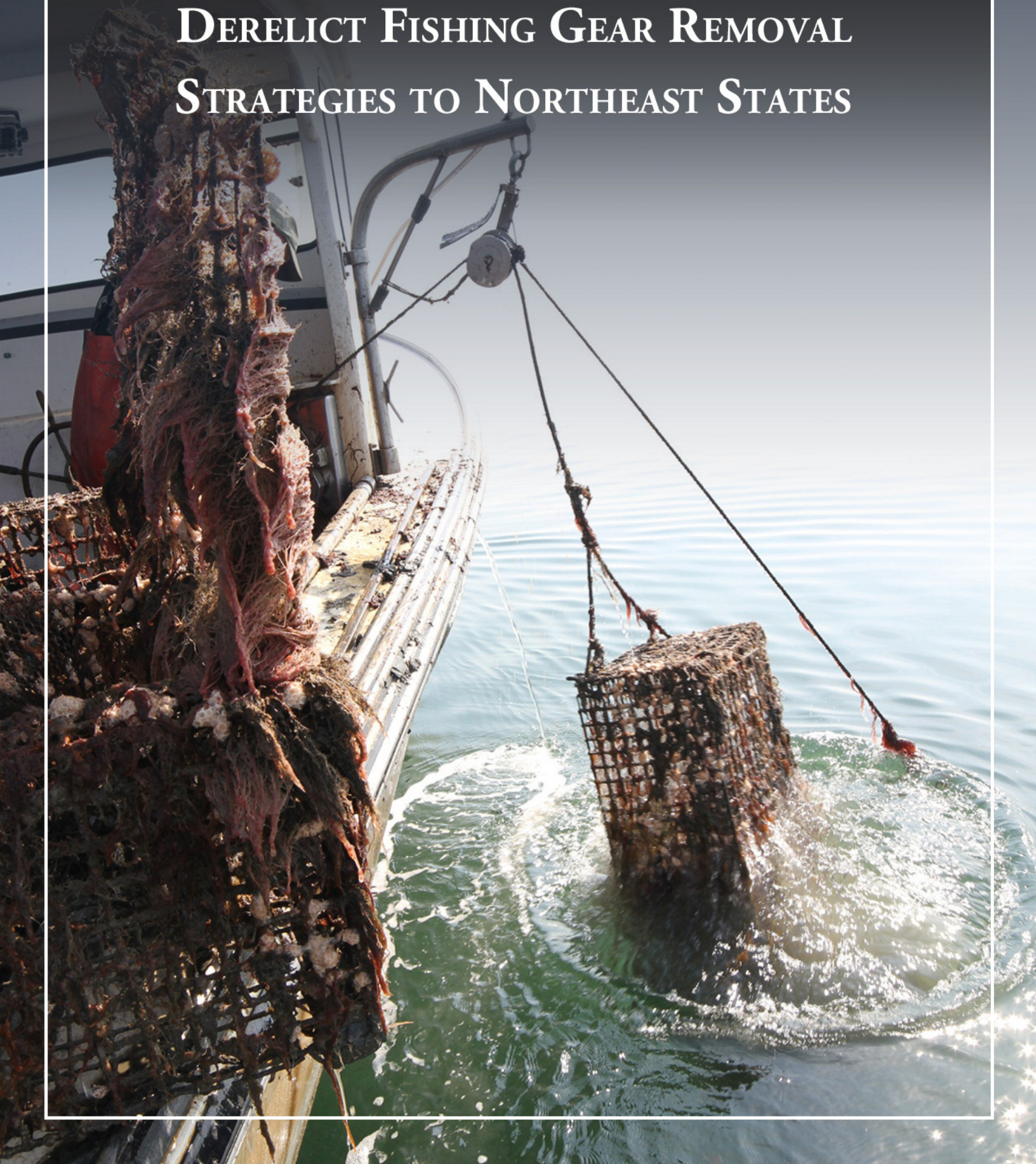


**TRANSFERABILITY OF INNOVATIVE
DERELICT FISHING GEAR REMOVAL
STRATEGIES TO NORTHEAST STATES**



TRANSFERABILITY OF INNOVATIVE DERELICT FISHING GEAR REMOVAL STRATEGIES TO NORTHEAST STATES

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THE UNIVERSITY of
MISSISSIPPI
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EXECUTIVE SUMMARY

In 2015, the National Sea Grant Law Center (NSGLC) at the University of Mississippi School of Law received a grant award from the National Fish and Wildlife Foundation's (NFWF) Fishing for Energy Partnership to help New England managers assess the feasibility of implementing innovative derelict fishing gear removal strategies in their states. Lost nets and other heavy fishing equipment can damage ecosystems as they are moved by tides and waves along the sea floor. Derelict fishing gear also impacts navigational safety, damages active fishing equipment and boats, and causes economic repercussions for coastal industries and communities across the country. The laws and regulations governing the removal of derelict fishing gear vary by fishery and state. To assess the feasibility of implementing innovative removal strategies in their states, New England managers need a better understanding of the current legal framework governing derelict fishing gear removal and how existing state marine debris programs are authorized.

The six case studies documented in this report highlight successful strategies for marine debris removal. In Florida, the Spiny Lobster, Stone Crab and Blue Crab Trap Retrieval Program authorizes commercial fishermen, who know the local area and own trap-pulling vessels, to remove traps from state waters during closed seasons. Louisiana has a similar removal program, which authorizes agencies, individual volunteers, and organizations to remove any abandoned pots and deposit them at designated disposal sites. In New Hampshire, where the majority of the coastline is state-owned, the New Hampshire Fish and Game Department (NHFGD) has expanded the authority to remove derelict fishing gear beyond NHFGD conservation officers and gear owners by signing a Memorandum of Agreement with another agency to allow those employees to act as agents of the NHFGD and remove derelict fishing gear. The Washington Department of Fish and Wildlife and other federal and state agencies have drafted removal guidelines for implementation of a derelict fishing gear (DFG) removal program in the Puget Sound. The report also highlights two programs outside of the typical derelict fishing gear removal programs: Maine's abandoned aquaculture gear removal program and Maryland's abandoned vessel removal program.

These case studies are intended to illustrate how states have adjusted existing state law to target a particular issue. Among the integral strategies of the selected case studies are: 1) clear definitions of derelict, abandoned, or intact gear; 2) authorization for commercial fishermen, agency personnel, and volunteers to remove gear; 3) a closed season to facilitate gear removal; 4) clear guidelines for gear removal, including streamlined notification and disposal requirements; and 5) innovative funding mechanisms.

The case studies are not intended to provide exhaustive descriptions of each state's derelict fishing gear program. Rather, these case studies are designed to highlight key components of marine debris removal programs that could serve as models for transfer into New England states. In comparing each case study to the five New England states, this report notes similarities of the programs to each state, as well as any gaps and actions needed to implement similar programs. New England states may use this report to evaluate whether their particular states could transfer some of the ideas and components from the case studies to increase the effectiveness of their derelict fishing gear programs.

INTRODUCTION

As a first step towards increasing awareness and improving understanding of state derelict fishing gear laws and regulation, the NSGLC compiled the relevant laws and regulations related to derelict fishing gear for eleven priority states as identified by NFWF (Washington, California, Maine, Massachusetts, New Hampshire, Maryland, Virginia, Florida, Alabama, Connecticut, and Rhode Island). Relevant statutory and regulatory provisions were identified through traditional legal research methods. Each state compilation was sent to appropriate state agency contacts for review and feedback.

In January 2016, the NSGLC formed a project advisory committee to obtain guidance on project planning and facilitate agency review of project deliverables. The Advisory Committee members include:

- Sarah Cotnoir, Maine Department of Marine Resources;
- Dan McKiernan, Massachusetts Department of Energy and Environmental Affairs;
- Cheri Patterson, New Hampshire Fish and Game Department;
- Daniel Costa, Rhode Island Department of Environmental Management; and
- Rachel Keylon and Keith Cialino, NOAA Marine Debris Program.

The NSGLC analyzed the compiled laws and regulations to address several key management questions identified by the project Advisory Committee. For each state, the NSGLC identified the following: state definitions for derelict fishing gear; requirements for marking gear and attending gear; prohibitions on “molesting” gear; requirements or authorizations to remove gear; closed periods for gear removal; and, other relevant definitions for derelict or abandoned property. Draft summaries were sent to each state for review and comment and the final summaries are available in Appendix A.

In addition to identifying the priority management questions, the Committee also identified derelict fishing gear removal programs and strategies that could potentially be used by New England states. The NSGLC drafted legal cases studies of these six programs to gain a solid understanding of how they operate and provide a foundation for assessing their transferability to the New England region. Each short narrative case study, included within the Case Study Comparisons section of the document, details how the program was authorized, responsible entity, and regulatory and permitting requirements.

This report will first summarize the existing legal framework governing derelict fishing gear and removal programs for each of the five New England states (Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island). The full state analysis is located in Appendix A of this document. The report will then compare the five New England states to each case study, identifying transferability of similar programs to each state. The report will note any gaps and identify actions needed to implement similar programs.

SUMMARIES OF NEW ENGLAND DERELICT FISHING GEAR LAWS

Below is a short summary of each state’s laws related to derelict fishing gear (DFG). Full summaries are available in Appendix A. Table 1 provides a snapshot comparison of the New England states. The table identifies which states have a derelict gear definition, marking and tending requirements, prohibitions on molesting fishing gear, authorization required to remove gear, closed periods specifically for gear removal, and other relevant gear removal definitions, such as identifications of abandoned vessels.

Table 1. Snapshot comparison of Northeast states:

	DFG Definition	Marking/ Attending Requirements	Prohibition on Molesting	Authorization Required to Remove Gear	Closed Periods for Gear Removal	Other Relevant Definitions
Connecticut	✘	✓	✓	✓	✘	✓
Maine	✘	✓	✓	✓	✘	✓
Massachusetts	/	✓	✓	✓	✘	✓
New Hampshire	✘	✓	✓	✓	✘	✓
Rhode Island	✘	✓	✓	✓	✘	✓

- ✓ = State provisions
- ✘ = Authorities not expressly provided for
- / = Partial

Connecticut

Connecticut does not define derelict fishing gear. While there are closed periods for the lobster fishery, there are no closed periods specifically to facilitate the removal of gear.

State law permits only certain parties to touch fishing gear: only the owner, his agent, or an authorized Department of Energy and Environmental Protection (DEEP) employee or agent may touch any lobster trap, pot, or other gear. (CONN. GEN. STAT. § 26-167).

DEEP may remove gear that is not in compliance with state law, such as pots or traps that are not properly marked. (CONN. GEN. STAT. § 26-157a(b); CONN. AGENCIES REGS. § 26-157c-2). State regulations require all pots and traps to be marked in a certain manner, with a requirement for valid tags on lobster pots from June 1 through May 31. (CONN. GEN. STAT. § 26-157). In addition, any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

Maine

Maine does not legally define “derelict fishing gear.” There are no provisions specifically closing a fishery to facilitate the removal of gear. Maine law prohibits anyone other than authorized personnel from the Department of Marine Resources, the owner, or individual with written permission from the owner from raising, lifting, transferring, possessing, or otherwise molesting lobster traps. (ME. REV. STAT. ANN. tit. 12 § 6434(1)). Lobster traps and buoys and certain nets must be properly marked, with valid tags required for lobster traps. (ME. REV. STAT. ANN. tit. 12, § 6432(2)-(3)). For trap and pot fishing gear, there is no wet storage of gear over 30 days. (13-18-75 ME. CODE R. § 75.02).

Massachusetts

Massachusetts does not directly define derelict fishing gear. Division of Marine Fisheries (DMF) regulations, however, refer to “ghost gear” in reference to its interaction with mobile gear fishing. For this purpose, ghost gear is defined as “any fixed fishing gear including but not limited to gillnets with their flyers and floats and lobster pots with their buoys and line, which are no longer buoyed to the surface of the water, are not visible from the surface and become entangled with mobile gear.” (322 MASS. CODE REGS. 4.06(1)). “To abandon” or “to store” means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods. (322 MASS. CODE REGS. §§12.02-12.03). This applies to any fixed gear at any time. However, it is most enforceable during gear haul-out periods. There are closed periods requiring gear removal for certain fisheries, but there are no closures in place specifically to facilitate DFG removal.

In Massachusetts, without permission of the owner, it is illegal for anyone except the owner or DMF or the Environmental Police to handle, destroy or molest any lobster or crab pot or other fishing gear, including any gear swept upon the shore, beaches or flats whether public or private, or to take fish therefrom (MASS. GEN. LAWS ANN. ch. 130, § 31). However, any vessel with mobile gear whose gear becomes entangled with ghost gear may haul said ghost gear on board for the purpose of identification and return to the rightful owner, if authorized in writing by said owner (322 MASS. CODE REGS. 4.06). The owner of any fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within 30 days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. (MASS. GEN. LAWS, ch. 130, § 32). If the gear is not recovered by the owner as detailed above or recovered by other legal means within 60 days it becomes the property of the riparian owner of the shore, beach, or flat.

New Hampshire

The state does not legally define “derelict fishing gear.” There are no provisions specifically closing a fishery to facilitate the removal of gear.

State law makes it unlawful for anyone other than New Hampshire Fish and Game Department (NHFGD) conservation officers or the lobster gear owner to touch lobster gear. (N.H. REV. STAT. ANN. § 211:31). NHFGD has signed a Memorandum of Agreement (MOA) with the New

Hampshire Department of Resources and Economic Development (NHDRED). The MOA allows NHDRED employees to act as agents of the Executive Director of the NHFGD and remove derelict fishing gear from beaches and coastal parks.

State regulations require unattended pots, traps, and nets to be marked in a specific manner, including tags on lobster traps. Any pot or trap for lobster or crab must have a properly marked buoy attached, and any pot, traps, or other gear in violation of this will be forfeited (N.H. REV. STAT. ANN. § 211:32). Fishermen must haul in traps and pot gear at least once every 30 days. (NH CODE ADMIN. R. ANN. FIS § 602.09).

Rhode Island

Although there are provisions for abandoned gear, no definition is provided for “derelict fishing gear.” No provisions were found to specifically facilitate gear removal.

No person except the director, enforcement officers, and authorized technical personnel of the Department of Environmental Management (DEM) may unduly disturb, lift, raise, molest, or remove any animal from a trap, pot, or any other device of a person licensed under Title 20 of R.I. GEN. LAWS ANN. without the written permission of that person. (R.I. GEN. LAWS ANN. § 20-4-8; R.I. CODE R. § 25-8-4:11.9; R.I. CODE R. § 25-8-4:15.1). Traps, pots, nets, and other gear must be appropriately marked, with appropriate trap tags required for lobster traps. Fish traps must be removed once an owner ceases to use it, and DEM may take possession of the trap. (R.I. GEN. LAWS ANN. § 20-5-14).

CASE STUDY COMPARISONS: LEGAL GAPS AND BARRIERS

FLORIDA'S SPINY LOBSTER, STONE CRAB, AND BLUE CRAB TRAP RETRIEVAL PROGRAM

In Florida, accumulation of derelict traps presents significant hazards to the marine environment. Florida's Spiny Lobster, Stone Crab, and Blue Crab Trap Retrieval Program enables the Florida Fish and Wildlife Commission (FWC) to contract with commercial fishermen to remove traps from state waters during closed seasons.

