

PASSAMAQUODDY TRIBE
Fisheries Management Plan
Governing Salt Water Hunting, Fishing and Gathering

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Part 1: General Provisions, Section 1.1: Authority, Intent;

This Fisheries Management Plan (FMP) governing saltwater hunting, fishing and gathering by members of the Passamaquoddy Tribe is enacted by the Passamaquoddy Joint Tribal Council pursuant to resolution xx-xx-xx in exercise of its sovereign authority to govern fisheries and other internal matters of the Passamaquoddy tribe and are intended to ensure the protection of the marine environment, its resource and inherent rights of tribal members to engage in the harvesting of marine resources in a manner which will:

Maintain cultural and historic subsistence, ceremonial and commercial hunting, fishing and gathering of marine resources by tribal members;

Provide for the immediate and long term cultural, economic and social interests and needs of tribal members and future generations;

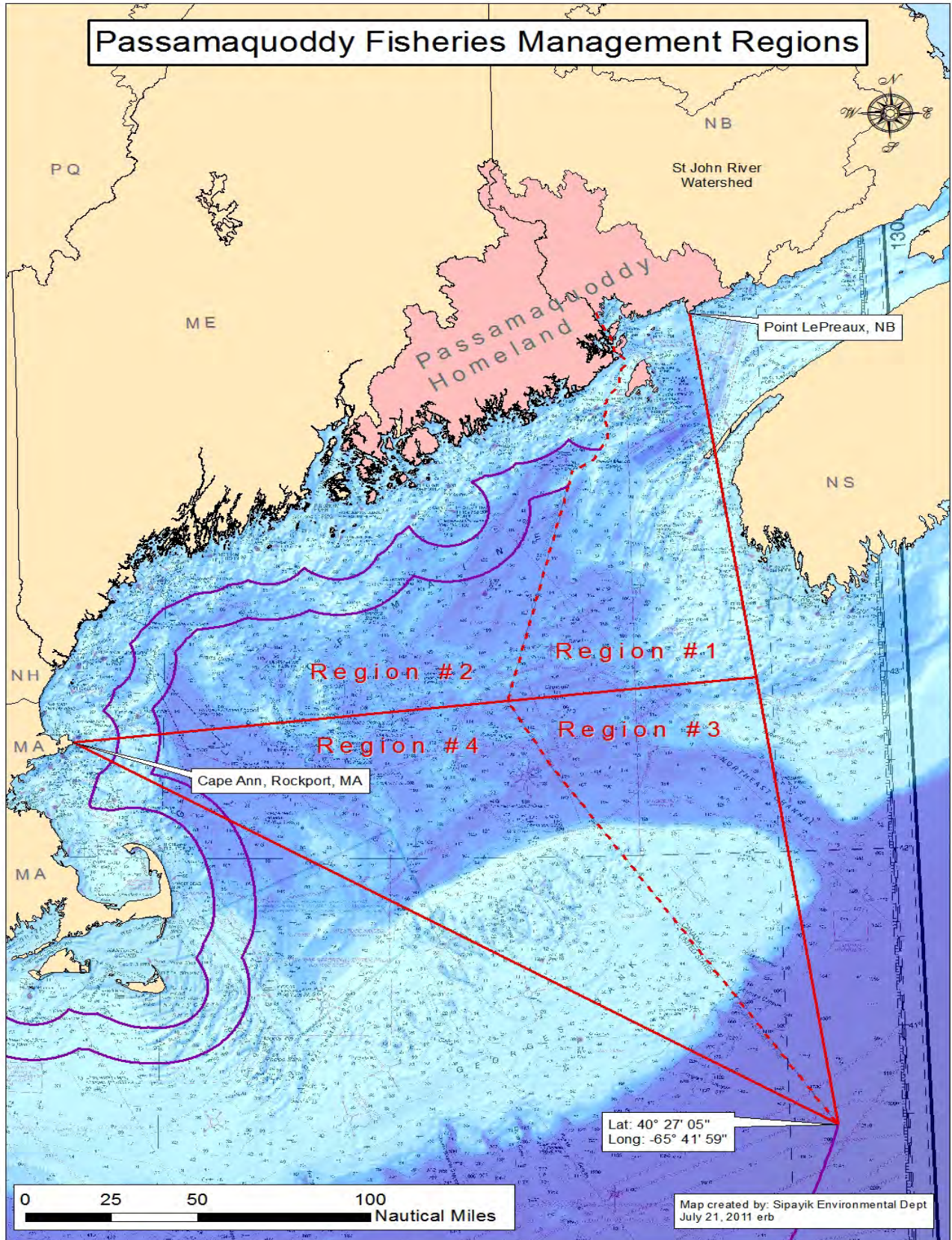
Cooperate with Tribal, Canadian, American, State, Provincial and Municipal authorities in the conservation and protection of the marine environment and its resources through safe and responsible harvesting practices.

This fisheries management authorizes the Sakom and Council of either reservation to enter into fisheries and trade agreements with other tribes and shellfish harvesting agreements with municipalities, under provisions of law providing municipalities the authority to govern the taking of shellfish, provided that such agreements shall be for the benefit of all Passamaquoddy tribal members consistent with tribal law

Section 1.2: Applicability;

- A. Provisions of this Fisheries Management Plan (FMP) having been enacted as tribal law by the Passamaquoddy Joint Tribal Council are applicable to all members of the Passamaquoddy tribe who apply for and receive saltwater hunting, fishing and gathering licenses and permits and any other persons acting on behalf of or in concert with members of the Passamaquoddy tribe in connection with the activities governed by this plan.
- B. They govern the taking of any mammal, plant, fish, organism, resource or life that inhabits the marine environment below the head of tide, flats, bottoms, rivers or estuaries regularly or continuously covered by sea water, and the possession, transportation and distribution of any and all marine resources so taken.
- C. Provisions set forth herein shall be applicable to any person who is not a member of the Passamaquoddy tribe taking shellfish from the pleasant point reservation and any person acting on behalf of or acting in concert with any member of the Passamaquoddy tribe in connection with the taking of any shellfish from within the boundaries of the Pleasant Point reservation, or under the authority of a Passamaquoddy saltwater hunting, fishing and gathering permit.

