of examining a license) or of an inspection may not be used in a criminal prosecution.

(h) To carry firearms or other weapons, concealed or otherwise, in the course of and in performance of the duties of office;

(i) And to arrest without a warrant, to execute all warrants and search warrants, and to make and execute complaints within any district to the justice or clerk of the district court without recognizance or surety against any person for the following criminal offenses:

- (1) Assault;
- (2) Assault with a dangerous weapon;
- (3) Larceny;
- (4) Vandalism;
- (5) Obstructing officer in execution of duty.

Conservation officers shall be deemed "officer" within the meaning of § 11-32-1.

(j) It shall be a misdemeanor punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than thirty (30) days, or both, for any person to refuse to move or to stop on an oral command or order of a conservation officer, when the officer is acting in the performance of his or her duties.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1986, ch. 214, § 1; P.L. 1989, ch. 542, § 30.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542; §§ 1 and 30) inserted "them" near the end of subdivision (e); substituted "officer" for "peace officers" in subdivision (i)(5); and made several minor changes in capitalization, punctuation, and style, along with several substitutions for the words "such", "same", and "said", throughout the section; P.L. 1989, ch. 542, § 30.

Compiler's Notes. In 1989, following the reenactment of this title, in subdivision (i), the compiler capitalized the first word in the introductory language and deleted "of the general laws of Rhode Island" at the end of the last undesignated paragraph.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Enforcement powers:

Conn. Gen. Stat. §§ 26-3, 26-6.

20-1-8.1. Procedures for seizure and forfeiture. — Any vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment used in violation of any law, rule, or regulation relating to fish and wildlife, which, by provision of any section of this title, is subject to forfeiture to the state, shall be seized pursuant to § 20-1-8(f) and forfeited under the provisions of this section.

(a) The attorney general shall proceed pursuant to §§ 12-21-23 to 12-21-32, inclusive, to show cause why such vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment used in the knowing and willful violation of any law, rule, or regulation relating to fish and wildlife which, by provision of any section of this title, is subject to forfeiture to the state, may be forfeited to the use of or the sale of the department on producing due proof that the vessel, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any other implements, appliances, or equipment was used in such violation.

(b) Whenever property is forfeited under this section and the specific provision of this title requiring forfeiture for a particular offense, the department may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required by this title to be destroyed and which is not harmful to the public; but the proceeds of any such sale, after first deducting the amount sufficient for all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and advertising and court costs, shall be paid to the general treasurer for the use of the state.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor changes in punctuation and style throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Forfeiture:

Conn. Gen. Stat. § 26-129.

Mass. Ann. Laws ch. 131, § 55.

20-1-9. Operation of patrol boats. — The general assembly shall annually appropriate such sum as it may deem necessary to patrol and police the shellfish grounds, check licenses of fishermen, protect the scallop areas, collect animal specimens, and execute special work incidental to the lobster and other shellfisheries and enforce the provisions of chapter 22 of title 46, this sum to be expended under the direction of the director of the department of environmental management for the purpose of maintaining and operating patrol boats and their crews. The controller is hereby authorized and directed to draw orders upon the general treasurer for the payment of such sum or sums or so much thereof as may be required from time to time upon the receipt by the controller of proper vouchers approved by the director.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctu-

ation change, and substituted "this sum" for "said sum", in the first sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-10. Obligation of vessels to heave-to on command of a patrol boat. — (a) Every person operating a boat or vessel in Rhode Island territorial waters who shall fail to immediately heave-to upon a shouted command or a flare fired into the air from a marine patrol boat operated by the department of environmental management and carrying the identification "Department of Environmental Management, State of Rhode Island" shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500).

(b) Every person who shall, while aboard a boat or vessel in Rhode Island territorial waters which has been ordered to heave-to upon shouted command or a flare fired into the air from a marine patrol boat operated by the department of environmental management and carrying the identification "Department of Environmental Management, State of Rhode Island," dump, destroy, or throw anything from the vessel or boat shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500).

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) deleted the word "or" before "dump" in subsection (b).
The 1989 Reenactment (P.L. 1989, ch. 542,

§ 1) substituted "the vessel" for "said vessel", and made two minor punctuation changes near the end of subsection (b).

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-11. Prosecution of violations. — It shall be the duty of the attorney general to conduct the prosecution of all court proceedings brought by the director as requested by the director.

History of Section.

P.L. 1981, ch. 197, § 3.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Cross References. Penalties for violations, § 20-1-16.

20-1-12. Fixing of seasons and bag limits. — The director is hereby authorized to adopt regulations fixing seasons, bag limits, size limits, possession limits, and methods of taking on any species of fish, game, bird, or other wild animal occurring within the state, other than marine species regulated by the marine fisheries council. Such regulations may prohibit the taking, holding, or possession of any species, prohibit the taking, molestation, or disturbance in any way of nesting, breeding, or feeding sites of any species and/or prohibit, control, or regulate any commercial use, importation into the state, or exportation from the state of any species. Such regulations may be of statewide applicability or may be applicable in any specified locality or localities within the state when the director shall find after investigation that the regulations are appropriate. The regulations shall be adopted only after the holding of a public hearing subject to the provisions of the Administrative Procedures Act, chapter 35 of title 42.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor punctuation changes in the first two sentences; made a substitution for the word "such" in each of the last two sentences; and added "chapter 35 of title 42" at the end of the last sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Regulations fixing seasons, bag limits, etc.:

Conn. Gen. Stat. §§ 26-66, 26-72, 26-86a, 26-111, 26-112.

Mass. Ann. Laws ch. 131, § 5.

20-1-13. Publication and effective date of seasons and bag limits. — Notice of the director's intention to adopt regulations pursuant to § 20-1-12 and the holding of a public hearing thereon shall be published in at least one newspaper of general statewide circulation, not less than twenty (20) days prior to the date of the public hearing. Such regulations shall remain in effect not longer than one year following the date of their effectiveness.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "the public hearing" for "such public hearing" at the end of the first sentence, made a minor

change in punctuation in the first sentence, and made a minor stylistic change in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-14. Control of fishing in Wallum Lake, Central Pond, and the James V. Turner Reservoir. — The director may make suitable rules and regulations governing fishing in Wallum Lake in Burrillville and Central Pond and the James V. Turner Reservoir in East Providence, and for this purpose may confer with the division of

fisheries and wildlife in the department of natural resources of the commonwealth of Massachusetts concerning the fishing privileges of residents of Massachusetts in those bodies of water.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor capitalization changes in the section catch-

line and throughout the section; and made substitutions for the words "such" and "said".

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-15. Entry of private property. — The director of environmental management and each duly authorized employee of that department may in the discharge of his or her duties under this title enter upon and pass over private property without liability for trespass. If feasible the employee shall give notice to the property owner.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctuation change in the first sentence; and

made substitutions for the words "said" and "such" in both sentences.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-16. Penalty for violations. — Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days or both.

History of Section.

P.L. 1981, ch. 197, § 3.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-17. Cooperation with other states. — The director may cooperate with the fish and wildlife commissioners or other similar bodies or agencies of other states in carrying out the purpose of this title.

History of Section.

P.L. 1981, ch. 197, § 3.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

20-1-18. Collector's permits. — Notwithstanding any other restriction or prohibition set forth in this title, the director is authorized to issue special permits for the taking, handling, and/or possession of any species of wild animal, of any size, age, and numbers as may be appropriate to persons for the purpose of carrying out scientific experiments and cultivation projects for which the director has responsibility. The director may require an applicant to provide such information as he or she deems necessary to ascertain that the person is involved in a bona fide experiment or project. Failure to abide by the provisions of any permit or failure to report any information required by the director shall be cause for suspension or revocation of the permit.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1986, ch. 209, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor punctuation changes in the first sentence; and made several substitutions for the word

"such" in the last two sentences.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Scientific purposes:

Conn. Gen. Stat. §§ 26-40d, 26-60.

NOTES TO DECISIONS**1. Legislative Intent.**

The legislature intended the language "Notwithstanding any other restriction or prohibition set forth in this title" to allow the director of the department of environmental

management to issue collector's permits for scientific purposes, regardless of the restrictions imposed on jacklighting in § 20-15-1(g). *Defenders of Animals, Inc. v. Department of Env'tl. Mgt.*, 553 A.2d 541 (R.I. 1989).

20-1-19. Powers of enforcement of officers in waters between states. — If and when the states of New York and Connecticut and the commonwealth of Massachusetts or any of them shall enact similar laws for the arrest and punishment for violations of the conservation or fish laws of this state or the state so enacting the similar law, committed or attempted to be committed by any person or persons fishing in waters lying between the states, any wildlife protector, fish warden, or other person of either state who is authorized to make arrests for violations of the conservation or fish laws of that state shall have power and authority to make arrest on any part of waters between the states or the shores thereof and to take any person or persons so arrested for trial to the state in which the violation was committed and there to prosecute the person or persons according to the laws of that state.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "for violations" for "of violations" near the beginning of the section; and made several minor changes in capitalization and punctuation,

along with several substitutions for the word "such", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

Comparative Legislation. Enforcement powers in boundary waters:

Conn. Gen. Stat. § 26-26.

20-1-20. Power to require reports. — When deemed necessary to carry out his or her duties under this title, the director may require that reports detailing hunt, catch, effort, and other data be provided him or her by any person who hunts or fishes in this state or who lands his or her catch in this state. These individual reports and other data shall remain confidential and may only be disseminated to the public or persons outside the department in a statistical format.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctuation change in the first sentence, and sub-

stituted "These" for "Such" at the beginning of the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-1-1.

CHAPTER 6

SHELLFISH

SECTION.		SECTION.	
20-6-1.	Taking of shellfish without a license.	20-6-16.	Scallops — Commercial allowance.
20-6-2.	Oysters — Open season.	20-6-17.	Taking and possession of seed scallops.
20-6-3.	Scallops — Open season.	20-6-18.	Sale of scallops during closed season.
20-6-4.	Registration of boats and display of numbers.	20-6-19.	Number, size and handling of dredges.
20-6-5.	Registered boat operated only by licensee.	20-6-20.	Towing of dredge during closed season.
20-6-6.	Registration of boat used in taking of molluscan shellfish.	20-6-21.	Opening shellfish on water.
20-6-7.	Use of dredges.	20-6-22.	Transplanting of seed scallops.
20-6-8.	Opening areas for quahaug dredging.	20-6-23.	Penalty for taking shellfish at night.
20-6-9.	Penalty for exceeding allowance without license.	20-6-24.	License for shellfish buyers — Suspension or revocation.
20-6-10.	Allowance of shellfish taking under license.	20-6-25.	Disposition of monies received under this chapter.
20-6-11.	Minimum size of shellfish — Penalty.	20-6-26.	Transfer of shellfish from uncertified waters.
20-6-12.	Maximum take for dredged quahaugs.	20-6-27.	Dredging, raking, and tonging.
20-6-13.	General penalties for violations — Impoundment of boats.	20-6-28.	Cost of transfer of shellfish.
20-6-14.	Costs of seizure and impounding.	20-6-29.	Penalty for improper taking of transferred shellfish.
20-6-15.	Soft-shelled clams — Method of taking.		

20-6-1. Taking of shellfish without a license. — Unless otherwise specified in regulations adopted by the marine fisheries council, any resident of this state may without a license take in any one day during the open season therefor, if applicable, not more than one-half ($\frac{1}{2}$) bushel each of quahaugs, soft shell clams, sea clams, oysters, and mussels, and not more than one bushel of scallops; provided that those quahaugs, soft shell clams, sea clams, oysters, mussels, or scallops shall not be sold or offered for sale.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "a license take" for "license taken" and "those quahaugs" for "such quahaugs"; and made several minor changes in punctuation and style throughout the section.

Repealed Sections. Former §§ 20-6-1 — 20-6-4 (G.L. 1896, ch. 171, § 26; G.L. 1909, ch. 207, §§ 32, 46; P.L. 1915, ch. 1244, § 1; G.L. 1923, ch. 235, §§ 37, 47, 54; P.L. 1931, ch. 1692, § 1; P.L. 1934, ch. 2093, §§ 1, 2; G.L. 1938, ch. 245, §§ 1-4; P.L. 1939, ch. 737, § 1; P.L. 1944, ch. 1528, § 1; P.L. 1953, ch. 3048, § 1; R.P.L. 1957, ch. 96, § 1; P.L. 1958,

ch. 80, § 1; P.L. 1958, ch. 179, § 1; P.L. 1962, ch. 126, § 1), concerning fishing by nonresidents, were repealed effective January 1, 1982 by P.L. 1981, ch. 197, § 2. For provisions on the same subject as that of former §§ 20-6-1 — 20-6-4, see §§ 20-2-1 — 20-2-31.

Cross References. Taking shellfish at night, § 20-6-23.

Comparative Legislation. Shellfish:

Conn. Gen. Stat. § 26-192 et seq., § 26-239 et seq.

Mass. Ann. Laws ch. 130, § 52 et seq., § 57 et seq., § 69 et seq., § 74 et seq.

Collateral References. Power of game warden or commission as to opening or closing season. 34 A.L.R. 832.

20-6-2. Oysters — Open season. — Unless otherwise specified in regulations adopted by the marine fisheries council, the open season for taking oysters from the free and common oyster fisheries in any of the waters of this state shall be between the fifteenth day of September and the fifteenth day of May. Any person who shall take any oysters or expose any oysters for sale taken from the free and common fisheries in state waters in violation of the foregoing provisions shall upon conviction be fined no less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and costs for each offense.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "in state

waters" for "aforesaid" in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-6-1.

20-6-3. Scallops — Open season. — Unless otherwise specified in regulations adopted by the marine fisheries council, the open season for taking scallops from the waters of the state shall be between sunrise of the first day of October and sunset on the last day of December of every year. Any person taking scallops in violation of this section shall upon conviction be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned not more than thirty (30) days for each offense.

History of Section.

P.L. 1981, ch. 197, § 3.

Repealed Sections. For repeal of former section, see note to § 20-6-1.

Cross References. Taking shellfish at night. § 20-6-23.

Collateral References. Power of game warden or commission as to opening or closing season. 34 A.L.R. 832.

20-6-4. Registration of boats and display of numbers. — No boat shall be used in the taking of quahaugs by dredge or the commercial taking of scallops unless that boat has been registered with the director of environmental management. Each boat so registered shall be issued a certificate of registration and assigned a number, which number shall be displayed on a flat surface in a conspicuous place upon the port side while the boat is engaged in taking quahaugs or scallops.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) added "of environmental management" at the end of the first

sentence, and made substitutions for the words "such" and "said" throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-6-1.

20-6-5. Registered boat operated only by licensee. — Each boat registered pursuant to § 20-6-4 shall be operated only by the person to whom that boat was registered, provided that person is duly licensed for the activity engaged in. Each boat so registered and used shall be limited, no matter how many persons are on board, to the catch limit established for one licensee.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made two substitu-

tions for the word "such" in the first sentence, and made a minor stylistic change in the second sentence.

20-6-6. Registration of boat used in taking of molluscan shellfish. — Each boat used in the commercial taking of oysters, soft shell clams, surf clams, mussels, or quahaugs, other than by dredging, shall be registered with the director of environmental management. Upon registration, and the payment of a fee of two dollars (\$2.00), the boat shall be issued a registration number to be displayed on the boat while engaged in shellfishing.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctuation change near the middle of the first

sentence, and added "of environmental management" at the end of that sentence; and made two substitutions for the word "such" in the second sentence.

20-6-7. Use of dredges. — Except as hereinafter provided and unless otherwise specified by regulation of the marine fisheries council, no person shall take any oysters, bay quahaugs, or soft-shell clams from the waters of this state by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats. No licensed person shall cast, haul, or have overboard any dredges while fishing for oysters, bay quahaugs, or soft-shell clams from the free and common fisheries of this state, nor shall any licensed boat be used for fishing oysters, soft-shell clams, or bay quahaugs with dredges, except as herein provided; provided, however, that any person having a license issued under this title for the taking of scallops may use a dredge or dredges, not exceeding six (6) in number nor exceeding twenty-eight inches (28") each in width, for that purpose, provided that the licensee shall immediately return all oysters, soft-shell clams, or bay quahaugs caught by the licensee to the waters from which they were taken. Any licensed boat may be used in dredging for mussels by the licensee of that boat, the licensee having first obtained a permit from the director of environmental management allowing him or her so to do; provided the licensee, while dredging for mussels under the permit granted the licensee by the director, shall immediately return all oysters, scallops, or bay quahaugs caught by him or her to the waters from which they were taken. The fact of any licensed person being found with oysters, scallops, or bay quahaugs in his or her possession while dredging for mussels shall be prima facie evidence that person was fishing in violation of the provisions of this chapter and shall be subject to the penalties and fines imposed thereby. Any resident dredging for surf clams or skimmers, so-called, shall not be in violation of this section if that dredging is done southerly of the coastline of Little Compton, southerly of a line extending from Church point, in the town of Little Compton, to Flint point on Aquidneck Island, southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle

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Hill point on Aquidneck Island, to southwest point of Conanicut Island to Boennet point, Narragansett, easterly of the coastline of the town of Narragansett, southerly of the coastline of the towns of Narragansett, South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this section, coastline refers to the land facing the open sea.

History of Section.

P.L. 1981, ch. 197, § 3.
Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several minor changes in capitalization and punctuation along with several substitutions for the

words "such" and "said", throughout the section; and inserted "the" preceding "marine" in the first sentence.

Cross References. Use of dredges in taking scallops, §§ 20-6-19, 20-6-20.

20-6-8. Opening areas for quahaug dredging. — Pursuant to good conservation practices, the marine fisheries council shall be authorized to open areas of the public waters of the state for taking quahaugs under license by a registered boat, by dredges, rakes, or other apparatus operated by mechanical power or hauled by power boats, and shall be authorized to close those areas at any time there is a danger of depletion of quahaugs or when flagrant violations of this chapter occur.

History of Section.

P.L. 1981, ch. 197, § 3.
Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) substituted "those areas" for "such areas", and made two minor punctuation changes.

20-6-9. Penalty for exceeding allowance without license. — Every person who shall take in any one day more than one-half ($1/2$) bushel each of oysters, bay quahaugs, soft shell clams, sea clams, or mussels from the free and common fisheries of this state, without a license therefor, shall be fined upon conviction not exceeding fifty dollars (\$50.00) and costs for each one-half ($1/2$) bushel or fraction thereof above the stated limits or be imprisoned not more than thirty (30) days or both.

History of Section.

P.L. 1981, ch. 197, § 3.
Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "there-

for" for "aforesaid" near the middle of the section; and made several minor changes in punctuation and style throughout the section.

20-6-10. Allowance of shellfish taking under license. — (a) Unless otherwise specified by regulation of the marine fisheries council, a holder of a commercial shellfishing license may take and/or possess, in any one day, up to twelve (12) bushels of quahaugs, twelve (12) bushels of soft-shell clams, and three (3) bushels of oysters.

(b) A holder of a non-resident shellfishing license may take in any one day not more than one peck each of oysters, quahaugs, soft-shell clams, surf clams, or mussels. Any person taking more than these allowances in any one day shall be fined upon conviction one hun-

dred dollars (\$100) for each bushel or part of a bushel exceeding the prescribed quantity or be imprisoned for not more than thirty (30) days or both.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1987, ch. 254, § 3.

(P.L. 1989, ch. 542, § 1) added the subsection designations, and made a minor punctuation change in the first sentence of subsection (b).

Reenactments. The 1989 Reenactment

20-6-11. Minimum size of shellfish — Penalty. — No person shall take and/or possess any quahaugs less than one inch (1") shell thickness (hinge width), soft-shell clams or mussels of a diameter less than one and one-half inches (1½") taking the maximum shell diameter, or any oysters measuring less than three inches (3") measured parallel to the long axis of the oyster, unless greater minimum sizes are established by the marine fisheries council. Any person who takes and/or possesses shellfish of less than the minimum size, upon conviction, shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each and every fifteen (15) shellfish taken. Additionally, any person who takes and/or possesses shellfish of less than the minimum size commingled and/or otherwise stored or contained with shellfish of not less than the minimum size, where the percentage of the less than minimum size shellfish is not less than ten percent (10%) of the total piece count of the commingled and/or otherwise stored or contained package, shipment, or container shall be subject to seizure and/or forfeiture of the entire commingled and/or otherwise stored or contained package, shipment, or container, in accordance with the provisions of §§ 21-1-8(e), (f) and 20-1-8.1.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1988, ch. 166, § 1; P.L. 1989, ch. 413, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "shellfish" for "quahaugs, soft shell clams, mussels" in the section catchline; and made a minor stylistic change in the first sentence.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1989 reenactment of title 19 by P.L. 1989, ch. 542, which were not included in the 1989 amend-

ment. For the extent of the reenactment changes, see the reenactment note above.

As amended by P.L. 1989, ch. 413, § 1, the word "and" near the beginning of the last sentence contained a typographical error. Also, in 1989, following the 1989 amendment, in the last sentence, the compiler made two minor punctuation changes and deleted "of the general laws" at the end.

Comparative Legislation. Size limits:

Conn. Gen. Stat. §§ 26-235, 26-252.

Mass. Ann. Laws ch. 130, § 69.

20-6-12. Maximum take for dredged quahaugs. — Any person licensed to take quahaugs by dredge, rake, or other apparatus operated by power or hauled by a power boat may take and possess, between sunrise and sunset of any one day, thirty (30) bushels of quahaugs, unless a different amount is specified by regulation of the marine fisheries council. Any person taking more than the prescribed quantity shall be fined upon conviction not more than one

hundred dollars (\$100) for each bushel exceeding the prescribed quantity, or be imprisoned not more than thirty (30) days, or both.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "a" preced-

ing "power" in the first sentence; and made several minor changes in punctuation and style throughout the section.

20-6-13. General penalties for violations — Impoundment of boats. — Any person who shall without a license take quahaugs by dredge, or any person who shall violate any suspension of the director of environmental management made with respect to quahaug dredging or who shall violate any provisions of this chapter for which a penalty is not otherwise provided, shall upon conviction for the first offense be fined two hundred fifty dollars (\$250) and the director may seize, hold, and impound at the owner's expense, in one of three (3) commercial shipyards submitting the lowest bid, for a period of not less than thirty (30) days nor more than sixty (60) days, any power boat used in any such violation of this section together with its dredges, rakes, and equipment. Any person convicted of a subsequent violation or violations of the provisions of this section shall be imprisoned for thirty (30) days and the director of environmental management may seize, hold, and impound at the owner's expense, in a commercial shipyard for a period of not less than ninety (90) nor more than one hundred twenty (120) days, any power boat used in any such violation of this chapter together with its dredges, rakes, and equipment.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "the director" for "said director" near the middle of the first sentence; and made several minor

changes in punctuation and style throughout the section.

Collateral References. Jury trial in case of seizure of nets, traps, boats, etc. alleged to have been used illegally. 17 A.L.R. 574, 50 A.L.R. 97.