DFG Problem:

Derelict traps in Florida waters pose a significant problem. In the Florida Keys National Marine Sanctuary alone, one scientific study surveying lobster trap debris found that over 85,000 ghost traps (traps that are lost but continue to catch marine animals) and over 1 million non-fishing traps or trap remnants were left in the study area. These traps are long-lasting marine debris that present a significant threat to people and to the marine environment.

As in most states, removing the derelict traps is not simple. In Florida, it is unlawful for anyone to tamper with traps and associated gear. (FLA. STAT. §§ 379.365, 379.367). A violation can result in fines of up to \$5,000 and the permanent revocation of fishing privileges. Authorized government entities and volunteer groups are permitted by Florida law to participate in coastal cleanups, as long as they comply with the requirements in FLA. ADMIN. CODE ANN. r. 68B-55. In order to increase removal efforts, the FWC's Spiny Lobster, Stone Crab and Blue Crab Trap Retrieval Program authorizes commercial fishermen, who know the local area and own trap-pulling vessels, to remove traps from state waters during closed seasons. In addition, the state administrative rules define both "derelict trap" and "fishable trap," which helps to clarify what gear may be removed and disposed of by fishermen.

Responsible Entity:

Florida Fish and Wildlife Commission (FWC)

Program Authorization:

FLA. STAT. § 379.2424 authorizes the FWC to implement a trap retrieval program for retrieval of spiny lobster, stone crab, and blue crab traps remaining in the water during the closed season for each species. The FWC is authorized to contract with commercial fishermen for the program operation.

Program Implementation:

Fishery participant organizations are contracted to implement this program. Fishery participant organizations are defined as

A group of commercial fishermen all of whom possess a current saltwater products license and a blue crab, stone crab, or spiny lobster endorsement. For the purpose of participation in the retrieval of derelict traps this means participants who receive and possess written permission from each other to bring their traps into land or move them back into line, who work under law enforcement supervision to retrieve traps, or who prepare a plan for FWC authorization. (FLA. ADMIN. CODE ANN. r. 68B-55.001)

Fishery participant organizations are selected through a competitive-bid process. The vendor with the lowest bid is selected, and payment is based on the number of traps retrieved and the number of retrieval trips completed. A FWC observer is present onboard for each retrieval trip and is responsible for verifying the number of traps retrieved, and to record license and location data from each trap retrieved.

The trap retrieval program is funded by revenue generated through the sale of commercial saltwater licenses and the collection of trap retrieval fees. For each spiny lobster, stone crab, and blue crab commercial license issued, \$25 is allocated to the trap retrieval efforts. In return, each license holder is granted a retrieval fee waiver for up to 5 traps for each endorsement type held. For example, if a fisherman has both a stone crab endorsement and a crawfish endorsement, he will receive a waiver for the first 10 traps retrieved each calendar year. If a fisherman holds a stone crab endorsement, a crawfish endorsement, and a blue crab endorsement, then he will receive a waiver for the first 15 traps retrieved each calendar year. Traps that are recovered as part of this program are destroyed and disposed of. A retrieval fee of \$10 per trap is assessed to the trap owner for each trap retrieved. These fees are dedicated to the operation of the trap retrieval program. (FLA. STAT. § 379.368). Commercial licenses cannot be renewed until all retrieval fees have been paid.

Essential to the program is the regulatory definition of “derelict trap” and “fishable trap.” “Derelict trap” is defined as “any trap during any closed season for the species, or any fishable trap during the open season that lacks more than two of the following elements:” buoy, line, current Commission-issued trap tag (if required), and current license. “Fishable trap” is defined as “a trap that has 6 intact sides and at least two of the following elements:” buoy, line, current Commission-issued trap tag (if required), and identification.” (FLA. ADMIN. CODE ANN r. 68B-55.001).

Transferability of Florida Program

As noted above, FLA. STAT. § 379.2424 authorizes the FWC to implement a trap retrieval program for retrieval of spiny lobster, stone crab, and blue crab traps remaining in the water during the closed season for each species. The FWC is authorized to contract with commercial fishermen for the program operation. Key components include the requirement to remove gear during fishery closures and the presumption that gear left in waters during the closure is presumed abandoned. Also key is the authority of the state agency and commercial fishermen to remove and dispose of the gear.

Table 2. Snapshot comparison to Florida program.

	Definition or Description of Derelict or Fishable Trap	Requirement to Remove Gear During Closure	Presumption of Abandonment During Closed Period	State Authority to Remove	Commercial Fishermen Authority to Remove	Authority to Dispose
Connecticut	No*	No	N/A	Yes	No	No
Maine	No	No	N/A	Yes	No	Yes
Massachusetts	Yes	Yes	Yes (required)	Yes	No**	Yes
New Hampshire	No	No	N/A	Yes	No	Yes
Rhode Island	No*	Yes	Yes (limited)	Yes	No	Yes

* States do not have definitions or descriptions of derelict or fishable traps, but they do reference abandoned gear.

** In Massachusetts, commercial fishermen have acted as contractors to non-governmental organizations who have organized gear removal projects with agency permission.

Definition or Description of Derelict or Fishable Trap

A definition of derelict or fishable gear clearly identifies what gear may be removed. Only Massachusetts has a definition or description of abandoned gear.

- Massachusetts’s regulations refer to “ghost gear” in reference to its interaction with mobile gear fishing. For this purpose, ghost gear is defined as “any fixed fishing gear including but not limited to gillnets with their flyers and floats and lobster pots with their buoys and line, which are no longer buoyed to the surface of the water, are not visible from the surface and become entangled with mobile gear.” (322 MASS. CODE REGS. 4.06(1)). “To Abandon” or “To Store” means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods. (322 MASS. CODE REGS. §§12.02-12.03). This applies to any fixed gear at any time. However, it is most enforceable during gear haul-out periods.

Rhode Island has provisions for abandoned gear but does not define it. Rhode Island state law provides that “Any fish trap damaged or allowed to get into a dilapidated condition will be regarded as abandoned unless promptly removed or rebuilt. Failure to do this will subject the owner to prosecution and forfeiture of the trap.” (R.I. GEN. LAWS ANN. § 20-5-14). Connecticut does not define derelict fishing gear, but state law does provide that any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

Maine and New Hampshire do not have any definitions or provisions defining derelict fishing gear.

Requirement to Remove Gear During Closure

A requirement to remove gear during fishery closures makes it easier to identify abandoned gear, as it creates a presumption of abandonment. Of the five New England states, only Massachusetts and Rhode Island expressly require the removal of gear during closed periods.

- In Massachusetts, “Fishing for lobster with traps is prohibited in the Large Whale Seasonal Trap/Pot Gear Closure Area (322 MASS. CODE REGS. 12.11) from February 1st through April 30th. It is also unlawful for any fisherman authorized to fish traps in the Outer Cape Lobster Conservation Management Area (LCMA) to fish, set, or abandon any lobster pots in the Outer Cape LCMA or any other LCMA during this seasonal closure.” (322 MASS. CODE REGS. 6.02). Also, fish and conch pot traps must be removed from the water when the fishery is closed for purposes of management or quota being reached. Consequently, conch traps must be removed December 15th through April 14th, and fish pots for taking sea bass or scup must be removed within three days of the annual quotas being filled.
- Rhode Island requires gear removal before the last day of December of each year and gear may not be reset before the first day of March. (RI GEN. LAWS ANN. 20-5-15). There are also removal requirements during seasonal closures established by the Department of Environmental Management (DEM). For example, in certain Lobster Management Areas (LMAs), lobster fishermen have a two-week period to remove lobster pots from the water and may set lobster pots one-week prior to the end of the closed season. (R.I. CODE R. 25-8-4:15.1). The DEM may take possession for any fish trap or appurtenances, which is willfully maintained in a wrong position or location. (RI GEN. LAWS ANN. 20-5-15). They may also take possession of any abandoned fish trap. (*Id.*).

Presumption of Abandonment During Closed Period

A presumption of abandonment allows fishermen to remove any gear left in the water during fishery closures. Only two states, Massachusetts and Rhode Island, have a presumption of abandonment during closed periods.

For Massachusetts, it is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster traps in the Outer Cape LCMA or any other LCMA during this seasonal closure. Leaving fixed gear in prohibited areas during prohibited periods falls within the meaning of the definition “to abandon”. (322 MASS. CODE REGS. 12.02-12.03).

In Rhode Island, during a seasonal closure, any fish trap damaged or allowed to get into a dilapidated condition will be regarded as abandoned unless promptly removed or rebuilt. Failure to do this will subject the owner to prosecution and forfeiture of the trap. (R.I. GEN. LAWS ANN. § 20-5-14). The DEM may take possession for any fish trap or appurtenances, which is willfully maintained in a wrong position or location. (RI GEN. LAWS ANN. 20-5-15). They may also take possession of any abandoned fish trap. (*Id.*)

State Authority to Remove

A state authority to remove refers to an express statement providing state agencies or officers with the authority to remove fishing gear. All of the New England states authorize state agencies or officers to remove fishing gear.

- In Connecticut, DEEP has specific authority to remove gear that is not in compliance with state law. Only the owner, authorized agent, the DEEP or other law enforcement may lift, raise, molest, or draw traps, post, or devices. (CONN. GEN. STAT. § 26-167). Lobster pots and traps in use which are not marked as required or do not contain the required escape vents and escapement panels may be seized by any authorized representative of DEEP and disposed of as determined by the agency. (CONN. GEN. STAT. § 26-157a(b); CONN. AGENCIES REGS. § 26-157c-2). Any lobster pot, trap or similar device found to contain a defaced or obliterated license number may be seized by any authorized representative of DEEP and either used by DEEP for purposes of marine research or destroyed. (*Id.*)
- In Maine, a marine patrol officer may remove fishing gear. (ME. REV. STAT. ANN. tit. 12, § 6434(1)).
- In Massachusetts, all buoys, pots, traps, and lobster cars that are not marked as required must be removed from the coastal waters by any officer who is empowered to enforce state fisheries regulations (usually performed by DMF and law enforcement). Upon removal, the gear must be held for up to six months. If the owner of any such buoy, pot, trap or lobster car fails to claim the gear within six months it will be permanently confiscated and disposed of by the DMF for the best interest of the commonwealth. The DMF may in no way be held liable for such removal, confiscation or disposal. (MASS. GEN. LAWS, ch. 130, §§ 12, 38).
- In New Hampshire, any Fish and Game Department conservation officer may raise, lift or examine any pot, trap, car or other contrivance that is set for the taking or holding of marine species. The Department is also authorized to seize all pots, traps, cars or other contrivances and the contents thereof used in violation of any law or rule relating to marine species, and to hold the same until the fine and costs imposed for such violation have been paid in full. (N.H. REV. STAT. ANN. § 211:75).

- In Rhode Island, the Department of Environmental Management has general authority to remove traps. No person except the DEM may place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner. (R.I. CODE R. § 25-8-4:15.1a; R.I. CODE R. § 20-7-12.1). The DEM may take possession of any abandoned fish trap and appurtenances; or any fish trap and appurtenances placed in a location for which no permit has been obtained; or any fish trap and appurtenances for which a permit location has been obtained but which the owner of the fish trap and appurtenances may willfully maintain in a wrong position or location. (R.I. GEN. LAWS ANN. § 20-5-15).

Commercial Fishermen Authority to Remove

Granting commercial fishermen authority to handle gear of other fishermen is crucial to the implementation of the Florida program. It does not appear that New England states other than Massachusetts specifically grant commercial fishermen authority to remove gear other than their own. In Massachusetts, any vessel with mobile gear whose gear becomes entangled with ghost gear may haul said ghost gear on board for the purpose of identification and return to the rightful owner, if authorized in writing by said owner. (322 MASS. CODE REGS. 4.06).

Maine, New Hampshire, and Rhode Island do allow any person with written permission to remove gear, so a commercial fishermen would be able to remove others' gear in that limited circumstance. For example, if a commercial fisherman had written permission from another commercial fishermen to remove the gear, he could do so. (*See*, ME. REV. STAT. ANN. tit. 12, § 6434(1); N.H. REV. STAT. ANN. § 214; RI GEN. LAWS ANN. 20-4-8; RI GEN. LAWS ANN. 20-5-15).

Authority to Dispose

Authorizing disposal and identifying disposal procedures is another important part of a removal program. The Florida program specifies how abandoned gear should be disposed of. All New England states have the authority to dispose of gear they have removed pursuant to state law. The required notice and disposal procedures vary, however.

- In Connecticut, lobster pots or traps not marked as required or without the proper configuration may be seized and disposed of at the discretion of the agency; any without a license number may be destroyed.
- In Maine, the DMR may dispose of traps, warps buoys, or cars or authorize their disposal if he owner cannot be identified or if the owner has been notified and fails to respond within 30 days. (ME. REV. STAT. ANN. tit. 12 § 6434(2)).
- In Massachusetts, any buoys, pots, traps, and lobster cars not marked as required will be held for up to six months and if not claimed, may be disposed of by DMF. (MASS. GEN. LAWS, ch. 130 §§ 12, 38).

- In New Hampshire, any gear used in violation of state law may be confiscated until fine or costs for the violations have been paid. After 60 days, the gear may be placed for public auction. (N.H. REV. STAT. ANN. § 211:75).
- In Rhode Island, the DEM may destroy or dispose of gear with proper notice. (RI GEN. LAWS ANN. 20-5-15).

Barriers to Transferability

A major barrier to implementing a similar removal program in the New England states is the lack of seasonal closures. Only a few New England states have seasonal closures. For example, while Massachusetts and Rhode Island have seasonal lobster closures, Connecticut, Maine, and New Hampshire have year-round seasons; therefore, the presumption of abandonment would not work in these lobster fisheries as there is never a closed period.

The lack of a definition of derelict, abandoned, or intact gear is also a barrier to implementation. A definition of derelict or abandoned gear and the authority to remove it could be used in lieu of the presumption of abandonment during closure. As stated, the New England states do not specifically define derelict or abandoned gear.

In addition, the Florida program has a presumption of abandonment during closed periods. Presumption of abandonment allows fishermen to assume that any gear left in the water is abandoned and remove it. Currently, only Massachusetts requires removal during closed periods.

Another major roadblock for implementing the Florida program in New England states is the limitation on commercial fishermen handling others' fishing gear. To make the program work, commercial fishermen would need the authority to remove the gear of other fishermen. Currently, the only state that allows this is a very limited exception in Massachusetts for removal of entangled ghost gear. In addition, in most instances, non-state actors are prohibited from molesting gear of others.

Strategies to Reduce Barriers

- Authorize commercial fishermen or others to retrieve abandoned gear.
 - If legislation for program is not feasible, issue letter of authorization for certain groups to retrieve gear.
- Allow presumption of abandonment during closed period OR define derelict or abandoned gear.
- If closures are established, look at creating them in seasons in which gear is easier to collect.
- Pay for retrieval based on the number of traps retrieved and the number of retrieval trips completed.

LOUISIANA'S CRAB TRAP CLOSURE PROGRAM

Louisiana authorizes closures to allow for the removal of derelict crab pots. During these closures, the Louisiana Wildlife and Fisheries Commission (LWFC), individual volunteers, and organizations remove any abandoned pots and deposit them at Louisiana Department of Wildlife and Fisheries (LDWF)-designated disposal sites.

