

To: Gabriela Bradt, Extension State Specialist, Aquaculture & Fisheries, New Hampshire Sea Grant

From: Amy Kraitchman, Ocean and Coastal Law Fellow

Re: Regulatory Status of European Green Crab (NSGLC-25-05-01)<sup>1</sup>

Date: January 28, 2025

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## Advisory Summary

The New Hampshire Sea Grant (NHSG) reached out to the NSGLC for assistance in understanding the current status of European green crabs and how that affects the ability to take, possess, and sell them in the New England area and on the west coast. Specifically, NHSG was interested in knowing if green crabs were regulated as an invasive species, at both the federal and state level, and if they are not a regulated invasive species, if there are any fishing regulations that would prevent a market from being established to catch and sell them. This advisory memo first discusses if green crab are listed as an invasive species in the New England area. It then examines how green crab's status relates to fishing regulations and bait laws in the New England area and on the west coast.

## Introduction

Non-native species are species that are “intentionally or unintentionally released into new environments.”<sup>2</sup> A non-native species can rise to the level of invasive, when it causes harm to the environment, public health, or even the economy.<sup>3</sup> Not every non-native species rises to the level of invasive. Species that do cause harm can be listed as invasive under the federal Lacey Act.<sup>4</sup> Beyond the Lacey Act, states may choose to list species as invasive under their own regulations.

There is no comprehensive list of invasive species and species of concern may vary across regions. Non-native species “that are considered damaging in one area” can be seen as

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<sup>2</sup> EFFECTS OF CLIMATE CHANGE ON AQUATIC INVASIVE SPECIES AND IMPLICATIONS FOR MANAGEMENT AND RESEARCH, NAT'L CTR. ENV'T ASSESSMENT 1-3 (2008), [https://www.eli.org/sites/default/files/eli-pubs/d18\\_04.pdf](https://www.eli.org/sites/default/files/eli-pubs/d18_04.pdf).

<sup>3</sup> *Invasive Species*, NAT'L WILDLIFE FED., <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Threats-to-Wildlife/Invasive-Species#:~:text=An%20invasive%20species%20can%20be,economy%2C%20or%20even%20human%20health> (last visited Jan. 17, 2025).

<sup>4</sup> 18 U.S.C. 42; Understanding Injurious Wildlife Regulations, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/story/understanding-injurious-wildlife-regulations> (last visited Jan. 17, 2025).

“beneficial in another.”<sup>5</sup> European green crab, for instance is regulated differently in New England compared to the west coast. Green crab has been present in the New England area since the 1800s.<sup>6</sup> Due to their long-term establishment in the region, they are largely not regulated as an invasive species in New England. However, their more recent arrival on the west coast poses a threat to established fisheries. As oceanic waters warm, and ecosystems change due to climate change, green crabs are likely to spread further.<sup>7</sup> States on the west coast, therefore, do regulate green crab as an invasive species.

A species’ invasive status can affect how they are regulated under other laws and statutes. Species that are regulated as invasive by a federal or state agency may require additional permits to sell, transport, or possess and there may be record keeping or management practices required to prevent their release and further harm.<sup>8</sup> However, “the degree of focus on invasive species prevention, control, and management depends on the individual legislation” enacted.<sup>9</sup> Invasive species legislation varies by state; one state may allow for the taking, possession, or sale of a species while their neighbor does not.

## **Invasive Species**

Invasive species are “alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.”<sup>10</sup> Invasive species can cause harm to native plants and species and impact habitats.<sup>11</sup> Specifically, “Invasive species can lead to the extinction of native plants and animals, destroy biodiversity, and permanently alter habitats.”<sup>12</sup> At the federal level, invasive species are primarily managed under the Lacey Act.<sup>13</sup> Invasive species, also referred to as “non-native” or “injurious,” listed under the act cannot be imported in the United States or transported between the continental U.S. and certain states and territories without a permit from the U.S. Fish and Wildlife Service (FWS).<sup>14</sup> Congress or the U.S. Secretary of the Interior may designate what species are injurious under the act.<sup>15</sup>

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<sup>5</sup> , NAT’L CTR. ENV’T ASSESSMENT, *supra* note 2, at 1-5.

<sup>6</sup> *Look Out for Invasive Crabs!*, NOAA FISHERIES (May 23, 2023), <https://www.fisheries.noaa.gov/alaska/habitat-conservation/look-out-invasive-crab>.

<sup>7</sup> *Id.*

<sup>8</sup> NAT’L CTR. ENV’T ASSESSMENT, *supra* note 2, at 1-3–1-4.

<sup>9</sup> *Id.*

<sup>10</sup> Exec. Order No.13112, 64 Fed. Reg. 6183 (1999).

<sup>11</sup> *What is an Invasive Specie?*, NAT’L OCEANIC & ATMOSPHERIC ADMIN. (Jun. 16, 2024), <https://oceanservice.noaa.gov/facts/invasive.html>.

<sup>12</sup> *What are Invasive Species?*, NAT’L INVASIVE SPECIES INFO CTR., <https://www.invasivespeciesinfo.gov/what-are-invasive-species> (last visited Nov. 18, 2024).

<sup>13</sup> 18 U.S.C. 42.

<sup>14</sup> 18 U.S.C. 42; *Lacey Act*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/law/lacey-act> (last visited Nov. 18, 2024).