20-6-14. Costs of seizure and impounding. — Any costs incurred by the seizure and impounding of power boats by authority of § 20-6-13 shall be assessed against the owner or owners of those boats and no boats so seized and impounded shall be released to any claimant unless and until any costs incurred by reason of their seizure and impounding shall have been paid.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made several substitutions for the words "said" and "such" throughout the section.

20-6-15. Soft-shelled clams — Method of taking. — No person, either as principal, agent, or employee, shall dig or take by any method other than by forks, rakes, hoes, tongs, or any other device operated by hand, from any of the waters of this state, any soft-shelled clam. Any violation of the provisions of this section shall be

punishable by a fine of not less than ten (\$10.00) nor more than fifty dollars (\$50.00).

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "any" pre-

ceding "other" in the first sentence, and at the beginning of the second sentence; and made several minor changes in punctuation throughout the section.

20-6-16. Scallops — Commercial allowance. — Unless otherwise specified by regulation of the marine fisheries council, a person holding a license for the commercial taking of scallops shall take in any one day not more than ten (10) bushels of scallops, including shells, from the waters of the state.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made a minor stylistic change near the end of the section.

20-6-17. Taking and possession of seed scallops. — Every person who shall take any seed scallops, and who shall fail to restore them as soon as possible to their natural beds in the water from which taken, shall be fined not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100) or be imprisoned not more than thirty (30) days or both for each offense. For the purpose of this chapter, a seed scallop shall be a scallop with a bright, thin, slightly curved shell with no foreign adherent, the shell having no well-defined raised annual growth line, and the scallop being less than one year old.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "who shall" preceding "fail" in the first sentence, and "a" preceding "seed" in the second sentence; sub-

stituted "each offense" for "each such offense" in the first sentence, and "the scallop" for "the scallops" in the second sentence; and made a minor change in punctuation in the first sentence and a minor change in style in the second sentence.

20-6-18. Sale of scallops during closed season. — Any person who shall offer for sale any scallops other than during the open season for taking scallops shall be fined not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100) for each quart offered for sale, or be imprisoned for not more than thirty (30) days, or both; provided, however, it shall be lawful to have in possession or offer for sale frozen scallops legally taken.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made a minor punctuation change near the end of the section.

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20-6-19. Number, size, and handling of dredges. — Unless otherwise specified by regulation of the marine fisheries council, no person engaged in the taking of scallops shall use more than six (6) single dredges, the blades of which shall not be more than twenty-eight inches (28") in width, and the bag to be used shall not be more than thirty-six inches (36") in length. Every single dredge shall be towed and hauled aboard the registered boat individually.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor punctuation changes in the section catchline and in the first sentence, inserted "the" preceding

"taking" in the first sentence, and deleted "said" preceding "registered" in the second sentence.

Cross References. Use of dredges, § 20-6-7.

20-6-20. Towing of dredge during closed season. — Any person who tows a scallop dredge in the waters of the state during the season closed to the taking of scallops shall upon conviction be fined not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100) or imprisoned not more than thirty (30) days or both for each offense.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "the" pre-

ceding "taking" near the middle of the section.

Cross References. Use of dredges, § 20-6-7.

20-6-21. Opening shellfish on water. — No person shall possess the meats of more than six (6) shellfish while shellfishing on the waters of the state or throw the shells of open scallops onto the scallop beds.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1987, ch. 254, § 3.

20-6-22. Transplanting of seed scallops. — The director of environmental management may conduct such scallop transplant programs as may be appropriate to enhance scallop stock, seed depleted areas, and further the scallop harvest in the state.

History of Section.

P.L. 1981, ch. 197, § 3.

20-6-23. Penalty for taking shellfish at night. — Notwithstanding the provisions of any general or public law to the contrary, any person who shall take any oysters, clams, quahaugs, scallops, or mussels from any of the waters of this state during the hours between sundown and sunrise shall upon conviction be punished by a fine of not more than one thousand dollars (\$1000) or by imprisonment for not more than three (3) years or by both such fine and

imprisonment; and any boat, dredges, rakes, or other equipment used in any such violation shall be forfeited to the state.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1988, ch. 166, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made two minor punctuation changes.

20-6-24. License for shellfish buyers — Suspension or revocation. — (a) No person, partnership, firm, association, or corporation shall barter or trade in shellfish taken by persons licensed under this chapter unless a license so to do has been obtained from the director of environmental management.

(b) Any licensee operating under the provisions of this section shall purchase shellfish from licensed persons only and shall purchase or possess only those shellfish legally taken or possessed.

(c) The director shall issue and enforce rules and regulations and orders governing bartering and trading in shellfish by licensed fishers of shellfish, licensed shellfish buyers and other persons, partnerships, firms, associations, or corporations.

(d) The director may suspend, revoke, or deny the license of a shellfish buyer or fisher of shellfish for the violation of any provision of this title or the rules, regulations, or orders adopted or issued pursuant thereto.

(e) Any person aggrieved by the decision of the director may appeal the decision pursuant to the provisions of the Administrative Procedures Act, chapter 35 of title 42.

(f) The director of the department of environmental management and his or her agents are authorized to enter and inspect the business premises, appurtenant structures, vehicles, or vessels of any shellfish buyer and to inspect records maintained by a shellfish buyer for the purpose of determining compliance with the provisions of this section and any rules, regulations, or orders issued thereunder, and no person shall interfere with or obstruct the entrance or inspection of the director or his or her agents of those business premises, appurtenant structures, vehicles, or vessels.

(g) Any violation of the provisions of this section or any rule, regulation, or order adopted hereunder shall be subject to the penalties prescribed in § 20-1-16.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1983, ch. 173, § 3; P.L. 1986, ch. 214, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) designated the former introductory paragraph as subsection (a), while redesignating former subdivisions (a) to (f) as present subsections (b) to (g); in-

serted "the" preceding "violation" and "rules" in subsection (d), and "Any" at the beginning of subsection (f); made several substitutions for the words "said", "same", and "such" in subsections (e) and (f); and made several minor changes in punctuation throughout the section.

20-6-25. Disposition of monies received under this chapter. — All monies derived from payments received for fishing licenses required under the provisions of this chapter shall be deposited with the general treasurer, and the general assembly shall annually appropriate such a sum as it may deem necessary for the protection, cultivation, research, and management of shellfish; and the state controller is hereby authorized and directed to draw his or her orders upon the general treasurer for payment of such sums as may be necessary from time to time upon receipt by the controller of duly authenticated vouchers presented by the director of the department of environmental management; provided, however, nothing in this section shall be construed to deprive the licensing agents of their recording fees.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) inserted "a" preceding "sum", and made a minor change in punctuation near the middle of the section.

20-6-26. Transfer of shellfish from uncertified waters. — The director of environmental management is authorized and directed, after requiring all necessary safeguards, to transfer shellfish from uncertified waters of the state to approved areas. The director may make rules and regulations governing the reharvest of those shellfish to the best economical benefit of the state after all necessary safeguards to insure their cleanliness.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) substituted "those shellfish" for "such shellfish" in the second sentence.

20-6-27. Dredging, raking, and tonging. — Those areas to which the shellfish are transferred shall be marked out and dredging, raking, or tonging on them shall be prohibited except under the special direction of the director.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1988, ch. 166, § 1.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made minor punctuation changes in the section catchline and in the section.

20-6-28. Cost of transfer of shellfish. — For the transfer of shellfish pursuant to § 20-6-26, the director is herewith authorized to hire dredge boats or handrakers and to set the rate of payment. Any shellfish so transferred may be sold by the director, and the proceeds of that sale shall be retained under the control of the director for the purpose of assisting in the cost of the transfer of shellfish from uncertified waters to approved areas from time to time as the transfer shall become necessary or expedient.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1989, ch. 542, § 32.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "shellfish

pursuant to § 20-6-26" for "these shellfish" in the first sentence; and made substitutions for the words "said", "such", and "same" in the second sentence.

20-6-29. Penalty for improper taking of transferred shellfish. — Any person violating rules or regulations promulgated by the director of environmental management as provided for in §§ 20-6-26 to 20-6-28, inclusive, shall upon conviction therefor be subject to a fine not exceeding five hundred dollars (\$500) or imprisoned for not more than thirty (30) days or both.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made a minor stylistic change near the middle of the section.

CHAPTER 7

LOBSTERS AND OTHER CRUSTACEANS

SECTION.		SECTION.	
20-7-1.	License required for taking of lobsters.	20-7-10.	Minimum size of lobsters taken — Egg-bearing females.
20-7-2.	Taking of lobsters by commercial fishing vessels.	20-7-11.	Buoying of pots — Escape vents.
20-7-3.	Noncommercial lobster licenses.	20-7-11.1.	Lobster pots — Color scheme required.
20-7-4.	Diver's lobster license.	20-7-12.	Removal of branded numbers from lobster pots.
20-7-5.	Seller's license.	20-7-12.1.	Unauthorized possession and/or transfer of pots and traps.
20-7-6.	Use of license by agent or employee.	20-7-13.	Raising pots at night.
20-7-7.	Suspension and revocation of licenses.	20-7-14.	Mutilation of uncooked lobsters.
20-7-7.1.	Administrative suspension/revocation of licenses — Penalties — Appeal.	20-7-15.	Methods of taking blue crabs — Nonresidents.
20-7-8.	Exhibition of certificate.	20-7-16.	Egg-bearing blue crabs — Minimum size.
20-7-9.	Report of lobsters taken.	20-7-17.	Violations as to blue crabs.

20-7-1. License required for taking of lobsters. — No person either as principal, agent, or servant shall at any time catch or take any lobster from any of the waters in the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise, or draw in or from any of those waters or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters any pot or other contrivance, designed or adapted for the catching or taking of lobsters unless licensed to do so.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) deleted "Penalty" at the end of the section catchline; and made several minor punctuation changes, along with several substitutions for the word "said", throughout the section.

Repealed Sections. Former §§ 20-7-1 —

20-7-6 (P.L. 1953, ch. 3144, §§ 1-4; P.L. 1960, ch. 184, § 1; P.L. 1968, ch. 159, §§ 1, 2; P.L. 1975, ch. 155, § 1; P.L. 1976, ch. 267, § 1; P.L. 1979, ch. 196, § 2), concerning regulation and reports of commercial fisheries, were repealed effective January 1, 1982 by P.L. 1981, ch. 197, § 2. For provisions on the same subject as that of former §§ 20-7-1 — 20-7-6, see §§ 20-4-1 — 20-4-12.

NOTES TO DECISIONS

1. Constitutionality.

Former § 20-12-1 (requiring licenses for taking of lobsters) was a valid exercise of the police power and was not, by requiring a li-

cense, in violation of U.S. Const., Art. IV, § 2 or Amend. 14, or R.I. Const., Art. I, § 17. *State v. Kofines*, 33 R.I. 211, 80 A. 432 (1911).

20-7-2. Taking of lobsters by commercial fishing vessels. — No operator of a Rhode Island registered boat engaged in trawling for fin fish in Rhode Island territorial waters may retain and sell any lobsters taken unless that operator shall have a commercial lobster license.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "any lob-

sters taken unless that" for "lobsters taken unless such".

Repealed Sections. For repeal of former section, see note to § 20-7-1.

20-7-3. Noncommercial lobster licenses. — A holder of a non-commercial lobster license may set, place, or maintain in the water at any one time not more than five (5) lobster pots or traps. A non-commercial lobster licensee shall not offer for sale or sell lobsters.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor change in punctuation, and a minor change in style,

in the first sentence; and substituted "A non-commercial lobster" for "Such" in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-7-1.

20-7-4. Diver's lobster license. — A holder of a diver's license shall take no more than eight (8) lobsters in any one day. It shall be unlawful for any diver to use a spear, gig, gaff, or other penetrating device to harvest lobsters or while diving to set, open or tend lobster pots. It shall be unlawful for lobsters taken by divers to be sold or offered for sale.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor stylistic change in the first sentence, and made a

minor punctuation change in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-7-1.

20-7-5. Seller's license. — Any person who shall have charge of a vessel carrying lobsters who lands in the state of Rhode Island and who is not licensed under any of the provisions of this chapter shall be required to have a seller's license. Any person violating the provisions of this section shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than thirty (30) days or both.

History of Section.

P.L. 1981, ch. 197, § 3.

Repealed Sections. For repeal of former

section, see note to § 20-7-1.

20-7-6. Use of license by agent or employee. — If any person to whom a seller's or a commercial lobster license shall be granted shall be incapacitated for any reason from using that license, that person may permit his or her agent or employee, if a citizen of the United States, to perform such duties under the license as may be necessary during the period of his or her incapacity, provided that the incapacitated licensee has notified the director of environmental management prior to the transfer of those duties.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "of environmental management", substituted "the trans-

fer of those duties" for "such transfer", and made two substitutions for the word "said".

Repealed Sections. For repeal of former section, see note to § 20-7-1.

20-7-7. Suspension and revocation of licenses. — (a) If a person licensed under this chapter is convicted of any of the offenses hereinafter stated, his or her license shall be suspended for the periods hereinafter enumerated:

(1) Possession of ten (10) or more undersize lobsters but not more than nineteen (19) in violation of § 20-7-10, one month;

(2) Possession of twenty (20) or more undersize lobsters in violation of § 20-7-10, one year;

(3) Possession of mutilated lobsters or lobster meat in violation of § 20-7-14, one year;

(4) Possession of one or more brushed female berried lobsters in violation of § 20-7-10, one year;

(5) Possession of ten (10) or more egg-bearing female lobsters in violation of § 20-7-10, one year;

(6) Unauthorized raising of another's lobster pots in violation of § 20-4-8, one year;

(7) Use or possession of a lobster pot from which the markings or branded numbers have been removed, altered or obliterated in violation of § 20-7-12, one year;

(8) Failure to file reports of lobsters taken as required by § 20-7-9, one year.

(b) Any person whose license is so suspended shall not engage in the lobster fishery of this state during the specified period of suspension. Any person who is convicted of engaging in the lobster fishery during the specified period of suspension shall be fined five thousand dollars (\$5,000) or imprisoned for thirty (30) days, or both. The license of any person convicted a second time of any of the offenses set forth in subdivisions (1) through (8) of subsection (a) shall be revoked for three (3) years and the person whose license is revoked shall not engage in the lobster fishery of this state in any way while the revocation is in force, under a penalty of sixty (60) days' imprisonment or a fine of ten thousand dollars (\$10,000) or both, for each offense.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1987, ch. 254, § 4.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) changed the reference in subsection (a)(1) from "§ 20-7-19" to "§ 20-7-10", the reference in subsection (a)(3) from "§ 20-12-11" to "§ 20-7-14", the reference in subsection (a)(4) from "§ 20-7-19" to "§ 20-7-10", the reference in subsection (a)(6) from "§ 20-4-7" to "§ 20-4-8", and the reference in subsection (a)(7) from "§ 20-7-13" to "§ 20-7-12".

The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "Suspension and revocation" for "Suspension/Revocation" and added "Appeal" in the section catchline; added the subsection designations; substituted "under this chapter" for "as aforesaid" in the introductory paragraph of subsection (a), and "so suspended" for "suspended as aforesaid" in the first sentence in subsection (b); and made several minor changes in capitalization, punctuation, and style, along with several substitutions for the word "said", throughout the section.

20-7-7.1. Administrative suspension/revocation of licenses — Penalties — Appeal. — (a) If a person licensed under this chapter is found, pursuant to § 42-17.1-2, to have violated any of the offenses hereinafter stated, his or her license shall be suspended for the periods hereinafter enumerated:

- (1) Possession of ten (10) or more undersize lobsters but not more than nineteen (19) in violation of § 20-7-10, one month;
- (2) Possession of twenty (20) or more undersize lobsters, in violation of § 20-7-10, one year;
- (3) Possession of mutilated lobsters or lobster meat in violation of § 20-7-14, one year;
- (4) Possession of one or more brushed female berried lobsters in violation of § 20-7-10, one year;
- (5) Possession of ten (10) or more egg-bearing female lobsters in violation of § 20-7-10, one year;
- (6) Unauthorized raising of another's lobster pots in violation of § 20-4-8, one year;
- (7) Use or possession of a lobster pot from which the markings or branded numbers have been removed, altered, or obliterated in violation of § 20-7-12, one year;
- (8) Failure to file reports of lobsters taken as required by § 20-7-9, one year.

(b) Any person whose license is so suspended shall not engage in the lobster fishery in this state during the specified period of suspension. Any person who is found, pursuant to § 42-17.1-2, to have engaged in the lobster fishery during the specified period of suspension shall pay an administrative penalty of five thousand dollars (\$5,000).

(c) The license of any person found, pursuant to § 42-17.1-2, to have violated any of the offenses set forth in subdivisions (1) through (8) of subsection (a) a second time shall be revoked for three (3) years thereafter and the person whose license is revoked shall not engage in the lobster fishery of this state in any way while the revocation is in force, and in addition shall pay an administrative penalty of ten thousand dollars (\$10,000) for each violation.

(d) In addition to any other sanctions provided by law, any person found, pursuant to § 42-17.1-2, to have violated any of the provisions of this chapter shall pay an administrative penalty of not less than

fifty dollars (\$50.00), nor more than five hundred dollars (\$500), for each lobster taken or possessed in violation of the provisions of this chapter.

(e) Any person aggrieved by a final decision under this section may appeal therefrom in accordance with the provisions of the Administrative Procedures Act, chapter 35 of title 42.

History of Section.

P.L. 1987, ch. 254, § 5.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) added the subsection designations; substituted "under this chapter" for "as aforesaid" in the introductory paragraph of subsection (a), "so suspended"

for "suspended as aforesaid" in the first sentence in subsection (b), and "under this section" for "as aforesaid" in subsection (e); and made several minor changes in capitalization, punctuation, and style, along with several substitutions for the words "said" and "such", throughout the section.

20-7-8. Exhibition of certificate. — Each person or agent as defined in § 20-7-1 licensed under the provisions of this chapter shall, upon demand of the director of the department of environmental management or any of his or her deputies, exhibit the license issued to him or her as provided in § 20-7-1. Every person violating the provisions of this section shall, for each offense, be fined up to fifty dollars (\$50.00).

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) substituted "the department of environmental management" for "said department" in the first sentence.

20-7-9. Report of lobsters taken. — For the purpose of determining whether the number of lobsters caught in the waters of this state are increasing or decreasing during any period, every person licensed pursuant to § 20-2-24 to catch, take, and/or sell lobsters in Rhode Island shall, upon request of the department of environmental management, report catch and effort statistics upon forms furnished by the department. The returns from any person shall not be made public, shall be kept only in the files of the department, and shall be used only for statistical purposes.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "shall be" in

the second sentence; and made several minor changes in punctuation, along with several substitutions for the words "Such" and "said", throughout the section.

20-7-10. Minimum size of lobsters taken — Egg-bearing females. — (a)(1) Unless otherwise specified by regulations adopted by the marine fisheries council, no person shall catch or take from any of the waters within the jurisdiction of this state or have in his or her possession within this state any lobster or parts thereof, cooked or uncooked, which is less than three and three sixteenths inches ($3\frac{3}{16}$ ") measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the carapace.

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(2) The minimum size of three and three sixteenths inches ($3 \frac{3}{16}$ ") shall be increased as follows:

- (i) On January 1, 1988, $\frac{1}{32}$ " from $3 \frac{3}{16}$ " to $3 \frac{7}{32}$ ";
- (ii) On January 1, 1989, $\frac{1}{32}$ " from $3 \frac{7}{32}$ " to $3 \frac{1}{4}$ ";
- (iii) On January 1, 1991, $\frac{1}{32}$ " from $3 \frac{1}{4}$ " to $3 \frac{9}{32}$ ";
- (iv) On January 1, 1992, $\frac{1}{32}$ " from $3 \frac{9}{32}$ " to $3 \frac{5}{16}$ ".

(b) No person shall have in his or her possession within this state any female lobster bearing eggs or from which the eggs have been brushed or removed.

(c) In addition to any penalties specified in other sections of this chapter, every person violating any of the provisions of this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) for each lobster in violation of this regulation or thirty (30) days in jail or both. Any person licensed under this chapter catching and taking any lobster as described in subsection (a) or (b) and immediately returning the lobster alive to the water from which it was taken shall not be subject to these fines or penalties. The possession of any lobster as described in subsection (a) or (b), cooked or uncooked, shall be prima facie evidence that the lobster was caught and taken in violation of this section. Any person convicted a second time of a violation of this section shall be fined five hundred dollars (\$500) and be deprived of the privilege of fishing for lobsters within the state for three (3) years after conviction under a penalty of sixty (60) days' imprisonment or a fine of five hundred dollars (\$500) or both for each offense.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1983, ch. 107, § 1; P.L. 1988, ch. 305, § 1.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) substituted "council" for "ouncil" in subsection (a)(1) to correct a typographical error.

The 1989 Reenactment (P.L. 1989, ch. 542, § 1) added the subsection and subdivision designations; deleted the former subheading "Increase in Minimum Size" following the in-

troductory paragraph of subsection (a)(2), and made several minor punctuation changes throughout that subsection; inserted "as described in subsection (a) or (b)" in the second and third sentences of subsection (c); and made several substitutions for the words "such" and "same" in the second and third sentences of subsection (c).

Cross References. License revocation for violation, § 20-7-7.

NOTES TO DECISIONS**1. Knowledge.**

A defendant in possession of undersize lobsters could be convicted even though he did not know they were undersize if, having had

full opportunity, he neglected to determine whether they were of legal size. *State v. Sheehan*, 28 R.I. 160, 66 A. 66 (1907) (decided under former § 20-12-7).

20-7-11. Buoying of pots — Escape vents. — (a) Each and every lobster pot, set, kept, or maintained or caused to be set, kept, or maintained in any of the waters in the jurisdiction of this state by any person licensed under this chapter, shall contain an escape vent in accordance with the following specifications:

(A) A rectangular escape vent with an unobstructed opening not less than $1 \frac{3}{4}$ inches (44.5mm) by 6 inches (152.5mm); or

(B) Two (2) circular escape vents with an unobstructed opening not less than 2¼ inches (57.2mm) in diameter; or

(C) An unobstructed gap caused by raising both ends of a bottom lath in the parlor section 1¼ inches (44.5mm) from the bottom; or

(D) An unobstructed gap caused by separating both ends of two (2) vertical laths on the end of the parlor section by 1¾ inches (44.5mm); or

(E) An unobstructed gap created by cutting wires in a wire trap in such a manner as to meet the minimum size and number of vents required under subdivisions (A) and (B).

(b) The vent or gap shall be installed or made in the parlor section on the sides or end panel. No horizontal rectangular vent or gap or circular vent shall be located more than three inches (3") from the sill of the trap. Traps equipped with multiple opposing parlor sections must adhere to the escape vent requirements specified in subdivision (A) or (B) of subsection (a) in each parlor section. Any fisher not complying with the provisions of this section or § 20-7-10 shall be fined in compliance with § 20-3-3.

(c) The marine fisheries council shall have the power to establish larger escape vent sizes by regulation.

