

Draft Strikethrough Regulations for Public Comment

4.06 Use of Mobile Gear

(2) Seasonal Mobile Gear Closures. The following closures shall apply to the use of mobile gear within the waters under the jurisdiction of the Commonwealth.

(a) Area 1 - North Shore Region - Year Round Closure. Except as provided at 322 CMR 4.06(2)(a)1. and 4.06(2)(k), it shall be unlawful to fish with mobile gear within the waters of the North Shore Region Year Round Closure. North Shore Region Year Round Closure consists of those waters under the jurisdiction of the Commonwealth encompassed by an imaginary line beginning where 41° 21.552' north latitude with the eastern shoreline of Deer Island in Winthrop; thence in a straight line in an east northeasterly direction to where it intersects with 42° 24.497' north latitude and 70° 49.232' west longitude; thence in a straight line in a northeasterly direction to where it intersects with 42° 27.018 north latitude and -70° 46.446' west longitude; thence continuing in a straight line in a northeasterly direction to where it intersects with 42° 29.664' north latitude and 70° 43.914' west longitude; thence in a straight line in a northeasterly direction to where it intersects with 42° 31.688' north latitude and 70° 40.164' west longitude; thence in a straight line in a easterly direction to where it intersects with 42° 31.836' north latitude and 70° 38.118' west longitude; thence in a straight line in an east northeasterly direction to 42° 32.502' north latitude and 70° 36.432 west longitude; thence in a straight line in a northeasterly direction to the nearest point where it intersects with the three nautical mile line, as described on NOAA Chart #13267, at the 70° 36.162' west longitude; thence following the three nautical mile line, as described on the NOAA Charts #13267 and 13278, to the seaward junction of the Massachusetts - New Hampshire marine boundary; thence shoreward along the Massachusetts - New Hampshire marine boundary to the shoreline; and thence in a southerly direction along the shoreline and concluding at the starting point.

1. North Shore Mobile Gear Seasonal Area Exemptions. Coastal Access Permit holders further endorsed for North Shore Mobile Gear may fish within the North Shore Region Year Round Closure Area in accordance with the following exemptions:

a. Area 1A Gloucester/Rockport Exemption. During the periods of February 1st through March 31st and June 15th through September 30th, mobile gear may be fished within those waters under the jurisdiction of the Commonwealth encompassed by an imaginary line beginning off the northernmost Gloucester-Rockport coastline where 70° 37.365' west longitude intersects with the three nautical mile line, as described on NOAA Chart #13278; thence following in a straight line in a south southwesterly direction to where it intersects 42° 42.848' north latitude and 70° 37.632' west longitude; thence in a straight line in a southeasterly direction to where it intersects with 42° 40.806' north latitude and 70° 33.468' west longitude; thence in a straight line in a south southeasterly direction to where it intersects with 42° 39.504' north latitude and 70° 32.776' west longitude; thence in a straight line due south to where it intersects with 42° 37.806' north latitude and 70° 32.776 west longitude;

thence in a straight line in a south southwesterly direction to where it intersects with 42° 35.490' north latitude and 70° 34.578' west longitude; thence in a straight line in a south easterly direction to the nearest point where it intersects with 70° 33.770' west longitude at the three nautical mile line, as described on NOAA Chart #13278; thence following the three nautical mile line, as described on NOAA Chart #13278, in a northerly direction concluding at the starting point.

b. Area 1B Ipswich Bay Exemption. During the period December 15th through April 30th, mobile gear may be fished within those waters under the jurisdiction of the Commonwealth encompassed by an imaginary line beginning at the intersection of 70° 47.838' west longitude with the Massachusetts - New Hampshire marine boundary; thence following the Massachusetts - New Hampshire marine boundary seaward in an easterly direction to where it intersects with the three nautical mile line, as described on NOAA Chart #13278; thence following the three nautical mile line, as described on NOAA Chart #13278, in a southerly direction to the northern Gloucester-Rockport coastline to where it intersects with 70° 37.365' west longitude; thence in a straight line in a south southwesterly direction to where it intersects with 42° 42.222' north latitude and 70° 38.130' west longitude; and thence following one nautical mile seaward from shore in a northerly direction concluding at the starting point.

c. Restrictions on the Use of Trawl Gear during Area 1A and Area 1B Seasonal Exemptions. It shall be unlawful for any fishermen fishing with mobile gear during the Area 1A and 1B seasonal exemptions:

- i. To fish trawl nets configured with a sweep or a foot rope greater than 80 feet.
- ii. To fish trawl nets **unless** configured with a sweep or foot ropes composed of chain, wire or discs.
- iii. To fish with roller gear.
- iv. To possess or retain any lobsters. Any lobsters caught shall be immediately returned to the sea.

