Section 1: Definitions

Section 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

**''Boston harbor'',** that part of Boston harbor lying westerly and inside of a line drawn between Point Allerton on the south and the southerly end of Point Shirley on the north.

**''Department'',** the department of environmental protection; provided, however, that in sections two, two A, three, four, five, six, seven, eight, nine, nine A, ten, eleven, eighteen A, twenty-five, twenty-seven, twenty-nine, twenty-nine A, thirty-one, thirty-two, thirty-three, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, 43A, 43B, 43C, forty-five, forty-six, forty-seven, forty-eight, forty-nine, forty-nine A and fifty, the word ''Department'' shall mean the department of conservation and recreation.

**''Landlocked tidelands'',** filled tidelands, which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for any portion of such filled tidelands that are presently located: (a) within 250 feet of the high water mark of flowed tidelands; or (b) within any designated port area under the Massachusetts coastal zone management program. For the purposes of this definition, a public way may also be a landlocked tideland, except for any portion thereof which is presently within 250 feet of the high water mark of flowed tidelands.

**''Structure'' or ''structures'',** as used in sections ten, twelve to twenty-two, inclusive, twenty-eight and thirty-four, shall include pipe lines, wires and cables, and all words used in connection with ''structure'' or ''structures'' shall mean and include their appropriate equivalent as applied to pipe lines, wires and cables.

**''Tidelands'',** present and former submerged lands and tidal flats lying below the mean high water mark.

**''Commonwealth tidelands'',** tidelands held by the commonwealth in trust for the benefit of the public or held by another party by license or grant of the commonwealth subject to an express or implied condition subsequent that it be used for a public purpose.

**''Private tidelands'',** tidelands held by a private party subject to an easement of the public for the purposes of navigation and free fishing and fowling and of passing freely over and through the water.

**''Secretary,''** the secretary of the executive office of energy and environmental affairs.

**''Substantial change in use'',** a use for a continuous period of at least one year of ten per cent or more of the surface area of the authorized or licensed premises or structures for a purpose unrelated to the authorized or licensed use or activity.

**''Substantial structural alteration'',** a change in the dimensions of a principal building or structure which increases by more than ten per cent the height or ground coverage of the building or structure specified in the authorization or license, or an increase by more than ten per cent of the surface area of the fill specified in the authorization or license.

**''Water-dependent uses'',** those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site.

Section 2: Duties of public works department relative to commonwealth lands

Section 2. The department shall, except as otherwise provided, have charge of the lands, rights in lands, flats, shores and rights in tide waters belonging to the commonwealth, and shall, as far as practicable, ascertain the location, extent and description of such lands; investigate the title of the commonwealth thereto; ascertain what parts thereof have been granted by the commonwealth; the conditions, if any, on which such grants were made, and whether said conditions have been complied with; what portions have been encroached or trespassed on, and the rights and remedies of the commonwealth relative thereto; prevent further encroachments and trespasses; ascertain what portions of such lands may be leased, sold or improved with benefit to the commonwealth and without injury to navigation or to the rights of riparian owners; and may lease the same. It may sell and convey, or lease, any of the islands owned by the commonwealth in the great ponds. It may make contracts for the improvement, filling, sale, use or other disposition of the lands at and near South Boston known as the Commonwealth flats, may lease any portion thereof with or without improvements thereon, may regulate the taking of material from the harbor and fix the lines thereon for filling said lands. All conveyances and contracts, and all leases for more than five years, made under this section shall be subject to the approval of the governor and council.

In carrying out its duties under the provisions of this chapter, the department shall act to preserve and protect the rights in tidelands of the inhabitants of the commonwealth by ensuring that the tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose.

The department of environmental protection shall protect the interests of the commonwealth in areas described herein in issuing any license or permit authorized pursuant to this chapter. The activities of the department of environmental management pursuant to this chapter shall be subject to the licensing and permitting authority of the department of environmental protection.

Section 2A: Powers as to property acquired, built or improved in Plymouth by Pilgrim tercentenary commission

Section 2A. The department, having charge under section two of the lands, pier, structures and other property in the town of Plymouth belonging to the commonwealth which were acquired, built or improved by the Pilgrim tercentenary commission under chapter one hundred and eighty-seven of the Special Acts of nineteen hundred and nineteen, may repair, alter and maintain said pier and other structures, and if it deems it advisable remove said pier, or may equip, operate and administer the same for the benefit of the commonwealth, and may from time to time make such rules and regulations, and may charge such reasonable rates for the use of said pier and equipment, as shall be approved by the governor and council. All receipts hereunder shall be paid into the state treasury. The town of Plymouth shall have police jurisdiction over said lands, pier and other property. Subject to appropriation and with the approval of the governor and council, the department may arrange with said town or with any appropriate memorial or historical society for the care, maintenance and use of said lands, pier and other property or any part or parts thereof, and said town is hereby authorized to appropriate money to pay the costs and expenses of such care and maintenance. With the approval of the governor and council, the department may sell and convey or lease said pier.

Section 3: Powers as to Boston harbor

Section 3. The department shall have all the rights, powers and duties transferred to the directors of the port of Boston under section four of chapter seven hundred and forty-eight of the acts of nineteen hundred and eleven in respect to lands, rights in lands, flats, shores, waters and rights belonging to the commonwealth in tide waters and land under water in Boston harbor, or which adjoin the same or are connected therewith, and shall have the same powers and duties relative thereto as it has with respect to the commonwealth flats under section two. It may, in accordance with such plans as it adopts, excavate and dredge in Boston harbor wherever public convenience and necessity require. It shall at all times have access to any maps, charts, plans and documents in the custody of any public board, commission or officer relating to waters and lands in charge of the department, shall have immediate charge of lands owned or acquired by the commonwealth upon or adjacent to the Boston harbor front, and shall have charge of the construction of piers and other public works in said harbor, shall administer all terminal facilities under control of the department and shall secure and keep full information as to the present and probable future requirements of steamships and shipping and the best means which can be provided at the port of Boston for the accommodation of steamships, railroads, warehouses and industrial establishments.

Section 4: Improvement of Boston harbor; access to piers, railroads, etc.

Section 4. The department shall undertake such work for the improvement, development, maintenance and protection of Boston harbor as it deems reasonable and proper. It may, with the approval of the governor and council, grade and suitably surface any railroad locations or traffic ways which are or may be located on lands, flats or rights therein, owned or acquired by the commonwealth in Boston harbor, and may carry said ways or railroads over or under any railroad or railway location or public way in order to eliminate crossings at grade, and may provide suitable and convenient track connections between the rails serving any pier or piers and those of any existing or proposed railroad that now reaches or hereafter may reach Boston. All piers controlled by the department shall be accessible and open to all teaming and lighterage traffic, subject to such regulations as the department may from time to time make. Upon application to the department, any railroad company that now reaches or hereafter may reach Boston, either by its own rails or under trackage or traffic contract or agreement with any other railroad company, shall be provided by the department with a track connection with the tracks serving such pier or piers.

Section 5: **Power to take or purchase real property**

Section 5. With the consent of the governor and council, the department may take by eminent domain under chapter seventy-nine or acquire by purchase or otherwise, and hold, such real property and such rights and easements therein as the department may from time to time consider necessary for the purpose of constructing, or securing the constructing or utilizing of, piers and, in connection therewith, highways, waterways, railroad connections, storage yards and sites for warehouses and industrial establishments, and may lay out and build thereon, and upon such other lands within its jurisdiction under section three, such piers, with buildings and appurtenances, docks, highways, waterways, railroad connections, storage yards and public warehouses as the department deems desirable; provided, that if general plans bearing the signed approval of the department, given after due notice and a hearing, describing the property and showing the location and character of any proposed docks, piers, wharves, warehouses, factories, power plants, and industrial terminals, of adequate and proper design and general suitability for the purposes for which they are to be used, shall be filed with the department, together with a notice signed by the owners or lessees or by others having legal rights in the premises stating that they propose to construct upon the property described the improvements shown by said plans and claiming exemption from the taking by eminent domain as herein authorized of any of such property, including the lands upon which said improvements are to be constructed, then said land and said improvements shall not be taken by the department by right of eminent domain without authorization of the general court granted within forty years after the date of filing of said plans, if substantial construction in general accordance with such plans is actually begun in good faith within one year after the date of approval by the department of the plans, and if said improvements are finished substantially in accordance therewith within five years after the beginning of construction of said improvements unless the department shall extend the time within which said improvements shall be completed; and provided, that after completion, said improvements during said period of forty years are kept in suitable repair and are used for the purposes to which said approval applied, and provided, that if general plans bearing the signed approval of the department, given after due notice and a hearing, and describing the property, and the location and character of any existing docks, piers, wharves, warehouses, factories, power plants, and industrial terminals, and certifying that they are of proper design and adequate and suitable for the purposes for which they are to be used, and that they are in proper condition and in thorough repair, shall be filed with the department, together with a notice signed by the owners or lessees, or others having legal rights in the premises and claiming exemption from the taking by eminent domain as authorized by this section of any such property, including the lands upon which said improvements have been constructed, then said land and said improvements shall not be taken by the department by the right of eminent domain without authorization of the general court granted within forty years after the date of the approval by the department, if during that time such property is kept in suitable repair and is used for the purposes to which said approval applied; and provided, that none of the exemptions from the right of eminent domain herein provided for shall apply to the taking by the department of any property necessary for providing suitable and convenient track connections between the rails serving any piers that may be built, or acquired or improved under sections four and five or may have been built or acquired or improved under corresponding provisions of earlier laws, and the rails of any existing or proposed railroad that reaches or may reach Boston.