(d) Each lobster pot shall be separately and plainly buoyed; except that in cases where natural conditions render it impracticable to separately buoy each pot, the director of environmental management may, upon application from any person licensed under this chapter, grant permission to otherwise buoy those pots subject to rules and regulations promulgated by the director; and each and every permit so granted shall set forth the name of the person to whom the permit is granted, the number of the permit, the place or places where the lobster pots are to be located, the manner in which lobster pots shall be set, and the period of time during which the permit shall extend.

History of Section.

P.L. 1981, ch. 197, § 3; P.L. 1988, ch. 305, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) added the subsection designations; deleted "the" preceding "separating" in subsection (a)(D); substituted "sub-

divisions" for "paragraphs" and "subdivision" for "section" in subsection (b); made several substitutions for the words "such", "same", and "said" in the second sentence in subsection (d); and made several minor changes in capitalization, punctuation, and style throughout the section.

20-7-11.1. Lobster pots — Color scheme required. — (a) Each and every pot, trap, or other device used for the taking of lobsters or crabs in any of the waters of this state shall bear a color scheme on the attached buoy. Each applicant for a lobster license shall state the color scheme that he or she desires to use. These colors, unless disapproved by the director of environmental management, may be set forth in his or her license, and all buoys used by the licensee shall be marked accordingly. Each licensee shall cause his or her color scheme to be displayed on any lobster boat used by the licensee in the waters of this state. Those colors shall be painted on the port and

starboard sides of the hull in a section not less than one foot (1') square, or a clearly painted buoy shall be set at the highest point on the boat excluding the mast and be visible for three hundred sixty degrees (360°). The buoy or colors must be prominently displayed on the vessel at all times that lobster gear fished under that license is in the water.

(b) No person shall place, set, lift, raise, unduly disturb, draw in, or transfer any pot, trap, or other device used for the taking of lobsters unless the color scheme of the attached buoy is the same as the color scheme that is on file with the license application and displayed on the boat used by that person, or unless that person is duly licensed and possesses written permission from the rightful owner of the pot, trap, or other device.

History of Section.

P.L. 1986, ch. 99, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "of environmental management" in the third sentence of subsection (a), and "the" preceding "port" in

the next-to-last sentence of that subsection; substituted "lobsters" for "lobster" in subsection (b); and made several minor changes in punctuation and style, along with several substitutions for the words "said" and "Such", throughout the section.

20-7-12. Removal of branded numbers from lobster pots. — No person shall set, maintain, or have in his or her possession any lobster pots from which the branded numbers have been altered, obliterated, or removed with the intent to defraud or deprive the owner thereof. Every person convicted of violating the provision of this section shall be fined one hundred dollars (\$100) for each such trap or be imprisoned not more than thirty (30) days or both. All pots used or possessed contrary to the provisions of this section and other sections of this chapter shall be seized by any officer engaged in the enforcement of this chapter, and that property shall be forfeited.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor punctuation changes in the first sentence, and sub-

stituted "that property" for "said property" in the last sentence.

Cross References. License revocation for violation, § 20-7-7.

20-7-12.1. Unauthorized possession and/or transfer of pots and traps. — (a) No person except the director of environmental management, enforcement officers, and authorized technical personnel of the department of environmental management shall place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any such pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner thereof.

(b) Every person convicted of violating this section shall be fined not more than one thousand dollars (\$1,000) for each offense, or be imprisoned for not more than one year, or both, and each pot, trap, car, or device used in violation of this section shall constitute a

separate offense. In addition, if that person is licensed, his or her license shall be revoked for one year.

History of Section.

P.L. 1986, ch. 204, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) inserted "of environmental management" twice near the beginning of subsection (a), designated the second

paragraph as subsection (b), substituted "that person" for "said person" in the second sentence of subsection (b), and made minor changes in punctuation and style throughout the section.

20-7-13. Raising pots at night. — No person shall raise or unduly disturb any lobster pot or trap within the territorial waters of this state between the hours of one hour after sundown and one hour before sunrise. Every person violating this section shall upon conviction be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than one year or both. However in situations of emergency upon application being made, the owner of the lobster pots or traps may be authorized to remove the pots or traps by the director of environmental management or his or her designee during the prohibited hours. All boats, pots, or other equipment used in violation of this section shall be seized and forfeited to the state.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor changes

in punctuation and style, along with several substitutions for the words "such" and "same", throughout the section.

20-7-14. Mutilation of uncooked lobsters. — (a) No person shall mutilate any uncooked lobster by severing its tail from its body or have in his or her possession any part or parts of any uncooked lobster so mutilated. In any and all prosecutions under this section the possession of any part or parts of any uncooked lobster so mutilated shall be prima facie evidence sufficient to convict.

(b) *Lobster meat.* Any fishing vessel operating in Rhode Island territorial waters shall not have on board at any time more than one pound (1 lb.) of cooked or uncooked lobster meat for each person on board that vessel. Any violation of this section shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500), and imprisonment for not less than thirty (30) days, or both.

History of Section.

P.L. 1981, ch. 197, § 3.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "that vessel" for "said vessel" at the end of the first

sentence of subsection (b) and made minor stylistic changes throughout that subsection.

Cross References. License revocation for violation, § 20-7-7.

CHAPTER 8.1
SHELLFISH GROUNDS

SECTION.		SECTION.	
20-8.1-1.	Definitions.	20-8.1-4.	Factors considered in determining polluted areas.
20-8.1-2.	Regulations.	20-8.1-5.	Taking or selling shellfish from polluted areas.
20-8.1-3.	Investigation of shellfish grounds — Notice of polluted areas.	20-8.1-6.	Use of dredges, tongs, and rakes in polluted areas.

SECTION.		SECTION.	
20-8.1-7.	Taking, sale of, or possession of non-complying shellfish prohibited — Confiscation — Search warrants.	20-8.1-9.	Inspection of boats, vessels, and vehicles.
		20-8.1-10.	Powers of enforcement.
		20-8.1-11.	Penalties for violations.
20-8.1-8.	Enforcement — Prosecution of violations.	20-8.1-12.	[Repealed.]

20-8.1-1. Definitions. — Unless otherwise specifically provided herein, the following definitions shall apply to this chapter:

(1) The word "department" shall be construed to mean the state department of environmental management.

(2) The word "director" shall be construed to mean the director of the state department of environmental management or his or her duly appointed agents.

(3) The word "person" shall be construed to mean any individual, firm, copartnership, association, or private or municipal corporation.

(4) The word "approved" shall be construed to mean approved by the director.

(5) The word "shellfish" shall be construed to mean and include oysters, mussels, and all varieties of clams.

(6) The term "shellfish grounds" shall be construed to mean and include all land underlying waters within the rise and fall of the tide and the marine limits of the jurisdiction of the state.

(7)(i) The term "polluted area" shall be construed to mean and include any shellfish grounds underlying waters which have been examined and found to be unfit for the taking of shellfish for human consumption which have been declared by the director as polluted areas pursuant to §§ 20-8.1-3 and 20-8.1-4.

(ii) For purposes of any criminal or civil proceeding instituted under this chapter, a declaration by the director shall be prima facie evidence of a polluted area.

(8) The word "taking" shall be construed to mean and include the gathering, digging, raking, tonging, or dredging of shellfish.

History of Section.

P.L. 1980, ch. 263, § 1; P.L. 1981, ch. 197, § 5.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctuation change in subdivision (3), added the paragraph designations in subdivision (7),

made a capitalization change in subdivision (7)(i), substituted "a declaration" for "such declaration" in subdivision (7)(ii), and made a minor stylistic change in subdivision (8).

Comparative Legislation. Shellfish grounds:

Conn. Gen. Stat. §§ 26-192 — 26-237c.

20-8.1-2. Regulations. — The director shall, with the approval of the environmental standards board established under § 42-17.3-1, adopt such regulations regarding shellfish grounds as he or she shall deem necessary with reference to the growing and taking of shellfish.

History of Section.

P.L. 1980, ch. 263, § 1.

20-8.1-3. Investigation of shellfish grounds — Notice of polluted areas. — The director shall investigate the sanitary condition of the waters overlying shellfish grounds. Those waters that are found to be in an unsatisfactory sanitary condition for the taking of shellfish for human consumption shall be declared to be polluted areas. The director shall give notice that he or she has declared any area to be polluted by advertising his or her action in at least one public newspaper published in the city of Providence.

History of Section.

1980, ch. 263, § 1.

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Revocation of certificate.
2. Notice of polluted area.

1. Revocation of Certificate.

Where regulation required applicants to agree to handle only shellfish obtained from approved areas, certificates could be revoked for failure to comply with such agreement even without finding that premises of certificate holders were not in a sanitary condition.

Meunier v. Commissioners of Shell Fisheries, 54 R.I. 12, 168 A. 907 (1933) (decided under former § 21-14-4).

2. Notice of Polluted Area.

In prosecution for taking shellfish from a prohibited area, copy of newspaper advertisement showing official notice of polluted area was admissible in evidence. *State v. Merritt*, 84 R.I. 313, 124 A.2d 540 (1956) (decided under former § 21-14-4).

20-8.1-4. Factors considered in determining polluted areas. — In making a determination that an area is polluted, the director shall take into consideration one or more of the following matters as they apply: the volume of sewage that may affect the area; the dilution of that sewage by clean water; the distance of the area from sources of pollution; whether or not the median "most probable number" of coliform bacteria found upon examining the water from the area under different tidal conditions exceeds the maximum allowable of seventy (70) per one hundred milliliters (100 mm) of water, the most probable number having been determined according to re-print No. 1621 public health report, United States public health services 1947. The director may declare an area to be polluted in the absence of a median "most probable number" of coliforms in excess of seventy (70) per one hundred milliliters (100 mm) if the director has evidence that significant volumes of fresh raw sewage or inadequately purified sewage may reach the area intermittently. Whenever a significant increase or decrease occurs in the amount of treated or untreated sewage affecting an area, a review of the status of the area shall be made by the director.

History of Section.

P.L. 1980, ch. 263, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "that

sewage" for "such sewage" near the middle of the first sentence, and made minor stylistic changes throughout the section.

20-8.1-5. Taking or selling shellfish from polluted areas. —

No person shall take shellfish from the waters of polluted areas, or knowingly sell shellfish taken from the waters of polluted areas, except shellfish from areas not subject to nearby sources of pollution continuous or intermittent, where the median "most probable number" of coliform bacteria lies between seventy (70) and seven hundred (700), for transplanting or relaying in unpolluted areas, except pursuant to a transplant program specifically authorized by and conducted under the direct supervision of the director. In granting permission, the department of environmental management shall first obtain the written approval of the director of the department of health as to the suitability and safety for the purposes intended. The possession by any person of shellfish while in a vessel upon the waters of polluted areas between the hours of two (2) hours after sunset and sunrise shall be prima facie evidence that those shellfish were taken by that person in violation of this section.

History of Section.

P.L. 1980, ch. 263, § 1; P.L. 1983, ch. 173, § 4.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made several substitutions for the word "such" in the last sen-

tence, and made minor changes in punctuation and style throughout the section.

Compiler's Notes. In 1989, the compiler substituted "probable" for "probably" in the first sentence.

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Elements of offense.
2. Allegations of complaint.
3. Evidence of notice.

1. Elements of Offense.

Evidence that particular shellfish taken were not polluted would not be received since offense was taking from polluted area. *State v. Merritt*, 84 R.I. 313, 124 A.2d 540 (1956) (decided under former § 21-14-6).

2. Allegations of Complaint.

Allegations of taking from polluted area

was equivalent to an allegation of taking from area that had been declared polluted. *State v. Merritt*, 84 R.I. 313, 124 A.2d 540 (1956) (decided under former § 21-14-6).

3. Evidence of Notice.

Copy of map furnished to licensees and copy of newspaper notice of polluted areas were admissible in prosecution under this section. *State v. Merritt*, 84 R.I. 313, 124 A.2d 540 (1956) (decided under former § 21-14-6).

20-8.1-6. Use of dredges, tongs, and rakes in polluted areas.

— No person shall work a dredge, pair of tongs, rake or rakes, or any other implement commonly employed in taking shellfish, except an implement commonly employed for the taking of scallops, in a polluted area, nor shall any person, while upon or sailing over any polluted area, cast, haul, or have overboard any dredge, pair of tongs, rake, or rakes, or any other implement commonly employed in taking shellfish except an implement commonly employed for the taking of scallops.

History of Section.

P.L. 1980, ch. 263, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punc-

tuation change and substituted "any dredge" for "any such dredge" near the middle of the section.

20-8.1-7. Taking, sale of, or possession of non-complying shellfish prohibited — Confiscation — Search warrants. — No person shall take, sell, or possess within this state any shellfish which have not been taken in compliance with the provisions of this chapter and the regulations adopted in accordance therewith. Any shellfish which the director shall have reasonable cause to believe have been taken from polluted areas or which have not been taken in compliance with the provisions of this chapter and the regulations adopted in accordance therewith shall be confiscated. Search warrants may be issued by any district court upon the complaint of the director or his or her duly authorized agents relating to violations of this chapter.

History of Section.

P.L. 1980, ch. 263, § 1; P.L. 1983, ch. 173, § 4.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made minor changes in punctuation and style throughout the section.

20-8.1-8. Enforcement — Prosecution of violations. — It shall be the duty of the director to enforce the provisions of this chapter and the regulations adopted in accordance therewith and to prosecute all persons guilty of violations thereof. In all prosecutions the director shall not be required to enter into any recognizance nor to give surety for costs.

History of Section.

P.L. 1980, ch. 263, § 1.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made several substitutions for the words "such" and "said" in the second sentence.

20-8.1-9. Inspection of boats, vessels, and vehicles. — The director shall make regular inspections of the boats, vessels, and vehicles used or suggested of being used in the taking or transporting of shellfish, and no person shall interfere with or obstruct the entrance of the director to any boat, vessel, or vehicle, for the purpose of making inspections, and no person shall obstruct the conduct of any inspection; provided, however, that inspections as to the taking of shellfish shall be made only by the director or employees of the state department of environmental management.

History of Section.

P.L. 1980, ch. 263, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor punctu-

ation changes in the section catchline and throughout the section, and made several substitutions for the word "said" near the end of the section.

20-8.1-10. Powers of enforcement. — Conservation officers of the department may arrest any person found violating any of the provisions of this chapter, and may seize all shellfish and any boat or vessel, or outboard motor, or dredge, tongs, rakes, or other implements, commonly employed in the taking of shellfish, in possession of any person violating the provisions of this chapter, and may make complaints for all those violations, and in any complaint they shall not be required at the time of the complaint or thereafter to enter into recognizance or in any way to become liable for the costs that may accrue thereon.

History of Section.

P.L. 1980, ch. 263, § 1.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor changes

in punctuation and style, along with several substitutions for the word "such", throughout the section.

20-8.1-11. Penalties for violations. — Persons convicted of violating any of the provisions of this chapter or the regulations adopted in accordance therewith shall be punished by a term of imprisonment not exceeding one year or by a fine not exceeding five hundred dollars (\$500) or by both such fine and imprisonment for the first offense; and by a term of imprisonment not exceeding four (4) years or by a fine not exceeding two thousand dollars (\$2,000) or by both such fine and imprisonment for a subsequent offense. Any boat or vessel, or outboard motor, or dredge, tongs, rakes, or other implements, commonly employed in the taking of shellfish, seized from any person as used in violation of §§ 20-8.1-5 and/or 20-8.1-6, shall upon conviction of that person be forfeited to the state. That forfeiture shall follow the course provided in chapter 21 of title 12 as amended and § 20-1-8.1.

History of Section.

P.L. 1980, ch. 263, § 1; P.L. 1981, ch. 197, § 5; P.L. 1983, ch. 173, § 4.

Reenactments. The 1989 Reenactment

(P.L. 1989, ch. 542, § 1) made minor changes in punctuation and style, along with several substitutions for the word "such", throughout the section.

20-8.1-12. [Repealed.]

Repealed Sections. This section (P.L. 1980, ch. 263, § 1) providing procedures for the seizure and forfeiture of boats and equipment used in the violation of this chapter,

was repealed, effective January 1, 1982, by P.L. 1981, ch. 197, § 4. For new law, see §§ 20-1-8 — 20-1-11.

CHAPTER 10

AQUACULTURE

SECTION.		SECTION.	
20-10-1.	Declaration of intent and public policy.	20-10-10.	Assignability of permits.
20-10-2.	Definitions.	20-10-11.	Regulations.
20-10-3.	Authority to grant permits for aquaculture.	20-10-12.	Permits for possession, importation, and transportation of species used in aquaculture.
20-10-4.	Application for a permit to conduct aquaculture.	20-10-13.	Cultivated plants or animals as property of the permittee.
20-10-5.	Procedures for approval.	20-10-14.	Emergency closure of areas subject to permit.
20-10-6.	Leases.	20-10-15.	Authority to enter and inspect.
20-10-7.	Fees.	20-10-16.	Penalties.
20-10-8.	Performance requirements — Bond.	20-10-17.	Arrest, seizure, and prosecution of violators.
20-10-9.	Marking of areas subject to permit — Restrictions on public use.	20-10-18.	Severability.
		20-10-19 —	20-10-33. [Repealed.]

20-10-1. Declaration of intent and public policy. — Whereas, R.I. Const., Art. I, Sec. 17, guarantees to the people the right to enjoy and freely exercise all rights of fishery and imposes on the general assembly the responsibility to provide for the conservation of water, plant, and animal resources of the state, and

Whereas, it is in the best public interest of the people and the state that the waters of the state, and the land under those waters, are utilized properly and effectively to produce plant and animal life, and

Whereas, the process of aquaculture is a proper and effective method to cultivate plant and animal life in the waters of the state, and

Whereas, the process of aquaculture should only be conducted within the waters of the state in a manner consistent with the best public interest, with particular consideration given to the effect of aquaculture on other uses of the free and common fishery and navigation, and the compatibility of aquaculture with the environment of the waters of the state, therefore,

It is the public policy of this state to preserve the waters of this state as free and common fishery. The health, welfare, environment, and general well being of the people of the state require that the state restrict the uses of its waters and the land thereunder for

aquaculture and therefore, in the exercise of the police power, the waters of the state and land thereunder are to be regulated hereunder.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "the waters" for "such waters" near the end of the second sentence of the last paragraph, and made minor changes in punctuation and style throughout the section.

Repealed Sections. Former sections 20-10-1 — 20-10-33 (P.L. 1901, ch. 853, §§ 7-10, 12-33; P.L. 1902, ch. 966, § 1; P.L. 1903, ch. 1002, § 1; C.P.A. 1905,

§§ 1209-1211, 1217; P.L. 1906, ch. 1361, § 1; P.L. 1907, ch. 1493, § 2; G.L. 1909, ch. 203, §§ 8-11, 13-34; P.L. 1909, ch. 396, § 1; P.L. 1911, ch. 672, § 1; P.L. 1911, ch. 703, § 1; P.L. 1912, ch. 769, § 45; P.L. 1912, ch. 791, § 1; P.L. 1915, ch. 1242, § 1; P.L. 1917, ch. 1524, § 1; P.L. 1921, ch. 2074, §§ 1, 2; G.L. 1923, ch. 230, §§ 1, 8-10, 12-34; P.L. 1935, ch. 2217, § 1; G.L. 1938, ch. 233, §§ 1-3, 5, 6, 8-28, 30, 31; G.L. 1956, §§ 20-10-1 — 20-10-33), concerning oyster ground leases, were repealed by P.L. 1980, ch. 219, § 1.

20-10-2. Definitions. — As used in this chapter:

(a) The term "aquaculture" shall refer to the cultivation, rearing, or propagation of aquatic plants or animals under either natural or artificial conditions.

(b) The terms "director" or "department" shall mean the director of or the department of environmental management.

(c) The term "CRMC" shall mean the coastal resources management council.

(d) The term "water column" shall mean the vertical extent of water, including the surface thereof, above a designated area of submerged bottom land.

(e) The term "MFC" shall mean the marine fisheries council.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) substituted a colon for a

period at the end of the first phrase in this section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-3. Authority to grant permits for aquaculture. — The CRMC may grant permits for the conduct of aquaculture in the coastal waters of the state, including coastal ponds and estuaries to coastal rivers, to any person, or any corporation or business entity, chartered under the laws of this state, subject to the provisions of this chapter. Those permits shall be for a term not to exceed ten (10) years, and shall be renewable upon application by the permittee for successive periods, up to five (5) years for each renewable period, provided the terms and conditions of the permit and of any previous renewal and the rules and regulations promulgated by the CRMC pursuant to this chapter, have been met. All permits with their terms and stipulations presently in effect, as of May 15, 1980, under existing laws and regulations shall continue until their expiration.

History of Section.

P.L. 1980, ch. 219, § 2; P.L. 1989, ch. 542, § 33.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, §§ 1 and 33) substituted "Those permits" for "Such permits" and made minor changes in punctuation and style in the second sentence, and inserted ", as of May 15, 1980," in the third sentence.

Compiler's Notes. This section as it ap-

pears above has been edited by the compiler to incorporate the changes made by the 1989 reenactment of title 20 by P.L. 1989, ch. 542, which were not included in the 1989 amendment. For the extent of the reenactment changes, see the reenactment note above.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-4. Application for a permit to conduct aquaculture. —

Any applicant desiring a permit to conduct aquaculture in the coastal waters of the state, including coastal ponds and the estuaries of coastal rivers, shall file with the CRMC a written application in such a form as it may prescribe, setting forth the following information:

- (a) The name and address of the applicant;
- (b) A description of the location and amount of submerged land and water column to be subject to the permit;
- (c) A description of the aquaculture activities to be conducted, including:
 - (1) Whether such activities are to be experimental or commercial;
 - (2) A description of the species to be managed or cultivated within the permitted area; and
 - (3) A description of the method or manner of aquaculture activity;
- (d) An assessment of the current capability of the applicant to carry out those activities;
- (e) Such other information as the CRMC may by regulation require.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor stylistic change in subdivision (b), made minor

changes in punctuation and style in subdivision (c), and substituted "those activities" for "such activities" in subdivision (d).

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-5. Procedures for approval. — (a) Upon submission of a completed application to the CRMC, the CRMC shall notify the director and MFC and such other parties as the CRMC may by regulation designate.

(b) No application shall be approved by the CRMC or a permit granted prior to the consideration of recommendations by both the director and the MFC.

(c) The director shall review the application to determine whether the aquaculture activities proposed in the application are:

- (1) Not likely to cause an adverse effect on the marine life adjacent to the area to be subject to the permit and the waters of the state;
- (2) Not likely to have an adverse effect on the continued vitality of indigenous fisheries of the state.

(d) The MFC shall review the application to determine whether the aquaculture activities proposed in the application are consistent with competing uses engaged in the exploitation of the marine fisheries.

(e) The approval by the CRMC shall be subject to such public hearings, consistent with chapter 35 of title 42, as it may require.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) substituted the word "or" for "and" in subsection (b) and substituted "chapter 35 of title 42" for "chapter 42-35" in subsection (e).