6.04: Atlantic Bluefin Tuna

(1) Preamble. In 1974, the Massachusetts Division of Marine Fisheries promulgated regulations governing the taking, landing and sale of Atlantic bluefin tuna. 322 CMR 6.00 imposed reporting requirements on tuna fishermen, limited the size of the total catch permitted in Massachusetts, and limited the number of vessels in the purse seine fishery for Atlantic bluefin tuna to those vessels which operated in that fishery prior to 1964.

In 1975, Congress enacted the Atlantic Tunas Convention Act, 16 U.S.C. 971, *et seq.*, (ATCA). Regulations promulgated pursuant to ATCA established federal reporting requirements, annual catch limits and an inspection and certification scheme for tuna purse seine vessels (50 CFR Part 285).

Pursuant to 50 CFR 285.8 federal regulations were made applicable within Massachusetts territorial waters. In 1976 Massachusetts deleted all provisions of its 1974 regulations with the exception of the limit on the number of fishing vessels in the purse seine fishery for Atlantic bluefin tuna, and extended the grandfather provision to cover those purse seine vessels operating in the fishery prior to 1974.

On June 22, 1979, the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, (NMFS) published an interpretation of its regulations *vis-a-vis* the Massachusetts regulations stating that the application of federal regulations in state waters is not intended to prevent the application of state regulations which when concurrently applied do not conflict with federal regulations, and are not inconsistent with conservation and management of Atlantic bluefin tuna under recommendations made by the International Commission for the Conservation of Atlantic Tunas (44 Fed. Reg. 122, 50 CFR 285). This interpretation concluded by stating "No effort has been made in our continuing review of laws and regulations to prevent the concurrent application of regulations such as the Massachusetts limited entry scheme for tuna purse seine vessels." (44 Fed. Reg. at 3639).

As of 2020, the Division of Marine Fisheries no longer issues any regulated fishery permit endorsements authorizing the use of purse seines for bluefin tuna. Accordingly, this activity is now prohibited within the waters under the jurisdiction of the Commonwealth.

(2) Definitions. For the purposes of 322 CMR 6.00 and unless the context requires otherwise the following words shall have the following meanings:

Director means the Director of the Massachusetts Division of Marine Fisheries, or his or her agents or representatives.

Division means the Massachusetts Division of Marine Fisheries.

Fish For means to harvest, catch, take or encircle, or attempt to harvest, catch, take or encircle any tuna by means of a purse seine.

Tuna means that species of Atlantic bluefin tuna, *Thunnus thynnus thynnus*, irrespective of size, weight or classification.

~~Vessel Allocation means a written letter, certificate or other documentation signed by~~

~~the Regional Director, Northeast Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce, verifying that the holder thereof has been allocated a specified amount of tuna authorized to be caught by means of a specified purse seine fishing vessel.~~

(3) **Prohibition. Regulated Fishery.** It shall be unlawful to fish for tuna by means of any net, including purse seines, within the waters under the jurisdiction of the Commonwealth, except as follows:

(a) tuna may be taken in fish traps authorized pursuant to M.G.L. c. 130, § 29 as an incidental catch only. The Director shall have the right to inspect any authorized fish trap if he determines that the fish trap has been set or is being specifically operated to take and trap tuna, and he may modify the trap construction and its operations as he or she deems appropriate. ;

~~(b) vessels may fish for tuna by means of a purse seine provided that said vessel has fully complied with the registration requirements contained in 322 CMR 6.04(4);~~

~~(c) vessels may not fish for tuna prior to September 1st, of any year.~~

~~(d) vessels may not fish for tuna within Cape Cod Bay, defined as those waters which lie south of an imaginary line running from Brant Rock in Marshfield to Race Point in Provincetown as appearing on charts of the National Oceanic and Atmospheric Administration and as line A on the attached published chart, during any weekend, defined as the 48 hour period beginning on Friday midnight and ending on Sunday midnight, and during any Massachusetts or federal holiday, during the period September 1st through September 30th, except that 322 CMR 6.04(3)(d) shall not apply when the federal tuna~~

