

DEPARTMENT OF MARINE RESOURCES

Chapter 105 Safety Regulations

105.01 Definitions

105.10 Tender and Diver Safety requirements

A. Compliance

Beginning August 1, 2010, all copies of Cardio-Pulmonary Response (CPR) Card and First Aid Card or equivalent documentation must be current (non-expired). This applies to all license renewals and new applications. A copy of the current CPR and First Aid cards must be presented upon demand by Maine Marine Patrol. Exception: those persons who have never held a tender license in accordance with 12 M.R.S. §6535 or 12 M.R.S. §6536 are required to have current (non-expired) cards or equivalents as of the effective date of this regulation.

1. Tenders

Each person licensed as a sea urchin or scallop diving tender under 12 M.R.S. §6535, or acting as a tender under a license issued pursuant to 12 M.R.S. §6701(5)(B), or §6748(4)(B), must have completed safety training as required by this Chapter. The training requirements or equivalents include a Cardio-Pulmonary Response (CPR) Card and First Aid Card; plus the DMR Diving Safety Course for Tenders certificate of completion card for tenders where required; or receive a Department approved waiver, (see Waivers).

Persons issued a sea urchin and scallop diving tender license pursuant to 12 M.R.S. §6535 who have never held a tender license in accordance with 12 M.R.S. §6535 or 12 M.R.S. §6536 shall provide a copy of a current (non-expired) Cardio-Pulmonary Response (CPR) Card and First Aid Card or equivalent at the time of a new license application or at time of license renewal. New tender license applicants are required to complete the DMR Diving Safety Course for Tenders. Persons seeking a renewal of this license are not required to take the course (they have already met this requirement) and will be required to present a current (non-expired) Cardio-Pulmonary Response (CPR) Card and First Aid Card or equivalent at the time of a new license application or at time of license renewal beginning August 1, 2010.

Persons acting as a tender in accordance with 12 M.R.S. §6701(5)(B), or §6748(4)(B) who have never held a tender license in accordance with 12 M.R.S. §6535 or 12 M.R.S. §6536 must have in their possession, at the time when acting as a tender, a current (non-expired) CPR card, a current (non-expired) First Aid card and a DMR Diving Safety Course for Tenders certificate of completion card pursuant to 12 M.R.S. §6533, or Department approved equivalent documentation (see Waivers).

Persons acting as a tender in accordance with 12 M.R.S. §6701(5)(B), or §6748(4)(B) who have held a tender license in accordance with 12 M.R.S. §6535 or 12 M.R.S. §6536 must have in their possession, at the time when acting as a tender, a current (non-expired) CPR card, a current (non-expired) First Aid card beginning August 1, 2010.

2. Divers

Persons licensed as a scallop diver in accordance with 12 M.R.S. §6701 or sea urchin diver in accordance with §6748 shall provide a current (non-expired) copy of a Cardio-Pulmonary Response (CPR) Card and First Aid Card or equivalent beginning August 1, 2010. (No new urchin or scallop diver licenses are being issued at this time.)

Also see Table of requirements below.

B. DMR Diving Safety Course for Tenders

Training shall provide basic recognition of diver related injuries and emergency procedures encompassing boating safety emergency responses as first responders. Upon successful completion of the course a card indicating proof of completion shall be issued by the Department.

1. Contact information

To obtain information about the DMR Diving Safety Course for Tenders contact: Marine Patrol Headquarters, Attn Tender Safety Training, Dept. of Marine Resources, 21 State House Station, Augusta, ME 04333; telephone (207-624-6500), or online from the Department's web site at <http://www.maine.gov/dmr/index.htm> then search under the license category for "other forms".

C. Waivers

The Commissioner may waive the requirement to complete the CPR, First Aid or the DMR Diving Safety Course for Tenders as provided in Chapter 105.10(B) for any person who demonstrates to the Commissioner, either through documented experience or technical or professional accreditation, a level of knowledge at least equal to that expected from a person who completed the training requirements of this Chapter. It is the responsibility of the person seeking such a waiver to request that waiver in writing to the Commissioner and to provide any documentation the Commissioner determines necessary to make a decision.

D. Table of requirements

What → Who ↓	CPR card ↓ (non-expired as of 8-1-10 except for*)	First Aid card ↓ (non-expired as of 8-1-10 except for*)	Course ↓
New applicants for Scallop/Urchin Tender license (12 MRS §6535)	show w/application	show w/application	Must complete course prior to license issuance (*non-expired as of 12-xx-09)
Renewal of Scallop/Urchin Tender - license holder (12 MRS §6535)	Provide at license renewal	Provide at license renewal	NA (These license holders have already completed a DMR approved course.)
Scallop/Urchin boat w/tender license holder w/ non-licensed tenders per: (12 MRS §6701(5)(B) (12 MRS §6748(4)(B))	At time of application and future renewals	At time of application and future renewal	NA
*Persons acting as tenders under the Scallop/Urchin boat w/tender license holder per: (12 MRS §6701(5)(B) (12 MRS §6748(4)(B))	In possession & and upon demand by Maine Marine Patrol (MMP) request (*non-expired as of 12-xx-09)	In possession & and upon demand by MMP request (*non-expired as of 12-xx-09)	Course completion card or after course completion will be entered in DMR license database available to MMP
Persons acting as tenders under the Scallop/Urchin boat w/tender license holder per: (12 MRS §6701(5)(B) (12 MRS §6748(4)(B) who have held a tender license per 12 MRS §6535 or §6536	In possession & and upon demand by Maine Marine Patrol (MMP) request beginning 8-1-10	In possession & and upon demand by Maine Marine Patrol (MMP) request beginning 8-1-10	NA (These license holders have already completed a DMR approved course.)
Scallop diver license holder (12 MRS §6701)	Provide at license renewal	Provide at license renewal	NA
Urchin diver license holder (12 MRS §6748)	Provide at license renewal	Provide at license renewal	NA

Basis Statement

Chapter 105 Safety Regulations

Safety training has been a requirement for divers and tenders since 1994. In Maine, hazardous working conditions in the commercial fisheries industry are made all the more dangerous by cold waters, high winds, icing and economic pressures associated with fisheries management initiatives. The statistics are alarming as evidenced from the scallop and sea urchin fisheries that, having grown through 1980's and until 1993, reached dive related fatality numbers on an average of 7 divers per year, primarily from lack of dive certification and no safety education. In 2000, there were more deaths in the commercial fishing industry than in any other sector of Maine's economy. From January 2000 to January 2001 alone, 10 fishermen died in 6 separate incidents, ending an eight-year period in which 34 Maine fishermen lost their lives. The vast majority of those deaths resulted from drowning and often hypothermia, after vessels capsized or sank, or after a crew member fell overboard; and from 2002 to September 2006 an additional 6 casualties occurred in the lobster fishery inside state waters. Although not all of these statistics are divers and tenders they are an indicator of persistent safety related fatalities.