Section 5A: Repealed, 1966, 621, Sec. 1

Section 6: Power to lease piers, etc.; Port of Boston Fund

Section 6. The department may lease for a period not exceeding twenty years, under such covenants and conditions as it prescribes, storage facilities, wharves, piers, bulkheads, docks, sheds, warehouses, foreshores and industrial locations in Boston harbor within its charge. It may lease sites for warehouses and industrial locations for a longer period, but every lease of such sites for a period exceeding twenty years shall provide for a readjustment of the rental at intervals of not more than twenty years. No lease for a term exceeding five years shall be valid until approved by the governor and council. The income from all wharfage and storage rates, use of cranes, lighterage, dockage and other charges, and from the leases of lands, storage structures, wharves, piers, docks, sheds, warehouses and industrial sites, all moneys received by the commonwealth under section twenty-one for tide water displacements in Boston harbor, and all moneys hereafter received which on May twenty-eighth, nineteen hundred and twelve, were required to be paid into the Commonwealth's Flats Improvement Fund, shall be collected by the department and paid to the commonwealth, to the credit of the Port of Boston Fund. Said fund may be invested by the state treasurer at his discretion from time to time as provided for the investment of the commonwealth's funds; and all income from such investments shall be added to the fund. The department may expend the Port of Boston Fund to operate, maintain, repair and preserve the property in Boston harbor in the control of the department, and such sums as the legislature may appropriate annually for salaries, office expenses, and general engineering expenses in connection with the work of the department in Boston harbor shall be paid so far as possible from said fund; any balance remaining from said fund after the aforementioned expenses have been paid shall be applied to the payment of interest and to the annual payments on account of principal of any securities which may have been or may be issued to raise money to be expended by the department for the development of the port of Boston.

Section 7: Piers, etc.; freight loading equipment; rules and regulations

Section 7. All piers and other similar structures in Boston harbor built by the department or its predecessors shall be equipped, either by the department or by the lessees thereof, with fireproof sheds, railway tracks, cranes and other machinery and accommodations for the convenient, economical and speedy loading and discharge of freight; and the department may acquire, hold and operate such lighters and other vessels as it deems convenient and needed therefor. The department shall make such reasonable rules and regulations and charge such reasonable rates for the use of such structures and equipment as it may from time to time deem wise.

Section 8: Acquisition of Apple Island and shore lands

Section 8. The department shall take all proper measures to obtain from Boston, without expense to the commonwealth, a conveyance of all the present right, title and interest of said city in and to Apple Island, and the flats appurtenant thereto, and in and to any other flats and rights of said city on the easterly side of East Boston, which the department deems are required for the development contemplated by section four, and said Boston may make such conveyance, and in furtherance of the development of the port make conveyance to the department or others, but only for maritime or commercial improvement, of any shore lands owned by it elsewhere, acquired either by purchase or taking.

Section 9: Utilization plans for acquired property

Section 9. The department shall make, and, so far as practicable, put into execution, comprehensive plans providing, on the lands now owned or hereafter acquired by the commonwealth in Boston harbor, adequate piers, capable of accommodating the largest vessels, and in connection with such piers suitable highways, waterways, railroad connections and storage yards, and sites for warehouses and industrial establishments.

Section 9A: Construction or reconstruction of piers and waterfront terminal facilities; written contracts

Section 9A. The department may adopt a program of construction or reconstruction of piers and other waterfront terminal facilities at any port of the commonwealth after holding hearings, public or private, due notice whereof shall have been given, at which hearings all persons interested may be heard and, if such program relates to the port of Boston, after consulting with and securing the advice and judgment, by report or otherwise, of the Boston Port Authority. After the adoption of any such program, the department is hereby empowered to lay out and construct or reconstruct any particular facilities aforesaid included in such program, to acquire as hereinafter provided any facilities proposed to be reconstructed which are not then owned by the commonwealth, and to execute a contract for the use of any facilities to be constructed or reconstructed hereunder; provided, that no action obligating the commonwealth to any expenditure under this section shall be taken until the department, in the name and on behalf of the commonwealth, shall have executed a written contract, approved by the governor and council, with some responsible party, for the use of the particular facilities proposed to be constructed or reconstructed hereunder, for a term not exceeding forty years and containing provisions for the payment of rental as hereinafter provided, nor unless sufficient funds shall have been made available for such project under a loan authorized by the general court. Prior to executing such a contract for the use of facilities proposed to be constructed or reconstructed at the port of Boston, the department shall consult with and secure the advice and judgment, by report or otherwise, of the Boston Port Authority relative to the advisability and feasibility of entering into such contract, with special reference to the effect such action may have on the commerce or progress of the port. Every such contract shall provide that the lessee of the facilities shall pay a rental determined by the department to be sufficient to pay all interest charges as they accrue on account of moneys borrowed by the commonwealth and used in the construction or reconstruction of such facilities and for the acquisition of property in connection therewith, and to pay the principal amounts of the money so borrowed and used as they become due and, in addition, to defray so much of the expenses of the department as may in its opinion be properly allocable to the construction or reconstruction of such facilities and the acquisition of property in connection therewith.

Subject to this section, the department, in the name and on behalf of the commonwealth, may take by eminent domain under chapter seventy-nine of the General Laws, or acquire by purchase, lease or otherwise, such property and such rights and easements therein as the department may from time to time consider necessary for the construction or reconstruction of any particular facilities included in a program adopted under this section; and the foregoing shall authorize the commonwealth to acquire in the manner hereinbefore provided any particular pier or other waterfront terminal facility included in any such program, for the purpose of reconstructing the same.

Section 10: Powers and duties relative to harbors, etc.

Section 10. The department shall have general care and supervision of the harbors and tide waters within the commonwealth, of the flats and lands flowed thereby, of the waters and banks of the Connecticut river and the banks and waters of the non-tidal portion of the Merrimack river and of all structures therein, in order to prevent and remove unauthorized encroachments and causes of every kind which may injure said Connecticut river or said part of Merrimack river or interfere with the navigation of such harbors, injure their channels or cause a reduction of their tide waters, and to protect and develop the rights and property of the commonwealth in such waters, flats and lands; and it may make such surveys, examinations and observations as it deems necessary therefor. The department of environmental protection shall protect the interests of the commonwealth in areas described herein in issuing any license and permit authorized pursuant to this chapter.

Section 10A: Temporary moorings of floats or rafts; permits, issuance or refusal; review; public nuisances

Section 10A. Notwithstanding any contrary provision of law, the harbormaster of a city or town or whomsoever is so empowered by said city or town may authorize by permit the mooring on a temporary basis of floats or rafts held by anchors or bottom moorings within the territorial jurisdiction of such city or town upon such terms, conditions and restrictions as he shall deem necessary. He shall act on applications for such permits within a period of fifteen days from receipt thereof.

A reasonable fee for such mooring permit, proportionate to the city or town's cost of overseeing mooring permits, may be imposed by the city or town or whoever is so authorized by the city or town, but no mooring fee shall discriminate on the basis of residence. Any mooring fee collected shall be deposited into and used in accordance with the purposes of a municipal waterways improvement and maintenance fund established pursuant to section 5G of chapter 40.

Any person aggrieved by a refusal to permit such temporary mooring, or by any condition or restriction imposed relative to such mooring, may appeal to the division of waterways of the department within thirty days after receiving notice of such refusal or of the imposition of such condition or restriction.

Said division shall review the circumstances resulting in such appeal and shall render a ruling either confirming the action of a harbormaster, setting such action aside, or amending such action and imposing its own conditions and restrictions as deemed necessary.

Nothing in this section shall be construed as authorizing the placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than the applicant if objected to by the owner or owners thereof.

Actions by a harbormaster and/or the division under this section shall be subject to applicable laws administered by the division of motor boats, the division of marine fisheries, the United States Coast Guard and the United States Corps of Engineers.

Floats or rafts held by anchors or bottom moorings installed without permission from a harbormaster and/or said division shall be considered a public nuisance and may be removed by the harbormaster at the expense of the owner in the event he fails to remove same after notice in writing from the harbormaster.

For the purpose of this section, temporary shall mean for no longer than to the end of any given calendar year.

Section 10A1/2: Repealed, 2003, 26, Sec. 239

Section 10B: Repealed, 1977, 363A, Sec. 64

Section 10C: Docking of commercial vessels; permits; applications; appeal

Section 10C. Notwithstanding any contrary provision of law, the harbormaster of a city or town or whomsoever is so empowered by said city or town may authorize by written permit the stationing of commercial vessels to a public commercial dock, pier, wharf, float, raft or mooring, fixed or otherwise, within the territorial jurisdiction of such city or town upon such terms, conditions and restrictions as he shall deem necessary. He shall act on application for such permits within a period of seven days from his receipt thereof.

Such application may be left at the office of the city or town clerk by the master of such commercial vessel.

If the harbormaster or whomever is so empowered fails to act within such period, such permit shall then be deemed to have been granted. Any refusal to grant such permits within such period shall be in writing by the harbormaster or whomever is so empowered by said city or town and shall include the reasons for such refusal.

Any person aggrieved by the decision of the harbormaster of said city or town or whomever is so empowered by said city or town relative to such stationing may appeal to the division of waterways of the department within thirty days of such decision.

Said division shall review the circumstances resulting in such appeal and shall render a ruling either confirming the decision, setting such decision aside, or amending such decision and imposing conditions and restrictions deemed necessary by said office.

Actions by a harbormaster or said division of waterways under the provisions of this section shall be subject to applicable laws administered by the division of motor boats, the division of marine fisheries, the United States Coast Guard and the United States Corps of Engineers.

Section 10D: Scuba divers and skin divers; access to Commonwealth tidelands

Section 10D. No person shall be denied access during daylight hours to commonwealth tidelands across any land available to the public for swimming or recreation which is owned or controlled by the commonwealth or any of its political subdivisions for the purpose of scuba diving or skin diving which activities are hereby declared to be water dependent uses; provided, however, that if such tidelands are at any time closed to access by the general public, such access by such scuba diver or skin diver shall not be permitted.

Section 11: Improvement and preservation of rivers, streams, harbors, etc.