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Section 1.3 Management Zone, Regions, Areas;

A. Management Zone established; The Passamaquoddy Marine Resource Management Zone shall comprise all waters west of a straight line southward from Point Lepreau to the extreme southern end of the "Hague line" and north of a straight line west from the extreme southern end of the Hague line to Cape Anne, including all waters below the head of tide from Cape Anne to Point Lepreau.

B. Management Regions established;

1. **North region,** the north region shall encompass all waters west of a straight line from Point Lepreau south to coordinates xx xxx xx and north of a straight line from coordinates xx xxx xx to Cape Anne, including all waters below the head of tide from Cape Anne to Point Lepreau.

2. **South region,** the south region shall encompass all waters south of a straight line from Cape Anne to coordinates xx-xx-xx and west of a straight line south from coordinates xx xxx xx to the southern extreme of the Hague line and north of a straight line from the southern extreme of the Hague line to Cape Anne

C. Fisheries management areas;

1. **Committee to identify;** subject to the administrative procedures and in accordance with the framework adjustment process set forth within the fisheries management plan. The fisheries advisory committee shall recommend fisheries management areas, seasons and (quotas if necessary) for the following fisheries to be established in accordance with the timeframe set forth below.

- a) **Atlantic Sea Scallops;** management areas no later than 15 February 2012
- b) **American lobster;** management areas no later than 14 March 2012
- c) **Multi species;** (ground fish) management areas no later than 15 April 2012
- d) **Pelagic and anadromous;** no later than 15 April 2012
- e) **Halibut and other restricted fisheries;** affected by individual fisheries quotas, seasons, schedules, size limits, gear and other restrictions

2. **Committee presentation;** in addition to specific fisheries identified in section 1.1; a, b, c, d. of this part, and subject to the administrative procedures and framework adjustment procedure specified in this plan, the fisheries advisory Committee is hereby directed to present to the Joint Tribal Council by means of a fisheries advisory committee report. Regular and continual recommendations for the establishment of specific fisheries management rules governing the hunting, fishing and gathering of all marine resources within all fisheries management areas, which include, take (harvest) methods, gear restrictions, size limits, area opening and closure dates, total allowable catch (TAC) quotas, individual fisheries quotas (IFQ) set asides and rules governing the disposition of bycatch.

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Section 1.4: Administration.

A. Licensing Authority. Unless otherwise specified by the Passamaquoddy Joint Tribal Council, Salt water Hunting, Fishing and Gathering licenses and permits shall be issued by the officials to whom that authority has been delegated by the Passamaquoddy Joint Tribal Council, to

- Members of the Passamaquoddy tribe
- Tribal member owned corporations
- Qualified vessels owned by and registered to members of the Passamaquoddy tribe
- Qualified vessels owned by and registered to tribal member owned corporations

1. Authorization. The Sipayik reservation Sakom and Council are authorized to establishment a Passamaquoddy Fisheries Department or similar entity for the purposes of carrying out the administrative, management, regulatory, planning and other requirements of this plan and any other marine resource management duties and responsibilities similar to that of other governmental agencies authorized to manage and regulate activities affecting the marine environment, fisheries and resources.

B. Uses Defined.

1. Sustenance use; means

- a. The consumption or use of any marine mammal, organism or resource by members of the Passamaquoddy tribe or;
- b. By members of the household of any member of the Passamaquoddy tribe and or
- c. By any person within the household of a member of the Passamaquoddy tribe when such marine resources are obtained for sustenance use.

2. Ceremonial use; means,

- a. The consumption or use of any marine mammal, organism or resource at any public or private ceremonial event meant to enhance the cultural, ceremonial, and traditional practices of Passamaquoddy tribal members.
- b. Nothing in this part is intended to prohibit the consumption and use of marine resources by persons who are not members of the Passamaquoddy tribe who are participating in ceremonies defined in this part.
- c. For purposes of this part, a feast during a public or private cultural or political event constitutes a ceremony

3. Communal sustenance and ceremonial use; means,

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- a. the consumption and or use of any marine mammal, organism or resource at any public or private ceremonial, cultural or political event sponsored, authorized or requested by any member of the Sakom and council of the Passamaquoddy Tribe,
- b. Any ceremonial event, feast, function, celebration or gathering to which any member of the Sakom and Council of the Passamaquoddy Tribe has requested the delivery of marine resources,
- c. Any occasion in which any Sakom of either reservation, requests the distribution of marine resources to households of tribal members during times of need
- d. For purposes of this part, tribal elder meal sites, tribal elder functions, schools and tribally authorized food distribution centers are considered tribally authorized functions and events to which any member of the tribal Sakom and Council may request or cause the delivery of marine resources under a communal sustenance permit, subject to the issuance of such permit be the department

4. Special sustenance and ceremonial use; means

- a. any ceremonial event, feast, function, celebration or gathering of any native American community, entity or organization, with which members of the Passamaquoddy tribe have historic, cultural, political or trade relationships with, and
- b. Have requested from any member of the Passamaquoddy Sakom and council, the delivery of marine resources in furtherance of such historic, cultural, political or trade relationships.

