

6.07: Striped Bass Fishery (*Morone Saxatilis*)

(1) Purpose and Scope. Since approximately October 1981 the Atlantic coastal states, through the auspices of the Atlantic States Marine Fisheries Commission (ASMFC), have been developing conservation and management measures **for Atlantic striped bass through an interstate fishery management plan. to arrest the severe decline in the stocks of striped bass and to manage restored stocks. This cooperative management effort has been successful and as a consequence, the Chesapeake Bay Stock of the Atlantic Coast striped bass resource has been declared recovered as of January 1, 1995.**

The following regulations represent the Commonwealth's response to this cooperative and joint coastal state conservation management effort. The objective of 322 CMR 6.07 is to allow controlled sustained recreational and commercial fishing for striped bass pursuant to the provisions of the ASMFC striped bass Fishery Management Plan.

322 CMR 6.07 is designed to identify the various user groups, implement conservation and management measures tailored to each group, and collect accurate statistics on striped bass catch levels. Persons intending to fish for striped bass have the option of classifying their activity as recreational or commercial. If a person intends to catch striped bass only for personal consumption and not for sale, that person must have a recreational saltwater fishing permit, and may fish year-round, and retain striped bass that measure between 28 inches and less than 31 inches, but may not retain more than one striped bass within any 24-hour period.

Any person intending to catch and possess striped bass for the purpose of sale, barter or exchange must be fishing under the authority of a commercial permit and a regulated fishery permit for striped bass. However, 322 CMR 6.07 establishes a commercial fishing season that closes upon reaching the commercial catch quota, establishes a minimum commercial size of 35 inches, and requires fish to be sold only to dealers licensed and authorized by the Commonwealth.

Finally, 322 CMR 6.07 allows wholesale and retail dealers to purchase and sell striped bass under certain conditions. To purchase striped bass directly from commercial fishers~~men~~, wholesale and retail dealers must be authorized as primary buyers of striped bass and must affix a Striped Bass ID Tag to all striped bass at the time of primary purchase from the commercial fisher~~man~~. Striped bass imported into the Commonwealth must be marked with a numbered tag that identifies the state of origin and must be accompanied by documents that verify state of origin. Nonconforming (undersized) striped bass that were caught in the wild may be imported into the Commonwealth provided those fish were legally taken, shipped and meet documentation requirements of the state-of-origin.

(1) 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 **fishing fisherman** permit holder in a motor vehicle or a vessel. For purposes of 322 CMR 6.00, this shall include the movement of lawfully caught

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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.

Bait means any marine or aquatic organism, live or dead, whole or parts thereof.

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 means 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).

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, sale, 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 16th and ending when the quota is reached or on November 15th, 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.

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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.

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).

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 **between a commercial fisher and a dealer authorized as a primary buyer and where both parties to the transaction are present**.

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 noncommercial 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 nontransferable 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.

(2) Regulated Fishery Permit. The following special permit shall be required:

(a) A commercial fisherman shall have issued to him or her by the Director a regulated fishery permit for striped bass, in addition to any other permits required by the Massachusetts General Laws, in the following categories:

1. resident; and
2. nonresident.

(b) A striped bass regulated fishery permit authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession, and landing of striped bass for commercial purposes in compliance with 322 CMR 6.07, 322 CMR 7.01: *Form, Use and Contents of Permits* and 322 CMR 7.04: *Commercial Fisheries Control Date*.

(c) A striped bass regulated fishery permit shall be valid only during the striped bass commercial season as provided for in 322 CMR 6.07(4)(b).

(d) A striped bass regulated fishery permit shall be carried by the holder at all times when catching, taking, possessing or selling striped bass, and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce 322 CMR 6.07.

(e) All persons must apply for or apply to renew their striped bass regulated fishery permit endorsement by the last day of February in the effective permitted fishing year.

(3) Commercial Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to commercial fishersmen 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 fishersmen 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 16th and ending when the commercial quota is taken or on November 15th, whichever occurs first.

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1. During the period of June 16th through September 30th, open commercial fishing days shall be **Tuesdays and Wednesdays** ~~Mondays through Wednesdays~~ and closed commercial fishing days shall be **Mondays, Thursdays, Fridays, Saturdays, and Sundays** ~~Thursdays through Sundays~~. The 3rd of July, 4th of July and Labor Day shall be considered closed commercial fishing days.
 2. During the period of October 1st through November 15th, open commercial fishing days shall be Mondays through Fridays and closed commercial fishing days shall be Saturdays and Sundays.
 3. During any closed commercial fishing day it shall be unlawful for any commercial fisher~~man~~ 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 fishers~~men~~ 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 fishers~~men~~, then all striped bass in possession must be greater than 35 inches in total length, and all fishers~~men~~ 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 fishers~~men~~ engaged in striped bass fishing under the authority of a ~~Commercial Fisherman~~ **Commercial Fishing** Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2): *Commercial Fishing Fisherman Permits* 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 fisher~~man~~, 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 fishers~~men~~ engaged in striped bass fishing under the authority of a **Commercial Fishing Fisherman** Individual or Rod and Reel permit, issued in accordance with 322 CMR 7.01(2): *Commercial Fishing Fisherman Permits* or under the authority of a **Commercial Fishing 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 fisher~~man~~ whether fishing from shore or a vessel, regardless of the number of commercial striped bass regulated fishery permit endorsement assigned to the individual fisher~~man~~ 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,

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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 fishers~~men~~ shall sell striped bass only to Primary Buyers.