Section 11. The department shall undertake such construction and work for the improvement, development, maintenance and protection of tidal and non-tidal rivers and streams, great ponds, harbors, tide waters, foreshores and shores along a public beach as it deems reasonable and proper, and for this purpose shall have the same powers conferred upon it by section thirty-one. The department, in pursuance of the work authorized, may construct, reconstruct, alter and repair bridges, culverts, conduits, pipes, walls and dams, and may do such other incidental work as may be deemed necessary for the improvement and safety of waterways. In selecting the places to do such work, the department shall consider the general public advantage of the proposed work, the local interest therein as manifested by municipal or other contributions therefor, the importance of the industrial or commercial and other interests to be especially served thereby, and any other material considerations affecting the feasibility, necessity or advantage of the proposed work or the expenditure therefor. No work authorized by this section shall be begun until after a public hearing has been held and a survey and an estimate of the cost has been made.

The department is hereby authorized to enter into agreements with the Soil Conservation Service of the United States Department of Agriculture for the performance of work necessary on resource conservation and development projects approved for the commonwealth. Said agreements shall be limited to those for which the Soil Conservation Service is authorized to share in the installation cost, including flood prevention measures, agricultural water management, erosion and sediment control measures, fish and wildlife measures and recreation development.

In any project undertaken under the authority of this section, the department is authorized to pay the commonwealth's share of funds to the federal government if the Soil Conservation Service is the contracting agency for the project.

Section 11A: Resource protection, navigational safety and development projects; work agreements with local authorities

Section 11A. The department is hereby authorized to enter into agreements with municipalities, local commissions or local authorities for performance of work necessary for resource protection, navigational safety and protection and development projects approved by the department. Said agreements shall be limited to those for which the department is authorized under sections nine A, ten, ten A1/2, eleven, twenty-nine, twenty-nine A, thirty-one, thirty-eight, and thirty-nine of chapter ninety-one. The department may make application to the government of the United States for reimbursement of any amounts expended under any provisions of this section.

Section 12: License for structures in Connecticut, Westfield and Merrimack rivers

Section 12. The department may license and prescribe the terms for the construction or extension of a dam, road, bridge, or other structure, or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below high water mark of the Connecticut river or of that part of the Westfield river, in the towns of West Springfield and Agawam, lying between the confluence of said river with the Connecticut river and the bridge across said river at Suffield street in the said town of Agawam, and in, over and upon the waters of the non-tidal part of the Merrimack river below high water mark; and the provisions of this chapter shall apply to all such licenses. Every erection made, and all work done on or within the banks of the Connecticut river, of said part of the Westfield river or of said part of the Merrimack river, below high water mark, not authorized by the general court or by the department, or made or done in a manner not sanctioned by the department, without a license as hereinbefore provided, shall be considered a public nuisance. The attorney general and the district attorneys within their respective districts shall, at the request of the department, institute proceedings to enjoin or abate any such nuisance. This section and any such license shall not impair the legal rights or remedies of any person.

Section 12A: License for structures in rivers or streams where expenditures for channel improvement and flood control already made

Section 12A. The department may license and prescribe the terms for the construction or extension of a dam, road, bridge or other structure, or the filling of land, the driving of piles, or the making of excavations, in, over or upon the waters below high water mark of any river or stream within the commonwealth with respect to which expenditures from federal, state or municipal funds have been made for stream clearance, channel improvement or any form of flood control or prevention work, and the provisions of this chapter shall apply to all such licenses. Section twenty shall apply to any person authorized by the general court to build structures or do other work in said rivers and streams. Every erection made, and all work done on or within the banks of said rivers and streams, below high water mark, not authorized by the general court or by the department, or made or done in a manner not sanctioned by the department, without a license as hereinbefore provided, shall be considered a public nuisance. The attorney general and the district attorneys within their respective districts shall, at the request of the department, institute proceedings to enjoin or abate any such nuisance. This section and any such license shall not impair the legal rights or remedies of any person.

Section 13: Licenses for booms in Connecticut river and structures in great ponds

Section 13. The department may license any person to construct and maintain booms in or across the Connecticut river, for periods of not more than five years, in such locations and upon such terms as it prescribes, or to build and extend a wharf, pier or shore wall below high water mark in said river, or to build or extend a wharf, pier, dam, wall, road, bridge or other structure, or to drive piles, fill land or excavate in or over the waters of any great pond below natural high water mark, or at or upon any outlet thereof, upon such terms as the department prescribes; but such license shall not validate acts beyond the line of riparian ownership or affecting the level of the waters in such pond, unless approved by the governor and council.

Section 14: License for structures in or over tide water; conduits or cables under tide water; private or commonwealth tidelands

Section 14. The department may license and prescribe the terms for the construction or extension of a wharf, pier, dam, sea wall, road, bridge or other structure, or for the filling of land or flats, or the driving of piles in or over tide water below high water mark, but not, except as to a structure authorized by law, beyond any established harbor line, nor, unless with the approval of the governor and council, beyond the line of riparian ownership. A license shall not be granted for the construction of a bridge across a river, cove or inlet, except in a location above a bridge, dam or similar structure authorized by law over such tide water, in which no draw actually exists or is required by law, and not then, if objection is made by the aldermen or selectmen of the town where the bridge is to be built.

The said department may license and prescribe the terms for the construction or extension of a pipe line, conduit or cable under tide water beyond any established harbor line; provided, that such pipe line or conduit is entirely imbedded in the soil and does not in any part occupy, or project into such tide water, and provided also that said department may at any time require any pipe line, conduit or cable to be moved or relocated if channel changes or alterations demand the same.

Except as provided in section eighteen, no structures or fill may be licensed on private tidelands or commonwealth tidelands unless such structures or fill are necessary to accommodate a water dependent use; provided that for commonwealth tidelands said structures or fill shall also serve a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands.

Section 15: Revocation and expiration of authority or license; exception; mortgageable interest

Section 15. Every authority or license granted since eighteen hundred and sixty-eight or hereafter granted by the commonwealth to any person to build a structure or do other work in, over and under the Connecticut River or the nontidal part of the Merrimack River or in, over or under the waters of any great pond or at any outlet thereof below high water mark, or upon ground over which the tide ebbs and flows, or to fill up or to enclose the same, whether such ground is above or below low water mark, or within or beyond one hundred rods from high water mark, or whether private property or property of the commonwealth, shall be subject to the following conditions, whether expressed in the act, resolve or license granting the same or not. Said authority or license shall be revocable at the discretion of the general court, or by the department for noncompliance with the terms and conditions set forth therein. The license shall expire as to all work authorized or licensed not completed within five years from the date of such authorization or license or such other period of time specified therein; provided, however, that for good cause shown the department may extend, without public hearing or notice, the construction period of the authorization or license for one or more one-year periods. Revocation by the general court of licenses issued after January first, nineteen hundred and eighty-four shall be treated as a taking of real property requiring payment of just compensation in accordance with the provisions of chapter seventy-nine for valuable structures, fillings, enclosures, uses or other improvements built, made or continued in compliance with said authorization or license. Except as provided herein, the grant of a license pursuant to this chapter shall not convey a property right, nor authorize any injury to property or invasion of rights of others. A license issued pursuant to this chapter is hereby made a mortgageable interest lawful for investment by any banking association, trust company, savings bank, cooperative bank, investment company, insurance company, executor, trustee, or other fiduciary, and any other person who is now or may hereafter be authorized to invest in any mortgage or other obligation of a similar nature.

Section 16: Cessation, determination of authority or license for non-use

Section 16. Every authority or license granted since eighteen hundred and sixty-eight by the general court or by the department or its predecessors to any person to build or extend a wharf or other structure upon, or to drive piles in, or to fill or otherwise occupy, land in tide or navigable water, within Boston harbor, or within the port of Boston as defined by the provisions of section two of chapter ninety-one A, which is revocable at the discretion of the general court, and every other similar right or privilege within Boston harbor or within the port of Boston as defined by the provisions of section two of chapter ninety-one A which is so revocable, whether or not compensation has been paid under any provision of law or otherwise, shall hereafter cease and determine, or be subject to forfeiture, in case of non-use of the same for an unreasonable time without reasonable cause, and it shall be prima facie evidence that the same is held unused in restraint of trade when the tendency of such non-use is to prevent competition in its broad and general sense, unless such person has, prior to July twenty-eighth, nineteen hundred and twelve, made reasonable and substantial use of structures, or has reasonably and substantially occupied land in tide or navigable waters, for the purposes for which the authority or license was granted; and thereupon, every such authority or license and every similar right and privilege shall cease and determine on repayment, or tender of repayment, by the commonwealth or compensation therefor to the amount which shall have been paid to the commonwealth in accordance with the terms of such authority or license; and the department and the attorney general shall cause a proper certificate of the revocation of such authority or license to be recorded forthwith in the registry of deeds for the county where such structure was built or work done.

Section 17: Construction of licenses; approval

Section 17. No license or other authority to build structures upon or to fill up or enclose any ground mentioned in the two preceding sections shall be construed to interfere with or impair the right of any person affected thereby to equal proportional privileges of approaching low water mark or one hundred rods from high water mark, or harbor lines established by law, or to impair the right to obtain a license or authority so to approach of persons having interests in lands or flats which may be affected thereby, or to impair the legal rights of any person. All things done under such license or authority shall be subject to the approval of the department. If the general court establishes a harbor line within the outer line covered by such license or authority, the same shall be limited by and not extend beyond such harbor line. This section, so far as may be, shall apply to licenses granted under section fifteen to erect structures on great ponds.

Section 18: Application for license; notice; hearings; records

Section 18. Upon or prior to applying for a license pursuant to this section, the applicant shall submit to the planning board of the city or town where the work is to be performed, except in case of a proposed bridge, dam or similar structure across a river, cove, or inlet, the application containing the proposed use, the location, dimensions and limits and mode of work to be performed.

Said planning board may conduct a public hearing within thirty days of receipt of license application. Within fifteen days of conducting said public hearing or within forty-five days of receipt of license application, the planning board shall submit a written recommendation to the department. Said recommendation shall state whether said planning board believes the development would serve a proper public purpose and would not be detrimental of the public's rights in these tidal lands. The department shall take into consideration the recommendation of the local planning board in making its decision whether to grant a license.

