

## Express Terms Summary

The New York State Department of Environmental Conservation (Department) proposes to add a new 6 NYCRR Part 39 and to amend 6 NYCRR Part 175. The proposed addition and amendment would:

- (1) update Part 175 to reflect the reestablishment of the Department's Division of Marine Resources (DMR), separate and distinct from the Division of Fish and Wildlife (DFW);
- (2) clarify the processes for issuance and management of special fish and wildlife licenses and permits;
- (3) add a new Part 39, titled "Marine Licenses and Permits – Definitions and Uniform Procedures" to describe the processes for issuance, reissuance, surrender, designation, and revocation of marine resources licenses and permits;
- (4) detail the process for the immediate suspension of a shellfish dealer permit where violations by the permit holder pose a threat to human health; and
- (5) describe the process for Department suspension of review of a license or permit application where there is a pending enforcement matter against the applicant.

## Revised Express Terms

### 6 NYCRR Part 39, Marine Resources Licenses and Permits – Definitions and Uniform Procedures

A new Part 39 is added to read as follows:

#### Section 39.1. Purpose.

This Part describes, notwithstanding any provision of this Chapter to the contrary, general requirements for applications, processes for license and permit renewal, amendment, reissuance, surrender and designation, department action on applications, and license and permit revocation and suspension procedures for marine licenses and permits authorized by the provisions listed in section 39.2 of this Part. Certain terms not defined by the Environmental Conservation Law are defined here to provide for consistent review of applications for and issuance of such licenses and permits.

#### Section 39.2. Applicability.

(a) This Part applies to marine licenses and permits authorized by the following sections of the Environmental Conservation Law:

(1) Article 11: section 11-0305—General powers and duties of the department; section 11-1303 – Open seasons, size and catch limits and manner of taking fish fixed by regulation; section 11-1505— Open seasons, size and catch limits and manner of taking and possession of fish; regulations.

(2) Article 13: section 13-0309—Taking, handling and importation of shellfish; general provisions; section 13-0311—Digger's permit to take shellfish for commercial purposes; when not required; section 13-0313—Shellfish growers; definitions; bed

permit; section 13-0315—Shellfish shipper's and processor's permit; section 13-0316—Marine hatcheries; off-bottom and on-bottom culture; permits; section 13-0319—Shellfish regulations; section 13-0321—Taking and importation of shellfish for transplanting and other purposes; section 13-0323—Oysters; prohibited acts; section 13-0325—Clams; prohibited acts; section 13-0327—Scallops; section 13-0328—Commercial licenses; limited entry; section 13-0329—Lobsters; permit to take; prohibited acts; section 13-0330—Whelks or conchs; license to take; section 13-0331—Crabs; permit to take; prohibited acts; section 13-0333—Menhaden; prohibited acts; section 13-0334—Marine and coastal district food fish and crustacea dealers and shippers license; section 13-0335—Food fish; license; prohibited acts; section 13-0336—Marine and coastal district party and charter boat license; section 13-0343—Nets other than trawls; restrictions on use of nets and trawls; section 13-0343-a—Fish pots and traps; restrictions; section 13-0347—Management of striped bass in marine waters.

(b) This Part applies to licenses and permits authorized by the following sections of the Environmental Conservation Law when issued for an activity taking place in the marine and coastal district, the Hudson River south of the Troy Dam, or in any tributary of the Hudson River up to the first impassable barrier to fish:

(1) Article 11: section 11-0315—Hudson River shad fishery; section 11-0507—Liberation of fish, shellfish and wildlife; section 11-0515—Licenses to collect, possess or sell for propagation, scientific or exhibition purposes; section 11-0517—Taking for propagation and stocking; fish hindering propagation of food fish or shellfish; section 11-

1315—Taking and sale of bait fish; section 11-1503—Nets; license required; power of department.

(c) This Part applies to endangered and threatened species licenses and permits authorized by section 11-0535 of the Environmental Conservation Law when issued in relation to any of the following:

- (1) Atlantic sturgeon;
- (2) shortnose sturgeon;
- (3) sea turtles; or
- (4) marine mammals.

#### Section 39.3. Definitions.

As used in the sections of the Environmental Conservation Law listed in section 39.2 of this Part and their accompanying regulations, in licenses and permits issued pursuant to such sections and regulations, and in applications for such licenses and permits, the following terms shall mean:

(a) 'Applicant' means a person, as defined in section 1-0303(18) of the Environmental Conservation Law, filing an appropriate application and supporting materials for the purpose of obtaining a license or permit from the department.

(b) 'Complete Application' means an application for a license or permit, using the appropriate form provided by the department, which is determined by the department to be complete for the purpose of commencing review of the application, but which may need to be supplemented during the course of review in order to enable the department to make the findings and determinations required by law.

(c) 'Designation' means the identification by a license or permit holder of an immediate family member, pursuant to ECL § 13-0328(6)(a), to whom the license or permit will be reissued in the event that the license or permit holder dies prior to surrendering his or her license or permit to the department.

(d) 'Domicile' means that place where a person has his or her true, fixed and permanent home, and to which he or she intends to return even though he or she may actually reside elsewhere.

(e) 'Educational' means that the purpose of the collection, possession and/or exhibition of marine species, such as fish, crustacea, horseshoe crabs, mollusks, sea turtles or marine mammals, is to teach or instruct members of the public about the characteristics, ecological role or conservation needs of the marine species, or a population or community of such species.

(f) 'Exhibition' means regular public display or showing to members of the public of marine species, such as fish, crustacea, horseshoe crabs, mollusks, sea turtles or marine mammals, or parts thereof or products made therefrom, where the display or showing itself is the chief object. A license or permit authorizing possession for exhibition purposes may permit exhibition with the intention or expectation of receiving monetary gain.

(g) 'Renewal' means department authorization for a new permit term or recertification of a permit for a previously approved activity, or activity which will be continuing at the same site or facility without material change.

