

July 2022

Assessing the Efficacy of Massachusetts Laws and Regulations Pertaining to Derelict and Abandoned Fishing Gear Removal through Analyzing Other Coastal States' Programs

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Executive Summary

To protect the endangered North Atlantic right whale from becoming entangled in trap gear, Massachusetts instituted a commercial trap gear closure in state waters from February 1 – May 15 (322 CMR 12.04 (2) – See *Appendix 1*). This closure extends from Cape Cod Bay (CCB) to the New Hampshire border, as well as state waters east of Cape Cod. To ensure the efficacy of the trap gear closure in state waters, the MA Division of Marine Fisheries (DMF) partnered with the Massachusetts Environmental Police (MEP) to remove trap gear left during the months of February and March. To accomplish this, DMF entered into contracts with local commercial lobster fishers who provided the vessel and expertise necessary to safely and efficiently haul and transport the gear.

For 2022, DMF relied on a one-time supplemental funding source to run the program in 2022. However, moving forward, there is not a long-term funding source available to permanently institute an annual state-run gear retrieval program. As such, there is a critical need to address the removal of trap gear from this closure to ensure its efficacy in protecting endangered right whales.

Under Massachusetts General Law ([M.G.L. c. 130, §§31 and 32) - See *Appendix 1*) trap gear is interpreted as personal property which makes it unlawful for any person other than the owner to handle the gear; this includes gear that is abandoned or washed ashore. Technically, gear left behind in the closure is still someone's property, but illegally maintained inside a protected species closure. Subsequently, legislature granted DMF and MEP the authority to seize unlawful gear pursuant to [M.G.L. c. 130, §9] however, both agencies are prohibited from disposing of the gear retrieved. DMF and MEP are restricted by the personal property laws mentioned above and are required to return any gear found back to the original owner which creates an administrative burden as well as storage issues. In many cases the gear retrieved is frequently derelict and non-functional, more closely resembling marine debris.

As managers of the closure, DMF should downgrade the personal property designation for any gear found in a closed area to enable it to be seized and sold or otherwise disposed of. Currently, these antiquated laws restrict the manner by which fishing gear can be removed from closed areas. These laws, when enacted in 1941, did not consider seasonal closures to protect endangered species. In this way, they are antiquated and updating them would better allow for gear to be efficiently and economically hauled out of closed areas.

Analyzing different coastal states' laws and regulations provides a window into how other jurisdictions approach managing abandoned gear and can ultimately inform recommendations to better address this issue in Massachusetts. During the research process for this paper, it became clear that two sets of recommendations would be necessary to successfully deal with the handling of abandoned gear in Massachusetts waters that are closed to fixed gear fishing. If both sets of recommendations were to be implemented, it will allow for the establishment of an effective and self-sustaining derelict fishing gear removal program within the Commonwealth.

The first set of recommendations is in relation to personal property law updates and the establishment of an abandoned gear retrieval program within Massachusetts laws. One aspect of this recommendation is to make an amendment to Massachusetts general law [M.G.L. c. 130, et. Seq.) to diminish the property standing of gear left in a closed area. This change would ultimately allow for the disposal of any gear left behind and subsequently solve the storage issue the state is currently facing. The second and third aspects of amending the laws would be to adopt an abandoned gear retrieval program into law along with a funding mechanism for the abandoned gear retrieval program. The specifics of two options (surcharge to fishers for whom gear is hauled and a general conservation tax to all permit holders) are discussed within the conclusions and recommendations section.

The second set of recommendations focuses on the structure and functionality of an abandoned gear program that the state could implement going forward. The idea of the recommended abandoned gear retrieval program structure would be to reduce administrative burden (e.g., having to contact owners of retrieved gear and arrange for pick-up), as well as avoid the need for storage of any traps retrieved during the program's duration. It is important to note that these recommendations could have a wide range of benefits that would impact multiple stakeholders. DMF would gain a reduced administrative burden, while still ensuring compliance with Atlantic Large Whale Take Reduction Plan requirements and simultaneously reducing any risk to right whales from buoy lines left in state waters. The MEP would benefit by not having the burden of storing and maintaining custody of retrieved traps. Fishermen would also benefit because the risk to the fishery would be reduced, as there would be less chance of a right whale becoming entangled in buoy lines in state waters. In addition, interested fishermen could apply for a letter of authorization (LOA) to be a contractor in the abandoned gear retrieval program which would provide some income during a time period when they're unable to fish due to the closure.



Introduction

Due to antiquated personal property laws in Massachusetts, the disposal of any lobster traps retrieved by the Massachusetts Division of Marine Fisheries (DMF) or the Massachusetts Environmental Police (MEP) within a closed fishing area is prohibited. This law applies to any trap that is identifiable (i.e., contains a trap tag affixed to the trap). Even if the trap is unfishable, DMF and MEP are not allowed to dispose of the trap gear if it is identifiable. This restriction creates several challenges for DMF, including storage issues which can ultimately lead to a stockpile of traps.

The purpose of this white paper is to consider ways in which Massachusetts can adjust its statutes and regulations to allow for the handling of gear left inside a protected species closure, and how the state can implement a successful abandoned gear retrieval program with little administrative and financial burden. This paper has been developed through extensive literature review and with multiple direct conversations with stakeholders from different coastal states. The stakeholders included marine patrol and game wardens, government employees working within the state fisheries programs, and non-profit organizations working on gear retrieval programs. The conversations were focused on determining what, if any, legal frameworks, or programs states use to address the removal of abandoned and derelict gear. Additionally, members of the Massachusetts Lobstermen's Association provided comments on preliminary recommendations at their June 2022 Delegates meeting, helping to shape the final recommendations presented in this paper.

The author of this paper is a full-time employee of the Massachusetts Division of Marine Fisheries and is enrolled in the Environmental Science Professional Science Master's program at the University of Massachusetts Boston. This paper was produced as a deliverable of the author's joint internship between the Massachusetts Division of Marine Fisheries and the Urban Harbors Institute which is a requirement of the graduate program mentioned above.

The goals of this paper are to:



Highlight the challenges pertaining to the management and handling of personal property illegally maintained within closed fishing areas.



Provide context as to why legislative amendments are needed to implement an abandoned gear retrieval program and treat gear within the closure as something lesser than personal property.



Act as a resource for other organizations interested in implementing gear retrieval programs.

Overview of the Massachusetts Abandoned Gear Retrieval Program

From February through mid-March of 2022, DMF initiated a new joint program with the MEP to identify and remove all lost and abandoned fixed fishing gear within the portion of Massachusetts state waters that are seasonally closed for right whale protection. Beginning in February, DMF utilized a combination of aerial surveillance provided by the Center for Coastal Studies (CCS) and MEP vessel patrols to identify and mark the location of lost/abandoned fixed fishing gear in the closure. DMF then utilized six contracted commercial lobster vessels which worked with DMF staff and MEP officers to haul and remove all identified gear. Between February 9 and March 17, DMF conducted a total of 49 sea-days in which more than 2,000 traps and roughly 500 buoy lines were hauled from the closure.

This effort not only ensured that the seasonal state waters closure was as effective as intended at reducing entanglement risk, but it also provided an opportunity to monitor compliance with the closure and requirements for weak rope/contrivances, maximum rope diameter, and gear marking schemes which are now required by DMF. The vast majority (~80%) of buoy lines that were removed were from gear that was deemed “lost”. The buoys, ropes, and traps retrieved were heavily fouled and typically consisted of a few traps or a lone trawl that belonged to a single individual. Within that population of lost gear, compliance with 1,700-lb weak rope, maximum rope diameter, and gear marking rules was >90%. This represents a good random sample of what the expected compliance would be with these regulations and is consistent with observations by MEP during routine inspections at other times of year. Non-compliant permit holders in these cases were issued a non-criminal citation given the modest scale of the violation.

The remaining 20% of gear hauled in this program consisted of gear that appeared to be intentionally left behind in the closure. This typically consisted of multiple traps or trawls belonging to a single individual in a fairly discrete area. The gear in question did not have any fouling and was consistent with gear that had been recently hauled (in one instance the gear was freshly baited). Compliance with 1,700-lb weak rope, maximum rope diameter, and gear marking rules among this subset of gear was poor. In total, there was gear from six different permit holders that fell into this category. Given the serious nature of the violations and the clear intent to ignore the closure, DMF will pursue administrative hearings to suspend or revoke the individual's commercial fishing permit based on the severity of the violation(s).

In addition, there was a definitive regional trend in compliance with the closure. In Cape Cod Bay where the seasonal closure has been in effect since 2015, compliance rates were exceptionally high (~99%). Compliance rates in Massachusetts Bay north to the Cape Ann region however were lower, and this is where the major violations were observed. The seasonal closure in this portion of state waters started in 2021. It is expected that compliance in this area will improve in subsequent years, as it has in Cape Cod Bay where fishers have dealt with managing their businesses around the closure for a longer period of time.

Issues Encountered with the Pilot Run of the Abandoned Gear Retrieval Program

Given 2022 was the initial year of the abandoned gear retrieval program, DMF encountered several challenges that ranged from staffing to trap storage. The amount of time DMF employees devoted to the program was estimated at 475 hours, totaling \$32,200 in salary and benefits. It should be noted that these numbers do not consider the number of staff hours or pay the MEP incurred and the \$52,500 that DMF spent on vessel contracts. Funding for the retrieval program came from a one-time supplemental funding source, but this is not necessarily guaranteed for future years. Given the highly endangered status of North Atlantic right whales, there is a need to maintain a program via a stable funding source going forward. DMF staff involved with the retrieval program put aside their daily duties to be aboard vessels each sea day. DMF hopes that in future years, with increased compliance and less traps in the water, the amount of staff time dedicated to the project will be decreased.

Since Massachusetts General Law does not allow for disposal of trap gear that is identifiable, at the end of each sea day DMF staff needed to contact each fisherman whose gear was brought in. This created several logistical issues and proved to be a substantial drain on DMF resources. While uncommon, there were scenarios where the fishermen would opt not to pick up the gear brought in because it was degraded and unfishable. Since the gear was identifiable, DMF still could not dispose of the gear even though the fisherman did not want the gear back. Subsequently, DMF staff needed to bring the agency's trailer up to the various docks where DMF was storing gear, pick-up the gear left behind, and bring it to the storage facility where the stockpile of gear resides.

In addition, the non-compliant gear that was found was given back to the owners. In most cases, the gear was not needed for enforcement purposes (i.e., as evidence) and therefore, was allowed to be returned to the owner by MEP. While these individuals were subject to criminal or non-criminal citations from MEP or administrative actions by DMF, there was no immediate cost to the fishermen for the retrieval efforts and they were able to pick-up their gear free of charge. Because some of these cases reflected a blatant disregard for the seasonal fixed gear closure, it would be prudent for DMF to have a fee structure in place to deter this type of behavior from continuing in future years.

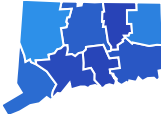
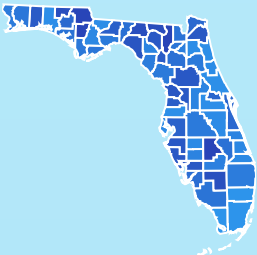


Overall, the joint effort between DMF and MEP for the abandoned gear retrieval program was a success. The joint effort ultimately ensured the efficacy of the seasonal fixed gear closure given the number of traps and buoy lines retrieved (>2,000 and 500 respectively), and the subsequent presence of right whales, including mother-calf pairs, in the areas in which the gear was retrieved earlier in the spring. The goal of this program was to be a new compliance monitoring and mitigation program that will be conducted annually as part of Massachusetts' Right Whale Habitat Conservation Plan. It is DMF's expectation that enforcement through this program, updated property regulations, and a more comprehensive program design will enhance overall compliance of the seasonal fixed gear closure, and subsequently ensure that there is no entanglement risk to right whales when they are seasonally abundant in state waters.

Analysis of Different Coastal States' Programs



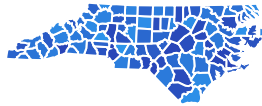
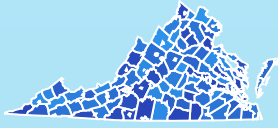
The table on the next page provides an overview of each state interviewed for the purpose of developing this white paper. The table highlights gear removal programs and laws and regulations that each state has in place to combat the issue of derelict or abandoned gear. Some states interviewed did not have established retrieval programs but would have occasional clean-up efforts or allow third parties to conduct gear removal. There are three columns within the table: State, Overview, and Description. The 'State' column simply is the state name and corresponding postal abbreviation. The 'Overview' column provides a list of what the listed state offers and corresponds to the 'Description' column. The 'Description' column provides an analysis regarding each program or law or regulation the state offers.

For each state featured in the table, there is additional information that delves further into the details provided in the 'Description' column in the table. To review the corresponding information on each state in the table, refer to *Appendix 2*. Both the table and *Appendix 2* are organized in alphabetical order by states on each coast: Atlantic, Gulf, and Pacific. It should be noted that Virginia was not interviewed due to scheduling conflicts and time constraints. Virginia does have a Marine Debris Action Plan which was discovered during the research process. The Marine Debris Action Plan is described in detail in the following table and the link to the Plan can be found in *Appendix 2*.