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~~(e) vessels may not fish for tuna from September 1st through September 15th within an area bounded as follows: beginning at the shoreline of the Loran 9960-Y-44020 line; then following the Loran 9960-Y-44020 line in an easterly direction to its intersection with the Loran 9960-X-25340 line; thence following the Loran 9960-X-25340 line in a northeasterly direction to its intersection with the Loran 9960-W-13830 line; thence following the Loran 9960-W-13830 line in a northerly direction to its intersection with the shoreline; thence following the shoreline within Cape Cod Bay to the point of beginning; all as appearing as line B on 322 CMR 6.04: *Chart 604-1*; except that 322 CMR 6.04(3)(e) shall not apply when the federal tuna quota in the general category has been reached per notification of the National Marine Fisheries Service.~~

~~(4) Vessel Registration. Vessels intending to fish for tuna by means of a purse seine must have on board the following authorizations:~~

~~(a) Commercial Fisherman Permit. This permit authorizes an individual to fish for tuna for commercial purposes within the territorial waters of the Commonwealth, and shall be issued in the name of the applicant.~~

~~(b) Regulated Fishery Permit. This permit authorizes an individual to fish for tuna by means of a purse seine within the territorial waters of the Commonwealth, shall be issued in the name of the applicant and validated for use on board one named purse seine vessel only.~~

~~(c) Conditions. Each regulated fishery permit issued may be accompanied by a Statement of Conditions to be determined by the Director relative to the use of that permit. Said conditions may include, but are not limited to:~~

- ~~1. the days or hours in which tuna fishing may be authorized;~~
- ~~2. the areas where tuna fishing may be authorized;~~
- ~~3. the quantity of purse seine gear to be used, and the manner in which it may be used;~~
- ~~4. requirements for accommodating state observers on board any registered purse seine vessel; and~~
- ~~5. reporting requirements for any registered purse seine vessel.~~

~~All conditions shall be subject to change by the Director and shall be effective upon written notice to the holder of the regulated fishery permit to which the Statement of Conditions apply.~~

~~(d) Requirements. In order to be eligible for a regulated fishery permit pursuant to 322 CMR 7.01(4)(a): *Regulated Fishery* an applicant must submit with the application a vessel allocation evidencing that the applicant has been given a tuna purse seine allocation.~~

~~(e) Validation. A regulated fishery permit shall be validated in the name of the purse seine vessel named in the vessel allocation. In the event of loss or damage to the vessel, change of vessel name, or replacement of the vessel, the regulated fishery permit shall become void and inoperative. In order to obtain a new regulated fishery permit the individual must make new application pursuant to 322 CMR 7.01: *Form, Use and Contents of Permits* and have the permit validated in the name of the new vessel.~~

~~(f) Signature. Each permit and the Statement of Conditions issued pursuant to~~

~~322 CMR 7.01: *Form, Use and Contents of Permits* shall be signed by the applicant. The signature of the applicant shall constitute notice of 322 CMR 6.04(4)(f) and the Statement of Conditions issued, and shall constitute an express agreement to abide thereby.~~

~~(g) Display. All permits and the Statement of Conditions issued pursuant to 322 CMR 7.01: *Form, Use and Contents of Permits* shall be carried on board the registered purse seine vessel during all aspects of tuna fishing operations, and shall be produced upon demand by any individual authorized to enforce 322 CMR.~~

~~(5) Enforcement. Each registered purse seine vessel shall conduct its fishing operations so as not to conflict with or disrupt any pleasure boat, charter boat, party boat, other commercial fishing vessel, or any fixed fishing gear.~~

~~If, in the opinion of the Director, the registered purse seine vessel has violated any condition as contained in the Statement of Conditions, or unnecessarily or unduly disrupted the fishing activities of any sport or commercial fisherman, or damaged any fixed fishing gear, the regulated fishery permit of the registered purse seine vessel shall be suspended immediately and surrendered forthwith to the Director. Thereafter, and in an expeditious manner, the Director or a Presiding Officer to be appointed by him shall conduct an adjudicatory proceeding pursuant to M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules* to determine whether the regulated fishery permit shall be permanently revoked.~~

~~(6) Reservation. The Division has determined that:~~

- ~~(a) 322 CMR 6.04 is intended to concurrently apply with 50 CFR Part 285, and is consistent with conservation and management of tuna under recommendations made by the International Commission for the Conservation of Atlantic Tunas; and~~
- ~~(b) any Special Acts of the Massachusetts Legislature governing purse seining activities in the territorial waters of Massachusetts are fully applicable and are not superseded or otherwise repealed by operation of law pursuant to M.G.L. c. 130, §§ 17A and 104.~~