(h) 'Reissuance' means the transfer of a license or permit to an immediate family member of the prior license or permit holder pursuant to ECL section 13-0328(6)(a).

(i) 'Resident' means a person whose domicile is within New York State.

(j) 'Scientific' means that the use of a marine species, such as fish, crustacea, horseshoe crabs, mollusks, sea turtles or marine mammals, or parts thereof by a scientific institution, clinic, laboratory or individual researcher affiliated with a recognized or accredited scientific or educational institution, non-governmental organization, conservation organization or government agency, is for the purpose of expanding scientific knowledge or to gain knowledge of the marine species, or a population or community of the species. Captive-bred populations may be established and maintained as part of a scientific endeavor. The determination of whether a use is an appropriate scientific use will be made in the sole discretion of the Commissioner or the Commissioner's designee.

Section 39.4. General requirements for applications.

(a) General requirements for a complete application. In order to be determined complete for the purpose of commencing department review, the application for a license or permit must meet the following criteria:

(1) The application must include a properly completed department application form, supporting documentation, and supplemental information as required.

(2) The application must be accompanied with cash, a check or a money order made payable to the Department of Environmental Conservation for the total amount of the license, permit or application fee, where applicable. Cash payments should not be submitted through the mail.

(3) The application may be modified by the applicant at any time prior to issuance of the license or permit. A modification of an application will require a commensurate extension of the review time period.

(4) The application will bear a form notice, to be signed by the applicant, to the effect that false statements made therein are punishable pursuant to section 210.45 of the Penal Law.

(5) Unless instructed otherwise, license and permit applications must be submitted to the Division of Marine Resources, NYS Department of Environmental Conservation, 123 Kings Park Boulevard (Nissequogue River State Park), Kings Park, NY 11754.

(6) If the applicant is a corporation, firm, partnership, association, institution or public or private agency, the application must be signed on behalf of such entity by the president or an appropriate principal officer. The application must list all persons authorized to act on behalf of the corporation, firm, partnership, association, institution or agency.

(7) All applicants that are corporations, limited liability companies or limited partnerships must provide documentation that they are in good standing at the time the application is submitted to the department. All applicants that are sole proprietorships, assumed names (DBA), general partnerships or limited liability partnerships must provide a copy of the business certificate usually available from the local county clerk's office.

(8) Vessels

(i) If a vessel must be identified for the issuance of a specific license or permit, the applicant must annually provide valid documentation identifying and describing the

vessel. Such documentation may include a valid United States Coast Guard Certificate of Documentation or a valid state registration for the vessel or any other required documentation.

(ii) If the applicant for a license or permit is a corporation, the application must name a specific vessel used by the corporation to conduct the authorized fishing activity. The corporate license or permit must be carried on the specific vessel named on the license or permit when that vessel is being used to conduct the authorized fishing activity.

(b) Renewals.

(1) Applications for renewal of a license or permit must be received by the department no later than one year from the date of expiration. Unless otherwise specified in paragraph 39.4(b)(2), all marine licenses and permits expire on December 31.

(2) Exceptions to 39.4(b)(1) are the following:

(i) As required by ECL section 11-0515(1), the license to collect or possess expires one year from the effective date of the license.

(ii) As required by ECL section 13-0335(2), the non-resident food fishing license must be issued in January of each year.

(iii) Applications for the striped bass commercial harvesters permit must be received by the date described in Part 40.1(j)(9) of this Title.

(c) Enforcement actions. If an enforcement action has been or is commenced against the applicant for any alleged violation of the Environmental Conservation Law, its associated regulations, or other environmental laws or regulations administered by the department, the department may suspend processing and review of an application

by providing written notice to the applicant. Such suspension of processing and review may remain in effect pending final resolution of the enforcement action.

Section 39.5. Applications for license and permit amendments, reissuances, surrender and designations.

(a) Unless instructed otherwise, applications for amendment or reissuance of a license or permit and requests to surrender or designate a license or permit must be submitted to the Division of Marine Resources, NYS Department of Environmental Conservation, 123 Kings Park Boulevard (Nissequogue River State Park), Kings Park, NY 11754.

(b) Reissuance of Limited Entry Licenses and Permits.

(1) License and permit holders may apply for reissuance of their food fishing license (including any associated striped bass commercial harvesters permit and summer flounder commercial permit), crab permit, whelk license, or lobster permit to a member of their immediate family, as defined in ECL 13-0328(6)(d), who is at least 16 years old. Reissuance of a lobster permit includes reissuance of the permit trap tag allocation, if applicable. Reissuance of a food fishing license with an associated striped bass commercial harvesters permit does not entitle the recipient to a full share of tags. The license or permit must be valid at the time of reissuance.

(2) Applications for the reissuance of valid licenses or permits must be submitted on a form prescribed by the department. The new license or permit holder may be subject to a record of compliance review prior to reissuance.

(3) Once a license or permit has been reissued, the prior license or permit holder is no longer eligible to participate in the fishery associated with that license or permit. The

prior license or permit holder may not apply for the same type of license or permit but may be the recipient of a reissued or designated license or permit.

(c) Surrender. A person may surrender a license or permit by returning the license or permit card, along with written notification, to the Division of Marine Resources. The notice of surrender must include:

(1) license or permit card; and

(2) written notification to the Division of Marine Resources. The written notification must:

(i) identify the current license or permit holder;

(ii) identify the license or permit to be surrendered by its license or permit number;

and

(iii) state why the license or permit is being surrendered.

A surrendered license or permit may be returned to the license or permit holder within the same permit year upon written notification to the Division of Marine Resources.

(d) Designation of Limited Entry Licenses and Permits.