<sup>15</sup> 18 U.S.C. 42; *Injurious Wildlife Listings – Keeping Risky Wildlife Species Out of the United States*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/program/injurious-wildlife-listings-keeping-risky-wildlife-species-out-united-states> (last visited Nov. 18, 2024).

European Green Crab, or *Carinus Maenas*, (green crab) are a non-native species that has been in the New England region for centuries.<sup>16</sup> Originally from Europe, green crab likely arrived in the United States via ballast water from ships crossing the Atlantic Ocean.<sup>17</sup> Due to green crabs’ “habitat destruction, high rates of predation, and rapid reproduction” they pose a serious threat to native species in the region.<sup>18</sup> Additionally, as ocean temperatures rise, green crab populations spread as they seek warmer waters.<sup>19</sup> However, despite these concerns, green crabs are not currently listed as an injurious species under the Lacey Act.

The U.S. states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and the Canadian Provinces of New Brunswick, Nova Scotia, and Quebec make up the Northeastern Aquatic Nuisance Species Panel (northeast panel). The northeast panel was created in 2001 under the Nonindigenous Aquatic Nuisance Prevention Act as one of six region panels to work in conjunction with the Federal Aquatic Nuisance Species Task Force.<sup>20</sup> The regional panels are meant to “address[] issues and concerns relative to the freshwater and marine resources of its members.”<sup>21</sup> The northeast panel maintains a list of 22 invasive species that are present in the region, which includes green crab.<sup>22</sup> This list however is not legally enforceable and does not mean that green crab are regulated as an invasive species at the federal or state level.

Of the northeast states surveyed in this report, only one—New York—includes green crab on an official regulatory list of invasive species. For the rest of the states, the species’ regulatory status can be a bit unclear as there is some discrepancy between regulatory agencies’ websites and the actual regulations. Some websites refer to green crab as “invaders” or “nuisances,” which may lead the general public to believe that they are regulated as invasive. However, these terms are often not defined or used in regulations, which can indicate that they do not actually carry any legal weight and are more meant to help inform the general public that they are not native

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<sup>16</sup> PATRICK KELIHER ET AL., REPORT BY THE GOVERNOR’S TASK FORCE ON THE INVASIVE EUROPEAN GREEN CRAB, GOVERNOR’S TASK FORCE ON THE INVASIVE EUROPEAN GREEN CRAB (2014), <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/docs/taskforcerpt2015.pdf> (estimating that green crabs arrived in the Long Island area around 1817).

<sup>17</sup> *Green Crabs in Maine*, DEP’T OF MARINE RES., <https://www.maine.gov/dmr/science/species-information/invasives/green-crabs> (last visited Nov. 22, 2024).

<sup>18</sup> Eve Fischer, Jesse Minor & Marissa McHahan, Recommendations for Establishing a Market for Invasive Carabs in New England 4 (2022) (internal citation omitted).

<sup>19</sup> See, e.g., *Warmer Ocean Contributes to Spread of Invasive Green Crabs; Oregonians Urged to Eat Them*, KPIC (Nov. 19, 2021), <https://kpic.com/news/local/warmer-ocean-contributes-to-spread-of-invasive-green-crabs-oregonians-urged-to-eat-them> (warning of green crabs coming to the Oregon Coast); Tammy Davis, *European Green Crab: Will they be the Next Aquatic Invasive Species in Alaska?*, DEP’T FISH & GAME (2021), [https://www.adfg.alaska.gov/index.cfm?adfg=wildlifeneews.view\\_article&articles\\_id=990](https://www.adfg.alaska.gov/index.cfm?adfg=wildlifeneews.view_article&articles_id=990).

<sup>20</sup> 16 U.S.C. § 4701; *Regional Panels*, U.S. FISH WILDLIFE SERV., <https://www.fws.gov/program/aquatic-nuisance-species-task-force/regional-panels> (Dec. 4, 2024).

<sup>21</sup> *Home*, NORTHEAST AQUATIC NUISANCE SPECIES PANEL, <https://www.northeastans.org/index.php/home-page/> (last visited Dec. 4, 2024).

<sup>22</sup> *Aquatic Nuisance Species in the Northeast*, NORTHEAST AQUATIC NUISANCE SPECIES PANEL, <https://www.northeastans.org/index.php/home-page/aquatic-nuisance-species-in-the-northeast/> (last visited Dec. 4, 2024).

species. For example, the Massachusetts' Aquatic Invasive Species website refers to green crab as an established invader, however this group does not have any regulatory authority and the state's invasive species list only includes insects and plants. This discrepancy along with the confusion at the federal level, can make the status of species like green crab unclear to the general public.

### *Connecticut*

In Connecticut, the Office of Aquatic Invasive Species, within the Agricultural Experiment Station, regulates all aquatic invasive species. Currently, the only aquatic species listed as invasive in Connecticut are aquatic plant species.<sup>23</sup> As such, green crab are not a regulated invasive species in Connecticut.

### *Maine*

In Maine, the Marine Resources Department tracks and lists aquatic invasive species. On the department's website, green crab are listed as "marine invaders," meaning that they "are easily spread by ocean currents as well as human activities."<sup>24</sup> However, similar to Connecticut, Maine's invasive species list is limited only to aquatic plants.<sup>25</sup> As such, green crab are not a regulated invasive species in Maine.