Every license granted under this chapter shall be signed by the department, shall state the conditions on which it is granted, including, but not limited to the specific use to which the licensed structure or fill is restricted, and shall specify by metes, bounds and otherwise the location, dimensions, and limits and mode of performing the work authorized thereby. Any changes in use or structural alteration of a licensed structure or fill, whether said structure or fill first was licensed prior to or after the effective date of this section, shall require the issuance by the department of a new license in accordance with the provisions and procedures established in this chapter. Any unauthorized substantial change in use or unauthorized substantial structural alteration shall render the license void. Licenses granted by the department pursuant to this chapter shall be revocable by the department for noncompliance with the conditions set forth therein. The department shall not revoke any license until it has given written notice of the alleged noncompliance to the licensee and those persons who have filed a written request for such notice with the department and afforded them a reasonable opportunity to correct said noncompliance. The department may promulgate regulations for implementation for its authority under this chapter.

No license shall be required under this chapter for fill on landlocked tidelands, or for uses or structures within landlocked tidelands.

The department shall submit any regulations promulgated under the provisions of this chapter to the joint legislative committee on natural resources and agriculture, to the senate committee on ways and means and to the house committee on ways and means, for their review within sixty days prior to the effective date of said regulations.

Forty-five days before any license is granted pursuant to this chapter, the department shall give notice to the selectmen of the town or the mayor of the city and the conservation commission of the town or city where the work is to be performed that they may be heard, except in the case of a proposed bridge, dam or similar structure across a river, cove or inlet, the department shall give notice to the selectmen or mayor, and conservation commission of every municipality into which the tidewater of said river, cove or inlet extends, and the department shall cause said notice to be published at the same time in a newspaper or newspapers having a circulation in the area affected by said license at the expense of the applicant.

A public hearing shall be held in the affected city or town on any license application for nonwater dependent uses of tidelands, except for landlocked tidelands. No structures or fill for nonwater dependent uses of tidelands, except for landlocked tidelands may be licensed unless a written determination by the department is made following a public hearing that said structures or fill shall serve a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands and that the determination is consistent with the policies of the Massachusetts coastal zone management program. For those license applications where a public hearing is not mandated, a public hearing may be held, upon the request of the municipality or at the discretion of the department in the affected city or town.

Any person aggrieved by a decision by the department to grant a license pursuant to this chapter shall have the right to an adjudicatory hearing in accordance with chapter thirty A.

The department shall keep a record of each license and a plan of the work or structure. Said license shall be void unless, within sixty days after its date, it and the accompanying plan are recorded in the registry of deeds for the county or district where the work is to be performed. Work or change in use authorized under the license shall not commence until said license is recorded and the department has received notification of said recordation.

No license shall be granted for private tidelands unless the application therefor contains a certification by the clerk of the affected cities or towns that the work to be performed or changed in use is not in violation of local zoning ordinances and by-laws.

Each license granted shall contain a statement of the tidewater displacement assessments made with respect thereto and that payment has been received therefor, or that performance of other conditions in lieu of such payment has been completed to the satisfaction of the department and a statement of the assessment for occupation of commonwealth tidelands if, any, made with respect thereto for which payment has been received or shall be required in accordance with regulations of the department.

Section 18A: Public access to great ponds; petition

Section 18A. Upon petition of ten citizens of the commonwealth that in their opinion public necessity requires a right of way for public access to any great pond within the commonwealth, the department and the attorney general or a representative designated by him sitting jointly shall hold a public hearing and receive such evidence thereon as may be presented to them. The joint board may make such additional investigation as it deems desirable and if it appears to said board that such a right of way exists it shall present a petition to the land court for registration of the easement. If it appears that no right of way exists it shall submit a report, together with recommendations thereon, to the general court on or before January first of the following year. This section shall not apply to any body of water used as a source of water supply by the commonwealth or by any town or district, or water company, nor shall it affect the right of the commonwealth or any town or district or water company to the use and control of the waters of any such pond for the purposes of a water supply, nor shall it affect or diminish any existing right to the use of the water of any such pond for mercantile or manufacturing purposes.

Section 18B: Secretary as administrator of tidelands; duties; public benefit review and public benefit determination; appointment of public information officer

Section 18B. (a) The secretary shall serve as the administrator of tidelands. The secretary may appoint an individual or individuals to assist him in carrying out the duties of his office. The duties of this office may be exercised in combination with other duties, as the secretary shall see fit.

(b) The secretary shall conduct and complete a public benefit review for any proposed project that is: (i) subject to the licensing provisions of section 13 or 18; or (ii) geographically located on landlocked tidelands, and in either case is required to file hereafter an environmental impact report pursuant to chapter 30. The secretary may conduct and complete a public benefit review for any proposed project that is: (i) subject to the licensing provisions of said section 13 or 18; or (ii) geographically located on landlocked tidelands and in either case is required to file hereafter an environmental notification form pursuant to chapter 30. The public benefit determination of the secretary shall not supersede said chapter 30 or this chapter or any rules or regulations promulgated pursuant thereto and shall not delay the issuance of a license pursuant to this chapter or the completion of a review or any step thereof pursuant to said chapter 30. At the completion of said review, the secretary shall make a public benefit determination, the goal of which shall be to publish on the public record a written public benefit determination of the project.

In making said public benefit determination, the secretary shall consider the purpose and effect of the development; the impact on abutters and the surrounding community; enhancement to the property; benefits to the public trust rights in tidelands or other associated rights, including, but not limited to, benefits provided through previously obtained municipal permits; community activities on the development site; environmental protection and preservation; public health and safety; and the general welfare; provided further, that the secretary shall also consider the differences between tidelands, landlocked tidelands and great ponds lands when assessing the public benefit and shall consider the practical impact of the public benefit on the development.

The secretary shall promulgate regulations that may, among other things, exempt from the public benefit determination process the development of certain parcels of land, or certain activities, uses and structures on the land that are determined to be of *de minimus* impact. The regulations shall also establish timelines and procedures for the public benefit review, and the regulations may combine the public benefit review with the environmental review under chapter 30.

Any state or local agency holding a public comment period pursuant to chapter 30 or this chapter shall provide copies of all written testimony submitted during said public comment period to the secretary.

The secretary shall provide the determination of public benefit to the department, and if there is an appeal of a decision or license issued by the department, to the division of administrative law appeals.

The department shall incorporate the public benefit determination of the secretary in the official record.

(c) The secretary shall designate an individual to serve as the chapter 91 public information officer. The chapter 91 public information officer shall answer questions about the chapter 91 process, providing history and context regarding chapter 91 and the public benefits process as it pertains to this chapter.

Section 18C: Noncommercial small-scale docks, piers and similar structures accessory to residential use; issuance of general license; applicability of other laws to projects subject to general license

Section 18C. (a) Notwithstanding any general or special law to the contrary, the department may issue a general license authorizing noncommercial small-scale docks, piers and similar structures that are accessory to a residential use, but not marinas or large-scale docks, piers or similar structures, in tidelands, great ponds, rivers and streams, otherwise subject to individual licensing under sections 12, 12A, 13, 14, 18 and 19. Projects that extend beyond harbor lines or are within areas of critical environmental concern to the commonwealth shall not be eligible for a general license under this section. The department may consider the cumulative impacts of docks, piers and similar structures in a geographic area in determining whether a project is appropriate for coverage under a general license. The licensee shall comply with all general license performance standards to be issued as regulations by the department and any additional concerns specified by the department pursuant to the general license. A proponent of a project eligible for a general license under this section shall certify compliance with its terms and conditions to the department and shall pay all applicable fees required by this chapter before beginning construction. The department shall perform annual audits to monitor compliance with the general license requirements of this section.

(b) The first 2 paragraphs of section 18 shall not apply to projects subject to a general license; provided, however, that upon or prior to applying for a license pursuant to this section, the project proponent shall submit to the planning board of the city or town where the work is to be performed a statement of the proposed use, the location, dimensions and limits and mode of work to be performed. The planning board may, within 45 days after receipt of the statement, submit a written opinion to the department that the project does not comply with the general license standards set forth in this section and recommend that the project be subject to individual licensing, as applicable, under said sections 12, 12A, 13, 14, 18 and 19. The department shall not issue a general license under this section if a planning board recommends that the project be subject to individual licensing. The department may issue a general license after the expiration of 45 days without local planning board comment or upon receiving notification from the local planning board that it does not oppose the project's eligibility for a general license.

(c) The first sentence of the third paragraph of said section 18 shall not apply to projects subject to a general license; provided, however, that the project proponent shall specify by metes, bounds and otherwise the location, dimensions and limits and mode of performing the work in its certification to the department.

(d) The second sentence of said third paragraph of said section 18 shall not apply to a project subject to a general license; provided, however, that any changes in use or structural alteration of a licensed structure or fill, whether the structure or fill first was licensed before, on or after the effective date of this section, shall require a new certification to the department and submission to the planning board in accordance with subsection (b) for projects eligible for a general license, or a license for structures which are ineligible for the general license, in accordance with the provisions and procedures established in this chapter and the general license.

(e) The sixth paragraph of said section 18 shall not apply to a project subject to a general license; provided, however, that upon or prior to applying for a general license under this section, the project proponent shall give notice to the selectmen of the town or the mayor of the city and the conservation commission of the town or city where the work is to be performed and shall publish, at the expense of the proponent, the notice at the same time in a newspaper or newspapers having a circulation in the area affected by the project.

(f) The seventh and eighth paragraphs of said section 18, regarding public and adjudicatory hearings, shall not apply to a project subject to a general license.

(g) The ninth paragraph of said section 18 regarding recordation shall not apply to a project subject to a general license; provided, however, that the project proponent shall submit a plan of the work or structure to the department in its certification. The general license for these projects shall be void unless, within 60 days after certification, the certification and the accompanying plan are recorded in the registry of deeds for the county or district wherein the work is to be performed. Work or change in use shall not commence until the certification is recorded and the department has received notification of the recordation.