5. Commercial use; means

- a. The taking of marine resources through hunting, trapping, fishing and or gathering for the sole purpose of transferring any marine organism or resource for commercial sale, barter or trade.
- b. A person engages in commercial use of marine resources if he/she takes or obtains any marine organism or resource through any means for the sole purpose of sale, trade, barter or exchange for monetary value or consideration other than official tribal trade ceremonies.
- c. For any purpose other than sustenance or ceremonial uses as defined by this FMP.
- d. For purposes of this part, the term commercial, shall include any manner or method through which a person may fish for, gather, trap, take, possess, ship, transport, or cause any person to engage in any of the above either with, for or in conjunction with a tribal member for any purpose except sustenance and or ceremonial purposes, or unless otherwise authorized in Section 1; D, 3, of this part.

C. Licenses, Permits;

1. Sustenance license; the department shall issue a non-expiring general sustenance hunting, fishing and gathering license or permit to any member of the Passamaquoddy tribe without fee who completes a general sustenance application which includes the following information;

- a. Name and address of tribal member; Marine resources to be harvested; method, gear, vessel type; whichever applies;

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- b. A general description of the harvest area, i.e.; inshore/offshore, gulf, basin, bank, river or bay.
- c. The sustenance hunting, fishing and gathering permit shall also include the following language;
 - (i) “Certain provisions limiting the season, method, time, and manner in which a marine resource can be taken, may be in effect or may from time to time be adjusted. It is the responsibility of the license/permit holder to know, understand and abide by all rules and regulations pertaining to the harvest of any marine organism or resource”.
 - (ii) “It is the responsibility of any person engaging in any form of tribally permitted or licensed hunting, fishing and or gathering of marine resources to know and abide by the provisions of this ordinance, and any other laws and regulations governing such activity as may be made applicable by this ordinance.”
- d. Non-expiring sustenance hunting, fishing and gathering license or license, once issued may be suspended only upon conviction of a violation of this ordinance through adjudication by the tribal court in accordance with the provisions and penalties prescribed in this ordinance.

Nothing in this section is intended to prevent the department from exercising its authority to implement emergency measures in accordance with section 5. (b) of part 1,

if a vessel is to be used in sustenance hunting, fishing trapping or gathering, then the “applicant” vessel shall meet the same vessel ownership and control requirements of tribally owned or tribal member owned vessels applying for a commercial fishing permit.

2. Special Ceremonial, Sustenance Permits; may be issued by the department to qualified tribal members for the purpose of harvesting marine resources for consumption or use at any function as defined by Section C, 2, 3, and 4 of this part,

- a. The department shall require the presence of a certified tribal observer at all times during the harvest, if
 - (i) the quantities specified in the written request are of an amount which may not conform to catch, harvest, take or possession limits established by other jurisdictions.

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- (ii) The harvest area specified on the permit may have other limitations and closures which may be found to be inconsistent with tribal cultural and or ceremonial practices.
- (iii) The particular marine resource named on the permit is subject to prohibitions on the hunting, fishing, gathering and taking of any kind by another jurisdiction, within the harvest/use area or any other points between.
- b. A special ceremonial, special sustenance or communal sustenance permit shall be a temporary permit valid from the date of issue through delivery to the intended user(s) of the marine resource identified on the permit.

3. Commercial fishing permit; subject to the eligibility requirements established in section 1.5 of this part, and in accordance with the administrative procedures of the fisheries management plan. The department shall issue a commercial fishing permit to a

- a. tribal member or tribal member owned corporation or to a qualified vessel owned by a tribal member or a tribal member owned corporation , provided
- b. limited access commercial fishing permits held in the “permit pool” shall be made available through advertisement in accordance with the administrative procedures provisions of the fisheries management plan and
- c. shall be issued first to tribal members or tribal member owned corporations demonstrating ownership of commercial fishing vessels, deemed by the department to be suitable for undertaking the activities authorized by the permit
- d. any limited access commercial fishing permit held in the “permit pool” which has not been issued to a tribal member or tribal member owned corporation in accordance with this part, shall be issued to a tribal member or tribal member owned corporation who leases a commercial fishing vessel deemed by the department to be suitable for undertaking the activities authorized by the limited access commercial fishing permit, provided
- e. the applicant meets all other eligibility requirements established by the fisheries management plan, including proof of tribal member control over leased vessels requirements of the FMP.
- f. if a limited access commercial fishing permit held in the “permit pool” remains unissued after the availability of which has been advertised in accordance with the administrative procedures of this plan. The department may issue a limited access commercial fishing permit to eligible tribal members by way of lottery, provided
- g. a lottery established for the issuance of limited access commercial fishing permits held in the permit pool, shall be advertised in accordance with the administrative procedures established in the fisheries management plan.

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4. Management areas; an application for a Passamaquoddy commercial fishing permit whether issued to tribal members or to tribal member owned corporations or to tribal member owned vessels or to vessels owned or operated by tribal member owned corporations shall include the following information which shall also be placed on the permit

1. specific Passamaquoddy fisheries management area or region where the authorized commercial fishing activity is to be conducted, or
2. in the absence of a specific Passamaquoddy fisheries management area designation, the permit shall identify the corresponding federal, state or provincial fisheries management area designation, including any special conditions, endorsements or restrictions governing the permitted commercial fisheries activity as may be established by the department in accordance with the administrative procedures of the fisheries management plan
3. it shall be the responsibility of the permit holder or any person operating a vessel upon which a Passamaquoddy commercial fisheries permit has been assigned, to adhere to the most restrictive rule doctrine, whenever a permit holder or vessel operates within the management area of another jurisdiction

5. Experimental Fisheries, subject to approval by the fisheries advisory committee in accordance with all other requirements and administrative procedures established within the fisheries management plan. The department may issue an experimental fisheries permit to any qualified tribal member or qualified tribal member owned corporation, for any commercial or other fishery activity not specifically or generally authorized by the Passamaquoddy Joint Tribal Council, when the applicant provides a complete fisheries management plan, which includes

a. Fisheries management plan; for the affected fishery which includes; a detailed recruitment schedule and harvest plan, describing all aspects of the experimental fishery, including but not limited to; targeted species, sources of seed or brood stock, placement, recruitment, harvesting schedules, techniques, equipment, gear type, monitoring, potential bycatch mortality and disposition and