DFG Problem:

Crab traps were introduced in Louisiana as early as 1948 and became the dominant gear in the fishery by the mid-1960s. From the late 1970s through the present, trap landings have contributed over ninety-nine percent of total blue crab and stone crab landings in Louisiana. Large numbers of these traps are lost or abandoned each year due to a variety of reasons, such as extreme weather conditions, accidental clipping of the buoy lines by passing vessels, displacement of traps caught in shrimp gear, vandalism, and improper disposal of old traps.

Because modern crab traps consist of vinyl coated wire mesh that may take years to degrade, removal of derelict and abandoned crab traps has become especially important in Louisiana. Removal reduces unnecessary mortality of blue crabs and other marine organisms that get stuck in the unused traps. Such efforts also improve visual esthetics of state waterways and reduce navigation hazards and conflicts with other fishing gear and user groups.

Responsible Entity:

Louisiana Wildlife and Fisheries Commission (LWFC), Louisiana Department of Wildlife and Fisheries (LDWF).

Program Authorization:

While the LWFC is charged with creating regulations for the program, the LWFC has authorized the LDWF to implement aspects of the program. LA. REV. STAT. § 56:332 authorizes the LWFC to establish a program for the removal of derelict crab traps. Under LA. REV. STAT. § 56:332, LWFC may close state waters for a period of time to facilitate removal, and any crab traps found in these waters during the closed period are deemed abandoned and may be removed by anyone authorized by the LWFC.

Program Implementation:

Through regulation, the LWFC establishes the specific locations and times for closure. (LA. ADMIN. CODE PT tit. 76, § 367). During the closure period, crab traps may be removed by anyone between one-half hour before sunrise to one-half hour after sunset.

Closures have taken place every year since 2004. In 2016, the regulations establish closures for three different areas along Louisiana's coast. The first closure of 2016 took place from February 12-21 in the eastern portion of Lake Pontchartrain, Lake Catherine and adjacent marshes. The second took place from February 19-28 in the upper Barataria basin. The third took place from February 19-28 in Sabine Lake, located on the Texas-Louisiana border, to allow Texas Parks and Wildlife Department (TPWD) to conduct a lake cleanup.

The program has an important volunteer component. Specified days within the closure period are announced for volunteer participation. According to LDWF, volunteers, including commercial crabbers, Louisiana Sea Grant, the Louisiana Coastal Conservation Association, and members of the general public have helped tremendously in some of the more productive crab trap cleanup efforts over the years.

In the weeks leading up to a closure, the LDWF mails notices to all licensed recreational and commercial crab trap license holders and crab buyers within affected parishes as well as non-resident licensed crab fishermen who fish Louisiana waters and reside in Mississippi and Texas. All crab traps remaining in the closed areas during the specified period are considered abandoned. No person removing crab traps from the designated closed areas during the closure periods may possess the traps outside of the closed area. The abandoned traps are destroyed on site and taken to LDWF-designated disposal sites. (LA. ADMIN. CODE PT tit. 76, § 367). According to LDWF, since the traps are taken from a closed area and every attempt is made to notify fishermen in that area beforehand, no other notifications are made.

Transferability of Louisiana Program

Under LA. REV. STAT. § 56:332, LWFC may close state waters for a period of time to facilitate removal, and any crab traps found in these waters during the closed period are deemed abandoned and may be removed by anyone authorized by the LWFC.

Key components to the Louisiana program include the authority to close waters for the purpose of gear removal and the presumption that gear left in waters during the closure is abandoned. Another key component is the authority of the state agency and non-state actors to remove and dispose of the gear.

Table 3. Snapshot comparison to Louisiana program.

	Authority to Close Waters for Gear Removal	Presumption of Abandonment During Closed Period	State Authority to Remove	Non-state Actor Authority to Remove	Authority to Dispose
Connecticut	No	N/A	Yes	No	No
Maine	No	N/A	Yes	No	Yes
Massachusetts	Yes	Yes	Yes	Yes*	Yes
New Hampshire	No	N/A	Yes	No	Yes
Rhode Island	Yes	Yes	Yes	No	Yes

* Massachusetts grants authority on a contract basis.

Authority to Close Waters for Gear Removal

As noted above, Louisiana state law specifically authorizes LWFC to close state waters to facilitate removal. None of the New England state agencies have legislative or regulatory authority to close waters for the purpose of gear removal. Although states have the authority to close waters for management purposes, closure for the purpose of gear removal is not specifically identified in the New England states. Although not specifically outlined in state law, Massachusetts’s managers cite gear removal as a reason for the February through April closure, which is designed to eliminate the presences of gear that could entangle whales.

Presumption of Abandonment During Closed Period

Only two states, Massachusetts and Rhode Island, have a presumption of abandonment during closed periods. The provisions for those states are outlined in the previous section on page 8.

State Authority to Remove

All of the New England states authorize state agencies or officers to remove fishing gear in violation of state law. See analysis above on page 9.

Non-state Actor Authority to Remove

In all New England states, non-state actors are prohibited from molesting gear of others. In some states, non-state actors may remove gear with written permission from the owner or the appropriate state agency.

- In Connecticut, only the owner, authorized agent of the owner, the DEEP or other law enforcement official may lift, raise, molest, or draw traps, pots, or devices. (CONN. GEN. STAT. § 26-167).
- In Maine, only a marine patrol officer, the licensed owner, or any person having written permission may raise, lift, transfer, possess, or otherwise molest lobster traps. (ME. REV STAT. ANN. tit. 12, § 6434(1)). A person with written permission from a Marine Patrol Officer may move or remove a lobster trap, car, buoy or warp from the waters or shores of the state for the purpose of returning the lobster gear to the licensed owner or properly disposing of lobster gear. Written permission must be obtained in advance of removal. (ME. REV STAT. ANN. tit. 12, § 6434(1)).
- In Massachusetts, only the owner or the DMF may remove gear except for mobile gear that becomes entangled with ghost gear. In those instances, the gear may be hauled on board for identification and return, if authorized by the owner. (MASS. GEN. LAWS, ch. 130, § 32). The state also provides commercial fishermen with authority to remove DFG on a contract basis.
- In New Hampshire, only the owner, someone with written permission from the owner, or a conservation officer may touch fishing gear. (N.H. REV STAT. ANN. § 214).
- In Rhode Island, only the DEM or someone with written permission of the owner may remove lobster gear. (RI GEN. LAWS ANN. 20-4-8; RI GEN. LAWS ANN. 20-5-15).

Authority to Dispose

All New England states have the authority to dispose of gear they have removed pursuant to state law. The required notice and disposal procedures vary. See section above on page 10 for analysis.

Barriers to Transferability

The primary roadblock for implementing the Louisiana program in New England states is the lack of authority to remove fishing gear without written permission from the owner or the appropriate state agencies. Volunteers, for example, could not remove gear without obtaining specific authorization from the owner or the state.

In addition, the Louisiana program closes state waters for the specific purpose of cleanup and any gear left in the water is presumed abandoned and subject to removal. None of the New England states have closures specifically for the removal of gear. Further, even if the waters were closed, there is no presumption of abandonment or definition of derelict gear and the authorization to remove.

Strategies to Reduce Barriers

- Authorize closure for cleanup through legislation. It might be possible to tweak regulations to include gear removal in agencies' authority to close for emergency or management purposes.
- Indicate that traps in the waters during the closure are deemed abandoned and may be removed by the agency or non-state actors.

NEW HAMPSHIRE'S MOA TO ALLOW DFG REMOVAL

In New Hampshire, state laws designed to protect the property of lobster harvesters hinder the removal of derelict lobster gear. State law makes it unlawful for anyone other than the New Hampshire Fish and Game Department (NHFGD) conservation officers or the lobster gear owner to touch lobster gear. To expand the authority to remove derelict fishing gear beyond NHFGD conservation officers and gear owners, the NHFGD has signed a Memorandum of Agreement (MOA) with the New Hampshire Department of Resources and Economic Development (NHDRED). The MOA allows NHDRED employees to act as agents of the Executive Director of the NHFGD and remove derelict fishing gear from beaches and coastal parks. The MOA works especially well in New Hampshire, where a majority of the state's coastline is owned by the state. The full text of the MOA is available in Appendix B of this document.

DFG Problem:

To prevent theft of private property (e.g., traps, buoys, etc.), New Hampshire enacted laws that prohibit removing or even touching fishing gear belonging to someone else. In New Hampshire, it is unlawful for any person, except the owner of the gear or NHFGD conservation officers, to “take up, lift, molest, have in his possession, or transfer any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, nor take, remove or carry away from the beach or shore, any such pot, trap, car or other contrivance or warp or buoy without the written permission of the owner. In addition to the penalty for violation of this section, said person, if he holds a license, must lose said license for one year.” (N.H. REV. STAT. ANN. § 211:31).

While these laws are important to protect the catch and property of lobster harvesters, they impede beach cleanups, as a NHFGD official must be present at the cleanup for gear to be legally removed. To aid in keeping NH's coastal areas clean from derelict fishing gear, NHFGD and the NHDRED signed an MOA in 2015, formalizing requirements that the NHDRED employees must follow when collecting gear from coastal areas.

Prior to the formal MOA, NHDRED employees would collect derelict fishing gear from the coast based on an informal agreement with the NHFGD and work with the Town of Hampton for disposal options. Under the current MOA, the derelict fishing gear must be delivered to a set location. Currently, the disposal sites are part of a recycling program, “Fishing for Energy,” which is a partnership between NHFGD, the National Fish and Wildlife Foundation, NOAA's Marine Debris Program, Covanta Energy Corporation and Schnitzer Steel Industries. New Hampshire also works with industry in performing an annual cleanup of private beaches.

Responsible Entity:

New Hampshire Fish and Game Department (NHFGD).

Program Authorization:

State law directs the Executive Director of the NHFGD to cooperate with other New Hampshire state agencies “for the protection, propagation, and preservation of all wildlife” in New Hampshire. (N.H. REV. STAT. ANN. § 206:23). To facilitate cooperation with respect to derelict fishing gear removal, the NHFGD and NHDRED entered into an MOA. MOAs, also known as Memorandums of Understanding MOU, are agreements to work together to achieve common goals and are generally not legally binding. The MOA authorizes the NHDRED to act as an agent of the NHFGD for the purpose of collecting and disposing derelict gear from beaches and coastal parks. The MOA also sets forth guidelines the NHDRED must follow when collecting and disposing of gear. The MOA does not delegate any NHFGD authority to NHDRED.

Program Implementation:

Pursuant to the MOA, NHDRED employees may act as agents of NHFGD and aid in retrieving derelict fishing gear if certain requirements are met. These requirements include: NHDRED staff must be in the appropriate NHDRED uniform and vehicle when disturbing derelict fishing gear; any living organisms obtained during recovery must be released; and NHDRED must notify the NHFGD with a report of any gear removed. In addition, gear with an identifiable owner must be placed in a designated location so the owner can retrieve it. Unusable gear or gear without an identifiable owner must be placed in designated disposal containers. This gear is recycled as part of the Fishing for Energy Program and converted into energy at a New Hampshire waste-to-energy plant.

Transferability of New Hampshire Program

State law directs the Executive Director of the NHFGD to cooperate with other New Hampshire state agencies “for the protection, propagation, and preservation of all wildlife” in New Hampshire. (*see* N.H. REV. STAT. ANN. § 206:23). Key to the New Hampshire program is state agency authorization to work cooperative with other agencies for derelict gear removal.

Table 4. Snapshot comparison to New Hampshire program.

	Secondary State Agency Authority to Remove	Authority for Primary Agency to Cooperate with Other Agencies	Current MOU or Other Agreement
Connecticut	Yes	Yes	No
Maine	No	Yes	No
Massachusetts	Yes	Yes	Letter for Cleanup
Rhode Island	No	Yes	No

Secondary State Agency Authority to Remove

Specifying that other state agencies have the authority to remove gear broadens the ability of state agencies to engage in removal of derelict fishing gear. Connecticut and Massachusetts include “other law enforcement” in the description of those entities authorized to remove or touch traps. Maine, New Hampshire, and Rhode Island specify authority only for the primary agency.

Authority for Primary Agency to Cooperate with Other Agencies

The authority for the “primary” agency to cooperate with other state agencies allows the agencies to enter into an MOU, similar to the one in New Hampshire. All states authorize the agency charged with removing DFG to cooperate with other agencies or entities in fulfilling their duties.

- In Connecticut, “The commissioner may enter into cooperative agreements with educational institutions and state, federal or other agencies to promote wildlife research and to train personnel for wildlife management, information, distribution and education projects, and may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups or landowners, associations and individuals for the development of fish or wildlife management and demonstration projects.” (CONN. GEN. STAT. ANN. § 26-3).
- Maine specifies that “The commissioner shall consult with, offer advice to and cooperate with the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry in carrying out the commissioner's duties, and these agencies shall do the same in carrying out their duties....” (ME. REV. STAT. tit. 12, § 6022).

- In Massachusetts, the Executive Office of Energy and Environmental Affairs is authorized “to advise, assist, and cooperate with such other departments, agencies, authorities, officials, and institutions, including state institutions of higher learning, as may be concerned with or involved in matters under their control or supervision.” (MASS. GEN. LAWS ANN. ch. 21A, § 2). Beach cleanups are done in coordination with the Massachusetts Office of Coastal Zone Management. The Division of Marine Fisheries issues guidance and letters of authorization for fishing gear removal within state waters and from the shoreline. The Division of Marine Fisheries is also authorized to enter into cooperative agreements with local, state, or federal authorities for the purpose of joint conservation and management of marine fisheries and for the joint conservation and management of marine fisheries and implementation and rules and regulations. (MASS. GEN. LAWS ANN.ch. 130, § 21).
- As noted, New Hampshire state law directs the Executive Director of the NHFGD to cooperate with other New Hampshire state agencies “for the protection, propagation, and preservation of all wildlife” in New Hampshire. (*see* N.H. REV. STAT. ANN. § 206:23).
- In Rhode Island, “The director [of DEM] may cooperate with the fish and wildlife commissioners or other similar bodies or agencies of other states in carrying out the purpose of this title.” (20 R.I. GEN. LAWS ANN. § 20-1-17).

Barriers to Transferability

There are no major barriers to the transferability of the New Hampshire MOA. Connecticut and Massachusetts include “other law enforcement” in the description of those authorized to remove or touch traps. An MOA may not be necessary in these states, as other law enforcement personnel are authorized to touch the traps. However, an MOA could still be a useful mechanism through which to outline cleanup guidelines.

Strategies to Reduce Barriers

- State agencies should initiate MOAs with appropriate agencies or entities, which would allow those agencies to assist with the collection and disposal of derelict gear from beaches and coastal parks.
- The MOA should set forth guidelines to follow when collecting and disposing of gear.

WASHINGTON'S DFG REMOVAL IN PUGET SOUND

In 2002, Washington State adopted legislation authorizing the development of guidelines for safe, effective removal of derelict fishing gear. The Northwest Straits Initiative, in conjunction with the Washington Department of Fish and Wildlife (WDFW) and other federal and state agencies, subsequently drafted removal guidelines for implementation of the DFG removal program in the Puget Sound. A coastal gear recovery program operates under the same overarching WDFW derelict gear recovery provisions but functions independently from the Puget Sound program.

DFG Problem:

In Puget Sound and the Northwest Straits region, the rocky reefs and outcroppings in the sound frequently snag gill nets. Additionally, recreational and commercial crabbing in the area resulted in abandoned crab pots, as the crab pot lines are clipped by passing vessels. As a result, hundreds of tons of derelict gear have collected in the area over time. Off the Washington coast, the Dungeness crab fishery results in an estimated loss rate of up to 10% on 120,000 crab pots placed annually.