The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor changes in capitalization, punctuation, and style, along with several substitutions for the word "such", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-6. Leases. — (a) The CRMC, in accordance with chapter 6 of title 37 is authorized and empowered, when it shall serve the purposes of this chapter, to lease the land submerged under the coastal waters of the state, including any coastal ponds or estuaries to coastal rivers, and the water column above those submerged lands, to an applicant who has been granted an aquaculture permit pursuant to the provisions of this chapter, provided that the CRMC finds that a lease giving the applicant exclusive use of the submerged lands, and water column, including the surface of the water, is necessary to the effective conduct of the permitted aquaculture activities.

(b) Those leases shall be granted for a term concurrent with the term of the aquaculture permit and may be renewed from time to time upon renewal of the aquaculture permits.

(c) Those leases shall be subject to the terms and conditions of the aquaculture permit, and any renewal thereof, and the provisions of this chapter and the rules and regulations adopted hereunder, and failure to comply with the terms and conditions of the permit or renewal, or the provisions of this chapter or the rules and regulations adopted hereunder, shall be grounds for termination of the lease at the discretion of the CRMC.

(d) Any assignment or sublease of the whole or any part of the area subject to lease shall constitute a breach of the lease and cause for the termination of the lease, unless that assignment or subletting has received the prior approval of the CRMC.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor changes in punctuation and style, along with several

substitutions for the word "such", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-7. Fees. — The CRMC shall establish by regulation fees for applications, permits, leases, and renewals. Those fees may be based on the cost of administration, including inspection, required by the aquaculture permitting process.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made a minor punctuation change in the first sentence, and sub-

stituted "Those fees" for "Such fees" in the second sentence.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-8. Performance requirements — Bond. — The CRMC may require the execution of a bond by the permittee to ensure the performance by the permittee of all of the conditions of his or her permit, and, in the event of a failure so to perform, to ensure the removal of aquaculture apparatus from the waters of the state.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor stylistic

changes throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-9. Marking of areas subject to permit — Restrictions on public use. — (a) The CRMC shall require all permittees to mark off the areas under permit by appropriate ranges, monuments, stakes, buoys, or fences, so placed as not to interfere unnecessarily with navigation and other traditional uses of the surface. All permittees shall cause the area under permit and the means of permittees to be shown by signs appropriately placed pursuant to regulations of the CRMC.

(b) Except to the extent necessary to permit the effective development of the species of animal or plant life being cultivated by the permittee, the public shall be provided with means of reasonable ingress and egress to and from the area subject to permit for traditional water activities such as boating, swimming, and fishing. All limitations upon the use by the public of the areas subject to permit that are authorized by the terms of the permit shall be clearly posted by the permittee pursuant to regulations by the CRMC.

History of Section.

P.L. 1980, ch. 219, § 2.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-10. Assignability of permits. — Any permit granted pursuant to this chapter shall be void if assigned in whole or in part, unless that assignment is made with the prior approval of the CRMC.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "that assignment" for "such assignment" and made a

minor stylistic change near the end of the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-11. Regulations. — The CRMC may adopt, repeal, and amend such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter, subject to chapter 35 of title 42. Such rules and regulations shall be promulgated in consultation with the director and the MFC.

History of Section.

P.L. 1980, ch. 219, § 2.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-12. Permits for possession, importation, and transportation of species used in aquaculture. — (a) The director is hereby authorized and empowered to grant permits for and establish rules and regulations governing the taking, possession, sale, importation, and transportation of animal or plant species utilized in aquaculture. Provided, however, that in the case of bivalves, no approval shall be given for the sale, possession, use, storage, or transportation of those species for human consumption without the written approval and permission of the director of health.

(b) Any person who possesses, imports, or transports any animal or plant species as delineated in subsection (a) of this section without a permit issued by the director shall be guilty of a misdemeanor and subject to imprisonment of not more than one year or a fine of not more than five hundred dollars (\$500), or both. The animal or plant species possessed, imported, or transported by that person may be forfeited to the state.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) substituted the word "bivalves" for "bivolves" in subsection (a) and the word "forfeited" for "forfieted" in subsection (b).

The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor punctuation changes in the

section catchline and throughout subsection (a), made a capitalization change in the second sentence of subsection (a), and made minor stylistic changes, along with several substitutions for the word "such", in subsection (b).

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-13. Cultivated plants or animals as property of the permittee. — Any plant or animal species as stipulated in an aquaculture permit which are being cultivated within the designated, permitted area are the personal property of the permittee.

History of Section.

P.L. 1980, ch. 219, § 2.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-14. Emergency closure of areas subject to permit. — Notwithstanding the provisions of this chapter or any other provision of law, if the director finds or has cause to believe that an aquaculture activity is causing or is likely to cause an immediate danger to marine life or the environment of the coastal waters of the state, the director shall notify the CRMC. The CRMC shall immediately order all permittees affected by that notice to show cause why

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FISH AND WILDLIFE

their aquaculture activities should not be terminated, and any aquaculture species or paraphernalia removed from the waters of the state. The CRMC shall proceed to hold a public hearing and issue its order with respect to the hearing within a reasonable period. In its order following the hearing the CRMC may direct the temporary or permanent suspension of aquaculture activities in the affected area, removal of equipment or animals, or such other measures as shall be deemed necessary for the protection of the marine life and environment of the waters of the state, including the forfeiture to and destruction by the state of any plant or animal species.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319) substituted the word "of" for "or" near the end of the section.

The 1989 Reenactment (P.L. 1989, ch. 542,

§ 1) made minor stylistic changes, along with several substitutions for the words "said" and "such", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-15. Authority to enter and inspect. — The director shall have the authority to enter and inspect any and all areas subject to an aquaculture permit for the purpose of determining compliance with the terms and provisions of the permit.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "the per-

mit" for "any such permit" at the end of the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-16. Penalties. — (a) Any person who conducts aquaculture activities in excess of those authorized by an aquaculture permit shall be guilty of a misdemeanor and subject to imprisonment for not more than one year or a fine of not more than five hundred dollars (\$500), or both. In addition to that fine and imprisonment, all works, improvements, fish, and animal and plant life involved in the project may be forfeited to the state.

(b) Any person who shall damage, disturb, or interfere with any area subject to an aquaculture permit or any person who shall damage, disturb, interfere, or take by any means whatsoever, or possess, the cultivated species in an area subject to an aquaculture permit, without the permission of the permittee, shall be guilty of a misdemeanor and subject to imprisonment for not more than one year or a fine of not more than five hundred dollars (\$500), or both. In addition to that fine and imprisonment, all vessels, dredges, tongs, rakes, and other implements used to damage, disturb, interfere, or take cultivated species in those areas may be forfeited to the state.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) made minor changes in punctuation and style, along with several

substitutions for the word "such", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-17. Arrest, seizure, and prosecution of violators. — (a) Any police officer authorized to make arrests, the director, and conservation officers appointed under the authority of § 20-1-10 shall be empowered:

(1) To enforce all laws, rules, and regulations relating to this chapter;

(2) To execute all warrants and search warrants for the violation of laws, rules, and regulations relating to this chapter;

(3) To serve subpoenas issued for the trial of all offenses hereunder;

(4) To arrest without a warrant and on view any person found violating any law, rule, or regulation relating to this chapter, take that person before a court having jurisdiction for trials, detain that person in custody at the expense of the state until arraignment, and to make and execute complaints within any district to the justice or clerk of the court against any person for any of the offenses enumerated under this chapter, committed within the district.

(b) The director and his or her deputies and assistants may, by virtue of their respective offices, make complaints of any violation of this chapter, and they shall not be required, or any of them, to give recognizance or to furnish surety for costs or be liable for costs on those complaints.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "violators" for "violations" in the section catchline, made minor punctuation changes in the sec-

tion catchline and throughout the section, and made minor stylistic changes, along with several substitutions for the words "such" and "said", throughout the section.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

20-10-18. Severability. — If any provision of this chapter or any rule, regulation, or determination made thereunder, or the application thereof to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this chapter, or the rule, regulation, or determination, and the application of those provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of this chapter.

History of Section.

P.L. 1980, ch. 219, § 2.

Reenactments. The 1989 Reenactment (P.L. 1989, ch. 542, § 1) substituted "those provisions" for "such provisions" near the end

of the first sentence and made minor changes in punctuation and style throughout that sentence.

Repealed Sections. For repeal of former section, see note to § 20-10-1.

CHAPTER 22

REGULATION OF BOATS

SECTION.		SECTION.	
46-22-1.	Declaration of policy.	46-22-9.5.	Speeding.
46-22-2.	Definitions.	46-22-10.	Collisions, accidents, and casualties.
46-22-3.	Operation of unnumbered motorboats prohibited.	46-22-11.	Transmittal of information.
46-22-4.	Identification number and registration fee.	46-22-12.	Water skis and surfboards.
46-22-5.	Classification and required equipment.	46-22-13.	Regattas, races, marine parades, tournaments, or exhibitions.
46-22-6.	Exemption from numbering provisions of this chapter.	46-22-14.	Local regulation prohibited.
46-22-7.	Boat liveries.	46-22-15.	Owner's civil liability.
46-22-8.	Muffling devices.	46-22-15.1.	Operation of boat by nonresident as appointment of attorney to receive process.
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46-22-9.4.	Operating so as to endanger, resulting in personal injury.	46-22-17.1.	Enforcement power of employees of the department of environmental management.
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46-22-18.	Funds.	46-22-24.	Scuba divers, skin diving, or snorkeling — Warning flags.
46-22-19.	Penalties.	46-22-25.	Regulations.
46-22-20.	Severability.	46-22-26.	Severability.
46-22-21.	Reporting of accidents, casualty, vandalism, and thefts.		

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). Refer-

ences in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-22-1. Declaration of policy. — It is the policy of this state to promote safety for person and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto.

History of Section.

G.L. 1956, § 46-22-1; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "equipment of vessels" near the end of the section.

Comparative Legislation. Boating: Conn. Gen. Stat. § 15-121 et seq. Mass. Ann. Laws ch. 90B § 1 et seq.

46-22-2. Definitions. — As used in this chapter, unless the context clearly requires a different meaning:

(a) "Director" means the director of environmental management.

(b) "Motorboat" means any vessel whether or not the vessel is propelled by machinery. For purposes of this chapter, motorboat shall not include houseboats as defined in § 44-5-25.1, any ferry, canoes, and rowboats twelve feet (12') in length or less.

(c) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(d) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved, or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(e) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(f) "Personal watercraft" means a small class A vessel less than sixteen feet (16') in length which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power; and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than the conventional manner of sitting or standing inside of the vessel.

(g) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(h) "Waters of this state" means any waters within the territorial limits of this state, and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state.

History of Section.

G.L. 1956, § 46-22-2, P.L. 1959, ch. 187, § 1; P.L. 1985, ch. 370, § 1; P.L. 1990, ch. 65, art. 24, § 2.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made minor capitalization and punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) arranged the subdivisions in alphabetical order, thereby redesignating the subdivision designations, and substituted "the vessel" for "said vessel" in the first sentence of subdivision (b).

46-22-3. Operation of unnumbered motorboats prohibited.

— Every motorboat on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any motorboat on those waters unless the motorboat is numbered in accordance with this chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless:

- (1) The certificate of number awarded to the motorboat is in full force and effect, and
- (2) The identifying number set forth in the certificate of number is displayed on each side of the bow of the motorboat.

History of Section.

G.L. 1956, § 46-22-3; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the word "such".

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) divided the former single continuous provisions into the present introductory paragraph and subdivisions, thereby making related punctuation, capitalization, and stylistic changes.

46-22-4. Identification number and registration fee. — (a)(1) Except as otherwise provided in subsection (b), the owner of each motorboat shall file annually an application for registration with the department of environmental management on forms approved by the director. The application shall be accompanied by a registration fee according to the following schedule:

OVERALL LENGTH AT LEAST FEET	NOT MORE THAN FEET	ANNUAL FEE
UNDER	16	\$15
17	20	\$20
21	25	\$30
26	30	\$50
31	35	\$100
36	40	\$125
41	45	\$150

OVERALL LENGTH AT LEAST FEET	NOT MORE THAN FEET	ANNUAL FEE
46	50	\$200
51 and over		\$300

(A) For the purpose of the above fee schedule "overall length" shall be defined as the horizontal distance between the foremost part of the stem, and, the aftermost part of the stern, excluding bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments. For purposes of this section a fraction of a foot shall be deemed to be the next higher foot.

(B) The fee payable under this section for any motorboat owned by a nonprofit organization shall not exceed twenty-five dollars (\$25.00).

(2) Upon receipt of the completed application and correct registration fee, the department of environmental management, division of boating safety, shall enter the application and registration fee into its records, and issue to the owner a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of department of environmental management, division of boating safety, in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever that motorboat is in operation.

(b) The owner of any motorboat already covered by an identification number, in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number with the department of environmental management, division of boating safety, prior to operating the motorboat on the waters of this state in excess of the ninety (90) day reciprocity period provided for in § 46-22-6(a). The recordation shall be in the manner and subject to the procedure and fees required for the award and transfer of a number under subsections (a) and (c) through (i) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form shall be filed with the department of environmental management, division of boating safety. Should the change in ownership take place before the date upon which the certificate of number expires, the new owner shall pay an administrative fee of five dollars (\$5.00).

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this chapter by the department of environmental

management, division of boating safety, shall be in conformity therewith.

(e) All records of the department of environmental management made or kept pursuant to this section shall be public records.

(f) The department of environmental management, division of boating safety, shall fix a day and month of the year on which the certificate of number is due to expire and no longer be of any force and effect, unless renewed pursuant to this chapter.

(g) The owner shall furnish the department of environmental management, division of boating safety, notice of the transfer of all or any part of the owner's interest, other than the creation of a security interest in a motorboat numbered in this state, pursuant to subsections (a) and (b) of this section, or of the destruction or abandonment of the motorboat, within fifteen (15) days thereof. That destruction shall terminate the certificate of number for the motorboat.

(h) Any holder of a certificate of number shall notify the department of environmental management, division of boating safety, within fifteen (15) days if the holder's address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the department of environmental management, division of boating safety, the new address. The department of environmental management, division of boating safety may provide, in its rules and regulations, for the surrender of the certificate bearing the former address or for the alteration of an outstanding certificate to show the new address of the holder.

(i) No number, other than the number awarded to a motorboat or granted reciprocity pursuant to this chapter, shall be painted, attached, or otherwise displayed on either side of the bow of the motorboat.

History of Section.

G.L. 1956, § 46-22-4, P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 1; P.L. 1967, ch. 184, §§ 1 to 3; P.L. 1969, ch. 243, § 1; P.L. 1970, ch. 317, § 1; P.L. 1985, ch. 370, § 1; P.L. 1986, ch. 406, § 1; P.L. 1990, ch. 65, art. 24, § 2.

Reenactments. The 1970 Reenactment (P.L. 1970, ch. 73) restored subsections (b) through (j) which were mistakenly eliminated by chapter 243 of Public Laws 1969 which amended § 46-22-4.

The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "division of harbors and rivers."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) inserted the subdivision (1) and (2) des-

ignations in subsection (a); substituted "The certificate of number" for "The certificate number" in the last sentence of subsection (a)(2); made several substitutions for the word "such"; and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) assigned the paragraph designations (A) and (B) in subsection (a)(1); substituted "the application and registration fee" for "the same" near the middle of the first sentence in subsection (a)(2); substituted "rules and regulations" for "rules and regulation" near the middle of the second sentence in subsection (a)(2); substituted "number under subsections" for "number under subsection" near the end of subsection (b); and made numerous punctuation changes throughout the section.

46-22-5. Classification and required equipment. — (a) Motorboats subject to the provisions of this chapter shall be divided into four (4) classes as follows:

- (1) Class A. Less than sixteen feet (16') in length.
- (2) Class 1. Sixteen feet (16') or over and less than twenty-six feet (26') in length.
- (3) Class 2. Twenty-six feet (26') or over and less than forty feet (40') in length.
- (4) Class 3. Forty feet (40') or over and not more than sixty-five feet (65') in length.

(b) Every motorboat, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when under way, and during that time no other lights which may be mistaken for those prescribed shall be exhibited.

(1) Every motorboat of Classes A and 1 shall carry the following lights:

- (A) A bright white light aft to show all around the horizon.
- (B) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two (2) points abaft the beam of their respective sides.

(2) Every motorboat of Classes 2 and 3 shall carry the following lights:

- (A) A bright white light in the fore part of the vessel, as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass, so fixed as to throw the light ten (10) points on each side of the vessel; namely, from right ahead to two (2) points abaft the beam on either side.

(B) A bright white light aft to show all around the horizon and higher than the white light forward.

(C) On the starboard side, a green light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the starboard side. On the port side, a red light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the port side. The side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Classes A and 1, when propelled by sail alone, shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of Classes 2 and 3, when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two (2) miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery, any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, 1948, Federal Act of October 11, 1951 (33 USC 143-147d) as amended [repealed by Pub. L. 88-131, § 3, Sept. 24, 1963; for present similar provisions, see 33 U.S.C. § 2000 et seq.], in lieu of the lights required by subsection (b) of this section.

(d) Every motorboat of Class 1, 2, or 3 shall be provided with an efficient whistle or other sound producing mechanical appliance.

(e) Every motorboat of Class 2 or 3 shall be provided with an efficient bell.

(f) Every vessel shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the department of environmental management, for each person on board, so placed as to be readily accessible; provided, that every motorboat carrying passengers for hire shall carry, so placed as to be readily accessible, at least one life preserver of the sort prescribed by the regulations of the department of environmental management, for each person on board.

(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the department of environmental management, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of subsections (d), (e), and (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to § 46-22-13 or, if the boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the department of environmental management.

(j) Every motorboat and every vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the department of environmental management, for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

(k) The department of environmental management is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal Boat Safety Act of 1971 as amended or the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(l) The department of environmental management is hereby authorized to establish and maintain, for the operation of vessels not more than sixty-five feet (65') in length on the waters of this state, pilot rules in conformity with the pilot rules contained in the federal navigation laws or the navigation rules promulgated by the United States coast guard.

(m) No person shall operate or give permission for the operation of a vessel, which is not equipped as required by this section, or modification thereof.

History of Section.

G.L. 1956, § 46-22-5; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 2; P.L. 1965, ch. 134, § 3; P.L. 1991, ch. 124, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the word "such", and made minor stylistic changes throughout the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the paragraph designations (A) and (B) for the words "First" and "Second", respectively, at the beginning of the provisions following the introductory language of subsection (b)(1); substituted the paragraph designations (A) through (C) for the words "First", "Second", and "Third", respectively, at the beginning of each of the

provisions directly following the introductory language of subsection (b)(2); assigned the subdivision designations (1) through (4) in subsection (a); deleted the word "said" preceding "side lights" near the beginning of the last sentence in subsection (b)(2)(C); substituted "the boats" for "such boats" near the middle of subsection (h); and made several punctuation and stylistic changes throughout the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

Federal Act References. — The federal Boat Safety Act of 1971, referred to in subsection (k), is codified throughout Title 46 of the U.S. Code.

46-22-6. Exemption from numbering provisions of this chapter. — A motorboat shall not be required to be numbered under this chapter if it is:

(a) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or federally approved numbering system of another state; provided, however, in the event the boat is to be operated on the waters of this state in excess of ninety (90) days, the owner shall record the number with the department of environmental management, division of boating safety, and pay the fees required under this chapter.

(b) A motorboat from a country other than the United States temporarily using the waters of this state.

(c) A motorboat whose owner is the United States, a state, or a subdivision thereof.

- (d) A ship's lifeboat.
- (e) A motorboat used exclusively for racing.
- (f) A houseboat as defined in § 44-5-25.1.
- (g) A rowboat twelve feet (12') in length or less.
- (h) A canoe.
- (i) A ferry.

History of Section.

G.L. 1956, § 46-22-6, P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 1; P.L. 1985, ch. 370, § 1; P.L. 1990, ch. 65, art. 24, § 2.

Reenactments. The 1970 Reenactment (P.L. 1970, ch. 73) inserted a former reference to the registry of motor vehicles.

The 1988 Reenactment (P.L. 1988, ch. 84,

§ 1) substituted "That the boat" for "That such boat" near the middle of subdivision (a), and made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made a stylistic and capitalization change near the beginning of subdivision (a), and inserted a comma following "boating safety" near the end of subdivision (a).

46-22-7. Boat liveries. — (a) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him or her to be operated as a motorboat; the identification number thereof; and the departure date and time, and the expected time of return. The record shall be preserved for at least six (6) months.

(b) Neither the owner of a boat livery nor his or her agent or employee shall permit any motorboat or any vessel designed or permitted by him or her to be operated as a motorboat to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to § 46-22-5, and any rules and regulations made pursuant thereto.

History of Section.

G.L. 1956, § 46-22-7; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. , § 1) inserted a comma following "§ 46-22-5" near the end of subsection (b).

46-22-8. Muffling devices. — The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. Outboard motors shall be equipped with underwater exhausts of standard manufacture as furnished by marine supply dealers. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in § 46-22-13, and for such motorboats while on trial-runs approved as provided in § 46-22-13(b), or during a period not to exceed forty-eight (48) hours immediately preceding the regatta or race and for the motorboats, while competing in official trials for speed records, during a period not to exceed forty-eight (48) hours immediately following the regatta or race.

History of Section.

G.L. 1956, § 46-22-8; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the word "such", and made a minor stylistic change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) near the end of the last sentence, inserted a comma following "the motor boats" and following "speed records".

46-22-9. Prohibited operation. — (a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless manner so as to endanger the life, limb, or property of another.

(b) No person shall operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana. A person arrested and charged with operating any motorboat or vessel, or manipulating any water skis, surfboard, or similar device, while under the influence of intoxicating liquor or narcotic or habit-forming drugs, shall have the right to be examined at his or her own expense immediately after his or her arrest, by a physician selected by him or her, and the officer so arresting or so charging that person shall immediately inform that person of this right and afford him or her a reasonable opportunity to exercise this right, and at the trial of that person the prosecution must prove that he or she was so informed and was afforded the opportunity.

(c) No person shall operate a motorboat or vessel within a water area, which has been clearly marked, in accordance with, and as authorized by, the laws of the state, by buoys or some other distinguishing device as a bathing, swimming, or otherwise restricted area; provided, that this section shall not apply in the case of an emergency, or to patrol or rescue craft. The department of environmental management, is hereby authorized to establish maximum speeds for boats in the public harbors in the state of Rhode Island at five (5) miles per hour, no wake. Any such speed limits duly established by the department of environmental management, pursuant hereto, shall have the full force and effect of law, and a violation thereof shall be a misdemeanor in accordance with the penalties enumerated in § 46-22-19(c).

(d) No person shall operate any motorboat, vessel, or seaplane in a manner which shall unreasonably or unnecessarily interfere with any other motorboat, vessel, or seaplane, or with the free and proper navigation of the waterways of the state. Anchoring under bridges or in heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

(e) No motorboat, vessel, or seaplane shall be docked or made fast to any pier, wharf, or other shore structure without the consent of the owner thereof, except in the case of an emergency.

History of Section.