### *Massachusetts*

In Massachusetts, the office of Coastal Zone Management has authority over the Aquatic Invasive Species Program.<sup>26</sup> Pursuant to the state's aquatic nuisance control program law, an aquatic nuisance species includes "rooted aquatic vegetation and algae populations, dreissena mussels, spiny water fleas and any other invasive species that the commissioner [of the office of Coastal Zone Management] declares to be an aquatic nuisance."<sup>27</sup> Green crabs have not been declared an aquatic nuisance species in Massachusetts.

### *New Hampshire*

The Department of Environmental Services (DES) regulates and maintains the state's list of invasive species. While DES does refer to green crab as an "established invader" in outreach materials,<sup>28</sup> green crabs are not included on its regulatory list of invasive species.<sup>29</sup> Thus, green crab are not a regulated invasive species in New Hampshire.

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<sup>23</sup> CONN. GEN. STAT. § 22-79A. The list of aquatic invasive plants can be found at CONN. GEN. STAT. § 22a-0381(d).

<sup>24</sup> *Non-Native Invasive Marine Species*, DEP'T OF MARINE RES., <https://www.maine.gov/dmr/science/species-information/invasives> (last visited Nov. 26, 2024).

<sup>25</sup> ME. STAT. tit. 38, § 410-N. Only "species identified by the Department as an invasive aquatic plant or one of the following species" listed are considered aquatic invasive species. *Id.* at § 401-N(1)(B).

<sup>26</sup> *Marine Invasive Species Program*, MASS., [https://www.mass.gov/marine-invasive-species-program#:~:text=Massachusetts%20Office%20of%20Coastal%20Zone%20Management%20\(CZM\)%20works%20to%20monitor,%2C%20economy%2C%20or%20public%20health](https://www.mass.gov/marine-invasive-species-program#:~:text=Massachusetts%20Office%20of%20Coastal%20Zone%20Management%20(CZM)%20works%20to%20monitor,%2C%20economy%2C%20or%20public%20health) (last visited Jan. 16, 2025).

<sup>27</sup> MASS. ANN. LAWS ch. 21, § 37B. The invasive species list can be found at MASS. ANN. LAWS ch. 132, § 11.

<sup>28</sup> *See, e.g., New England Marine Invader ID Card*, OFF. COASTAL MGMT., <https://www.mass.gov/doc/new-england-marine-invader-id-cards-crabs/download> (last visited Dec. 4, 2024) (listing characteristics of green crab to help people identify it).

<sup>29</sup> N.H. CODE ADMIN. R. ANN. AGR. 3802.01. The list only includes plant and insect species.

### *New York*

New York has two categories of invasive species: Regulated Invasive Species and Prohibited Invasive Species. Green crab are a regulated invasive species.<sup>30</sup> As a regulated invasive species, no one in the state can “knowingly introduce into a free-living state or introduce by a means that one knew or should have known would lead to the introduction into a free-living state any regulated invasive species, although such species shall be legal to possess, sell, buy, propagate and transport.”<sup>31</sup> It is therefore lawful to possess, sell, and transport green crab in New York, as long as live crabs are not released into the wild.

### *Rhode Island*

The Rhode Island Department of Environmental Management (RIDEM) maintains the state’s aquatic invasive species list. The Director of RIDEM regulates all activities regarding exotic and native fish species. The director has the discretion to “promulgate rules and regulations” prohibiting any person from releasing or liberating “any species of non-native (exotic) fish or invertebrate . . . into the freshwater lakes, ponds, rivers, streams, or wetlands of the state.”<sup>32</sup> RIDEM regulations exempt all invertebrates, except for certain listed species, from the requirement for an exotic animal possession permit unless it is considered a nuisance species, invasive species, or is otherwise prohibited from importation by Federal or State laws.<sup>33</sup> While possession of green crab is not explicitly prohibited by this regulation, it could be covered by the catch-all for invasive species.<sup>34</sup> However, RIDEM does not identify green crab as an “aquatic invasive species” on its website.<sup>35</sup> Therefore, possession of green crab is not prohibited in Rhode Island.

## **Fishing Regulations**

While most states in the region have not listed green crab as an invasive species, state fishing laws may restrict the harvest, sale, transport, or possession of the species. Whether a state’s fishing regulations apply to green crab can be difficult to determine if there is no established fishery or if the status of a species is unclear. Some states have explicit exclusions of green crab in their lobster and crab fishing regulations; however, most are silent on the matter. Additionally, many regulatory definitions of covered species do not clearly state if non-native invasive species are meant to be included. Likely, a lack of explicit exclusion could be read as needing a fishing license in order to catch and possess green crab.

### *Connecticut*

In Connecticut, a commercial license is needed to “take any regulated species for commercial purposes.”<sup>36</sup> Additionally, marine fish and bait species may be harvested recreationally under a

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<sup>30</sup> N.Y. COMP. CODES R. & REGS. tit. 6 § 575.4(b)(4). Listed as an “aquatic invertebrate.”

<sup>31</sup> *Id.*

<sup>32</sup> 20 R.I. GEN. LAWS § 20-1-27.

<sup>33</sup> 250-40 R.I. CODE R. 040-05-3.17(A)(1)(c).