These safety training requirements for scallop and urchin divers and tenders provide basic safety training relating to diver injuries and emergency procedures in the event these persons are first responders to such situations. Cardio-Pulmonary Response (CPR) and First Aid will continue to be required of divers and tenders; plus a revised DMR Diving Safety Course is required for new tenders.

To address the short turn around time to meet currency requirements before the up coming fishing seasons the Department has modified the required "current non-expired" CPR and First Aid cards to begin August 1, 2010 for individuals who have taken the comprehensive diver and tender safety course offered by the Southern Maine Community College through 2009 or passed the DMR approved course prior to September 12, 2009. From the effective date of these regulations until August 1, 2010 the requirements for proof of CPR and First Aid training *regardless of when* that training occurred will continue for those persons who have been licensed prior to the 2010 calendar year as a: scallop diver in accordance with 12 M.R.S. §6701; sea urchin diver in accordance with §6748; scallop diving tender license in accordance with 12 M.R.S.

§6536; or sea urchin and scallop diving tender license in accordance with §6535. In accordance with the new law, 12 M.R.S. §6533, the new non-licensed tender, (12 M.R.S. §6701(5)(B), or §6748(4)(B)) and new tender license applicants (12 M.R.S. §6535) who have not held one of the licenses listed above, will be required to complete the DMR Diving Safety Course for Tenders, which requires a current (non-expired) CPR card and a current (non-expired) First Aid card (or equivalent) from the effective date of these regulations, and will be required to present their current (non-expired) cards upon demand by Marine Patrol.

Summary of Comments

A public hearing was held in Hallowell, October 26, 2009. No persons from the public attended the hearing. The list of commenter's who submitted emails or letters during the comment period from October 5 through November 6, 2009 are listed, followed by a summary of the comments or questions with the Department's responses, which is followed by the summarized individual written comments.

Written comments were received from:

Dave Sinclair, Sea Ventures Charters, Wayne
Terry Preston, Roque Bluffs
Adelbert M. Vinal, Jr., Tenants Harbor
John McMillan, Belfast (Commercial Fishing Safety Council member)
William Sutter, Wiscasset, Elected member and Chair Sea Urchin Zone Council & Ex-Officio member of the DMR Advisory Council (two written comments)
Rep. Jonathan McKane, Newcastle, Joint Standing Committee on Marine Resources, House District 51
Terry Gray, Verona Island (Scallop Advisory Council member)
Brian Preney, Falmouth
Andy Mays, Southwest Harbor (Scallop Advisory Council member)
Robert Odlin, Scarborough (Commercial Fishing Safety Council member & Sea Urchin Zone Council member)
George Freeman, Scarborough (Scallop Advisory Council member)
Major John Fetterman, DMR, Bureau of Marine Patrol, Augusta (DMR staff for Commercial Fishing Safety Council, National Association of State Boating Law Administrators)
Brian Soper, Harpswell (Sea Urchin Zone Council member)
Julia Darling Soper, Harpswell
Elliott Thomas, Yarmouth, Chairman, Commercial Fishing Safety Council and Lobster Advisory Council, non-zone western representative
Dana Temple, Cape Elizabeth, Chair, Scallop Advisory Council

Summary of comments / questions / suggestion with responses:

1. There is insufficient time to comply with these rules before the season open, it is unnecessary and there are no benefits.

- The short time available to obtain "current" certifications for new tenders and license renewals for divers and tenders will result in a reduction of the current pool of licensed dive tenders and instances of divers working without a tender with unintended tragic consequences.
- The proposed rule should be rescinded and allow the Sea Urchin and Scallop Zone councils time to review and make their recommendations on this to the Commissioner.
- There is too little time to comply and will put more fishermen out of work January 1st.
- The time frame to complete these courses is unrealistic.
- Remove the word "current".
- Could the currency requirement be postponed until 2011?

Response:

The Department acknowledges that the turn around time would be short and therefore is modifying the switch to requiring "current non-expired" CPR and First Aid cards to begin August 1, 2010. From the effective date of these regulations until August 1, 2010 the requirements for proof of CPR and First Aid training regardless of when that training occurred will continue for those persons who have taken the comprehensive diver and tender safety course offered by the Southern Maine Community College through 2009, which was required for persons licensed as a scallop diver in accordance with 12 M.R.S. §6701, sea urchin diver in accordance with §6748, scallop diving tender license in accordance with 12 M.R.S. §6536, or sea urchin and scallop diving tender license in accordance with §6535 prior to 2010.

In accordance with the new law, 12 M.R.S. §6533, persons acting as a non-licensed tender, (12 M.R.S. §6701(5)(B), or §6748(4)(B)) who have not held a scallop diving tender license in accordance with 12 M.R.S.

§6536, or sea urchin and scallop diving tender license in accordance with §6535 will be required to complete the DMR Diving Safety Course for Tenders, which requires a current (non-expired) CPR card and a current (non-expired) First Aid card (or equivalent) from the effective date of these regulations..

2. Why now?

- The CFSC and the DMR have created an unnecessary mandate that will not reduce accidents or have any benefit for safety in the industry.
- Why is this happening now, so sudden, without review by the Scallop or Sea Urchin Zone Councils and with such a short time frame for notification?

Response:

The proposed regulations are not considered brand new or a sudden concept. As described in the written comment by Mr. Odlin the Commercial Fishing Safety Council (CFSC) first discussed this particular matter in their January and February 2008 meetings. This was followed by the concept of mandatory CPR/First Aid training presented at the Sea Urchin Zone Council (SUZC) meeting held April 17, 2008. Mr. Odlin is the SUZC representative on the CFSC however, there is no assigned CFSC representative on the Scallop Advisory Council as that council was created more recently and does not have an assigned representative on the CFSC. However, DMR staff has indicated that this safety concept was presented to the SAC in January 2009. Also, a notice was mailed to all tender license holders of the upcoming changes in July/August 2009.