(1) Current license or permit holders may identify a member of his or her immediate family, as defined in ECL § 13-0328(6)(d), to whom a food fishing license (including any associated striped bass commercial harvesters permit and/or summer flounder commercial permit), crab permit, whelk license, or lobster permit shall be reissued in the event that the license or permit holder dies prior to surrendering his or her license or permit to the department. Designation of a lobster permit includes designation of the permit trap tag allocation, if applicable. Designation of a food fishing license with an

associated striped bass commercial harvesters permit does not entitle the recipient to a full share of tags.

(2) Designation requests may be made by submitting a designation form prescribed by the department or a written statement that includes the following:

- (i) The printed name of the current license or permit holder;
- (ii) A list of the licenses or permits, including the license or permit number, to be designated;
- (iii) The name and date of birth of the intended recipient;
- (iv) The relationship of the intended recipient to the current license or permit holder;
- (v) The domicile of the intended recipient; and
- (vi) The notarized signature of the license or permit holder. An accompanying signature of a witness to the license or permit holder's signature may be accepted in lieu of a notarized signature at the department's discretion.

(3) The license or permit holder may designate a new recipient at any time by submitting an updated designation form or written statement pursuant to paragraph 39.5(d)(2).

(4) Proof of the permit or license holder's death, in the form of a death certificate or other proof determined to be acceptable by the department, is required prior to reissuance of the license or permit to the designated recipient.

(5) If upon the license or permit holder's death the designated recipient does not wish to engage in the commercial fishing activities authorized by the license or permit and wishes to waive his or her eligibility for reissuance of such license or permit, he or she may identify an alternate recipient of the license or permit by notifying the

department in writing. The written notification must be notarized and include the following:

- (i) The name and date of birth of the alternate recipient; and
- (ii) A list of the licenses or permits, including the license or permit number, to be received by the alternate recipient. The alternate recipient need not be an immediate family member as defined in ECL § 13-0328(6)(d) but must be at least sixteen years old.

Section 39.6. Department action on applications.

(a) The department will determine if an application is complete for review within 30 calendar days after receipt of the application. The application review period will not begin until the department has determined that an application is complete. Except as described in subdivision 39.6(b), incomplete or vague applications will be returned to the applicant with a request for additional information. Failure by an applicant to meet the reporting requirements of a current license or permit may result in a determination by the department that the application is incomplete. Nothing in this section precludes the department from requesting additional information in accordance with subdivision 39.9(b).

(b) If an application for a license to collect or possess issued pursuant to ECL section 11-0515 is determined to be incomplete, the department will send written notice to the applicant, identifying any areas of incompleteness and requesting additional information. Failure by the applicant to provide the requested information within 90 calendar days of the department's notice may result in the application being deemed withdrawn without prejudice.

(c) If the application is determined to be complete, the department will mail to the applicant a decision in the form of a license or permit with conditions or, if applicable, a statement that the license or permit applied for has been denied, with an explanation for the denial, within 45 calendar days after receipt of the completed application.

(d) Grounds for denial of a license or permit application include:

(1) materially false or inaccurate statements in the application, supporting papers or required reports;

(2) failure by the applicant to meet the requirements of a current or prior license or permit, including reporting requirements, or to comply with any terms or conditions of a license or permit;

(3) exceeding the scope of the purpose or activities described in a current or prior license or permit;

(4) noncompliance with any provision of the Environmental Conservation Law or its accompanying regulations, or any other local, State, or Federal law related to the licensed or permitted activity;

(5) submission of a check or money order by the applicant for a license, permit or application fee which is returned to the department for insufficient funds;

(6) conviction of any offense relating to cruelty to animals or issuance of a judicial order prohibiting possession of a marine species, such as a fish, crustacean, horseshoe crab, mollusk, sea turtle or marine mammal; and

(7) determination by the Department that issuance of the license or permit would be contrary to the policies described in section 1-0101 of the ECL.

(e) If the department fails to mail a decision within the time periods specified above, the applicant may make notice of that failure, by means of certified mail, return receipt requested, addressed to the Director of the Division of Marine Resources, NYS Department of Environmental Conservation, 123 Kings Park Boulevard (Nissequogue River State Park), Kings Park, NY 11754. This notice must contain the applicant's name, the name of the license or permit applied for, and the date the application was mailed to the department.

(f) If the department fails to mail a decision to the applicant within 15 working days of the receipt of such notice, the application will be deemed approved and the license or permit deemed granted, subject to the standard terms or conditions applicable to such license or permit.

#### Section 39.7. License and permit revocations by the department.

(a) A license or permit may be revoked by the department for a period of time it deems appropriate, after taking into consideration all relevant circumstances. The grounds for revocation include:

(1) materially false or inaccurate statements in the application, supporting papers or required reports;

(2) failure by the license or permit holder to comply with any terms or conditions of the license or permit, including reporting requirements;

(3) exceeding the scope of the purpose or activities described in the application for a license or permit;

(4) noncompliance with any provision of the Environmental Conservation Law or its accompanying regulations, or any other local, State, or Federal law related to the licensed or permitted activity;

(5) submission of a check or money order by the applicant for a license, permit or application fee which is returned to the department for insufficient funds or nonpayment after the license or permit has been issued; and

(6) conviction of any offense relating to cruelty to animals or issuance of a judicial order prohibiting possession of a marine species, such as a fish, crustacean, horseshoe crab, mollusk, sea turtle or marine mammal.

(b) The department shall send a notice of intent to revoke to the license or permit holder by certified mail, return receipt requested. The notice must state the alleged facts or conduct which warrant the revocation and the effective date of the revocation.

(c) Within 10 working days of receiving a notice of intent to revoke, the license or permit holder may submit a written statement to the Director of the Division of Marine Resources, NYS Department of Environmental Conservation, 123 Kings Park Boulevard (Nissequogue River State Park), Kings Park, NY 11754. The written statement must set forth either the reasons why the license or permit should not be revoked, or a request for a hearing, or both. If a hearing is requested, the license or permit holder must include a statement which responds to each of the allegations stated in the notice of intent to revoke. The license or permit holder must submit a copy of the written request for hearing to the Chief Administrative Law Judge, Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233. Failure by the license or permit

holder to timely submit a statement or request a hearing will result in the department's action becoming effective on the date specified in the notice.