<sup>34</sup> *Id.*

<sup>35</sup> *Aquatic Invasive Animals*, DEP’T OF ENV’T MGMT., <https://dem.ri.gov/environmental-protection-bureau/water-resources/research-monitoring/aquatic-invasive-species-animals> (last visited Dec. 4, 2024).

<sup>36</sup> CONN. GEN. STAT. § 26-142a(b).

marine waters fishing license, with some exceptions.<sup>37</sup> There does not seem to be a list of species for which the recreational marine fishing licenses applies to, so it is likely that one would be needed for the recreational harvesting of green crab.

While only blue, horseshoe, and Jonah crabs are explicitly mentioned in all the regulations, “regulated species” is defined as “the following species or species groups: Bait species, crustacea, finfish, horseshoe crabs, sea scallops, squid or whelk.”<sup>38</sup> As a crustacean species, a commercial fishing license is likely needed to take green crab commercially.

### *Maine*

Unlike some of the other states in the region, Maine does have a specific commercial license for green crab.<sup>39</sup> Under the regulations, a person cannot take, possess, ship, transport, or sell green crab without a commercial green crab license.<sup>40</sup> However, a person does not need a license if they are taking green crab for personal use or consumption.<sup>41</sup> The license can only be held by an individual and costs \$2 for a resident of Maine.<sup>42</sup> Green crabs can also be taken as by-catch under a commercial lobster fishing license.<sup>43</sup>

There are restrictions on how green crabs can be caught. A fisher cannot use “A trap constructed with any opening greater than 1/12 inch wide; any length allowed; or [] An approved crab trap” as defined elsewhere in the regulations.<sup>44</sup> However, green crabs can be taken as by-catch by a licensed commercial lobster fisher, “by hand, jook and line, or by by-catch in another licenses fishery.”<sup>45</sup>

Lastly, Maine also has a Green Crab Management Fund which allows the commissioner to collect funds from the licenses in order to fund “research and management programs for the green crab fishery.”<sup>46</sup>

### *Massachusetts*

Massachusetts’ regulations sometimes refer to “edible crab” in fishery regulations. Edible crab is defined as “blue crabs, Cancer crabs and other native species of crabs that are suitable for human consumption. This shall not include species of non-native crabs including, but not limited to the European green crab or the Asian shore crab.”<sup>47</sup> Some believe that green crab’s explicit exclusion from the definition of edible crab keeps green crab “from being subject[ed] to the more intensive permitting associated with lobstering and crabbing . . . expanding the market possibilities” for

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<sup>37</sup> *Id.* at § 26-28b.

<sup>38</sup> *Id.* at § 26-1(16).

<sup>39</sup> ME. REV. STAT. ANN. tit. 12, § 6808.

<sup>40</sup> *Id.* at § 6808(1)–(2).

<sup>41</sup> *Id.* at § 6808 (3). The green crab must be taken by “hand or by a method exempted from licensing requirements.” *Id.*; 13-188-25 ME. CODE R. § 25.40(f).

<sup>42</sup> ME. REV. STAT. ANN. tit. 12, § 6808(5)–(6). A nonresident license cost \$4.

<sup>43</sup> 13-188-25 ME. CODE R. §25.40(C)(1).

<sup>44</sup> *Id.* at § 25.40(B)(1).

<sup>45</sup> *Id.* at (C)(1).

<sup>46</sup> ME. REV. STAT. ANN. tit. 12, § 6809.

<sup>47</sup> 322 MASS CODE REGS. 6.19(1).

them.<sup>48</sup> There are specific regulations for edible crab species management, however, since green crab are explicitly not included under the definition, they do not apply.<sup>49</sup>

Massachusetts does have a specific state law for the taking of green crab.<sup>50</sup> Under this regulation, anyone may take a green crab without a permit as long as they: (1) provide advanced written notice to the Director of the Department of Marine Fisheries; (2) identify all traps and gear according to the director’s requirements; and (3) file annual reports on the amount of crab taken each month and “whether such crabs were destroyed or used for bait purposes in the commonwealth.”<sup>51</sup> This regulation seems to only apply to the taking of green crab for personal use, such as recreation or bait. It does not appear to permit the commercial harvest of green crab for food.

### *New Hampshire*

While New Hampshire does have a specific lobster and crab fishing license, the statute specifically states that it does not apply to green crab.<sup>52</sup> There are other commercial fishing licenses for saltwater species, however green crab would not likely fall within their scope since they are not meant to apply to lobster and crab fishing.<sup>53</sup> A commercial fishing license is therefore likely not required to harvest green crab in New Hampshire.

### *New York*

In New York, a permit is needed to take crabs for commercial uses.<sup>54</sup> Crabbing permits can be for an individual or a vessel.<sup>55</sup> Similar to Connecticut some crab species such as blue crab are specifically mentioned in the regulations, but green crab are not.<sup>56</sup> Since it is lawful to sell, possess, and transport green crab as a regulated invasive species, and because the licensing requirements apply to all “crabs,” a license may be needed to harvest green crabs commercially.

### *Rhode Island*

It is unclear if a fishing license would be needed for green crab. There is a general license that could potentially apply, as it requires a license to “take, harvest, possess, hold or transport for sale in Rhode Island” any marine species.<sup>57</sup> Marine species is defined in regulation as “any animal species found in the marine waters of Rhode Island, including but not limited to finfish, shellfish, crustaceans, and squid.”<sup>58</sup> Without more information, a general license may be needed to take green crab for commercial use.