Regarding the responsibilities of the CFSC versus other councils it was created following the period of January 2000-2001 when 10 fishermen died in 6 separate incidents. In February 2002 the Commercial Fishing Safety Task Force was appointed to make recommendations on how to improve industry safety as many of the accidents that kill or severely injure Maine fishermen are preventable. One recommendation was to create a Commercial Fishing Safety Council (CFSC) to take the lead and implement the Task Force recommendations. The CFSC was created in 2003 with the council established in 2004 with the charge by the Task Force and Legislature to develop safety initiatives.

In 2009 legislation was proposed that revised the diver and tender safety training requirements established in statute with a directive they be replaced by agency regulations, see 12 M.R.S. §6533. A separate change in statutes initiated by Mr. Soper was also proposed at this time for unlicensed tenders. Both statutes became effective September 12, 2009 after which rulemaking was initiated and the Department opted to combine the necessary agency rulemakings instead of taking a piecemeal approach.

3. Fairness issues

- These should apply to every fisherman, not just divers and tenders.
- Shouldn't all boat operators be required to be trained in CPR and First Aid to fish?
- Why doesn't this include other fisheries as they die more frequently than those in our industry?

Response:

The CFSC has certainly discussed the concept that all marine resource license holders be required to obtain some sort of safety / survival training. At this time all federally permitted vessels are required to have at least one certified safety / survival drill conductor on board and monthly drills required. To that end legislation on statute 12 M.R.S. §6176 Commercial Fishing Safety, effective in March 24, 2006, was developed to allow Maine to adopt commercial fishing safety rules in a much broader application. However, it was determined after this passed that states are preempted by federal law preventing the adoption of such rules until changes are made in the federal laws. The Department understands that US Coast Guard, New England District 1 is willing and continues to pursue the necessary changes at the federal level to certain safety regulations when legally allowed to do so. The application of all safety components suggested in the comments will certainly continue to be given consideration.

Meanwhile, the CFSC has continued to work within the confines of the authority in existing statutes. This is not the first set of safety rules applied to Maine fishermen. A safety education course for those in the lobster apprentice program became effective February 1, 2007 and the previous version of the diver / tender safety training rules as described in Major Fetterman's comments resulted in the initial diver tender safety legislation in 1994.

4. Oppose in general as this is too burdensome, it's too many rules, and will not accomplish its intent

- Oppose the requirement for "current" CPR and First Aid certifications for scallop license renewals...
- This just creates another unnecessary expense as fisheries decline...

- There are already too many regulations and this one does not do anything good...
- The basic training these requirements offer are not useful for actual diver related situations; they do not teach water rescue of a comatose or bent diver...
- If there were no deaths since 1998 why is a new requirement necessary?

Response:

Regarding expenses, tenders were required to take a Tending Course taught by a certified diver as the instructor until September 12, 2009. The original course was offered by the Southern Maine Community College at a cost of \$150 per student. All students had to show proof of current CPR prior to taking the course. The course was only offered when there were enough individuals signed up to defray the cost of the instructor, which was a minimum of 7 divers and 7 tenders or 20 tenders. Over the last several years it has become increasingly difficult to gather the number of persons required to have a tender safety training course. To address this decline the new Booklet course came about which is free of charge (as the authority to defray costs was removed in the recent legislation). The only cost to new tenders would be to obtain a current CPR card plus First Aid (~\$40), which has been a requirement since the initial Course was offered along with the \$150 Course fee. Now the total cost for the tender training minus the license fee is \$40.

The proposed safety training requirements for divers and tenders are not new, are certainly considered worthwhile and the reason for these best articulated by Major Fetterman, from his comments:

"My involvement in the dive related fisheries issue goes back to the early 1980's when as a member of – and supervisor of the Marine Patrol Dive Team. I witnessed the explosion of dive related injuries and fatalities as the Scallop dive industry grew and towards the end of the 80's the overwhelming fatality statistics as the Sea Urchin dive fishery grew. By 1993 our dive related fatality numbers grew to an average of 7 divers per year who were unnecessarily lost due directly to two major factors:

1. Lack of dive certification
2. No safety education

Almost every fatality could be linked to those two factors.

1994 brought the passage of ground breaking legislation which required that every diver must show proof of basic open water dive certification from a nationally recognized training curriculum and that every diver and tender must complete a "Commercial Diver Safety Program" developed by the Department of Marine Resources. I worked with a private commercial contractor and wrote the diver safety program which since 1994 has delivered training to over 4,800 divers and tenders through the University of Southern Maine Community College system.

As part of the original program, First Aid and CPR have been a component of that training curriculum and every single student diver and tender alike have met that licensing prerequisite.

Since the inception of the DMR Diver Safety Program we have only seen one fatality in a dive related fishery in Maine. That fatality was an accident and not related to lack of certification of safety training."

Hopefully the commenter's would not prefer to return to the 1980's with no training requirements and many fatalities. The arguments against this do help make the point that training in a classroom would be better than the modified at home course offering as hands on practice would be preferable to on-line training. However, as Major Fetterman continues to explain:

"As both the Scallop and Sea Urchin resources continue to decline the number of days and the level of fishing effort have also exponentially declined as well. The Diver Safety Program is just as viable a program today as it was in 1994; however the number of available students has declined to a level that it is no longer feasible to deliver classroom training by certified instructors. The Scallop and Sea Urchin Divers have presented us with a real dilemma --- With so few days available to fish it has become increasingly hard to employ a licensed tender. The risk is significant for these divers and we had to search for a solution:

Under the advice of the Commercial Fishing Safety Advisory Council we have:

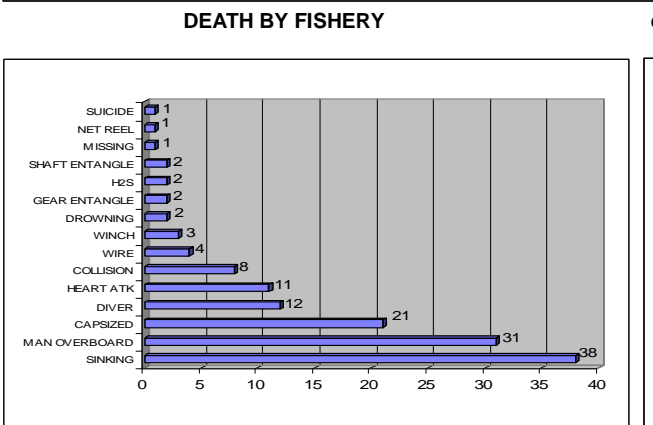
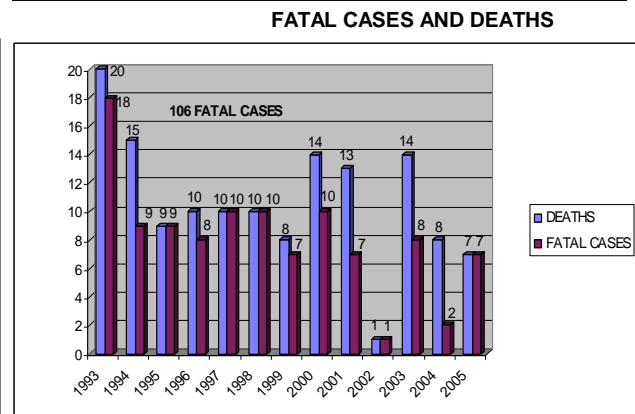
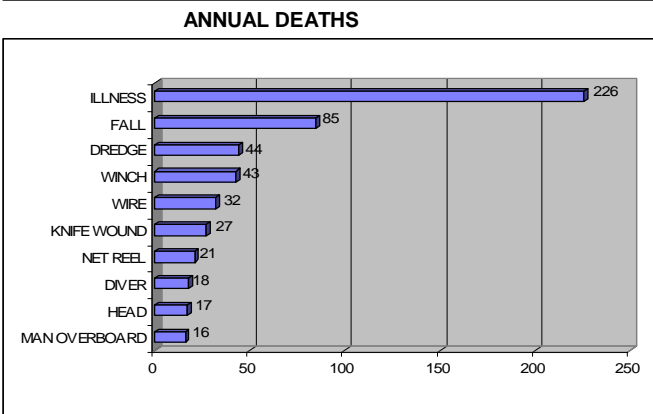
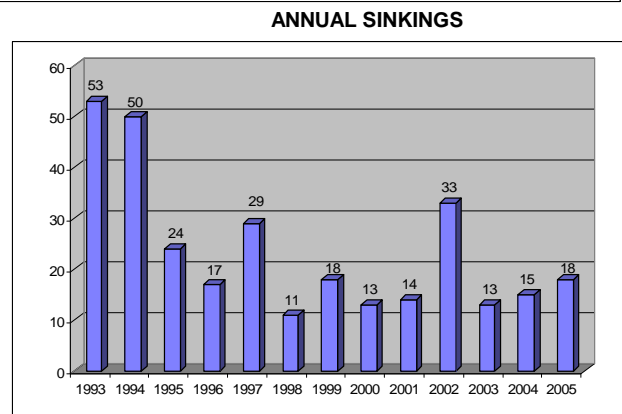
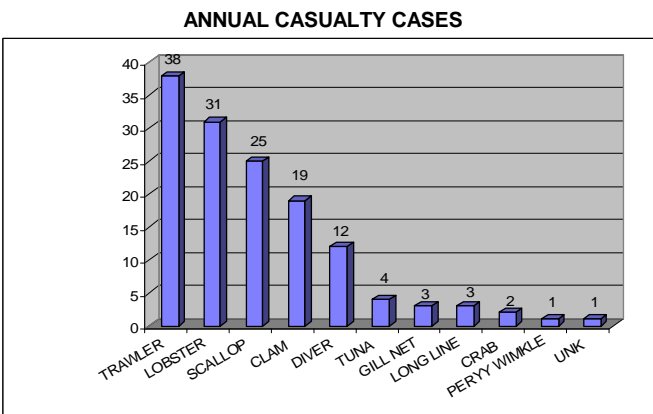
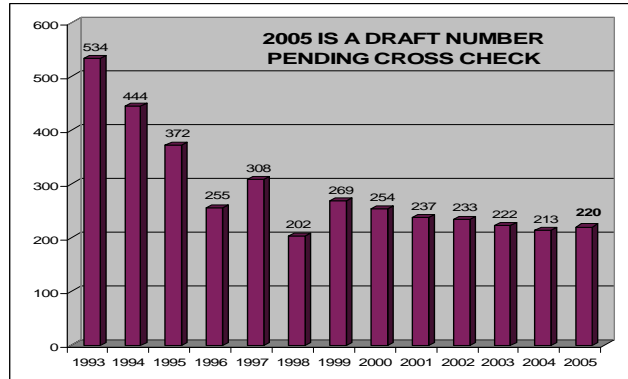
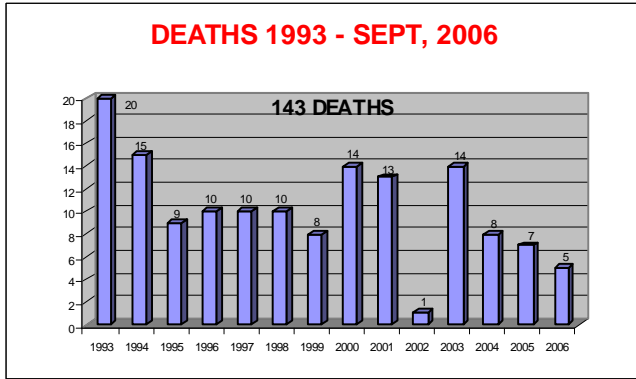
1. Modified the DMR Diver Safety Program to an "at home study" program which still includes a test
2. The revised safety program delivers essential safety information directly related to dive physiology and recognition of dive related injury
3. The revised safety program outlines basic emergency procedures and safety equipment specific to commercial fisheries dive activity
4. Finally the First Aid/CPR prerequisite remains in place as it always has. This skill set has a proven shelf life and techniques constantly change – current certification is mandatory.

First Aid and CPR are very basic tools for First Responders. As many fisherman testimonials have illustrated --- it is often another fisherman, not the Coast Guard or Marine Patrol who respond to injuries and emergencies at sea in a dive related fishery.