(d) Within 10 working days of receipt of the license or permit holder's statement or request for hearing, the department shall either:

(1) if only a statement is submitted, rescind or confirm the notice of revocation based on the information provided by the license or permit holder; or

(2) if a hearing has been requested, the Chief Administrative Law Judge will notify the license or permit holder of a date and place for a hearing and the manner in which the hearing will be conducted. The hearing shall be commenced no later than 60 days from this notification.

(e) In the event such a hearing is held, the Commissioner, or the Commissioner's designee, shall within 60 calendar days of receipt of the completed record of the hearing, issue a decision which:

(1) continues the license or permit in effect as originally issued;

(2) modifies the license or permit conditions; or

(3) revokes the license or permit.

(f) Except as otherwise stated in this section, hearings shall be conducted in accordance with Part 622 of this Title.

(g) Nothing in this Part precludes or affects the commissioner's authority to take emergency actions summarily suspending a license or permit under section 401 of the State Administrative Procedure Act.

(h) Upon notice that the license or permit has been revoked by the department, the license or permit holder must surrender his or her license or permit to the issuing office.

(i) When a license or permit has been revoked, the prior license or permit holder must comply with written directives provided by the department for the final disposition of any fish, crustacea, horseshoe crabs, mollusks, sea turtles, marine mammals, or parts or products thereof, or any other property or thing formerly possessed under the license or permit. All liabilities and expenses for the final disposition of such fish, crustacea, horseshoe crabs, mollusks, sea turtles, marine mammals, or parts, products, or articles are the responsibility of the prior license or permit holder. No action for damages shall lie for such seizure and disposition of seized animals and such disposition shall be at the sole discretion of the department.

Section 39.8. Shellfish dealer license and permit suspensions by the department.

(a) This section applies to all shellfish shipper's and processor's permits issued pursuant to ECL section 13-0315.

(b) Where a permit holder's noncompliance with the Environmental Conservation Law, its accompanying regulations, or the terms or conditions of the permit results in a demonstrable threat to public health or safety, the department may temporarily suspend the permit.

(c) The department shall notify the permit holder in writing that his or her permit has been suspended. The notice of suspension must state the facts warranting the suspension and identify the threat to public health or safety. The suspension shall be effective immediately upon receipt of the notice.

(d) Within 10 working days of receiving a notice of suspension, the permit holder may submit either:

(1) a written plan of action, outlining the corrective actions that have been taken, or will be taken, to address the conditions warranting suspension; or

(2) a written statement setting forth the reasons the permit should not be suspended.

All submissions shall be addressed to the Director of the Division of Marine Resources, NYS Department of Environmental Conservation, 123 Kings Park Boulevard (Nissequogue River State Park), Kings Park, NY 11754.

(e) Within five working days of receipt of the permit holder's written plan of action or statement, the department shall either:

(1) If a written plan of action is submitted, notify the license or permit holder that the plan of action has been approved or rejected and, if deemed necessary by the department, conduct a follow-up inspection. If department staff determines that the conditions warranting suspension have been corrected, the department shall immediately notify the permit holder that the suspension has been lifted.

(2) If a written statement is submitted, rescind or confirm the suspension based on the information provided by the permit holder.

(f) If at any time during the suspension period the department commences permit revocation pursuant to section 39.7 of this Part, the suspension shall remain in effect until the department makes a final decision either continuing or revoking the permit or until the suspension is lifted pursuant to subdivision 39.8(e).

(g) Upon suspension of a permit, shellfish may be examined, embargoed and/or condemned by the department pursuant to section 42.18 of this Title.

Section 39.9. Additional provisions.

(a) Any time period specified in this Part may be extended for good cause by the department. The department must notify the applicant or license or permit holder in writing of the duration of the extension.

(b) At any time during the review of an application for a license or permit or renewal, the department may request in writing any additional information which is reasonably necessary to make any findings or determinations required by law or regulation. Such a request must be explicit and must indicate the reasonable date by which the department is to receive the information. Failure to provide such information by the date specified in the request will be grounds for deeming the application incomplete.

(c) Where this regulation requires exchange of written materials within specified time periods, postmark or email dates will satisfy the requirements, when not otherwise specifically provided.

(d) Any person issued a license or permit assumes all liability and responsibility for any activity conducted under the authority of such license or permit or actions resulting from activities authorized by the license or permit.

(e) Any person who has been issued a license or permit pursuant to this Part consents to allow any authorized representative of the department access to enter upon his or her premises to conduct inspections for compliance with license or permit conditions or to take any action it deems necessary to stop or mitigate any threat to the health and welfare of a marine species, such as a fish, crustacean, horseshoe crab, mollusk, sea turtle or marine mammal, or human populations resulting from activities authorized pursuant to his or her license or permit.

## Revised Express Terms

### 6 NYCRR Part 175, Special Licenses and Permits – Definitions and Uniform Procedures

Subdivision 175.1(a) is amended to read:

(a) Definitions. The Environmental Conservation Law contains, but does not define, certain terms used in relation to the authorization of the issuance of special licenses and permits to collect, ~~[possess]~~ possess, sell, barter, exchange, trade [and] and/or traffic in certain species of fish and wildlife and products made from these species. Definitions are promulgated by these regulations to provide guidance for consistent review of applications for and issuance of such special licenses and permits. Definition of these terms will place holders of these special licenses and permits on notice as to which activities may be authorized and which are not.