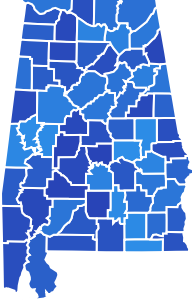
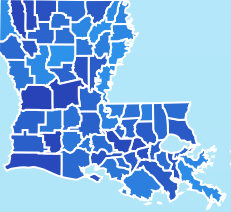
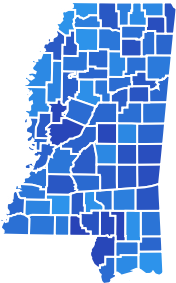
Atlantic States

| State | Overview | Description |
|--|--|---|
| Connecticut (CT)  | Law/Regulatory Changes Gear Retrieval Efforts by Third Party | <p>In 2019, CT changed state regulations to allow for the removal of abandoned/derelict gear.</p> <p>Norwalk Aquarium runs a derelict gear retrieval program on behalf of CT, removing traps from the CT portion of Long Island Sound following a decision tree (See <i>Appendix 2</i>). If the trap contains current or the previous year's tags, it is to be returned to the water. Efforts are made to return retrieved identifiable gear to the owner, however, most of the gear retrieved is no longer identifiable.</p> |
| Florida (FL)  | Law/Regulatory Changes Gear Retrieval Program Fee Structures | <p>FL has comprehensive laws and regulations (See <i>Appendix 2</i>) that cover everything from fee structures to establishing trap retrieval programs. Florida allows for the retrieval and disposal of traps during a closed period for particular fisheries. The laws and regulations also outline who can retrieve gear and whether or not permission from the Commission is required. Traps are declared a public nuisance if left for a certain period of time, which allows them to be removed by the Division of Law Enforcement.</p> <p>The trap gear retrieval program established in regulations allows contractors to retrieve gear left in closed areas with permission from the Commission. The contractor is required to record information regarding the gear retrieved and contact the Commission's Division of Law Enforcement office, in the area most appropriate to the cleanup. The contractor is also responsible for the disposal of retrieved gear. Florida funds the contractors to conduct retrieval work.</p> <p>FL has several fee structures in place that help fund the trap retrieval program. FL has instituted a \$10 trap fee that's issued to the permit holder per trap retrieved. FL also has a requirement that \$25 of stone crab, blue crab, and spiny lobster permit endorsements go towards funding the program in future years.</p> |
| New Hampshire (NH)  | Coastal Clean-up | <p>NH does not have a designated retrieval program. In April, an annual Coastal Clean-Up Day occurs where tons of gear is retrieved from the shore and properly disposed of. Gear found washed ashore is either identified and returned to the owner by a conservation officer or disposed of in a "Fishing for Energy" dumpster if the owner cannot be identified.</p> |
| New Jersey (NJ)  | Gear Retrieval Efforts by Third Party | <p>NJ does not have a designated retrieval program. Stockton University researchers retrieve traps using side scan sonar and grappling efforts focusing on the shallow NJ coastal bay blue crab fishery. Recovery areas are fished by a limited number of commercial crabbers (<10), several of which are directly involved in recovery efforts. Salvageable traps are typically returned to the owner.</p> |


Atlantic States *continued...*

| State | Overview | Description |
|--|---------------------------------------|---|
| New York (NY)  | Gear Retrieval Efforts by Third Party | NY does not have a designated retrieval program in their laws or regulations. NY gives Cornell Cooperative Extension (CCE) a letter of authorization which allows them to haul derelict lobster traps. The program runs throughout the year, even during periods when the fishery is open. Therefore, they're only authorized to haul pots that don't have surface buoys - since this would be illegal or lost gear. Efforts are made to return the gear to fishermen, however, if the gear is unidentifiable the pots are recycled. |
| Maine (ME)  | Gear Retrieval Efforts by Third Party | ME does not have a designated retrieval program in their laws or regulations. The Gulf of Maine Lobster Foundation (GOMLF) runs a successful retrieval program. The GOMLF works with marine patrol to dispose of any traps that are derelict, and efforts are made to return traps if they're fishable and identifiable. Separately, traps seized by marine patrol are subject to the libel process and are typically auctioned off. |
| North Carolina (NC)  | Gear Retrieval Efforts by Third Party | NC has a crab trap closure in place from January 15 through February 7. During the closure, NC allows the North Carolina Coastal Federation to retrieve crab traps left in state waters. Prior to this allowance, NC Marine Patrol was responsible for the removal of derelict traps which demanded a significant amount of staff time. Marine Patrol currently does a preliminary search for any gear in violation prior to the start of the NC Coastal Federation's retrieval program. Due to NC laws, any gear retrieved must be returned to the owner if the gear is identifiable. The NC Coastal Federation issues a press release and typically provides a two-week window for fishermen to retrieve their gear. If the gear retrieved is unidentifiable and not fishable, the gear can be disposed of. |
| Virginia (VA)  | Marine Debris Action Plan | VA published a Marine Debris Action Plan (MDAP) in November 2021 (the link to the full report is in <i>Appendix 2</i>). One of the four main goals of the MDAP is to address derelict, lost, or abandoned gear. Some strategies being implemented to combat derelict gear are outreach and education; research and monitoring for hotspots of derelict gear; proper disposal and infrastructure; removal of derelict gear from coastal areas; and policy, management, legislation, and enforcement to build sustainable programs that mitigate derelict fishing gear. |


Gulf States

| State | Overview | Description |
|---|---|---|
| Alabama (AL)  | <p>Laws/Regulations</p> <p>Gear Retrieval Efforts</p> | <p>AL has a law that allows the state to implement a crab trap closure period as needed. The law sets guidelines for volunteers, as well as how the state shall inform crabbers of the closure.</p> <p>AL conducts derelict crab pot counts twice a year. The crab pot counts are typically from vessels, a good vantage point on land, or aerial surveys. AL analyzes the counts, identifies hot spots of high trap density, and then decides if a volunteer derelict crab trap cleanup is warranted in a given year. If a cleanup is warranted, AL gets approval from the Commissioner of the Alabama Department of Conservation and Natural Resources to temporarily close the areas of operation to crab harvest. AL informs the public, commercial, and recreational crabbers of the cleanup and the closure via a press release which references all relevant codes and regulations. If an identifiable trap is retrieved, efforts are made to return the gear to the owner.</p> |
| Louisiana (LA)  | <p>Laws/Regulations</p> <p>Gear Retrieval Program</p> | <p>LA established a law which allows the state to implement a closure period for a limited number of consecutive days, during certain times of year to retrieve derelict gear each year.</p> <p>The Louisiana Wildlife and Fisheries Commission established a Derelict Crab Trap Removal Program in 2004. The program is funded in part by the sale of Louisiana crab fishing licenses and is run by the Louisiana Department of Wildlife and Fisheries, Louisiana Sea Grant, and volunteers. LA primarily utilizes staff to run the retrieval program and is therefore limited by manpower and the number of days that can be dedicated to retrieving gear. Occasionally, LA contracts NGOs to assist with removal, but are limited in the number of NGOs that are capable and staffed to conduct on water trap removals. All gear remaining in a closed area is deemed illegal and subject to citation and/or seizure by persons authorized by the Commission. Currently, all traps retrieved are disposed of or recycled. Department staff works directly with enforcement to give notice of any traps remaining in the closure area that are suspected to be actively fished.</p> |
| Mississippi (MS)  | <p>Laws/Regulations</p> <p>Gear Retrieval Efforts</p> | <p>MS has a law that gives the state the ability to implement closure periods to conduct gear clean-ups. Any gear remaining in state waters seven days after the closed season is considered abandoned and is able to be retrieved.</p> <p>MS only implements closures for abandoned gear clean-up efforts. As a courtesy, if a trap retrieved is identifiable and fishable MS tries to return traps to the owner however, MS statute allows for the disposal of traps. MS also has the ability to allow the general public to remove gear during a closure period. MS donates traps retrieved to a local scrap recycler and in return, the recycler donates dumpsters for clean-up events. Clean-up events typically occur every other year – there is usually no demand for higher frequency unless a storm event occurs.</p> |


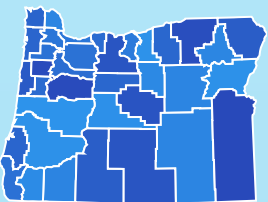
Gulf States *continued...*

| State | Overview | Description |
|---|------------------------|---|
| Texas (TX)  | Laws/Regulations | <p>The Abandoned Crab Trap Removal Program was created by Senate Bill 1410 which allows TX to implement a ten-day closure period to retrieve abandoned crab traps. TX also defines derelict traps left behind during the closure as litter and are therefore subject to disposal.</p> |
| | Gear Retrieval Program | <p>The ten-day closure period put in place to conduct the Abandoned Crab Trap Removal Program typically begins on the third Friday in February. To inform crabbers of the closure, TX does a lot of outreach prior to the closure. During the closure, TX works with various organizations to conduct volunteer clean-ups. Volunteers are used in the field on vessels to retrieve the traps, as well as on docks managing the traps brought in for disposal. TX provides all volunteers with materials such as gloves and trap hooks to ensure successful trap retrieval. All traps are disposed of or recycled.</p> |

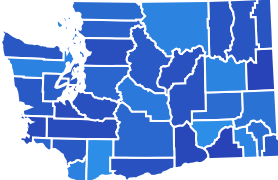
Pacific States

| State | Overview | Description |
|--|------------------------|---|
| California (CA)  | Laws/Regulations | <p>CA has a law that establishes the Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program. The law allows CA to establish any qualifications they believe necessary for a successful implementation of the retrieval program. There is a section within the establishing law that gives ownership of the retrieved trap (under a retrieval permit) to the retrieval permit holder. CA has regulations that further outline who is able to retrieve gear in closed areas, as well as the operations of the retrieval program.</p> |
| | Gear Retrieval Program | <p>Under the Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program, any gear left behind is considered lost or abandoned and is subject to retrieval. To participate in the retrieval process, a "Retrieval Permit" is required. The Retrieval Permit is typically issued to third-party organizations such as NGOs, commercial or sport fisherman associations, or other local agencies. Those who are issued the Retrieval Permit list "Designated Retrievers" who are authorized under the permit to retrieve any lost or abandoned gear. The third-party holder of the Retrieval Permit or "Retrieval Permittee" ensures that the Designated Retrievers they list on their permit are in good standing and have participated in the commercial trap fishery within the previous three years. CA has set the limit that no more than 10 Designated Retrievers may operate under one Retrieval Permit. All Designated Retrievers are required to keep logbooks of gear that was retrieved. Once the gear is retrieved, the Retrieval Permittee is required to contact the owner of the gear within a week of the retrieval. The Retrieval Permittee can dispose of the retrieved gear after October 21 following the</p> |

Pacific States *continued...*

| State | Overview | Description |
|--|---|--|
| <p>California (CA) <i>continued...</i></p>  | <p>Gear Retrieval Program <i>continued...</i></p> <p>Fee Structures</p> | <p>trap's retrieval if the gear has not been picked up or the "Retrieval Trap Fee" has not been paid. Under the CA regulations, Designated Retrievers may start retrieving gear 15 days after the closure of the fishery. This window allows law enforcement to look for any blatant violations. CA has the right to suspend or revoke any retrieval permit for any violations.</p> <p>For any gear retrieved, the Dungeness Crab Vessel Permitholder or "Responsible Vessel Permitholder" is required to pay a Retriever Trap Fee per identifiable trap retrieved. The cost of the Retriever Trap Fee is usually negotiated between the Responsible Vessel Permitholder and Retrieval Permittees. The Department will reimburse the Retrieval Permittee for any Trap Retrieval Fee that has gone unpaid. The Department then charges the gear owner a "Department Trap Fee" which covers the reimbursement cost and if the fee remains unpaid, will result in permit suspension or non-renewal of permits.</p> |
| <p>Oregon (OR)</p>  | <p>Laws/Regulations</p> <p>Gear Retrieval Program</p> | <p>OR passed House Bill 3262 in 2013 which authorized OR's post-season derelict gear program. The idea behind the legislation was to exempt traps brought in through the program from personal property laws. This exemption provides the incentive for fishermen to participate in the program by allowing them to take ownership of the pots they retrieve and either keep them for their own use or sell them. OR then used industry input to develop details of the retrieval program and subsequently asked the rule-making board (Oregon Fish and Wildlife Commission) to adopt them as regulations.</p> <p>OR issues permits to interested fishermen to be a part of the post-season derelict gear recovery program. The permitted commercial vessels can begin retrieving gear 15 days after the close of the commercial crab season, and any gear retrieved after that time frame is not subject to any personal property laws. The provisions of the permit (such as notifying OR at least 24-hours prior to leaving the dock to retrieve gear) issued by OR must be followed. Any retrieved gear must be brought to shore during the same fishing trip in which the retrieval took place. All gear retrieved must be documented for transparency purposes and tagged by Department staff. After documenting the gear retrieved, the permittee has the discretion and ability to dispose of, keep, or sell the gear. If the previous owner of the gear would like the gear back, they negotiate a price with the commercial vessel permitholder that retrieved the gear.</p> |

Pacific States *continued...*

| State | Overview | Description |
|---|--|---|
| <p>Washington (WA)</p>  | <p>Laws/Regulations</p> <p>Gear Retrieval Program(s)</p> | <p>WA has a law in place which allows the Department to issue a permit to participants in the Dungeness crab-coastal fishery to retrieve traps left in state waters during a closed period. WA's laws allow for two different recovery permits, one for emergency coastal crab gear recovery and the second is a general coastal crab gear recovery permit. WA recently updated the laws to allow for the expansion of the coastal commercial Dungeness crab pot removal program which allows for gear retrieval during the open fishing season (beginning May 1). The laws also allow for expansion of the retrieval program to Puget Sound waters during shellfish harvest closures. The law contains limitations (such as number of participants) regarding the Puget Sound retrieval efforts.</p> <p>Authorized permit holders retrieving gear during the post-season are able to retrieve gear 15 days after the closure of the primary commercial Dungeness crab-coastal harvest season. The removal permitholder must follow all provisions set forth by the issued recovery permit. Department staff must be notified 24-hours prior to the vessel leaving the dock and at least 2-hours prior to returning to the dock even if no gear was recovered during the trip. Department staff must be notified at least 2 hours prior to returning to the dock with recovered Dungeness crab gear during in-season gear recovery. Permittees allowed to recover gear are required to record data of the gear collected and present the data to the Department upon return to the dock. Upon returning to the dock, Department staff tag the gear retrieved. The gear retrieved is then allowed to be retained by the removal permitholder.</p> <p>Northwest Straits Foundation is a partner to Washington Department of Fish and Wildlife. Since 2002, the NW Straits Foundation has successfully implemented a derelict gear retrieval program primarily focused in the Salish Sea area. Since 2002, they have removed over 5,800 nets, and over 6,000 crab pots. The Foundation has an online form for reporting lost or derelict gear (including nets) and does an immense amount of outreach which educates the public on the impacts of derelict gear.</p> |

Findings

Through discussions with the states featured in the table above, there seemed to be several options that Massachusetts could pursue regarding altering property laws and regulations to make handling derelict or abandoned gear easier. The discussions with different states also provided valuable insight as to which abandoned gear retrieval structure would work best in Massachusetts. Given that there are about 700 active lobstermen who are permitted to fish primarily in Massachusetts state waters, criteria such as scalability and practicality were considered when determining which states' laws, regulations, and program structures could work in Massachusetts. Some states such as New Jersey and the Gulf states have significantly fewer commercial fishermen fishing in state waters compared to Massachusetts, and therefore, scalability would be a concern if these states had a program that Massachusetts was considering adopting.