(h) The tenth paragraph of said section 18 regarding zoning approval shall not apply to a project subject to a general license; provided, however, that the project proponent shall submit a certification by the clerk of the affected cities or towns that the work to be performed or change in use is not in violation of local zoning ordinances and by-laws, in its certification to the department.

(i) The eleventh paragraph of said section 18, regarding assessments for tidewater displacement and occupation of commonwealth tidelands, shall not apply to projects subject to a general license; provided, however, that these assessments shall be paid by the project proponent in its certification to the department.

(j) Section 20 shall not apply to projects subject to a general license; provided, however, that the project proponent shall submit to the department plans of any proposed work to be performed and a copy of any legislative grant in its certification to the department.

(k) The department shall adopt regulations to implement this section. The regulations shall protect and preserve any rights held by the commonwealth in trust for the public to use tidelands, great ponds and other waterways for lawful purposes and public rights of access on private tidelands, great ponds and other waterways for any lawful use.

Section 19: Restriction on structures in great ponds

Section 19. Except as authorized by the general court and as provided in this chapter, no structure shall be built or extended, or piles driven or land filled, or other obstruction or encroachment made, in, over or upon the waters of any great pond below the natural high water mark; nor shall any erection or excavation be made at any outlet thereof whereby the water may be raised or lowered.

Section 19A: Lowering waters of great ponds; penalty

Section 19A. No person authorized or licensed to build any structure, drive piles, fill land or to make any dam or other obstruction or encroachment in, over or upon the waters of any great pond below the natural high water mark, or to make any erection or excavation at any outlet of a great pond whereby the water may be raised or lowered, shall, except in case of emergency, lower the water of said pond, except a body of water used for agricultural, manufacturing, mercantile, irrigation, or insect control purposes, or for flowing cranberry bogs, or for public water supply, unless he shall have notified the department of environmental protection of his intention so to do and has received the approval of said department to lower the waters of said pond. Whoever violates the provisions of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Section 20: Supervision by department of erections under legislative grants

Section 20. Whoever is authorized by the general court to build over tide waters a bridge, wharf, pier or dam, to fill flats or drive piles below high water mark, or to build any structures in the Connecticut river, or in the non-tidal part of the Merrimack river, or to build or extend any structure or to do any other work mentioned in the preceding section in, over or upon the waters of any great pond, shall not commence such work until he has given written notice thereof to the department and submitted plans of any proposed structure, the flats to be filled, and the manner in which the work is to be performed, and the same has been approved in writing by the department, which may alter such plans and prescribe any direction, limits and manner of doing the work consistent with the legislative grant. Such works shall be supervised by the department.

Section 21: Compensation for displacement of tidewater

Section 21. The amount of tidewater displaced by any structure below high water mark, or any filling of flats, shall be ascertained by the department, which shall require the person, his heirs or assignees who are responsible for such displacement to make compensation therefor by excavating, under its direction, between high and low water mark in some part of the same harbor a basin for a quantity of water equal to that displaced; or by paying to the commonwealth, in lieu of such excavation, an amount assessed by the department, or by improving the harbor in any other manner satisfactory to the department. The department shall by regulation determine a schedule of rates of assessment to be charged pursuant to this section per cubic yard of water displaced. In determining said rate of assessment the department may consider the following factors: the costs incurred by the department in the licensing of tidelands; the costs typically associated with excavation or improvement of harbors or basins as permitted in lieu of payment of an assessment under this section; and the level of assessments historically charged in the commonwealth or in other states with respect to the displacement of tidewater. An assessment for the tidewater which has been displaced may be recovered in contract in the name of the state treasurer.

Section 22: Compensation when title to land is in Commonwealth

Section 22. If authority or a license is granted by the general court or by the department to a person to build a wharf or other structure upon, or to fill or otherwise occupy, land in tide water, or to build or extend any structure or drive piles, fill land or make any obstruction, encroachment or excavation in, over or upon the waters of any great pond, he shall pay to the commonwealth such compensation for the rights granted in any land the title to which is in the commonwealth as shall be determined pursuant to regulations of the department. The department shall by regulation provide for a method for determination of such compensation which may in the department's discretion be based on either a schedule of rates per square yard of commonwealth tidelands occupied or on an appraisal of the fair market value of the rights granted by the commonwealth, and which may in the department's discretion be assessed either as a lump sum payable in full prior to issuance of the license or as a series of annual payments which shall be required as a condition of the license. This section shall not apply to authority granted to a county, city or town for the construction, widening or maintenance of a bridge constituting a part of a highway.

Section 23: Unauthorized work in public waters; public nuisances

Section 23. Every erection made and all work done within tide water, or within the waters of a great pond or outlet thereof, or on or within the banks of the Connecticut river, or the Merrimack river, below high water mark, not authorized by the general court or by the department, or made or done in a manner not sanctioned by the department, if a license is required as hereinbefore provided, shall be considered a public nuisance. Whoever creates such nuisance, (a) shall be punished by a fine of not more than twenty-five thousand dollars for each day such nuisance occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or (b), shall be subject to a civil penalty of not more than twenty-five thousand dollars for each day such nuisance occurs or continues. The attorney general or the district attorneys within their respective districts shall, at the request of the department, institute proceedings to enjoin or abate such nuisance, or to restrain the removal of material from any bar or breakwater of any harbor.

Section 24: Money paid into General Fund

Section 24. Except as is provided in section six, all moneys received in payment for tide water displaced and for rights and privileges granted in tide water land of the commonwealth and in the commonwealth's land in great ponds, under licenses and permits granted under this chapter for structures and other work, shall be paid into the General Fund.

Section 25: Supervision of province lands

Section 25. The department shall have general supervision of so much of the province lands at Provincetown as lies north and west of a line beginning at a point at or near the shore of Provincetown harbor, in latitude north forty-two degrees, two minutes, and longitude west seventy degrees, eleven minutes, forty-five seconds; thence northwesterly to a point in latitude north forty-two degrees, three minutes, eight seconds, and longitude west seventy degrees, twelve minutes, forty-eight seconds; thence northeasterly to a point in latitude north forty-two degrees, three minutes, twenty-eight seconds, and longitude west seventy degrees, eleven minutes, thirty-three seconds; thence due north to a point in latitude north forty-two degrees, three minutes, forty-eight seconds; thence due east to a point in the eastern boundary of the province lands.

Section 26: Exemption of portion of province lands from certain provisions of law

Section 26. Section two of this chapter, chapter two hundred and sixty-one of the acts of eighteen hundred and fifty-four, chapter one hundred and forty-four of the acts of eighteen hundred and eighty-six, so much of section one of chapter eleven of the province laws of seventeen hundred and twenty-seven as is contained in the following words ''saving always the right and title of this province to the said lands which is to be in no wise prejudiced'', and all other acts or parts of acts which refer to the province lands at Provincetown, except the act incorporating said town, shall not apply to that portion of said province lands lying east and south of the line fixed in the preceding section.

Section 27: Bounds of province lands; regulations

Section 27. The department shall fix and mark the bounds of the province lands within its jurisdiction and establish regulations for the care thereof.

The department may make rules and regulations relative to hunting on or other uses of the province lands; provided, that such rules and regulations shall be consistent with all laws in relation to the protection of birds and mammals. No such regulation shall prohibit hunting within said lands except the hunting of deer. Whoever violates any provision of any such rule or regulation shall be punished by a fine of not more than twenty-five dollars. The aforesaid rules and regulations may be enforced by any state police officer, by any town police officer or by any constable, sheriff or deputy sheriff empowered to serve criminal process.

Section 28: Unlawful existing structures

Section 28. This chapter shall not legalize any structure, filling or other occupation or encroachment, made or done without authority, upon the waters in or the land under any great pond prior to May ninth, eighteen hundred and eighty-eight, or in or upon the Connecticut river, below high water mark, prior to April thirtieth, eighteen hundred and ninety-one, or as waiving or impairing any rights or remedies of the commonwealth or of any person relative thereto.

Section 29: Improvement of tidal and non-tidal waters by counties or towns; assumption of liability for improvements

Section 29. A county or town may appropriate money for the improvement of tidal and non-tidal rivers and streams, harbors, tide waters, foreshores and shores along a public beach within its jurisdiction, and the money so appropriated shall be paid to the state treasurer and be expended by the department for said purposes within the limits of such town; and the town may also assume liability for all damages to property suffered by any person by any taking of land, or of any right, interest or easement therein, within the town made by said department for the purposes hereinbefore authorized.

Section 29A: Protection of private property along shores; construction of structures by cities or towns

Section 29A. Any city or town which accepts the provisions of this section may appropriate money for the construction of structures for the protection of private property along shores within its boundaries. Money so appropriated shall be paid to the state treasurer and expended by the department for such purposes within the limits of such city or town; provided, however, that such city or town assumes liability for all damages to property by reason of any taking of land, or of any right, interest or easement therein, within the city or town by the department for such purpose.

Section 30: Removal of gravel, sand, stones, etc. from beaches; notice; penalty

Section 30. If it appears to the department that the digging or removal of stones, gravel, sand or other material, upon or from any beach, shore, bluff, headland, island or bar, in or bordering on tide waters, or the destruction of any trees, shrubs, grass or other vegetation growing thereon, is, or is likely to prove, injurious to any harbor or other navigable tide waters, the department may, by written notice, prohibit such digging or removal, or the doing of any acts injurious to such trees or other vegetation, upon or from any such beach or other place aforesaid specified in such notice. Whoever, after receiving such notice, wilfully does any act or thing prohibited therein, and which is authorized to be so prohibited by this section, or, being the owner or having the control of any land specified in such notice, wilfully suffers or permits such act or thing to be done thereon, shall be punished by a fine of not less than twenty nor more than two hundred dollars.