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

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

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

(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), (d) and (e).

(m) Commercial fishers~~men~~ are prohibited from harvesting striped bass from the Cape Cod Canal for commercial purposes or possessing any striped bass 35 inches in 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.

(n) Commercial fishers shall not retain, possess, land, sell, or offer for sale any striped bass unlawfully taken in another jurisdiction.

(4) Recreational Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to recreational fishers~~men~~ who harvest, catch, take or possess or attempt to harvest, catch, take or possess any striped bass:

(a) Only striped bass measuring at least 28 inches and less than 31 inches in total length may be retained. Striped bass measuring less than 28 inches or 31 inches or greater in total length shall be released immediately to the waters from which taken. Recreational fishers~~men~~ shall not mutilate any striped bass in a manner that prevents the accurate measurement of the fish.

(b) Recreational fishers~~men~~ may retain no more than:

1. one striped bass per day; and
2. may possess no more than one striped bass at any one time.

(c) Recreational fishers~~men~~ may not sell, barter or exchange any striped bass.

(d) Recreational fishers~~men~~ may not discard dead striped bass that measure between at least 28 inches, but less than 31 inches in total length.

(e) To prohibit the practice of high-grading as defined in 322 CMR 6.07(2), recreational fishers~~men~~ may not retain legal-sized striped bass and release

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said fish in favor of another larger legal-sized striped bass captured subsequently. Any legal-sized fish not immediately released into the water and held by stringer, live-well or another means shall be considered intent to high-grade.

(f) Mandatory Use of Circle Hooks. Recreational fishers~~men~~ shall use circle hooks when fishing for striped bass with whole or cut natural baits. This shall not apply to any artificial lure. Striped bass caught on any unapproved method of take must be returned to the water immediately without unnecessary injury.

(g) Rules Specific to For-hire Vessels.

At-sea Filleting. Operators and crew onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* may fillet or process legal sized striped bass for their recreational customers at sea provided that:

1. The skin is left on the fillet; and
2. Not more than two fillets taken from legal striped bass are in the possession of each customer of that trip, representing the equivalent of one fish per angler.

(5) Dealer Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to any dealer who possesses, sells or offers to sell any striped bass:

(a) Only Primary Buyers shall purchase striped bass directly from **commercial fishers~~men~~ and both parties shall be present at the transaction.**

(b) Primary Buyers shall report all striped bass purchases from commercial fishers~~men~~ based on schedules and on forms to be provided by the Division.

(c) Primary Buyers may not purchase or receive from a commercial fisher~~men~~ any striped bass which is less than 35 inches in total length.

(d) Primary Buyers may not purchase, receive or possess from a commercial fisher~~men~~ any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish.

(e) Primary Buyers may not purchase or receive from a commercial fisher~~men~~ any striped bass during the closed fishing days within the commercial fishing season.

(f) Primary Buyers may not purchase more than a single commercial trip limit of striped bass from any commercial fisher~~men~~, regardless of the number of commercial striped bass regulated fishery permit endorsements in the possession of the commercial fisher~~man~~.

(g) Dealers may purchase and offer for sale whole striped bass that were caught in the wild and imported into Massachusetts from states where they have been lawfully landed provided that the fish comply with the size limit for the jurisdiction of origin and are individually tagged with the jurisdiction of origin. If fish are filleted after importation, all containers of fillets shall be accompanied by records describing the jurisdiction of origin, the name of the Massachusetts dealer that processed the fish, the quantity of fillets and the species. A copy of these records shall be kept on the dealers premises for 30 days after processing. Original tags shall remain with the fish or the fish

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fillets, as required at 322 CMR 6.07(6)(h)2.

(h) Primary Buyers shall tag each striped bass with a Striped Bass ID Tag in accordance with the following provisions:

1. Issuance of Striped Bass ID Tags.
 - a. The Director shall annually issue Striped Bass ID Tags only to Primary Buyers.
 - b. The annual quantity of tags issued shall be determined by the Director based on the commercial quota.
 2. Use and Disposition of Striped Bass ID Tags.
 - a. ~~Prior to departing any ramp, pier, parking lot or other location of primary purchase, the~~ Immediately upon receipt of fish at the primary purchase, the Primary Buyer shall affix a Striped Bass ID Tag through the mouth and gills or through the lower jaw of each striped bass and lock the Striped Bass ID Tag into place.
 - b. Striped Bass ID Tags shall remain affixed through the mouth and gills or lower jaw of any whole striped bass or accompany any processed or filleted striped bass while in the possession of any person for the purpose of resale.
 - c. If a person intends on selling portions of processed or filleted striped bass to a consumer, the tags shall remain on the premise of the seller until all portions are sold to a consumer.
 - d. Once all portions of a striped bass are sold, a person shall cut the Striped Bass ID Tag into two pieces and discard it.
 3. Striped Bass ID Tag Accounting.
 - a. Within 30 days of a written request by the Director, following the close of the commercial season, the Primary Buyer shall:
 - i. return all unused Striped Bass ID Tags issued to the Primary Buyer by the Director for that year; and
 - ii. submit a Striped Bass ID Tag Accounting Report, on forms provided by the Director, which documents the disposition of all Striped Bass ID Tags.
 - b. The Director may restrict a dealer from future participation as a Primary Buyer for failure to return all unused Striped Bass ID Tags or submit the Striped Bass ID Tag Accounting Report in accordance with 322 CMR 6.07(6)(h)3.a.
- (6) Prohibitions. It shall be unlawful for:
- (a) a recreational fisherman to retain more than one striped bass per day;
 - (b) a recreational fisherman to possess more than one striped bass at any one time;
 - (c) a recreational fisherman to sell, barter or exchange or offer to sell, barter or exchange any striped bass;
 - (d) a recreational fisherman to retain or possess any striped bass less than 28 inches or 31 inches or greater in total length;
 - (e) a recreational fisherman to mutilate any striped bass in a manner that prevents the accurate measurement of the fish; such mutilation shall be *prima facie* evidence of a violation of 322 CMR 6.07(7);
 - (f) a recreational fisherman to discard dead striped bass that measure