Subdivision 175.1(b) is amended to read:

(b) Uniform procedures. These regulations describe, notwithstanding any provision of this Chapter to the contrary, general requirements for applications, department action on applications, license and permit revocation [procedures and] procedures, special provisions, and application procedures for license and permit renewals, reissuances, modifications, transfers and relinquishments for special licenses and permits authorized by the provisions of [articles] article 11 [and 13] of the Environmental Conservation Law except hunting, fishing and trapping licenses issued pursuant to title 7 of article 11 or section 11-0913.

Subdivision 175.1(c) is amended to read:

(c) Applicability. [This] Except as described in Parts 39.2(b) and 39.2(c) of this Title, this Part applies to special licenses and permits, hereinafter called licenses and [Permits,] permits, authorized by the following sections of the Environmental Conservation Law:

Paragraph 175.1(c)(1) is amended to read:

(1) title 3 of article 11: section [11-0305(15)—Sale, barter, purchase, possession, and transportation] 11-0305(13)—Possession, transportation, sale, barter and purchase of Pacific salmon and parts thereof;

Paragraph 175.1(c)(2) is amended to read:

(2) title 5 of article 11: section 11-0505—Interference with fish and wildlife; section 11-0507—Liberation of [fish] fish, shellfish and wildlife; section 11-0511—Possession and transportation of wildlife; section 11-0512—Possession, sale, barter, transfer, exchange and import of wild animals as pets prohibited; section 11-0515—Licenses to collect, possess or [sell;] sell for propagation, scientific or exhibition purposes; section 11-0517—Taking for propagation and [stocking,] stocking; fish hindering propagation of food fish or shellfish; section 11-0524—Nuisance wildlife control operators; section 11-0535—Endangered and threatened [species;] species, species of special concern; section 11-0535-a—Illegal ivory articles and rhinoceros horns; section 11-0536—Sale of certain wild animals [or their products;] or wild animal products prohibited; section 11-0538—Direct contact between public and big cats prohibited; section 11-0540—Prohibition on permits authorizing the use of elephants in entertainment acts;

Paragraph 175.1(c)(3) is amended to read:

(3) title 9 of article 11: section 11-0901—Modified [archer permit;] longbow authorization and modified crossbow permit; section 11-0907—Permit to allow a nonambulatory hunter to take a deer of either sex; section 11-0917—Possession, transportation and sale of wild game and other wildlife; section 11-0919—Aid to wildlife in distress; section 11-0925—Special dog training areas; section 11-0927—Field trials; section 11-0928—Tracking dogs; section [11-0931—Permit to possess a loaded firearm in a motor vehicle;] 11-0931—Prohibitions on the use and possession of firearms;

Paragraph 175.1(c)(4) is amended to read:

(4) title 10 of article 11: [section] sections 11-1003 and 11-1007—Falconry license;

(5) title 11 of article 11: section 11-1109—Registered muskrat [marsh;] marshes;

Paragraph 175.1(c)(5) is unchanged.

Paragraph 175.1(c)(6) is amended to read:

(6) title 13 of article 11: section 11-1315—Taking and sale of bait fish; section 11-1317—Fish [bait,] bait; protection of aquatic insects;

Paragraph 175.1(c)(7) is amended to read:

(7) title 15 of article 11: section [11-1503—License to use a net or device to take fish; section 11-1507—Nets in Lakes Erie and Ontario; section 11-1509—Nets in Chaumont Bay; section 11-1517—Possession of nets;] 11-1503—Nets; license required; power of department; section [11-1521—Commercial striped bass license;] 11-1521—Management of striped bass in the Hudson River;

Paragraph 175.1(c)(8) is amended to read:

(8) title 17 of article 11: section 11-1703—Importation, possession and sale of [fish;] fish without license or permit; prohibitions; section 11-1707—Importation and possession of non-saleable fish, game and wildlife and saleable fish, game and wildlife imported during the closed season; section 11-1709—Importation and transportation of certain fish or fish eggs; [section 11-1711—Sale and transportation of flesh of big game from outside the state; section 11-1713—Flesh of bear possessed under special license; section 11-1715—Certification of domestic game and hatchery trout propagated outside of the state;] section 11-1728—Sale of live wild birds;

Paragraph 175.1(c)(9) is amended to read:

(9) title 19 of article 11: section 11-1901—Breeding of domestic game birds; section 11-1903—Shooting preserves; section 11-1905—Breeding of domestic game animals; section 11-1907—Propagation of fur-bearing animals; section 11-1909—Private trout and black bass hatcheries; section 11-1911—Farm fish ponds; section 11-1913—Fishing preserves; and

Paragraph 175.1(c)(10) is amended to read:

(10) title 21 of article 11: section 11-2101—Powers of the department on conservation areas and [facilities; and] facilities.

Paragraph 175.1(c)(11) is repealed.

Section 175.2. is amended to read:

As used in [sections 11-0305, 11-0515, 11-0517, 11-0536, 11-0917, 11-1705, 11-1901, 11-1903, 11-1905, 11-1907, 11-1909, 11-1911 and 11-1913 of the Environmental Conservation Law, in Parts

173, 174, 180 and 182 of this Title and in licenses or permits issued pursuant to such sections and Parts and applications for such licenses and permits,] the sections of the Environmental Conservation Law listed in subdivision 175.1(c) and their accompanying regulations, in licenses and permits issued pursuant to such sections and regulations, and in applications for such licenses and permits, the following terms shall mean:

Existing subdivision 175.2(d) is renumbered subdivision 175.2(h).

Existing subdivision 175.2(e) is renumbered subdivision 175.2(i).

Existing subdivisions 175.2(a) through (b) are renumbered subdivisions 175.2(e) through (f).

Existing subdivision 175.2(c) is renumbered subdivision 175.2(m).

A new subdivision 175.2(a) is added to read:

(a) 'Applicant' means a person, as defined in section 1-0303(18) of the Environmental Conservation Law, filing appropriate applications and supporting materials for the purpose of obtaining a license or permit from the department.