Section 30A: Removal of natural barriers preventing erosion by sea; jurisdiction of superior court; penalty

Section 30A. Whoever removes stones, gravel, sand or other material from any natural barrier on land bordering on the sea, which barrier furnishes protection to such land and adjacent upland against erosion by the sea shall be punished by a fine of not more than five hundred dollars.

The superior court shall have jurisdiction in equity to enforce the provisions of this section. A petition for such enforcement may be filed by the attorney general, the selectmen of the town or the mayor of a city in which such barrier is located, or any person who may suffer damage in his property by such removal.

Section 31: Surveys and improvements for preservation of harbors

Section 31. The department may make surveys and improvements for the preservation of harbors and may repair damages occasioned by storms or other destructive agencies along the coast line or river banks of the commonwealth, and may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, in the name and behalf of the commonwealth, any land or materials necessary for making such improvements or repairs. No contract made under the authority of this section shall be valid until approved in writing by the governor and council.

Section 32: Survey of Connecticut river

Section 32. The department shall, as funds are appropriated therefor, cause that portion of the Connecticut river lying within the commonwealth to be surveyed and plotted, and a copy of such survey within the limits of Hampden, Hampshire and Franklin counties, respectively, to be prepared, attested by them and deposited in the registry of deeds for the county to which it relates, as a public record.

Section 33: Improvement of topographical survey of commonwealth; sale of maps

Section 33. The department may make such surveys and do such other work as may be required by any order of the land court, to reestablish and permanently mark certain triangulation points and stations previously established in connection with the topographical survey of the commonwealth, and the town boundary survey, which have been lost or destroyed, and to obtain the geographical position of such new points and stations as may be required from time to time by the court. The department may sell at such prices and on such conditions as it may prescribe maps prepared by it from time to time in connection with its functions under this chapter in respect to waterways and public lands.

Section 34: Establishment of harbor lines

Section 34. The department of environmental protection may, after hearing the parties interested, prescribe lines in any harbor of the commonwealth and make report thereof to the general court, not later than the next session, for its action, thereon. If such lines are established by the general court as the harbor lines of said harbor, no wharf, pier or other structure shall thereafter be extended into said harbor beyond such lines, except as provided by section fourteen. Notice of the hearing shall be published three weeks successively in a newspaper published in Boston and in one or more published in the county or counties where such harbor lies, the first publication to be at least thirty days before the hearing.

Section 35: Great ponds; definition

Section 35. The provisions of this chapter relative to great ponds shall apply only to ponds containing in their natural state more than ten acres of land, and shall be subject to any rights in such ponds which have been granted by the commonwealth.

Section 36: Applications to congress for appropriations for harbors

Section 36. The department may apply to congress for appropriations for the protection and improvement of any harbor in the commonwealth.

Section 37: Enforcement of stipulations in deeds from commonwealth

Section 37. If the commonwealth has the right under stipulations in a deed given in its name to enter upon premises and, at the expense of the party at fault, to remove or alter a building, any of its grantees under similar deeds, their heirs, legal representatives or assigns may institute proceedings in equity to compel the department to enforce such stipulations.

Section 38: Definitions applicable to Secs. 38 to 48

Section 38. As used in sections 38 to 48, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

''Abandoned'', unoccupied, deserted, forsaken, derelict, wrecked or sunken vessel or other shipwrecked property, on the shores or waters of the commonwealth and not in the custody of the owner or his agent or of any other person lawfully authorized to take possession of the vessel and deemed by the department or the harbormaster of the city or town, in whose jurisdiction the vessel lies or whomsoever is so empowered by said city or town, to be an obstruction to the safe and convenient navigation or other lawful use of such waters.

''Certificate of number'', a document issued by the director stating the name and address of the owner and the number awarded to a vessel pursuant to this chapter, except such vessels, other than livery boats, owned by a manufacturer of, or dealer in, boats.

''Certificate of documentation number'', a document issued by the United States Coast Guard stating the name and address of the owner of a commercial vessel and the identification number awarded to a vessel pursuant to this chapter.

''Claimant'', the commonwealth, its political subdivisions, or any person or entity, public or private, which desires to acquire title to an abandoned vessel.

''Department'', the department of conservation and recreation acting through the division of waterways.

''Director'', the director of law enforcement within the executive office of energy and environmental affairs.

''Identification number'', the number awarded to a vessel pursuant to this chapter and upon approval of an application for a certificate of number or certificate of documentation number.

''Lienholder'', a person or entity holding a lien on a vessel pursuant to generally accepted admiralty or maritime law.

''Office'', the office of law enforcement within the executive office of energy and environmental affairs.

''Operator'', a person who operates or who has a charge of the navigation or use of a vessel.

''Owner'', a person, other than a lienholder, holding title to a vessel, including a person entitled to the use or possession of a vessel subject to an interest of another person, reserved or created by agreement and securing payment or performance of an obligation, but excluding a lessee under a lease not intended as a security interest.

''Person'', a natural person, corporation, association, partnership or other legal entity.

''Removal costs'', costs associated with the removal or destruction of any vessel from land or water, including the reimbursement of any costs incurred by the claimant in the course of acquiring title to an abandoned vessel.

''Vessel'', a boat or watercraft of every description, motorized and non-motorized, except a seaplane on the water, used or capable of being used as a means of transportation on water including, but not limited to, documented boats and ships, flat-bottomed boats, barges, scows and rafts and including all equipment, modes of power and property aboard the vessel.

Section 39: Willful abandonment of vessel on public lands or shores of the commonwealth

Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public land or the shores or waters of the commonwealth or upon private property or the water thereof adjacent to public land or the shores or waters of the commonwealth without the consent of the official designated by law to have jurisdiction over such public land or waterway, or the owner or other person in charge of the private property. Mooring, grounding or otherwise attaching or fastening a vessel upon public land or waterway or private property without consent for a period of more than 90 days shall constitute prima facie evidence of abandonment. A vessel that the owner, operator or lienholder has placed at a storage or repair facility, which is subject to section 63, sections 179 or 180 of chapter 6, sections 26 to 27D, inclusive, of chapter 9, section 14 of chapter 255 or any other applicable federal or state law, shall not be considered an abandoned vessel for purposes of this chapter.

Section 40: Application for title to abandoned vessel; priority of claims; prerequisites to filing; notice to owner or lienholder

Section 40. A claimant wishing to obtain title to a vessel abandoned upon public land or the shores or waters of the commonwealth or upon any private property or the water thereof adjacent to public land or the shores or waters of the commonwealth and not subject to the exclusive jurisdiction of the United States may apply to the office for title under this section. If there is more than 1 claimant, the office shall give preference for the claim in the following order: (i) lienholders, in order of priority as determined by admiralty or maritime law; and (ii) the first of the following to file: the department, the office, another political subdivision of the commonwealth, the municipal government or jurisdiction wherein the vessel lies and the government of the United States of America or any political subdivision thereof. In no event shall preference be granted if emergency conditions exist and the procedures under this section would jeopardize navigation, public health or safety. In the event that there is more than 1 equal claimant, the office shall hold an auction and the title, subject to valid liens as provided for hereunder, shall go to the highest bidder.

Prior to applying to the office for title pursuant to section 41, the claimant shall: (i) if the vessel has an identification number, a registration number, equipment numbers, a certificate of documentation number, a certificate of number or other means of identification, contact the office to determine if the vessel has been stolen; (ii) secure the owner's last known address and the address of any lienholder appearing on record if, after 30 days, the office determines that the vessel is abandoned and not stolen; provided, however, that the claimant shall notify the owner, any known lienholder and the department by certified first class mail, return receipt requested, of the owner's, lienholder's or other party's, as required by regulation address of record; and (iii) if the owner of record fails to reply within 30 days, the claimant shall cause a notice to appear for 3 consecutive printings in a newspaper of general circulation published in the county, city or town of the owner's last known address, or if the owner's name and address are unavailable, where known lienholders have their places of business or, if no lienholder's name and address is known, where the vessel is located; provided, however, that the notice shall include: (1) a description of the vessel and any identifying information; (2) a description of the location where the vessel is situated; (3) a statement informing the owner and any lienholder of their right to reclaim the vessel within 30 days, subject to the rights of any other lienholder; (4) a statement that failure to claim the vessel will constitute a waiver of all rights, title and interest in the vessel; and (5) a statement that if ownership or a lienholder interest is not claimed and the vessel is not removed within 90 days after the owner, the owner's agent or employee signs the return receipt or within 90 days after the last day of notice by publication, whichever is later, the claimant may apply to the office for title to the vessel.

Section 41: Failure of owner or lienholder to claim vessel; application for title by claimant

Section 41. If the owner or lienholder fails to claim the vessel within 90 days after the return receipt is received by the claimant or within 90 days after the last day of notice by publication, whichever is later, and if the commonwealth is not the owner pursuant to section 179 or 180 of chapter 6 or sections 26 to 27D, inclusive, of chapter 9, and if the United States is not the owner pursuant to federal law or regulation, the claimant may apply to the office for a title, subject to any lien which is valid and enforceable under any other statute, including section 9 of chapter 106. The application shall include: (i) a notarized affidavit by the claimant stating that the vessel has been abandoned for at least 90 days, that all notice requirements pursuant to this chapter have been satisfied and that the vessel is not subject to said section 179 or 180 of said chapter 6 or said sections 26 to 27D, inclusive, of said chapter 9 or the requirements of section 63, or any other applicable state or federal law or regulation; (ii) if applicable, a copy of the letter to the identified owner and any lienholders and accompanying return receipts; provided, however, that in the alternative, the claimant may supply a detailed explanation of the unsuccessful steps taken to identify the owner and any lienholders and to secure the address of the owner or any lienholders, including any returned notices; and (iii) in the case of notice by publication, original copies of the notice as published. The office shall certify that the claimant has met the requirements of this section and such certification shall be included with the records of the granting of the title.