Additionally, practicality was taken into consideration since fisheries differ by state. For example, California has a hugely successful retrieval program, but California permits third-party entities who ultimately permit "Designated Retrievers" to retrieve gear. This method would likely not work in Massachusetts due to a lack of third-party entities that have the resources to contract commercial fishermen to retrieve gear in state waters. Using third-party entities transfers the burden of dealing with abandoned or derelict gear onto the permittee rather than the state. While this method may be appealing in Massachusetts, it would mean there is no involvement at the state level within the abandoned gear retrieval program. Massachusetts must maintain close involvement in the abandoned gear retrieval program as part of its proposed Massachusetts Right Whale Habitat Conservation Plan. Another component of practicality that was taken into consideration was the methods of gear retrieval within each state's program. Many of the states interviewed have gear retrieval programs designed to hand haul single traps in shallow waters (i.e., Gulf Coast crab fisheries, and the NJ crab fishery). The effort needed to do this is vastly different than the industrial efforts needed to remove lobster trap gear in Massachusetts waters. Many Gulf states have shallow bays where crab trapping activity occurs and at low tide the traps become visible. In Massachusetts, the only traps that are visible at low tide are usually derelict or lost traps that have washed ashore. The majority of gear retrieved during the pilot run of the Massachusetts abandoned gear retrieval program was retrieved from 40 – 99 feet of water. The depths at which the gear is retrieved from does not allow for hand hauling, and therefore requires that commercial lobstermen be contracted to conduct gear retrieval efforts.

While several Atlantic states allow third parties to collect abandoned or derelict gear, most of the states encounter similar issues regarding property laws and are required to return retrieved gear to the rightful owner (if identifiable). An example would be Connecticut's retrieval program, which uses a "Decision Tree" that requires the gear to be thrown back if it contains the current year or previous years' tags (see *Appendix 2*). Such a protocol could not be adopted for Massachusetts because of the commercial trap gear closure in effect from February 1 through May 15. There are to be no buoy lines left in state waters during the closure period and subsequently does not allow for any gear retrieved to be put back in the water.

All of the Gulf states have gear retrieval efforts in place, and while some of the programs are appealing, they won't necessarily work in Massachusetts due to the scalability and practicality considerations mentioned above. However, the way in which some of the Gulf states' laws and regulations are written are appealing and could be emulated in Massachusetts (see *Appendix 3*). Louisiana has a Derelict Crab Trap Removal Program in place, and the law that establishes the program allows the state to choose a 14 or 16 consecutive-day period in which the closure will occur. Louisiana's program relies heavily on state personnel which Massachusetts is trying to avoid, and therefore may not be ideal for implementation within Massachusetts. Alabama and Mississippi have gear retrieval efforts in place, but the retrieval efforts happen on an as-needed or every-other-year basis. Due to the protected species closure, Massachusetts needs a retrieval program to occur annually and thus would not be an option that Massachusetts could consider.

Texas' Abandoned Crab Trap Removal Program is organized so that the clean-ups are all volunteer based. Volunteers are usually recruited through NGOs and other third-party organizations. The costs Texas incurs to run the program include materials such as gloves and trap hooks given to volunteers, but even some of the materials they give out are donated. The reduced cost burden is attractive for Massachusetts; however, the volunteers are typically part of a third-party organization and there is less involvement at the state level. If Massachusetts were to rely on volunteers, they would need to have a vessel with a hauler (typically only commercial fishermen have a vessel equipped with a hauler). Vessels with haulers are not a requirement to retrieve gear in Texas because the bays are shallow. Volunteers can typically see the trap at the surface at low tide and thus there is no need for a hauler – only the trap hooks supplied by Texas.

Pacific states such as Oregon and Washington both have very similar abandoned gear retrieval programs in place. They both issue recovery permits and once Department staff tag the gear that's brought to the dock, the permit holder is allowed to keep, sell, or dispose of the gear retrieved. Both states have those permitted to retrieve gear wait 15 days before retrieving gear from the day the season closes. This time period allows for law enforcement to look for any blatant violations (i.e., multiple traps or trawls belonging to a single individual in a fairly discrete area). Subsequently, once the 15-day period passes, any gear left behind becomes property of the retriever. While the peer-to-peer selling of gear may not work in Massachusetts due to potential peer-to-peer conflicts, the idea that the trap gear left behind during a closure becomes property of the retriever/state is needed in Massachusetts.

In regard to which retrieval programs may work in Massachusetts, there were aspects of several states retrieval efforts that could work if they were to be combined into a hybrid program. Florida is currently the sole Atlantic state that has laws and regulations in place that could effectively work in Massachusetts. Florida is able to retrieve and dispose of any gear that is left inside a closed area. In addition, Florida has a fee structure within their laws that essentially fines any fisherman that leaves gear behind in closed areas. The current fine is antiquated and non-consequential at \$10 per trap retrieved. Even though the current fine would not adequately contribute to the cost of running an abandoned gear retrieval program, having a fee structure implemented within Massachusetts laws would be a deterrent to those considering leaving gear within a closed area. To truly act as a deterrent, the fine amount would need to be increased so that there is a true consequence for leaving gear behind in a closed area. In addition, the structure of the laws and regulations implementing abandoned gear retrieval programs in California, Mississippi, Oregon, Texas, and Washington are appealing since any gear left in a closed area is considered abandoned, derelict, or illegal, and ultimately subject to seizure and disposal. If Massachusetts emulated these laws and regulations it would significantly reduce the administrative burden of returning identifiable traps back to the owner and is therefore, a part of the recommendations section on the following pages.

Conclusions and Recommendations for Massachusetts


The inability to dispose of identifiable gear retrieved during the inaugural year of MA's abandoned gear retrieval program (February–March 2022) proved challenging. The state laws currently in place protect those who are illegally leaving gear behind in a closed area from any costs associated with its retrieval or possible forfeiture, by requiring that any such recovered gear be returned to them free of charge. Additionally, when gear hauled in during the retrieval program is not claimed by the owner, DMF, as manager of the program, is left with a stockpile of gear that is not disposable.


After discussions with various states, it became evident that each state had different scalability regarding the size of the fishery and the amount of gear they retrieve each year. While some states had retrieval programs that were appealing, it was clear that Massachusetts should seek to adopt a program that has worked in a state where the fishery is of similar size or greater. The two recommendation sections below are broken down between recommendations for regulation changes, and recommendations for the structure of an abandoned gear retrieval program. *Appendix 1* contains the Massachusetts laws and regulations referenced in this section, and *Appendix 3* contains information on regulations other states have implemented that Massachusetts could potentially emulate.

Legal and Regulatory Recommendations

Below are recommendations that were created to gain the support of the Massachusetts Division of Marine Fisheries regarding personal property regulation updates and the establishment of an abandoned gear retrieval program. These recommendations have been based on the examination of regulations and conversations with counterparts in other states.

Updating Massachusetts General Law


 Due to the constraints of Massachusetts General Law [M.G.L. c. 130, §§31 and 32], (specifically, the personal property designation that applies to gear left inside closed areas) Massachusetts should work to modify the law so that once the commercial trap gear closure (322 CMR 12.04 (2)) takes effect on February 1, any gear left in state waters is considered abandoned and therefore, the state has the authority to retrieve and dispose of the gear by either disposal, donation, or sale. This could be expanded to include gillnets and other marine debris as well which could also be retrieved during the period of the protected species closure beginning February 1.


 Making this change will allow the state to ensure the efficacy of the closure. This modification would significantly relieve the administrative burden associated with ensuring illegally kept traps are returned to their rightful owner. Updating the regulation would also eliminate storage issues.

Legal and Regulatory Recommendations continued...

Establishment of an Abandoned Gear Retrieval Program


Establishing an abandoned gear retrieval program within Massachusetts regulations will ultimately set the precedent that any gear left illegally within the closed area is subject to seizure and disposal. It would be helpful if DMF were given the authority by legislature to develop this program as seen fit. Examples of how other states established an abandoned gear program through regulation are in *Appendix 3*.

 There should be a section within the regulation that provides guidelines on how the permitting for the program will function. These guidelines would describe the use of the permit or the conditions by which the removal of derelict gear may occur. Such conditions could include requiring the participants to be in good standing with the MEP. Another condition could require that any fisherman who is going to be a participant must hold an active fishing permit. These conditions could be extended to include non-profits such as the Center for Coastal Studies (CCS) which runs a successful derelict gear retrieval program in Massachusetts state waters. It would be advisable that DMF maintains the authority to approve or deny any Letter of Authorization request received to participate in or conduct an abandoned gear retrieval program.

 Methods of gear retrieval should also be incorporated into the permitting guidelines. It would be advisable to allow for grappling gear as this is the method CCS employs and would give the state the option to target balled up gear that develop from storm events.

Violation and Permitting Fee Structures

A violation fee structure should be created which would ultimately help fund the abandoned gear retrieval program. The violation fee would apply to those who chose to leave gear in the closed fishing area and disregard state regulations (322 CMR 12.04). There should be an exception included for those who have lost gear from a storm event. Failure to pay the fees would result in a non-renewal of their permits the following fishing year.

 This fee structure could emulate the fees associated with towing a car. When a car is towed, there are fees associated with hooking up the car, towing the car (and sometimes a charge per mile towed), and storage fees. The fee structure associated with the retrieval program could include a fee for hauling the trap, a mileage fee to bring the trap into shore, and a fee for storage of the traps (this fee would increase gradually by day stored). The fee structure should be tiered so that the fees would increase based on the number of traps retrieved for each permit holder found in violation of the closure.

An additional way to fund the abandoned gear retrieval program would be to designate a portion of the funds received for commercial lobster permits and/or recreational lobster permits to be used towards funding the abandoned gear retrieval program. Funding provided in this general manner would be meant to support retrieval of lost gear (something that is widely experienced) as opposed to intentionally illegally set gear.

Abandoned Gear Retrieval Program Structure Recommendations

Below are recommendations that DMF should support regarding the structure of abandoned gear retrieval programs. Through conversations with stakeholders such as Massachusetts lobstermen and representatives from other states, a hybrid model combining the structure and strategies used by Florida, Oregon, Texas, and Washington may work within Massachusetts and is therefore recommended below.

Option 1 – Preferred by Massachusetts Lobstermen



Ahead of the closure, DMF will permit or issue a Letter of Authorization (LOA) to interested entities or fishermen that want to participate in the abandoned gear retrieval program. The LOAs will contain a program start and end date, as well as the guidelines for retrieving gear within the closure (suggestions for these permit guidelines are within the "Establishment of an Abandoned Gear Retrieval Program" section on the previous page.



Once the closure goes into effect on February 1, there will be a short time period (i.e., ten days) during which the Center for Coastal Studies (CCS) will do fly-overs identifying any buoyed gear left in the closed area. Concurrently, the MEP will mark any gear they find and identify any blatant non-compliance.



At the end of the gear identification period, the permitted fishermen will be assigned zones (based on homeport). The fishermen will first use the maps with marked buoyed gear provided by CCS and the MEP. Once the marked gear is retrieved, the fishermen would have the option to search for additional buoyed gear that may have been missed in the original search.



While at sea, the fishermen will record information on the location of where they hauled the gear; trap tag ID number; the year listed on the trap tag; whether the gear was a trawl or a single trap, and if a trawl, the number of traps and buoy lines hauled; whether the gear was recreational or commercial; the date the gear was hauled; and any other pertinent information.



At the end of each sea day, DMF staff will meet the fishermen at port and inventory the gear retrieved. DMF staff would then determine the price of the fee for fishermen whose gear was retrieved inside the closed area based on the fee structure. DMF staff would work with MEP to ensure the fees were given accordingly.



Traps that were brought in would be subject to disposal by DMF and/or MEP. Due to the cost and waitlist that currently exists for new traps, it would be a waste to dispose of fishable traps. If several fishable traps are brought in, DMF should have the option to hold the traps and donate them to a third-party entity such as the Massachusetts Lobstermen's Association who could then donate them to fishermen declaring financial hardship or a fisherman just entering the fishery. Ideally, DMF would be able to sell the traps, but this process would create further administrative burden. By donating the fishable traps, there would likely be little to no administrative burden since the traps would be otherwise destined for disposal.



Due to the cost of fuel and other expenses (such as paying deckhands) the fishermen participating in this program will incur, it is recommended that DMF provide a day-rate stipend.

Abandoned Gear Retrieval Program Structure Recommendations *continued...*

Option 2

The Option below has been employed in other states with success, however it is worth noting that members of the Massachusetts Lobstermen's Association expressed concern over the ability for peer-to-peer gear transfers and sales, noting that personal relationships and other factors could make that type of arrangement awkward or unfair. Should this Option be pursued, the state might consider developing a fee structure or price ceiling to guide these sales. Option 2 would be the exact same as Option 1 except:



At the end of each sea day, DMF staff will meet the fishermen at port and tag each trap brought in. This will indicate the trap was retrieved from the closure legally and gives the fisherman the right to sell or dispose of the trap as they wish.



Once the gear is tagged by DMF staff, the fishermen can either sell the gear back at a reasonable price to the original owner under a "retrieval trap fee," sell the gear to another fisherman, or keep the trap(s) for themselves to use in future fishing seasons. It will be up to the fisherman to determine the price of the gear, and they do not necessarily have to charge for the gear. The fisherman would then be responsible for the disposal of any gear that is unfishable or unwanted.



This Option would eliminate the disposal of usable traps and allow the fishermen participating in the program to get additional pay for their efforts.

For Future Consideration

In addition to the impacts on right whales, there are several issues related to derelict gear and ownership that could not be addressed in this paper, for example, the impacts of derelict gear on the marine environment, e.g., ghost fishing, and habitat damage. Items that may be worthy of addressing in the future through rulemaking or outreach are addressed below. *Appendix 4* provides examples of laws and regulations in other states that support the recommendations made below.

Marine Debris Found Along the Shoreline



Currently, Massachusetts does not define marine debris within the laws or regulations. Defining marine debris or trap debris as litter or a public nuisance by amending [M.G.L. c. 130, § 32) would allow for disposal of mangled traps or other debris that washes ashore. Typically, any trap that washes ashore is unidentifiable and unfishable, but under current law [M.G.L. c. 130, § 32) any person cleaning the beach is unable to touch or dispose of the trap debris that has washed ashore. By amending this law, it would eliminate legal issues raised when a beach clean-up is scheduled. Presently, when beach clean-ups occur, individuals are forced to leave behind trap debris because it is considered personal property under Massachusetts General Law.

Encourage Gear Loss Reporting



Currently, there is no system in place in Massachusetts that requires fishermen to report lost gear. Gear loss declaration forms can be filled out if a storm event occurs or if a gear conflict occurs (i.e. traps get caught during a dragger tow), but reporting is voluntary. There is no way for managers to estimate how much gear is lost annually. Gear loss reporting could be encouraged through outreach, and this would ultimately give managers a better idea of how much gear is lost annually and may help identify areas that need to be grappled for gear in future gear retrieval efforts.