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- between 28 inches, but less than 31 inches or greater in total length;
- (g) a recreational fisherman to “high-grade” striped bass or to keep striped bass alive in the water by attaching a line or chain to the fish or placing the fish in a live-well or holding car;
- (h) any person(s), whether from shore or onboard a vessel, to possess striped bass in any quantity exceeding one striped bass per person without a commercial striped bass regulated fishery permit and for those striped bass to violate the commercial management regulations at 322 CMR 6.07(4);
- (i) a for-hire vessel, permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, during a for-hire trip to retain more than one striped bass for each person onboard;
- (j) any person other than a commercial fisherman to make a primary sale of striped bass to any person other than a Primary Buyer.
- (k) a nonresident 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);
- (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);
- (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 **Fishing 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 **Fishing Fisherman** Individual or Rod and Reel Permit, issued in accordance with 322 CMR 7.01(2)(h): *Individual*, 322 CMR 7.01(2)(i): *Shellfish/Rod and Reel* and 322 CMR 7.01(2)(j): *Rod and Reel*, or under the authority of a Commercial **Fishing 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

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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;

(r) a commercial fisherman to fillet or process any striped bass other than by evisceration;

(s) a commercial fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper or adequate measurement of the fish;

(t) a commercial fisherman to participate in the primary purchase of any striped bass which is not in the round, or which has had the head or tail removed;

(u) a commercial fisherman to possess or land striped bass once the Director has determined that 100% of the commercial quota has been reached;

(v) any Primary Buyer to purchase or receive during a primary purchase any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish;

(w) any Primary Buyer to purchase or receive from a commercial fisherman any striped bass which is less than 35 inches in total length;

(x) any Primary Buyer to purchase or receive from a commercial fisherman any striped bass after the open commercial season has closed or on any calendar day that is not an open commercial fishing day;

(y) any Primary Buyer to fail to report all striped bass purchases from commercial fishermen as prescribed by the Director;

(z) any commercial fishermen to harvest, catch, or take striped bass by longlines or tub- trawls;

(aa) any vessel rigged for otter trawling, hauling sink gillnets, purse seines, or possessing baited or unbaited longline or tub-trawl gear to possess striped bass;

(bb) any wholesale or retail dealer to possess, sell, barter or exchange or offer to sell, barter or exchange any whole striped bass imported into Massachusetts, unless such fish so imported is tagged as specified by 322 CMR 6.07(6);

(cc) any commercial fisherman to discard dead striped bass that are 35 inches or greater in total length;

(dd) any person to receive during a primary purchase any striped bass, unless permitted as a wholesale or retail dealer pursuant to 322 CMR 7.01(3): *Dealer Permits* and authorized as a Primary Buyer pursuant to 322 CMR 7.07: *Dealers Acting as Primary Buyers*;

(ee) any person involved in the resale of striped bass to fail to furnish, upon request of the Director or the Environmental Police, receipts documenting the purchase of striped bass;

(ff) any person to apply a Striped Bass ID Tag to a striped bass harvested for commercial purposes without being a Primary Buyer;

(gg) a Primary Buyer to tag a striped bass with a Striped Bass ID Tag that was not issued to said Primary Buyer by the Director for the current year or

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that has been defaced or modified in any manner;

(hh) any person, other than the original harvester, to possess striped bass or portions thereof for the purpose of sale without the striped bass or portions thereof being tagged in accordance with 322 CMR 6.07(6)(g);

(ii) any person to fail to surrender Striped Bass ID Tags to the Director or the Environmental Police upon request;

(jj) any person to sell, trade, loan or gift or offer to sell, trade, loan or gift to another person any Striped Bass ID Tags;

(kk) a Primary Buyer to file a false claim of Striped Bass ID Tag loss for purposes of obtaining additional Striped Bass ID Tags.

~~(ll) a dealer to purchase a striped bass that has had its right pectoral fin entirely removed.~~ Any person to retain, possess, land, sell, or offer for sale any striped bass unlawfully taken in another jurisdiction.

(mm) for any recreational fisher ~~angler~~ to use any device other than a nonlethal device to remove a striped bass from the water or assist in the releasing of a striped bass.

(nn) for any commercial fisher ~~man~~ fishing on an open commercial fishing day to gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than 35 inches in total length.