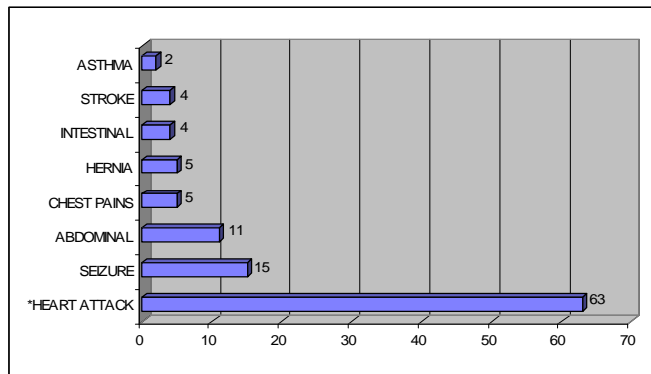
I believe the DMR CFSC has taken a modified step to accommodate a safety need in these dive fisheries by allowing access to safety information and training to keep – especially tenders – at sea with divers. Any further reduction in the DMR Diver Safety Program will set the stage for regression back to a time when we lost so many."

This page contains statistics from the US Coast Guard D1 Commercial Fishing Industry Casualty Data, 1993-2005. The graph in the lower left hand corner shows death by fishery and diver fatalities as 4th from the highest in USCG District 1 for New England.

USCG D1 COMMERCIAL FISHING INDUSTRY CASUALTY DATA 1993 - 2005



CAUSE OF DEATHS – HEART ATTACKS ARE INCLUDED EVEN THOUGH THEY ARE NOT A REPORTABLE CASUSE OF DEATH



Individual summarized comments:

Dave Sinclair, Sea Ventures Charters, Wayne

I enjoyed speaking with you [Cathy Fetterman] on the phone and wanted to follow up with my comments on the proposed Chapter 105 Safety regulations. I am opposed to new regulations requiring current CPR and First Aid certifications for scallop license renewals. I do believe in safety training and have personally received and taught numerous trainings over the years. Most certifications/licenses that I hold (USCG 100 ton Master, Reg. Maine Guide, PADI Master SCUBA Instructor, Rescue Diver Instructor) required proof of CPR and First Aid at the time of initial certification but do not require them for renewals. I do keep my certifications current but don't feel that they should be required to renew my scallop license. I feel that this creates another requirement and expense that adds to the ever-growing list of expenses and time commitments. Fishing continues to decline and expenses are harder to cover, especially during these difficult economic times.

This proposal raises questions about whether every boat operator should be CPR and First Aid certified in order to participate in fisheries activities. Should we all be required to hold USCG licenses and Maine Guide licenses like I am in order to take passengers/divers out on my boat?

I feel that we have enough regulations and that divers and tenders are now required to be certified in order to obtain their initial licenses. Thanks for considering my comments.

Terry Preston, Roque Bluffs

I just wanted to say I don't think the divers or tenders should take a safety course to get their license if the draggers don't have to after all the people working on the draggers are the ones that are dying because they don't know what to do. I think if a diver has a heart attack under the water the tender can't do anything to help him same if the tender falls in when the diver is in the water there is nothing the diver can do. So if tenders and divers have to take a safety course the people on the drag boats should too. It would be the only fair way to do it.

Adelbert M. Vinal, Jr., Tenants Harbor

I recall doing the first aid and cpr to qualify to get my license renewed way back when. And I also recall 15 liters of oxygen per minute [basically flooding their face] being recommended as the way to go after some breathing and heart rate are established. Shame you can't get oxygen without a prescription, and no doctor I've ever asked about it would even consider giving me that. [Dr. David Hall, Dr. Gordon Paine, Dr. William Master, all of Pen Bay Hospital.] Want to save life? Put speed limiters in cars, cell phone jammers in all vehicles, teach everyone handgun use and carry, ban alcohol. I am off base here, sorry. I do not want another rule in my life that won't help anything. If this is just about causing fewer harvesters, link license renewal with having used it and actually paying income taxes on what you catch. No income taxes paid on harvest, you don't need the license. All the best, I appreciate you folks trying.

John McMillan, Belfast (Commercial Fishing Safety Council member)

I would like to make a few comments supporting the proposed safety regulation for scallop and urchin divers and their tenders which would require current training in CPR and First Aid.

When we read in our local papers "Fishing Vessel Accident Claims the Life of One" what is the cause of death. Panic is not a cause but would lead to death. The leading causes of marine fatalities around the world are drowning, injuries and exposure to the environment. In Maine, our waters are not cold but VERY cold. There is a difference. Upon initial immersion, fishermen are faced with their greatest threat to survival due to a "gaspng response" that will happen. It's not a MAYBE. Drowning can occur within seconds especially when fully clothed.

Why would a fisherman not want to learn how to open an airway and cover up high heat loss areas to prevent cold exposure from occurring?

The sad fact about "safety training requirements" is someone has to die before something is done. It's called "blood money" in the training industry.

If Brad Pitt was to be killed in a recreational boating accident, you would immediately see recreational boaters be required to take a "Safe Boating" class before they could operate a vessel on navigatable waters. In the commercial fishing industry, you have to kill a lot at one time as in the capsizing of the F/V Northern Edge off the coast of Massachusetts in December 2005. 5 men lost their lives. The death of 1 fisherman from time to time does not draw the attention as mass casualties.

Most fishermen would agree that since I have never had a medical emergency on my vessel, why I should take this class. I myself have had to administer first aid to my mother-in-law as she choked on carrot and raisin salad. I have had to attend to a motor cycle accident as I was first on scene. The injured man told me "I think I swallowed some teeth and I think my leg is broken" Once I told him I was first aid certified, he laid down and began to relax...just on that comment alone.

Watching a few episodes of "House" does not give one the ability to perform basic medical skills. In my opinion, when an accident happens, every crew member will be in shock & disbelief, even the ones with 20 years of experience.

Fishermen lead active lives. They hunt, snowmobile & keep active. What if a shot gun accidently fires and removes part of the left leg while at deer camp or a snowmobile runs into a tree creating head/neck injuries to a fellow

rider or at the Winter Harbor Boat races a child of a tourist breaks an arm or an automobile catches on fire creating facial burns and respiratory issues, knowing basic medical can be useful every day of our lives.