~~(7) Prohibitions. It shall be unlawful for any person:~~

- ~~(a) to fish for tuna with a purse seine without a valid commercial fisherman permit and a regulated fishery permit issued by the Division;~~
- ~~(b) to fish for tuna with a purse seine prior to September 1st, of any year;~~
- ~~(c) to violate any conditions as set forth in the Statement of Conditions issued to any person who has received a valid regulated fishery permit;~~
- ~~(d) to fish for tuna with a purse seine during a period of permit suspension or revocation under 322 CMR 6.04(5);~~
- ~~(e) to harass, intimidate, disrupt, obstruct, conflict or interfere with the fishing activity of any other fishing vessel, sport boat, party boat, charter boat or head boat, or damage any fixed fishing gear;~~
- ~~(f) to fish for tuna with a purse seine within Cape Cod Bay, as those waters are set forth in 322 CMR 6.04(3)(d), on any weekend, defined as the 48 hour period beginning on Friday midnight and ending on Sunday midnight, or on any Massachusetts or federal holiday, during the period September 1st through September 30th, unless the federal tuna quota in the general category has been~~

reached;

~~(h) to fish for tuna with a purse seine during the period September 1st through September 15th in those waters set forth in 322 CMR 6.04(3)(e) unless the federal tuna quota in the general category has been reached; or~~

~~(i) to fish for tuna by means of a purse seine without supplying the Director with a written report of the location(s), time(s), date(s), and catch of each purse seine set upon the completion of each fishing day.~~

~~(8) Penalties. Violation of any provision of 322 CMR 6.00 shall be punishable by:~~

~~(a) a fine of not less than \$10 nor more than \$1,000 or~~

~~(b) suspension and/or revocation of the commercial fisherman permit and the regulated fishery permit; or~~

~~(c) forfeiture of all tuna unlawfully taken or the proceeds thereof; or~~

~~(d) forfeiture of all boats, vehicles and apparatus used in violation of 322 CMR 6.00; or~~

~~(e) any combination of the above.~~

6.07: Striped Bass Fishery (*Morone Saxatilis*)

(2) Definitions. For purposes of 322 CMR 6.07, the following words shall have the following meanings:

Actively Transport means the movement of lawfully caught striped bass by a commercial fisherman permit holder in a motor vehicle or a vessel. For purposes of this regulation, this shall include the movement of lawfully caught striped bass by a motor vehicle along the roads adjacent to the Cape Cod Canal, and also the landing of striped bass lawfully caught aboard a vessel and brought ashore at Taylor Point Marina in the town of Bourne or in Sandwich Marina.

Cape Cod Canal means those waters and the shoreline – including all adjacent jetties, wharfs, docks, ripraps and beaches – extending from the most seaward extent of the state pier at Taylor’s Point on the campus of Massachusetts Maritime Academy in Bourne; thence extending in an easterly direction to the seaward end of the northern breakwater jetty at the eastern entrance at Scusset Beach in Sandwich; thence in a straightline in a southerly direction across the eastern entrance of the waterway to the seaward end of the southern breakwater jetty in Sandwich; thence in a westerly direction to the northernmost tip of the peninsula at the end of President’s Road in Bourne.

Circle Hook is defined as a fishing hook designed and manufactured so that the barb of the hook is not offset from the plane of the shank and bend and is turned perpendicularly back towards the shank to form a circular or oval shape.

Closed Commercial Fishing Day means any **calendar day within the commercial season when the retention, possession, and landing of striped bass for commercial purposes is unlawful, as set forth at 322 CMR 6.07(4)(b). ~~Sunday, Tuesday, Thursday, Friday and Saturday within the commercial season, as well as any Monday or Wednesday that falls on July 3rd, July 4th and Labor Day.~~**

Commercial Fisherman means any person who may catch, possess and land striped bass for the purpose of sale, barter, or exchange or keeps for personal or family use taken under the authority of a commercial fishing permit issued by the Director under the authority of 322 CMR 7.01: *Form, Use and Contents of Permits*.

Commercial purposes means the retention, possession, and transportation of striped bass for any fare, rate, fee, charge, share, exchange, trade or other consideration that is directly or indirectly made in connection with any business or other undertaking intended for profit.