(oo) for any recreational fisher ~~man~~ to use any type of hook other than a circle hook when fishing for striped bass with whole or cut natural baits. This shall not apply to any artificial lure.

(pp) for any recreational fisher ~~man~~ to retain any striped bass incidentally caught by any unapproved method.

(qq) any person to retain or possess more than one striped bass taken from the Cape Cod Canal during any calendar day.

(rr) Any person to possess any striped bass measuring 31 inches in total length or larger within 1,000 feet of the Cape Cod Canal unless that fish was lawfully harvested in a location other than the Cape Cod Canal and is being actively transported to a primary buyer.

(ss) Any person to possess more than one striped bass at any time within 1,000 feet of the Cape Cod Canal, unless the fish was lawfully harvested in a location other than the Cape Cod Canal and is being actively transported to a primary buyer.

(tt) Any commercial fisher ~~man~~ to retain or possess any striped bass taken from the Cape Cod Canal for sale or attempted sale.

322 CMR 6.21: Whelk Conservation and Management

(2) **Commercial ~~Commerical~~ Possession of Legal Sized Knobbed and Channeled Whelks.**

- (b) **Minimum Chute Gauge Width and Chute Gauge Specifications.** The chute gauge used to determine the legal size for knobbed and channeled whelks shall measure at least six inches length and by 1½" height. The internal width of the chute gauge shall be: 3 1/8" through April 14, 2027; 3 ¼" during the period of April 15, 2027 through April 14, 2030; 3 3/8" during the period of April 15, 2030 through April 14, 2033; 3 ½" during the period of April 15, 2033 through April 14, 2036, and 3 5/8" on or after April 15, 2036. No person shall modify the chute gauge in any manner that may affect the gauging of knobbed or channeled whelks. It shall be *prima facie* evidence of a violation of 322 CMR 6.21(2)(c) if a commercial fisher is not in possession of a chute gauge meeting these minimum specifications when fishing for or in possession of knobbed or channeled whelk. ~~3 1/8" through December 31, 2023; 3 ¼" during the period of January 1, 2024 through December 31, 2026; 3d" during the period of January 1, 2027 through December 31, 2029; 3 ½" during the period of January 1, 2030 through December 31, 2032; and 3e" on and after January 1, 2033. No person shall modify the specified chute gauge in any manner that may affect the gauging of knobbed or channeled whelks. It shall be *prima facie* evidence of a violation of 322 CMR 6.21(2)(c) if a commercial fisherman is not in possession of a chute gauge meeting these minimum specifications when fishing for or in possession of knobbed or channeled whelks.~~

6.22: Summer Flounder (Fluke) Restrictions

(2) Commercial Fishery.

(a) Minimum Size. It shall be unlawful for any commercial fisher to retain, possess, or land summer flounder less than 14 inches in total length.

(b) Seasonal Quota Allocations. Annually, the quota shall be split with a target allocation of 30% to the Period I fishery and 70% allocated to the Period II fishery. Any unused portion of the quota from Period I may be re-allocated to Period II. Overharvest of either period allocation may be deducted from the corresponding period in the following year.

(c) Period I (January 1st through April 22nd).

1. From January 1st through April 22nd, or until DMF **determines projects** 30% of the quota has been reached, whichever occurs sooner, ~~it shall be unlawful for any commercial fisher to retain, possess or land any summer flounder using any gear other than nets. During this period,~~ the trip limit for ~~a~~ any commercial fisher ~~using nets~~ shall be ~~5,000 10,000~~ pounds.

2. Once DMF **determines projects** 30% of the quota has been reached, the trip limit for any commercial fisher ~~using nets~~ shall be 100 pounds.

3. Subject to an annual authorization from the Director, vessels landing in Massachusetts may possess summer flounder in quantities exceeding the limits at 322 CMR 6.22(2)(c)1. and 2., provided the non-conforming fish is to be landed in another state, is clearly labeled identifying the state it is to be landed in, and it remains on the vessel while the Massachusetts limit is being landed.

(d) Period II (April 23rd through December 31st).

1. Commercial Fishing with Nets. From April 23rd through **September 30th August 31st**, the trip limit for a commercial fisher using nets shall be 600 pounds.

a. **Should DMF determine that 75% of the annual quota is taken on or before August 1, then the trip limit for a commercial fisher using nets shall be reduced to 400 pounds.**

b. **If on September 1, DMF determines that less than 75% of the annual quota is taken, then the trip limit for a commercial fisher using nets shall be increased to 800 pounds.**

2. Commercial Fishing with Hook and Line Gear. From April 23rd through **September 30th August 31st**, the trip limit for a commercial fisher using hook and line gear shall be 400 pounds.

a. **Should DMF determine that 75% of the annual quota is taken on or before August 1, then the trip limit for a commercial fisher using nets shall be reduced to 200 pounds.**

b. **If on September 1, DMF determines that less than 75% of the annual quota is taken, then the trip limit for a commercial fisher using nets shall be increased to 800**

pounds.