A new subdivision 175.2(b) is added to read:

(b) 'Complete Application' means an application for a license or permit which is in an approved form and is determined by the department to be complete for the purpose of commencing review of the application, but which may need to be supplemented during the course of review in order to enable the department to make the findings and determinations required by law.

A new subdivision 175.2(c) is added to read:

(c) 'Dangerous animal' means an animal belonging to any of the orders, families, species or subspecies, including hybrids thereof, listed in Part 180.1(b) of this Title.

A new subdivision 175.2(d) is added to read:

(d) 'Domicile' means that place where a person has his or her true, fixed and permanent home, and to which he or she intends to return even though he or she may actually reside elsewhere.

Renumbered subdivision 175.2(e) is amended to read:

(e) 'Educational' [shall mean] means that the purpose of the collection, possession and/or exhibition [in order] of fish, wild animals, wildlife, dangerous animals, shellfish, crustacea, or protected insects is to teach or instruct members of the public about the characteristics, ecological role or conservation needs of [a fish or wildlife] the species, or a population or [community.] community of such species.

Renumbered subdivision 175.2(f) is amended to read:

(f) 'Exhibition' means regular public display or showing to members of the public of fish, wild animals, [wildlife] wildlife, dangerous animals, shellfish, crustacea, protected insects, or parts thereof or products made therefrom where the display itself is the chief object. A license or permit authorizing possession for exhibition purposes may permit exhibition with the intention or expectation of receiving monetary gain. Any person issued a license authorizing exhibition must comply with all appropriate standards of care, handling and confinement, including, but not limited to, department standards and the standards of animal care set forth in the Federal Animal Welfare Act, 7 U.S.C. 54, as well as ensure public safety.

A new subdivision 175.2(g) is added to read:

(g) 'Modification' means any change or amendment whatsoever to a license or permit that is currently in force.

Renumbered subdivision 175.2(h) is amended to read:

(h) 'Propagation' means production of selected species by application of husbandry techniques in a controlled environment for commercial or other authorized [purposes.] purposes, where the purpose of such activity is to enhance the propagation or survival of the species.

A new subdivision 175.2(i) is added to read:

(i) 'Renewal' means department authorization for a new permit term or recertification of a permit for previously approved activities which will be continuing at the same site or facility without material change. A renewal application may only be submitted for a license or permit that is currently in force.

A new subdivision 175.2(j) is added to read:

(j) 'Resident' means a person whose domicile is within New York State.

A new subdivision 175.2(k) is added to read:

(k) 'Sale' means any transfer of ownership or title for consideration, and includes offering or exposing for sale, and soliciting for sale by catalogs, newspapers, magazines, online, or other advertising matter. Unless otherwise authorized by license or permit issued pursuant to this Title, any public display of a species regulated by the department, or an article made in whole or in part from a regulated species in an auction house, store, or other retail or wholesale establishment shall be deemed to be an offering for sale.

Renumbered subdivision 175.2(l) is amended to read:

(l) 'Scientific' means that the purpose of the use of fish, ~~wild animals~~, [wildlife] ~~wildlife, dangerous animals, shellfish, crustacea, protected insects~~, or parts thereof by a scientific institution, clinic, laboratory or individual [researcher] ~~researcher, affiliated with a recognized or accredited scientific or educational institution, including consulting firms~~, is to expand scientific knowledge or to gain knowledge of a [fish] ~~fish, wild animal~~ or wildlife species, ~~dangerous animal~~, population or community. Captive-bred populations may be established and maintained as part of a scientific endeavor. The determination of whether a use is an appropriate scientific use will be made in the sole discretion of the Commissioner or the Commissioner's designee.

Paragraph 175.3(a)(1) is amended to read:

(1) The application must include a properly completed department application [form.] form, supporting documentation, and supplemental information as required by this Part.

Paragraphs 175.3(a)(2) through 175.3(a)(6) are unchanged.

A new paragraph 175.3(a)(7) is added to read:

(7) Prior to the issuance of a license or permit authorizing the possession of a live animal, the department may require the applicant to provide proof of having a cooperative working relationship with a veterinarian whereby the veterinarian agrees to provide euthanasia services, proper and legal use of chemical immobilization drugs, and other professional and technical services relating to the possession and husbandry of the live animal.

A new subdivision 175.3(b) is added to read:

(b) Enforcement actions. Processing and review of an application may be suspended by written notice to the applicant if an enforcement action has been or is commenced against the applicant for any alleged violations of the Environmental Conservation Law, its regulations or other environmental laws or regulations administered by the department.

Subdivision 175.4(a) is amended to read:

(a) The department will determine if an application is complete for [review. Incomplete or vague applications will be returned to the applicant with a request for additional information] review within 30 calendar days after receipt of the application. The application review time period will not begin until the department has determined that an application is complete.

Existing subdivisions 175.4(c) through (d) are renumbered 175.4(e) through (f).

Existing subdivision 175.4(b) is renumbered 175.4(c).

A new subdivision 175.4(b) is added to read:

(b) If the application is determined to be incomplete, the department will mail notice to the applicant identifying any areas of incompleteness and requesting additional information. Failure by the applicant to provide the requested information within 30 calendar days of the date of such notice may result in the application being deemed withdrawn without prejudice. Nothing in this section precludes the department from requesting additional information in accordance with section 175.6(b) of this Part.