Commercial Quota means the allowable annual Massachusetts commercial harvest of striped bass pursuant to the ASMFC Interstate Striped Bass Management Plan, reduced by any overage incurred in the previous year.

Commercial Season means that period when commercial fishing is allowed beginning on the first open fishing day on or after **June 1 ~~June 23rd~~** and ending when the quota is reached or on **November 15, ~~December 31st~~**, whichever occurs first. The commercial season shall be further regulated by open and closed fishing days.

Consumer means any individual who obtains striped bass for personal use, rather than resale.

Dealer means any wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114.

For-hire Vessel means any vessel that holds a for-hire permit, issued in accordance with M.G.L. c. 130, § 17C and 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, that is carrying paying customers for the purpose of recreational fishing.

Gaff means a pole with a hook on the end that is used to lift a fish out of the water and onto a vessel or the shore.

High-grading means the discarding of a smaller legal-sized fish (previously captured and retained) in favor of a larger legal-sized fish.

Land means to transfer or attempt to transfer the catch of striped bass from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any striped bass onboard to tie-up to any pier, wharf, dock, or artificial structure.

Non-Lethal Device means any tool used in the removal of striped bass from the water or to assist in the releasing of striped bass that does not pierce, puncture, or otherwise cause invasive damage to the fish that may result in its mortality.

Open Commercial Fishing Days means **those calendar days within the commercial season when the retention, possession, and landing of striped bass for commercial purposes is lawfully allowed, as set forth at 322 CMR 6.07(4)(b). ~~Mondays and Wednesdays within the commercial season, excluding Labor Day, when commercial fishermen may harvest or attempt to harvest striped bass. Open fishing days shall not apply to any Monday or Wednesday that falls on July 3rd or July 4th.~~**

Person means any individual, firm, corporation, association, partnership, club, bar, restaurant, supermarket, food warehouse, or private body.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.07: *Dealers Acting as Primary Buyers*, to purchase striped bass directly from a commercial fisherman.

Primary Purchase means the first commercial transaction by sale, barter or exchange of any striped bass after its harvest.

Recreational Fisherman means any person who harvests or attempts to harvest striped bass for personal or family use, sport or pleasure, and which are not sold, traded or bartered.

Recreational Fishing means the non-commercial taking or attempted taking of striped bass for personal or family use, sport, or pleasure and which are not sold, traded or bartered.

Striped Bass ID Tags means the lockable, single-use, tamper evident, and non-transferable tags issued by the Director to Primary Buyers for affixing to striped bass. Striped Bass ID Tags are imprinted with the species, year, state, and unique identification number traceable to

the Primary Buyer to whom they are issued.

Total Length means the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork may be squeezed together to measure the tail extremity.

(4) Commercial Management Measures. For purposes of conservation and management of the resource the following measures shall apply to commercial fishermen who harvest, catch or take, and/or sell, barter or exchange, or attempt to sell, barter or exchange any striped bass:

(a) Massachusetts commercial striped bass harvest will be limited annually by the commercial quota less any amount deducted to compensate for the previous year's overage.

(b) Commercial fishermen may fish for striped bass only during the commercial season and open **commercial** fishing days within said season beginning on the first open **commercial** fishing day on or after **June 1** ~~June 23rd~~ and ending when the commercial quota is taken or on **November 15** ~~December 31st~~, whichever occurs first.

1. During the period of June 1 – September 14, open commercial fishing days shall be Mondays through Thursdays and closed commercial fishing days shall be Fridays through Sundays. The 3rd of July, 4th of July and Labor Day shall be considered closed commercial fishing days.

2. During the period of September 15 – September 30, open commercial fishing days shall be Mondays through Fridays and closed commercial fishing days shall be Saturdays and Sundays.

3. During the Period of October 1 until the commercial striped bass fishery is closed, there shall be no closed commercial fishing days.

4. During any closed commercial fishing day it shall be unlawful for any commercial fisherman to retain, possess, or land more than one striped bass; to retain, possess or land any striped bass measuring 35 inches or greater total length; or to sell, barter, or exchange or offer for sale, barter, or exchange any striped bass.

(c) Commercial fishermen engaged in commercial fishing for striped bass may not possess striped bass less than 35 inches in total length. If the number of striped bass aboard a vessel is greater than the number of fishermen, then all striped bass in possession must be greater than 35 inches in total length, and all fishermen must be commercially permitted as described in 322 CMR 6.07(3). Striped bass less than 35 inches in total length shall be returned immediately to the waters from which taken.