Appendix 1. Massachusetts General Laws and Regulations Referenced

Appendix 1 contains the Massachusetts laws and regulations referenced throughout this paper.

"Chapter 130, Section 31. No person shall, without the consent of the owner, take, use, destroy, injure or molest a weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear, or a fish car or other contrivance used for the purpose of storing fish, including any such fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, or take fish therefrom."

"Chapter 130, Section 32. The owner of any fishing gear mentioned in section thirty-one which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the event such fishing gear shall not be so recovered within such period or recovered by other legal means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the manner provided in chapter one hundred and thirty-four."

"Chapter 130, Section 9. The director, the deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement and all environmental police officers and deputy environmental police officers or a member of the state police may, without a warrant, search any boat, vessel, fish car, bag, box, locker, package, crate, any building other than a dwelling house, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property in which he has reasonable cause to believe, and does believe, that fish taken, held, kept, possessed, transported or held for transportation or sale in violation of law, may be found, and may seize any such fish there found, and may seize any boat, vessel, fish car, bag, box, locker, package, crate, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property used in a violation of the laws relative to marine fisheries and hold the same for forfeiture.

Any such person or officer may arrest without a warrant any person found violating any provision of this chapter or of any ordinance, rule or regulation made under authority thereof, or any other provision of law relative to marine fisheries."

"(322 CMR 12.04 (1) (2)(3)): Fixed Gear Seasonal Closures (1) Gillnet Closure to Protect Right Whales. It shall be unlawful for any Commercial Fisherman to fish, set, store, or abandon any sink gillnets within the waters under the jurisdiction of the Commonwealth during the period of January 1 through May 15. This closure may be extended past May 15 or rescinded after April 30 based on the presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3).

(2) Commercial Trap Gear Closure to Protect Right Whales. It shall be unlawful for any Commercial Fisherman, to fish, set, store, or abandon any trap gear in any waters under the jurisdiction of the Commonwealth from February 1 through May 15. This closure may be extended past May 15 or rescinded after April 30 based on the presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3). Exception: This shall not apply to those waters under the jurisdiction of the Commonwealth within Lobster Management Area 2, as defined at 322 CMR 6.33(2)(e): LCMA 2.

(3) Notice of Declaration to Amend Timing of Fixed Gear Seasonal Closures. The Director, through Notice of Declaration, may adjust the duration of the fixed gear seasonal closures at 322 CMR 12.04(1) and (2), as reasonably necessary to prevent the entanglements of the North Atlantic right whale in fixed fishing gear based on the Director's assessment of the documented presence of the North Atlantic right whale in Massachusetts waters. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the Massachusetts Register, publishing the Notice on the Division's Legal Notice web page, and distributing it via the Division's e-mail list serve."

Appendix 2. Inventory of Other Coastal States Laws and Regulations

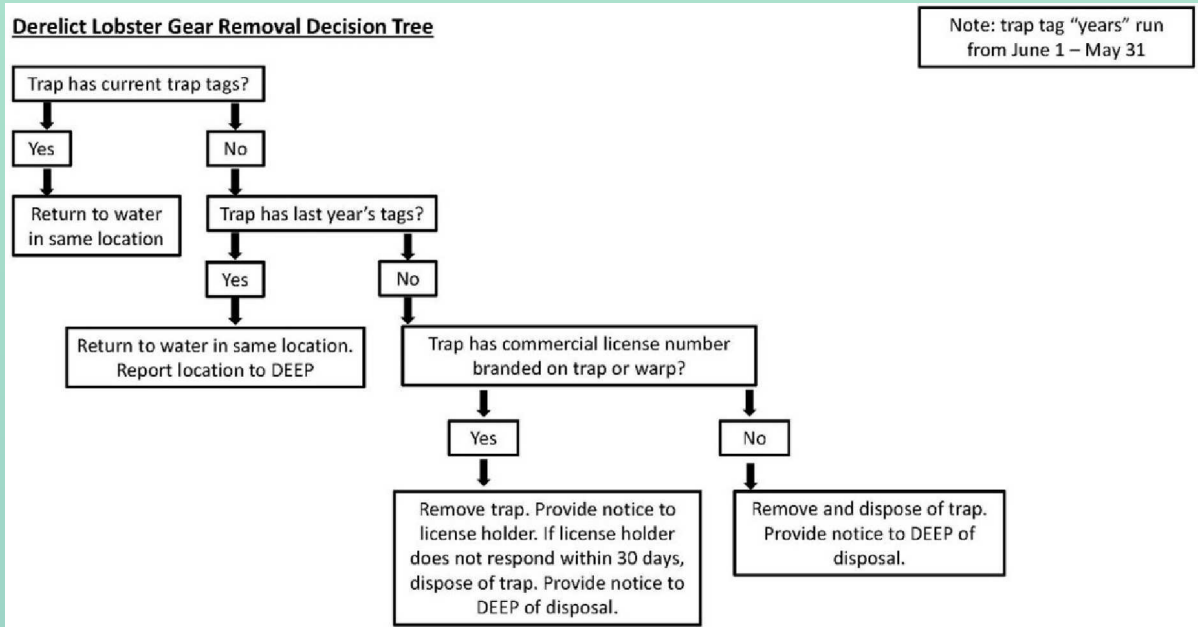
Appendix 2 provides an inventory of the programs, laws, and regulations mentioned in the 'Description' column within the table analysis of other coastal states.

Atlantic States

Connecticut

"Chapter 490, Sec. 26-23. Abandoned or discarded fishing or hunting implements. Derelict lobster gear. (a) Any weapon, article or implement, capable of being used for the purpose of taking, catching or holding any fish, crustacean, wild or game bird, wild or game quadruped, reptile or amphibian, which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer. If the owner or person having custody of any such article at the time it is abandoned, discarded or thrown away fails to claim such article within one year after it comes into the possession of such officer, such article shall be forfeited to the state and may be retained for use by the commissioner, may be sold at public auction or may be destroyed at the discretion of said commissioner. The proceeds from such sales shall be paid to the State Treasurer to be credited to the General Fund.

(b) Any derelict lobster gear may be seized by an authorized representative of the commissioner. The commissioner, or the commissioner's authorized representative, shall attempt to notify the last known licensee of such derelict lobster gear not later than thirty days following such seizure. In the event: (1) There is no identifying marker on such seized derelict lobster gear, (2) the owner of such seized derelict lobster gear cannot be identified, or (3) the last known licensee of such seized derelict lobster gear fails to claim the seized derelict lobster gear, the commissioner may dispose of such seized derelict lobster gear or authorize the disposal of such seized derelict lobster gear. For the purpose of this subsection, "derelict lobster gear" means any lobster pot, trap, warp or live car found in Connecticut waters that does not have the current Connecticut commercial license number branded on the pot, trap, warp or live car in accordance with section 26-157a and that is not attached to the annual trap tag required by regulations adopted pursuant to section 26-157c for the current trap tag year cycle or the trap tag from the previous year's trap tag year cycle."



Derelict Lobster Gear Removal Decision Tree (Courtesy of Justin Davis, Ph.D. Assistant Director, Connecticut Department of Energy and Environmental Protection)

Florida

"Chapter 68B-55.002 Retrieval of Trap Debris."

(1) Local, state, or federal governmental entities, nonprofit nongovernmental organizations, fishery participant organizations, or other community or citizens groups are hereby authorized to remove trap debris from shoreline areas landward of mean low water, and from mangroves or other shoreline vegetation when they organize, promote, and participate in coastal cleanup events for the purpose of removing marine debris.

(2) Except as provided in subsection (3), other coastal cleanup events for the purpose of removing trap debris from all other areas of state waters shall only be undertaken with prior authorization from the Commission, to assure that such removal is adequately supervised.

(3) Local, state, or federal government personnel may remove trap debris located in areas that are permanently closed to trapping without prior authorization from the Commission.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-03, Amended 10-15-07."

"Chapter 68B-55.003 Trap Retrieval Program Funded Pursuant to Sections 379.368 and 379.2424, F.S."

(1) Traps shall be retrieved by Commission personnel or by a contractor under direct oversight of such personnel, by any approved persons through either a cooperative agreement with federal, state, or local governments, or with fishery participant organizations acting in conjunction with the Commission.

(2) For each trap retrieved pursuant to this section, the following information shall be documented:

(a) The intended species targeted by the trap.

(b) Owner identification/endorsement number.

(c) Presence or absence of a required tag.

(d) Commercial or recreational trap.

(e) Location of trap.

(f) Buoy colors.

(3) The Commission's Division of Law Enforcement office, in the area most appropriate to the cleanup, shall be notified by the Commission program administrator, no less than 24 hours prior to commencement of trap retrieval under this program, and on each day thereafter until cleanup ceases.

(4) Trap owners affected by a disaster, pursuant to Section 379.368(3), F.S., will be allowed ten calendar days after notification to claim traps from a Commission authorized storage area. Unclaimed traps will be properly disabled and disposed of as trap debris.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-03."

"Chapter 68B-55.004 Retrieval of Derelict Traps and Traps Located in Areas Permanently Closed to Trapping."

(1) During the closed season for the harvest of any species for which traps are allowable gear, and after any authorized trap retrieval period together with any extensions, traps are considered to be derelict and may be retrieved as part of coastal cleanup events conducted by local, state, or federal government entities, nonprofit nongovernmental organizations, fishery participant organizations, or other community or citizens groups. Except as provided in subsection (3), such events shall only be undertaken with prior authorization from the Commission, to assure that such removal is adequately supervised but without the mandatory reporting required in Rule 68B-55.003, F.A.C.

(2) During the open season for harvest of any species for which traps are allowable gear, retrieval of derelict traps may occur at any time deemed appropriate by the Commission. Commission employees, local, state, or federal personnel, or members of a fishery participant organization may retrieve derelict traps. Except as provided in subsection (3), retrieval other than by Commission personnel shall only be pursuant to a Commission approved plan. The plan shall include the operational area and time period proposed, authorized personnel, the number of vessels, methods of disposition, and number and qualifications of supervisory personnel. An approved plan shall also include notification of the Commission's Division of Law Enforcement no less than 24 hours prior to commencement of retrieval under this program with final float plan information including contact information, vessel registration numbers, trip times, and number of days.

(3) Local, state, or federal government personnel may retrieve traps located in areas that are permanently closed to trapping without prior authorization from the Commission.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-03, Amended 10-15-07.”

“Chapter 379.2424 Retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps during closed season; commission authority. —

The Fish and Wildlife Conservation Commission is authorized to implement a trap retrieval program for retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps remaining in the water during the closed season for each species. The commission is authorized to contract with outside agents for the program operation.”

History.—s. 4, ch. 87-116; s. 4, ch. 87-120; s. 230, ch. 94-356; s. 246, ch. 99-245; s. 2, ch. 2004-72; s. 13, ch. 2007-223; s. 71, ch. 2008-247.

Note.—Former s. 370.143(1).

“Chapter 379.368 Fees for the retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps during closed season. —

(1) Pursuant to s. 379.2424, the commission shall assess trap owners, and collect, a retrieval fee of \$10 per trap retrieved. However, for each person holding a spiny lobster endorsement, a stone crab endorsement, or a blue crab endorsement issued under rule of the commission, the retrieval fee shall be waived for the first five traps retrieved. Traps recovered under this program shall become the property of the commission or its contract agent, as determined by the commission, and shall be either destroyed or resold to the original owner. Revenue from retrieval fees shall be deposited in the Marine Resources Conservation Trust Fund and used solely for operation of the trap retrieval program.

(2) Payment of all assessed retrieval fees shall be required prior to renewal of the trap owner’s saltwater products license. Retrieval fees assessed under this program shall stand in lieu of other penalties imposed for such trap violations.

(3) In the event of a major natural disaster, such as a hurricane or major storm, that causes massive trap losses within an area declared by the Governor to be a disaster emergency area, the commission shall waive trap retrieval fees.”

History.—s. 4, ch. 87-116; s. 4, ch. 87-120; s. 34, ch. 96-321; s. 246, ch. 99-245; s. 42, ch. 2000-364; s. 2, ch. 2004-72; s. 13, ch. 2007-223; s. 155, ch. 2008-247.

Note.—Former s. 370.143(2)-(4).

“Chapter 379.367 Spiny lobster; regulation.

(2)(a)1. Each commercial harvester taking or attempting to take spiny lobster with a trap in commercial quantities or for commercial purposes shall obtain and exhibit a spiny lobster endorsement number, as required by the Fish and Wildlife Conservation Commission. The annual fee for a spiny lobster endorsement is \$125. This endorsement may be issued by the commission upon the receipt of application by the commercial harvester when accompanied by the payment of the fee. The design of the applications and of the trap tag shall be determined by the commission. Any trap or device used in taking or attempting to take spiny lobster, other than a trap with the endorsement number, shall be seized and destroyed by the commission. The proceeds of the fees imposed by this paragraph shall be deposited and used as provided in paragraph (b). The commission may adopt rules to carry out the intent of this section.

2. Each commercial harvester taking or attempting to take spiny lobster in commercial quantities or for commercial purposes by any method, other than with a trap having a spiny lobster endorsement number issued by the commission, must pay an annual fee of \$100.

(b) Twenty-five dollars of the \$125 fee for a spiny lobster endorsement required under subparagraph (a)1. must be used only for trap retrieval as provided in s. 379.2424. The remainder of the fees collected under paragraph (a) shall be deposited as follows:

1. Fifty percent of the fees collected shall be deposited in the Marine Resources Conservation Trust Fund for use in enforcing the provisions of paragraph (a) through aerial and other surveillance and trap retrieval.

2. Fifty percent of the fees collected shall be deposited as provided in s. 379.3671(4).”

Below are links to examples of rules for certain species (stone crab, spiny lobster, and blue crab) which declare traps a public nuisance if left for a certain period of time and allows them to be removed by the Division of Law Enforcement:



[68B-13.008\(4\)\(e\), FAC](#) – Stone Crab



[68B-24.005\(5\), FAC](#) – Spiny Lobster



[68B-45.0045\(1\)\(b\), FAC](#) – Blue Crab

New Hampshire

The regulation below establishes a fund specifically for derelict fishing gear clean-ups along the NH coast.