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<sup>48</sup> Fischer et al, *supra* note 18, at 6.

<sup>49</sup> 322 MASS CODE REGS. 6.19.

<sup>50</sup> MASS. ANN. LAWS ch. 130, § 37A.

<sup>51</sup> *Id.*

<sup>52</sup> N.H. REV. STAT. ANN. § 211:18.

<sup>53</sup> N.H. REV. STAT. ANN. § 211:49-b.

<sup>54</sup> N.Y. Env’t Conserv. LAW § 13-0331. A commercial use is when one “takes or lands more than fifty crabs in any one day” to sell or barter with. *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Commercial Crabbing*, DEP’T ENV’T CONSERVATION, <https://dec.ny.gov/things-to-do/saltwater-fishing/crabbing> (last visited Dec. 2, 2024).

<sup>57</sup> R.I. GEN. LAWS § 20-2.1-4. There are additional provisions for residential and nonresident fishing license. R.I. GEN. LAWS § 20-2.1-5; R.I. GEN. LAWS § 20-2.1-6.

<sup>58</sup> 250-90 R.I. CODE R. 090-00-1.10(XXX).

Additionally, RIDEM regulations set forth some general requirements for crabbing, such as harvesting and crabbing pots.<sup>59</sup> However, the regulations only have specific provisions for blue, horseshoe, Jonah, and Atlantic Rock crabs.<sup>60</sup> The lack of explicit harvesting regulations for green crab may mean a commercial license is not required, or that the species could be covered under the general licensing requirement for marine species, with no additional requirements or regulations.

## **Bait Laws**

One potential use for green crab is as fishing bait. Some states have regulations or restrictions on the use of live bait (“bait laws”). These regulations can include limitations on which species can be used as bait, what gear can be used to catch bait species, or permit requirements to catch or sell bait. State bait laws, therefore, may govern the commercial harvesting of green crab for sale as bait.

Some bait laws are silent as to whether species besides finfish are allowed to be used as bait. In some states, bait laws only refer to “baitfish” or only include finfish on their list of approved, or prohibited, live bait. It can be unclear whether the silence with respect to other bait species is meant to exclude alternative bait species from being used or meant to imply that a license is not needed to catch and sell these species as bait. For the purposes of this report, the NSGLC only summarized bait laws with broad scopes or that clearly applied to marine crustaceans.

It is important to note that the NSGLC only reviewed bait regulations at the state level. Some states allow municipalities to create their own regulations or licenses for catching, possessing, and selling bait.<sup>61</sup> The sale of green crabs as bait may also be restricted on the local level or in certain geographic areas.

### *Connecticut*

In Connecticut, a bait species is defined as “all species of fish, frogs, crustaceans and insects listed as bait in the regulations issued by the Commissioner of Energy and Environmental Protection” (DEEP).<sup>62</sup> Although the regulation does not list specific species that fall under this definition, green crab are listed as a marine species that can be taken, with a permit, elsewhere on the agency’s website.<sup>63</sup>

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<sup>59</sup> 250-90 R.I. CODE R. 90-00-5.4.

<sup>60</sup> *Id.* These requirements include regulations such as who can harvest a species, the size limits, and permit conditions. *Id.*

<sup>61</sup> *See, e.g., Commercial Activities*, LOS ANGELES CNTY., [https://library.municode.com/ca/los\\_angeles\\_county/codes/code\\_of\\_ordinances?nodeId=TIT19AIHA\\_CH\\_19.12HA\\_PT5COAC\\_19.12.910LIBAEGTACOVE](https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT19AIHA_CH_19.12HA_PT5COAC_19.12.910LIBAEGTACOVE) (last visited Jan. 15, 2025) (providing additional regulations and rules for selling, taking, and disposing of bait that must be followed in the county, along with the state regulations); 19.12.870–19.12.930.

<sup>62</sup> CONN. GEN. STAT. ANN. §26-1(2).

<sup>63</sup> *Saltwater Fishing Guide*, DEP’T ENERGY & ENV’T PROT., <https://portal.ct.gov/deep/fishing/saltwater-fishing-guide/bait-species-blue-crab-and-lobster-regulations> (last visited Jan. 7, 2025); *Open Access Commercial Fishing License Application*, DEP’T ENERGY & ENV’T PROT., <https://portal.ct.gov/>



In order to harvest and sell bait species, fishers must receive a permit from DEEP. A commercial fishing license is needed to take marine bait species.<sup>64</sup> An additional bait dealer's license is needed to possess, "sell or offer for sale any bait species."<sup>65</sup> In order to sell green crab as a bait species in Connecticut, both a commercial and a marine bait license would likely be needed.

### *Maine*

In Maine, there are lobster and crab bait regulations. Under these regulations it is "unlawful to sell or use any marine or freshwater organisms as bait to fish for or take lobsters or crab that has not been reviewed and approved by the Department of Marine Resources."<sup>66</sup> Instead of listing what species can be used as bait, the Department of Marine Resources conducts a "review of bait source" upon submission of an application and makes a determination of if a potential bait species is prohibited or allowed.<sup>67</sup> Under this regulation, it is unclear if green crab can be used as bait until the Department of Marine Resources is asked to make a determination.