Unfortunately, regulatory barriers, such as permit requirements for gear removal and penalties for fishermen reporting lost gear, historically prevented effective cleanup methods. In 2002, the Washington legislature adopted Senate Bill 6313 for the purpose of developing safe, effective methods to remove derelict fishing gear, eliminating regulatory barriers to gear removal, and discouraging future losses of fishing gear. WDFW and the Northwest Straits Initiative were directed to develop guidelines for gear removal.

Responsible Entity:

Washington Department of Fish and Wildlife (WDFW)

Program Authorization:

WASH. REV. CODE § 77.12.865(2) required the WDFW, in conjunction with the Northwest Straits Commission and other interested parties, to develop guidelines for the safe removal and disposal of derelict fishing gear. The Derelict Fishing Gear Removal Guidelines promulgated pursuant to WASH. REV. CODE § 77.12.865(2) establish the procedures for the removal of lost or abandoned fishing gear in the Puget Sound. Currently, the Washington coastal gear recovery program operates through the use of permits issued by WDFW that authorize DFG removal during fishery closures. The permits essentially exempt the permit holder from Washington state lost and found property laws. The Nature Conservancy and the Quinault Department of Fisheries, in consultation with the tribal fishing community, is also developing a reporting and recovery program. The program is fashioned after the Puget Sound program, with consideration of the cultural and community norms of the Quinault Indian Nation. These guidelines are not highlighted here, as the focus of the case study is on the development and use of the guidelines to replace permitting.

Program Implementation:

In 2001, the Northwest Straits Initiative, a program authorized by Congress to protect and restore marine resources in the Northwest Straits, received its first grant for a pilot derelict gear removal project. The Northwest Straits Initiative worked with state agencies and local organizations to devise diver-training protocols and identify priorities for gear removal activities.

Northwest Straits, in conjunction with WDFW and other federal and state agencies, developed removal guidelines as directed by S.B. 6313. As long as gear removal is conducted in accordance with these guidelines, the removing party is not subject to additional permits by the WDFW; however, authorization may be needed from private landowners or Tribe, state, or county parks depending on where the removal activities will occur. The guidelines focus on removing existing gear and preventing new gear from entering the water through non-regulatory means.

To remove gear from the Puget Sound, a removal plan must be submitted to WDFW 30 days in advance. Derelict gear removal methods vary based on the location and type of the gear. If the gear can be identified, the owner must be contacted in accordance with federal admiralty law and Washington State's Abandoned Property Law. Otherwise, the gear must be disposed of properly or recycled. A post-recovery report is due to the WDFW within 60 days of the operation or every six months if the project is of long duration.

In addition to the guidelines, Northwest Straits created a database of known derelict gear locations and established a phone and web-based reporting system. According to Northwest Straits, "Central to the success of the derelict gear program has been its grassroots nature and partnerships with commercial and recreational fishermen to locate and remove gear."

Transferability of Washington Program

WASH. REV. CODE § 77.12.865(2) required the WDFW, in conjunction with the Northwest Straits Commission and other interested parties, to develop guidelines for the safe removal and disposal of derelict fishing gear. The Derelict Fishing Gear Removal Guidelines promulgated pursuant to WASH. REV. CODE § 77.12.865(2) establish the procedures for the removal of lost or abandoned fishing gear. Key to the program is the development of specific guidelines.

Table 5. Snapshot comparison to Washington program.

	Requirement to Enact Removal Guidelines	Removal Plan	Notification Requirements	Disposal Requirements	Gear Database (State-sponsored)
Connecticut	No	No	1 year*	Yes	No
Maine	No	No	30 days	Yes	No
Massachusetts	No	Yes	6 months	Yes	No
New Hampshire	No	Yes	60 days	Yes	No
Rhode Island	No	No	"proper notice"	Yes	No

* (for gear abandoned to conceal evidence)

Requirement to Enact Removal Guidelines

A requirement to enact removal guidelines grants the authority to develop specific removal procedures. WASH. REV. CODE § 77.12.865(2) required the WDFW, in conjunction with the Northwest Straits Commission and other interested parties, to develop guidelines for the safe removal and disposal of derelict fishing gear. No New England state has a similar requirement to enact removal guidelines.

Removal Plan

A removal plan streamlines removal procedures. In Washington, the Derelict Fishing Gear Removal Guidelines promulgated pursuant to WASH. REV. CODE § 77.12.865(2) establish the procedures for the removal of lost or abandoned fishing gear. As long as gear removal is conducted in accordance with these guidelines, the removing party is not subject to additional permits by the WDFW; however, authorization may be needed from private landowners or Tribe, state, or county parks depending on where the removal activities will occur. The guidelines focus on removing existing gear and preventing new gear from entering the water through non-regulatory means. Only two New England states appear to have removal procedures in writing.

In Massachusetts, the Division of Marine Fisheries will issue a letter to authorize gear removal within state waters. The letter must be kept aboard the vessel used in cleanup and those participating in the cleanup must accommodate DMF staff upon request.

- No fishing gear properly marked with a surface system may be removed from the water.
- All traps and nets and associated components removed from the water shall be – to the degree possible - inventoried and described regarding gear type, fishery, and owner.
- Any intact nets or traps that are fish-able must be turned over to DMF. All traps and nets that are not intact will be considered trap or net debris and may be disposed of by the organization performing the cleanup after a detailed inventory is generated for transmittal to DMF at the end of the year.
- Final report of all activities and detailed list of gear and trap or net debris must be furnished to DMF by a certain time. (letter from DMF, on file with author).

The New Hampshire NHFGD's MOA with the New Hampshire Department of Resources and Economic Development (NHDRED) allows NHDRED employees to act as agents of NHFGD to remove derelict gear from beaches and coastal parks of New Hampshire during work hours with certain stipulations:

- The NHDRED staff must be in the appropriate NHDRED uniform and vehicle when disturbing DFG.
- Any living organisms obtained during the cleanup must be released. NHDRED must notify the NHFGD with a report of any DFG removed.
- Unusable DFG or without an identifiable owner must be placed in designated disposal containers.
- DFG with an identifiable owner must be placed in a designated location for return.

Notification/Disposal Requirements

Clear notification and disposal requirements allow for disposal of derelict gear. To remove gear in Washington, a removal plan must be submitted to WDFW 30 days in advance. Derelict gear removal methods vary based on the location and type of the gear. If the gear can be identified, the owner must be contacted in accordance with federal admiralty law and Washington State's Abandoned Property Law. Otherwise, the gear must be disposed of properly or recycled. A post-recovery report is due to the WDFW within 60 days of the operation or every six months if the project is of long duration.

All New England states have authority to remove gear that does not comply with state law. The states have varying notice and disposal procedures.

- In Connecticut, any lobster pots or traps not marked as required or improperly configured may be seized and disposed of at the discretion of the agency; any without a license number may be destroyed. In addition, any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23). If the owner or person having custody of any such article at the time it is abandoned, discarded or thrown away fails to claim such article within one year after it comes into the possession of such officer, such article shall be forfeited to the state and may be retained for use by DEEP, sold at public auction, or destroyed at the discretion of DEEP. The proceeds from such sales shall be paid to the state treasurer to be credited to the general fund.
- In Maine, the DMR may dispose of traps, warps buoys, or cars or authorize their disposal if he owner cannot be identified or if the owner has been notified and fails to respond within 30 days. (ME. REV. STAT. ANN. tit. 12 § 6434(2)).
- In Massachusetts, any buoys, pots, traps, and lobster cars not marked as required will be held for up to six months and if not claimed, may be disposed of by DMF. (MASS. GEN. LAWS, ch. 130 §§ 12, 38).
- In New Hampshire, any gear used in violation of state law may be confiscated until fine or costs for the violations have been paid. After 60 days, the gear may be placed for public auction. (N.H. REV. STAT. ANN. § 211:75).
- In Rhode Island, the DEM may destroy or dispose of gear with proper notice. (RI GEN. LAWS ANN. 20-5-15).

Gear Database

A gear database for marine debris allows users to see where gear removal has occurred and where gear debris remains. For example, New Hampshire has a Marine Debris to Energy project through the University of New Hampshire that tracks marine debris. This is not a state sponsored program, but part of a study funded through New Hampshire Sea Grant and a grant from the NOAA Marine Debris Program. <http://cecf1.unh.edu/debris/>

Barriers to Transferability

WASH. REV. CODE § 77.12.865(2) required the WDFW, in conjunction with the Northwest Straits Commission and other interested parties, to develop guidelines for the safe removal and disposal of derelict fishing gear. No New England state has a similar requirement to enact removal guidelines.

Strategies to Reduce Barriers

- States should enact legislation that require and/or authorize state agencies to develop guidelines for the safe removal and disposal of derelict fishing gear. Like Washington, states could coordinate with nonprofit groups to develop guidelines and maintain a database of derelict fishing gear.

MAINE'S ABANDONED AQUACULTURE GEAR REMOVAL PROGRAM

Maine's Abandoned Aquaculture Gear Removal Program, although not directly related to DFG, may be used as a parallel program comparison. This case study is intended to illustrate how states have adjusted existing state law to target a particular issue. Methods used to remove abandoned aquaculture gear may translate to DFG removal.

Like derelict fishing gear, abandoned aquaculture gear can impact marine habitats and fishing vessels. To address this threat to the marine environment, Maine has long required lessees to hold a current bond or escrow account in an amount deemed sufficient to pay for gear removal if an applicant fails to do so at the end of a lease term or after revocation. More recently, Maine has enacted legislation providing a mechanism for the removal and disposal of abandoned aquaculture gear in the event a bond or escrow account unknowingly lapses.

Management Problem:

Maine is one of the leading U.S. producers of farm-raised seafood, with approximately 110 aquaculture leases and 250 licenses. The abandonment of aquaculture gear and equipment by leaseholders or licensees can damage the marine habitat or cause navigation issues. Although Maine aquaculture producers generally act as responsible environmental stewards, Maine has proactively enacted laws and regulations that outline procedures for removing such gear in the event of abandonment.

Responsible Entity:

Maine Department of Marine Resources (DMR)

Program Authorization:

The Department of Marine Resources may remove abandoned aquaculture equipment under ME. REV. STAT. ANN. tit. 12, § 6086.

Program Implementation:

Aquaculture gear may be presumed "abandoned" in various circumstances. Aquaculture gear and equipment must be removed upon termination of lease by the applicant or revocation by DMR. If an applicant fails to remove gear, the bond or escrow account would be accessed to pay for removal. If the bond or escrow account is unavailable, gear would be considered "abandoned" and subject to removal.

Aquaculture equipment is also considered abandoned if gear remains in the water after the term of the lease or license has expired. If equipment remains in the area of the lease or license site, and the equipment is not legally permitted to remain by another authority, such as a municipal mooring permit, it is considered abandoned. Aquaculture equipment also meets the definition of abandoned if the aquaculture lease or license holder has not entered into an agreement with the DMR to accomplish timely removal of the equipment or stock.

Once the DMR has determined that there is abandoned aquaculture equipment, the DMR may begin removal or authorize a third party to remove equipment if the DMR is satisfied that the work will be completed. (ME. REV. STAT. ANN. tit. 12, § 6086(3)(A)-(B)). Prior to removal, the DMR must give notice to the aquaculture lease or license holder or any person who has a property interest in the equipment or stock. The lease or license holder then must respond within 15 days and remove the equipment or stock from the coastal waters within 60 days of notification by the DMR (or within 60 days of ice out if the equipment or stock is icebound). Immediate removal is authorized where the gear is a human health or safety hazard or immediate threat to the marine environment. If the persons to whom the DMR has given notice cannot be contacted or do not remove the equipment within the time period specified, the DMR may initiate removal of the equipment. (ME. REV. STAT. ANN. tit. 12, § 6086(3)).

The DMR is authorized to sell abandoned equipment. Any proceeds from the sale must first be applied to the removal costs; however, any money that remains may be applied to any liens against the equipment or stock. The remaining money goes to the Aquaculture Management Fund. (ME. REV. STAT. ANN. tit. 12, § 6086(3)(D)). If the State is not compensated for removal costs, the State must first attempt to recover the removal costs by claiming these expenses against the escrow account or performance bond. (ME. REV. STAT. ANN. tit. 12, § 6072-C; 13-188 ME. CODE R. § 40). As a final step, the State may bring a civil action against the owner of the equipment or stock to cover any cost of removal of the equipment or stock. The court may award an additional fifty percent removal cost. The penalty is payable to the Aquaculture Management Fund.

Maine has not yet employed this removal process for abandoned aquaculture gear. According to the DMR, if gear has been left behind, aquaculture producers generally respond to the DMR's request to remove it. If producers did leave gear behind, however, these rules would facilitate removal of the gear.

Transferability of Maine Program

Maine’s Abandoned Aquaculture Gear Removal Program, although not directly related to DFG, may be used as a parallel program comparison. Key to the Maine program is the requirement for leaseholders or licensees to have bond or escrow accounts to provide funds for cleanup. In addition, the program clearly defines abandoned gear and specifies gear removal and sale procedures.

Table 6. Snapshot comparison to Maine program.

	Requirement for Commercial Fishermen to have Bond or Escrow Account	Definition or Description of Abandoned Gear	State Authority to Remove Abandoned Gear	Authority to Sell Gear	Notice Requirements
Connecticut	No	No (provisions)	Yes	Yes	1 year*
Maine	No	No	Yes	No	30 days
Massachusetts	No	Yes	Yes	No	6 months
New Hampshire	No	No	Yes	Yes	60 days
Rhode Island	No	No (provisions)	Yes	Yes	“proper notice”

* (for gear abandoned to conceal evidence)

Requirement for Commercial Fishermen to Have Bond or Escrow Account

Maine requires aquaculture leaseholders to have a bond or escrow account in an amount deemed sufficient to pay for gear removal if an applicant fails to do so at the end of a lease term or after revocation. Although some states, like Massachusetts, may have similar requirements for aquaculture gear, none of the New England states have a similar requirement for commercial fishermen and commercial fishing gear.

Definition or Description of Abandoned Gear

A definition of abandoned or derelict gear allows the appropriate gear to be identified and removed. Only Massachusetts has a definition or description of abandoned gear. See discussion above on page 7.

Authority to Remove Abandoned Gear

A state authority to remove means that state agencies or officers may remove gear. All of the New England states authorize state agencies or officers to remove fishing gear placed in violation of state law. See analysis above on page 9.

Authority to Sell and Notice Requirements

The authority to sell abandoned aquaculture equipment gives the state another potential source of funding for the removal process. Below are state laws that specifically reference the sale of fishing gear. Other states may rely on general abandoned property law for auction requirements.

- In Connecticut, if the owner of pots, traps, or fishing gear abandoned, discarded, or thrown away fails to claim property within one year after it comes into the possession of DEEP, it may be sold at public auction. The proceeds from such sales shall be paid to the state treasurer to be credited to the general fund. (CONN. GEN. STAT. § 26.23).
- In New Hampshire, any gear used in violation of state law may be confiscated until fine or costs for the violations have been paid. After 60 days, the gear may be placed for public auction. (N.H. REV. STAT. ANN. § 211:75).

Barriers to Transferability

The Maine program clearly defines abandoned aquaculture equipment and outlines removal procedures. The New England states lack a clear definition of “abandoned gear” which impedes removal of derelict fishing gear.

