



Massachusetts Division of Marine Fisheries

New Laws Enacted to Update Fines and Penalties

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For too long, low fines were considered the “cost of doing business” for poachers of marine fish and shellfish resources.

In response to longstanding and urgent demands from fishermen and Environmental Police, DMF led an initiative to overhaul state laws to increase the fines and penalties associated with violations of marine fisheries rules. This past summer, the Legislature included in the Environmental Bond Bill a substantial re-write of state laws to address the problem of outdated and insignificant fines. Governor Baker signed the legislation in August and the new laws took effect on November 7, 2018.

Under Massachusetts law, fines and penalties are set in law and require legislative and gubernatorial approval for any changes. Almost two years ago, DMF convened a committee, which included members of its Marine Fisheries Advisory Commission and leadership of the MA Environmental Police, to identify the problems with outdated statutes levying fines and make recommendations to the Legislature. It's a complicated task to amend 42 sections of state law, but DMF received strong legal support from staff at the Department of Fish and Game, Executive Office of Energy and Environmental Affairs, and the Governor's office. Once the proposals for change were drafted, DMF received stakeholder input and support from commercial fishermen's organizations, municipal shellfish officials, and recreational fishing groups.

When citing a person for a marine fisheries violation, an Environmental Police Officer (EPO) can use discretion to charge the individual with non-criminal (civil) or criminal charges. EPOs rely heavily on non-criminal penalties as an enforcement tool for minor violations because courts are often not supportive of criminal prosecution/conviction of fishermen for low level violations. However, the consensus among the Environmental Police was that the low level of fines set by law was not a sufficient deterrent to discourage law-breakers. The experience and guidance of the EPOs was invaluable to achieve the right balance in establishing new fines. For example, the EPOs advised us not to set the fines so high that some courts might waive the fines upon appeal.

As a result of the new laws, the new fine schedule for non-criminal tickets has been doubled.

Previously, the fines were scaled at \$50, \$100 and \$200 depending on the violation; these fines are now \$100, \$200 and \$400.

On top of the base fine, officers may now also issue a \$10 fine per non-compliant fish. The additional \$10 fine applies to all regulated marine fish species except for bivalve shellfish

(clams). This per-fish fine will be especially effective for some of the high profile cases where large numbers of illegally harvested black sea bass, tautog, and whelk have been discovered. These additional fines will add up quickly and serve as a deterrent for poaching.

On the criminal side, many of the old laws established specific fines for each section of law and were so outdated to be considered quaint—or laughable depending on your perspective. The penalties reflect attitudes, conservation priorities and currency values of the time period when they were enacted. For example the criminal fine for poaching river herring (last amended about a century ago) was just \$5 to \$50! Many sections of law written over the last century had different criminal fines, and this needed to be streamlined and stiffened. **Now, nearly all criminal violations will result in a consistent \$400 to \$10,000 fine and up to 2 ½ years in jail.**

Longstanding criminal fines specific to lobster and shellfish were unchanged because they are recently enacted and sufficiently strong to deter poaching. For example, lobster violations carry stiff fines per lobster: egg-bearing female lobsters at \$150–\$500 each; short lobsters at \$100–\$500 each; and removing eggs from a lobster at \$250–\$500 each. These per-lobster fines help make the lobster industry highly compliant.

Another creation of the new law is the authority for the Commonwealth to assess a civil penalty of up to \$10,000 for marine fisheries violations. This new enforcement tool will be reserved for the most egregious violations that the Attorney General may decide does not warrant criminal prosecution but does require a more substantial economic penalty than that provided by a non-criminal citation. Such cases would be prosecuted by the Attorney General's office on behalf of DMF or the Environmental Police.

Finally, like a good, old-fashioned attic cleanup, some sections of Chapter 130 that were no longer needed have been eliminated. These include a requirement to label all containers of sea scallop meats as “sea scallops” (Section 92); a prohibition on transporting fish out of state (Section 99); and a requirement to kill all starfish, “cockles,” and “winkles” by placing them above the high water mark (Section 103). This last law was particularly awkward in modern times given the commercial whelk fishery is now worth millions annually.

A multitude of thanks go all around for the completion of this important update: to all who contributed on the committee including the leadership of the Environmental Police, to the Marine Fisheries Advisory Commission for their support, to the legal staff for their detailed review and edits, to the Legislature and Governor.