Section 42: Granting of title to claimant

Section 42. Except as otherwise set forth in this chapter or in section 179 or 180 of chapter 6 or sections 26 to 27D, inclusive, of chapter 9, or any other applicable state or federal law, the office may grant title to an abandoned vessel and any contents therein to a claimant. Upon certification as required by section 41 and upon payment of any fees or taxes due, the office shall issue the claimant title to the vessel. The applicant shall be responsible for all costs incurred in transferring title. If the claimant wishes to operate the vessel, the claimant shall, if required by law, register the vessel with the office in accordance with chapter 90B or document the vessel under the applicable federal requirements.

Section 43: Removal, destruction or sale of vessel by claimant after receipt of title

Section 43. After receiving title, the claimant may remove the vessel, destroy it or sell it. Removal costs shall be borne by the previous owner if that owner has been identified and otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise dispose of the vessel, the new owner shall do so in compliance with all related state and federal statutes.

Section 43A: Removal of obstructing vessel by department; department as claimant

Section 43A. If an abandoned vessel or an unlawful or unauthorized structure or thing is deposited or suffered to remain in the tide waters of the commonwealth and if the department deems it is, or is liable to cause or become, an obstruction to the safe and convenient navigation or other lawful use of such waters, the department shall move it or cause it to be removed, after which time the department may become a claimant and apply for title from the office, in accordance with sections 40 to 43, inclusive.

For a vessel that has been abandoned that does not pose an obstruction to the safe and convenient navigation or other lawful use of the tidewaters of the commonwealth, and for which no other claimant commences proceedings under this chapter within 60 days of the department having notice of the vessel, the department may become a claimant and apply for title from the office, in accordance with said sections 40 to 43, inclusive.

Section 43B: Penalty for willful abandonment of vessel; exceptions

Section 43B. A person who willfully abandons a vessel shall be punished by a fine of not more than $10,000, except where a vessel, scow, lighter or other structure is or has been grounded within the limits of a harbor or on the shores of the commonwealth by reason of accident, emergency, errors of navigation, or in order to prevent loss of life or the sinking of such vessel, scow, lighter or other structure.

Section 43C: Fraudulent claim to abandoned vessel; penalty

Section 43C. A person who obtains or attempts to obtain title to a vessel through fraudulent means shall be punished by a fine of not more than $1,000.

Section 43D: Rules and regulations relating to Secs. 38 to 43C

Section 43D. The department, in consultation with the office, shall promulgate such rules and regulations as are necessary to carry out the provisions of sections 38 to 43C, inclusive.

Section 44: Liability of insurer

Section 44. An insurer of a vessel who has paid the loss thereon shall not, by reason of such insurance, be held liable to remove such vessel, or to pay the cost and expenses of such removal, unless he has exercised some act of ownership or control over such vessel or some part or appurtenance thereof or received the proceeds of the sale thereof.

Section 45: Application to federal government for reimbursement

Section 45. The department shall make application to the government of the United States for reimbursement of any amounts expended under any provision of the seven preceding sections, which, in the opinion of the department, might properly be paid by the United States.

Section 46: License for breaking up and disposing of floating structures

Section 46. The owners of any vessel, scow, lighter or similar floating structure lying within the limits of any harbor of the commonwealth shall not, without first obtaining a license therefor from the department, cause or permit the same to be broken up or altered to such an extent that it will not keep afloat with ordinary care, nor shall they ground any such craft within any such harbor or permit other persons so to do, or to remove any part thereof.

Section 46A: Violations of Sec. 46; penalty

Section 46A. Whoever, without first obtaining the license required by section forty-six, causes or permits the work of breaking up or altering of any vessel, scow, lighter or other structure, as described in said section, shall be subject to a penalty of not less than five dollars nor more than five hundred dollars to the use of the commonwealth to be recovered by an information in equity brought by the attorney general in the superior court.

Section 47: Application for license; issuance; conditions; bond

Section 47. Upon the application of the owner of any vessel, scow, lighter or similar floating structure, the department may issue a license authorizing him to break up such vessel or other floating structure upon the following conditions: first, that the written consent of the owner of the premises where the work is to be done shall first be obtained and filed with the department; second, that all the material composing the vessel or other structure shall be removed wholly from tide water, to the satisfaction of the department; third, that the work shall be completed within a certain fixed time, which may be extended by the department; fourth, if the work is not completed at the time fixed in the license or as so extended, the department may cause the work to be completed at the expense of the licensee; and fifth, such other conditions as the department deems proper in any case. Before receiving the license, the licensee shall file a bond with the department in a sum fixed by it, with satisfactory sureties, in which the commonwealth is obligee, conditioned to perform the provisions of the license and to pay to the commonwealth such sums as it may expend in connection with the work licensed.

Section 48: Failure to comply with terms of license; completion of work by department

Section 48. Whenever a licensee under either of the two preceding sections fails to comply with the terms of his license, the department may proceed to complete the work and remove from tide water all materials composing the vessel or other structure, and the cost thereof shall, in the first instance, be paid from the appropriation made therefor. If not repaid to the commonwealth by the licensee, upon demand, it may be recovered by the state treasurer in contract, brought by him in behalf of the commonwealth in the superior court against the licensee or the sureties on his bond.

Section 49: Repealed, 2010, 309, Sec. 3

Section 49A: Removal of whales or other mammals from tidewaters

Section 49A. If a whale or other mammal is deposited or remains in the tidewaters or on the shores of the commonwealth, the department shall, if it determines that said whale or other mammal is or may be injurious to the public health, remove or cause to be removed therefrom such whale or other mammal.

Section 49B: Removal of dilapidated or unsafe wharves or piers; notice; revocation of license; liability for cost; lien

Section 49B. The department shall remove or cause to be removed any wharf or pier located in the tide waters or tide lands of the commonwealth, which in the opinion of the department is dilapidated, unsafe, a menace to navigation or is a source of floating debris that is, or is liable to become, a menace to navigation.

If the owner of record of such wharf or pier is known to the department, the department shall give such owner written notice to remove such wharf or pier within a reasonable time therein specified. Such notice shall be deemed sufficient if delivered to the owner in hand, if left at his usual place of business or abode or if sent by certified mail to his last known post office address.

If such wharf or pier is not removed in a manner satisfactory to the department within the time specified in such notice, the department may revoke forthwith any license or authority applicable to such wharf or pier issued or granted under the provisions of sections fourteen through eighteen, inclusive. If such wharf or pier is not removed in a manner satisfactory to the department within the time specified in such notice, or if the department has been unable to make sufficient service of such notice, the department shall remove, complete that removal or cause to be removed such wharf or pier. The owner of such wharf or pier shall be liable to the commonwealth for the costs and expenses for such removals, and the sum so received shall be credited to the Harbors and Inland Waters Maintenance Fund established by section ten B. If the owner fails to reimburse the commonwealth within thirty days of such removal, the department, in the name of the commonwealth, may take a lien on any real property held by the owner of said wharf or pier. The commonwealth shall place on record in the proper registry of deeds or registry district of the land court, as the case may be, an instrument in writing and under seal executed in common form and acknowledged in the same manner as deeds for real property creating a lien upon such real estate for the amount of the costs and expenses of such removal. The instrument shall be recorded or registered without fee. Such lien shall be enforceable by a petition or bill in equity filed by the attorney general in the superior court or in the probate court for the county wherein the real estate is situated. The subpoena shall be returnable not more than thirty days subsequent to the entry of the bill and shall contain a brief description of the property, sufficient to identify it, and a statement of the amount alleged to be due. Upon reimbursement for the amount due under the terms of such lien, the attorney general shall execute and deliver a satisfaction thereof, and, upon its being recorded or registered, the lien shall be dissolved as of the date of such recordation or registration.

The department may make application to the government of the United States for reimbursement of any amounts expended under any provision of this section.

Section 50: Foreign corporations engaged in business of wrecking or salvaging; license; bond; penalty

Section 50. No foreign corporation shall engage in the business of wrecking or salvaging in the navigable waters of the commonwealth without first obtaining a license therefor from and filing a bond with the department. The license, effective for one year from the date of its issue, shall be granted upon payment of a fee, to be determined annually by the commissioner of administration under the provision of section three B of chapter seven. The bond shall run to the state treasurer in a sum and with security satisfactory to the department, and shall be conditioned upon payment by the licensee of such amounts as shall lawfully be due to any person for damage to person or property caused by any act of the corporation, its agents or servants, in the commonwealth. Whoever violates this section shall be punished by a fine of not less than fifty nor more than three hundred dollars.

Section 51: Impairment of right or authority derived from federal government

Section 51. The preceding section shall not impair any right or authority derived from, or exercised under, any law of the United States, or any right, license or privilege lawfully granted by any department thereof.

Section 52: Supervision of transportation and dumping of dredged material in tidewaters; payment of cost; burning and towing of rubbish

Section 52. The department shall supervise the transportation and dumping of all material dredged in the tide waters of the commonwealth, or of any other material which may be placed in scows or boats to be transported and dumped in tide water, and may employ necessary inspectors therefor, who shall accompany the material while in transit, either upon the scows containing the material or upon the boat towing them, upon which they shall be provided with proper and suitable quarters and board by the owner of the boat. The cost of such supervision and also of the supervision under licenses and permits authorizing such transportation or dumping granted by the department, shall in the first instance be paid from such appropriation as may be available, if the material is taken outside of Boston harbor, and from the Port of Boston Fund if taken in said harbor, and shall be repaid to the commonwealth monthly by the owners of the dredges or other machines doing the excavating when the material is dredged in tidewater and credited respectively to the General Fund or to said Port of Boston Fund, and, in the case of other material, by the owners of the scows in which it is transported, the monthly amount due from each owner to be determined and certified to the state treasurer by the department.

This section shall apply also to the burning of rubbish and other material upon any of the waters within the jurisdiction of the department. Reasonable rules and regulations to control towing and burning rubbish or other debris within harbor lines and upon adjacent waters may be adopted by the department, in accordance with chapter thirty A.

