

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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# Part 175: Special Licenses and Permits - Definitions and Uniform Procedures

*[Last Amended: August 16, 2006]*

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## §175.1 Purpose

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

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

(c) Applicability. This Part applies to special licenses and permits, hereinafter called licenses and Permits, authorized by the following sections of the Environmental Conservation Law:

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

(2) title 5 of article 11: section 11-0505 - Interference with fish and wildlife; section 11-0507 - Liberation of fish and wildlife; section 11- 0511 - Possession and transportation of wildlife; section 11-0515 - Licenses to collect, possess or sell; section 11-0517 - Taking for propagation and stocking, fish hindering propagation of food fish or shellfish; section 11- 0535 - Endangered and threatened species; section 11-0536 - Sale of certain wild animals or their products;

(3) title 9 of article 11: section 11-0901 - Modified archer permit; section 11-0907 - Permit to allow a nonambulatory hunter to take a deer of either sex; section 11-0917 - Possession, transportation and sale of wild game and other wildlife; section 11-0925 - Special dog training areas; section 11-0927 - Field trials; section 11-0928 - Tracking dogs; section 11- 0931 - Permit to possess a loaded firearm in a motor vehicle;

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

(5) title 11 of article 11: section 11-1109 - Registered muskrat marsh;

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

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

(8) title 17 of article 11: section 11-1703 - Importation, possession and sale of fish; section 11-1707 - Importation and possession of fish, game and wildlife imported during the closed season; section 11-1709 - Importation and transportation of certain fish or fish eggs; section 11-1711 - Sale and transportation of flesh of big game from outside the state; section 11-1713 - Flesh of bear possessed under special license; section 11-1715 - Certification of domestic game and hatchery trout propagated outside of the state; section 11-1719 - Game dealers' license; section 11-1728 - Sale of live wild birds; section 11-1731 - Bird plumage for fly tying purposes; section 11-1733 - Taxidermy licenses;

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

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

(11) title 3 of article 13: section 13-0309 - Possession transportation, taking and handling of shellfish; section 13-0311 - Digger's permit to take shellfish for commercial purposes; section 13-0313 - Shellfish growers bed permit; section 13-0315 - Shellfish shipper's and processor's permits; section 13-0316 - Marine hatcheries, off-bottom and on-bottom culture permits; section 13-0319 - Shellfish permits;

section 13-0321 - Permit for the taking and importation of shellfish for transplanting and other purposes; section 13-0323 - Oyster permits; section 13-0325 - Permit to take, harvest, possess and transplant hard clams and license for boat to take surf clams; section 13-0327 - Permit to transplant or salvage scallops; section 13-0329 - Permits to take lobsters; section 13-0331 - Permits to take blueclaw crabs; section 13-0333 - License to take menhaden; section 13-0335 - Food fish license; section 13-0343 - License or permit for possession and use of nets; section 13-0347 - Striped bass license.

## **§175.2 Definitions**

As used in sections 11-0305, 11-0515, 11-0517, 11-0536, 11-0917, 11-1705, 11-1901, 11-1903, 11-1905, 11-1907, 11-1909, 11-1911 and 11-1913 of the Environmental Conservation Law, in Parts 173, 174, 180 and 182 of this Title and in licenses or permits issued pursuant to such sections and Parts and applications for such licenses and permits, the following terms shall mean:

(a) Educational shall mean collection, possession and/or exhibition in order to teach or instruct about the characteristics, ecological role or conservation needs of a fish or wildlife species, population or community.

(b) Exhibition means regular public display or showing of fish, wildlife or parts thereof or products made therefrom where the display itself is the chief object. A license or permit authorizing possession for exhibition purposes may permit exhibition with the intention or expectation of receiving monetary gain.

(c) Zoological means collection and/or possession of live fish and wildlife for use in:

(1) developing husbandry techniques for maintaining self-sustaining captive populations;

(2) establishment and maintenance of captive populations to supply specimens to others for scientific or educational purposes; or

(3) preservation of a gene pool for possible reintroduction to the wild. A license or permit authorizing collection and/or possession for zoological purposes may provide that the fish or wildlife may be exhibited.

(d) Propagation means production of selected species by application of husbandry techniques in a controlled environment for commercial or other authorized purposes.

(e) Scientific means use of fish, wildlife or parts thereof by a scientific institution, clinic, laboratory or individual researcher to expand scientific knowledge or to gain knowledge of a fish or wildlife species, population or community. Captive-bred populations may be established and maintained as part of a scientific endeavor.

### **§175.3 General Requirements for Applications**

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

(1) The application must include a properly completed department application form.

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

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

(4) The application will bear a form notice to the effect that false statements made therein are punishable pursuant to

section 210.45 of the Penal Law and this notice must be signed by the applicant.

(5) The application must be submitted to the appropriate department office as identified on the application or application instructions.

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

## **§175.4 Department Action on Applications**

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

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

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

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

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

## **§175.5 License or Permit Revocations by the Department**

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

- (1) materially false or inaccurate statements in the application, supporting papers or required reports;
- (2) failure by the licensee or permittee to comply with any terms or conditions of the license or permit;
- (3) exceeding the scope of the purpose or activities described in the application;
- (4) noncompliance with any provisions of the Environmental Conservation Law, any other State or Federal laws or regulations of the department directly related to the licensed or permitted activity; and
- (5) checks, money orders or vouchers, submitted by the applicant for a license, permit or application fee which are subsequently returned to the department for insufficient funds or nonpayment after the license or permit has been issued.

(b) The department shall send a notice of intent to revoke to the licensee or permittee by certified mail return receipt requested. The notice must state the alleged facts or conduct which warrant the intended action.

(c) Within 10 working days of receiving a notice of intent to revoke, the licensee or permittee may submit a written

statement, for all licenses or permits listed in 175.1(c)(1)-(9) of this Part, addressed to the Director of the Division of Fish, Wildlife and Marine Resources, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233 and for all licenses and permits listed in 175.1(c)(10) of this Part addressed to the Chief, Bureau of Marine Resources, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, E. Setauket, NY 11733. The written statement must set forth either the reasons why the license or permit should not be revoked, or a request for a hearing, or both. Failure by the licensee or permittee to timely submit a statement or request a hearing will result in the department's action becoming effective on the date specified in the notice.

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

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

(2) if a hearing has been requested, notify the licensee or permittee of a date and place for a hearing. The hearing shall not be held earlier than 30 days from the date of this notification.

(e) In the event such a hearing is held, the Director of the Division of Fish and Wildlife or the Director of the Division of Marine Resources, as appropriate, or the director's agent shall, within 30 calendar days of receipt of the completed record of the hearing, issue a decision which:

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

(2) modifies the license or permit conditions; or

(3) revokes the license or permit.

(f) Nothing in this Part precludes or affects the commissioner's authority to take emergency actions summarily suspending a

license or permit under section 401 of the State Administrative Procedure Act

(g) Any person holding a license or permit must surrender such license or permit to the issuing office upon notification that the license or permit has been revoked by the department.

(h) When a license or permit has been revoked, the former licensee or permittee must comply with written directives, provided by the department, for the final disposition of any fish, game, wildlife, shellfish, crustacea, protected insects, parts or products thereof or any other property or thing formerly possessed under license or permit. All liabilities and expenses for the final disposition of such fish, game, wildlife, shellfish, crustacea, or protected insects, parts, products or articles are the responsibility of the former licensee or permittee.

## **§175.6 Special Provisions**

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

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

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

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

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

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