“Chapter 211:77 Derelict Fishing Gear and Coastal Cleanup Fund Established. –

There is hereby established a separate fund to be known as the derelict fishing gear and coastal cleanup fund. The fund shall be administered by the executive director and shall be nonlapsing and continually appropriated to the executive director for the purposes of this section. The executive director shall credit to this fund all federal moneys, state funds appropriated, fines or settlements for derelict fishing gear or other items, and fines for littering in coastal waters or beaches collected under RSA 163-B:4. The executive director may accept and expend all funds, including any gifts, grants, or donations made to the fund. The moneys in the fund shall be used to establish and support new and existing programs to retrieve and dispose of derelict fishing gear, to conduct periodic coastal cleanup programs for the removal of derelict fishing gear and marine trash, and to support recycling efforts for fishing gear and other marine trash. In this section, "derelict fishing gear" means lost, discarded, or abandoned fishing gear.”

Source. 2021, 208:2, Pt. V, Sec. 7, eff. Aug. 10, 2021.

New Jersey

The following links provide more insight into the gear retrieval efforts by Stockton University researchers.



[Stockton University Marine Debris Programs](#)



[Derelict Crab Pot Removal and Prevention in Southern New Jersey](#)

New York

Similar to Massachusetts, New York has strict laws surrounding personal property and the handling of traps. By issuing a Letter of Authorization to the Cornell Cooperative Extension, they are then allowed to remove gear left behind in NY state waters. Funding for the projects primarily comes from the National Fish and Wildlife Foundation, the Long Island Sound Study, and NOAA Fisheries.

“Chapter 43b article 13 title 3 section 13-0329 (6). No person other than the licensee shall set out, tend, haul or unduly disturb, or take or remove lobsters from, a lobster pot or trap or other commercial gear, or damage, take, remove or possess such gear. Possession of such gear without the consent of the licensee shall be considered prima facie evidence of violation of this subdivision. Provided, however, that in the event of a temporary emergency, a licensee may provide written authorization for a different licensee to haul and remove lobster from the licensee's pots or traps. A copy of such written authorization shall be filed with the department and the department shall determine what constitutes a temporary emergency and the appropriate maximum duration of a temporary emergency for the purposes of this subdivision.”

North Carolina

"Title 15A NCAC 03J .0301 Pots

(a) It is unlawful to use pots except during time periods and in areas specified herein:

(1) In Coastal Fishing Waters from December 1 through May 31, except that all pots shall be removed from Internal Waters from January 15 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle, and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 15 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots."

"G.S. 113-268. Injuring, destroying, stealing, or stealing from nets, seines, buoys, pots, etc.

(a) It is unlawful for any person without the authority of the owner of the equipment to take fish from nets, traps, pots, and other devices to catch fish which have been lawfully placed in the open waters of the State.

(b) It is unlawful for any master or other person having the management or control of a vessel in the navigable waters of the State to willfully, wantonly, and unnecessarily do injury to any seine, net or pot which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish except that a net set across a channel may be temporarily moved to accommodate persons engaged in drift netting, provided that no fish are removed and no damage is done to the net moved.

(c) It is unlawful for any person to willfully steal, destroy, or injure any buoys, markers, stakes, nets, pots, or other devices on property lawfully set out in the open waters of the State in connection with any fishing or fishery.

(d) Violation of subsections (a), (b), or (c) is a Class A1 misdemeanor.

(e) The Department may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action for injunctive relief to restrain a violation or threatened violation of subsections (a), (b), or (c) of this section pursuant to G.S. 113-131. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur and shall be in the name of the State upon the relation of the Secretary. The court, in issuing any final order in any action brought pursuant to this subsection may, in its discretion, award costs of litigation including reasonable attorney and expert-witness fees to any party. (1987, c. 636, s. 1; 1989, c. 727, s. 112; 1993, c. 539, s. 849; 1994, Ex. Sess., c. 24, s. 14(c); 1998-225, s. 3.9.)"

Maine

"13-188 CMR Ch. 25.05 Lobster Trap Removal.

Summary: This regulation established the procedure for removal of traps, warps, buoys or cars that are washed up above the mean low water mark or are otherwise abandoned or lost pursuant to 12 M.R.S.A. §6434.

1. A lobster trap, car, buoy or warp may be moved or removed from the waters or shores of the state for the purpose of returning the lobster gear to the licensed owner or properly disposing of lobster gear by any person who has written permission from a Marine Patrol Officer. Any person who wants to obtain written permission to remove the above described gear must contact the Department in advance of removal. Such written permission shall include amount and type of gear, license number, (if available), and final destination of said gear.

2. Any person who possesses traps, warps, buoys or cars and is not a Marine Patrol Officer, the licensed owner or someone with written permission from the licensed owner or a Marine Patrol officer, shall be in violation of 12 M.R.S.A. §6434."

"Chapter 619 §6434. Molesting lobster gear

A person may not raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car except as provided in this section. [PL 2003, c. 520, §5 (AMD).]

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

A. A marine patrol officer; [PL 1989, c. 428 (NEW).]

B. The licensed owner; [PL 1989, c. 428 (NEW).]

C. Any person having written permission from the commissioner; and [PL 2003, c. 520, §5 (AMD).]

D. Any person authorized by rule pursuant to subsection 2. [PL 1989, c. 428 (NEW).]
[PL 2003, c. 520, §5 (AMD).]

2. Adoption of rules required. The commissioner shall adopt rules, no later than January 1, 1990, authorizing the removal of traps, warps, buoys or cars that are washed up above the mean low tide mark or are otherwise abandoned or lost. Notwithstanding Title 25, sections 3502 and 3503, the commissioner may dispose of such traps, warps, buoys or cars, or authorize their disposal, if the owner cannot be identified or if the owner has been notified and fails to respond within 30 days. [PL 2011, c. 266, Pt. A, §13 (AMD).]

3. Using another's lobster gear; prohibition. Traps, warps, buoys or cars may not be used for fishing by any person other than the licensed owner unless that person has written permission from the commissioner. [PL 2007, c. 283, §1 (AMD).]

3-A. Penalty. A person who violates this section commits a Class D crime. [PL 2017, c. 197, §11 (AMD).]

4. Restitution. If a person violates this section by cutting a lobster trap line, the court shall:

A. Order that person to pay to the owner of the trap line that was cut an amount equal to twice the replacement value of all traps lost as a result of that cutting; and [PL 2007, c. 695, Pt. A, §15 (RPR).]

B. Direct that person to provide proof of payment of that restitution to the commissioner as required by section 6402, subsection 1. [PL 2007, c. 695, Pt. A, §15 (RPR).]

Restitution imposed under this subsection is in addition to any penalty imposed under subsection 3-A. [PL 2009, c. 561, §17 (AMD).]"

SECTION HISTORY

PL 1977, c. 661, §5 (NEW). PL 1989, c. 428 (RPR). PL 1993, c. 543, §2 (AMD). PL 2003, c. 520, §5 (AMD). PL 2007, c. 201, §15 (AMD). PL 2007, c. 283, §§1-3 (AMD). PL 2007, c. 695, Pt. A, §15 (AMD). PL 2009, c. 561, §17 (AMD). PL 2011, c. 266, Pt. A, §13 (AMD). PL 2017, c. 197, §11 (AMD).

The statute below describes when it is and is not necessary for a Maine Marine Patrol Officer to utilize the libel process.

"Chapter 609 §6207. Seizure and disposition of equipment and organisms

Any marine organism that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of marine resources laws and all currency that is used in violation of any provision of marine resources laws is contraband and is subject to forfeiture in accordance with this section and section 6206. All equipment and vehicles used or possessed in violation of any provision of marine resources laws are contraband and are subject to forfeiture. [PL 2019, c. 163, §1 (AMD).]

1. May be seized without warrant; marine patrol officer's duty to libel; contents of libel. Whenever a marine patrol officer seizes any organism or equipment and does not return them to the owner, he shall within a reasonable time file a libel with a judge. He shall insert the following information in the libel:

A. The description of the items seized by him; [PL 1977, c. 661, §5 (NEW).]

B. A statement of the date and place of seizure; [PL 1977, c. 661, §5 (NEW).]

C. A statement of the violation that causes the seizure; and [PL 1977, c. 661, §5 (NEW).]

D. A prayer for a decree of forfeiture of those items. [PL 1977, c. 661, §5 (NEW).]

[PL 1979, c. 541, Pt. B, §73 (AMD).]

2. Items which need not be libeled. The following items need not be libeled:

A. If the aggregate value of all items seized is less than \$200, unless there is reasonable doubt as to their ownership; and [PL 2013, c. 468, §2 (AMD).]

B. All marine organisms of illegal size, shellfish taken from polluted areas, shellfish or shellfish products embargoed, condemned or ordered destroyed by the commissioner, female egg-bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, female lobsters which have had the eggs removed by other means than natural hatching, and any other marine organism, the possession of which is unlawful throughout the State. [PL 1981, c. 433, §4 (AMD).] [PL 2013, c. 468, §2 (AMD).]"

Virginia

Below is the link to Virginia's Marine Debris Action Plan published in November 2021. The action plan will be in effect from 2021 through 2025.



[Virginia's Marine Debris Action Plan](#)

Gulf States

Alabama

"Section 9-2-7, Code of Alabama 1975, Rule 220-3-.52

(a) There is hereby established a one day closed fishing season for the taking or harvesting of crabs by the use of crab traps (recreational or commercial) in any inside waters of the State of Alabama under the jurisdiction of the Marine Resources Division within 500 yards of the shoreline on Saturday, March 11, 2006, and in the future, such closure dates and areas as shall be established utilizing a public notice by the Commissioner of Conservation and Natural Resources.

(b) During the closure defined in (a) of this regulation no crab traps (recreational or commercial) shall be allowed in any waters closed by this regulation to the taking or harvesting of crabs by the use of crab traps (recreational or commercial) and any traps in the closed areas shall be considered marine litter and may be removed by any individual from these closed waters. Any individual who removes crab traps (recreational or commercial) that are considered to be marine litter must remove the marine litter from the waters of the State of Alabama under the jurisdiction of the Marine Resources Division and properly dispose of such by placing such marine litter in an approved waste container or facility and it shall be unlawful to use any such marine litter for any personal purpose.

(c) It shall be lawful for those assisting with the removal of derelict crab traps to use an airboat on any of the public waters of this state subject to an ebb and flow of the tide of at least two inches, south of a line beginning at the Mississippi state line following the eastbound lane of the Interstate Highway 10 to the Florida state line (except when Interstate Highway 10 lies north of U.S. Highway 90 Battleship Parkway, the line follows the eastbound lane of U.S. Highway 90) on Saturday, March 11, 2006. Any individual who uses an airboat must register such vessel with the Marine Resources Division on later than 5:00 p.m. on Thursday, March 9, 2006. During the closure defined in (a) utilizing a public notice by the Commissioner, such public notice shall state if airboats shall be lawful and establish a date and time that airboats must register with the Marine Resources Division."

Author: M. Barnett Lawley Statutory Authority: Code of Ala. 1975, §§9-2-4, 9-2-7, 9-2-8. History: New Rule (PE): Filed May 2, 2002; effective May 2, 2002. Repealed and New Rule (PE): Filed January 17, 2003; effective January 17, 2003. Amended (PE): January 15, 2004; effective January 15, 2004. Amended (PE): January 26, 2006; effective January 26, 2006. PENALTY: As provided by law.

Louisiana

"RS 56:332 Crabs; release of immature female crabs and crabs in berry stage; method of taking crabs; time limitations; by-catch; penalties, abandoned crab trap removal program; escape rings

N.(1) Notwithstanding any other provision of law to the contrary, the Wildlife and Fisheries Commission may develop and establish a program to remove abandoned crab traps from state-owned lake and river beds and other water bottoms of the state. Any crab trap found in state-owned lakes and river beds and other water bottoms of the state during a period of time when their use has been prohibited by the commission under the provisions of Paragraph (2) of this Subsection shall be considered abandoned and may be removed by those persons authorized by the commission.

(2) The commission may prohibit crab traps in state-owned lake and river beds and other water bottoms of the state as follows:

(a) During a sixteen-consecutive-day period between February first and March thirty-first, the commission may prohibit crab traps in one or more geographical areas of the state.

(b) During a fourteen-consecutive-day period of time which includes the opening day of the spring inshore shrimp season the commission may prohibit crab traps in one or more geographical areas of the state.

(c) At any time crab harvest is closed for biological or technical reasons, the commission may prohibit crab traps for the duration of the closure.

(d) The period of time for the prohibitions of crab traps authorized in Subparagraphs (a) and (b) of this Paragraph shall be specified by the commission for each geographical area, which period may be for fewer than the sixteen consecutive days, but shall consist of consecutive days within the sixteen-consecutive-day period."

To view the year-by-year statistics of traps retrieved as part of Louisiana's Derelict Crab Trap Removal Program see the link below.



[Louisiana's Derelict Crab Trap Removal Program](#)

Mississippi

"MS Code § 49-15-84.1 Closed season for use of crab traps; removal of abandoned traps.

(1) The commission may establish a closed season for the use of crab traps in the public waters of this state. The commission may designate the closed season as not less than ten (10) days nor more than thirty (30) days per year. Any crab trap remaining in the public waters after the expiration to the seventh day of a closed season may be considered as abandoned under the regulations established by the commission.

(2) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

- (a) The conservation and management of crab resources;
 - (b) Boating safety;
 - (c) The cleanliness of the beds and bottoms of the public waters of the state; and
 - (d) Enforcement of this chapter.
- (3) Abandoned crab traps are litter and are subject to immediate removal and disposal."

Texas

"Senate Bill 1410. Sec. 78.115. Crab Traps; Removal of Abandoned Traps.

(a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed season established by the commission under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

- (1) enforcement of this chapter;
- (2) the cleanliness of the beds and bottoms of the public water of this state;
- (3) boating safety; and
- (4) the conservation and management of crab resources.

(d) Abandoned crab traps are litter for purposes of Section 365.011 (see below), Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code. Section 12.1105 does not apply to the removal and disposal of an abandoned crab trap under this section.

(e) A proclamation made by the commission under this section prevails over a conflicting commission proclamation made under Chapter 47, 61, or 66."

Added by Acts 2001, 77th Leg., ch. 278, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 858, Sec. 1, eff. June 20, 2003.

"Health and Safety Code Sec. 365.011.

Definitions. In this subchapter:

(6) "Litter" means:

(B) non-decayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal."

Pacific States

California

"14 CCR § 132.7. Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program.