G.L. 1956, § 46-22-9; P.L. 1959, ch. 187, § 1; P.L. 1969, ch. 62, § 1; P.L. 1977, ch. 86, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources" and "division of boating safety."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the word "such", and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) near the end of the second sentence in subsection (b), substituted "this right" for "the same" and substituted "the opportunity" for "such opportunity"; in the last sentence of subsection (c), inserted the word "a" preceding "violation thereof" and deleted "of this chapter" following "§ 46-22-19(c)"; deleted the word "such" preceding "interference if unreasonable" in the second sentence of subsection (d); inserted the word "the" preceding "case of an emergency" at the end of subsection (e); and made several punctuation changes throughout subsections (b) and (c).

46-22-9.1. Houseboats — Exclusion from coastal ponds. —

(a) No person shall live on a houseboat on any coastal pond in this state.

(b) As used in this section, "houseboat," means a building constructed on a float, raft, or barge that is used for single or multiple family habitation or is represented as a place of business. If used as a means of transportation, this use is secondary. "Houseboat" includes platforms, and waterborne hotels and restaurants.

(c) A "coastal pond", as used in this section, shall be as designated or defined in the rules and regulations of the coastal resources management council.

History of Section.

P.L. 1981, ch. 369, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) designated the subsections, and made minor punctuation and capitalization changes.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) divided the former single continuous provisions in subsection (b) into subsection (b) and subsection (c), thereby making a related stylistic change; and inserted a comma preceding and following "as used in this section" in subsection (c).

46-22-9.2. Flotation devices — Children. — Any person transporting under power a child ten (10) years of age or under in a Class A or Class 1 motorboat on the waters of this state shall require that the child wear a personal flotation device approved by the United States coast guard.

History of Section.

P.L. 1990, ch. 47, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) substituted "the child" for "said child" near the end of the section.

46-22-9.3. Operating so as to endanger, resulting in death. — (a) When the death of any person ensues as a proximate result of an injury received by the operation of any vessel in reckless disregard of the safety of others, the person so operating such vessel shall be guilty of "operating so as to endanger, resulting in death."
 (b) Any person charged with the commission of the foregoing shall upon conviction be imprisoned for not more than ten (10) years.

History of Section.

P.L. 1991, ch. 121, § 1.

46-22-9.4. Operating so as to endanger, resulting in personal injury. — (a) When the serious bodily injury of any person ensues as a proximate result of the operation of any vessel in reckless disregard of the safety of others, the person so operating such vessel shall be guilty of "operating so as to endanger, resulting in personal injury."

(b) "Serious bodily injury" means physical injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Any person charged with a violation of this section shall upon conviction be imprisoned for not more than five (5) years and shall be required to take a boating safety course.

History of Section.

P.L. 1991, ch. 121, § 1.

46-22-9.5. Speeding. — (a) No person shall operate any motorboat or vessel in any harbor or inlet or any pond or other confined body of water in this state in excess of forty five (45) miles per hour during the hours from sunrise to sunset and twenty five (25) miles per hour during periods of darkness or other periods of restricted visibility; provided, however, nothing herein shall prohibit the posting of lesser speed limits where deemed necessary by the appropriate state or local authority.

(b) Violations of this section shall be as follows:

(1) The first violation if no greater than ten (10) miles per hour over the speed limit shall be a civil offense which shall require payment of a twenty five dollars (\$25.00) assessment fee and may be required to attend a boating safety course.

(2) Any violation in excess of ten (10) miles per hour over the speed limit shall be deemed a misdemeanor with fines as follows:

(a) 11-15 miles per hour in excess of speed limit	\$50.00
(b) 16-20 miles per hour in excess of speed limit	\$75.00
(c) 21-25 miles per hour in excess of speed limit	\$100.00
(d) Greater than 25 miles per hour in excess of speed limit:	Fine of five dollars (\$5.00) per mile in excess of speed limit.

(e) The violator shall also be required to attend a boating safety course.

(3) State, federal, and local law enforcement and rescue agencies may exceed this speed limit when responding to an emergency or law enforcement action: provided that this speed does not endanger any person not involved in this action.

(c) The operation of personal watercrafts, as defined, use, speed, age of operator, and area of operation shall be regulated by the department of environmental management. Rules and regulations

shall be promulgated by the department within three (3) months of [June 16, 1991].

History of Section.

P.L. 1991, ch. 121, § 1.

Compiler's Notes. The bracketed date in

subsection (c) was substituted by the compiler for "the passage of this act."

46-22-10. Collisions, accidents, and casualties. — It shall be the duty of the operator of any motorboat or vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew, and passengers (if any), to render to other persons affected by the collision, accident, or other casualty, such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

History of Section.

G.L. 1956, § 46-22-10; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 1; P.L. 1968, ch. 267, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) inserted a comma following "other casualty" near the middle of the section.

46-22-11. Transmittal of information. — In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the department of environmental management, pursuant to § 46-22-21 or 46-22-22, shall be transmitted to that official or agency of the United States.

History of Section.

G.L. 1956, § 46-22-11; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 4.

Reenactments. This section was revised by the 1970 Reenactment (P.L. 1970, ch. 73) which substituted a reference to "§§ 44-22-21 and 42-22-22" for "§ 46-22-10(b)" which has been repealed.

The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental

management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "to that official" for "to said official" near the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) near the end of the section, made a stylistic change and inserted a comma preceding "shall be transmitted".

46-22-12. Water skis and surfboards. — (a) No person shall operate a vessel on any waters of this state for towing a person or persons on water skis, or a surfboard, or similar device unless there is in the vessel a person at least twelve (12) years of age, in addition to the operator, in a position to observe the progress of the person or persons being towed; and there shall be aboard the vessel, in addition to those required for the persons aboard the vessel, at least one life preserver, or life belt, or ring buoy for the person or persons being towed.

(b) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under § 46-22-13.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with or strike against any object or person.

History of Section.

G.L. 1956, § 46-22-12; P.L. 1959, ch. 187, § 1; P.L. 1969, ch. 61, § 1; P.L. 1978, ch. 186, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "in the

vessel" for "in such vessel" near the middle of subsection (a) and "person engage in water skiing" for "person engaged in water skiing" near the middle of subsection (b), and made minor punctuation and stylistic changes.

46-22-13. Regattas, races, marine parades, tournaments, or exhibitions. — (a) No regatta, motorboat or other boat race, marine parade, tournament, or exhibition (but not including a navigational or piloting contest), in which vessels participating are to be propelled by machinery, may be held on any waters of this state unless authorized by the department of environmental management, as set forth in this section. The department shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof, shall, at least fifteen (15) days prior thereto, file an application with the department of environmental management for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without authorization of the department of environmental management in writing. No application for a motorboat race (not including a navigational or a piloting contest), in which vessels participating are to be propelled by machinery on any waters of this state, shall be approved by the department of environmental management until the applicant shall furnish proof to the department that the applicant has in force regatta liability insurance in the following amounts:

Bodily injury to one person	\$10,000
Bodily injury to two or more persons	\$20,000
Property damage — one accident	\$5,000
Property damage — aggregate	\$10,000

(b) A special permit shall be obtained from the department of environmental management for authorization to engage in a trial run (other than a trial run held under the provisions of § 46-22-8) for a motorboat regatta or race, with or without cutouts and/or mufflers, the permit setting forth the time, place, and other conditions under which the trial run may be made.

(c) Motorboats used exclusively for racing, operating on the waters of this state, other than when competing in a duly authorized regatta or race, or making trial runs as set forth in this chapter, shall comply with all the provisions of this chapter.

(d) The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

History of Section.

G.L. 1956, § 46-22-13; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 2.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84,

§ 1) made several substitutions for the words "said" and "such", and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the regatta" for "such regatta" near the end of the third sentence in subsection (a), and made several punctuation and stylistic changes throughout the section.

46-22-14. Local regulation prohibited. — (a) The provisions of this chapter, and of other applicable laws of this state, shall govern the operation, equipment, numbering, and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, the provisions of which are identical to the provisions of this chapter, amendments thereto, or regulations issued thereunder; provided, that the ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto, or regulations issued thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the department of environmental management for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits, and shall set forth therein the reasons which make those special rules or regulations necessary or appropriate.

(c) The department of environmental management, is hereby authorized to make special rules and regulations, not inconsistent with chapter 9 of this title or the rules and regulations issued thereunder, with reference to the operation of vessels not more than sixty-five feet (65') in length on any waters within the territorial limits of any subdivision of this state.

History of Section.

G.L. 1956, § 46-22-14; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 2.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "that the ordinances" for "that such ordinances" near the end of subsection (a) and "make those special rules" for "make such special rules" near the end of

subsection (b), and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "this state" near the beginning of subsection (a), following "equipment of vessels" near the middle of subsection (a), and following "territorial limits" near the middle of subsection (b), and made a stylistic change near the end of subsection (c).

Cross References. Local regulation permitted to certain towns, §§ 46-4-6.1 — 46-4-6.7.

46-22-15. Owner's civil liability. — The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe such ordinary care and such operation as the rules of the common law require. The owner shall not be liable, however, unless the vessel is being used with his or her express or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner, if at the time of the injury or damage, it is under the control of his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he or she would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of the injury or damage actually incurred.

History of Section.

G.L. 1956, § 46-22-15; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the word "such", and made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted the word "the" preceding "injury or damage" near the end of the last sentence.

46-22-15.1. Operation of boat by nonresident as appointment of attorney to receive process. — Operation of a motorboat on the waters of this state by a nonresident person, his or her servant, or agent shall be deemed equivalent to an appointment by the nonresident of the secretary of state and the secretary's successor in office, to be his or her true and lawful attorney, upon whom may be served all lawful processes in any action or proceeding against the nonresident, growing out of any accident or collision in which the nonresident, his or her servant, or agent, may be involved while operating a motorboat on the waters of this state, and that operation shall be a signification of the nonresident's agreement that any such process against him or her, which is served as provided herein, shall be of the same force and validity as if served on him or her personally.

History of Section.

G.L. 1956, § 46-22-15.1, P.L. 1961, ch. 54, § 1; P.L. 1965, ch. 134, § 1; P.L. 1970, ch. 317, § 1; P.L. 1985, ch. 370, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "director of environmental management" for "director of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the words

"such" and "said", and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted "by nonresident" following the word "boat" in the section heading, inserted a comma following "lawful attorney" near the middle of the section, and inserted a comma preceding and following "which is served as provided herein" near the end of the section.

46-22-15.2. Service on nonresident. — Service of process as described in § 46-22-15.1, shall be made by leaving a copy of the process with a fee of five dollars (\$5.00) in the office of the secretary of state in the hands of the secretary or someone acting in the secretary's stead and such service shall be sufficient service upon the nonresident; provided, that notice of the service and a copy of the process shall be forthwith sent by the plaintiff or his or her attorney by certified mail to the defendant at the address given upon the defendant's application for a number, and the sender's post office receipt of sending and the plaintiff's or the plaintiff's attorney's affidavit of compliance herewith are appended to the process and entered with the declaration, or that the notice and a copy of the process are served upon the defendant by leaving the same in the defendant's hands and possession by a duly constituted public officer qualified to serve civil process in the state or jurisdiction where the defendant is found, and that officer's return showing the service to have been made at least fifteen (15) days before the return day of the process is appended to the process and entered with declaration. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

History of Section.

G.L. 1956, § 46-22-15.2, P.L. 1961, ch. 54, § 1; P.L. 1965, ch. 134, § 1; P.L. 1970, ch. 317, § 1; P.L. 1985, ch. 370, § 1; P.L. 1991, ch. 354, § 11.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "director of environmental management" for "director of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "process as described in § 46-22-15.1 shall be" for "process shall be" near the beginning of the section, and made several substitutions for the words "such" and "said".

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1), near the beginning of the first sentence, inserted the word "the" preceding "secretary of state" and substituted "the service" for "such service"; inserted the word "a" following "application for" near the middle of the first sentence; and made several punctuation and capitalization changes throughout the first sentence.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

46-22-15.3. Process fees as costs — Record of process. — The fee of five dollars (\$5.00), paid by the plaintiff to the assistant director for motor vehicles at the time of the service shall be taxed in the plaintiff's costs if he or she prevails in the suit. The assistant director for motor vehicles shall keep a record of all such process, which shall show the day and hour of service, and all fees so paid shall be paid over to the general treasurer.

History of Section.

G.L. 1956, § 46-22-15.3; P.L. 1961, ch. 54, § 1; G.L. 1956, ch. 134, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "assistant di-

rector for motor vehicles" for "registry of motor vehicles."

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made several punctuation changes throughout the section.

46-22-16. Boat manufacturers and dealers. — The director is authorized to promulgate regulations governing the issuance of fourteen-day temporary numbers to be used by qualified manufacturers or dealers in transporting or demonstrating motorboats. The director may set rules qualifying dealers and manufacturers.

History of Section.

G.L. 1956, § 46-22-16, P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 5; P.L. 1985, ch. 370, § 1.

Reenactments. The 1980 Reenactment

(P.L. 1980, ch. 366) added former provisions relating to the assistant director for motor vehicles and the department of environmental management.

46-22-17. Enforcement. — The department of environmental management, harbormasters, assistant harbormasters, police officers authorized to make arrests, and employees of the department of environmental management, authorized to make arrests under the provisions of §§ 2-12-8, 20-1-12, and 20-1-15, shall have the authority to enforce the provisions of this chapter and, in the exercise thereof, shall have the authority to stop and board any vessel subject to this chapter.

History of Section.

G.L. 1956, § 46-22-17; P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 7; P.L. 1983, ch. 107, § 5; 1984, ch. 171, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made several punctuation changes throughout the section.

46-22-17.1. Enforcement power of employees of the department of environmental management. — (a) Employees of the department of environmental management, authorized to make arrests under the provisions of chapter 1 of title 20, shall, in connection with the enforcement of the provisions of this chapter, be deemed officers within the meaning of § 11-32-1 and shall have the power:

(1) To enforce all laws, rules, and regulations relating to this chapter;

(2) To execute all warrants and search warrants for the violation of laws, rules, and regulations relating to this chapter;

(3) To serve subpoenas issued for the trial of all offenses hereunder;

(4) To carry firearms or other weapons, concealed or otherwise, in the course of and in performance of their duties under this chapter; and

(5) To arrest, without warrant and on view, any person found violating any law, rule, or regulation relating to this chapter; take that person before a court having jurisdiction for trial; detain that person in custody at the expense of the state until arraignment; and to make and execute complaints within any district to the justice or clerk of the court against any person for any of the offenses enumerated under this chapter, committed within that district.

(b) Employees of the department of environmental management authorized to make arrests under the provisions of § 2-12-8, shall, in connection with the enforcement of the provisions of this chapter and the rules and regulations made thereunder, have the power to arrest without a warrant any person found in the act of violating any provision of this chapter, and shall not be required to give surety for costs upon any complaint made by him or her.

History of Section.

G.L. 1956, § 46-22-17.1; P.L. 1965, ch. 134, § 8.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made several substitutions for the words

"such" and "the said", and made minor punctuation changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "§ 2-12-8" for "2-12-9" near the beginning of subsection (b), as that appears to be the correct reference; and made several punctuation changes throughout the section.

46-22-17.2. Prosecution of violations. — The director of environmental management and the director's deputies and assistants may, by virtue of their respective offices, make complaints of any violations of this chapter, and they shall not be required, either jointly or individually, to give recognizance or to furnish surety for costs or be liable for costs on those complaints.

History of Section.

G.L. 1956, § 46-22-17.2; P.L. 1965, ch. 134, § 8.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "director of environmental management" for "director of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "those complaints" for "such complaints" at the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "either jointly or individually" for "or any of them" near the end of the section.

46-22-17.3. Refusal to stop on order or command. — It shall be a misdemeanor, punishable by a fine of not more than one hundred dollars (\$100), for any person to refuse to move or stop on oral command or order of any employee of the department of environmental management in the exercise of the employee's duties under this chapter. It shall likewise be a misdemeanor, punishable as aforesaid, for any person to refuse to move or stop on oral command of a harbor-master, assistant harbor-master, or police officer, operating from a patrol boat identified as such and exercising the duties lawfully assigned to him or her.

History of Section.

G.L. 1956, § 46-22-17.3; P.L. 1965, ch. 134, § 8; P.L. 1970, ch. 209, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) made a minor punctuation change.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made several punctuation changes throughout the section.

46-22-18. Funds. — (1) All monies collected under the provisions of this chapter shall be paid into a restricted receipt account to be allocated, distributed and used as follows:

(a) One-half ($1/2$) of all such funds collected from in-state residents shall be used exclusively for:

(i) Expenses of the department of environmental management, division of boating safety, incurred in the administration and enforcement of this chapter;

(ii) Expenses of boating safety, boating safety services and programs, boating education, marine patrols, enforcement training programs, and promotion and publicity relating to boating and boating safety and equipment related to boating safety;

(iii) Grants for the purpose set forth in subsection (1)(a)(ii) above;

(iv) Maintenance and improvement of recreational and navigational facilities relating to boating safety; including, but not limited to, the installation, improvement, and maintenance of aids to navigation, and support facilities; and

(v) Expenses incurred in cooperation with the government of the United States in boating and boating safety matters.

(b) One-half ($1/2$) of all funds collected from in-state residents shall be paid annually to the cities and towns of the state in lieu of a property tax on motorboats. The portion of the total amount to be paid to each city and town each year under this subsection shall be determined in accordance with a formula under which each city and town shall receive a proportionate share of the total amount to be distributed under this subsection, the proportionate share to be determined by a ratio, the numerator of which shall be the total annual fees paid under § 46-22-4 with respect to motorboats registered to persons residing in such city or town, and the denominator of which shall be the total annual fees paid with respect to all motorboats registered in all cities and towns of the state.

(c) Fees generated from motorboats registered to nonresidents of Rhode Island shall be allocated, distributed and used in accordance with subsection (a) of this section.

(2) All funds collected and payable to the cities and towns hereunder shall be paid to the cities and towns on or before June 15 of each year. To the extent that any additional funds payable to the cities and towns are thereafter generated, the additional funds shall be paid to the cities and towns on or before December 31 of each year.

History of Section.

G.L. 1956, § 46-22-18, P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 10; P.L. 1985, ch. 370, § 1; P.L. 1990, ch. 65, art. 24, § 2; P.L. 1991, ch. 44, art. 16, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "those purposes" for "such purposes" at the end of subdivision (d), and made minor capitalization and stylistic changes.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) assigned the subsection (1) and (2) designations; inserted the word "and" preceding "promotion and publicity" in subsection (1)(a)(ii); substituted "subsection (1)(a)(ii)" for "subsection (ii)" in subsection (1)(a)(iii);

deleted the word "such" preceding "funds shall be paid" in the first sentence of subsection (1)(b); substituted "the proportionate share" for "such proportionate share" near the middle of the second sentence in subsection (1)(b); substituted "the additional funds" for "the same" in the second sentence of subsection (2); and made several punctuation changes throughout subsection (1).

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

46-22-19. Penalties. — In addition to any other penalties specified in this chapter:

(a) Any person who violates any provision of §§ 46-22-3 — 46-22-5, 46-22-8, 46-22-9.2, 46-22-10, and 46-22-13, or who violates any rule or regulation made under the provisions of this chapter shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one hundred dollars (\$100) for each violation.

(b) Any person who violates any provision of §§ 46-22-7 and 46-22-12 shall be guilty of a misdemeanor and shall be subject to a fine not to exceed two hundred dollars (\$200) for each violation.

(c) Any person who violates any provision of §§ 46-22-9 and 46-22-9.1 shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000), or imprisonment not to exceed one year, or both for each violation.

History of Section.

G.L. 1956, § 46-22-19, P.L. 1959, ch. 187, § 1; P.L. 1965, ch. 134, § 9; P.L. 1981, ch. 369, § 2; P.L. 1985, ch. 370, § 1; P.L. 1988, ch. 84, § 17; P.L. 1988, ch. 153, § 1; P.L. 1990, ch. 47, § 2; P.L. 1991, ch. 124, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "each violation" for "each such violation" at the end of subdivisions (a) and (b); substituted "46-22-9.1" for "46-22-9.2" near the beginning of subdivision (c); and made minor punctuation and stylistic changes.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1), in subdivision (a), made a stylistic change and inserted a comma following "46-22-13" and following "this chapter"; deleted "of this chapter" preceding "shall be guilty" in subdivision (b); and deleted the word "of" preceding "not to exceed six" near the end of subdivision (c), which deletion was previously made in 1988 by the compiler.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

46-22-20. Severability. — The provisions of this chapter shall be severable and, if any of the provisions shall be held invalid, the decision of the court respecting that provision or provisions shall not affect the validity of any other provision which can be given effect without that invalid provision.

History of Section.

G.L. 1956, § 46-22-20; P.L. 1959, ch. 187, § 1.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "that provision" for "such provision" near the middle of the section and "that invalid provision" for

"such invalid provision" at the end of the section.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "shall be severable and" near the beginning of the section.

46-22-21. Reporting of accidents, casualty, vandalism, and thefts. — The operator or owner of a vessel on the waters of this state, involved, or whose vessel is involved, in an accident, casualty, vandalism, or theft in excess of five hundred dollars (\$500), or other casualty which results in death or injury to a person, shall report the same, and immediately give notice of the incident to the department of environmental management or to a nearby office of local or state police. In the event the local or state police are notified, it shall be the duty of the officer receiving the notice to immediately give notice of the incident to the department of environmental management. In the event the department of environmental management is notified, it shall be the duty of the employee of the department receiving the notice to give notice of the incident to the state and local police of the city or town wherein the incident occurred within twenty-four hours (24) hours in the following circumstances: thefts in excess of one hundred dollars (\$100), or any accident which results in bodily injury or death to a person. In order to allow more complete investigations of theft, all motorboats manufactured after 1971, required to apply for numbering in § 46-22-3 above, shall provide to the department of environmental management, at the time of their next annual application, the full hull identification number of the vessel. Homemade vessels may apply to the department for identification numbers. The director may promulgate regulations for the enforcement of this requirement.

History of Section.

G.L. 1956, § 46-22-21, P.L. 1968, ch. 267, § 2; P.L. 1985, ch. 370, § 1; P.L. 1991, ch. 124, § 1.

Reenactments. The 1970 Reenactment (P.L. 1970, ch. 73) substituted "employee" for "employer" in the third sentence.

The 1980 Reenactment (1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "report the same" for "report

same" near the middle of the first sentence, and made several substitutions for the words "such" and "said".

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made several punctuation changes throughout the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

46-22-22. Owner required to make written reports. — The owner of a vessel involved in an accident, casualty, vandalism, or theft in excess of five hundred dollars (\$500), shall, within five (5) days after the incident, forward a written report of the incident to the department of environmental management, on forms provided by the department.

History of Section.

G.L. 1956, § 46-22-22, as enacted by P.L. 1968, ch. 267, § 2; P.L. 1991, ch. 124, § 1.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "department of environmental management" for "department of natural resources."

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "the incident" for "such incident" twice near the middle of the section.