1. Number of vessels(s) type of vessels, US coast guard certificate of inspection for all commercial vessels to be employed in all marine aspects of the fishery and
2. Name and address of all non-tribal member(s), non-tribal member owned entities, corporations and vehicles to be involved in the experimental fishery, including support, delivery and sales functions.

b. Environmental impact statement describing potential impacts upon the targeted fishery, other fisheries resources and the marine environment resulting from any activities directly or indirectly associated with the experimental fishery and

1. plan for handling, disposing of all equipment, vessels, parts, chemicals, pieces, refuse, debris, waste and any foreign materials or substances used in or generated as a result of the experimental fishery,

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2. plan for the storage, maintenance and disposal of all equipment either permanently fixed to vessels or placed in the water column, tidal range, beaches, flats or in any way employed in the fishery,
3. plan for mitigation of any environmental impact resulting from activities associated with the permitted activities or removal of any equipment and fixtures upon conclusion or cessation of the experimental fisheries whether through, expiration, abandonment, or termination of the permitted activities by the department

C. Economic impact statement; describing all costs to be borne by the applicant and benefits to the community as may be associated with the experimental fishery, including but not limited to

1. budget, describing startup, operation, completion and clean-up costs
2. estimated short term project benefit to community through job creation and payment of fees
3. detailed description of long term benefit to community resulting from the experimental fishery, including but not limited to additional commercial fisheries development opportunities, and
4. letter of commitment to provide payment of fees not to exceed % .5 percent of landed value of any marine resources sold as a result of the experimental fishery including all reasonable department monitoring costs as identified in section 4.1, b of this part
5. Statement of financial capability demonstrating ability of applicant to meet permit requirements, including, fee payments schedules and method of payment.

d. Conditions for maintenance, renewal, termination; an experimental fisheries permit may be renewed for one year only upon recommendation by the department subject to committee approval, provided

- (i) any experimental fisheries permits issued by a Sakom of the Passamaquoddy tribe for the 2012 fishing year shall remain in effect through the 2012 fishing year
 - (ii) subsequent to the 2012 fishing year, the department may negotiate joint department/permit holder management of the experimental fishery, or
 - (iii) Negotiate management agreements or contracts in accordance with the administrative procedures established by the FMP, for the continuation of the fishery as a Passamaquoddy Joint Tribal Council economic enterprise, or
 - (iv) Continue to operate the experimental fishery as a Passamaquoddy Joint Tribal Council owned economic enterprise or
 - (vi) establish a commercial fisheries permit for any commercial fisheries opportunities established as a result of the experimental fishery
1. an experimental fisheries permit holder meets all contractual, evaluation, permit fee, reporting requirements and conditions for the issuance of an experimental fisheries permit
 2. requests for renewal of experimental fisheries permits must be submitted in accordance with the permit renewal application period established by this FMP or,

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3. if the permit was issued in accordance with section E. 1) (i) of this part, an application for renewal of an experimental fisheries permit must be submitted prior to 90 before the initial date of expiration
4. the committee may deny the extension or renewal of an experimental fisheries permit upon recommendation by the department if
5. the committee determines that significant harm to the environment or a negative impact upon tribal culture or marine resource could occur from an extension or renewal of the permit, or
6. there is no real or potential benefit to the cultural, economic or environmental interests of members of the Passamaquoddy tribe

1.5. Vessel Ownership.

a. vessel ownership. Prior to the issuance of a commercial hunting, fishing or gathering permit. The department shall require an applicant to provide proof of ownership of a suitable vessel(s) from which commercial fishing activities are to be conducted, including but not limited to;

1. Valid Passamaquoddy Commercial fishing vessel certificate of registration identifying the tribal member or tribal member owned corporation as the registered owner of the vessel
2. Official US or Canadian vessel documentation bearing the name of the tribal member or tribal member owned corporation as the owner of the vessel,
3. Current State registration bearing the name of the tribal member or tribal member owned corporation as the owner of the vessel
4. Valid certificate of registration issued by a tribal government having executed a fisheries and trade agreement in accordance with this plan.

b. leased vessel(s). Passamaquoddy commercial fishing permits may be issued for placement on a suitable commercial fishing vessel which has been leased to a tribal member or tribal member owned corporation only when the leased vessel is determined to be under no less than 100 % operational control by the tribal member or tribal member owned corporation. Operational control may be demonstrated when the following has been provided.

1. Signed and witnessed lease agreement between the original owner (Lessor) and the tribal member (Lessee) detailing all terms and conditions associated with the lease
2. (if a tribal member owned corporation) a signed and witnessed lease agreement between the original owner (Lessor) and an authorized executive of the tribal member owned corporation (Lessee) detailing all terms and conditions associated with the lease
3. a certificate of personal injury insurance naming the Lessee or operator and crew of the leased vessel as the insured
4. If the operator of a leased vessel is any person or entity other than the Lessee, then the Lessee shall provide to the department any all operational agreements and or management contracts by and between the (Lessee) and the operator of the Leased vessel,
5. If any person(s) or entity other than the Lessee maintains operational control over a leased vessel even if they are not the operator of the leased vessel, then the Lessee shall provide to the department any and all operational contracts and management agreements by and between the

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Leasee and the person(s) or entity maintaining operational control of the leased vessel, including sales contracts and or marketing agreements.