(a) *Commercial Dungeness crab trap gear left in the ocean after the close of the commercial Dungeness crab season is declared to be lost or abandoned and subject to retrieval under the terms of this Section.*

(b) *Lost or Abandoned Dungeness Crab Trap Gear Retrieval Permit Required.* Pursuant to Section 9002.5 (see below) of the Fish and Game Code, the department may grant a Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit ("Retrieval Permit") to aid in the retrieval of lost or abandoned traps after the close of the commercial Dungeness crab season under the requirements of the Trap Gear Retrieval Program set forth herein. For the purposes of this Section, trap gear is defined as the trap and any attached lines or buoys. Retrieval Permits shall expire each year on December 31st.

(c) *Retrieval Permit Application.* Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application (DFW 1078; New 08/14/19), incorporated herein by reference, and Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment (DFW 1078a; New 08/14/19), a form allowing for its amendment, incorporated herein by reference, shall be made available online at www.wildlife.ca.gov.

(1) An applicant for a Retrieval Permit shall only be:

(A) a charitable organization as defined by 26 U.S.C. § 501 (c)(3);

(B) a sport or commercial fisherman association with a written charter or a governing board; or,

(C) a "Local agency" within the meaning of Government Code Section 5001, or a "District" within the meaning of Harbors and Navigation Code Section 6002 or 6200.

(2) At the time of filing form DFW 1078, the applicant shall submit a nonrefundable Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application Fee, as specified in Section 705.

(3) At the time of filing form DFW 1078a, the applicant shall submit a nonrefundable Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment Fee, as specified in Section 705.

(d) *Lost or abandoned trap gear may only be retrieved by individuals ("Designated Retrievers") using a vessel identified on a Retrieval Permit, as modified by any subsequent Retrieval Permit Amendment of that Retrieval Permit. A holder of a Retrieval Permit ("Retrieval Permittee") shall ensure the following:*

(1) Every Designated Retriever under its Retrieval Permit is a commercial fishing license holder who has not had a commercial license or permit revoked or suspended and is not awaiting final resolution of any pending criminal, civil, and/or administrative action that could affect the status of the commercial license or permit.

(2) Every Designated Retriever under its Retrieval Permit has landed or has participated in landing in a commercial trap fishery in any of the previous three calendar years.

(3) Every Designated Retriever under its Retrieval Permit has access to use a commercial pump to help dislodge traps that are silted in place.

(4) No more than 10 Designated Retrievers, and 10 associated vessels, may operate under a given Retrieval Permit. A Retrieval Permittee may amend its list of Designated Retrievers and its list of vessels by submitting a Retrieval Permit Amendment to the department.

(e) *Trap Gear Retrieval Logbooks.* A Retrieval Permittee shall ensure that each Designated Retriever complete an accurate record of the trap gear retrieval on a Trap Gear Retrieval Logbook (DFW 1059; New 08/14/19), incorporated herein by reference, which contains instructions regarding submission to the department. Trap Gear Retrieval Logbooks shall be kept on the vessel while it is engaged in, or returning from, trap gear retrieval operations.

(f) Trap Gear Retrieval Permit Operations.

A Designated Retriever may retrieve lost or abandoned trap gear in an area starting 15 calendar days after the commercial Dungeness crab fishing season closes in that area pursuant to Fish and Game Code Section 8276 and until September 30 of that year. A Designated Retriever may also retrieve lost or abandoned trap gear during a period of time in which the Director restricts the take of Dungeness crab pursuant to Fish and Game Code Section 8276.1 or implementing regulations, if the Director authorizes retrieval operations during that time period. At no time may retrieval operations occur in an area open to commercial Dungeness crab fishing or during a designated pre-season gear setting period. Only trap gear with a Dungeness crab buoy tag issued by the department pursuant to Section 8276.5 of the Fish and Game Code may be retrieved. To the extent practicable, any lines or buoys attached to the trap shall also be retrieved.

(1) Each Designated Retriever shall keep in his/her possession a legible copy of the Retrieval Permit he/she is operating under that identifies the Designated Retriever and their associated vessel while conducting retrieval operations. At least one person aboard the vessel needs to be a Designated Retriever.

(2) Retrieved trap gear shall be stored at a secure location until collected by the Responsible Vessel Permitholder or disposed of by the Retrieval Permittee pursuant to subsection (h).

(3) Designated Retrievers and Retrieval Permittees shall, to the extent possible, prevent any additional physical damage to retrieved trap gear. Buoy tags, crab trap tags, and any other markings may not be removed from the gear until it has been documented in the Trap Gear Retrieval Logbook and processed pursuant to subsection (h).

(4) The department may enter and conduct unannounced visits to inspect facilities and vessels of a Retrieval Permittee or a Designated Retriever used as part of the trap retrieval operation. The department may also inspect, audit, or copy at any time any permit, license, book, or record required to be kept under these regulations.

(5) A Designated Retriever who observes lost or abandoned commercial Dungeness crab trap gear located in an area where take of Dungeness crab by trap is prohibited shall inform the department Law Enforcement Division through the CalTIP Program at 1-888-334-CalTIP (888-334-2258). A Designated Retriever may not retrieve such trap gear without written or verbal authorization from the department Law Enforcement Division.

(g) A Retrieval Permit may be suspended or revoked by the department for the violation of any provision of any California regulation, California Code, local ordinance, federal regulation, federal code, or the terms of the Retrieval Permit by the Retrieval Permittee or any of its Designated Retrievers. An entity whose Retrieval Permit has been suspended or revoked must turn over all records produced and all traps retrieved under the terms of this program pursuant to the Department's direction.

(h) A Dungeness crab vessel permitholder ("Responsible Vessel Permitholder") shall be liable to pay a Retriever Trap Fee on a per trap basis for each retrieved trap identified by a buoy tag, a buoy marked pursuant to Section 9006 of the Fish and Game Code, or a trap tag required by Section 132.1, Title 14, CCR as associated with his/her vessel permit.

(1) Retrieval Permittees and Responsible Vessel Permitholders may freely negotiate the amount of the Retriever Trap Fee.

(2) A Retrieval Permittee shall contact the Responsible Vessel Permitholder associated with retrieved trap gear via text, email or certified letter within one week of the trap gear being retrieved. The text, email or certified letter shall include contact information for the Retrieval Permittee, the number of traps retrieved, the date the traps were retrieved, and that the traps were retrieved under this Section. Retrieval Permittee shall maintain record of the text or email, or a copy of the letter and the certified mail receipt for at least one calendar year.

(3) A Retrieval Permittee shall contact all Responsible Vessel Permitholders with outstanding Retriever Trap Fees via certified letter postmarked no later than October 6. The certified letter shall include contact information for the Retrieval Permittee, all traps whose Retriever Trap Fee is outstanding, the date the traps were retrieved, and that the traps were retrieved under this Section. Retrieval Permittee shall maintain record of the certified letter and the certified mail receipt for at least one calendar year.

4) The title of retrieved trap gear shall be transferred to the Responsible Vessel Permitholder once the Retriever Trap Fee for that trap gear has been paid and the Responsible Vessel Permitholder takes physical

possession of the trap gear. The Retrieval Permittee shall produce two copies of a receipt detailing the time, date, and the fee paid when the Responsible Vessel Permittee takes possession of the trap gear; the Retrieval Permittee and the Responsible Vessel Permittee shall each keep a copy of the receipt for at least one calendar year.

(5) Retrieval Permittee may freely dispose of retrieved trap gear only if the trap gear has not been picked up by the Responsible Vessel Permitholder or the Retriever Trap Fee owed has not been paid by the October 21 following the trap's retrieval. Retrieval Permittee must return associated buoy tags to the Department with the logbook documenting that trap's retrieval.

(i) *Reimbursement.* The Department shall reimburse a Retrieval Permittee \$125 for each trap that has been identified on a completed and submitted Retrieval Logbook as requiring Department Reimbursement.

(j) *Notification and Deadline of Department Trap Fee and Non-Renewal of Dungeness crab vessel permit.* A Trap Gear Retrieval Logbook shall identify the nonpayment of a Retriever Trap Fee by any Responsible Vessel Permitholder that would require the department to pursue a Lost or Abandoned Department Trap Fee on a per trap basis as specified in subsection 705(c) ("Department Trap Fee").

(1) All Responsible Vessel Permitholders shall pay the Department Trap Fee.

(2) By January 15 following the date of trap retrieval, any outstanding Department Trap Fee is considered late for a Responsible Vessel Permitholder and the department shall suspend the renewal and transferability of the associated Dungeness crab vessel permit. The suspension shall remain in effect until all outstanding Department Trap Fees have been paid by the Responsible Vessel Permitholder, consistent with Fish and Game Code Section 7852.2."

Note: Authority cited: Section 9002.5, Fish and Game Code. Reference: Sections 7852.2, 8276, 8276.5, 9002.5 and 9006, Fish and Game Code.

"Chapter 4. Article 1. Traps [9000 - 9024]. 9002.5.

(a) Notwithstanding Section 9002, the department, in consultation with the Dungeness crab task force, shall establish a retrieval program to provide for the retrieval of lost or abandoned commercial Dungeness crab traps by June 30, 2019.

(b) The retrieval program developed pursuant to subdivision (a) shall be consistent with all of the following:

(1) (A) The department shall establish a retrieval permit that grants a person who obtains a retrieval permit the authority to retrieve Dungeness crab traps located in ocean waters belonging to another person without written permission from that person during both of the following periods of time:

(i) The closed season of the Dungeness crab commercial fishery, as described in Section 8276.

(ii) A period of time other than the time period described in clause (i) in which the director restricts the take of Dungeness crab pursuant to Section 8276.1 or regulations adopted pursuant to that section, if the director authorizes retrieval permitholders to retrieve traps during that time period.

(B) The department may establish any qualifications it deems necessary for a person to obtain a retrieval permit.

(C) The department shall require a permit fee in an amount necessary to fully recover, but not exceed, all reasonable administrative and implementation costs to the department of the retrieval program.

(2) Notwithstanding Chapter 4 (commencing with Section 2080) of Title 6 of Part 4 of Division 3 of the Civil Code or any other law, any Dungeness crab trap retrieved under the authority of a retrieval permit shall become the property of the retrieval permitholder.

(3) The department shall require a retrieval permitholder to notify the former trap owner of the retrieval of a Dungeness crab trap and to offer to sell the trap to the former owner for a reasonable recovery fee, as determined by the retrieval permitholder, based on the cost of trap retrieval and storage of the trap. The department shall impose per-trap fees on any former trap owner who refuses to pay the recovery fee to the retrieval permitholder. The department shall set the rate of these per-trap fees at a level sufficient to recover any costs to the department from handling noncompliance with the gear retrieval program and to reimburse the retrieval permitholder for the reasonable cost of trap retrieval, storage, and disposal of crab traps belonging to a former owner who refuses to pay the recovery fees for those traps and, upon appropriation by the Legislature, shall use the proceeds of the per-trap fees for these purposes. The department shall annually adjust the per-trap fees pursuant to Section 713.

(4) Notwithstanding Section 8022, the department may release contact information to a retrieval permitholder for purposes of the retrieval program under terms and conditions as the department deems necessary to preserve the confidentiality of the information released. Any release of information pursuant to this section does not constitute a waiver of any applicable exemptions from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(5) The department may deny an application for renewal or transfer of a Dungeness crab vessel permit until the applicant pays any fees imposed pursuant to paragraph (3).

(6) The department shall submit the proposed retrieval program developed pursuant to this section to the Dungeness crab task force for review, and shall not implement the retrieval program until the task force has had 60 days or more to review the proposed retrieval program and recommend any proposed changes. The director may implement the retrieval program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(c) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed."

(Amended by Stats. 2021, Ch. 615, Sec. 118. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615. Inoperative April 1, 2029. Repealed as of January 1, 2030, by its own provisions.)

Oregon

House Bill 3262. Relating to crab pots; and declaring an emergency.

"Be It Enacted by the People of the State of Oregon:

SECTION 1. { + Section 2 of this 2013 Act is added to and made a part of ORS chapter 508. + }

SECTION 2. { + (1) As used in this section, 'crab fishing season' has the meaning given that term in ORS 508.931.

(2) A person may not leave a crab pot used as part of the ocean Dungeness crab fishery in the waters of this state more than 15 days after the closure of the crab fishing season.

(3) The State Fish and Wildlife Commission may issue permits to persons for the removal of crab pots left in violation of subsection (2) of this section:

(a) Regardless of whether the person who removes the crab pot originally set the crab pot; and (b) If the permit holder also holds a boat license issued pursuant to ORS 508.260.

(4) By rule the commission:

(a) Shall establish provisions related to the disposition of the crab pots by the permit holder who removes the crab pots.

(b) May restrict the removal of crab pots to specific geographic areas.

(5) The State Department of Fish and Wildlife may exempt certain owners of crab pots from the requirements of subsection

(2) of this section. If the department exempts certain owners under this subsection, the department must notify the holders of permits issued under subsection (3) of this section.

(6) The provisions of ORS 98.005, 98.015, 98.025 and 98.302 to 98.436 do not apply to crab pots removed under the provisions of this section. + }

SECTION 3. { + (1) Except as provided in subsection (2) of this section, sections 1 and 2 of this 2013 Act become operative on January 1, 2014.

(2) The State Fish and Wildlife Commission may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to implement, on

and after the operative date specified in subsection (1) of this section, sections 1 and 2 of this 2013 Act. + }

SECTION 4. { + This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency"

"Chapter 635-005-0491. Post-season Derelict Gear Recovery Permits

(1) Fifteen days after the close of ocean commercial crab season, the Department may grant Post-Season Derelict Gear Recovery Permits to commercial vessels, licensed pursuant to ORS 508.260, to recover Dungeness crab gear that remains in the ocean.

(2) It is unlawful to fail to follow the provisions of a Post-Season Derelict Gear Recovery Permit.

(3) The Director or Director's designee may grant emergency exemptions from the gear recovery program for Dungeness crab gear that was unable to be removed from the ocean prior to fifteen days after the end of the season as a result of undue hardship as defined in OAR 635-005-0240. Requests for exemptions must be submitted to the Marine Resources Program, Newport by August 29 of each year.

(4) The provisions of ORS 98.005, 98.015, 98.025 and 98.302 to 98.436 do not apply to crab pots removed from the ocean under the provisions of a Post-Season Derelict Gear Recovery Permit.

(5) Dungeness crab gear retrieved under the authority of a Post-Season Derelict Gear Recovery Permit and not subject to emergency exemption under section (3) of this rule may be disposed of at the permit holder's discretion after documenting retrieval of the gear in accordance with permit conditions."