~~2. All Gear from September 1st through September 30th. Provided DMF projects more than 20% of the quota remains available on September 1st, from September 1st through September 30th, the trip limit for any commercial fisher, regardless of gear type used, shall be 800 pounds. If DMF projects 20% of the quota or less remains on September 1st, the trip limit provided at 322 CMR 6.22(2)(d)(1) and (2) shall apply.~~

3. All Gear from October 1st through December 31st. Provided DMF ~~determines projects~~ more than 5% of the quota remains available on October 1st, from October 1st through December 31st, the trip limit for any commercial fisher, regardless of gear type used, shall be ~~5,000~~ ~~10,000~~ pounds. If DMF ~~determines projects~~ 5% of the quota or less remains on October 1st, the trip limit for any commercial fisher, regardless of gear type used, shall be 800 pounds.

Subject to an annual authorization from the Director, vessels landing in Massachusetts may possess summer flounder in quantities exceeding the limits at 322 CMR 6.22(2)(d)4., provided the non-conforming fish is to be landed in another state, is clearly labeled identifying the state it is to be landed in, and it remains on the vessel while the Massachusetts limit is being landed.

4. Summer Flounder Limits for Vessels Fishing with Small Mesh Trawls.
The trip limit shall be 100 pounds for any commercial fisher fishing with trawl gear and using a net with net mesh less than 5.5" diamond or 6" square throughout the cod end of the net.

6.34: Horseshoe Crab Management

- (1) Purpose. The Division of Marine Fisheries manages horseshoe crabs in compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crabs. Additionally, DMF manages local horseshoe crab populations to ensure the resource is available for current and future generations for use as a commercial fishery resource, in biomedical applications, for education and scientific research, and to provide cultural and ecological services. This requires the Division of Marine Fisheries control harvest and mortality across all fisheries and provide for spawning opportunities.

(2) Definitions.

Asian Horseshoe Crab means those species of horseshoe crab identified as *Carcinoscorpius rotundicauda*, *Tachypleus gigas* and *Tachypleus tridentatus*.

Bait Fishery Quota means the total annual allowable harvest of horseshoe crabs for the bait fishery to be established by the Division of Marine Fisheries.

Biomedical Fisher means any person who has been issued a special biomedical horseshoe crab harvest permit by the Director in accordance with 322 CMR 7.01(4)(f) allowing the retention, possession, and landing of horseshoe crabs for biomedical or research purposes and direct sale to a biomedical dealer or biomedical processor or research institution authorized by the Director to conduct biomedical or research activities.

Biomedical Dealer means any person or entity, permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(3), who has a contractual relationship with a biomedical processor and authorized at 322 CMR 7.07 to conduct a primary purchase of horseshoe crabs from a biomedical fisher.

Biomedical Processor means any person or entity, permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(3) and authorized by the Director to process horseshoe crabs for biomedical purposes.

Biomedical Processor Quota means the total annual allowable harvest of horseshoe crabs for biomedical processing in Massachusetts assigned by the Division in equal shares to each permitted biomedical processor.

Cape Cod National Seashore means that area of land and waters located in Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham under the control of the United States Department of the Interior's National Park Service pursuant to 16 U.S.C. 459b.

Commercial Fisher means any person permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(2) to participate in the commercial bait fishery for horseshoe crabs and retain, possess, and land horseshoe crabs for purpose of sale, barter, or exchange or any person who keeps for personal or family use any horseshoe crab taken under the authority of said permit.

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Director means the Director of the Massachusetts Division of Marine Fisheries.

Division means the Massachusetts Division of Marine Fisheries.

Horseshoe Crab means the species known as *Limulus polyphemus*.

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

Mobile Gear means any moveable gear or encircling fishing gear or nets, which are towed, hauled or dragged through the water for the harvest of fish. This includes, but is not limited to, pair trawls, otter trawls, beam trawls, mid-water trawls, Scottish seines, pair seines, purse seines or shellfish dredges.

Monomoy National Wildlife Refuge means that area of lands and waters located in Chatham under the control of the United States Department of the Interior's Fish and Wildlife Service. The boundaries thereof are described in the October 30, 2015 Notice of Availability for the Monomoy National Wildlife Refuge Final Comprehensive Conservation Plan and Environmental Impact Statement at 80 F.R. 66928; published in the March 2016 Monomoy National Wildlife Refuge Comprehensive Conservation Plan; and first established in 1944 via the Declaration of the Taking filed by the Department of the Interior with the Federal District Court for the District of Massachusetts.

Primary Purchase means the first commercial transaction by sale, barter, or exchange of horseshoe crabs after its harvest.

Total Mortality means the number of horseshoe crabs harvested in the biomedical horseshoe crab fishery that died during harvest, handling, transportation, storage, penning, processing, and release.

Trawl means a fishing practice that herds or captures target species by towing a net through the ocean.

Trip means that period of time that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp or port to carry out commercial fishing operations and that ends with a return to a dock, berth seawall, ramp or port.

Trip Limit means the maximum lawful amount of horseshoe crabs that a commercial fisher or biomedical fisher may retain, possess, or land within the Commonwealth or sell, barter or exchange or offer for sale barter or exchange. Trip limits apply per trip or per calendar day, whichever period of time is longer and are applied to the vessel named on the commercial fishing permit regardless of the number of commercial fishing permits or letters of authorization carried on board the vessel.

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(3) General Restrictions.