Further, the Maine program is funded through contributions from aquaculture farmers. None of the New England states require a similar bond or escrow account required for commercial fishermen.

The Maine program allows for the sale of abandoned gear. Only two states, Connecticut and New Hampshire, specifically mention selling at public auction. Other states simply allow “disposal” and may rely on general abandoned property laws for auction requirements.

Strategies to Reduce Barriers

- Define derelict or abandoned gear in state law.
- Require a bond or other account to have commercial fishermen pay for abandoned gear.
- Specifically authorize the sale of abandoned gear.

MARYLAND'S ABANDONED BOAT AND DEBRIS PROGRAM

Although Maryland's Abandoned Boat and Debris Program does not directly relate to DFG, the removal of abandoned boats from the water parallels the removal of derelict or abandoned fishing gear. Guidelines and processes used to remove abandoned vessels may translate to DFG removal. This case study is intended to illustrate how states have adjusted existing state law to target a particular issue. Specifically, the abandoned boat program removes abandoned vessels from state lost and found property laws, streamlining notification and removal of abandoned vessels.

Overview:

Maryland has a formal abandoned vessel program, with statutes on the designation, notification, titling requirements, and removal authority of abandoned vessels on both private and public property. In addition, the Maryland Department of Natural Resources (DNR), which manages the abandoned vessel program, provides reimbursable grants and expertise to assist public agencies in the removal of abandoned boats and debris from state waters. While this program may not address derelict fishing gear directly, components of the abandoned vessel program could serve as a model for derelict fishing gear removal.

Problem:

When boats have outlived their usefulness or are severely damaged by storm events, some boat owners find removal to be too expensive or troublesome and simply leave their vessels behind on Maryland's shorelines and waterways. Other times, boats may be abandoned due to the owner being deceased or in jail. The abandoned boats will often sink and sometimes break down into smaller pieces. In addition to being eyesores, these abandoned boats may impede navigation and harm the environment.

Maryland prohibits the abandonment of vessels and has implemented laws for the removal and disposal of abandoned vessels. Before removing a vessel, the state must follow certain procedures, such as attempting to locate the boat owner. To amplify its removal efforts, the DNR has instituted the Abandoned Boat and Debris Program, which allows authorized public entities in Maryland to apply for grants to remove some of these vessels.

Responsible Entity:

Maryland Department of Natural Resources (DNR)

Program Authorization:

In general, a person may not abandon any vessel on any waters of the State. Maryland's abandoned vessel laws specifically deal with designating vessels as abandoned, the assessment of civil and criminal penalties for vessel abandonment, removal and disposal requirements, and the title acquisition process that must be followed by private citizens. (MD. CODE § 8-725.1).

The DNR is authorized to seize, remove, and take into custody any abandoned vessel. The DNR can use its own personnel, equipment, and facilities or use other persons, equipment, and facilities for removing, preserving, or storing abandoned vessels. (MD. CODE § 8-721). “Abandoned vessel” is defined as any vessel that:

- Is left illegally or has remained without permission for more than 30 days on public property, including public marinas, docks, or boatyards;
- Has remained either at a private marina or property operated by a private marina, or a private boatyard or property operated by a private boatyard for more than 90 days without the consent of the owner or person in control of the property;
- Has remained either at a private dock or at or near waters’ edge on private property for more than 30 days without the consent of the owner or person in control of the property;
- Has remained on private property other than the private property described above for more than 180 days without the consent of the owner or person in control of the property; or
- Has been found adrift or unattended in or upon the waters of the State, and is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters of the State or presents a potential health or environmental hazard. (MD. CODE § 8-721).

The DNR can delegate its authority to remove and dispose of abandoned vessels to any local jurisdiction that consents to the delegation. (MD. CODE § 8-721).

Program Implementation:

If a vessel meets the above definition of “abandoned vessel” the DNR will start removal procedures or allow private citizens to acquire title in certain instances. As part of the removal process, the DNR must spend time and funds to notify the owner, take the abandoned vessel into custody, and then make an additional attempt to contact the last known registered owner of the vessel. If the DNR is unable to determine the last registered owner or the identity of any secured party of the abandoned vessel, the DNR must give notice of seizure by publication. When an abandoned vessel is in such a state of disrepair that the Department cannot remove the vessel intact, the Department may dispose of the vessel without providing the notice required. (MD. CODE § 8-721). These procedures, while effective, are time consuming and costly to the DNR.

The Maryland Abandoned Boat and Debris Program allows authorized public entities in Maryland to apply for grants to remove vessels. Only local governments with ownership, management, or jurisdiction over the aquatic lands where the vessel or hazardous debris is located may apply for grants. Applicants can apply for up to \$25,000 for abandoned vessels and \$10,000 for debris removal. Reimbursement is contingent upon compliance with all terms and conditions of the grant. Funds for the program come from the state Waterway Improvement Fund, which is generated from the one-time five percent excise tax paid to the state when a boat is purchased and titled in Maryland.

Transferability of Maryland Program

Although the Maryland Abandoned Boat and Debris Program does not directly relate to DFG, the removal of abandoned boats from the water parallels the removal of abandoned fishing gear. The definition of “abandoned” allows for the identification and removal of abandoned vessels. Other key components include penalties for abandoned vessels to incentivize recovery and local government involvement.

Table 7. Maryland Comparison to New England States.

	Definition of Abandoned	Penalties for Abandonment	State Agency Authority to Remove	Removal/ Disposal Procedures	Local Govt. Authority to Remove	Grant Funds for Removal Projects
Connecticut	No	No	Yes	Yes	--	No
Maine	No	No	Yes	No	No	No
Massachusetts	Yes	No	Yes	No	--	No
New Hampshire	No	No	Yes	Yes	No	No
Rhode Island	No	No	Yes	Yes	No	No

Definition of Abandoned Gear or Equipment

Only Massachusetts has a definition or description of abandoned gear. Rhode Island has provisions for abandoned gear but does not define it. See analysis above on page 7.

Penalties for Abandonment

Penalties may be useful to deter the abandonment of equipment. Although none of the New England states have penalties for abandoned fishing gear, all states have the authority to issue citations and assess fines for violation of marine fisheries laws by license holders. This may include having improperly marked, placed, or configured gear.

- In Connecticut, lobster pots and traps in use which are not marked as required or do not contain the required escape vents and escapement panels may be seized by any authorized representative of DEEP and disposed of as determined by the agency. (CONN. AGENCIES REGS. § 26-157a(b); CONN. AGENCIES REGS. § 26-157c-2). Also, any lobster pot, trap or similar device found to contain a defaced or obliterated license number may be seized by any authorized representative of DEEP and either used by DEEP for purposes of marine research or destroyed. (*Id.*) Any person who violates any provision of CONN. GEN. STAT. § 26-157a or any regulation adopted in accordance with section 26-157c will be guilty of a class D misdemeanor for each offense. (*Id.*)

- In Maine, fines for violation of fisheries laws include fishing without a tag. (13-188 ME. CODE R. § 25.08.)
- In Massachusetts, anyone who violates a provision of the marine fisheries chapter “shall, unless otherwise provided, be punished by a fine of not less than ten nor more than five thousand dollars, or by imprisonment for not more than one year, or both. Whoever violates any rule or regulation made under authority of this chapter shall, unless otherwise provided, be punished by a fine of not less than fifty nor more than one thousand dollars. Any penalty imposed under this section shall be in addition to the suspension or revocation of licenses, permits or certificates as authorized by this section, and to any forfeiture proceedings authorized under this chapter.” (MASS. GEN. LAWS ANN. ch. 130, § 2).
- In New Hampshire, “Any pots, traps, cars or other contrivance used to catch or store lobsters or crabs in violation of this requirement will be forfeited.” (N.H. REV. STAT. ANN. § 211:32). For each offense under Revised Statutes Annotated §§ 211:22, 23, 23-a, 32, 34, 38 or 39 shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. N.H. REV. STAT. ANN. § 211:44.
- In Rhode Island, “Unless another penalty is specified in this title, any person who violates a rule or regulation of the marine fisheries council shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than thirty (30) days, or both.” (R.I. GEN. LAWS ANN. § 20-3-3).

State Agency Authority to Remove

A state authority to remove means that state agencies or officers may remove gear. All of the New England states authorize state agencies or officers to remove fishing gear placed in violation of state law. See analysis above on page 9.

Removal or Disposal Requirements

All states have authority to remove gear that does not comply with state law. The states have varying notice and disposal procedures. See analysis above on page 10.

Local Government Authority to Remove Gear

None of the New England states specifically mention local government. Connecticut and Massachusetts include “other law enforcement” in the description of those authorized to remove or touch traps. In these states, city police or county sheriffs may be included in “other law enforcement.”

Government Grant/Funds for Removal Projects

A fund or grant for removal projects helps cover removal and disposal expenses. None of the New England states have grant programs for fishing gear removal.

Barriers to Transferability

A significant roadblock to implementing a fishing gear removal program similar to Maryland's abandoned vessel program would be lack of a definition of "abandoned" gear in most states. A definition of derelict or abandoned gear helps to accurately identify what gear may be removed.

Another barrier to implementing this type of program would be the lack of penalties for abandoning gear. Fines and penalties provide an enforcement mechanism to discourage abandonment of gear.

The lack of specific authority for local law enforcement to remove gear is also a barrier. If local law enforcement had authority to remove gear, they could have their own removal programs.

Finally, a lack of dedicated funds for removal grants is also a barrier to implementation. Removal programs require funding, and grant programs could help with associated costs.

Strategies to Reduce Barriers

- Define derelict or abandoned gear.
- Authorize local law enforcement to remove abandoned gear.
 - If legislation is not feasible, states could issue a letter of authorization for law enforcement to retrieve gear.
- Implement a fine or penalty on gear owners for failure to remove gear.
- Clearly outline removal and disposal procedures.
- Provide grant funds for public entities to perform debris removal.

CONCLUSION

In sum, primary barriers to transferability include a lack of definitions for derelict or abandoned gear, removal authority, closed periods, and guidelines for removal. First, a definition of “derelict,” “abandoned,” or “intact” gear in state law allows derelict or abandoned gear to be clearly identified and removed, if necessary. In Florida, the state administrative rules define both “derelict trap” and “fishable trap,” clarifying what gear may be removed and disposed of by fishermen. Maine’s abandoned aquaculture gear removal program clearly defines abandoned gear. New England states could potentially use the definitions as models in their own states.

Authorization to remove the derelict or abandoned gear is also crucial. Florida’s crab trap retrieval program authorizes commercial fishermen to remove traps from state waters during closed seasons. Louisiana authorizes volunteers to remove gear during closures. New Hampshire’s MOA authorizes other state agency personnel to remove gear. And, Washington allows removal when its guidelines are followed. New England states’ lack of this type of authorizations is clearly a barrier to implementing these types of removal programs.

A closed season facilitates gear removal programs. During closures, gear left in the water is presumed abandoned and may be removed. Several of the case studies highlight closures for gear removal, including Florida and Louisiana. One particular consideration for New England states is that closures when gear removal is not hindered by extreme weather conditions would be ideal.

Clear guidelines for gear removal are also essential for the removal process. All of the included case studies have clear removal and disposal requirements. As noted above, Washington allows gear removal in the Puget Sound, as long as removal guidelines are followed. The Maryland abandoned vessel program, in particular, highlights the streamlined notification and disposal requirements that a state may use to target particular marine debris problems.

Innovative funding mechanisms may help fund removal programs. Although not a derelict fishing gear program, the Maine abandoned aquaculture gear program highlights one option for New England states. In Maine, aquaculture producers must have a bond or escrow account prior to beginning operations. These funds are available in the event gear or equipment is abandoned. New England could potentially use this as a model to help fund DFG removal programs.

New England states should review gaps and barriers in their derelict fishing gear removal programs. States should consider strengthening their laws and regulations to facilitate removal. Transferring some of the ideas and components highlighted in this report may increase the effectiveness of state derelict fishing gear removal programs.

APPENDIX A: STATE SUMMARIES

CONNECTICUT

Does the state legally define derelict fishing gear?

Connecticut does not define derelict fishing gear. State law does provide that any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

What are the state requirements for marking gear?

Traps

All live cars or other devices in which lobsters are kept in the water, after having been removed from the pots, traps or trawls in which they were caught must be branded, in letters or figures not less than three-quarters of an inch in height, with the number of the license issued by the Commissioner of the Department of Energy and Environmental Protection (DEEP) to the owner of such live car or other device for the taking of lobsters. (CONN. GEN. STAT. § 26-157a(a)).

All lobster pots, traps or similar devices for the catching of lobsters must be suitably identified by having legibly branded on the top of the pot, or trap or similar device and painted or branded on the float in letters or figures not less than three-quarters of an inch in height the number of the license issued by the commissioner to the owner of such pot, trap or similar device for the taking of lobsters. (*Id.* at § 26-157a(b)).

No person may use any fish pots or fish traps and the buoys unless the pot, trap, and buoy is affixed with the commercial fishing license plate number of the owner in numbers not less than three-quarters of an inch in height. (CONN. AGENCIES REGS. § 26-142a-6).

Buoys

All lobster pot buoys used in the waters of this state must be of uniform color and pattern of coloration, such color or pattern to be determined by the license holder. (CONN. GEN. STAT. §26-157c-2(e))

Pots must be affixed with a tag that is valid for the period from June 1 through May 31. (*Id.* § 26-157c-4(d)(1)).

- Tags shall only be fished in Lobster Management Areas (LMAs) for which they are designated. Possession of untagged pots on the waters of any LMA is prohibited.
- The tag must be affixed to the top of the pot, provided that it is not affixed to any portion of the door or to any cut wire mesh.

Does this state have requirements for attending gear?

No provisions were found.

Are there prohibitions on “molesting” gear? If so, is “molesting” defined?

No person except the licensed owner, an authorized licensed agent of the owner, the commissioner or authorized agents of the DEEP or law enforcement officers empowered to serve criminal process shall remove or attempt to remove any fish or lobster from any pound, weir, net, pot or other device used for the purpose of taking or retaining fish or lobsters. (CONN. GEN. STAT. § 26-167).

- No person shall have in his possession or set or cause to be set any trap, pot or other device for taking fish or lobsters which belong to another without having written authorization from the owner or his authorized agent. Any trap, pot or other device so set and not identified by the owner’s number, as assigned by DEEP, shall be considered prima facie evidence of having been stolen or illegally possessed by the person setting the same.
- Any unauthorized person who lifts, raises, draws or molests, or assists in so doing, any trap, pot or other device set for the purpose of taking fish or lobsters, or steals any fish or lobster therefrom except as provided herein, shall be fined not more than \$200 or be imprisoned not more than six months or both. Any trap, pot or other device and accessories thereto used in violation of CONN. GEN. STAT. § 26-167 shall be forfeited to the state and shall be sold or otherwise disposed of by DEEP.

Are there any requirements that fishermen remove gear?

No provisions were found.

Who can remove derelict or abandoned fishing gear?

While Connecticut does not have any provisions directly addressing derelict fishing gear, the DEEP does have the authority to remove gear that is not in compliance with state law.

- Lobster pots and traps in use which are not marked as required or do not contain the required escape vents and escapement panels may be seized by any authorized representative of DEEP and disposed of as determined by the agency. (CONN. GEN. STAT. § 26-157a(b); CONN. AGENCIES REGS. § 26-157c-2).