A new subdivision 175.4(d) is added to read:

(d) Grounds for denial of a license or permit application include:

- (1) materially false or inaccurate statements in the application, supporting papers or required reports;
- (2) failure by the applicant to meet the requirements of a current or prior license or permit, including reporting requirements, or to comply with any terms or conditions of a license or permit;
- (3) exceeding the scope of the purpose or activities described in an application for a license or permit;
- (4) noncompliance with any provision of the Environmental Conservation Law or its accompanying regulations, or any other local, State, or Federal law related to the licensed or permitted activity;
- (5) submission of a check, money order or voucher by the applicant for a license, permit or application fee which is returned to the department for insufficient funds;
- (6) conviction of any offense relating to cruelty to animals or issuance of a judicial order prohibiting possession of fish, wildlife, wild animals, dangerous animals, shellfish or crustacea; and
- (7) determination by the Department that issuance of the license or permit would be contrary to the policies described in section 1-0101 of the ECL.

Renumbered subdivision 175.4(e) is amended to read:

(e) If the department fails to mail a decision within the time periods specified above, the applicant may make notice of that failure, by means of certified mail, return receipt requested, [for all licenses and permits listed in section 175.1(c)(1)-(9) of this Part,] addressed to the Director of the [Division of Fish, Wildlife and Marine Resources,] Division of Fish and Wildlife, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY [12233 and for all licenses and permits listed in section 175.1(c)(10) of this Part, addressed to the Chief, Bureau of Marine Resources, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, E. Setauket, NY 11733.] 12233. This

notice must contain the applicant's name, the name of the license or permit applied for, and the date the application was mailed to the department.

Section 175.5. is amended to read as follows:

Section 175.5. License [or] and permit revocations by the department.

Subdivision 175.5(a) is amended to read:

(a) Licenses [or] and permits may be revoked by the department for a period of time it deems appropriate, after taking into consideration all relevant circumstances. The grounds for revocation include:

Paragraph 175.5(a)(1) is unchanged.

Paragraph 175.5(a)(2) is amended to read:

(2) failure by the [licensee or permittee] license or permit holder to comply with any terms or conditions of the license or [permit;] permit, including reporting requirements;

Paragraph 175.5(a)(3) is amended to read:

(3) exceeding the scope of the purpose or activities described in the [application;] application for a license or permit;

Paragraph 175.5(a)(4) is amended to read:

(4) noncompliance with any provision of the Environmental Conservation [Law, any other State or Federal laws or regulations of the department directly] Law or its accompanying regulations, or any other local, State, or Federal law related to the licensed or permitted activity; [and]

Paragraph 175.5(a)(5) is amended to read:

(5) [checks, money orders or vouchers, submitted] submission of a check, money order or voucher by the applicant for a license, permit or application fee which are subsequently returned to the department for insufficient funds or nonpayment after the license or permit has been [issued.] issued; and

A new paragraph 175.5(a)(6) is added to read:

(6) conviction of any offense relating to cruelty to animals or issuance of a judicial order prohibiting possession of fish, wildlife, wild animals, dangerous animals, shellfish, crustacea or protected insects.

Subdivision 175.5(b) is amended to read:

(b) The department shall send a notice of intent to revoke to the [licensee or permittee] license or permit holder by certified mail return receipt requested. The notice must state the alleged facts or conduct which warrant the [intended action.] revocation and the effective date of the revocation.

Subdivision 175.5(c) is amended to read:

(c) Within 10 working days of receiving a notice of intent to revoke, the [licensee or permittee] license or permit holder may submit a written statement, [for all licenses and permits listed in section 175.1(c)(1)-(9) of this Part,] addressed to the Director of the [Division of Fish, Wildlife and Marine Resources,] Division of Fish and Wildlife, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY [12233 and for all licenses and permits listed in section 175.1(c)(10) of this Part addressed to the Chief, Bureau of Marine Resources, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, E. Setauket, NY 11733] 12233. The written statement must set forth either the reasons why the license or permit should not be revoked, or a request for a hearing, or both. If a hearing is requested, the license or permit holder must include a

statement which responds to each of the allegations stated in the notice of intent to revoke. The license or permit holder must submit a copy of the written request for hearing to the Chief Administrative Law Judge, Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233. Failure by the [licensee or permittee] license or permit holder to timely submit a statement or request a hearing will result in the department's action becoming effective on the date specified in the notice.

Subdivision 175.5(d) is amended to read:

(d) Within 10 working days of receipt of the [licensee's or permittee's] license or permit holder's statement or request for hearing, the department shall either:

Paragraph 175.5(d)(1) is amended to read:

(1) if only a statement is submitted, rescind or confirm the notice of revocation based on the information provided by the [licensee or permittee;] license or permit holder; or

Paragraph 175.5(d)(2) is amended to read:

(2) if a hearing has been requested, the Chief Administrative Law Judge will notify the [licensee or permittee] license or permit holder of a date and place for a hearing and the manner in which the hearing will be conducted. The hearing shall [not be held earlier than 30 days from the date of] be commenced no later than 60 days from this notification.

Subdivision 175.5(e) is amended to read:

(e) In the event such a hearing is held, [the Director of the Division of Fish and Wildlife or the Director of the Division of Marine Resources, as appropriate, or the director's agent] the

Commissioner, or the Commissioner's designee, shall, within [30] 60 calendar days of receipt of the completed record of the hearing, issue a decision which:

Paragraphs 175.5(e)(1) through 175.5(e)(3) are unchanged.

Existing subdivisions 175.5(f) through (h) are renumbered 175.5(g) through (i).

A new subdivision 175.5(f) is added to read:

(f) Except as otherwise stated in this section, hearings shall be conducted in accordance with Part 622 of this Title.

Renumbered subdivision 175.5(i) is amended to read:

(i) When a license or permit has been revoked, the former [licensee or permittee] license or permit holder must comply with written directives, provided by the department, for the final disposition of any fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, protected insects, parts or products thereof or any other property or thing formerly possessed under license or permit. All liabilities and expenses for the final disposition of such fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, or protected insects, parts, products or articles are the responsibility of the former [licensee or permittee.] license or permit holder. No action for damages shall lie for such seizure and disposition of seized animals, parts, products, or articles, and such disposition shall be at the sole discretion of the department.