"Chapter 635-005-0490. Derelict Dungeness Crab Gear

Derelict Dungeness crab gear may be retrieved from the ocean, including the Columbia River, and transported to shore provided that:

(1) The retrieving vessel holds a valid boat license, issued pursuant to ORS 508.260, and the captain and crew of that vessel hold valid commercial fishing license(s), issued pursuant to ORS 508.235.

(2) The number of derelict Dungeness crab gear which may be retrieved per trip are as follows:

(a) From the opening of the ocean Dungeness crab fishery in the area where retrieval takes place until the second Monday in June of the same ocean Dungeness crab season: 25 derelict pots and rings in aggregate;

(b) From the second Monday in June through August 14: 50 derelict pots and rings in aggregate;

(c) August 15 through October 31: an unlimited number of derelict pots and rings may be retrieved.

(d) Effective May 4 through August 14, under a waiver granted by the Department, the amount of derelict gear specified on the waiver may be retrieved provided that:

(A) The vessel is operating under a state contract to recover derelict gear;

(B) A waiver must be requested, approved, and issued prior to retrieval efforts as follows:

(i) A waiver request must be submitted in writing to: Oregon Department of Fish and Wildlife, Marine Resources Program, 2040 SE Marine Science Drive, Newport, OR 97365 or via email to Jeannine.C.Smith@odfw.oregon.gov;

(ii) Once the request is reviewed and approved, ODFW will issue a waiver; and

(iii) The waiver must be issued prior to retrieval efforts.

(C) A copy of the waiver must be on board the vessel during all gear recovery activities; and

(D) The vessel operator complies with all terms and conditions of the waiver.

(3) Upon retrieval from the ocean or Columbia River, the Dungeness crab gear must be un-baited.

(4) Crab from the retrieved Dungeness crab gear shall not be retained, except crab of legal size and sex may be retained by vessels holding a valid Dungeness crab permit, at such times and in such areas that Dungeness crab may otherwise be legally taken for commercial purposes.

(5) Immediately upon retrieval of Dungeness crab gear, the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot or ring retrieval, number of retrieved crab pots or rings in aggregate, location of retrieval, and retrieved Dungeness crab gear owner identification information.

(6) Any retrieved Dungeness crab gear must be transported to shore during the same fishing trip that retrieval took place."

The Oregon Crab Fishery Management Plan is available at the link below and has a derelict gear recovery efforts section that starts on page 102.



[Oregon Crab Fishery Management Plan](#)

Washington

"Chapter 77.70.500. Crab pot removal permit—Shellfish pot removal permit—Rules—Penalty.

(1)(a) As part of a coastal commercial Dungeness crab pot removal program, the department shall issue a crab pot removal permit that allows the participants in the Dungeness crab-coastal fishery created in RCW 77.70.280 to remove crab pots belonging to state commercial licensed crab fisheries from coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season, regardless of whether the crab pot was originally set by the participant or not.

(b) Beginning fifteen days after the close of the primary commercial Dungeness crab-coastal harvest season, any individual with a current commercial Dungeness crab-coastal license and a valid crab pot removal permit issued by the department may remove a crab pot or crab pots used to harvest Dungeness crabs remaining in coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season.

(c) In cooperation with individuals with a current commercial Dungeness crab-coastal license, the department may expand the coastal commercial Dungeness crab pot removal program to those areas closed to commercial Dungeness crab harvest prior to the end of the primary season and during that portion of the coastal Dungeness crab fishery that occurs from May 1st through September 15th.

(d) Nothing in this section prohibits the department from exempting certain crab pots from the coastal commercial Dungeness crab pot removal program or from restricting crab pot removal activities to specific geographic areas.

(2)(a) The department may expand the crab pot removal program to allow for the removal of shellfish pots belonging to state commercial or recreational licensed shellfish fisheries from Puget Sound waters during shellfish harvest closures, regardless of whether the shellfish pot was originally set by the permittee or not.

(b) If the department expands the program to Puget Sound waters, the department shall limit the program as necessary to streamline implementation, minimize the oversight burden on fish and wildlife enforcement officers, minimize interference with lawful fisheries and other user groups, minimize administrative overhead cost, and avoid the collection of shellfish pots that are not abandoned. The program may be limited as deemed appropriate by the department, including limitations on:

(i) The number of participants;

(ii) The eligible geographic areas in Puget Sound where shellfish pots may be recovered;

(iii) The types of shellfish pots that may be recovered;

(iv) The maximum or minimum depth where a shellfish pot must be located to be eligible for recovery; and

(v) The ports through which the vessels collecting the abandoned shellfish pots may operate.

(3) The department may adopt rules to implement subsections (1) and (2) of this section.

(4)(a) The following are exempt from complying with the lost and found property provisions in chapter 63.21 RCW:

(i) An individual participating in permitted crab pot removal activities in coastal marine waters who has a valid crab pot removal permit, and who adheres to the provisions of the permit as they relate to crab pot removal; and

(ii) An individual participating in permitted shellfish pot removal activities in Puget Sound waters who has a valid shellfish pot removal permit and who adheres to the provisions of the permit as they relate to shellfish pot removal.

(b) The individual who removes a shellfish pot under a valid crab pot removal permit or a valid shellfish pot removal permit takes the property free and clear of all claims of the owner or previous holder and free and clear of all individuals claiming ownership under the previous owner.

(5) A violation of this section, or any rules or permit conditions provided under this section, is punishable as provided in RCW 77.15.750.

(6) Individuals who remove shellfish pots under a valid crab pot removal permit or a valid shellfish pot removal permit in accordance with this section are not subject to permitting under RCW 77.55.021."

“Chapter 220-340-490. Commercial crab fishery—Coastal gear recovery permits.

(1) Emergency coastal crab gear recovery permit. Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) Coastal crab gear recovery permit. After the September 15 close of the primary coastal commercial crab season and from May 1 through September 15, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.”

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 21-24-031 (Order 21-259), § 220-340-490, filed 11/22/21, effective 1/1/22; WSR 20-15-049 (Order 20-128), § 220-340-490, filed 7/9/20, effective 8/9/20; WSR 20-04-066 (Order 20-15), § 220-340-490, filed 1/31/20, effective 3/2/20. Statutory Authority: CW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-490, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-044, filed 11/9/12, effective 12/10/12.]

Reviser's note: The permanent filing 20-04-066 contained no amendments to this section.

To learn more about the Northwest Straits Foundation Derelict Gear Retrieval Program, click the link provided below.



[Northwest Straits Foundation - Derelict Gear Retrieval Program](#)

Appendix 3. Regulatory and Abandoned Gear Retrieval Program Recommendation Examples

Appendix 3 highlights examples of current laws and regulations other states have implemented which could be emulated within Massachusetts. There are four separate sections within this appendix that correspond to the four aspects of recommendations made above (see the 'Conclusions/Recommendations for Massachusetts' section). There may be more laws and regulations that pertain to each state mentioned below, but those laws and regulations may not be ideal for implementation in Massachusetts and therefore were not included in this appendix. For a more in-depth view of each state interviewed, refer to Appendix 2.

- I. Laws and Regulations Designating the State's Right to any Gear Left in a Closure*
- II. Laws and Regulations Establishing Abandoned Gear Retrieval Programs*
- III. Laws and Regulations Regarding Permitting for Participants in Abandoned Gear Retrieval Programs*
- IV. Fee Structures*

I. Regulations Designating the State's Right to any Gear Left in a Closure

California

"14 CCR § 132.7. Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program.

(a) Commercial Dungeness crab trap gear left in the ocean after the close of the commercial Dungeness crab season is declared to be lost or abandoned and subject to retrieval under the terms of this Section."

Mississippi

"MS Code § 49-15-84.1.

(1) The commission may establish a closed season for the use of crab traps in the public waters of this state. The commission may designate the closed season as not less than ten (10) days nor more than thirty (30) days per year. Any crab trap remaining in the public waters after the expiration to the seventh day of a closed season may be considered as abandoned under the regulations established by the commission."

Texas

"Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.115. Crab Traps; Removal of Abandoned Traps.

(a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed season established by the commission under this section."

II. Laws and Regulations Establishing Abandoned Gear Retrieval Programs

California

"Article 1. Traps [9000 - 9024] (Article 1 repealed and added by Stats. 1984, Ch. 1271, Sec. 20.) 9002.5.

(a) Notwithstanding Section 9002, the department, in consultation with the Dungeness crab task force, shall establish a retrieval program to provide for the retrieval of lost or abandoned commercial Dungeness crab traps by June 30, 2019.

(b) The retrieval program developed pursuant to subdivision (a) shall be consistent with all of the following:

(1) (A) The department shall establish a retrieval permit that grants a person who obtains a retrieval permit the authority to retrieve Dungeness crab traps located in ocean waters belonging to another person without written permission from that person during both of the following periods of time:

(i) The closed season of the Dungeness crab commercial fishery, as described in Section 8276.

(ii) A period of time other than the time period described in clause (i) in which the director restricts the take of Dungeness crab pursuant to Section 8276.1 or regulations adopted pursuant to that section, if the director authorizes retrieval permitholders to retrieve traps during that time period.

(B) The department may establish any qualifications it deems necessary for a person to obtain a retrieval permit.

(C) The department shall require a permit fee in an amount necessary to fully recover, but not exceed, all reasonable administrative and implementation costs to the department of the retrieval program.

(2) Notwithstanding Chapter 4 (commencing with Section 2080) of Title 6 of Part 4 of Division 3 of the Civil Code or any other law, any Dungeness crab trap retrieved under the authority of a retrieval permit shall become the property of the retrieval permitholder.

(3) The department shall require a retrieval permitholder to notify the former trap owner of the retrieval of a Dungeness crab trap and to offer to sell the trap to the former owner for a reasonable recovery fee, as determined by the retrieval permitholder, based on the cost of trap retrieval and storage of the trap. The department shall impose per-trap fees on any former trap owner who refuses to pay the recovery fee to the retrieval permitholder. The department shall set the rate of these per-trap fees at a level sufficient to recover any costs to the department from handling noncompliance with the gear retrieval program and to reimburse the retrieval permitholder for the reasonable cost of trap retrieval, storage, and disposal of crab traps belonging to a former owner who refuses to pay the recovery fees for those traps and, upon appropriation by the Legislature, shall use the proceeds of the per-trap fees for these purposes. The department shall annually adjust the per-trap fees pursuant to Section 713. (4) Notwithstanding Section 8022, the department may release contact information to a retrieval permitholder for purposes of the retrieval program under terms and conditions as the department deems necessary to preserve the confidentiality of the information released. Any release of information pursuant to this section does not constitute a waiver of any applicable exemptions from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(5) The department may deny an application for renewal or transfer of a Dungeness crab vessel permit until the applicant pays any fees imposed pursuant to paragraph (3).

(6) The department shall submit the proposed retrieval program developed pursuant to this section to the Dungeness crab task force for review, and shall not implement the retrieval program until the task force has had 60 days or more to review the proposed retrieval program and recommend any proposed changes. The director may implement the retrieval program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(c) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed."

(Amended by Stats. 2021, Ch. 615, Sec. 118. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615. Inoperative April 1, 2029. Repealed as of January 1, 2030, by its own provisions.)

Florida

“Chapter 68B-55.003 Trap Retrieval Program Funded Pursuant to Sections 379.368 and 379.2424, F.S.

(1) Traps shall be retrieved by Commission personnel or by a contractor under direct oversight of such personnel, by any approved persons through either a cooperative agreement with federal, state, or local governments, or with fishery participant organizations acting in conjunction with the Commission.

(2) For each trap retrieved pursuant to this section, the following information shall be documented:

- (a) The intended species targeted by the trap.
- (b) Owner identification/endorsement number.
- (c) Presence or absence of a required tag.
- (d) Commercial or recreational trap.
- (e) Location of trap.
- (f) Buoy colors.

(3) The Commission’s Division of Law Enforcement office, in the area most appropriate to the cleanup, shall be notified by the Commission program administrator, no less than 24 hours prior to commencement of trap retrieval under this program, and on each day thereafter until cleanup ceases.

(4) Trap owners affected by a disaster, pursuant to Section 379.368(3), F.S., will be allowed ten calendar days after notification to claim traps from a Commission authorized storage area. Unclaimed traps will be properly disabled and disposed of as trap debris.”

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-03.

“Chapter 379.2424 Retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps during closed season; commission authority.—

The Fish and Wildlife Conservation Commission is authorized to implement a trap retrieval program for retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps remaining in the water during the closed season for each species. The commission is authorized to contract with outside agents for the program operation.”

History.—s. 4, ch. 87-116; s. 4, ch. 87-120; s. 230, ch. 94-356; s. 246, ch. 99-245; s. 2, ch. 2004-72; s. 13, ch. 2007-223; s. 71, ch. 2008-247.

Note.—Former s. 370.143(1).

Louisiana

“RS 56:332 Crabs; release of immature female crabs and crabs in berry stage; method of taking crabs; time limitations; by-catch; penalties, abandoned crab trap removal program; escape rings

N.(1) Notwithstanding any other provision of law to the contrary, the Wildlife and Fisheries Commission may develop and establish a program to remove abandoned crab traps from state-owned lake and river beds and other water bottoms of the state. Any crab trap found in state-owned lakes and river beds and other water bottoms of the state during a period of time when their use has been prohibited by the commission under the provisions of Paragraph (2) of this Subsection shall be considered abandoned and may be removed by those persons authorized by the commission.

(2) The commission may prohibit crab traps in state-owned lake and river beds and other water bottoms of the state as follows:

- (a) During a sixteen-consecutive-day period between February first and March thirty-first, the commission may prohibit crab traps in one or more geographical areas of the state.
- (b) During a fourteen-consecutive-day period of time which includes the opening day of the spring inshore shrimp season the commission may prohibit crab traps in one or more geographical areas of the state.
- (c) At any time crab harvest is closed for biological or technical reasons, the commission may prohibit crab traps for the duration of the closure.

(d) The period of time for the prohibitions of crab traps authorized in Subparagraphs (a) and (b) of this Paragraph shall be specified by the commission for each geographical area, which period may be for fewer than the sixteen consecutive days, but shall consist of consecutive days within the sixteen-consecutive-day period."

Mississippi

"MS Code § 49-15-84.1 Closed season for use of crab traps; removal of abandoned traps.

(1) The commission may establish a closed season for the use of crab traps in the public waters of this state. The commission may designate the closed season as not less than ten (10) days nor more than thirty (30) days per year. Any crab trap remaining in the public waters after the expiration to the seventh day of a closed season may be considered as abandoned under the regulations established by the commission.