(d) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) and on the registered vessel listed on the permit, may not possess, land, offer for sale or sell more than 15 striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2) **and 6.07(4)(b)**. This limit applies to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of individual commercial striped bass regulated fishery permit endorsement holders onboard or the number of trips taken in a day.

(e) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Individual or Rod and Reel permit, issued in accordance with 322 CMR 7.01(2) or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2), while

fishing from shore or any location other than the registered vessel listed on the permit may not possess, land, offer for sale or sell more than two striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2) **and 6.07(4)(b)**. This limit applies to the individual fisherman whether fishing from shore or a vessel, regardless of the number of commercial striped bass regulated fishery permit endorsement assigned to the individual fisherman or the number of trips taken in a day.

(f) All striped bass which are the subject of a first sale shall be in the round, with the head, body and tail fully intact.

(g) Except as provided for in 322 CMR 6.07(5)(f), no striped bass may be filleted or processed in any manner except by evisceration. In all prosecutions or non-criminal citations issued, mutilation of a striped bass which interferes with or affects a proper or adequate measurement of the fish shall be *prima facie* evidence that the striped bass was or is less than 35 inches in total length.

(h) Commercial fishermen shall sell striped bass only to Primary Buyers.

(i) Commercial fishermen shall sell striped bass only during the commercial season and only during the open commercial fishing days within the commercial season.

(j) Commercial fishermen may harvest, catch, or take striped bass by rod-and-reel or handline only.

(k) Commercial fishermen engaged in commercial fishing for striped bass may not fish aboard the same vessel at the same time as recreational fishermen.

(l) In accordance with the Declaration Procedure set forth at 322 CMR 6.41(2), the Director may make in-season adjustments to the commercial fishing limits as established in 322 CMR 6.07(4), including but not limited to the open commercial fishing days and the commercial fishing limits as set forth at 322 CMR 6.07(4)(b), (4)(d) and (4)(e).

(m) Commercial fishermen are prohibited from harvesting striped bass from the Cape Cod Canal for commercial purposes or possessing any striped bass 35" total length or larger in any container or vehicle within 1,000 feet of the shoreline of the Cape Cod Canal, unless the fish is being actively transported to a primary dealer and was lawfully taken in a location other than the Cape Cod Canal.

(7) Prohibitions. It shall be unlawful for:

(j) **any person other than** a commercial fisherman to **make a primary sale of sell** striped bass to any person other than a Primary Buyer.

(k) a non-resident commercial fisherman to possess more than one striped bass upon **entering or** leaving Massachusetts;

(l) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass without having issued to him or her a valid permit to do so;

(m) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to catch, take, possess, sell, barter or exchange any striped bass for commercial purposes once the commercial quota is reached and the commercial fishery is closed, or to retain, possess or land more than one striped bass during **any calendar day that is a closed commercial striped bass fishing day, as described at 322 CMR 6.07(4)(b) ~~the closed commercial fishing days;~~**

(n) a commercial fisherman to sell, barter, exchange or attempt to sell, barter, exchange any striped bass during **any calendar day that is a closed to commercial striped bass fishing day, as described at 322 CMR 6.07(4)(b) ~~the closed commercial fishing days within the commercial season;~~**

(o) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass less than 35 inches in total length;

(p) any commercial fisherman fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) and (e) and onboard the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than 15 striped bass during a single open commercial fishing day, **as set forth at 322 CMR 6.07(4)(b)**. This shall apply to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard;

(q) any commercial fisherman fishing under the authority of a Commercial Fisherman Individual or Rod and Reel Permit, issued in accordance with 322 CMR 7.01(2)(h): *Individual*, (i): *Shellfish/Rod and Reel* and (j): *Rod and Reel*, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) or (e), while fishing from shore or anywhere other than the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than two striped bass during a single open commercial fishing day, **as set forth at 322 CMR 6.07(4)(b)**. This shall apply to the individual commercial fisherman whether fishing from shore or from a vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard or trips taken in a day;

6.12: Fish Pot Fishery Restrictions

(5) Degradable Hinges and Fasteners. It is unlawful for any person to take or attempt to take fish from waters under the jurisdiction of the Commonwealth by use of pots without a panel or door **meeting the following specifications:** ~~with hinges and fasteners made of one of the following degradable materials:~~