It only takes a short time to learn these skills which one day may save a life. That's why we do what we do.

William Sutter, Wiscasset, Elected member and Chair Sea Urchin Zone Council & Ex-Officio member of the DMR Advisory Council (one of two written comments)

I have no objections to the requirement for possession of a valid CPR & First Aid certification at the time of **initial issuance** of a diver harvest or dive tender license.

I do find fault with the requirement for possession of a "current" certification for license renewal. I believe this requirement will result in a reduction of the current pool of licensed dive tenders and very possibly result in instances of divers working without a tender.

Recent management measures enacted in the scallop and urchin fisheries have severely curtailed the number of available working days in both fisheries, with no work days for most of January and February in the scallop fishery, and only 10 days total in the Zone 1 urchin fishery. This reduction in work days has resulted in many who were available to tend divers finding other work.

This proposed rule will have the immediate effect of reducing the available pool of dive tenders even further. The unavailability of licensed dive tenders will result in instances of divers working without a tender, and greatly increase the possibility of tragic consequences.

This proposed rule includes the requirement for a "current" CPR-First Aid certification for license renewal for both divers and tenders, and the real safety issue of diving without a tender remains unaddressed. Adoption of this rule with the "current" provision may very likely have unintended tragic consequences, I urge the issue of diver safety be referred back to the Fishing Vessel Safety Council for further consideration.

I understand the urgency of promulgating rules on this subject as a result of recently enacted Legislation. Deletion of the word "current" with respect to CPR and First Aid certification addresses the urgency for promulgating new rules for diver tenders as mandated by legislative action, and provides time for reconsideration of safety issues related to all dive harvesting activities.

Given the circumstances, and the potential for tragic unintended consequences, deletion of the word "current" from this proposed rule should not be considered a substantive change to the proposed rule.

Rep. Jonathan McKane, Newcastle, Joint Standing Committee on Marine Resources, House District 51

[If there have been] No deaths since 1998? I don't understand why we need this new requirement. [Explain]

Terry Gray, Verona Island (Scallop Advisory Council member)

Personally I think that CPR is a good thing to have. My only concern is that I won't be able to get in for a class prior to the scallop season opening. Is there any way that we can hold off until the 2011 season[?] While we are on the subject why is it only divers that are required to have **cpr** its just as dangerous on a drag boat or maybe worse with regards to a first aid type of injury. Maybe it's time to stop singling out divers and go for a broader group.

Brian Preney, Falmouth

I could possibly be convinced that the safety measures being put into rule making are appropriate and just a good idea. However, the process that is whirlwinding these measures through, is bewildering me. And the changes to the original concept of the bill will put many more fishermen out of work come January 1st because it is unlikely that many, or any, can pull off these courses before license renewal time.

The process began with a bill intended to make it easier for an urchin or scallop diver to find a tender, given the dwindling pool of available tenders, due mostly to the shortened seasons. I believe that Brian Soper, in conjunction with a Representative, authored a bill which would allow the boat to buy the tender license, and any candidate that had previously completed the safety course would be eligible. That would mean that hundreds of tenders who used to be part of a booming urchin economy, would be available on short notice. Great idea! This bill went through the process, and to my knowledge, got approved. Then, the DMR and the new Commercial Safety council got involved, and suddenly the good idea has become a near-term nightmare for the Maine diving community.

I have been attending meetings related to the fisheries for over a decade and countless times good ideas put forward by the fishing community were shot down by the DMR because of the inability to put them in place before season start. At the last Urchin Council meeting, these rules were merely at the discussion stage. No red flags, no red alerts. Suddenly, there has been a public hearing which I got no notice of, and a deadline for written comments of November 6, 2009. I highly encourage all of you to contact Laurice Churchill with you comments ASAP. The link can be found on the DMR website. Further, the literature states that no new licenses will be issued until documentation of the courses is presented which means that, since I have not bought my 2009 license yet, I may only have till the first of December to fit the courses in. Has the DMR investigated whether this is even possible? I expect that it is at least going to be extremely difficult, if not impossible.

Please mobilize and contact the department and get them to at least give time for people to realistically complete these courses. As Andy Mays and I agreed, most of us take responsibility for ourselves out there, and that's what keeps

us safe. But if these courses make some lawyer, or some insurance company, or some legislator, feel more comfortable, so be it. I would consent to taking the courses. Just do not put us out of the fishery because of some unfounded panic.

Andy Mays, Southwest Harbor (Scallop Advisory Council member)

I was an American Red Cross First Aid/CPR instructor for several years.

I encourage everyone to get certified. I have been (by chance) witness to or first to come upon two terrible auto/motorcycle accidents. My training was very beneficial to the accident victims and to me because I didn't experience the hopeless feeling of panic of not knowing what to do.

I find it extremely frustrating that the "commercial fishing safety council" would come up with a mandate to address an emergency that doesn't exist. Their failure to ask us for input is representative of the typical, "out of touch" government intervention. You stated the obvious, number one safety issue that rests (or lurks) in the back of the minds of all commercial scuba divers: "How will they get me on to the boat if I'm unconscious?"

I am a PADI Rescue Diver. I learned a long time ago, other than save someone from drowning, you cannot do much for a victim in the water. CPR is impossible. I could be wrong but I have the impression (I don't think I'm alone) that this safety council made this recommendation to justify that they *are* a safety council and had to do something to show that they actually do something. Mandating current CPR/First Aid certification accomplishes little to nothing towards reducing accidents in our industry. It is a lazy "effort" on the part of this council that has those with no idea of the hazards we face, nodding in approval. A fully staffed Trauma Center in my wheel house is useless without a plan and a method to get me, injured, onto the boat.

The training and safety certifications I have achieved and the effort I have put into accident prevention, demonstrate by my actions that I place a high priority on safety.

At the very least, I expect a "commercial fishing safety council" to possess as much subject matter expertise as I do and to actually confer with members of the industry they're protecting (?) and regulating!

I strongly suggest they go back to square one and identify the risks and hazards in commercial diving/harvesting. It would be a great start if they sat down with Garry Moore, a retired USCG skipper, who currently serves as a commercial fishing vessel safety examiner for the Coast Guard. This is a very valuable, successful program. He holds a wealth of knowledge and experience. He is highly respected by the commercial fishermen he serves because his "common sense" suggestions are based in real life scenarios and focus on preventing a catastrophe rather than a swimming lessons handbook for a man who is drowning.