Section 53: Terms of license

Section 53. Every license or permit issued to any person to dredge in the tide waters of the commonwealth shall contain a provision that the transportation and dumping of the dredged material shall be done under the supervision of the department as provided in the preceding section, and that the licensee shall be held liable to pay the cost of said supervision whenever the owner of the dredge or excavating machine fails to pay for the same within ten days after written notification from the state treasurer that the same is due.

Section 54: Dumping; notice; inspector; cost of supervision

Section 54. Every contractor or other person shall, at least three days before commencing any piece of dredging in tide water, give written notice to the department of the location and amount of the proposed work, and the time at which it is expected work will begin and, except with the written assent of the department, no dredged or other material which it is proposed to dump in tide water, shall be transported or dumped within the tide waters of the commonwealth, unless there is present on board the scows containing the material, or on the boat towing the same, an inspector employed for that purpose by the department; and no such material shall, in any event, be dumped within the limits of any channel which has been deepened by dredging, nor in any other part of the tide waters of the commonwealth, unless the same is duly authorized. The state treasurer may recover in contract from such contractor or person the cost of supervision determined as provided in the two preceding sections.

Section 55: Penalty for violating Secs. 52 to 54

Section 55. Whoever violates any provision of sections fifty-two, fifty-three and fifty-four or of any license or permit granted under said sections, (a) shall be punished by a fine of not more than twenty-five thousand dollars for each day that such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day for each day such violation occurs or continues.

Section 56: Application of Secs. 52 to 55 to federal government and its agents

Section 56. The four preceding sections shall not apply to the dredging, transporting and dumping of material by the United States, its officers or other duly authorized agents.

Section 57: Jurisdiction of supreme judicial court

Section 57. The supreme judicial court shall have jurisdiction in equity, upon information filed by the attorney general, of violations of this chapter.

Section 58: Arrest without warrant

Section 58. Any officer qualified to serve criminal process may, within his jurisdiction, arrest without a warrant any person found in the act of committing a misdemeanor in or upon any of the rivers, harbors, bays or sounds within the commonwealth.

Section 59: Discharge of petroleum products, refuse or other matter into or on lakes, rivers or tidal waters; penalty; exception; enforcement

Section 59. Whoever pumps, discharges or deposits, or causes to be pumped, discharged or deposited, into or on the waters of any lake or river or into or on tidal waters and flats, any crude petroleum or any of its products or any other oils or any bilge water or water from any receptacle containing any of the said substances, or any other matter or refuse, in such manner and to such extent as to be a pollution or contamination of said waters or flats or a nuisance or be injurious to the public health, shall be punished by a fine of not more than $25,000 for each day such violation occurs or continues; but this section shall not be construed to prohibit the use of oil for the extermination of mosquitoes or other insects. The provisions of this section shall be enforced by the department of state police and by all other officers authorized to make arrests.

Section 59A: Tort liability for discharge or deposit of crude petroleum or products; double damages

Section 59A. Whoever, by himself or his agent, so negligently pumps, discharges or deposits any crude petroleum or any of its products or any other oils or any bilge water or water from any receptacle containing any of the said substances into or on the waters of any lake or river or into or on tidal waters or flats in such manner as to cause damage to the property of another shall be liable in tort to the person whose property is so damaged in double the amount of the damages sustained by him. The use of oil for the extermination of mosquitoes or other insects on the waters of any lake or river or on tidal waters or flats declared to be a breeding place of mosquitoes or other insects, by a town, city or mosquito control project acting under chapter two hundred and fifty-two or any special law, shall not be deemed to be a violation of the provisions of this section, provided such use of oil conforms to the rules and regulations promulgated by the pesticide board.

Section 59B: Marinas; licensing by division of water pollution control; restrictions; term; renewal; fees

Section 59B. No marina shall be operated without a license issued by the division of water pollution control. Said division shall not issue any such license unless such marina provides (1) adequate facilities for the collection, treatment and disposal of sewage or other sanitary waste, as said division may specify, including facilities for the purging out and cleaning of holding tanks, the contents of which shall be then disposed of in such manner as not to be discharged into or near any waters of the commonwealth, unless such discharge is to a municipal sewerage system or to an adequate sewage treatment or disposal facility approved by the division of water pollution control; (2) adequate and conveniently located dockside toilet facilities for the use of the occupants of watercraft; and (3) adequate and conveniently located trash receptacles or similar devices designed for the disposal of litter and refuse.

Any license issued under this section shall be for a term of one year and may be renewed annually. The fee for such annual license and for a renewal of such license shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

Section 60 to 62: Repealed, 1968, 501, Sec. 2

Section 63: Salvage, recovery, etc. of underwater archaeological resources; permits; restrictions; disposition of resources; enforcement; violations; penalties; jurisdiction and venue

Section 63. No person, organization or corporation may remove, displace, damage or destroy underwater archaeological resources as defined in section one hundred and eighty of chapter six, except in conformity with the provisions of this section. Any qualified person, organization or corporation desiring to conduct any type of exploration, recovery or salvage operations in the course of which any underwater archaeological resources, with the exception of those specifically exempted from permit requirements, may be removed, displaced or destroyed shall first make application to the director for a permit to conduct such operations. If the director, with the approval of the board, shall find that the operations desired involve underwater archaeological resources and said operations are in the public interest, he shall, within thirty days from the receipt of application, grant the initial applicant a permit which allows said applicant the sole right to remove or salvage said resources for a period of one year. Said permits shall include without limitation the location, nature of activity, reporting requirements and time period covered and shall provide for the termination of the rights of the permittee upon violation of any of the terms of the permit. Until such time as a permit for any given site is granted, all records regarding the permit application for said site shall be confidential unless released by the applicant.

A uniform fee for such permits shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Said permits shall be renewable by the director upon approval of the board; provided, however, that operations on the location have been conducted during the period of the original permit.

The permittee may, with the approval of the board, subcontract his permit rights to another qualified person, organization or corporation, subject to the provisions of this section and the terms of the original permit.

All exploration, recovery and salvage operations undertaken pursuant to said permit shall be carried out under the general supervision of the board in accordance with its rules and regulations so that the maximum amount of historical, scientific, archaeological and educational information may be recovered, reported and preserved. If the director deems necessary, he may require that a permittee shall work under the direction of a qualified expert designated by the board. Permittees shall be responsible for obtaining permission of any federal agencies having jurisdiction prior to conducting any operations.

Permittees may retain seventy-five per cent of the value of said underwater archaeological resources. The remainder of such value shall be paid to the commonwealth; provided, however, that the commonwealth and private museums within the commonwealth shall have the first option to purchase within six months said resources at fair market value. Final disposition of said resources and the proceeds from the sale thereof shall be made within one year from the date of salvage unless extended by mutual agreement between the board and the permittee with the approval of the commissioner of administration and finance. Until final disposition the commonwealth and the permittee shall act in such a way as to preserve and protect all salvaged underwater archaeological resources except when recovered from a designated underwater archaeological preserve.

Upon the request of an applicant or permittee, the board may require a public hearing, if said board deems such a hearing in the public interest, on the granting or renewal of a permit, the subcontracting of permit rights, or the disposition of resources recovered under a permit.

The director shall invite information regarding underwater archaeological resources of substantial historical value and the location thereof, and shall cause to be printed a list of these resources which shall be designated as underwater archaeological preserves. Access to underwater archaeological preserves for recreational, historical, and scientific purposes shall be guaranteed. The director shall not grant a permit to recover underwater archaeological resources from within an underwater archaeological preserve except for historical or scientific purposes, and provided further, that all materials collected through such activities shall remain the permanent property of the commonwealth. The board may make arrangements for the disposition or display of any such materials recovered from within an underwater archaeological preserve in appropriate institutions located within the commonwealth. A public hearing may be requested regarding the designation of any underwater archaeological resource as a preserve. Persons may petition the director to designate certain resources as a preserve.

The director shall invite information regarding previously discovered or salvaged underwater archaeological resources and the location thereof, and shall cause to be printed a list of previously discovered and commonly known underwater archaeological resources and locations thereof which shall be exempt from the preceding permit requirements. A public hearing may be requested regarding the placement of any individual resource on said list. Persons may petition the director to add certain resources to said list.

Law enforcement agencies and officers of the commonwealth and its subdivisions shall enforce the laws, rules and regulations pertaining to underwater archaeological resources and shall protect the permittee from the removal or salvage of said resources by unauthorized parties. If such protection is extended at the request of the permittee for a period in excess of two months, the permittee shall pay reasonable costs of such protection.

Any person violating a provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment for six months, or both, and shall forfeit any underwater archaeological resources he has obtained thereby. In addition his permit, if any, shall be subject to revocation or suspension. Violations committed within the coastal waters of the commonwealth may be prosecuted in any district which has venue over the coastal waters. The superior court sitting in equity shall have jurisdiction to restrain continuing violations of section sixty-five and shall have jurisdiction to compel the restoration to the commonwealth of any underwater archaeological resources taken in violation of the provisions of this section.

Section 64: Uniform beach warning and safety flag program

Section 64. (a) The department of conservation and recreation shall create a state uniform beach warning and safety flag program to be used at all public coastal beaches maintained and guarded by the department. The program shall provide for a uniform size, shape, color and definition for each warning and safety flag deemed necessary by the department. The program shall warn the public of drowning and injury hazards presented by changes in tide and surf conditions.

(b) If the department defines any safety flags as warnings of health hazards presented by the quality of the beach water, such definitions shall be based on water quality testing procedures that ensure the warnings are timely, frequently updated and reflect, to the maximum extent feasible, the actual water conditions at the time the flags are posted and for the duration of their posting.

(c) A city or town having jurisdiction over a public beach along the coast may utilize at such beach the state uniform beach warning and safety flag program created by the department of conservation and recreation. Subsection (a) shall take effect in a city with a Plan D or Plan E charter by a vote of the city council upon submission by the city manager and in all other cities by a vote of the city council with the approval of the mayor and in a town with a town council, by vote of the town council and in all other towns, by a vote of the town meeting.