The 1991 Reenactment (P.L. 1991, ch. 354,

§ 1) inserted a comma preceding and following the word "shall" near the middle of the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354, which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

46-22-23. Maximum speed within the city of Warwick. — The Warwick park and waterfront development commission is hereby authorized to establish maximum speed limits for boats in the public harbors of the city of Warwick at five (5) miles per hour. Any speed limits duly established by the commission, pursuant hereto, shall have the force and effect of law, and a violation thereof shall be a misdemeanor.

History of Section.

P.L. 1970, ch. 209, § 2.

Reenactments. The 1988 Reenactment (P.L. 1988, ch. 84, § 1) substituted "by the commission" for "by said commission" in the last sentence.

The 1991 Reenactment (P.L. 1991, ch. 354, § 1) in the second sentence, deleted the word "such" preceding "speed limits", inserted a comma preceding and following "pursuant hereto", and inserted the word "a" preceding "violation thereof".

46-22-24. Scuba divers, skin diving, or snorkeling — Warning flags. — (a) Any person scuba diving, skin diving, or snorkeling in an area where power or motor boats are operated, shall place a warning flag on a buoy at a place of his or her submergence, the flag to be at least twelve by twelve inches (12" x 12") with a white stripe running from the diagonal corners which stripe shall be one quarter ($\frac{1}{4}$) as wide as the flag, or conspicuously flown upon a boat which he or she is then using in the area, in which case the flag shall be at least eighteen by eighteen inches (18" x 18") and with a white stripe running from one upper corner to a diagonal lower corner, which stripe shall be one quarter ($\frac{1}{4}$) as wide as the flag itself. The flag shall be in place only while diving operations are in progress and, during the hours between sunset and sunrise, this flag shall be illuminated by a light shining on the flag. Motor boats shall not be operated within fifty feet (50') of any flag as above described. No person shall be in violation of this section if he or she travels within fifty feet (50') of a scuba diver or snorkeler who is in fact obstructing navigation.

(b) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than fifty dollars (\$50.00).

(c) However, any person using the above scuba diving, snorkel diving, or skin diving flag with the intention of obstructing navigation shall be guilty of a misdemeanor and shall also be subject to a fine of not more than fifty dollars (\$50.00).

History of Section.

P.L. 1973, ch. 112, § 1; P.L. 1974, ch. 233, § 1; P.L. 1978, ch. 186, § 2.

Reenactments. The 1980 Reenactment (P.L. 1980, ch. 366) substituted "which" for "while" in the first sentence of subsection (a).

The 1988 Reenactment (P.L. 1988, ch. 84, § 1) designated the subsections, made several substitutions for the words "said" and "such", and made minor punctuation changes.

46-22-25. Regulations. — The director is authorized to promulgate rules and regulations necessary for the enforcement or implementation of this chapter.

History of Section.

P.L. 1985, ch. 370, § 1.

Compiler's Notes. As enacted by P.L. 1985, ch. 370, § 1, this section was designated as § 46-22-24. But inasmuch as a

§ 46-22-24 already existed at the time P.L. 1985, ch. 370 was passed, this section was redesignated as § 46-22-25 by the joint committee on legislative affairs pursuant to § 43-2-21.

CHAPTER 22.2

ALCOHOL BOATING SAFETY ACT

SECTION.		SECTION.	
46-22.2-1.	Short title.	46-22.2-5.	Chemical tests for intoxication.
46-22.2-2.	Definitions.	46-22.2-6.	Admissibility of evidence.
46-22.2-3.	Violations by intoxicated watercraft operators.	46-22.2-7.	Testing of blood of persons killed in watercraft accidents.
46-22.2-4.	Additional penalties for violators.	46-22.2-8.	Severability.

46-22.2-1. Short title. — This chapter shall be known as “The Alcohol Boating Safety Act.”

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231, § 1.

46-22.2-2. Definitions. — The following words and phrases shall have the meanings ascribed to them in this section, unless the context shall indicate another or different meaning or intent:

(a) “Chemical test” means an analysis of a person’s blood, breath, urine, or other bodily substance for the determination of the presence of alcohol or a controlled substance.

(b) “Controlled substance” means a drug, substance, or immediate precursor in schedules I-V of chapter 28 of title 21. The term shall not include distilled spirits, wine, or malt beverages, as those terms are defined or used in chapter 1 of title 3, nor tobacco.

46-22.2-3

WATERS AND NAVIGATION

(c) "Intoxicated" means under the influence of alcohol, a controlled substance, any drug other than alcohol or a controlled substance, or any combination of alcohol, controlled substance, or drugs, so that there is impaired thought and action and loss of normal control of a person's faculties to such an extent as to endanger any person.

(d) "Law enforcement officer" means an employee, the duties of whose position include investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the state and shall include conservation officers employed by the department of environmental management.

(e) "Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was ten hundredths percent (.10%), or more, by weight of alcohol in the person's blood.

(f) "Relevant evidence" includes evidence that at the time of the alleged violation there was at least five hundredths percent (.05%), but less than ten hundredths percent (.10%), by weight of alcohol in the person's blood.

(g) "Watercraft" means a device for transportation by water.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231, § 1.

Compiler's Notes. In 1991, the compiler made minor punctuation changes.

46-22.2-3. Violations by intoxicated watercraft operators. —

(a) Any person who operates a watercraft while intoxicated or after he or she has been ordered not to operate a watercraft under the provisions of this chapter shall be guilty of a misdemeanor.

(b) Any person who operates a watercraft while intoxicated and while so operating causes the death or serious bodily injury to another person or has been convicted of a second and subsequent offense under this chapter shall be guilty of a felony.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231, § 1.

46-22.2-4. Additional penalties for violators. — In addition to any criminal penalties imposed under this chapter, the violator's right to operate a watercraft shall be suspended by the court for a maximum period of one year in the case of a misdemeanor and two (2) years in the case of a felony and the violator shall be required to take a boating safety course that meets the standards as set forth by the United States Coast Guard and/or the U.S. Coast Guard Auxiliary and/or any other department of environmental management endorsed boating safety course, including, but not limited to the Power Squadron course.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231,
§ 1.

46-22.2-5. Chemical tests for intoxication. — (a) Any person who operates a watercraft in waters over which this state has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a watercraft in this state. If a person refuses to submit to a chemical test under this chapter, the court shall order the person not to operate a watercraft for at least one year.

(b) A law enforcement officer having probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person. A law enforcement officer may offer a person more than one chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter. A person must submit to each chemical test offered by a law enforcement officer in order to comply with the implied consent provisions of this chapter.

(c) If the chemical test results in relevant evidence that the person is intoxicated, he or she may be arrested for an offense under this chapter. If the chemical test results in prima facie evidence that the person is intoxicated, he or she shall be arrested for an offense under this chapter.

(d) Any person who refuses to submit to a chemical test may be arrested for an offense under this chapter.

(e) At any proceeding under this chapter, a person's refusal to submit to a chemical test is inadmissible into evidence.

(f) The provisions of § 31-27-2 concerning the certification and use of chemical breath tests apply to the use of such tests in a prosecution under this chapter.

(g) If a person refuses to submit to a chemical test under this chapter, the law enforcement officer shall inform the person that his or her refusal will result in the suspension of his or her watercraft operation privileges for one year.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231,
§ 1.

46-22.2-6. Admissibility of evidence. — At any proceeding concerning an offense under this chapter, evidence of the amount by weight of alcohol that was in the blood of the person charged with the offense at the time of the alleged violation, as shown by an analysis of his or her breath, blood, urine, or other bodily substance, shall be admissible.

46-22.2-7

WATERS AND NAVIGATION

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231,
§ 1.

46-22.2-7. Testing of blood of persons killed in watercraft accidents. — (a) The director of the department of health shall provide a procedure whereby all morticians in the state shall obtain blood samples from all watercraft operators who have died as a result of and contemporaneously with an accident involving a watercraft.

(b) All law enforcement officers shall report such fatalities to the director of the department of health immediately after their occurrence.

(c) The blood sample, with such other information as may be required, shall be delivered to the director of the department of health. Upon receipt of such sample the director shall cause such tests to be performed as may be required to determine the amount of alcohol or controlled substance that may be contained in such sample.

(d) The results of such tests shall be used exclusively for statistical purposes and the sample shall never be identified with the name of the deceased. Any person releasing or making public such information, other than as herein prescribed, shall be guilty of a misdemeanor.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231,
§ 1.

Compiler's Notes. — In 1991, the compiler added the subsection designations (a) to (d).

46-22.2-8. Severability. — If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

History of Section.

P.L. 1991, ch. 148, § 1; P.L. 1991, ch. 231,
§ 1.

CHAPTER 22.1

UNIFORM BOAT TITLE ACT

SECTION.		SECTION.	
46-22.1-1.	Short title.		porter's statement of origin.
46-22.1-2.	Definitions.	46-22.1-6.	Hull identification number of vessel.
46-22.1-3.	Owner's certificate of title — In general.	46-22.1-7.	Dealer's record of vessels bought, sold, or transferred.
46-22.1-4.	Fees — Duplicates.	46-22.1-8.	Transfer or repossession of vessel by operation of law.
46-22.1-5.	Obtaining manufacturer's or im-	46-22.1-13.	Relief upon satisfaction.
		46-22.1-14.	Adoption of rules and regulations.
46-22.1-9.	Security interest in vessels — Exemptions.	46-22.1-15.	Disclosure of information.
46-22.1-10.	Perfection generally.	46-22.1-16.	Exclusive method.
46-22.1-11.	Execution of application — Time when perfected — Endorsement of certificate.	46-22.1-17.	Forms and investigations.
46-22.1-12.	Assignability.	46-22.1-18.	Offenses relating to this chapter.
		46-22.1-19.	Severability.

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). Refer-

ences in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-22.1-1. Short title. — This chapter may be cited as the "Uniform Boat Titling Act".

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "This

chapter" for "This act", which substitution was previously made in 1988 by the compiler, and made a stylistic change at the end of the section.

46-22.1-2. Definitions. — As used in this chapter, the following words have the meanings indicated:

(1) "Amphibious vehicle" means a vehicle which may be propelled both on water and land.

(2) "Certificate" means any certificate of title issued.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels, or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for the sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" shall mean the department of environment management.

(5) "Director" shall mean the director of the department of environmental management.

(6) "Documentation papers" means those papers issued to a documented vessel by the United States Coast Guard or any federal agency successor thereto.

(7) "Documented vessel" means a vessel which has valid documentation papers issued by the United States Coast Guard or any federal agency successor thereto.

(8) "Homemade vessel" means any vessel built after October 31, 1972 for which a federal identification number is not required to be assigned to it by the manufacturer pursuant to federal law, or any vessel constructed or assembled prior to November 1, 1972, by other than a licensed manufacturer for his or her own use or the use of a specific person. In no event shall a rebuilt or reconstructed vessel be construed to be a homemade vessel.

(9) "Lien holder" means a person holding a security interest.

(10) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels for the purpose of sales or trade.

(11) "Manufacturer's Statement of Origin, (M.S.O.)" means the original written instrument or document required to be executed and delivered by the manufacturer to his or her agent or a dealer, or a person purchasing a vessel directly from the manufacturer, certifying the origin of the vessel or hull.

(12) "Manufactured vessel" shall mean any vessel built after October 31, 1972, for which a federal identification number is required pursuant to federal law, or any vessel constructed or assembled prior to November 1, 1972, by a duly licensed manufacturer.

(13) "Master Carpenter's Certificate, (M.C.C.)" shall mean the certificate issued by a carpenter who builds wooden vessels for sale or resale.

(14) "Operating" means to navigate or otherwise use a vessel.

(15) "Operator" means the person who operates or has charge of the navigation or use of a vessel.

(16) "Owner" means a person, other than a lienholder, having a property interest in or title to a vessel. The term includes a person entitled to use or have possession of a vessel subject to an interest in another person, reserved, or created by agreement and securing payment or performance of an obligation, but it does not include a lessee under a lease not intended as security.

(17) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash "proceeds". All other proceeds are "noncash proceeds".

(18) "Security interest" means an interest which is reserved or created by an agreement which secures payment or performance of an obligation, and is valid against third parties generally.

(19) "Ship's lifeboat" means a lifeboat used solely for lifesaving purposes. This term does not include dinghies, tenders, speedboats, or other types of craft, whether or not carried aboard a vessel, where the dinghies, tenders, speedboats, or other types of craft are not used solely for lifesaving purposes.

(20) "State" means the state of Rhode Island.

(21) "State of principal use" means the state on whose waters a vessel is used or to be used most during a calendar year.

(22) "Use" means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

(23) "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water.

(24) "Waters of the state" means any water within the jurisdiction of the state, the marginal sea adjacent to the state, and the high seas when navigated as part of a ride or journey to or from the shore of the state.

(25) "Z Hull identification number" shall mean a hull identification number which is assigned to a homemade vessel by the department of environmental management. The number shall consist of twelve (12) characters with the first three (3) characters being the letters "R.I.Z.", which will identify the hull number as being issued by the state of Rhode Island.

History of Section.

P.L. 1988, ch. 551, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) arranged the subdivisions in alphabetical order, thereby redesignating the subdivision designations; inserted the word "the" preceding "sale, trade" near the end of the first sentence in subdivision (4); substituted "the dinghies" for "said dinghies" in the second sentence of subdivi-

sion (19), which substitution was previously made in 1988 by the compiler; substituted "The number" for "Said number" at the beginning of the second sentence in subdivision (25), which substitution was previously made in 1988 by the compiler; and made several punctuation and stylistic changes throughout the section.

46-22.1-3. Owner's certificate of title — In general. — (a) Except as provided in subsections (b) and (e), any owner of a vessel principally used on the waters of this state shall apply to the department for a certificate of title for the vessel.

(b) A certificate of title shall not be required under this chapter for any vessel that is:

(1) A ship's lifeboat; or

(2) A nonmotorized inflatable vessel, surfboard, racing shell, rowing scull, or tender for direct transportation between a vessel and the shore, where the vessel is used solely for direct transportation between a vessel and the shore; or

(3) A documented vessel.

(c) Each certificate of title shall contain the title number, the name of the vessel manufacturer, model year, hull identification number, the registration number, hull material, propulsion, fuel type, use of vessel length, audit number, as well as name and address of the registered owner, date of issue of the certificate of title, first lien holder, if any, date and amount of lien, second lien holder, if any, date and amount of lien, and any evidence of first and second lien satisfaction with signature and title of agent, as well as notary public seal and any other information as required by the director. Certificates of title shall be issued on forms prescribed by the department.

(d) The department may not issue or renew a certificate of number to any vessel required to be registered and numbered in this state, unless the owner of the vessel has a valid certificate of title.

(e) A person who, on January 1, 1989, is the owner of a vessel with a valid certificate of number issued by this state is not required to file an application for a certificate of title for the vessel until he or she transfers any part of his or her interest in the vessel or renews the certificate of number for the vessel.

(f) Every owner of a vessel subject to titling under the provisions of this chapter shall apply to the department for the issuance of a certificate of title for the vessel within thirty (30) days after taking

possession of a vessel. The application shall be on forms the department prescribes, and be accompanied by the required fee. The application shall be signed and sworn to before a notary public and contain a certification signed in writing, representing that statements made on the application are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross purchase price of the vessel or the fair market value, if no sale immediately proceeded the transfer, and any additional information the department requires. If the application is made for a vessel last previously registered or titled in another state or foreign country, the application shall contain the information set forth above and any other the department may require.

(g) If a dealer buys or acquires a used numbered vessel for resale, he or she shall report the acquisition to the department on forms the department provides, or he or she may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used unnumbered vessel, he or she shall apply for a certificate of title in his or her name within fifteen (15) days. If a dealer buys or acquires a new vessel for resale, he or she may apply for a certificate of title in his or her name, but is not required to do so.

(h) Every dealer transferring a vessel requiring titling under this chapter shall assign the title to the new owner if the dealer is required under subsection (g) to obtain a title, or, in the case of a new vessel, assign the manufacturer's statement of origin. In the event the dealer accepts an application for title certificate and accompanying fee from the purchaser of a vessel, the dealer shall forward the required fee and application to the department within fifteen (15) days of the receipt of the application and fee.

(i) The department shall maintain a record of any certificate of title it issued.

(j) No person may sell, assign, or transfer a vessel titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. No person may purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for it in his or her name.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the vessel" for "said vessel" near the middle of subsection (b)(2), substituted "; or" for a period at the end of subsection (b)(2), inserted the word "A" preceding "documented" in subsection (b)(3), substituted "the department" for "said department" at the end of subsection (c), substituted "January 1, 1989" for "the effective

date of this chapter" in subsection (e), and substituted "the application" for "said application" near the end of subsection (h), which insertion and substitutions were previously made in 1988 by the compiler; inserted the word "the" preceding "certificate of title" near the middle of subsection (c); inserted the word "the" preceding "issuance of a certificate" in the first sentence of subsection (f); and made several punctuation changes throughout the section.

46-22.1-4. Fees — Duplicates. — (a) The department shall charge a ten dollar (\$10.00) fee to issue a certificate of title, and a five dollar (\$5.00) fee to transfer a title, or issue a corrected and duplicate certificate of title. A fifteen dollar (\$15.00) late fee shall be charged to any owner not timely filing an application for a title certificate under § 46-22.1-3.

(b) If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lien holder or, if there is none, the owner named in the certificate, as shown by the departments' records shall, within thirty (30) days, obtain a duplicate by applying to the department. The applicant shall furnish information concerning the original certificate and the circumstances of its loss, disappearance, mutilation, or destruction as the department may require. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate and required fee.

(c) The duplicate certificate of title shall be marked plainly "duplicate" across the face, and may be mailed or delivered to the applicant.

(d) If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) made several punctuation changes throughout the section.

46-22.1-5. Obtaining manufacturer's or importer's statement of origin. — A manufacturer or dealer may not transfer ownership of a new vessel without supplying the transferee with the manufacturer's or importer's statement of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain such information as the department may require.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted the word "as" following "such information" in the sec-

ond sentence, which insertion was previously made in 1988 by the compiler; and inserted a comma preceding "may require" at the end of the second sentence.

46-22.1-6. Hull identification number of vessel. — (a) Every vessel whose construction began after October 31, 1972 shall have a hull identification number assigned and affixed as required by the federal Boat Safety Act of 1971 [46 U.S.C. § 1451 et seq.]. The department shall determine the procedures for application and issuance of the hull identification number for homemade boats.

(b) A person may not destroy, remove, alter, cover, deface, or mutilate the manufacturer's hull identification number, the plate bearing it, or any hull identification number the department assigns to any vessel without the departments' permission.

(c) A vessel owner who is assigned a "R.I.Z." hull identification number for his or her homemade boat must permanently affix the number to his or her vessel. He or she shall carve, burn, stamp, emboss, mold, bond, or otherwise permanently affix the number to the exterior starboard side of the transom, and place the number at a second location known only to him or her. The number shall be no less than one-quarter ($\frac{1}{4}$) of an inch high.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "the number" for "said number" in the first sentence of subsection (c), which substitution was previously made in 1988 by the compiler;

and inserted a comma following the word "bond" in the second sentence of subsection (c).

Federal Acts References. The bracketed U.S. Code reference in subsection (a) was inserted by the compiler.

46-22.1-7. Dealer's record of vessels bought, sold, or transferred. — Every dealer shall maintain for three (3) years a record of any vessel he or she bought, sold, exchanged, or received for sale or exchange. These records shall be open to inspection by the department representatives and agents, during reasonable business hours.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma

following the word "sold" in the section heading, and inserted a comma following the word "exchanged" in the first sentence.

46-22.1-8. Transfer or repossession of vessel by operation of law. — If ownership of a vessel is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty (30) days after he or she has acquired the right to possession of the vessel by operation of law, shall mail or deliver to the department satisfactory proof of his or her ownership as the department requires together with an application for a new or transfer certificate of title, and the required fee.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) deleted the subsec-

tion (a) designation at the beginning of the section as this section does not contain a subsection (b), which deletion was previously made in 1988 by the compiler.

46-22.1-9. Security interest in vessels — Exemptions. — Sections 46-22.1-10 — 46-22.1-17 do not apply to or affect:

- (1) A lien given by statute or rule of law to a supplier of services or materials for the vessel;
- (2) A lien given by statute to the United States, this state, or any political subdivision of this state;
- (3) A security interest in a vessel created by a manufacturer or dealer who holds the vessel for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest;
- (4) Any lien arising out of an attachment of a vessel;

(5) Any security interest claimed on proceeds, as defined in subsection (2) of this section, if the original security interest did not have to be noted on the certificate of title in order to be perfected; or

(6) Any vessel for which a certificate of title is not required under this chapter.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made a stylistic change near the middle of the introductory language; substituted a colon for a semicolon

at the end of the introductory language, which substitution was previously made in 1988 by the compiler; inserted a comma following "this state" in subdivision (2); and inserted a comma following "this section" in subdivision (5).

46-22.1-10. Perfection generally. — (a) Unless excepted by § 46-22.1-9, a security interest in a vessel is not valid against creditors of the owners or subsequent transferees or secured parties of the vessel unless perfected as provided under §§ 46-22.1-10 — 46-22.1-17.

(b) A security interest is perfected by the delivery to the department of the existing certificate of title, if any, or if there is no certificate of title, an application for certificate of title on a form provided and approved by the department containing information regarding the security interest, and upon payment of a filing fee of fifteen dollars (\$15.00). The security interest is perfected as of the time of its creation if delivery and payment to the department are completed within ten (10) days of the date of its creation, otherwise perfection is as of the time of its delivery and payment.

(c) If a vessel is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including conflict of law rules) of the jurisdiction where the vessel was when the security interest attached, subject to the following:

(1) If the parties to the transaction understood at the time the security interest attached to that the vessel would be kept in this state, and it was brought into this state within thirty (30) days after the security interest attached for a purpose other than transportation through this state, the validity of the security interest in this state is to be determined by the law of this state.

(2) If the security interest was already affected under the laws of the jurisdiction where the vessel was when the security interest attached and before being brought into this state:

(i) If the name of the secured party is shown on an existing certificate of title issued by that jurisdiction or the security interest continues perfected in this state;

(ii) If the name of the secured party is not shown on the existing certificate of title issued by that jurisdiction, and if the law of that jurisdiction does not provide for a certificate of title disclosing security interests, the security interest continues perfected in this state for four (4) months, and thereafter, if within the four (4) month period it is perfected in this state. This security interest may also be

perfected in this state after the expiration of the four (4) month period in which case perfection dates from the time of perfection in this state; or

(iii) If the security interest was not perfected under the law of the jurisdiction in which the vessel was when the security interest attached before being brought into this state, it may be perfected in this state; in which case perfection dates from the time of perfection in this state.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) made a stylistic change near the end of subsection (a); inserted the word "to" following "interest attached" near the beginning of subsection

(c)(1) and corrected a typographical error in the word "affected" near the beginning of the introductory language in subsection (c)(2), which insertion and correction were previously made in 1988 by the compiler; and made several punctuation changes throughout the section.

46-22.1-11. Execution of application — Time when perfected — Endorsement of certificate. — If an owner creates a security interest in a vessel:

(a) The owner immediately shall:

(1) Execute the space provided on the certificate of title or a separate form the department prescribes, naming the secured party on the certificate of title showing the name and address of the secured party, the amount of the security interest, and the date of the security agreement, and

(2) Cause the certificate of title and application to be delivered to the department.