As divers, we accept and share certain risks of our profession. We have a vested interest in our safety and in managing and minimizing these risks. This sudden requirement is neither in our interest nor to our benefit. It will make it even more difficult to hire and retain what we really need, a man on top, keeping an eye out.

Robert Odlin, Scarborough (Commercial Fishing Safety Council member & Sea Urchin Zone Council member)

I serve on the Commercial Fishing Safety Council (CFSC). I am also a sea urchin diver, since 1987.

At a Sea Urchin Zone Council (SUZC) meeting in Orland I reported the concept of mandatory CPR/First aid training to the Sea Urchin Zone Council. It was first discussed at a CFSC meeting by the group as a whole, no one person was a proponent /opponent. Both of these meetings took place many months or even over a year ago.

I asked SUZC what they thought about it and reported back the results CFSC. The response from SUZC was minimal but positive, i.e. they thought it would not hurt us to be a little more informed medically with helping an injured person.

Helping a diver out of the water is an important skill, perhaps the most, but it was not taught by the required Urchin/scallop tender/diver one or two day class that was formally required to get a license.

Please keep in mind that both the SUZC and CFSC are volunteer councils formed by mostly harvesters. Members of DMR are there to guide and listen and participate. These are also strictly advisory councils that simply suggest ideas to the higher ups in DMR and I'd guess legislature.

At a CFSC it was discussed that all marine resource license holders may be required some sort of safety/survival training the future.

Keep in mind, federally permitted boats are required to have at least one certified safety/survival drill conductor onboard. Also monthly drills are required to be held onboard with the crew.

My attendance to both councils has been poor lately. I encourage anyone with interest to attend the meetings or ask to fill the numerous vacancies.

American Red-cross offers the Basic CPR/ First Aid courses quite frequently in various locations. I will be looking to attend one of these myself so maybe I'll [see] some of you there.

I have been offshore fishing or out of town for the last month so this is pretty much new news to me as well, I'm shocked it has been pushed through so quickly. I have no idea who is the driving force behind it if anyone, the timing is tough with Jan 1, 2010 right around the corner.

George Freeman, Scarborough (Scallop Advisory Council member)

My name is George Freeman and I am a 30 year veteran of commercial diving in Maine and Massachusetts. I also serve on the Scallop Advisory Council as their western diver representative. I've done more than 25,000 scuba tanks in this time period. I have had CPR and 1st aid training in the past and I don't feel that any of the training in these classes

offers anything useful for actual dive-related injuries such as embolisms, pulmonary illnesses or decompression sickness. They are simply basic classes. Nothing taught in these classes prepares anyone for a water rescue of a comatose or bent diver.

We haven't had a fatality diving in Maine since 1998! If we are going to use accidents that happened between 10 and 15 years ago as a justification for this new proposal, then maybe we should look at other fisheries such as lobstering and dragging (fish and scallops) and see what their numbers in the same time frame reveal. I guarantee that their numbers dwarf the divers' rates and yet there is no mention of them taking the courses. First aid on these vessels should be a priority. Even Rep. Jonathan McKane on the Marine Resource Committee has stated he sees no need for these classes for divers. I believe that this proposal is a classic case of trying to "fix" something that isn't even broke. It is also an attempt to justify the existence of the safety committee. Let's say no to this proposal!!

William Sutter, Wiscasset, Elected member and Chair Sea Urchin Zone Council & Ex-Officio member of the DMR Advisory Council (two of two written comments)

I have been requested to provide comment on this proposal, as Chair of the Sea Urchin Zone Council. Requests to do so have come forth from DMR Staff and from individual SUZC members.

I have provided my personal comments on this proposed rule under previous submission. I am unwilling to speak on behalf of the SUZC without first having arrived at a decision or consensus by Council members at a Council meeting.

The details of this proposed rule were not brought to the Council for consideration prior to exposure to public hearing. Subsequent to the notice of public hearing I have received comments from several Council Members on the SUZC role in the proposal, the substance of which amount to a desire to have the Council consider and make recommendations on such proposals prior to final submission to public hearing.

I understand the Scallop Advisory Council also was not afforded prior opportunity to consider and make recommendations on the details of this proposed rule.

My comment, as Chair of the Sea Urchin Zone Council, is to request this proposed rule be rescinded and the Council provided an opportunity to consider the issues and make its' recommendations to the Commissioner.

As a further note, the urchin and scallop fisheries are the primary commercial ventures for dive harvesters in Maine. The Advisory Councils for these fisheries, established by Legislative Act and intended to provide advice on such matters to the Commissioner of Marine Resources, have not yet been provided the opportunity to do so in this instance.

Major John Fetterman, DMR, Bureau of Marine Patrol, Augusta (DMR staff for Commercial Fishing Safety Council, National Association of State Boating Law Administrators)

I would like to comment on the safety requirement on any person seeking a Sea Urchin or Scallop Dive and or Tending License.

My involvement in the dive related fisheries issue goes back to the early 1980's when as a member of – and supervisor of the Marine Patrol Dive Team. I witnessed the explosion of dive related injuries and fatalities as the Scallop dive industry grew and towards the end of the 80's the overwhelming fatality statistics as the Sea Urchin dive fishery grew. By 1993 our dive related fatality numbers grew to an average of 7 divers per year who were unnecessarily lost due directly to two major factors:

1. Lack of dive certification
2. No safety education

Almost every fatality could be linked to those two factors.

1994 brought the passage of ground breaking legislation which required that every diver must show proof of basic open water dive certification from a nationally recognized training curriculum and that every diver and tender must complete a "Commercial Diver Safety Program" developed by the Department of Marine Resources. I worked with a private commercial contractor and wrote the diver safety program which since 1994 has delivered training to over 4,800 divers and tenders through the University of Southern Maine Community College system.

As part of the original program, First Aid and CPR have been a component of that training curriculum and every single student diver and tender alike have met that licensing prerequisite.

Since the inception of the DMR Diver Safety Program we have only seen one fatality in a dive related fishery in Maine. That fatality was an accident and not related to lack of certification of safety training.