- (a) Non-Commercial Possession Limit. It shall be unlawful for any person to retain, possess, or land more than six horseshoe crabs per day, unless authorized at 322 CMR 6.34(4) or 322 CMR 6.34(5). Any horseshoe crabs retained under this non-commercial possession limit shall be maintained only for personal or family use and shall not be sold, bartered, exchanged, or offered for sale, barter, or exchange.
- (b) Spawning Closure. It shall be unlawful for any person to retain, possess, or land horseshoe crabs from April 15 – June 7. ~~Lunar Spawning Closures. It shall be unlawful for any person to retain, possess, or land horseshoe crabs during a series of five-day periods coinciding with each new and full moon that occurs from April 16th through June 30th, as published by the U.S. Naval Observatory and adjusted for Eastern Daylight Savings Time. These lunar spawning closures shall commence at 12:00 A.M. two days prior to each new or full moon and end at 11:59 P.M. two days after each new or full moon~~
- (c) Asian Horseshoe Crab. It shall be unlawful to possess, purchase, import, transport, sell, barter, exchange, purchase, or offer for sale, barter or exchange Asian horseshoe crabs or to release into the waters under the jurisdiction of the Commonwealth any Asian horseshoe crabs.
- (d) Cape Cod National Seashore. It shall be unlawful for any person to harvest horseshoe crabs within the boundaries of the Cape Cod National Seashore.
- (e) Monomoy National Wildlife Refuge. It shall be unlawful for any person to harvest horseshoe crabs within the boundaries of the Monomoy National Wildlife Refuge.
- (f) Authority to Temporarily Close Areas to Harvest of Horseshoe Crabs. The Director may temporarily close any area within the waters under the jurisdiction of the Commonwealth to harvest of horseshoe crabs, subject to the procedure below:
 - 1. It has been approved by a majority of the members of the Marine Fisheries Advisory Commission;
 - 2. A Declaration of Closure has been filed with the Massachusetts Secretary of State for publication in the Massachusetts Register;
 - 3. A Declaration of Closure has been published in a local newspaper of record and posted on the Division's Legal Notice website; and
 - 4. A Declaration of Closure has been distributed *via* the Division's e-mail list serve and directly to any and all affected permit holders.

(4) Bait Fishery Management.

- (a) Commercial Bait Fishery Quota. The annual bait fishery quota shall be 140,000 horseshoe crabs.
- (b) Minimum Size. It shall be unlawful for any commercial fisher or dealer to retain, possess or land a horseshoe crab with a prosomal width of less than seven inches.
- (c) Trip Limits for the Commercial Bait Fishery.
 - 1. Limited Entry Bait Crab Trip Limit ~~for Mobile Gear~~. The trip limit for any commercial fisher with a regulated fishery permit endorsement for horseshoe crabs ~~and using mobile gear~~ shall be 300 horseshoe crabs. **On August 1, should DMF determines that more than 50% of the annual quota remain, the trip limit shall increase to 400 horseshoe crabs. Should DMF determine that 80% of the annual quota is taken on or before September 15, then the trip limit shall decrease to 200 horseshoe crabs.**
 - 2. ~~Limited Entry Bait Crab Limit for Hand Harvesters. It shall be unlawful for any~~

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~~commercial fisher with a regulated fishery permit endorsement for horseshoe crabs using gears other than mobile gear to take, possess, or land more than 400 horseshoe crabs during any 24-hour period beginning at 12:00 P.M.~~

2. Open Entry Bait Crab Limit for Mobile Gear. The trip limit for any commercial fisher without a regulated fishery permit endorsement for horseshoe crabs and using mobile gear shall be 75 horseshoe crabs.
3. Quota Closure. It shall be unlawful for any commercial fisher to retain, possess, or land any horseshoe crabs once the Director has determined that 100% of the annual bait fishery quota has been reached. The quota closure will be enacted and announced in accordance with 322 CMR 6.41(2)(c).
4. Exceptions. The commercial bait fishery trip limits described above shall not apply to:
 - a. Commercial pot fishers, permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 6.12 and 7.01(4) who are using horseshoe crabs as bait, provided their documented source of horseshoe crabs is a permitted bait dealer or the horseshoe crabs are held in storage by the commercial fisher named on the permit.
 - b. Dealers permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(3).
- (d) Bait Fishery Reporting. Beginning in 2024, all commercial fishers participating in the commercial bait fishery for horseshoe crabs at 322 CMR 6.34(5) shall report all their catch electronically daily prior to landing through an electronic reporting application approved by the Division.
- (e) Closures to Bait Harvest.
 1. Pleasant Bay Complex. It shall be unlawful to harvest horseshoe crabs from Pleasant Bay, as defined at 322 CMR 4.02: *Use of Nets in Inshore Restricted Waters*, except if lawfully participating in the biomedical horseshoe fishery under the authority of a special biomedical horseshoe crab harvest permit endorsement issued in accordance with 322 CMR 7.01(4).
- (f) Primary Purchase of Horseshoe Crabs.
 1. The primary purchase of horseshoe crabs taken in the commercial bait fishery shall be conducted between the commercial fisher and an entity that holds a bait dealer permit and primary buyer authorization, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.01(3) and 322 CMR 7.07: *Dealers Acting as Primary Buyers*.
 2. It shall be unlawful for a bait dealer to purchase horseshoe crabs from a single commercial fisher in excess of the commercial bait fishery limits established at 322 CMR 6.34(4)(c)1. and 2.
 3. It shall be unlawful for a bait dealer to purchase horseshoe crabs from any commercial fisher during the lunar spawning closures at 322 CMR 6.34(3).
 4. For a commercial fisher to sell horseshoe crabs to an entity other than a bait dealer authorized as a primary buyer, that commercial fisher must hold a bait dealer permit and primary buyer authorization, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.01(3) and 322 CMR 7.07: *Dealers Acting as Primary Buyers*.