6. complete list of all permits and licenses assigned to the leased vessel regardless of to whom or by whom any additional permits have been issued

C. Vessel qualifications; a vessel for which an application for a Passamaquoddy commercial fishing permit is being made, must be deemed suitable to undertake the activities described in the application before a permit can be issued. In determining suitability of an applicant vessel the department shall require the following documents and or equipment

1. Valid USCG safety inspection for the intended range of operation of the applicant vessel
2. Loss and liability insurance for any operator and crew of applicant vessel, comparable to that of other vessels engaged in similar activities
3. a valid tribal commercial vessel operators permit, or
 - a. Valid US commercial fishing vessel operators permit or
 - b. Valid Transport Canada commercial vessel operators certificate or
 - c. Valid commercial fishing vessel operators permit issued by another tribe having executed a fisheries and trade agreement with the Passamaquoddy tribe
4. If during any period the operator of a Passamaquoddy permitted vessel is any person(s) other than the permit holder, then the permit holder must provide an executed copy of either an employment contract or management agreement between the permit holder and the operator
5. All vessels applying for a Passamaquoddy Salt Water Fisheries Permit must be equipped with a fully functional VMS or other acceptable vessel tracking device necessary for department tracking of vessel s
6. prior to commencement of any commercial fishing activities beyond 3 nautical miles from any state, country or province, total number of individuals, (including tribal fisheries observers) names addresses of all crew members, position or rank, including emergency contact information
7. Permit holder/operator, signed acknowledgement of terms and conditions for operating under authority of the Passamaquoddy Joint Tribal Council Fisheries Management Plan (FMP) which shall include;
 - I. Acknowledgement of Passamaquoddy fisheries department zero tolerance policy concerning illegal use or possession of drugs while conducting Passamaquoddy permitted commercial fishing operations
 - II. Consent to submit to drug testing at any time prior to commencement, during and upon return from commercial fisheries and related activities authorized by the Passamaquoddy Joint Tribal Council, or at any time as may be directed by Passamaquoddy fisheries law enforcement officers.

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d. multi-jurisdictional permits/quota; No Passamaquoddy commercial fisheries permits shall be issued by the department to any vessel upon which a similar permit or active quota has been issued by another jurisdiction, if such placement would result in, stacking, grouping or any form of consolidation of permits or quota, unless

1. The vessel upon which a permit from another jurisdiction is placed has completely fulfilled all requirements and obligations associated with such permit or quota, rendering such other permit or quota as inactive for the effective period specified of the Passamaquoddy fisheries permit and
2. Written verification by the issuing authority certifying the inactive status of similar permits is received by the department prior to the issuance of a permit or
3. A commercial fishing permit issued by the department specifically authorizes multi-jurisdictional permits under special endorsements, conditions, circumstances, regulatory actions and restrictions in cooperation with similar permit issuing authorities in accordance with the administrative procedures of the Passamaquoddy Fisheries Management Plan

e. Commercial vessel operator's permit; the committee shall develop an appropriate format to serve as the design of a commercial vessel operators permit which identifies the holder as a member of the Passamaquoddy tribe authorized to operate a commercial fishing vessel. All persons who operate a commercial vessel engaged in activities governed by this plan shall

1. Possess a valid Passamaquoddy commercial fishing vessel operators permit, or
2. Valid transport Canada commercial vessel operators certificate, or
3. Valid United States government issued Commercial vessel operators permit, or
4. Valid commercial vessel operators permit issued by another tribe which having a fisheries cooperation and trade agreement with the Passamaquoddy tribe

Section 1.6. Enforcement.

A. Tribal Law Enforcement, Provisions of this fisheries management plan requiring law enforcement actions within the Passamaquoddy Marine Resource Management Zone and over all other provisions of this plan shall be the responsibility of tribal law enforcement officers.

1. tribal law enforcement officers are those members of Passamaquoddy law enforcement agencies with law enforcement powers and responsibilities established by the Joint Tribal Council, respective Passamaquoddy Reservations tribal governments, and
2. Members of other tribal law enforcement agencies with whom Passamaquoddy law enforcement agencies have executed a reciprocal or other cooperation agreement concerning marine resources and approved by the Joint Tribal Council

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3. Should the Sipayik Sakom and council establish a fisheries department then
4. The agency designated to implement provisions set forth in this part is hereby authorized to negotiate reciprocal agreements with other tribal, state, federal and provincial law enforcement agencies, subject to the approval of the Sipayik Sakom and Council.

B. implied consent. Any person or entity who applies for a license or permit to hunt, fish and gather marine resources or a license or permit to be placed upon a vessel in accordance with the licensing and other provisions of this plan has a responsibility to submit to inspection by law enforcement personnel and must agree to provide tribal enforcement personnel access to any and all records associated with such activity including all vessel ownership documents to determine ownership and operational control and suitability of said vessel or at any time when it is determined that inspection is necessary to ensure compliance with tribal laws, and;

1. Any person licensed or permitted by tribal law to engage in sustenance, ceremonial or commercial Hunting, fishing and gathering shall consent to inspection and search by any law enforcement officer engaged law enforcement activities.
2. Any watercraft or vehicles and the equipment located on or in which are used primarily for the purpose of taking, transporting or holding marine resources in any manner for which a license or permit under tribal law is required shall be subject to inspection and search by law enforcement personnel at any time;
3. Any other location where activities are conducted for which a license or permit under tribal law is required may be inspected or searched during the hours when those activities occur;
4. A location specified in part (c) of this subsection may be inspected at any time if the law enforcement official has a reasonable suspicion of a violation of tribal law
5. No residence or dwelling may be searched without a search warrant unless otherwise allowed by tribal law.
6. Any person who applies for or receives a license or permit under this ordinance has a responsibility to permit the seizure of evidence of an alleged violation of tribal law and the laws incorporated herein when an inspection or search is conducted in accordance with this section. Refusal to permit inspection or seizure as provided in this section is grounds for suspension of any and all licenses and permits issued under authority of the Joint Tribal Council fisheries management plan.