- (a) **all hinges or fasteners made of** untreated hemp, jute, or cotton string **shall be** ~~of~~ ^{3/16"} (4.8 mm) diameter or smaller;
- (b) **all hinges or fasteners made of** magnesium alloy, **shall be** timed float releases (pop-up devices) or similar magnesium alloy fasteners; or
- (c) **all hinges or fasteners made of** ungalvanized or uncoated iron wire **shall be** ~~of~~ 0.094" (2.4 mm) diameter or smaller.
- (d) **all ghost panels on black sea bass pots shall measure at least 3" by 6".**

6.43: Atlantic Menhaden Management

(1) Purpose. The purpose of 322 CMR 6.43 is to comply with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Menhaden to manage the Atlantic menhaden fishery in a manner that is biologically, economically, socially and ecologically sound, while protecting the resource and those who benefit from it.

(2) Definitions.

Atlantic Menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.

Bait Dealer means any person issued a bait dealer permit in accordance with 322 CMR

7.01(3)(g): *Bait Dealer*.

Barrel means a standard cylindrical container with a liquid capacity of 55 gallons or a volume of 7.35 cubic feet.

Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Declare means to file an advisory notification with the *Massachusetts Register* and publish it via the Marine Fisheries electronic mailing list and website.

Director means the Director of the Division of Marine Fisheries.

Episodic Events Set Aside means the 1% of the total allowable catch of Atlantic menhaden that is set aside for use by the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York when certain conditions exist as established in the Interstate Fishery Management Plan.

Fish tote means a standard rectangular container with a volume of 6,525 cubic inches.

Land means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish onboard to tie up to any dock, pier or other artificial structure.

Quota means the Commonwealth of Massachusetts annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers.

Trip means the time period that begins when a vessel departs from any land, pier, wharf, dock or other artificial structure to carry out commercial fishing operations, including the at-sea transfer and transport of fish, and that terminates with a return to any land, pier, wharf, dock or other artificial structure.

(3) Regulated Fishery Permit Endorsement Requirement. It shall be unlawful for any fisherman or vessel to take, land, or possess Atlantic menhaden in excess of 6,000 pounds per trip or per 24-hour day, whichever duration is longer, without a regulated commercial fishery permit endorsement for Atlantic menhaden issued by the Director, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* and managed pursuant to 322 CMR 7.06: *Limited Entry Permits*.

(4) Commercial Fishing Limits.

(a) Quota Managed Fishery.

1. Regulated Limited Entry Fishery Trip Limits. Commercial fishermen who have been issued a **limited entry** regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, shall adhere to the following trip limits:

- a. Until the Director declares that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day,

whichever duration is longer; and

b. Once the Director has declared that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer.

2. **Regulated Open Access Fishery** ~~**Trip Limits.**~~ Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit in accordance with 322 CMR 6.43(3) and 7.01(4)(a): *Regulated Fishery Permit Endorsement* ~~may possess and land up to 6,000 pounds of Atlantic menhaden per trip or 24-hour day, whichever duration is longer~~ may participate in an open access fishery for menhaden. For commercial fishermen participating in this fishery, it shall be unlawful to retain, possess, land, sell, or offer for sale more than ~~may possess and land up to~~ 6,000 pounds of Atlantic menhaden per trip or 24-hour day, whichever duration is longer.
3. **Quota Closure.** Except as provided at 322 CMR 6.43(4)(b) and (c), it shall be unlawful to catch and retain or land Atlantic menhaden once the Director has declared that 100% of the quota has been harvested. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

(b) **Incidental Catch and Small-scale Fishery.** When the Quota Managed Fishery is closed, commercial fishermen may possess and land up to 6,000 pounds of Atlantic menhaden per trip or per 24-hour day, whichever is longer. ~~**Exception: There shall be no such allowance for vessels using purse gear measuring 150 fathoms length and eight fathoms depth or greater.**~~

(c) **Episodic Event Set Aside Fishery.** ~~When the Quota Managed Fishery is closed, and if Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, as provided for in the Interstate Fishery Management Plan, commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, may possess and land up to 120,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer; Vessels participating in the Episodic Event Set Aside Fishery must harvest only from waters under the jurisdiction of the Commonwealth and land in Massachusetts ports. Daily catch reporting is required in accordance with 322 CMR 6.43(5).~~

~~Once Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, the Director shall notify commercial fishermen and dealers via the Division's e-mail list serve, posting notice on the agency's website, and filing a legal notice with the Massachusetts Register. Once the Atlantic States Marine Fisheries Commissioner determines that the Episodic Event Set Aside is exhausted, the closure of the Episodic Event Set Aside Fishery will be enacted and announced in accordance with the process set forth at 322 CMR 6.41(2)(c).~~