As both the Scallop and Sea Urchin resources continue to decline the number of days and the level of fishing effort have also exponentially declined as well. The Diver Safety Program is just as viable a program today as it was in 1994; however the number of available students has declined to a level that it is no longer feasible to deliver classroom training by certified instructors. The Scallop and Sea Urchin Divers have presented us with a real dilemma --- With so few days available to fish it has become increasingly hard to employ a licensed tender. The risk is significant for these divers and we had to search for a solution:

Under the advice of the Commercial Fishing Safety Advisory Council we have:

1. Modified the DMR Diver Safety Program to an "at home study" program which still includes a test
2. The revised safety program delivers essential safety information directly related to dive physiology and recognition of dive related injury
3. The revised safety program outlines basic emergency procedures and safety equipment specific to commercial fisheries dive activity

4. Finally the First Aid/CPR prerequisite remains in place as it always has. This skill set has a proven shelf life and techniques constantly change – current certification is mandatory.

First Aid and CPR are very basic tools for First Responders. As many fisherman testimonials have illustrated --- it is often another fisherman, not the Coast Guard or Marine Patrol who respond to injuries and emergencies at sea in a dive related fishery.

I believe the DMR CFSC has taken a modified step to accommodate a safety need in these dive fisheries by allowing access to safety information and training to keep – especially tenders – at sea with divers. Any further reduction in the DMR Diver Safety Program will set the stage for regression back to a time when we lost so many. The Department of Marine Resources will not turn its back on this safety issue and neither will I. I have already had to face too many families over the years due to a loss of life at sea.

I encourage everyone to put this issue into perspective. First Aid and CPR classes are widely available and even offered electronically. It's a base-line safety education that every fisherman should possess.

Brian Soper, Harpswell (Sea Urchin Zone Council member)

My name is Brian Soper, a commercial diver for 30 plus years and active member of the SUZC. When I initiated ideas to create a new "Boat License with a tender", the concept was to make finding a tender much easier. With a 10 day urchin season and a 70 day scallop season I am no longer able to provide a full time income for a full time tender, there is just not enough days. I am surrounded by excellent, qualified, seaworthy and trustworthy tenders that have had the tender training and licenses in the past. On any given day these tenders could tend me except for the \$150.00 fee that they all would have to buy on a hunch that they might fish. Now because the safety council has twisted the rule making to include experienced tenders along with new tenders I am now without a legal tender once again. I would either have to dive alone or break the law, and they consider that safety. As a SUZC member I represent 95% of the commercial divers on the coast of Maine, I would think that the safety council would at least present their proposal to our council before going to public hearing. Rob Odlin, a member of the SUZC and of the Safety Council has not been to our urchin meetings nor has he been in good attendance to the safety council, so much needed information has not been relayed. The safety council needs to put a halt on this rule making and involve the urchin council with a reliable liaison. As a veteran diver I believe I have some valuable input that could be shared involving the safety of my life. Please do not go forward with this proposed plan until all committees can agree.

Julia Darling Soper, Harpswell

This is an open letter to The Safety Council, Togue Brawn, Rob Odlin, David Etnier, and above all George Lapointe. My husband has been a commercial diver (30 years) longer than he has been married to me (29 years) tells you something. With all the turmoil that Maine's fishing has seen since the induction of Commissioner Lapointe I would think that the state might want to do something right for a change. A change in the licensing was asked for by the commercial divers to make it easier for them to choose a safe tender that had previously been licensed standing on shore. My husband has the opportunity to put any of the 6-7 tenders/divers (one includes my diver son) on his boat to tend him, these are tenders that he trusts with his life, boat and has extreme knowledge of the water, year round. You people the above mentioned might have the right politically but not morally to make these decisions on my husbands life. If this scheme that you have proposed goes through, my husband is forced to make a decision to dive alone or take an unlicensed tender which reflects on his license. If anything happens to his safety or his life I will hold the each and every one of the safety council members, Togue Brawn, Rob Odlin, David Etnier and At the top of the pile Commissioner Lapointe responsible. For his safety have some common sense revisit these ideas.

Elliott Thomas, Yarmouth, Chairman, Commercial Fishing Safety Council and Lobster Advisory Council, non-zone western representative

The Commercial Fishing Safety Committee (CFSC) voted unanimously in favor of the implementation of the components of the proposed rulemaking. One of the duties of the committee, as defined in §6035, is "to give the commissioner information and advice concerning fishing safety issues including.....minimum safety equipment, training and operational standards," and the requirements of this rulemaking falls within this duty.

The CFSC has discussed safety training for divers and tenders during the last several meetings, and recommended that the Department add the requirement for current CPR and First Aid Cards. The completion of CPR and First Aid course has been a part of the Diver Safety Program requirements from the inception of the program in 1994. As the techniques for CPR and First Aid have changed frequently over the years, the CFSC feels that holding a current card is a needed change.

In addition, completion of the DMR Diving Safety Course for Tenders is imperative. Knowing how to recognize and treat the potential injuries could easily save the life of a diver in distress. The DMR Diving Safety Course for Tenders has been changed to a home study course. This eliminates the problem of trying to schedule courses along the coast.

The CFSC feels that the burden of these requirements is very low compared to potential benefit of saving the life or health of a member of the diving community.

Dana Temple, Cape Elizabeth, Chair, Scallop Advisory Council and DMR Advisory Council member

The proposed rule requiring all divers and tenders to obtain First Aid and CPR certification as a prerequisite to obtaining a 2010 harvesting license has been proposed under a schedule which does not grant them advance notice or time to comply before renewing their licenses for 2010.

The council strongly supports and encourages voluntary, First Aid / CPR training for all commercial harvesters, including divers and their tenders. We recognize that commercial fishing is often performed under adverse conditions, away from medical assistance, using; sharp knives, powerful hydraulic winches, heavy steel drags, cables and rope under load that pose unique and serious safety hazards.

We do not feel that enough time has been given for those affected/concerned to have had sufficient opportunity to comment on the proposed rule. The comments submitted to date address reasonable concerns. While the council does not oppose measures which can demonstrably improve the safety of the fishing industry in Maine, we do feel that more discussion is necessary before a decision can be reached on this issue. We therefore ask that any voting on this rule be postponed until input can be heard from all those concerned.