A. tribal court jurisdiction. The Passamaquoddy tribal court is hereby granted jurisdiction to hear and decide any alleged violation of the provisions of this Fisheries Management Plan, whether the allegations are made by a tribal, federal, state or provincial law enforcement officer having jurisdiction over the location and activity involved, including any alleged violations by a member of another tribe or band when that tribe or band has executed a fisheries cooperation and trade agreement with the Passamaquoddy Joint Tribal Council or a Sakom and Council of the Passamaquoddy tribe.

1.7 Development.

A. Fisheries advisory committee. The Passamaquoddy Joint Tribal Council Fisheries Advisory Committee, (FAC) shall be responsible for drafting recommendations for the management of marine

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resources by the Joint Tribal Council in accordance with the adjustment to management measures process established in Section 1.7, B. of this part. The committee shall be responsible for scheduling, Posting and conducting meetings and public hearings relating to all proposed adjustments to management measures in accordance with the administrative procedures established in 1.7, C. of the Passamaquoddy Joint Tribal Council Fisheries Management Plan

1. Composition. The Sakom of each reservation shall appoint; up to three members of their respective reservation tribal councils and one member of the community at large from each reservation, for tribal council members the term of service shall be during their term of office and for the member of the community at large for the term of office of the appointing Sakom or until replaced by the appointing Sakom.

- i. The Sakom and vice chief from each reservation and the Sakom of the St. Croix Scoodic Band shall serve as ex officio members of the committee. No member of the Joint Tribal Council shall be prohibited from attending public meetings, hearings or proceedings of the fisheries advisory committee.
- ii. The committee shall select one of their members appointed to serve as committee chair, and one member to serve as vice chair provided, that
- iii. The member appointed from the community at large may serve as either chair or vice chair, provided the member appointed as either chair or vice is not under the direct employment of any federal, provincial or state governments.
- iv. The fisheries advisory committee shall be authorized to conduct public hearings, meetings and other proceedings necessary for carrying out the duties and responsibilities established in the Fisheries Management Plan, including but not limited to the calling of witnesses, tribal officials, department heads and other persons having expertise concerning fisheries matters
- v. The committee shall treat all of its deliberations and proceedings as internal tribal matters and shall provide final committee reports and recommendations only to the Passamaquoddy Joint Tribal Council, unless otherwise authorized or directed by the Passamaquoddy Joint Tribal Council.

2. Subcommittees authorized. The fisheries advisory committee may establish or cause to be established, specific subcommittees for the purpose of gathering and receiving tribal member and permit holder input concerning all fisheries related matters, provided

- a) Specific fisheries subcommittee membership shall be restricted to tribal members who hold permits for specific or limited entry fisheries; example. (Sea Urchin, Scallop, etc.)
- b) all activities and proceedings of any fisheries subcommittee shall be conducted in accordance with the administrative procedures of the fisheries management plan

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- c) no member of the JTC, the JTC fisheries advisory committee or employee of the department shall be authorized to serve as a member of any fisheries subcommittee
- d) Fisheries subcommittee members may appoint one member of the subcommittee to serve as subcommittee spokesperson to the fisheries advisory committee only and shall have no authority to speak on behalf of the Joint Tribal Council or fisheries advisory committee, without approval from the fisheries advisory committee.
- e) The fisheries advisory subcommittee shall be afforded all necessary and reasonable means required to carry out subcommittee business in accordance with the FMP.

3. Fisheries management plans. The fisheries advisory committee shall initiate proceedings for the development of fisheries specific management plans in accordance with the administrative procedures and framework adjustment process established by this part, for

- a. all marine resource harvesting activities authorized by the Joint Tribal Council and,
- b. procedures for the periodic review, amendment and implementation of management and enforcement measures designed to protect fisheries resources, the marine environment, resource users and the interests of future generations by preventing overfishing on a continual basis, and
- c. pursuant to the administrative procedures set forth herein, ensure adequate opportunity for input from tribal resource users, tribal members, elders and various tribal organizations through an inclusive and transparent decision making process

B. Committee assessment. Annually or upon a request from the Committee, the Department shall provide the committee with information on the status of the fisheries resource and marine environment.

- 1. within 30 days of receipt of the department report and in accordance with the administrative procedures outlined in section 1.8, A. of this part
- 2. The committee shall undertake a committee assessment concerning the condition of marine resources to determine the adequacy of marine resource conservation and safety measures. All committee assessments shall be completed within 30 days of initiation.

C. Committee report. Based upon this and other relevant information the committee shall prepare and present its report containing recommendations for consideration by the Joint Tribal Council (JTC) within 30 days of completion of the committee assessment. Whether or not the committee assessment was initiated upon receipt of a department report,

- 1. If the department does not provide a report in accordance with the administrative procedures of 1.7., B of this part. The committee may recommend adjustments to management measures to the Joint Tribal Council at any time to protect the resource and or to improve safety.

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2. If the committee does not provide a report or recommendation to the Joint Tribal Council before December 31st of each year, or
3. if the Joint Tribal Council does not adopt changes to fisheries management measures before March 1st. of each year, the measures from the most recent fishing year shall continue to remain in effect until such time as the Joint Tribal Council adopts changes to the FMP.

1.8. Administrative procedures.

A. public hearing/meeting. During the committee assessment and prior to completion of the committee report to the Joint Tribal Council, the committee shall hold no less than one public hearing on each reservation providing adequate opportunity for tribal member comment and fisheries resource user input. The proceedings of all committee initiated public meetings and hearings shall be recorded by the committee clerk or the clerk of the Joint Tribal Council and placed on file with the committee clerk and clerk of the Joint Tribal Council.

B. notice. The committee shall provide notice of public meetings and public hearings to each reservation community in accordance with the provisions of the tribal constitutions of each reservation, governing the conduct of public meetings and shall be posted in several locations on both reservations normally associated with posting notice of public meetings and hearings.