(b) At the time of delivery of the documents described in subdivision (a) of this section to the department the secured party shall pay to the department a filing fee as required for perfection of the security interest under § 46-22.1-10(b). The security interest is perfected as of the time of its creation if delivery and payment to the department are completed within ten (10) days of the date of its creation, otherwise perfection shall be as of the time of its delivery and payment.

(c) Upon receipt of the certificate of title, application, and the required filing fee, the department shall endorse on the existing certificate of title or on a new certificate which it then issues, the name and address of all secured parties, and mail or deliver the certificate of title to the secured party.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) divided the former single continuous provisions of subdivision (a) into the present introductory language and paragraphs, thereby making related

punctuation, capitalization, and stylistic changes; substituted the word "subdivision" for the word "paragraph" near the beginning of the first sentence of subdivision (b), which substitution was previously made in 1988 by the compiler; and made two punctuation changes in subdivision (a)(1).

46-22.1-12. Assignability. — (a) A secured party may assign, absolutely or otherwise, all or part of a security interest in the vessel to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest, and the secured party remains liable for any obligations as secured party until the assignee is named as secured party on the certificate of title.

(b) The assignee shall deliver to the department the certificate of title if available and an assignment by the secured party named in the certificate of title in the form the department may prescribe, accompanied by a filing fee as required for perfection of the security interest under § 46-22.1-10(b). The assignee's security interest is perfected as of the time of its creation if delivery and payment to the department are completed within ten (10) days of the date of its creation, otherwise perfection is as of the time of its delivery and payment.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted "its creation" for "it's creation" in the second sen-

tence of subsection (b), which substitution was previously made in 1988 by the compiler; and made several punctuation changes throughout the section.

46-22.1-13. Relief upon satisfaction. — (a) Upon the satisfaction of a security interest in a vessel, the secured party shall securely attach to the certificate of title a release of security interest, in whatever form as may be prescribed by or acceptable to the department and shall within fifteen (15) days mail or deliver the certificate of title with attached release to the owner and a copy of the release to the department. Upon receipt, the department shall update its records to reflect the release. Upon request of the owner and the receipt by the department of the certificate of title with attached release, the department may issue a new certificate of title to the owner upon receipt of a fee of five dollars (\$5.00).

(b) If the department determines, after a hearing and following due notice to all interested parties, that an indebtedness does not constitute a security interest, it shall release the indebtedness upon the certificate of title or issue a new certificate of title, and mail or deliver the certificate of title to the owner. Any person aggrieved by the decision of the department may file an appeal in accordance with the provisions of the state's Administrative Procedure Act.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted a comma following "interest in a vessel" near the be-

ginning of the first sentence in subsection (a); and near the beginning of the first sentence in subsection (b), inserted a comma following the word "determines" and following "interested parties".

46-22.1-14. Adoption of rules and regulations. — The department shall adopt the necessary rules and regulations to implement the provision of §§ 46-22.1-3 — 46-22.1-17. The department shall further adopt the substantive provisions of the federal Boat Safety Act of 1971 [46 U.S.C. § 1451 et seq.] as well as the rules and regulations of the coast guard concerning hull identification numbers adopted in August of 1984.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) made two punctuation changes and a stylistic change in the first sentence.

46-22.1-15. Disclosure of information. — A secured party named in a certificate of title, on written request of the owner, shall disclose to the owner any pertinent information as to the security agreement and indebtedness secured by it in accordance with the commercial laws or articles of the state.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted the word

"or" preceding "articles of the state" at the end of the section, which insertion was previously made in 1988 by the compiler.

46-22.1-16. Exclusive method. — The method provided in §§ 46-22.1-10 — 46-22.1-16 of perfecting and giving notice of security interest shall be exclusive.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) made a stylistic change near the middle of the section.

46-22.1-17. Forms and investigations. — (a) The department shall prescribe and provide suitable forms of applications, certificate of title, notices of security interest, and all other notices and forms necessary to carry out §§ 46-22.1-3 — 46-22.1-17.

(b) The department may make an investigation it deems necessary to procure information required to carry out §§ 46-22.1-3 — 46-22.1-17.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment

(P.L. 1991, ch. 354, § 1) made a stylistic change at the end of both subsections.

46-22.1-18. Offenses relating to this chapter. — (a) No person shall operate a vessel on the waters of this state for which a certificate of title is required, without having the certificate of title.

(b) No person shall fail to surrender or otherwise dispose of a vessel for which a certificate of title is required without delivering to the purchaser or transferee a certificate of title, or a manufacturer's or importer's statement of origin, or master carpenter's certificate as required by this chapter.

(c) No person shall fail to surrender to the department any certificate of title upon cancellation of the certificate of title by the department for any valid reason set forth in this chapter or regulations adopted pursuant thereto.

(d) No person shall steal, mutilate, destroy, alter, forge, counterfeit, or falsify any certificate of title or a manufacturer's statement of origin or importer's or master carpenter's certificate to a vessel.

(e) No person shall alter or falsify any assignment of a certificate of title, or an assignment or cancellation of a security interest on a certificate of title to a vessel.

(f) No person shall hold or use a certificate of title to a vessel nor hold assignment or cancellation of a security interest on a certificate of title to a vessel knowing the certificate of title to have been stolen, mutilated, destroyed, altered, forged, counterfeit, or falsified.

(g) No person shall use a false or fictitious name or address, or make any material false statement, or conceal any material fact in an application for a certificate of title, or in a bill of sale or sworn statement.

(h) No person shall procure or attempt to procure a certificate of title to a vessel, or pass or attempt to pass a certificate of title or any assignment thereof to a vessel knowing or having knowledge or having reason to believe that the vessel has been stolen.

(i) No person shall have possession of, buy, receive, sell, or offer for sale, or otherwise dispose of a vessel on which the manufacturer's or assigned hull identification number has been removed, destroyed, covered, altered, or defaced, knowing of the destruction, removal, covering, alteration or defacement.

(j) No person shall destroy, remove, cover, alter or deface the manufacturer's or assigned hull identification number on any vessel.

(k) No person shall possess, buy, sell, exchange or give away the certificate of title to a vessel which is abandoned, junked, salvaged, or destroyed.

(l) Any person who applies for a certificate of title for a homemade vessel, and who is assigned a state assigned hull identification number to the vessel shall permanently affix the number in accordance with this chapter and/or regulations under the federal Boat Safety Act of 1971 [46 U.S.C. § 1451 et seq.]. Failure of the vessel owner to affix the state assigned hull number to his or her vessel shall be a violation of this chapter.

(m) *Penalties.* Any person convicted of violating any provision of § 46-22.1-18 shall be guilty of a misdemeanor and subject to a fine of up to five hundred dollars (\$500), and/or a sentence of one year imprisonment, or both.

History of Section.

P.L. 1988, ch. 555, § 1.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) inserted the word "of" preceding "a vessel for which" near the

beginning of subsection (b); substituted "this chapter" for "this act" near the end of subsection (c), which substitution was previously made in 1988 by the compiler; substituted "the destruction" for "such destruction" near

CHAPTER 27

PERSONAL WATERCRAFT SAFETY ACT

SECTION.	SECTION.
46-27-1. Definitions.	46-27-3. Enforcement.
46-27-2. Regulation of personal watercraft.	46-27-4. Penalties.

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). Refer-

ences in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-27-1. Definitions. — In this chapter, the term

(a) "Headway speed" as used in this section shall mean the slowest speed at which a personal watercraft can be operated and maintain steerage way.

(b) "Operator" means a person who operates or who has charge of the navigation or use of a watercraft.

(c) "Personal watercraft" shall mean a vessel which uses an in-board motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional method of sitting or standing inside the vessel.

History of Section.

P.L. 1991, ch. 88, § 1; P.L. 1991, ch. 131, § 1.

Compiler's Notes. In 1991, the compiler

arranged the definitions in alphabetical order and added the subdivision designations (a) to (c).

46-27-2. Regulation of personal watercraft. — (a) A person may not operate a personal watercraft at any time between the hours from one-half (1/2) hour after sunset to one-half hour before sunrise.

(b) A personal watercraft must at all times be operated in a reasonable and prudent manner. Manuevers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to weaving through congested vessel traffic, or jumping the wake of another vessel unreasonably, shall constitute reckless operation of a vessel and are prohibited.

(c) No person under the age of sixteen (16) shall operate a personal watercraft on the waters of the state unless an adult accompanies him or her or unless he or she has passed a department of environmental management approved or United States Coast Guard approved safety course.

(d) It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person

under sixteen (16) years of age in violation of this section unless the provisions of subsection (c) are met.

(e) A person may not operate a personal watercraft within two hundred feet (200') of swimmers, divers, shore, or moored vessels, except at headway speed.

(f) Personal watercraft, when launched from shore or returning to shore, must proceed directly to the area where operation is allowed in a direction as near perpendicular as possible, not in excess of headway speed.

(g) No person shall operate a personal watercraft unless he or she and any passenger is wearing a personal flotation device which is approved by the United States Coast Guard.

(h) No person shall operate any personal watercraft in a reckless manner so as to endanger the life, limb, or property of another.

(i) No person shall operate any personal watercraft unless it is numbered in accordance with § 46-22-4.

(j) No person shall operate a personal watercraft unless the personal watercraft is equipped by the manufacturer with a lanyard-type engine cutoff switch which must be attached to the operator of the personal watercraft.

History of Section.

P.L. 1991, ch. 88, § 1; P.L. 1991, ch. 131, § 1.

Compiler's Notes. Both P.L. 1991, ch. 88, § 1, and P.L. 1991, ch. 131, § 1, enacted a

§ 46-27-2, which were identical, except that ch. 131 included a subsection (j) while ch. 88 did not. Subsection (j) is included in § 46-27-2 as set out above.

46-27-3. Enforcement. — The department of environmental management, division of boating safety, is empowered to enforce the provisions of this chapter. In addition thereto, the police officers of all localities, and the harbor masters of all localities are empowered to enforce all provisions of this chapter. The harbor master of any locality, or where there is none, the governing body of any locality is empowered and authorized to establish reasonable speed limits for the operation of any personal watercraft in any area within their jurisdiction. The harbor master of any locality, or where there is none, the governing body of any locality is empowered and authorized to post signs governing the reasonable use of personal watercraft at any location within their jurisdiction.

History of Section.

P.L. 1991, ch. 88, § 1; P.L. 1991, ch. 131, § 1.

46-27-4. Penalties. — Any person who violates any provision of this chapter or who violates any rule or regulation promulgated hereunder, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500), or imprisonment not to exceed six (6) months for each such violation.

APPENDIX I

STANDARD PATROL PROCEDURES AND OPERATIONS

Patrol Procedures:

As a law enforcement officer working on the water, it is necessary to know everything about your environment, including:

1. Geography - towns jurisdictional boundaries
2. Physical Characteristics - type of area you are working, such as where the rocks and shallow areas are, mooring areas, areas that have had trouble with vandalism or larceny in the past, and water front bars and clubs
3. Getting Around Your Area - the quickest and safest routes

Crime Prevention:

In today's world of law enforcement the objective for dealing with crime has shifted from reaction to prevention. Simply stated, crimes are committed by the potential offenders when they have the desire to commit the crime and the opportunity. There are several methods which effectively reduce the offenders opportunity for on-the-water crime. First, active on-the-water and shore patrols. High visibility during the day and at night deters most people from committing crimes. If, as harbormaster, you patrol your area primarily by water, have the police department make regular foot patrols on the docks and marinas. This increases patrol visibility and gives the boat owners security in knowing that their boats are being watched from shore as well as by boat patrols.

A second method is to get boat owners involved in crime prevention. This can be done by initiating a program in your marinas and a shorefront neighborhood watch in many areas. In the summertime many owners live aboard their boats and provide the full time "eyes and ears" in the harbor to successfully deter crime.

Finally, and most importantly, is to aggressively patrol trouble areas where there is a high risk of vandalism and larceny.

Boardings:

By creating a standard boarding system for yourself, in advance of the actual approach, the opportunity for mistakes is greatly reduced. It is important to note, however, that although it is useful to have a standard routine to follow, it is even more important to be aware of the dangers and be on-guard during every boarding. There are many documented cases of a boarding party becoming to lax during the performance of their duties, with injury or death resulting. Therefore, do not lose sight of the boarding objectives and the danger which exists each time you approach a vessel.

Boarding and Inspection of Boats:

This section provides the boarding officer the basic information necessary for conducting a general safety inspection by reviewing the approach, introduction and boarding procedure which ranges from

checking vessel's registration to ensuring that all required safety equipment is aboard and in proper operating condition.

I) APPROACH

As you approach the vessel to be boarded, make a quick 360° sweep around it to make sure there are no lines in the water or other obstructions near it. While doing this write down the registration number to verify with the certificate.

Before coming along side the vessel identify who the operator is and how many people are onboard. If you are alone and plan on boarding, it is also helpful to have all your lines and fenders ready and, if the area allows, move to good water so you do not have to maneuver the two vessels during the boarding. (If you physically board the boat have all the people on the vessel to be boarded move to the opposite side and allow you to board alone.)

II) INTRODUCTION

After coming along side and securing the two vessels, notify the operator of your intentions. Explain that you are going to complete a standard safety inspection to ensure that they are in compliance with all applicable state and local laws.

Although properly authorized enforcement officers (DEM, local police and harbormasters) can stop and board any vessel subject to the regulations of §46-22, it is recommended that there be some justifiable reason, (such as invalid or no registration sticker, speeding, or reckless operation), for stopping a vessel.

III) BOARDING PROCEDURES

Each boarding should be done in the same pattern and devised so that you are looking for key infractions first, such as registration and safety equipment. A standard system will make it easier and less time consuming for you and those on the vessel being boarded.

It should be noted that if a vessel is displaying a current coast guard auxiliary courtesy marine examination sticker, it can be safely assumed that the vessel has all the proper equipment and registration papers and may not warrant a boarding.

Registration:

Ask for both a driver's license and boat registration, to verify the person is either the owner or operator of the boat. The first box on the registration card is the expiration date located on the bottom right hand side of the card. (NOTE: registrations expire in February of the following year that they were issued.)

RHODE ISLAND BOAT REGISTRATION CERTIFICATE

XXXXXX XXX X		19 XX		RI XXXXXX	
HULL IDENTIFICATION		TYPE	HULL	USE	PROP FUEL
XXXXXXXXXXXXXXXXXXXX		X	X	X	X X
MOTOR MANUFACTURER #1	HP #1	MOTOR #1 SERIAL NUMBER			
XXXXXXXXXXXX	XXX	XXXXXXXXXXXXXXXXXXXX			
MOTOR MANUFACTURER #2	HP #2	MOTOR #2 SERIAL NUMBER			
XXXXXXXXXXXX	XXX	XXXXXXXXXXXXXXXXXXXX			
LAST NAME		FIRST	INITIAL		
XXXXXXXXXXXXXXXXXXXX		XXXXXXXXXXXX	X.		
STREET ADDRESS					
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX					
CITY/TOWN		STATE	ZIP CODE		
XXXXXXXXXXXXXXXXXXXX		XX	XXXXXXXXXXXX		
APPL NO	TIN	DECAL NO	DATE OF BIRTH		
XXXXX	XXXXX	XXXXX	XX/XX/XX		

VALID ONLY WHEN DATED AND OFFICIALLY STAMPED

OWNER'S SIGNATURE _____ **EXPIRES**
FEB. 28, 1993

Other key boxes to look at are the registration and the hull identification number. Ensure that the registration number from the card matches that on the hull. Outboard motors must also be registered. The motor certificate, like the vessel certificate, must be on the vessel when it is in the water.

RI OUTBOARD MOTOR REGISTRATION CERTIFICATE

MOTOR MAKE		HP	TIN	
MOTOR SERIAL NUMBER			OFFICIAL USE ONLY MODEL NO	
YEAR	TYPE	DATE	OFFICIAL USE ONLY	

VALID ONLY WHEN DATED AND OFFICIALLY STAMPED

LAST NAME		FIRST	INITIAL
STREET ADDRESS			
CITY/TOWN		STATE	ZIP CODE
APPL NO		DATE OF BIRTH	

OWNER'S SIGNATURE _____

In addition to the registration number on the hull, there must be a validation decal, stating the expiration date. Federal regulations cause the decals to be a different color every year for four years when the cycle begins again. By knowing what color the decal should be, you can easily identify if the boat is currently registered. If you stop a vessel that has a decal but no numbers, the number identification found in the center of the decal can be traced.




If you stop a vessel with no registration numbers, it is probably Coast Guard documented. This is a federal form of registration and is only applicable to vessels greater than 5 gross tons.

Documented vessels do not have registration numbers displayed on the hull, but they must be permanently affixed to some interior structural part of the hull. The documentation papers must be on board and be current.

In Rhode Island documented vessels must pay a registration fee and are issued a decal that is similar to the standard state registration decal. Document vessels registered to the state need only carry this decal and documentation paper, they do not have registration numbers affixed to the hull.

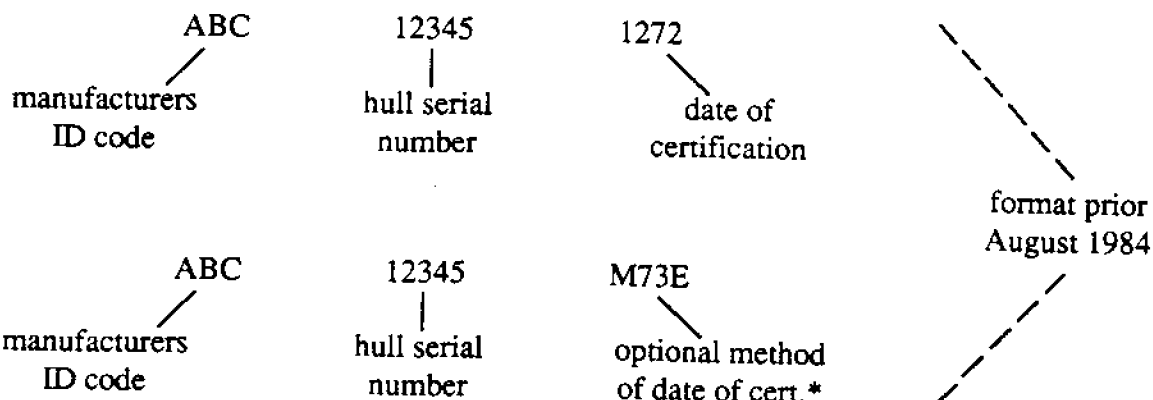


The following is an example of a Coast Guard document. Verify that the name and homeport are the same as on the vessel, usually found on the transom.

 UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION UNITED STATES COAST GUARD						
Certificate of Documentation						
VESSEL NAME			OFFICIAL NUMBER		HOMEPORT	
GROSS	NET	LENGTH	BREADTH	DEPTH	HULL MATERIAL	SELF PROPELLED
PLACE BUILT				YEAR BUILT		
OWNER			THIS VESSEL IS PRESENTLY DOCUMENTED FOR			
COMPLETE RECORDS ON FILE AT HOMEPORT						
MANAGING OWNER						
RESTRICTIONS						
ENTITLEMENTS						
REMARKS						
ISSUED AT				SIGNATURE AND SEAL		
ISSUE DATE				DOCUMENTATION OFFICE		
THIS CERTIFICATE EXPIRES ON THE LAST DAY OF UNLESS RENEWED BY DECAL ON REVERSE.						

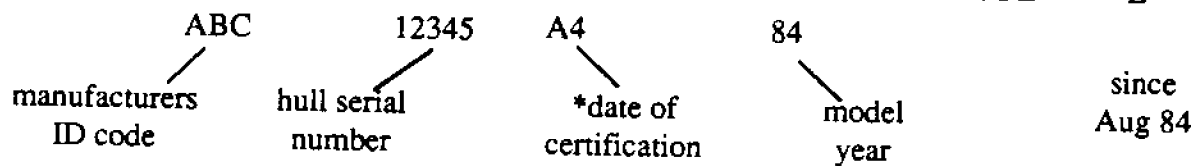
Hull Identification Number:

Every manufactured vessel built after October 30, 1972 is required to have a 12 digit number carved, burned, stamped, embossed, molded, bonded, or otherwise permanently affixed to the vessel so that alteration removal, or replacement would be obvious. There are three formats that apply to Hull Identification Numbers (H.I.N.)



*key month of model yr.

- AUG - A
- SEP - B
- OCT - C
- NOV - D
- DEC - E
- JAN - F
- FEB - G
- MAR - H
- APR - I
- MAY - J
- JUN - K
- JUL - L



*key to month of manufacturer

- JAN - A
- FEB - B
- MAR - C
- APR - D
- MAY - E
- JUN - F
- JUL - G
- AUG - H
- SEP - I
- OCT - J
- NOV - K
- DEC - L



When checking the H.I.N., first look at the state registration certificate and verify that there are 12 digits, and the format is the proper one for the model year. Next, look at the H.I.N. (located on the starboard transom as in the diagram) on the vessel, the number should be one-quarter inch in height and match the state registration certificate. (NOTE: For safety reasons, checking this number is not always practical and should only be done if you have another person with you; you are in a stable environment; or if there is some question as to the validity of the number.)

Once you have established ownership and ensured that all the paperwork is in order you should proceed to the safety equipment inspection. Again, by having an inspection pattern you will be able to expedite the boarding.

Many boaters are not familiar with the safety equipment they have on board. In these instances, your responsibility is not only to inspect the vessel equipment but to explain its purpose and usage. For this reason, it is imperative that you understand how to properly check the necessary gear and be able to explain how to use it.

The following page is a graphic summary of the equipment required to be onboard. The amount and type of equipment required is dependent on the length of the vessel as shown on the registration certificate.

CLASS A	-	less than 16'
CLASS 1	-	16' to less than 26'
CLASS 2	-	26' to less than 40'
CLASS 3	-	40' to less than 65'

EQUIPMENT	CLASS A	CLASS 1
	(less than 16')	(16' to less than 26')
BACK-FIRE FLAME ARRESTOR	One approved device on each carburettor of all gas engines except outboards	
VENTILATION	Two cowls and ducting for each closed compartment that contains a gasoline engine or gasoline tank, also boats after 1980 need a blower	
PERSONAL FLOTATION DEVICES (PFDS)	One approved Type I, II, III, or IV for each person on board	One approved Type I, II, or III for each person plus one Type IV
SOUND PRODUCING DEVICE	Every boat under 40' (12 meters) must carry an efficient sound producing device	
FIRE EXTINGUISHERS	At least one B-I type (unless construction does not require)	

EQUIPMENT	CLASS 2	CLASS 3
	(26' to less than 40')	(40' to less than 65')
BACK-FIRE FLAME ARRESTOR	Same as Class A & 1	
VENTILATION	Same as Class A & 1	
PERSONAL FLOTATION DEVICES (PFDS)	One approved Type I, II, or III for each person plus on Type IV	
SOUND PRODUCING DEVICE	Every boat under 40' must carry an efficient sound device	Every boat over 40' must carry a whistle and a bell
FIRE EXTINGUISHER	At least two B-I-type or at least one B-II	At least three B-I type or at least one B-I and one B-II type

NOTE: When fixed fire extinguishing system is installed in machinery space it will replace one B-I type

There are time that you might find yourself having to board a vessel for reasons other than a safety inspection. The following is a list of other laws that pertain to vessels on the waters of this state.