~~(9) Minimum Size. It is unlawful to possess a horseshoe crab for commercial purposes with a prosomal width of less than seven inches.~~

~~(10) Asian Horseshoe Crab Prohibition. It shall be unlawful to import, transport, purchase, possess, offer for sale or release into state waters Asian horseshoe crab species.~~

6.37: Coastal Shark Conservation and Management

(4) Regulation of Catches.

(a) Permitted Species Size Limits.

1. Recreational Fishing Size Limits.

- a. There shall be no recreational minimum size limit for smooth dogfish, Atlantic sharpnose, bonnethead, finetooth and blacknose sharks;
- b. For great hammerhead, scalloped hammerhead, and smooth hammerhead sharks, it shall be unlawful to possess or land a shark that is less than 78 inches in fork length; and
- c. For all other Permitted Shark Species, it shall be unlawful to possess or land a shark that is less than 54 fork inches in length.

2. Commercial Size Limits. For commercial fishers, there shall be no minimum size for any of the Permitted Species.

(b) Permitted Species Possession Limits.

1. Recreational Catch Limits. A recreational angler fishing from shore may harvest only one fish among all Permitted Species and one additional Bonnethead, one additional Atlantic sharpnose, and one additional smooth dogfish per trip. A recreational vessel may possess on board or land only one fish among all Permitted Species per trip regardless of the number of recreational fishers aboard, and one additional Bonnethead, one additional Atlantic sharpnose, and one additional smooth dogfish per person. Recreational fishers shall not possess oceanic whitetip sharks, great hammerhead sharks, scalloped hammerhead sharks or smooth hammerhead sharks if in possession of tunas, billfish or swordfish. Porbeagle sharks caught alive shall be released by recreational fishers if tunas, billfish or swordfish are to be retained, possessed or landed.

2. Commercial Catch Limits. Commercial fishers shall not retain:

- a. more than **300 100** pounds of smooth dogfish per trip or per day, whichever is the longer period of time; or
- b. any quantity of a Permitted Shark Species after the Director has announced a commercial fishery closure.

6.43: Atlantic Menhaden Management

(4) Commercial Fishing During Quota Managed Period.

(a) January 1st through May 31st. ~~June 14th.~~

1. Gear Restrictions. From January 1st through **May 31st** ~~June 14th~~, commercial fishers may only retain, possess, and land Atlantic menhaden taken by Non-Directed Gear or Small Scale Directed Gear. During this period, it shall be unlawful to retain, possess, or land menhaden taken by purse seine. It shall be *prima facie* evidence that a commercial fisher is fishing with a purse seine, in violation of 322 CMR 6.43(4)(a)1., if the vessel is rigged for purse seining or a purse seine is onboard the vessel and there are Atlantic menhaden onboard the vessel.

2. Trip Limit. From January 1st through **May 31st** ~~January 14th~~, the trip limit of Atlantic menhaden for all commercial fishers shall be 6,000 pounds. During this period, all Atlantic menhaden fishing shall occur within the waters under the jurisdiction of the Commonwealth. It shall be unlawful for any commercial fisher to land Atlantic menhaden more than once per calendar day.

Exception. For Atlantic menhaden caught in a permitted fish weir by commercial fishers who have been issued a regulated fishery permit endorsements for Atlantic menhaden, the trip limit shall be 120,000 pounds.

3. Storage Requirement. All Atlantic menhaden shall be brought onboard the vessel, and upon retention, be immediately stored in level filled barrels or fish totes. A level filled fish tote shall be the equivalent of 117 pounds of Atlantic menhaden; a level filled barrel shall be the equivalent of 350 pounds of Atlantic menhaden; and 51-level filled fish totes or 17-level filled barrels of Atlantic menhaden shall be the equivalent of 6,000 pounds of Atlantic menhaden.

(b) June 1st ~~15th~~– Quota. From June 1st ~~15th~~ through December 31st, or until 100% of the annual Atlantic menhaden quota is landed and the fishery is closed, whichever occurs sooner:

1. Limited Entry Fishery. Commercial fishers who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3) and 322 CMR 7.01(4)(a), shall comply with the following:

a. Until the Director declares 50% of the annual commercial Atlantic menhaden quota is landed, the trip limit shall be 120,000 pounds.

b. **Provided ~~once~~—**the Director declares 50% of the annual commercial Atlantic menhaden quota is landed **after June 30 and before September 1**, the trip limit shall be 25,000 pounds. **If DMF determines that 50% of the quota will be taken before July 1st, the trip limit shall be reduced to 6,000 pounds through June 30th**

and then on July 1st it shall be 5,000 pounds. If DMF determines 50% of the quota is to remain on or after September 1, then the trip limit shall remain at 120,000 pounds.