1. The committee shall establish a notice of meeting for all committee meetings and separately a notice of public hearing on any proposed adjustments to management measures, provided
2. The committee shall not schedule a public meeting or public hearing on a proposed adjustment to management measures on the same day the Joint Tribal Council has scheduled consideration of the same proposed adjustment to management measures
3. The committee may conduct public hearings or meetings on the same day that the Joint Tribal Council has any other fisheries related matter placed on the agenda for consideration.
4. The department shall provide written notice of all fisheries advisory committee public meetings and public hearings to tribal permit holders in the form of a notice to permit holders.

B. Emergency measures. If the department determines that an emergency measure is necessary to prevent overfishing, protect public safety, health and or the environment, the Department shall immediately set forth provisions for the establishment of an emergency measure. Implementation of the emergency measure shall be exempt from the administrative procedures and adjustment to framework measures identified in section 1.8, A, B., provided,

1. The department provides notification of the proposed measure to the committee at least 24 hours prior to the proposed effective date and time of the proposed emergency measure.
2. The notification must be either electronic, verbal, written or in person and shall identify the impacted fishery, reasons for proposing and anticipated duration of such emergency measure.
3. The department shall provide a written report to the committee within 3 calendar days following initial notification to the committee of the proposed emergency measure.

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4. If the department does not provide the required 24 hour advance notice to the committee or a written report to the committee within three days following the implementation of the emergency measure, the measure shall withdraw without prejudice.
5. The report shall contain information relative to the status of the affected fishery and conditions necessitating continuation and duration of the emergency measure. The department shall also provide a summary of its report to permit holders directly affected by such emergency measure, in the form of a letter to permit holders.
6. Any emergency measure intended to remain in effect for more than 30 days shall require committee approval in accordance with the administrative procedures of this ordinance, and
7. If the department recommends to the committee that an emergency measure remain in effect for any period exceeding 60 days during any fishing year or season. The committee shall initiate an adjustment to management measure proceeding in accordance with sections 1.7 and 1.8 of this part
8. If the JTC is unable to meet in order to undertake adjustments to management measures in response to a committee approved emergency measure then the committee recommendation shall take effect until such time as the JTC, meets to address such proposed emergency measure(s).
9. subject to the administrative procedures outlined in section 1.7 and 1.8 of this part, any Sakom of the Passamaquoddy tribe may request a review of proposed adjustments to management measures which have resulted from any emergency measure established in accordance with Section 1.8, C., of this part
10. A written request for review by a tribal Sakom must bear the signature of the tribal Sakom and shall identify the particular fisheries, part or section to be reviewed.
11. if a request for review by a Tribal Sakom is received, the committee shall include the request for discussion at the next committee meeting or appropriate proceeding in accordance with the administrative procedures established in the fisheries management plan

1.9 Judicial Powers; Penalties.

A. Criminal Violations. Jurisdiction over criminal violations of the provisions of this fisheries management plan shall be in the Passamaquoddy Tribal Court when alleged to have been committed by a member of the Passamaquoddy Tribe or by a member of another tribe having executed a fisheries cooperation and trade agreement with the Passamaquoddy tribe and in the state courts when alleged to have been committed by a non-tribal member.

1. It shall be a criminal violation of this fisheries management plan for any person(s) to Knowingly or willfully take, obtain, transfer, possess or transport any marine resource taken from any person, equipment, fishing gear, location, waters, pound, holding, storage or transportation container(s), vessel, vehicle or conveyance of any kind without authorization by the department, or the rightful owner of such marine organism or resource, or

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- (l) to cause another person or entity to take, obtain, transfer, possess or transport any marine resource taken from any person, equipment, fishing gear, location, waters, holding, storage or transportation container(s) vessel, vehicle or conveyance of any kind, without authorization by the department or owner of such marine organism or resource.
- 2. it shall be considered a criminal offense for any person to lift, raise, transfer, possess, or in any way damage or molest any fishing gear, storage or transportation containers, lines, buoys, markers, warps, nets of any kind without permission from the owner of such gear or as may be authorized by the department.
- B. Zero tolerance.** for purposes of enforcement of the provisions of this fisheries management plan by the department, the Passamaquoddy Joint Tribal Council has established a zero tolerance policy for any criminal activity associated with the taking of marine resources governed by this plan and
 - 1. As described in section 1.9., A.,1., (l), 2., of this part without authorization by the department or rightful owner to do so, or
 - 2. Take any marine resources classified as a limited access commercial fishery for commercial purposes
 - 3. Take any marine organism or resource from another person or entity, with the intent to deprive another person or entity of the possession or value of such organism or resource, without authorization by the department to do so whether or not the person or entity from whom the organism or resource was taken is authorized by the department to possess such marine resource.
- C. Penalties.** In addition to any penalties imposed by the Passamaquoddy Tribal Court for violations of the provisions of Section 1.9, A, 1, (l), 2 of this Fisheries Management Plan or by a court of competent jurisdiction for violations of marine resource laws, which if adjudicated in the tribal court would constitute a violation the provisions of Section 1.9 A, 1, (l). 2 of this fisheries management plan, the department shall
 - 1. After an adjudication of an initial finding of guilty for violation of section 1.9., A.,1 (l), 2 in accordance section 1.9, B, and C of this part, impose a one year mandatory administrative suspension of all marine resource licenses and permits issued by the department.
 - 2. if a person convicted of violations of Section 1.9, A., 1, (i), 2 of this part does not possess a marine resource license or permit, then the court may impose the maximum fine as may be permitted by tribal law, and the person so convicted, shall not be eligible to apply for a marine resource hunting, fishing and gathering permit for a one year period commencing from the date of conviction in the Passamaquoddy Tribal Court, or
 - 3. in any state, federal or provincial court or in the courts of a tribe having executed a fisheries cooperation and trade agreement with the Passamaquoddy Tribe for violations which would constitute violations of Section 1.9, A, 1, 2, of the Passamaquoddy fisheries management plan, then the department shall impose the same one year mandatory

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administrative suspension as if the conviction had been adjudicated in the Passamaquoddy Tribal Court.