(2) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

- (a) The conservation and management of crab resources;
 - (b) Boating safety;
 - (c) The cleanliness of the beds and bottoms of the public waters of the state; and
 - (d) Enforcement of this chapter.
- (3) Abandoned crab traps are litter and are subject to immediate removal and disposal."

Oregon

"635-005-0490: Derelict Dungeness Crab Gear

Derelict Dungeness crab gear may be retrieved from the ocean, including the Columbia River, and transported to shore provided that:

(1) The retrieving vessel holds a valid boat license, issued pursuant to ORS 508.260, and the captain and crew of that vessel hold valid commercial fishing license(s), issued pursuant to ORS 508.235.

(2) The number of derelict Dungeness crab gear which may be retrieved per trip are as follows:

(a) From the opening of the ocean Dungeness crab fishery in the area where retrieval takes place until the second Monday in June of the same ocean Dungeness crab season: 25 derelict pots and rings in aggregate;

(b) From the second Monday in June through August 14: 50 derelict pots and rings in aggregate;

(c) August 15 through October 31: an unlimited number of derelict pots and rings may be retrieved.

(d) Effective May 4 through August 14, under a waiver granted by the Department, the amount of derelict gear specified on the waiver may be retrieved provided that:

(A) The vessel is operating under a state contract to recover derelict gear;

(B) A waiver must be requested, approved, and issued prior to retrieval efforts as follows:

(i) A waiver request must be submitted in writing to: Oregon Department of Fish and Wildlife, Marine Resources Program, 2040 SE Marine Science Drive, Newport, OR 97365 or via email to Jeannine.C.Smith@odfw.oregon.gov;

(ii) Once the request is reviewed and approved, ODFW will issue a waiver; and

(iii) The waiver must be issued prior to retrieval efforts.

(C) A copy of the waiver must be on board the vessel during all gear recovery activities; and

(D) The vessel operator complies with all terms and conditions of the waiver.

(3) Upon retrieval from the ocean or Columbia River, the Dungeness crab gear must be un-baited.

(4) Crab from the retrieved Dungeness crab gear shall not be retained, except crab of legal size and sex may be retained by vessels holding a valid Dungeness crab permit, at such times and in such areas that Dungeness crab may otherwise be legally taken for commercial purposes.

(5) Immediately upon retrieval of Dungeness crab gear, the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot or ring retrieval, number of retrieved crab pots or rings in aggregate, location of retrieval, and retrieved Dungeness crab gear owner identification information.

(6) Any retrieved Dungeness crab gear must be transported to shore during the same fishing trip that retrieval took place."

Texas

"Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.115. Crab Traps; Removal of Abandoned Traps.

(a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed season established by the commission under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

- (1) enforcement of this chapter;
- (2) the cleanliness of the beds and bottoms of the public water of this state;
- (3) boating safety; and
- (4) the conservation and management of crab resources.

(d) Abandoned crab traps are litter for purposes of Section 365.011, Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code. Section 12.1105 does not apply to the removal and disposal of an abandoned crab trap under this section.

(e) A proclamation made by the commission under this section prevails over a conflicting commission proclamation made under Chapter 47, 61, or 66."

Added by Acts 2001, 77th Leg., ch. 278, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 858, Sec. 1, eff. June 20, 2003.

Washington

"RCW 77.70.500. Crab pot removal permit—Shellfish pot removal permit—Rules—Penalty.

(1)(a) As part of a coastal commercial Dungeness crab pot removal program, the department shall issue a crab pot removal permit that allows the participants in the Dungeness crab-coastal fishery created in RCW 77.70.280 to remove crab pots belonging to state commercial licensed crab fisheries from coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season, regardless of whether the crab pot was originally set by the participant or not.

(b) Beginning fifteen days after the close of the primary commercial Dungeness crab-coastal harvest season, any individual with a current commercial Dungeness crab-coastal license and a valid crab pot removal permit issued by the department may remove a crab pot or crab pots used to harvest Dungeness crabs remaining in coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season.

(c) In cooperation with individuals with a current commercial Dungeness crab-coastal license, the department may expand the coastal commercial Dungeness crab pot removal program to those areas closed to commercial Dungeness crab harvest prior to the end of the primary season and during that portion of the coastal Dungeness crab fishery that occurs from May 1st through September 15th.

(d) Nothing in this section prohibits the department from exempting certain crab pots from the coastal commercial Dungeness crab pot removal program or from restricting crab pot removal activities to specific geographic areas.

(2)(a) The department may expand the crab pot removal program to allow for the removal of shellfish pots belonging to state commercial or recreational licensed shellfish fisheries from Puget Sound waters during shellfish harvest closures, regardless of whether the shellfish pot was originally set by the permittee or not.

(b) If the department expands the program to Puget Sound waters, the department shall limit the program as necessary to streamline implementation, minimize the oversight burden on fish and wildlife enforcement officers, minimize interference with lawful fisheries and other user groups, minimize administrative overhead cost, and avoid the collection of shellfish pots that are not abandoned. The program may be limited as deemed appropriate by the department, including limitations on:

- (i) The number of participants;
 - (ii) The eligible geographic areas in Puget Sound where shellfish pots may be recovered;
 - (iii) The types of shellfish pots that may be recovered;
 - (iv) The maximum or minimum depth where a shellfish pot must be located to be eligible for recovery; and
 - (v) The ports through which the vessels collecting the abandoned shellfish pots may operate.
- (3) The department may adopt rules to implement subsections (1) and (2) of this section.
- (4)(a) The following are exempt from complying with the lost and found property provisions in chapter 63.21 RCW:
- (i) An individual participating in permitted crab pot removal activities in coastal marine waters who has a valid crab pot removal permit, and who adheres to the provisions of the permit as they relate to crab pot removal; and
 - (ii) An individual participating in permitted shellfish pot removal activities in Puget Sound waters who has a valid shellfish pot removal permit and who adheres to the provisions of the permit as they relate to shellfish pot removal.
- (b) The individual who removes a shellfish pot under a valid crab pot removal permit or a valid shellfish pot removal permit takes the property free and clear of all claims of the owner or previous holder and free and clear of all individuals claiming ownership under the previous owner.
- (5) A violation of this section, or any rules or permit conditions provided under this section, is punishable as provided in RCW 77.15.750.
- (6) Individuals who remove shellfish pots under a valid crab pot removal permit or a valid shellfish pot removal permit in accordance with this section are not subject to permitting under RCW 77.55.021.”
- [2020 c 172 § 1; 2010 c 193 § 3; 2009 c 355 § 1.]

III. Regulations Regarding Permitting for Participants in Abandoned Gear Retrieval Programs

Oregon

“635-005-0491: Post-season Derelict Gear Recovery Permits

- (1) Fifteen days after the close of ocean commercial crab season, the Department may grant Post-Season Derelict Gear Recovery Permits to commercial vessels, licensed pursuant to ORS 508.260, to recover Dungeness crab gear that remains in the ocean.
- (2) It is unlawful to fail to follow the provisions of a Post-Season Derelict Gear Recovery Permit.
- (3) The Director or Director’s designee may grant emergency exemptions from the gear recovery program for Dungeness crab gear that was unable to be removed from the ocean prior to fifteen days after the end of the season as a result of undue hardship as defined in OAR 635-005-0240. Requests for exemptions must be submitted to the Marine Resources Program, Newport by August 29 of each year.
- (4) The provisions of ORS 98.005, 98.015, 98.025 and 98.302 to 98.436 do not apply to crab pots removed from the ocean under the provisions of a Post-Season Derelict Gear Recovery Permit.
- (5) Dungeness crab gear retrieved under the authority of a Post-Season Derelict Gear Recovery Permit and not subject to emergency exemption under section (3) of this rule may be disposed of at the permit holder’s discretion after documenting retrieval of the gear in accordance with permit conditions.”

Washington

“WAC 220-340-490: Commercial crab fishery—Coastal gear recovery permits.

(1) Emergency coastal crab gear recovery permit. Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) Coastal crab gear recovery permit. After the September 15 close of the primary coastal commercial crab season and from May 1 through September 15, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.”

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 21-24-031 (Order 21-259), § 220-340-490, filed 11/22/21, effective 1/1/22; WSR 20-15-049 (Order 20-128), § 220-340-490, filed 7/9/20, effective 8/9/20; WSR 20-04-066 (Order 20-15), § 220-340-490, filed 1/31/20, effective 3/2/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-490, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-044, filed 11/9/12, effective 12/10/12.]

Reviser's note: The permanent filing 20-04-066 contained no amendments to this section.

IV. Fee Structures

Florida

Chapter 379.368 establishes a retrieval fee of \$10 per trap retrieved.

“Chapter 379.368 Fees for the retrieval of spiny lobster, stone crab, blue crab, and black sea bass traps during closed season.—

(1) Pursuant to s. 379.2424, the commission shall assess trap owners, and collect, a retrieval fee of \$10 per trap retrieved. However, for each person holding a spiny lobster endorsement, a stone crab endorsement, or a blue crab endorsement issued under rule of the commission, the retrieval fee shall be waived for the first five traps retrieved. Traps recovered under this program shall become the property of the commission or its contract agent, as determined by the commission, and shall be either destroyed or resold to the original owner. Revenue from retrieval fees shall be deposited in the Marine Resources Conservation Trust Fund and used solely for operation of the trap retrieval program.

(2) Payment of all assessed retrieval fees shall be required prior to renewal of the trap owner's saltwater products license. Retrieval fees assessed under this program shall stand in lieu of other penalties imposed for such trap violations.

(3) In the event of a major natural disaster, such as a hurricane or major storm, that causes massive trap losses within an area declared by the Governor to be a disaster emergency area, the commission shall waive trap retrieval fees.”

History.—s. 4, ch. 87-116; s. 4, ch. 87-120; s. 34, ch. 96-321; s. 246, ch. 99-245; s. 42, ch. 2000-364; s. 2, ch. 2004-72; s. 13, ch. 2007-223; s. 155, ch. 2008-247.

Note.—Former s. 370.143(2)-(4).

Chapter 379.367 establishes setting aside a portion of the funding from spiny lobster endorsements to fund the trap retrieval program established in FL.

“Chapter 379.367 Spiny lobster; regulation.

(2)(a)1. Each commercial harvester taking or attempting to take spiny lobster with a trap in commercial quantities or for commercial purposes shall obtain and exhibit a spiny lobster endorsement number, as required by the Fish and Wildlife Conservation Commission. The annual fee for a spiny lobster endorsement is \$125. This endorsement may be issued by the commission upon the receipt of application by the commercial harvester when accompanied by the payment of the fee. The design of the applications and of the trap tag shall be determined by the commission. Any trap or device used in taking or attempting to take spiny lobster, other than a trap with the endorsement number, shall be seized and destroyed by the commission. The proceeds of the fees imposed by this paragraph shall be deposited and used as provided in paragraph (b). The commission may adopt rules to carry out the intent of this section.

2. Each commercial harvester taking or attempting to take spiny lobster in commercial quantities or for commercial purposes by any method, other than with a trap having a spiny lobster endorsement number issued by the commission, must pay an annual fee of \$100.

(b) Twenty-five dollars of the \$125 fee for a spiny lobster endorsement required under subparagraph (a)1. must be used only for trap retrieval as provided in s. 379.2424. The remainder of the fees collected under paragraph (a) shall be deposited as follows:

1. Fifty percent of the fees collected shall be deposited in the Marine Resources Conservation Trust Fund for use in enforcing the provisions of paragraph (a) through aerial and other surveillance and trap retrieval.
2. Fifty percent of the fees collected shall be deposited as provided in s. 379.3671(4).”

Appendix 4. Future Consideration Recommendation Examples

Appendix 4 provides examples of laws and regulations in other states that support the recommendations made for future consideration in Massachusetts.

I. Marine Debris Found Along the Shoreline

I. Marine Debris Found Along the Shoreline

Florida

"68B-55.002 Retrieval of Trap Debris.

(1) Local, state, or federal governmental entities, nonprofit nongovernmental organizations, fishery participant organizations, or other community or citizens groups are hereby authorized to remove trap debris from shoreline areas landward of mean low water, and from mangroves or other shoreline vegetation when they organize, promote, and participate in coastal cleanup events for the purpose of removing marine debris.

(2) Except as provided in subsection (3), other coastal cleanup events for the purpose of removing trap debris from all other areas of state waters shall only be undertaken with prior authorization from the Commission, to assure that such removal is adequately supervised.

(3) Local, state, or federal government personnel may remove trap debris located in areas that are permanently closed to trapping without prior authorization from the Commission.

Rulemaking Authority Art. IV, Sec. 9, Fla. Const. *Law Implemented* Art. IV, Sec. 9, Fla. Const. *History*—New 7-1-03, Amended 10-15-07.

Below are links to examples of rules for certain species (stone crab, spiny lobster, and blue crab) which declare traps a public nuisance if left for a certain period of time and allows them to be removed by the Division of Law Enforcement:



[68B-13.008\(4\)\(e\), FAC](#) – Stone Crab



[68B-24.005\(5\), FAC](#) – Spiny Lobster



[68B-45.0045\(1\)\(b\), FAC](#) – Blue Crab

Texas

Health and Safety Code Sec. 365.011. DEFINITIONS. In this subchapter:

(6) "Litter" means:

(B) non-decayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

Acknowledgments

The following is a list of stakeholders who were interviewed as part of the research process in creating this paper. The conversations were helpful in producing this paper, and had they not generously donated their time, the final conclusions and recommendations as well as the analyses of other states' gear retrieval programs may not have been as thorough. Their time and knowledge is greatly appreciated.

Alabama Department of Conservation and Natural Resources
Atlantic States Marine Fisheries Commission - Law Enforcement Sub-Committee
California Department of Fish and Wildlife
Center for Coastal Studies
Connecticut Department of Energy and Environmental Protection
Cornell Cooperative Extension of Suffolk County - Marine Program
Florida Fish & Wildlife Conservation Commission
Gulf of Maine Lobster Foundation
Gulf States Marine Fisheries Commission
Island Institute
Louisiana Department of Wildlife and Fisheries
Maine Marine Patrol
Massachusetts Environmental Police
Massachusetts Lobstermen's Association
Mississippi Department of Marine Resources
National Sea Grant Law Center
New Hampshire Fish and Game Department
New Jersey Department of Environmental Protection
New Jersey Division of Fish and Wildlife
New York State Department of Environmental Conservation
NOAA Marine Debris Program
North Carolina Coastal Federation
North Carolina Division of Marine Fisheries
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