Additionally, a Lobster/Crab Wholesale Bait Dealer Permit from the department is required in order to sell lobsters or crab as bait.<sup>68</sup> The permit is the same as a wholesale dealer permit, except it has a special bait endorsement.<sup>69</sup> The permit does not define which species are covered under the permit and endorsement. Likely a Lobster/Crab Wholesale Bait Dealer Permit would be needed to sell green crab as bait if it is determined to be an allowed bait.

### *Massachusetts*

In Massachusetts, a bait species is "those species commonly used as bait and includes menhaden, sea herring, sand lance, and mackerel."<sup>70</sup> There is not a comprehensive list of all bait species, although the list suggests a focus on baitfish. However, the bait laws could potentially apply if the regulatory agency determined that green crabs are "commonly used as bait" in the state. In Massachusetts's green crab regulations, anyone taking green crab without a permit must report if the crabs were "destroyed or used for bait purposes."<sup>71</sup> This implies that green crab can be used as bait recreationally, even though they are not explicitly included on the regulation's list.

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<sup>64</sup> *Open Access Commercial Fishing License Application*, *supra* note 63. Unlike recreational freshwater fishing, it does not appear that a commercial bait license is needed to sell marine species such as green crab or that there are any restrictions on how marine bait species are taken. *See, e.g., Freshwater Fishing Guide*, DEP'T ENERGY & ENV'T PROT., <https://portal.ct.gov/deep/fishing/freshwater-fishing-guide/definitions#:~:text=Bait%20species:%20Common%20shiner%2C%20golden,the%20inland%20district%20is%20prohibited> (last visited Jan. 13, 2025).

<sup>65</sup> CONN. GEN. STAT. ANN. § 26-45.

<sup>66</sup> 13-188-025 ME. CODE R. § 25.11.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at § 25.11(D).

<sup>69</sup> *Id.*

<sup>70</sup> 322 MASS. CODE REG. 4.15(1)(b).

<sup>71</sup> MASS. ANN. LAWS ch. 130, § 37A.

In order to harvest bait species for sale, a commercial permit or a bait dealer permit is needed.<sup>72</sup> A permit is not needed to catch bait without the intention of selling it.<sup>73</sup> If green crab is a common type of bait, then either a commercial fishing or bait dealer permit is needed in order to sell green crab as bait.

### *New Hampshire*

In New Hampshire, bait is defined as any “dead or live natural bait whether in part or whole and includes but is not limited to fish, mollusks, crustaceans, amphibians, invertebrates, reptiles, or their progeny or eggs, and power bait or any ingestible substances.”<sup>74</sup> For freshwater species, there is a specific list of what live bait can be used, however there is not a similar list of marine species.<sup>75</sup>

A marine bait dealer’s license from the New Hampshire Department of Fish and Game is likely needed to sell green crab as bait in the state. In New Hampshire, a permit is needed to “import, possess, sell, exhibit, or release any live marine species or wildlife into the state.”<sup>76</sup> The Director of the Department of Fish and Game may exempt species from the requirements of the regulation.<sup>77</sup> There is no indication that green crab have been exempted from these regulations.

### *New York*

New York’s marine bait permit authorizes only the taking of Atlantic menhaden, silversides, and killifish as bait.<sup>78</sup> For baitfish there is specific regulations listing species that are allowed, however there is no mention of other aquatic animals.<sup>79</sup> However, because green crab are a regulated invasive species, the use of green crab as bait would be restricted because it is unlawful for person to knowingly introduce them into a waterbody.

### *Rhode Island*

In the general regulations for crab and lobster fishing, the only reference to a commercial bait fishery is in respect to horseshoe crab.<sup>80</sup> Without more information it is unclear if the use of other

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<sup>72</sup> 322 MASS. CODE REG. 4.15(3)(a)-(b).

<sup>73</sup> *Id.* at 4.15(2).

<sup>74</sup> N.H. CODE ADMIN. R. ANN. FISC. 401.01(d); 501.02. While the bait definition in rule 401.01(d) is found within the freshwater fishing regulations, which would normally mean that it only applies to freshwater fishing and not marine fishing, rule 501.02 states that the definition in 401.01(d) shall apply to commercial fishing as well.

<sup>75</sup> *Id.* at 402.08(a).

<sup>76</sup> N.H. REV. STAT. ANN. § 207:14(I); *Baitfish and Dealers in NH*, DEP’T FISH & GAME, <https://www.wildlife.nh.gov/fishing-new-hampshire/baitfish-and-dealers-nh> (last visited Jan. 16, 2025).

<sup>77</sup> N.H. REV. STAT. ANN. § 207:14(III). Additionally, the licenses application itself does not list what species are required to have a dealer’s license and which are exempt from the license requirements. *Bait Dealer’s License Application*, DEP’T FISH & GAME, <https://www.wildlife.nh.gov/sites/g/files/ehbemt746/files/documents/bait-dealer.pdf> (last visited Jan. 16, 2025).

<sup>78</sup> N.Y. COMP. CODES R. & REGS. tit. 6, § 19.3. Exceptions can be found at § 19.2 and include using bait in the waters it was legally taken from and using certain bait in certain waters (as defined in the regulations). *Id.* at § 19.2(b)–(c).

<sup>79</sup> *Id.* at § 19.2(a).