- Any lobster pot, trap or similar device found to contain a defaced or obliterated license number may be seized by any authorized representative of DEEP and either used by DEEP for purposes of marine research or destroyed. (*Id.*)

In addition, any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

- If the owner or person having custody of any such article at the time it is abandoned, discarded or thrown away fails to claim such article within one year after it comes into the possession of such officer, such article shall be forfeited to the state and may be retained for use by DEEP, may be sold at public auction, or may be destroyed at the discretion of DEEP. The proceeds from such sales shall be paid to the state treasurer to be credited to the general fund.

Are there closed periods to facilitate the removal of gear?

No provisions were found.

Are there other relevant definitions/laws/regulations for derelict or abandoned property?

Abandoned Vessels

“Derelict vessel” means any vessel, scow, lighter or similar floating structure or part thereof, whether or not moored, anchored or made fast to shore, that is broken or altered to such an extent that it will not keep afloat with ordinary care. (CONN. GEN. STAT. § 15-3a.)

It is dependent upon duly authorized harbor masters to determine if a vessel is derelict and requires removal. (*Id.* § 11a.)

Aquaculture

No provisions regarding abandoned aquaculture gear were found.

MAINE

Does the state legally define derelict fishing gear?

Maine does not legally define “derelict fishing gear.” State law does define, however, a similar term—abandoned aquaculture equipment—to mean “any equipment associated with the operation of an aquaculture lease or license . . . that has been left by the aquaculture lease or license holder in coastal waters without intention of removal.” (ME. REV. STAT. ANN. tit. 12, § 6086(1)(A)). This is discussed in more detail below.

What are the state requirements for marking gear?

Traps

It is unlawful to set, raise, lift or transfer any lobster trap or buoy unless it is clearly marked with the owner’s lobster and crab fishing license number or the owner’s nonresident lobster and crab landing permit number and the color design of the attached buoy is the same as the color design that is on file with the license application and is displayed on the boat, or unless the person is duly licensed and possesses written permission from the rightful owner of the lobster trap or buoy. The buoy must be visible at the surface. (ME. REV. STAT. ANN. tit. 12, § 6432(2)-(3)).

No person is allowed to fish with or have on board a vessel a lobster trap unless a valid lobster trap tag issued by the Department of Marine Resources (DMR) is securely attached to the frame of the trap. The lobster trap tag must be affixed to the bridge of the lobster trap so that the tag information is clearly visible for inspection by a Marine Patrol Officer. Further, no person is allowed to fish with, lift, haul, raise, or transport any lobster trap with a tag which has been tampered with or where the tag number is illegible or missing. (13-188-25 ME. CODE R. § 25.08).

Nets

Bait gillnets must be clearly marked at each end with buoy sticks at least 4 feet in length. The license-holder’s name, homeport, and Commercial Pelagic and Anadromous Fishing License number must be clearly displayed on every marking buoy. (13-188-55 ME. CODE R. § 04). This also applies in the Maine Sliver Area. (*Id.* § 75.03).

Buoys

It is unlawful to set, raise, lift or transfer any green crab trap unless it is clearly marked with a buoy that has the owner’s green crab fishing license number written on it. No floating or neutral line will be allowed. The buoy must be visible on both sides of the boat. (13-188-45 ME. CODE R. § 25.40(A)(3)).

Does the state have requirements for attending gear?

For trap and pot fishing gear, there is no wet storage of gear over 30 days. (13-18-75 ME. CODE R. § 75.02).

Are there prohibitions on “molesting” gear? If so, is “molesting” defined?

A person may not raise, lift, transfer, possess, or otherwise molest lobster traps, unless that person is a marine patrol officer, the licensed owner, or any person having written permission to do so. (ME. REV. STAT. ANN. tit. 12 § 6434(1)).

It is unlawful to molest the fishing equipment of any river herring fishing lease holder or to interfere with the fishing rights granted by the lease. (*Id.* § 6131(7)).

Are there any requirements that fishermen remove gear?

No provisions requiring fishermen to remove gear were found.

Who can remove derelict or abandoned fishing gear?

A marine patrol officer, the licensed owner, or any person having written permission to do so. (ME. REV. STAT. ANN. tit. 12, at § 6434(1)).

Are there closed periods to facilitate the removal of gear?

No provisions were found.

What are the procedures for removing gear?

The commissioner may dispose of such traps, warps, buoys or cars, or authorize their disposal, if the owner cannot be identified or if the owner has been notified and fails to respond within 30 days. (ME. REV. STAT. ANN. tit. 12 § 6434(2)).

Are there other relevant definitions/laws/regulations for derelict or abandoned property?

Abandoned Vessels

There is no legal definition for “derelict” vessel. “Abandoned Watercraft” means any watercraft that is inoperative and neglected, submerged or partially submerged or that has been left by the owner in coastal waters without intention of removal. This term includes motors, electronic and mechanical equipment and other machinery customarily used in the operation of watercraft. (ME. REV. STAT. ANN. tit. 12, § 1866(1)(A)).

It is unlawful to bring into or maintain in the harbor any derelict watercraft, watercraft for salvage, or abandon any watercraft in the harbor without a permit from the harbor master or, if there is no harbor master, the appropriate municipal official. Whoever does so without permit is guilty of a Class E crime. This law does not apply to certain licensed salvage watercraft. (ME. REV. STAT. ANN. tit. 38, § 9).

The municipal board or commission entrusted with harbor management is the sole determiner as to what constitutes a watercraft that is derelict and what constitutes a watercraft that is abandoned. (*Id.*).

Aquaculture

Abandoned aquaculture equipment is defined as “any equipment associated with the operation of an aquaculture lease or license . . . that has been left by the aquaculture lease or license holder in coastal waters without intention of removal.” (ME. REV. STAT. ANN. tit. 12, § 6086(1)(A)).

“Abandoned aquaculture stock” means “cultured marine organisms, including, but not limited to, fish, shellfish, sea urchins and algae, that have been left by the owner in coastal waters without intention of removal.” (*Id.* § 6086(1)(B)).

The DMR or an authorized third party may remove abandoned aquaculture equipment or abandoned aquaculture stock. (*Id.* § 6086(3)(A)-(B)).

- Prior to removing any abandoned equipment or stock, the DMR must give notice to the lease or license holder, who must respond within 15 days and remove the equipment within 60 days or the DMR will initiate removal. (*Id.* § 6086(3)(A)).
- If the DMR removes abandoned aquaculture equipment or abandoned aquaculture stock, the DMR may sell the equipment or stock. (*Id.* § 6086(3)(D)).

MASSACHUSETTS

Does the state legally define derelict fishing gear?

Massachusetts's regulations refer to "ghost gear" in reference to its interaction with mobile gear fishing. For this purpose, ghost gear is defined as "any fixed fishing gear including but not limited to gillnets with their flyers and floats and lobster pots with their buoys and line, which are no longer buoyed to the surface of the water, are not visible from the surface and become entangled with mobile gear." (322 MASS. CODE REGS. 4.06(1)).

"To Abandon" or "To Store" means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods. (322 MASS. CODE REGS. §§12.02-12.03). This applies to any fixed gear at any time. However, it is most enforceable during gear haul-out periods.

What are the state requirements for marking fishing gear?

Traps

Lobster traps, fish pots and conch pots fished by commercial fishermen must be marked with trap tags in accordance with 322 MASS. CODE REGS. 6.31.

Any person taking green crabs must mark all traps, gear and buoys in a uniform manner in accordance with requirements set forth by the Division of Marine Fisheries (DMF). (MASS. GEN. LAWS ANN. ch. 130, § 37A).

All buoys, pots, traps, and lobster cars must be marked with the licensee's number assigned to him by the DMF, which must be burned or cut into the surface. (MASS. GEN. LAWS ANN. ch. 130, § 38, 322 MASS. CODE REGS. 4.13(4)(a)).

For individuals lobstering commercially with scuba gear in state waters, the scuba tank and floating marker must display permit numbers. Permit numbers must be not less than 3 inches in height nor less than 1/2 inch in thickness or width of line (MASS. GEN. LAWS ANN. ch. 130 § 38; 322 MASS CODE REGS. 4.16).

All buoys set by non-commercial lobster and crab trap fishermen must be marked with the letter "N" prior to the permit number assigned by the DMF then a dash (-) with a single digit from 0 – 9 must follow the permit number indicating the sequential pot number in the series up to ten traps. This identification method must be permanently secured to the inside of the pot through the use of a synthetic plate or by being burned or cut into a wooden lath. (322 MASS. CODE REGS. 4.13(4)(a)(iii)).

For both commercial and non-commercial trap gear, permit numbers must not be less than 1/2 inch in height nor less than 1/8 inch in thickness or width of line. Said numbers must be burned or cut into a wooden lath or a plate made of durable synthetic material, which must be permanently secured to the inside of the trap.

322 MASS. CODE REGS. 4.13(4) establishes the following minimum requirements for the marking of fixed pot trawls and single pots within state waters:

- Single traps shall be marked with a single 7 x 7 or 5 x 11 buoy. Sticks are optional but must not bear a flag.

- The east end of a pot trawl must be marked with a double buoy, consisting of any combination of two 7 x 5 inches or 5 x 11 inches buoys and one or more three-foot sticks. The west end of a pot trawl must be marked with a single 7 x 7 inches or 5 x 11 inches buoy with a three-foot stick and a flag. Single pots must each be marked with a single 7 x 7 inches or 5 x 11 inches buoy with a three-foot stick and a flag. There is an exemption for Greater Boston Harbor that allows trawls to be marked on one end with a plastic bottle and a buoy of 7 x 7 or 5 x 11 must be used to mark the other end.

- Singles fished in LCMA1 are to be marked with three 12-inch marks located at top, middle and bottom of buoy line. Each mark is to be composed of 6 inch of red and 6 inch of white.

- Singles fished in LCMA2 are to be marked with three 12-inch marks located at top, middle and bottom of buoy line. Each mark is to be composed of 6 inch of red and 6 inch of black.

- Singles fished in OCCLCMA are to be marked with three 12-inch marks located at top, middle and bottom of buoy line. Each mark is to be composed of 6 inch of red and 6 inch of yellow.

- Trawls in LCMA1, 2 and OCC are to be marked with three 12-inch red marks located at the top, middle and bottom of the buoy line.

- Trawls in LCMA3 are to be marked with three 12-inch black marks located at the top, middle and bottom of the buoy line.

- Recreational lobster and crab traps are to be marked with a 4-inch red mark midway on the buoy line.

- Exception: If line is same color as mark, white may be substituted.

All fish pots and conch pots and the buoys of individual fish and conch pots or pot trawls must be marked in accordance with 322 MASS. CODE REGS. 4.13: Fixed Gear Marking and Maximum Length Requirements. (322 MASS. CODE REGS. § 6.12).

Nets

322 MASS. CODE REGS. 4.13 establishes the following minimum requirements for the marking of fixed gillnets within state waters:

- The east end of a gillnet must be marked with a high flyer and standard 12-inch tetrahedral corner radar reflector; the west end must be marked with a high flyer with flag and a standard 12-inch tetrahedral corner radar reflector;
- The buoy line must be marked with three 12 inch green marks located at the top, middle and bottom of the buoy line. If the line used is green the marks must be white.
- All buoys must be permanently and visibly marked or branded with the permit number of the owner.

All buoys for surface gillnets must be marked with reflective tape. The holder's permit number must be marked on all buoys and at least once every 50 feet on the headrope. Holders may burn or carve their number into floats attached to the headrope and must measure at least 1/2 inch in height; alternatively if permit holders opt to mark the net with synthetic durable material, then the numbers must be clearly visible and measure at least ¼ inch in height. The net ends must be marked with bullet-shaped buoys with a size of 9 x 16 inches and clearly marked with the letters SGN and the six-digit permit number of the holder. (322 MASS. CODE REGS. 4.14(b)).

Boston Harbor

Within Boston Harbor and its approaches, it is lawful to fish with trawls marked on one end with a plastic bottle attached by at least ten feet of 1/2 inch cotton line or similar light material, provided that said substitute buoy must be painted with the buoy colors and permit number of the owner. A standard buoy as specified in 322 MASS. CODE REGS. 4.13(3)(b) must be attached to the other end of the trawl, except that sticks need not be used. Single pots must be marked with a standard buoy attached by light line in channel areas. (322 MASS. CODE REGS. 4.13(3)(c)).

- “Boston Harbor and its Approaches” is delineated as: “In waters under the jurisdiction of the Commonwealth and circumscribed by an imaginary line beginning at Point Allerton in Hull; thence in an easterly direction to the #1 buoy at Thieves Ledge; thence in a northerly direction to the BG buoy; thence in a westerly direction to Grovers Cliff in Winthrop.”

Other gear

Any person who constructs or maintains any weir, pound net or fish trap after having received written approval therefor as provided in section twenty-nine must at all times while such structure is maintained have the same plainly marked with the number of such approval painted or printed on a sign or flag in figures at least 6 inches in height and conspicuously displayed on the inshore and offshore ends of such structure. Violation of the provisions of this section will be punished by a fine of not more than \$25. (MASS. GEN. LAWS ANN. ch. 130, § 30).

Additional requirements for fishing weirs:

- Weirs with one head must have anchors marked on the surface by buoys tied to the end of anchor lines of the most seaward pole of the bowl and of the poles on both sides of the bowl. The shoreward extension of the zone along and parallel to the leader must be marked on the surface by buoys tied to the anchor at the end of anchor lines on both sides of the leader 500 feet from the leader pole at the entrance to the heart.
- Weirs with two heads must have anchors marked on the surface by buoys tied to the end of the anchor line of the most seaward pole of the most seaward bowl and tied to the ends of anchor lines of the poles on both sides of the two heads' bowls. The shoreward extension of the zone along and parallel to the leader must be marked on the surface by buoys tied to the anchor at the end of anchor lines on both sides of the leader 500 feet from the leader pole at the entrance to the most shoreward head's heart.
- All buoys must be 12 inches diameter, orange, inflated balls marked with the weir number assigned by DMF. A weir with one head must be marked with five buoys. A weir with two heads must be marked with seven buoys. (322 MASS. CODE REGS. 4.04).

Does the state have requirements for attending gear?

Fishermen setting or fishing surface gillnets must remain within 200 feet of the net at all times. (322 MASS. CODE REGS. 4.14).

Traps must be hauled every 30-days or be considered abandoned. (*Id.* §§12.02-12.03).

Are there prohibitions on "molesting" gear? If so, is "molesting" defined?

It is illegal for anyone, except the owner, to handle, destroy or molest any lobster or crab pot or other fishing gear, including any gear swept upon the shore, beaches or flats whether public or private, or to take fish therefrom (MASS. GEN LAWS ANN. ch. 130, § 31).

- **Exception:** Any vessel with mobile gear whose gear becomes entangled with ghost gear may haul said ghost gear on board for the purpose of identification and return to the rightful owner, if authorized in writing by said owner (322 MASS. CODE REGS. 4.06)

The owner of any fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within 30 days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. (MASS. GEN LAWS, ch. 130, § 32).

- If the gear is not recovered by the owner as detailed above or recovered by other legal means within 60 days it becomes the property of the riparian owner of such shore, beach or flat.

Are there any requirements that fishermen remove gear?

There are haul out periods for trap gear and gillnets. (See 322 MASS. CODE REGS. 4.09, 4.11, 6.12 and 12.04).

Who can remove derelict or abandoned fishing gear?