Subdivision 175.6(a) is amended to read:

(a) Any time period specified in this Part may be extended for good cause, by the department. The department must notify the applicant or [licensee] license or permit holder in writing of the duration of the extension.

Subdivision 175.6(b) is amended to read:

(b) At any time during the review of an application for a license or permit or renewal, the department may request in writing any additional information which is reasonably necessary to make any findings or determinations required by law or regulation. Such a request must be explicit, and

must indicate the reasonable date by which the department is to receive the information. Failure to provide such information by the date specified in the request will be grounds for deeming the application [incomplete and the department will return the application to the applicant] incomplete.

Subdivisions 175.6(c) and 175.6(d) are unchanged.

Subdivision 175.6(e) is amended to read:

(e) Any person who has been issued a license or permit pursuant to this Part consents to allow any authorized representative of the department access to enter upon his or her premises to conduct inspections for compliance with license or permit conditions or to take any action it deems necessary to stop or mitigate any threat to the health and welfare of [fish or wildlife populations] fish, game, wild animals, wildlife, dangerous animals, shellfish, crustacea, or protected insects, or the human population resulting from activities authorized pursuant to his or her license or permit.

A new subdivision 175.6(f) is added to read:

(f) Upon expiration of a license or permit issued pursuant to this Part, the former license or permit holder must comply with written directives, provided by the department, for the final disposition of any fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, protected insects, parts or products thereof, or any other property or thing formerly possessed under the license or permit. All liabilities and expenses for the final disposition of such fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, or protected insects, parts, products, or articles are the responsibility of the former license or permit holder.

A new section 175.7. is added to read as follows:

Section 175.7. Applications for license or permit renewals, reissuances, modifications, transfers and relinquishments.

(a) Unless instructed otherwise, applications for renewal, reissuance, modification, transfer or relinquishment of a license or permit must be submitted to the Division of Fish and Wildlife. Applications must provide information supporting the action sought and, if for a modification, must include a statement of necessity or reasons for modification.

(b) The department must notify the applicant by mail of its decision on renewal, reissuance, modification, transfer and relinquishment requests on or before 30 calendar days after receipt of the application except as provided in subdivision (d) of this section.

(c) Applications for renewal must be submitted no less than 60 calendar days prior to permit expiration. This deadline applies unless otherwise stated as a special condition of the permit.

(d) The department may determine that any application for renewal or modification will be treated as a new application for a license or permit if:

(1) the application involves a material change in existing license or permit conditions or in the scope of the licensed or permitted activities;

(2) there is newly discovered material information or there has been a material change in environmental conditions, relevant technology, or applicable law or regulations since the issuance of the existing license or permit;

(3) An opportunity for public comment or hearing or both is required by law or is deemed necessary by the department;

(4) the application for renewal or modification is not timely or sufficient; or

(5) any of the grounds listed in section 175.5(a) of this Part are encountered.

When the department determines that an application for renewal or modification will be treated as a new application, it shall be reviewed pursuant to section 175.4 of this Part.

(e) Pursuant to section 401(2) of the State Administrative Procedure Act, when a license or permit holder has submitted a timely and sufficient application for renewal of a license or permit for an activity of a continuing nature, the existing license or permit does not expire until the department has made a final decision on the renewal application and if such application has been denied, then not until the last day for seeking review of the agency order or any later date fixed by a court. Projects or activities of a continuing nature are those involving an ongoing operational activity.

(f) Reissuances. Activities that are not of a continuing nature are not subject to the provisions of subdivision (e) of this section. However, expired licenses or permits may be reissued for a new license or permit term where the criteria in paragraphs (1) through (7) of this subdivision are met:

(1) there is no change in the activities to be undertaken from those that were previously licensed or permitted;

(2) there has been no material change in environmental conditions;

(3) the request for reissuance of the license or permit is made within two years of the date the previous license or permit expired;

(4) if applicable, all fees and sureties are paid;

(5) there are no outstanding violations of the ECL, its accompanying regulations, or any other State or Federal law directly related to the license or permitted activity;

(6) all the requirements of the previous license or permit were met, including submission of reports and final disposition of any fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, protected insects, parts or products thereof or any other property or thing formerly possessed under the previous license or permit; and

(7) the time period from the effective date on the initially issued license or permit to the expiration date of the reissued license or permit does not exceed 10 years.

If these conditions are not met, the former license or permit holder must apply for a new license or permit.

(g) Transfers. Applications for the transfer of a license or permit currently in effect, or pending license or permit applications, to a different license or permit holder or applicant, or to change the name of the license or permit holder or applicant, must be submitted on a form prescribed by the department and must be done in consideration of the following:

(1) Applications should be submitted at least 30 days prior to transfer, unless a different time period is required by specific program statute or regulation.

(2) The new license or permit holder may be subject to a record of compliance review before a decision on license or permit transfer is rendered.

(3) Any noncompliance by the existing license or permit holder, associated with the license or permit proposed to be transferred, must be resolved to the department's satisfaction prior to transfer.

(h) Relinquishments. A person may relinquish a license or permit by sending written notification to the Division of Fish and Wildlife. The notification must:

(1) identify the license or permit to be relinquished by its license or permit number; and

(2) state why the license or permit is being relinquished.

(i) In reviewing a request to relinquish a license or permit, the department must confirm that all license or permit provisions and conditions have been satisfied. The department will provide written verification of its concurrence with license or permit relinquishment or provide reasons why the license or permit must remain in effect.

(j) When a license or permit has been relinquished, the former license or permit holder must comply with written directives, provided by the department for the final disposition of any fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, protected insects, parts or products thereof or any other property or thing formerly possessed under license or permit. All liabilities and

expenses for the final disposition of such fish, game, wild animal, wildlife, dangerous animal, shellfish, crustacea, or protected insects, parts, products, or articles are the responsibility of the former license or permit holder.