<sup>80</sup> *Id.* at § 5.7(D)(2).

crab species is prohibited, or if horseshoe crab is simply the only established commercial bait fishery. Additionally, there is a commercial marine dealer’s license that is needed to sell all marine species caught.<sup>81</sup> If green crab can be sold commercially as bait, a marine dealer’s license will likely be needed.

## West Coast Considerations

Green crabs are also present on the west coast. Green crabs were first found in California in the late 1980’s and have moved north as ocean waters have warmed.<sup>82</sup> Alaska was the most recent state to discover green crabs in their waters, with the first reported finds in 2022.<sup>83</sup> Alaska, California, Oregon, and Washington have all reported green crab as present along their coastline. However, unlike in New England, the recent arrival of green crab on the west coast poses more of a threat to established fisheries and endangered species. Thus, the reactions and response of the west coast states to green crab is different from the New England states.

### A. Invasive Species

#### *Alaska*

In Alaska, the Department of Fish and Wildlife (ADFW) regulates invasive species. Green crabs are listed as a Class A Banned Invasive Species, meaning no one “may possess any part of a Class A banned invasive species, including reproductive or genetic material.”<sup>84</sup> There are some exceptions to this prohibition, such as authorization under an aquatic resources permit.

#### *California*

The Department of Fish and Game regulates California’s invasive species list. The list is made up of both aquatic and terrestrial species. Green crabs are not listed as a restricted crustacean species.<sup>85</sup> Although the California Department of Fish and Wildlife refers to green crab as a “well-known marine invasive species,” since they are not listed in the regulations as a restricted species, they are likely not a regulated invasive species.<sup>86</sup>

#### *Oregon*

In Oregon, the Department of Fish and Wildlife regulates and monitors invasive species. The Invasive Species Council reviews and declares species as invasive state regulations.<sup>87</sup> A species can be listed as an aquatic invasive species when it is listed on the “United States Geological

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<sup>81</sup> *Marine Dealer’s License*, DEP’T ENV’T MGMT. (Sept. 2023), <https://dem.ri.gov/sites/g/files/xkgbur861/files/2023-09/mardealr.pdf>.

<sup>82</sup> Paul Molyneaux, *Invasive Green Crabs Reach Alaska, Threatening Fisheries*, NAT’L FISHERMEN (Nov. 6, 2024), <https://www.nationalfisherman.com/invasive-green-crabs-reach-alaska-threatening-fisheries#:~:text=The%20European%20green%20crab%20has,and%20commercial%20fisheries%2C%20including%20salmon.>

<sup>83</sup> *Id.*; *European Green Crab*, ALASKA SEA GRANT, <https://alaskaseagrants.org/our-work/european-green-crab/> (last visited Dec. 11, 2024).

<sup>84</sup> ALASKA ADMIN. CODE tit. 5, § 41.075(c)–(d).

<sup>85</sup> CAL. CODE REGS. tit. 14, § 671(c)(8). The only crustaceans listed are mitten crabs and crayfish. *Id.*

<sup>86</sup> *What are Marine Invasive Species?*, DEP’T FISH & WILDLIFE, <https://wildlife.ca.gov/OSPR/Science/Marine-Invasive-Species-Program/Definition#592123789-well-known-marine-invasive-species-in-california> (last visited Jan. 13, 2025).

<sup>87</sup> OR. ADMIN. R. 609-010-0100–0140(1).

Service list of Aquatic Nonindigenous species in Oregon . . . or that is listed as a mollusk or crustacean in OAR 63-056-0050 as a Prohibited Species.”<sup>88</sup> Since the U.S. Geological Survey lists green crab as a nonindigenous species in the state, they are regulated invasive species in Oregon.”<sup>89</sup>

### *Washington*

The Department of Fish and Wildlife (WDFW) regulates invasive species in the state. Under the invasive species regulations, an aquatic invasive species is defined as “an invasive species of the animal kingdom with a life cycle that is at least partly dependent upon fresh, brackish, or marine waters. Examples include nutria, waterfowl, amphibians, fish, and shellfish.”<sup>90</sup>

There are three “level of prohibition” under the regulations for nonnative aquatic species.<sup>91</sup> The level of prohibitions determines what prevention, response, and management priorities are for WDFW. For example, a level 1 species is “high invasive risk and are a priority for prevention and expedited rapid response management actions.”<sup>92</sup> Green crabs are listed as a prohibited level 1 species.<sup>93</sup>

## **B. Fishing Regulations**

Since Alaska, Oregon, and Washington list green crab as a prohibited invasive species, the regulations surrounding the possession, transport, and sale of green crab are clearer and much more restrictive than in the New England area.

### *Alaska*

Green crabs cannot be possessed in Alaska, unless an exception applies.<sup>94</sup> One exception to the prohibition is an aquatic resources permit. Under an aquatic resources permit, a banned species can be transported within the state only when it is “harvested or caught under sport, personal use, subsistence or commercial regulations from the place of harvest or capture to a place within the state for processing or commercially caught or harvested aquatic organism to a place within the state for sale.”<sup>95</sup>

### *California*

In California, the importation of any live aquatic plant and animal must have written approval from the Department of Fish and Game prior to the species being imported.<sup>96</sup> Additionally, live animals cannot be imported, transported, or possessed in the state without a permit from the

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<sup>88</sup> OR. ADMIN. R. 635-059-0000. The Prohibited Species list can be found at OR. ADMIN. R. 635-056-0050.