46-22.2-3	Boating While Intoxicated
46-22-9(a)	Reckless Operation
46-22-9(c)	Operating in a Marked Area
46-22-9(d)	Operating as to Interfere with Others or with Free and Proper Navigation of Waterways
46-22-9.2	Children under 10 YOF/PFDS
46-22-9.3	Operating as to Endanger, Death Resulting
46-22-9.4	Operating as to Endanger, Injury Resulting
46-22-9.5	Speeding
46-22-12	Waterskis and Surfboards
46-22-17.3	Refusal to Stop on Oral Command
46-22-24	Divers Flag Required
46-22-27	Personal Watercraft

46-22.2-3 Any person who operates a watercraft while intoxicated or after he or she has been ordered not to operate a watercraft under the provisions of this chapter shall be guilty of a misdemeanor.

Any person who operates a watercraft while intoxicated and while so operating causes the death or serious bodily injury to another person or has been convicted of a second and subsequent offense under this chapter shall be guilty of a felony.

In addition to any criminal penalties imposed under this chapter, the violator's right to operate a watercraft shall be suspended by the court for a maximum period of one year in the case of a misdemeanor or two years in the case of a felony, and the violator shall be required to take a boating safety course.

Any person who operates a watercraft in waters over which this state has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a watercraft in this state.

If a person refuses to submit to a chemical test under this chapter the court shall order the person not to operate a watercraft for at least one year.

46-22-9(a) No person shall operate any motorboat, or vessel, or manipulate any water skis, surfboard, or similar device in a reckless manner so as to endanger the life, limb, or property of another.

46-22-9(c) No person shall operate a motorboat or vessel within a water area, which has been clearly marked, in accordance with, and as authorized by the laws of the state, by buoys or some other distinguishing device as a bathing, swimming, or otherwise restricted area. The DEM is hereby authorized to establish maximum speeds for boats in the public harbors in the state of Rhode island at five (5) miles per hour, no wake.

46-22-9(d) No person shall operate any motorboat, vessel, or seaplane in a manner which shall unreasonably or unnecessarily interfere with any other motorboat, vessel, or seaplane, or with the free and proper navigation of the waterways of the state.

46-22-9.2 Any person transporting, under power, a child ten years of age or under in a motorboat under 26' on the waters of this state shall require that said child wear a P.F.D.

46-22-9.3 When the death of any person ensues as a proximate result of an injury received by the operation of any vessel in reckless disregard of the safety of others, the person so operating such vessel shall be guilty of operating so as to endanger, resulting in death.

Any person charged with the commission of the foregoing shall upon conviction be imprisoned for not more than ten years.

46-22-9.4 When the serious bodily injury of any person ensues as a proximate result of the operation of of any vessel in reckless disregard of the safety of others, the person so operating such vessel shall be guilty of operating so as to endanger, resulting in personal injury.

Any person charged with a violation of this section shall upon conviction be imprisoned for not more than five years.

46-22-9.5 No person shall operate any motorboat or vessel in any harbor or inlet or any pond or other confined body of water in this state in excess of forty-five miles per hour during the hours from sunrise to sunset and twenty-five miles per hour during the periods of darkness or other periods of restricted visibility, provided, however nothing herein shall prohibit the posting of lesser speed limits where deemed necessary by the appropriate state or local authority.

46-22-12(a) No person shall operate a vessel on any waters of this state for towing a person or persons on water skis, or a surfboard or similar device unless there is a person at least twelve years of age, in

addition to the operator, in a position to observe the progress of the persons being towed.

46-22-12(b) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in waterskiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

46-22-17.3 It shall be a misdemeanor punishable by a fine of not more than two hundred dollars for any person to refuse to move or stop on oral command.

46-22-24 Any person scuba diving, skin diving, or snorkeling in an area where power or motorboats are operated, shall place a warning flag on a buoy at the place of his or her submergence. Motorboats shall not operate within 50' of this flag.

46-12-39 It shall be unlawful to discharge any sewage from a boat into the waters of this state unless discharged via a marine toilet which is either a marine sanitation device-type I, or a marine sanitation device-type II, in proper working condition.

PERSONAL WATERCRAFT CRAFT (P.W.C.)

Because of the increasing number of personal watercraft activity on state waters in the past five years the Rhode Island general assembly enacted legislation (in 1991) which would regulate the usage of these crafts.

The following regulations have been amended to §46-22 and are enforceable by harbormasters, police officers and the Department of Environmental Management, Division of Boating Safety.

- A) A person may not operate a P.W.C. at any time between the hours from one-half hour after sunset to one-half hour before sunrise.
- B) A P.W.C. must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to weaving through congested vessel traffic, or jumping the wake of another vessel unreasonably, shall constitute reckless operation of a vessel and are prohibited.
- C) No person under the age of 16 shall operate a P.W.C. on the waters of this state unless an adult accompanies him or unless he/she has passed a D.E.M. approved or USCG approved safety course.
- D) It is unlawful for the owner of any P.W.C. or any person having charge over or control of a P.W.C. to authorize or knowingly permit the same to be operated by a person under 16 unless the provisions of section C are met.
- E) A person may not operate a P.W.C. within 200' of swimmers, divers, shore, or moored vessels, except at headway speed.
- F) P.W.C., when launched from shore or returning to shore, must proceed directly to the area where operation is allowed in a direction as near perpendicular as possible, not in excess of headway speed.
- G) No person shall operate a P.W.C. unless he or she and any passenger is wearing a P.F.D. which is Coast Guard approved.
- H) No person shall operate any P.W.C. in a reckless manner as to endanger the life, limb, or property of another.
- I) No person shall operate any P.W. C. unless it is currently numbered.

VIOLATIONS & FINES

OFFENSE		FINE/PENALTY
Safety Equipment	Violation	Up to \$100.
Registration & Numbering	Violation	Up to \$100.
Failure to display a dive flag, operating within 30' of a dive flag	Violation	Up to \$100.
Diving with the intention of obstructing navigation	Violation	Up to \$100.
Failure to submit a boating accident report	Violation	Up to \$100.
Waterskiing without an observer	Violation	Up to \$200.
Waterskiing after dark	Violation	Up to \$200.
Operating in a reckless manner	Misdemeanor	Up to \$1000. and/or Up to 1 Year
Operating in a clearly marked area (swim, 5 mph)	Misdemeanor	Up to \$1000. and/or Up to 1 Year
Being in possession of a vessel with the hull id. number altered, removed or destroyed		
Any personal watercraft offense	Misdemeanor	Up to \$500. and/or Up to 6 months
Speeding	Violation	Up to 10 mi. over - \$25 11 mi. to 15 mi. over - \$50 16 mi. to 20 mi. over - \$75 21 mi. to 25 mi. over \$100 Over 25 mi. is \$5 per mi.
Boating while intoxicated		
Operating as endanger:		
Death resulting	Felony	Up to 10 years
Serious injury resulting	Felony	Up to 5 years

BOATING ACCIDENTS:

When a boating accident occurs, the operator(s) of the boat(s) are required under law to file a boating accident report with the state of occurrence.

You as harbormasters will be the first on-scene on many accidents, and it is important that you collect the following facts as quickly as possible.

- A) Registration numbers and names of each vessel
- B) Name and address of each owner involved
- C) Name, address, and phone of each operator (verify through automobile driver's license)
- D) Time and date of occurrence
- E) Exact location of occurrence
- F) Visibility, weather and water conditions
- G) Name and address of each injured party
- H) Availability and use of P.F.D.s
- I) Number and type of fire extinguishers
- J) Description of all property and vessel damage
- K) Present location of damaged vessel(s)
- L) Description of vessel casualty or accident
- M) Type of injuries or cause of death
- N) Name, address, and phone of each witness

Because boating accidents occur in an ever changing environment it is imperative that as much information about the accident be gathered quickly and accurately before conditions change. For example, suppose you arrive at a collision involving two vessels. Take a look at the whole picture, where the boats are, which direction it appears that they came from, other traffic in the area, weather conditions, visibility (is the sun high in the sky, is it low in the east...). These factors might be important later when trying to determine the cause. In the event of a boating accident be sure to contact the proper officials as quickly as possible.

TELEPHONE NUMBERS**DEM/Enforcement:**

24 hours dispatcher	277-3070
Marine Patrol Unit	277-2063
Boat Registry	277-6647
Licensing	277-3576
Burlingame Park	322-8910
Colt Park	253-2110
Ft. Adams	849-5649
Goddard Park	884-0088
Galilee Base (Park Police)	783-7071
USCG Aids to Navigation Team Bristol	253-9585
USCG Boating Safety Hotline	1-800-368-5647
USCG Documentation (Boston)	1-617-565-9030
(New York)	1-212-668-7873
USCG Marine Safety Office (Providence)	528-5335
USCG Towline	253-8586
USCG Sta. Castle Hill	846-3676
USCG Sta. Pt. Judith	783-3021
Conn. Boat Registry	1-203-566-3781
Mass. Boat Registry	1-617-727-3905

APPENDIX II

INSPECTING MARINE SANITATION DEVICES

STATE
OF
RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Marine Sanitation Devices (MSD)

POLLUTION CONTROL

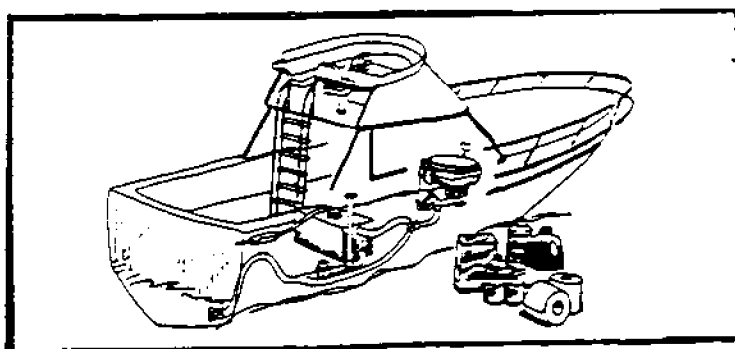
If you have a marine head (toilet) installed in your boat, it must be U.S. Coast Guard Certified and a type authorized where you will be boating.

IN RHODE ISLAND:

- Boaters may only discharge from a Type I or Type II MSD in proper working condition.
- Discharge from Type III MSD (Holding Tank) is prohibited. Type III MSDs must be emptied at a properly operating pump-out facility.
- It is illegal to operate or moor a boat that is equipped with a marine toilet that is not approved, not in proper working condition or that is not properly sealed in declared no discharge areas.

IN RHODE ISLAND, VIOLATIONS OF THIS LAW COULD RESULT IN A \$500 FINE

OR ONE YEAR IN PRISON.



Drawing Courtesy of the New Jersey Sea Grant Marine Advisory Service.

Marine Sanitation Devices

Introduction Marine sanitation device (MSD) regulations were passed to assist in the removal of untreated sewage into the waters of the United States.

Regulation reference Marine sanitation device regulations are found in 33 CFR Part 159

In this chapter The following information can be found in this chapter.

Information Title	Page
Definition of terms	6-M-2
Classifications of MSDs	6-M-5
Certification of MSDs	6-M-6
How to determine if MSDs are required	6-M-7
How to check compliance	6-M-8

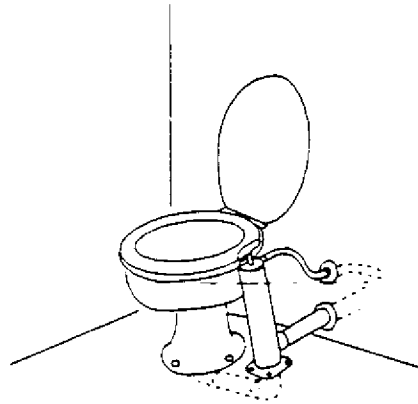
Marine Sanitation Device, Definition of Terms

Definition of an installed toilet facility

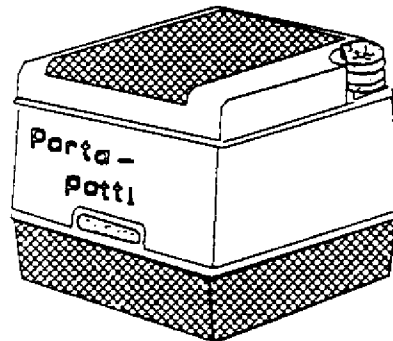
An installed toilet facility is a system consisting of

- toilets and/or urinals to receive sewage, and
- the piping or connections needed to move the sewage to another location.

• Example



• Non-example There is no piping with a porta-potty.

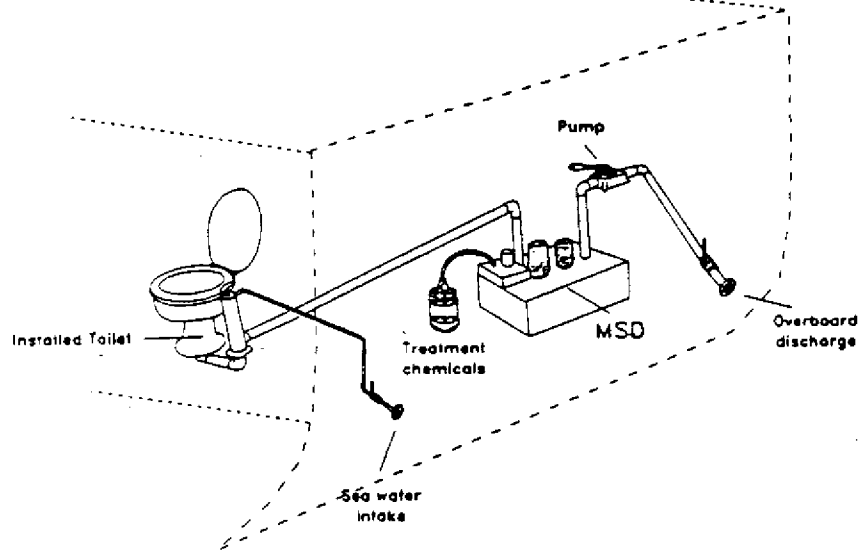


Marine Sanitation Device, Definition of Terms

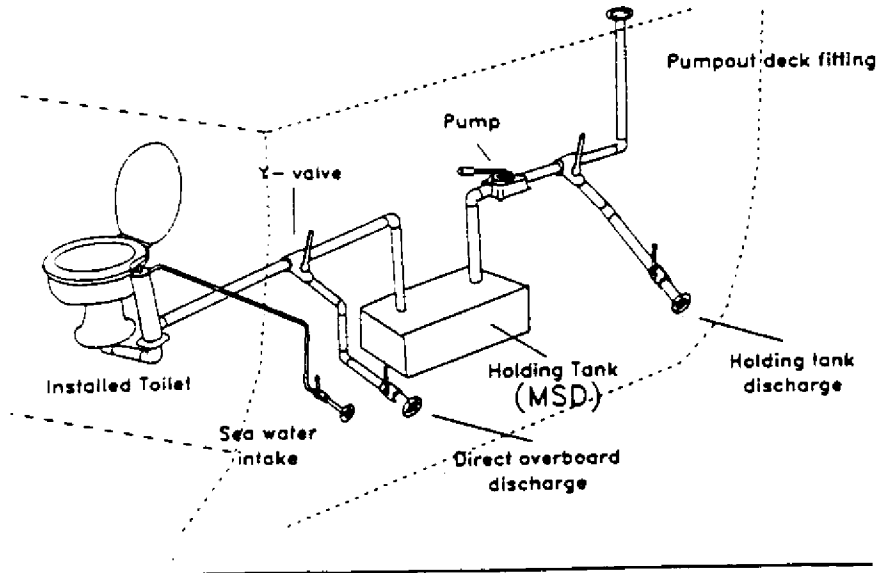
Definition of a marine sanitation device

A marine sanitation device (MSD) is a device designed to treat or store sewage. Sewage is human body waste.

- Example A tank where sewage is chemically treated before it is discharged overboard.



- Example A tank where sewage is stored until it can be pumped out at a sanitation facility.



Marine Sanitation Device, Definition of Terms

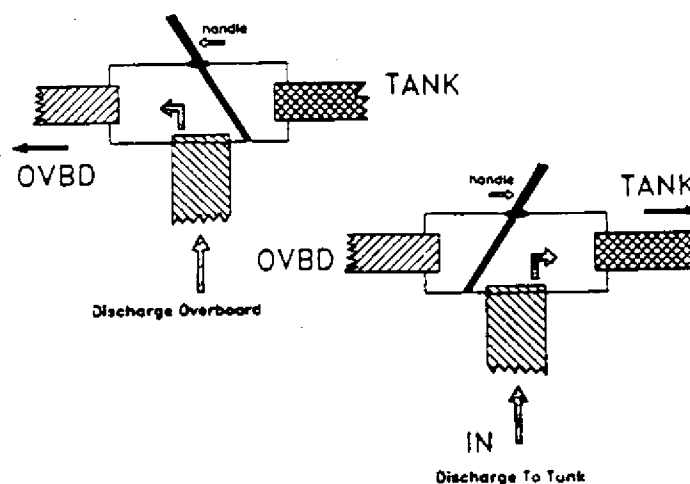
Non-example of an MSD

A pump that chops the sewage into smaller parts then pumps the sewage overboard. The sewage is not adequately treated.

Description of a Y valve

A Y-valve is a valve which diverts the flow.

- Example



Purpose of a Y-valve

The purpose of a Y-valve is to divert sewage flow away from the MSD and over the side to reduce the use of the MSD.

Policy on Y-valves

The Coast Guard policy on Y-valves is to secure Y-valves within the territorial seas to prevent accidental opening.

Definition of "no visible floating solids"

"No visible floating solids" is a standard where no solid sewage particles are visible to the naked eye.

Classifications of MSD

Classification of MSDs

MSDs are classified according to how clean the overboard discharge is. This table shows the types of MSDs.

Class	Characteristics	Examples
Type I	<ul style="list-style-type: none"> • Treats sewage by chemical or other means • Results in no visible floating solids 	A device that chops and then chlorinates the sewage.
Type II	<ul style="list-style-type: none"> • Treats sewage by biological means • Approximately five times cleaner than a Type I 	A device that uses bacteria to break down the sewage.
Type III	<ul style="list-style-type: none"> • Prevents the overboard discharge of treated or untreated sewage 	A device that <ul style="list-style-type: none"> • holds, or • incinerates, or • recirculates the sewage.

Description of a certified MSD

A certified MSD means that the MSD meets the appropriate standards and regulations specified by the U.S. Coast Guard.

Description of a certification number

A certification number is found on the label or data plate. It starts with 159.15 and ends with the type of MSD. This is the format:

159.15/xx/x



- This digit indicates the type of MSD.

• Example: 159.15/2376/25/I (indicates a type I MSD)

• Example: 159.15/8762/99/II (indicates a type II MSD)

How to Determine if an MSD is Certified

How to determine
MSD certification

Type of MSD and date of manufacture will determine the proof of certification needed. There are three methods of certification.

Use the table below to determine if an MSD is certified.

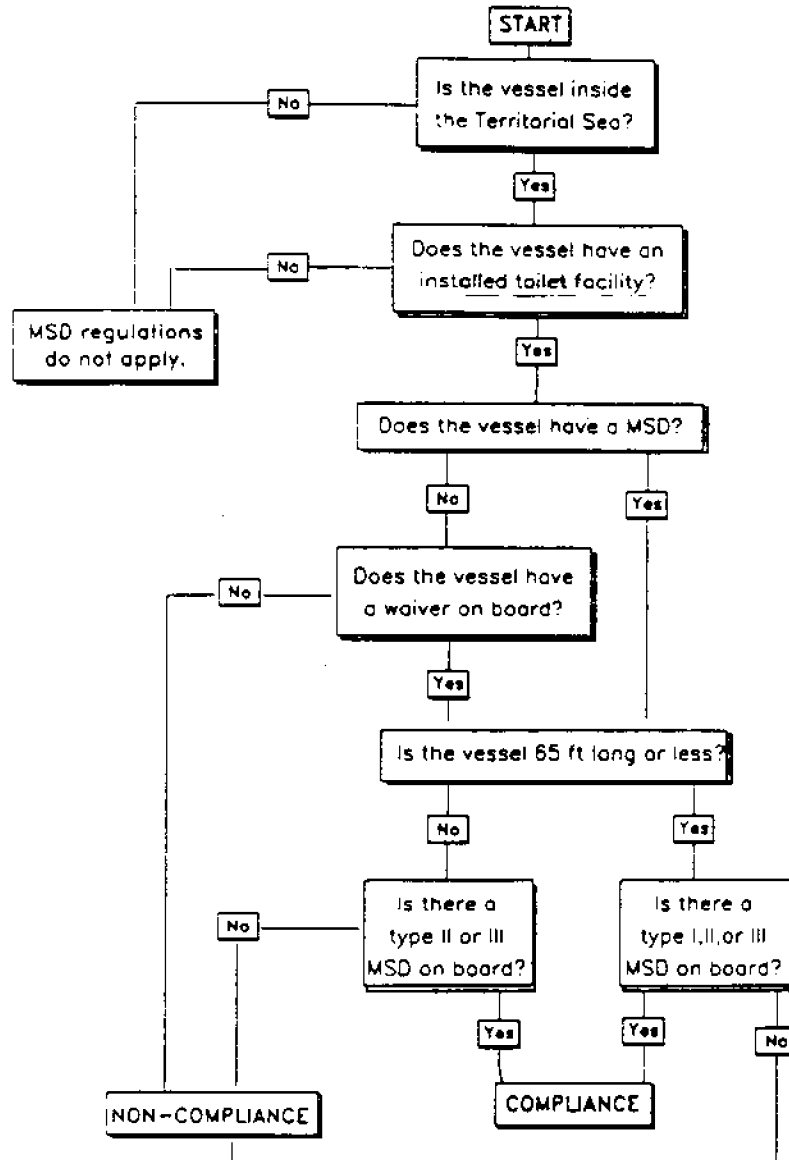
Method	Characteristics
Label Certification	<ul style="list-style-type: none">• Manufactured after 30 Jan 76• The label is attached to the MSD.• Identifies inspected or uninspected vessel.
Letter Certification	<ul style="list-style-type: none">• Manufactured prior to 30 Jan 76• Copy of the letter must be on board.
Certification by Regulation	<ul style="list-style-type: none">• Type III MSDs installed prior to 30 Jan 75• Holding tanks that store sewage at ambient air pressure and temperature.• No letter or label required.

How to Determine if an MSD is Required

How to determine if a MSD is required

Use the flow chart below to determine if a MSD is required on a vessel.

MSD Requirement Chart



How to check for compliance for MSD regulations

How to check for compliance for MSD regulations

Use the flow chart below to check for compliance for MSD regulations

MSD Acceptability Chart