All buoys, pots, traps, and lobster cars that are not marked as required must be removed from the coastal waters by any officer who is empowered to enforce state fisheries regulations (usually performed by DMF and law enforcement) and will be held for up to six months. If the owner of any such buoy, pot, trap or lobster car fails to claim the gear within six months it will be permanently confiscated and disposed of by the DMF of law enforcement or his designee for the best interest of the commonwealth. The DMF may in no way be liable for such removal, confiscation or disposal.

It will be prima facie evidence of a violation of this section if a person has in his possession or uses any buoy, pot, trap or lobster car, that has had the license number removed, altered or defaced. (MASS. GEN. LAWS, ch. 130, §§ 12, 38).

Are there closed periods to facilitate the removal of gear?

Closed periods requiring gear removal are noted below, although the closures are not specifically in place to facilitate DFG removal.

Fishing for lobster with pots or traps is prohibited in the Large Whale Seasonal Trap/Pot Closure Area from February 1st through April 30th. Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA as defined in 322 MASS. CODE REGS. 6.33 during this closed period. It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster traps in the Outer Cape LCMA or any other LCMA during this seasonal closure. (322 MASS. CODE REGS. 6.02, 12.04, 12.11).

From December 15th through April 14th it is unlawful for any person to take whelks by pots or set, haul, tend or abandon conch pots in the waters under the jurisdiction of the Commonwealth. (322 MASS. CODE REGS. 6.12).

It is unlawful to set, haul, tend or abandon black sea bass pots in the waters under the jurisdiction of the Commonwealth during the period that:

- Begins three days following the effective quota closure date for the commercial black sea bass fishery, as specified in the Declaration of Closure notice published in accordance with 322 MASS. CODE REGS. 6.41; and

- Ends on the Saturday prior to the first Tuesday in August. (322 MASS. CODE REGS. 6.12).

It is unlawful to set, haul, tend or abandon scup pots in the waters under the jurisdiction of the Commonwealth during the period that:

- Begins on November 4th or three days following the effective quota closure date of the commercial scup fishery, as specified in the Declaration of Closure notice published in accordance with 322 MASS. CODE REGS. 6.41, whichever occurs first; and
- Ends on April 28th. (322 MASS. CODE REGS. 6.12).

Conch pots must be hauled out from Dec. 15 – April 14. (322 MASS. CODE REGS. 6.12(2)(a)).

Single traps are prohibited north of Cape Cod seaward of 3 miles from the mean low tide water mark, except for an area bounded by Loran C Line 9960-x-25360 as it runs from Wellfleet to Barnstable. (322 MASS. CODE REGS. 12.06).

Gillnets may not be set in Critical Habitat from January 1 – May 15. Gillnets may not be set south of Cape Cod April 1 – Nov 15. Gillnets may not be set in area outside Boston Harbor from May 15 – Nov 1. (322 MASS. CODE REGS. 12.00 and 4.09 and 4.11).

What are the procedures for removing gear?

Beach cleanups may be done in coordination with the Massachusetts Office of Coastal Zone Management (CZM). Cleanup coordinators identify the areas to be cleaned up, publicize the cleanup locally, receive supplies, give cleanup instructions and distribute materials to cleanup volunteers, oversee the cleanup, and arrange for proper trash disposal.

The Division of Marine Fisheries will issue a letter to authorize gear removal within state waters. The letter must be kept aboard the vessel used in cleanup and those participating in the cleanup must accommodate DMF staff upon request.

- No fishing gear properly marked with a surface system may be removed from the water.
- All traps and nets and associated components removed from the water shall be – to the degree possible - inventoried and described regarding gear type, fishery, and owner.
- Any intact nets or traps that are fish-able must be turned over to DMF. All traps and nets that are not intact will be considered trap or net debris and may be disposed of by the organization performing the cleanup after a detailed inventory is generated for transmittal to DMF at the end of the year.

- Final report of all activities and detailed list of gear and trap or net debris must be furnished to DMF by a certain time. (letter from DMF, on file with author).

Are there other relevant definitions/laws/regulations for derelict or abandoned property?

Abandoned Vessels

Abandoned vessel means unoccupied, deserted, forsaken, derelict, wrecked or sunken vessel or other shipwrecked property, on the shores or waters of the Commonwealth and not in the custody of the owner or his agent or of any other person lawfully authorized to take possession of the vessel and deemed by the Department of Conservation and Recreation or the harbor master of the city or town, in whose jurisdiction the vessel lies or whomsoever is so empowered by said city or town, to be an obstruction to the safe and convenient navigation or other lawful use of such waters. (MASS. GEN. LAWS, ch. 91 § 38).

Aquaculture

MASS. GEN. LAWS, ch. 130 § 61 covers marking of license sites. Sites must be marked by stakes or buoys with number of license painted in figures 2 inches high in conspicuous place on each side or on flags attached thereto. Failure to maintain shall be sufficient cause for revocation. This may be further managed and enforced by the municipality through town bylaws. In Massachusetts, municipalities license aquaculture sites and communities may (and many do) require the posting of a bond to cover the costs of gear removal in the event the site and gear is abandoned. Also under state regulations, open water aquaculture sites that involve permitted structures shall post a performance bond for the gear removal.

NEW HAMPSHIRE

Does the state legally define derelict fishing gear?

New Hampshire does not legally define “derelict fishing gear.”

What are the state requirements for marking gear?

Traps

All pots or traps left unattended must be marked in the following manner:

- All fixed gear must have the name of the owner permanently affixed.
- Pot or trap trawls must be marked at each end with at least a single buoy made of highly visible material;
- Flags and pennants affixed to buoys marking a string of gear as required by N.H. CODE ADMIN. R. ANN. FIS § 602.09 must be of uniform color;
- Weak links with a maximum breaking strength of 600 pounds must be used on all flotation and/or weighted devices attached to the buoy line of all other fixed gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances; and
- Groundlines between traps must be sinking for all gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances.
- Vertical lines used for lobster trap/pot set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances must be permanently and clearly marked with a red color at least three times (top, middle, bottom) along the vertical line and each mark must be 12-inch (30.5 cm) in length. The red color may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, heat-shrink tubing, or other durable material. Alternatively, a thin red line may be woven into or through the vertical line.
- No person or vessel may fish with trap/pot gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line, or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects. (N.H. CODE ADMIN. R. ANN. FIS § 602.09).

A lobster trap tag must be:

- Securely attached to the frame of the lobster trap, in a manner for which it was designed such as a self-locking mechanism;
- Legible and clearly visible for inspection; and
- Not altered or defaced. (N.H. CODE ADMIN. R. ANN. FIS § 602.16.)

Nets

All nets left unattended must be marked in the following manner:

- All fixed gear must have the name of the owner permanently affixed.
- High flier buoys, as customarily used on longline gear, must be marked with the name of the owner;
- Gill nets and longline sets 6,000 feet or less must be buoyed on each end to support a vertical shaft at least 5 feet high with a radar reflector of at least 100 square inches reflective area;
- Flags and pennants affixed to buoys marking a string of gear as required by N.H. CODE ADMIN. R. ANN. FIS § 602.09 must be of uniform color;
- Weak links with a maximum breaking strength of 1100 pounds must be used in gillnet panels and on all flotation and/or weighted devices attached to the buoy line of gillnets set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances;
- Weak links with a maximum breaking strength of 600 pounds must be used on all flotation and/or weighted devices attached to the buoy line of all other fixed gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances; and
- Groundlines between traps or gillnet panels must be sinking for all gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances.
- Vertical lines used for gill net gear set seaward of 72 COLREGS demarcation line and seaward of Hampton and Rye and Hampton Harbor entrances must be permanently and clearly marked with a red color at least three times (top, middle, bottom) along the vertical line and each mark must be 12-inch (30.5 cm) in length. The red color may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, heat-shrink tubing, or other durable material. Alternatively, a thin red line may be woven into or through the vertical line. (N.H. CODE ADMIN. R. ANN. FIS § 602.09).

Buoys

No person may set any pot or trap for any lobster or crab without having the buoy attached, plainly carved or branded with his last name and initials. Any car or other contrivance for holding or keeping lobsters or crabs set in any tidal water must be plainly marked with the last name and initials carved or branded. Any pots, traps, cars or other contrivance used to catch or store lobsters or crabs in violation of this requirement will be forfeited. (N.H. REV. STAT. ANN. § 211:32).

Each applicant for a lobster and crab license must state the color scheme or other special markings of the buoys desired to be used by him. These colors, if approved by the executive director, must be in his license, and all buoys used by the licensee must be marked accordingly. (N.H. REV. STAT. ANN. § 211:33). Anyone fishing unattended pots or traps must conform with this requirement. (N.H. CODE ADMIN. R. ANN. FIS § 602.09).

No pot, trap or other contrivance for taking or holding lobsters or crabs may be set or buoyed other than plainly and separately except as provided. When pots, traps, or other contrivances are set on trawls, buoys plainly marked as provided in N.H. REV. STAT. ANN. 211:32 and 33 must be set on both ends of the trawls. Pot or trap trawls used for taking lobsters and crabs which contain less than 5 pots or traps may be plainly marked on one end. (N.H. REV. STAT. ANN § 211:34).

Other gear

For the take of whelk to resale:

- One pot, trap or other contrivance for taking or holding whelks must be fished on a single line and buoy;
- When pots, traps, or other contrivances are set on trawls, buoys plainly marked must be set on both ends of the trawl;
- Each buoy and trap must be permanently marked with the letter “W” and the first initial and complete last name of the licensee. (N.H. CODE ADMIN. R. ANN. FIS § 607.04).

Does the state have requirements for attending gear?

To set or use nets or weirs in the Lamprey River, the permittee must be in attendance at all times. (N.H. REV. STAT. ANN. § 211:48-b).

Trap/pot gear must be hauled at least once every 30 days. (N.H. CODE ADMIN. R. ANN. FIS § 602.09).

Any person using a gill net to take finfish from the waters of the Great Bay estuarine system inland of the Memorial Bridge in Portsmouth, Little Harbor and its tributaries inland of its most seaward jetty, Rye Harbor and its tributaries inland of its most seaward jetty, and inland of the Hampton Harbor Bridge must be within unaided eyesight of the net. Unaided eyesight means unaided by devices such as binoculars or spotting scope. (*Id.* § 602.06).

Are there prohibitions on “molesting” gear? If so, is “molesting” defined?

No person, except the owner or a conservation officer, may take up, lift, molest, have in his possession, or transfer any pot, trap, car or other contrivance that is set for the taking or holding of lobsters or crabs, nor take, remove or carry away from the beach or shore, any such pot, trap, car or other contrivance or warp or buoy without the written permission of the owner. In addition to the penalty for violation of this section, said person, if he holds a license, must lose said license for one year. (N.H. REV. STAT. ANN. § 211:31).

It is unlawful for any person, except the executive director of the New Hampshire Fish and Game Department or his agent, to molest, pull, tend, or to otherwise disturb any minnow or sucker trap, net, seine, bait house, or other gear of any licensed bait dealer without the written permission of the owner. (N.H. REV. STAT. ANN. § 214:34-c; N.H. CODE ADMIN. R. ANN. FIS § 602.09).

No person licensed in accordance with N.H. REV. STAT. ANN. § 211:18 may fish with, raise, or possess on board a vessel or submerged within the waters of New Hampshire, a lobster trap without a valid lobster trap tag affixed to the trap and issued to said person except:

- Helpers licensed in accordance with N.H. REV. STAT. ANN. § 211:20; or
- A surrogate lobster licensee in the case of a temporary physical disability as specified in N.H. CODE ADMIN. R. ANN. FIS § 602.14 who may fish with, raise, or possess lobster traps with lobster tags not issued specifically to them. (N.H. CODE ADMIN. R. ANN. FIS § 602.16).

Are there any requirements that fishermen remove gear?

The taking of lobsters and crabs in Rye Harbor by any person is prohibited. No lobster or crab trap buoys may be placed in the harbor or the approach channel to the harbor. A fisherman has 24 hours to remove his or her gear from restricted areas after an authorized enforcement officer makes a verbal request to the fisherman to remove said gear. An extension may be granted in the case of rough seas or thick fog. State conservation officers and others appointed by the Pease Development Authority, Division of Ports and Harbors enforce these provisions, and may remove gear from the restricted area if the verbal request is ignored. (N.H. REV. STAT. ANN. § 211:19-a).

Any person whose license has been suspended must within 5 days remove from the waters all lobster traps, pots, cars, or any device used in taking or storing of lobsters and crabs. These lobster traps, pots, cars or devices must be taken to a place of storage on the shore and must be inspected by a conservation officer and such traps, pots, cars or devices must not be placed in the water again by any other person until they have been inspected by a conservation officer and rebranded with the last name and initials of the new user in a manner satisfactory to the conservation officer. (N.H. REV. STAT. ANN. § 211:22).

No person must take river herring from the waters of the Lamprey River by any method between sunrise Wednesday and sunrise Thursday of any week. During such period all nets must be removed and a weir must be constructed so that total escapement of all river herring must occur. (N.H. REV. STAT. ANN. § 211:48-c).

Who can remove derelict or abandoned fishing gear?

Any person who purchases a license to take lobster and crabs in waters of the state of New Hampshire must be deemed to have given consent to law enforcement officers to haul, for any purpose, their lobster and crab gear set for the purpose of taking or keeping lobster and crabs within the jurisdiction of the state of New Hampshire. (N.H. REV. STAT. ANN. § 211:18 (I-a)).

Any Fish and Game Department conservation officer may raise, lift or in any way examine any pot, trap, car or other contrivance that is set for the taking or holding of marine species and to seize all pots, traps, cars or other contrivances and the contents thereof used in violation of any law or rule relating to marine species, and to hold the same until the fine and costs imposed for such violation have been paid in full.

- Provided, that in case such fine and costs are not paid within 60 days after imposition such pots, traps, cars or contrivances may be sold at public auction.
- Prior to such sale the department must give notice to the owner, if known, by registered mail; otherwise a notice must be published once in a newspaper of general circulation in the state, giving the time and place of such sale.
- If the owner must appear and must pay the fines and costs and must reimburse NHF GD for expenses incurred, the property will be delivered to the owner; otherwise it must be sold and the proceeds of such sale will be for the use of the NHFGD, unless otherwise authorized by the court exercising proper jurisdiction. (N.H. REV. STAT. ANN. § 211:75).

Are there closed periods to facilitate the removal of gear?

No provisions were found.

What are the procedures for removing gear?

The NHFGD has signed a Memorandum of Agreement with the New Hampshire Department of Resources and Economic Development (NHDRED) that allows NHDRED employees to act as agents of NHFGD to remove derelict gear from beaches and coastal parks of New Hampshire during work hours with certain stipulations:

- The NHDRED staff must be in the appropriate NHDRED uniform and vehicle when disturbing DFG.
- Any living organisms obtained during the cleanup must be released. NHDRED must notify the NHFGD with a report of any DFG removed.
- Unusable DFG or without an identifiable owner must be placed in designated disposal containers.

- DFG with an identifiable owner must be placed in a designated location for return.

Are there other relevant definitions/laws/regulations for derelict or abandoned property?

Abandoned Vessels

No person may abandon any boat at any time on the waters of the state. (N.H. REV. STAT. ANN. § 270-B:1). Any boat found unattended in a sunken, beached, or drifting condition is deemed abandoned by the owner. In the interest of the public safety such boat may be removed and impounded for safekeeping and disposal in accordance with the provisions of N.H. REV. STAT. ANN. § 270. (N.H. REV. STAT. ANN. § 270-B:2).