<sup>89</sup> *NAS – Nonindigenous Aquatic Species*, U.S. GEOLOGICAL SURV., <https://nas.er.usgs.gov/queries/SpeciesList.aspx?Group=&Sortby=1&state=OR> (last visited Dec. 11, 2024).

<sup>90</sup> WASH. REV. CODE § 77.135.010(2).

<sup>91</sup> *Id.* at § 77.135.030.

<sup>92</sup> *Id.* at § 77.135.030(1)(a).

<sup>93</sup> WASH. ADMIN. CODE § 220-640-030(2)(b).

<sup>94</sup> ALASKA ADMIN. CODE tit. 5, § 41.07(d).

<sup>95</sup> ALASKA ADMIN. CODE tit. 5, § 41.005(e).

<sup>96</sup> CAL. FISH & GAME CODE § 2271(a).

department.<sup>97</sup> Most likely a permit will be needed to possess, import, or transport green crab in California.

### *Oregon*

As a prohibited species, green crabs do not fall under the general commercial fishing and crabbing regulations. For most crab species, it is unlawful to take a crab for “commercial purposes, with or by the use of any other gear than that specifically known as crab ring or crab pot, or sell or offer for sale crabs unlawfully caught.”<sup>98</sup> However, since green crab are prohibited, it is not possible to commercially crab for green crab under this rule, even if the proper gear was used.

However, the Department of Fish and Wildlife may authorize people to “remove nonindigenous aquatic species from an area if it is determined that the species is adversely affecting any population of native fish species.”<sup>99</sup> The department allows the recreational harvest of green crab up to 35 crabs per day, with a shellfish license.<sup>100</sup>

### *Washington*

As a level 1 prohibited species, green crab cannot be “possessed or retained, introduced on or into a water body or property, or trafficked (transported, bought, or sold), without department authorization, a permit or as otherwise provided by rule.”<sup>101</sup> Additionally, “it is illegal to retain/harvest” green crab and any sighting of green crab or green crab molts are to be reported to the department.<sup>102</sup>

## **C. Bait Laws**

In states that have listed green crabs as a prohibited invasive species—Alaska, Oregon, and Washington—the ability to use green crab as bait is limited by the invasive species regulations. Even if bait laws and regulations did allow for the use of crustaceans, green crab’s status as a regulated or prohibited invasive species would still prohibit their use as bait due to restrictions on possessing and selling them.

In California, where green crab are not a regulated invasive species, “[l]egally acquired and possessed invertebrates, mollusks, crustaceans, amphibians (except salamanders), fish eggs and treated and processed foods may be used for bait” in freshwater, with some exceptions.<sup>103</sup> The

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<sup>97</sup> CAL. CODE REGS. tit. 14, § 671(a).

<sup>98</sup> 42 OR. REV. STAT. § 509.415(1).

<sup>99</sup> 41 OR. REV. STAT. § 496.860.

<sup>100</sup> *Crabs*, DEP’T FISH & WILDLIFE, <https://myodfw.com/crabbing-clamming/species/crabs> (last visited Jan. 16, 2025).

<sup>101</sup> *European Green Crab*, WASH. DEP’T FISH & WILDLIFE, <https://wdfw.wa.gov/species-habitats/invasive/carcinus-maenas> (last visited Dec. 6, 2024).

<sup>102</sup> *Crab Rules*, WASH. DEP’T FISH & WILDLIFE, <https://www.eregulations.com/washington/fishing/crab-rules> (last visited Jan. 6, 2024).

<sup>103</sup> CAL. CODE REGS. tit 14, § 4.00. Exceptions include using “federal or state endangered species,” trout, or salamanders. *Id.* at § 4.00(a)–(b), (e). Other restrictions for certain water districts or by municipalities may also exist.

only restrictions that exist for ocean waters is on tilapia.<sup>104</sup> Additional research would be needed to determine whether green crab could be used as bait in California.

## **Conclusion**

The ability to catch, possess, sell, and transport a non-native species depends largely on their regulatory status. Public outreach campaigns to prevent the spread of invasive may cause confusion related to the regulatory state of green crabs in a particular state. Green crabs are often referred to as “invasive” or as an “invader” even when those words do not carry any regulatory meaning. State agencies may use these words to describe green crabs on their websites, however, green crab are not currently regulated at the federal level as an invasive species, nor do many states officially regulate it as an invasive species. The only states surveyed for this report that regulate green crab under their invasive species regulations are: Alaska, New York, Oregon, and Washington. All the states that regulate green crab as invasive, except for New York, prohibit possession and sale of green crab for commercial purposes.

Of the states that do not regulate green crab as an invasive species two—Maine and Massachusetts—have regulations governing the recreational harvest of green crab. Maine requires a green crab permit to harvest, whereas Massachusetts permits harvest without a license if certain conditions are met. The laws in New Hampshire, New York, and Rhode Island are silent regarding commercial green crab harvesting but it may potentially be permitted under general crabbing licenses. In California and Connecticut, potentially only a general commercial fishing license would be needed to harvest green crab. Additionally, bait dealer licenses may be needed in these states to harvest and sell green crabs as bait.

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<sup>104</sup> *Id.* at § 27.10. “Tilapia may not be used or possessed for use as bait in ocean waters.” *Id.*