4. If a person while subject to administrative suspension resulting from an adjudication of a finding of guilty in violation of the provisions of Section 1.9, A., 1, 2,

D. Civil Violations. Any violation by any person of the provisions of this Fisheries Management Plan, or of the terms or conditions of any license issued under this Fisheries Management Plan or recognized under a fisheries cooperation and trade agreement, is declared to be a civil violation, whether or not the same conduct is punishable criminally. Civil violations may be prosecuted in the Passamaquoddy Tribal Court when alleged to have been committed by a tribal member or by a member of another tribe having a fisheries cooperation and trade agreement with the Passamaquoddy Tribe, or in the state Courts when alleged to have been committed by a nonmember of the Passamaquoddy tribe. In either case the following penalties are applicable;

1. License suspension. Any license or permit for the taking of marine resources may be suspension for a period of up to one year upon a judicial finding that the license or permit holder has violated the terms of the license or permit or of this fisheries management plan, or allowed another to commit such a violation under the authority of a license or permit issued by the department, or upon a judicial finding that the license or permit holder has violated section 1.9., A. 1., (I), 2, of this part. The Court may take judicial notice of the zero tolerance policy defined in section 1.9 C. of the fisheries management plan and in addition to any penalties the court may apply, impose the mandatory one year suspension of any license or permit commencing on the date the verdict was imposed by the Court.

2. Civil Penalties. The holder of any license or permit for the taking of marine resources may be subject to a civil money penalty of up to \$2,000 for any violation of the terms of the license or permit or of this Fisheries Management Plan, or for allowing another to commit such a violation under authority of a license or permit issued by the department, in addition to any other remedy. Any other person who, acting in concert with the holder of any license or permit for the taking of marine resources issued by the department, or with the holder of any shellfish harvesting license recognized by the Passamaquoddy Tribe under a reciprocal licensing agreement, violates or participates in any violation of the terms of that license or permit or of this fisheries management plan shall be subject to a civil money penalty of up to \$2,000 for each violation.

In determining the appropriateness of a civil penalty, the court shall consider the nature of the violation, any history of prior violations, and any adverse consequences to others, their property, the environment or other marine resources that may have resulted from the violation. In the event that a violation has caused damage or loss to the Tribe or to another person or entity, the Court may order restitution, in addition to or instead of other penalties, except for instances when a violation of Section 1.9 A.,1(I), B. has occurred.

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3. Seizure and disposition. Any marine resource that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of this Fisheries Management Plan shall be subject to seizure only by any Law Enforcement officer with authority to enforce this Fisheries Management Plan and to forfeiture to the Passamaquoddy Tribe. In accordance with the following forfeiture proceedings;

a. committee to develop. In accordance with the administrative procedures established in Section 1.8., a),b., and consistent with rules of procedure of the Passamaquoddy Tribal Court, the committee shall develop specific rules governing proceedings for forfeiture to be included in this fisheries management plan, and

b. in developing rules of procedure for the disposition of marine organisms and equipment which are subject to forfeiture or seizure by law enforcement officers authorized to enforce provisions of the Passamaquoddy Fisheries Management Plan.

the committee recommendation shall identify any marine organism taken in violation of this fisheries management plan and the marine resource management provisions of other jurisdictions made applicable to members of the tribe by the Joint Tribal Council, and

c. provisions for libel to be filed with a judge of the Passamaquoddy Tribal Court when any marine organism or equipment is subject to seizure by a law enforcement officer and not returned to the original owner, including listing of items which need not be libeled.

3. fines and other penalties. in accordance with the administrative procedures established in Section 1.8, a, b, of the fisheries management plan, the committee shall develop specific penalties for violations of rules governing the taking of marine resources on a fishery by fishery basis, and include those fines or penalties in the management provisions of each fishery management plan, except that the zero tolerance policy adopted by the Joint Tribal Council shall apply to all hunting, fishing and gathering activities governed by this plan and the provisions of any other marine resource law made applicable by the Passamaquoddy Joint Tribal Council.

a. cultural and economic consideration. In developing penalties for violations of provisions of the fisheries management plan, the committee shall give primary consideration to the protection of marine resources, cultural interests and economic needs of members of the Passamaquoddy tribe by ensuring, that

(l) all penalty provisions so recommended are consistent with the cultural interests of the members of the Passamaquoddy tribe, by establishing penalties which direct, any

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(II) Marine organisms subject to seizure by law enforcement officers or forfeiture proceedings in the Passamaquoddy Tribal Court to be provided to to elder food programs first and then to other community organizations or others identified in section 1.4., B.,

(III) any marine organism subject to seizure by law enforcement officers or forfeiture proceedings in the Passamaquoddy Tribal Court which is not subject to an order for final disposition to entities identified in Section 1.4., B., may be sold to any licensed dealer, provided

(IV) the monetary value of any marine organism subject to disposition through seizure, forfeiture proceedings in the Passamaquoddy Court, or sale, shall serve as the financial portion of any penalties for violations of the fisheries management plan and may be in addition to other penalty provisions as may be adopted by the Passamaquoddy Joint Council, except that the Passamaquoddy Joint Tribal Council zero tolerance policy shall be applied to all criminal violations established in Section 1.9., A., B, and C of this part and any other part relating to fisheries specific management plans establishing criminal provisions in accordance with section 1.9, A., B and C. of this part.

(V) any marine organism subject to seizure or forfeiture for which taking would not otherwise be authorized, shall be immediately released into the marine environment alive, or if an organism cannot be released into the marine alive then disposed of in accordance with a department marine organism disposal procedure designed to prevent the possession, use or distribution of any marine organisms taken in violation of this plan if the taking or possession by a license or permit holder would have been prohibited in accordance with any of the provisions of this fisheries management plan.