Aquaculture

No person, except the owner or the Department of Fish and Game may molest, pull, tend, possess, or disturb any gear used in a licensed marine aquaculture operation or any marine species raised therein without the written permission of the owner. (N.H. CODE ADMIN. R. ANN. § 807.15).

RHODE ISLAND

Does the state legally define derelict fishing gear?

Although there are provisions for abandoned gear, there is no definition provided.

What are the state requirements for marking gear?

Traps

The owner of every trap, pot, or other stationary contrivance used for the taking of marine fish, shellfish, crustaceans, or other invertebrates being fished in the waters of the state, and the owner of any trap or pot for catching or cars or other contrivances for keeping lobsters must mark each trap, pot, or contrivance, together with the buoy which is attached to it, with the name or names of the owners of the contrivance or the person or persons using the contrivance, and the license number or numbers of each person or persons. Failure to mark each trap may result in a fine, ranging from \$20-\$500, for each offense and all traps, pots, or other contrivances used contrary to this may be seized by the enforcement officer and the property must be forfeited to the state. (R.I. GEN. LAWS ANN. § 20-4-7; R.I. CODE R. 25-8-4:11.8; R.I. CODE R. 25-8-4:15.1).

For lobster pots, tags must be permanently attached to the trap bridge or central cross member of each trap and be clearly visible for inspection. All lobster trap tags must be a permanent, single-use design. Only lobster trap tags for the current fishing year and the immediate previous or following fishing year must be allowed to remain attached to each lobster trap. (R.I. CODE R. 25-8-4:15.1).

Buoys

Each lobster pot must be separately and plainly buoyed; except that in cases where natural conditions render it impracticable to separately buoy each pot, the Department of Environmental Management (DEM) may, upon application from any person licensed under R.I. GEN. LAWS ANN. § 20-7, grant permission to otherwise buoy those pots subject to rules and regulations promulgated by the DEM; and each and every permit so granted must state the name of the person to whom the permit is granted, the number of the permit, the place or places where the lobster pots are to be located, the manner in which lobster pots must be set, and the period of time during which the permit must extend. (R.I. GEN. LAWS ANN. § 20-7-11).

Each and every pot, trap, or other device used for the taking of lobsters or crabs in any of the waters of Rhode Island must bear a color scheme on the attached buoy. Each applicant for a lobster license must state the color scheme that he or she desires to use. These colors, unless disapproved by the DEM, must be stated in the license, and all buoys used by the licensee must be marked accordingly. (R.I. CODE R. § 20-7-11.1).

All floating fish traps deployed within Rhode Island state waters must be marked with no less than four radar reflective buoys (hi-flyers) each positioned no more than 100 feet from the trap or its appurtenances in the following locations: one buoy must be located at the shoreward end of the leader, one buoy on the seaward end of the leader adjacent to the head of the trap, and two buoys must be located on the seaward side of the head of the trap. There are additional detailed requirements listed for gear located at specific geographic sites. (R.I. CODE R. § 25-8-4:14.1).

Nets

In the Narragansett Bay Marine Life Management Area purse seines must be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet. (R.I. CODE R. § 25-8-4:16.2).

For all gill nets set, hauled, and/or maintained within Rhode Island waters, both the near shore and offshore ends of all gill nets must be marked with an orange or fluorescent orange bullet shaped buoy with a size of 9 x 16 inches and clearly marked with the letters “GN” with a minimum letter height of three inches. No person may set, haul, or maintain a gill net in Rhode Island waters, unless such net must be marked, together with the buoys which are attached, with the name and license number of said person. (*Id.* § 25-8-4:13.3).

There are additional area-specific regulations for areas between one-half and 3 nautical miles from the Rhode Island Coast.

- Gill nets greater than 600 feet and less than or equal to 1,200 feet must be marked with two orange or fluorescent orange floats with a size of 9 x 16 inches on the westernmost end as measured on a compass circle from magnetic south through west to, and including, north and one orange or fluorescent orange floats with a size of 9 x 16 inches on the easternmost end side as measured on a compass circle from magnetic north through east to, and including, south. In the case of nets set in a due north south line, the two orange or fluorescent orange floats with a size of 9 x 16 inches should be placed on the southernmost end. All orange or fluorescent orange floats with a size of 9 x 16 inches must be marked in accordance with the general marking requirements (*Id.*).
- Gillnets greater than 1,200 feet must be marked with an orange or fluorescent orange float with a size of 9 x 16 inches and a radar reflective highflyer at each end. One of the radar reflective highflyer is to be marked with a flag on the westernmost side as measured on a compass circle from magnetic south through west to, and including, north. The easternmost side as measured on a compass circle from magnetic north through east to, and including, south is to be marked with a radar reflective highflyer that must remain flagless. In the case of nets set in a due north south line, the flag on the radar reflective highflyer should be placed on the southernmost end. Orange or fluorescent orange floats with a size of 9 x 16 inches must be marked in accordance with the general marking requirements (*Id.*).

Does the state have requirements for attending gear?

Each gill net must be hauled once each day (24-hour period - 12:00 midnight to 12:00 midnight). (R.I. CODE R. § 25-8-4:13.3).

Are there prohibitions on “molesting” gear? If so, is “molesting” defined?

No person except the director, enforcement officers, and authorized technical personnel of the Department of Environmental Management may unduly disturb, lift, raise, molest, or remove any animal from a trap, pot, or any other device of a person licensed under Title 20 of R.I. GEN. LAWS ANN. without the written permission of that person. (R.I. GEN. LAWS ANN. § 20-4-8; R.I. CODE R. § 25-8-4:11.9; R.I. CODE R. § 25-8-4:15.1).

No person except the DEM, enforcement officers, and authorized technical personnel of the DEM may place, set, keep, maintain, sell, transfer, or have in his or her possession, any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the their owner. Every person convicted of violating this provision may be fined not more than \$1,000 for each offense, or be imprisoned not exceeding 1 year, or both, and each pot, trap, car, or device used in violation of this section must constitute a separate offense. In addition, if that person is licensed, his or her license must be revoked for 1 year. (R.I. CODE R. § 20-7-12.1).

Any person who willfully or maliciously cuts, removes, displaces, tampers with, or in any way damages any trap, leader, or pound set by virtue of the permit provided for by this chapter must be imprisoned not exceeding 2 years or fined not exceeding \$1,000, or both. (R.I. GEN. LAWS ANN. § 20-5-18).

No person except the DEM may place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner. (R.I. CODE R. § 25-8-4:15.1).

No person may place, set, lift, raise, unduly disturb, draw in, or transfer any pot, trap, or other device used for the taking of lobsters unless the color scheme of the attached buoy is the same as the color scheme that is on file with the license application and displayed on the boat used by that person, or unless that person is duly licensed and possesses written permission from the rightful owner of the pot, trap, or other device. (*Id.* § 20-7-11.1(b)).

No person may set, maintain, or have in his or her possession any lobster pots from which the branded numbers have been altered, obliterated, or removed, with the intent to defraud or deprive the owner. Every person convicted of violating the provision of this section may be fined \$100 for each of these traps or be imprisoned not more than thirty days, or both. All pots used or possessed contrary to these provisions may be seized by any officer engaged in the enforcement of this chapter, and that property must be forfeited. (R.I. GEN. LAWS ANN. 20-7-12; R.I. CODE R. § 25-8-4:15.1).

No person may have on board a vessel or set, deploy, place, keep, maintain, lift, or raise; from, in, or upon the waters under the jurisdiction of the State of Rhode Island any lobster port for taking of American lobster without the pot having a valid State of Rhode Island lobster trap tag. (R.I. CODE R. 25-8-4:15.1).

Are there any requirements that fishermen remove gear?

Upon ceasing to use any fish trap as authorized, that structure must at once be removed by the owner at the owner's expense and to the satisfaction of the director of DEM. Failure to remove it is considered sufficient grounds for prosecution of the owner for maintaining a public nuisance or for revocation of the fish trap permit. Unless otherwise specified by regulations adopted by the Marine Fisheries Council, all authorized fish must be completely removed by or before the last day of December of each year; and no fish trap must be reset before the first day of the following March. All submerged or broken stakes must be promptly removed. Any fish trap damaged or allowed to get into a dilapidated condition will be regarded as abandoned unless promptly removed or rebuilt. Failure to do this will subject the owner to prosecution and forfeiture of the trap. (R.I. GEN. LAWS ANN. § 20-5-14). Seasonal closures for management areas are specified in R.I. CODE R. 25-8-4:15.1.

Who can remove derelict or abandoned fishing gear?

The Department of Environmental Management may take possession of any abandoned fish trap and appurtenances; or any fish trap and appurtenances placed in a location for which no permit has been obtained; or any fish trap and appurtenances for which a permit location has been obtained but which the owner of the fish trap and appurtenances may willfully maintain in a wrong position or location. (R.I. GEN. LAWS ANN. § 20-5-15).

Are there closed periods to facilitate the removal of gear?

No provisions were found.

What are the procedures for removing gear?

Upon possession, the Department of Environmental Management may destroy the fish trap and appurtenances or may dispose of them at public auction to the highest bidder, first giving notice of the time and place of sale by publishing the notice at least 3 times a week for 2 successive weeks in a newspaper of general circulation with power to adjourn the sale from time to time, giving like notice of the adjournment; and make and execute to the purchaser at the sale a good and sufficient conveyance of all right, title, and interest in and to the fish trap and appurtenances; and to receive the proceeds of the sale and pay the proceeds into the treasury of the state; and the state controller must draw orders upon the general treasurer for the payment of all expenses of taking possession and disposing of a fish trap and any appurtenances, upon receipt by him or her of proper vouchers, approved by the DEM, and the general treasurer must pay the orders out of moneys appropriated for that purpose. (R.I. GEN. LAWS ANN § 20-5-15).

Are there other relevant definitions/laws/regulations for derelict or abandoned property?

Abandoned Vessels

“Abandoned Vessel” is defined as a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the submerged lands or waters below or on which the vessel is located for more than 45 consecutive days or for more than a total of 90 days in any 365 day period, and the vessel’s owner is: unknown or cannot be located; or known and located but is unwilling to take control of the vessel. Examples of abandoned vessels may, include, but are not limited to, the following:

- Any vessel that is left unattended or has remained illegally on public property, including docks, boat launching ramps, or moorings for more than 45 days.
- Any vessel that has been found adrift or unattended in or upon the waters or submerged lands of the state of Rhode Island, and is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters and submerged lands of the state or presents a potential health or environmental hazard. (R.I. GEN LAWS ANN. § 46-6-8.1(1)).

“Derelict Vessel” is a vessel whose owner is known and can be located, and who is able to exert control of a vessel that:

- Has been moored, anchored, or otherwise left in the waters or submerged lands of the state or on public property contrary to the rules adopted by an authorized public entity;
- Is sunk or in danger of sinking;
- Is obstructing a waterway; or
- Is endangering life or property. (R.I. GEN LAWS ANN. § 46-6-8.1(4)).

Aquaculture

No provisions regarding abandoned aquaculture equipment were found.

Appendix B: New Hampshire MOA

**MEMORANDUM OF AGREEMENT
BETWEEN THE
THE NEW HAMPSHIRE FISH AND GAME DEPARTMENT
AND THE
NEW HAMPSHIRE DEPARTMENT OF RESOURCES AND ECONOMIC
DEVELOPMENT
FOR THE AUTHORIZATION TO
REMOVE DERELICT FISHING GEAR FROM STATE PARKS AND BEACHES IN
COASTAL TOWNS OF NEW HAMPSHIRE**

WHEREAS, The New Hampshire Fish and Game Department (NHFGD) and New Hampshire Department of Resources and Economic Development (NHDRED) (collectively, the “parties”), have been working together in addressing conflicts with derelict fishing gear and public coastal beaches and parks; and,

WHEREAS, the NHFGD seeks to allow NHDRED employees to remove derelict fishing gear from the coastal beaches and parks of New Hampshire and deposit the fishing gear at a secure location agreed to by both parties; and,

NOW THEREFORE, NHFGD and NHDRED agree as follows:


1. The NHFGD hereby authorizes certain employees of NHDRED to act as agents of the executive director of NHFGD pursuant to RSA 211:31, and to remove derelict fishing gear from the beaches and coastal parks of New Hampshire during work hours with the following stipulations:
2. The NHDRED shall:
 - A. Be an appropriately identified NHDRED staff in uniform and use a vehicle that is appropriately marked as a NHDRED vehicle when disturbing derelict gear on the beach or park.
 - B. Release any living biological organisms such as lobster, crab, etc. located within any derelict gear immediately in appropriate habitat and prior to removal from the State beaches or parks.
 - C. Notify the NHFGD Marine Division (603-868-1095) of any and all derelict fishing gear removed from the State beaches or parks as soon as possible during NHFGD working hours (Monday – Friday 0800 – 1600 pm). The information to report will be (Attachment 1):
 - a. Date and time derelict gear was removed from State parks or beaches.
 - b. Name and agency of person removing derelict gear from State parks or beaches.
 - c. Contact phone number of person removing derelict gear from State parks or beaches.
 - d. Type and location of recovered derelict gear.
 - e. Holding or disposal location.
 - f. Identifying name or tags on derelict gear, if any.

- D. Place unusable derelict gear and derelict gear without an identifiable owner in designated disposal containers at agreed upon locations. See Attachment 2.
 - E. Place functional derelict gear with an identifiable owner in a designated location for return. See Attachment 3.
 - F. Not keep anything that is on or within any derelict gear for any purposes.
3. The Memorandum of Agreement is effective until modified by the parties in writing.
 4. This Memorandum of Agreement may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least 90 days prior to termination.
 5. The Parties agree that the obligations, agreements and promises made under this Memorandum of Agreement are not intended to be legally binding on the Parties and are not legally enforceable.
 6. Disputes arising under this Memorandum of Agreement which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
 7. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
 8. The parties hereto do not intend to benefit any third parties and this Memorandum of Agreement shall not be construed to confer any such benefit or create added standing for third parties.
 9. In the event any of the provisions of this Memorandum of Agreement are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Agreement will remain in full force and effect.
 10. This Memorandum of Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Agreement and understandings between the parties, and supersedes all prior Memoranda of Agreement and understandings relating hereto.
 11. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.
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STATE OF NH
DEPT OF JUSTICE

IN WITNESS WHEREOF, the respective parties have hereunto set their hands on the dates indicated.

NEW HAMPSHIRE FISH AND GAME DEPARTMENT

By:  Date: 11/4/15
Glenn Normandeau, Executive Director, NH Fish and Game Department

NEW HAMPSHIRE DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

By:  Date: 10-28-15
Philip A. Bryce, Director of Division of Parks and Recreation, NH Department of Resources and Economic Development

By:  Date: 11/2/2015
Jeffery J. Rose, Commissioner, NH Department of Resources and Economic Development

Approved by the ATTORNEY GENERAL this 13th day of November, 2015.

Assistant Attorney General 
Christopher G. Aslin

- Attachment 2. Type of unusable derelict fishing gear that can be disposed in container.
(If any fishing gear is questionable place next to container and contact NHF&GD)



Attachment 3. Condition of functional derelict fishing gear to be stored next to container.
(NHF&GD to be notified when gear stored near container)