1. **Annual Process to Participate in the Episodic Event Set Aside Fishery.** When the Quota Managed Fishery is closed, Massachusetts may apply to the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, as provided for in the Interstate Fishery Management Plan. If Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, the Director shall notify commercial fishermen and dealers via the Division's e-mail listserv, posting notice on the agency's website, and filing a legal notice with the

Massachusetts Register. Once the Atlantic States Marine Fisheries Commission determines that the Episodic Event Set Aside is exhausted, the closure of the Episodic Event Set Aside Fishery will be enacted and announced in accordance with the process set forth at 322 CMR 6.41(2)(c).

2. **Commercial Fishing Activity During Episodic Event Set Aside Fishery.** The following restrictions shall apply during the Episodic Event Set Aside Fishery:
 - (a) Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, may possess and land up to 120,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer.
 - (b) All other commercial fishermen may possess and land up to 6,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer.
 - (c) All commercial fishermen participating in the Episodic Event Set Aside Fishery shall only harvest menhaden from the waters under the jurisdiction of the Commonwealth and shall only land in Massachusetts ports.
 - (d) All commercial fisherman participating in the Episodic Event Set Aside Fishery shall be subject to the daily catch reporting requirements set forth at 322 CMR 6.43(5).
 - (e) In accordance with G.L. c. 130, §80 and 322 CMR 7.01(7), the Director may establish commercial fishing permit conditions to as necessary to manage during the Episodic Event Set Aside.

(d) **Compliance with 6,000 Pound Possession Limits.** The following requirements shall apply to any fishery for menhaden regulated at 322 CMR 6.43(4)(a)-(c) that is subject to a 6,000 pound possession and landing limit.

1. **Storage.** All menhaden shall be immediately stored in level filled barrels or fish totes.

2. **Volumetric Equivalency.** A level filled fish tote shall be the equivalent of 125 pounds of menhaden and a level filled barrel shall be the equivalent of 300 pounds of menhaden. 48 level filled fish totes or 20 barrels of menhaden shall be equivalent to the 6,000 pound trip limit.

3. **Maximum Purse Seine Dimensions.** It shall be unlawful to use a purse seine to catch menhaden that exceeds 300 feet long by 30 feet deep. The depth of the net will be determined by taking the average size of 20 meshes and counting the total number of meshes by depth.

(5) **Daily Catch Reporting.** All regulated Atlantic menhaden fishery **limited entry** permit endorsement holders **and commercial fishermen participating in the episodic event set aside fishery shall ~~must~~** obtain a bait dealers permit, as defined at 322 CMR 7.01(3): *Bait Dealer*, and report to the Division of Marine Fisheries their directed commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

7.01 Form. Use and Contents of Permits

(4) Special Permits. The following special permits may be issued by the Director for the following activities:

(a) Regulated Fishery Permit Endorsement. In accordance with M.G.L. c. 130, §§2 and 80, regulated fishery permit endorsements may be added to commercial fisherman permits, issued pursuant to 322 CMR 7.01(2) to authorize the named individual and/or commercial fishing vessel to harvest, possess, or land fish or shellfish or use certain fishing gear in a fishery regulated pursuant to M.G.L. c. 130, §17A.

2. Limited Entry Regulated Fishery Permit Endorsements. Commercial fisherman permits, issued in accordance with 322 CMR 7.01(2), may be endorsed with the following regulated fishery permit endorsements. Pursuant to the authority at M.G.L. c. 130, §2, the following regulated fishery permit endorsements are limited entry and may only be renewed and transferred subject to the provisions set forth at 322 CMR 7.06. These regulated fishery permit endorsements are required for the following.

a. Black Sea Bass. For the named individual and/or vessel to commercially fish for black sea bass within the waters under the jurisdiction of the Commonwealth, or to harvest, possess, or land any black sea bass for commercial purposes in the Commonwealth.

~~b. Bluefin Tuna Seine. For a named individual and/or vessel to set or fish for tuna by means of purse seine within the waters under the jurisdiction of the Commonwealth.~~

b. ~~e.~~ Bluefish Gillnet. For the named individual and/or vessel to set or fish bluefish by the means of gillnet, in accordance with 322 CMR 6.18(3), within the waters under the jurisdiction of the Commonwealth.