c. Once the Director declares 90% of the annual commercial Atlantic menhaden quota is landed, provided this occurs prior to September 1st, the trip limit shall be 6,000 pounds. If **DMF determines that greater than 50% of the quota but less than 90%** of the quota **remains is taken** on or after September 1st, then the trip limit shall **be remain-at** 25,000 pounds.

d. It shall be unlawful for any commercial fisher or vessel to land Atlantic menhaden more than once per calendar day.

e. Storage Requirement. Should the 6,000 pound trip limit at 322 CMR 6.43(4)(b)1.c. be in effect, all Atlantic menhaden shall be brought onboard the vessel, and upon retention, be immediately stored in level filled barrels or fish totes. A level filled fish tote shall be the equivalent of 117 pounds of Atlantic menhaden; a level filled barrel shall be the equivalent of 350 pounds of Atlantic menhaden; and 51-level filled fish totes or 17-level filled barrels of Atlantic menhaden shall be the equivalent of 6,000 pounds of Atlantic menhaden.

2. Open Access Fishery Limits. Commercial fishers who have not been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3) and 322 CMR 7.01(4)(a), may participate in the open access fishery for Atlantic menhaden subject to the following restrictions:

a. Trip Limit. The trip limit for the open access fishery shall be 6,000 pounds. It shall be unlawful for any commercial fisher or vessel to land more than once per calendar day.

b. Storage Requirement. All Atlantic menhaden shall be brought onboard the vessel, and upon retention, be immediately stored in level filled barrels or fish totes. A level filled fish tote shall be the equivalent of 117 pounds of Atlantic menhaden; a level filled barrel shall be the equivalent of 350 pounds of Atlantic menhaden; and 51-level filled fish totes or 17-level filled barrels of Atlantic menhaden shall be the equivalent of 6,000 pounds of Atlantic menhaden.

3. Use of Carrier Vessels.

a. The use of a carrier vessel is prohibited except with the prior authorization by the **Director Division**. Only those commercial fishers who have been issued a regulated Atlantic menhaden fishery permit endorsement may be authorized by the **Director Division** to use a carrier vessel. The **Director Division** may authorize the use of a named carrier vessel as a condition of the commercial fishing permit, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.01(6).

b. Authorized commercial fishers may use carrier vessels from June 1st **15th** until the **Director declares that 90% of the annual commercial Atlantic menhaden quota is landed and the trip limit for the limited entry fishery is reduced to 6,000 pounds.**

- c. Once ~~the Director declares that 90% of the annual commercial Atlantic menhaden quota is landed and~~ the trip limit for the limited entry fishery is reduced to 6,000 pounds, **and** the use of carrier vessels ~~shall be~~ **is** prohibited.
 - d. The use of carrier vessels is prohibited year-round within the inshore restricted waters of Boston Harbor, as defined at 322 CMR 4.02: *Use of Nets in Inshore Restricted Waters*.
 - e. It shall be unlawful for any carrier vessel to receive, possess, transport, or land Atlantic menhaden during any day closed to purse seining for Atlantic menhaden.
 - f. During any calendar day open to purse seining for Atlantic menhaden, it shall be unlawful for a carrier vessel to receive Atlantic menhaden from a commercial fisher in a quantity that exceeds the applicable trip limit at 322 CMR 6.43(4)(b)1.
 - g. It shall be unlawful for a carrier vessel to possess and transport Atlantic menhaden in a quantity that exceeds the applicable trip limit 322 CMR 6.43(4)(b)(1).
 - h. It shall be unlawful for a carrier vessel to receive Atlantic menhaden from more than one commercial fisher during any calendar day.
 - i. It shall be unlawful for a carrier vessel to land Atlantic menhaden during any calendar day if the commercial fishing vessel it is operating with is also landing Atlantic menhaden during that calendar day.
 - j. It shall be unlawful for a carrier vessel to land Atlantic menhaden more than once per day.
 - k. A commercial fisher may offload to multiple carrier vessels during the same calendar day provided the applicable trip limit at 322 CMR 6.43(4)(b)1. is not exceeded in the aggregate.
4. Vessel Capacity and Certification. Effective in 2024, prior to the annual commencement of fishing activity any participating vessel named on a commercial fishing permit or authorized carrier vessel capable and authorized to hold more than 6,000 pounds must be inspected by a certified marine surveyor and assessed with regard to its fish storage. The surveyor shall mark the fish hold to demonstrate volumetric capacity at 120,000 pounds and 25,000 pounds of Atlantic menhaden. It shall be *prima facie* evidence of a violation of the limited entry fishery trip limits established at 322 CMR 6.43(4)(b)1.a. and b. if a vessel holding and transporting Atlantic menhaden is exceeding their marked volumetric capacity at the applicable trip limit.
5. Use of Purse Seines during Quota Managed Period. In addition to complying with all applicable purse seining regulations at 322 CMR 4.06: *Use of Mobile Gear*, the following shall apply to commercial purse seining for Atlantic menhaden during the quota managed period.
- a. Commercial fishers shall be prohibited from using purse seines to fish for Atlantic menhaden ~~on Fridays, Saturdays, and Sundays.~~

~~until the Director declares 50% of the annual commercial Atlantic menhaden quota is landed.~~

~~b. Commercial fishers shall be prohibited from using purse seines to fish for Atlantic menhaden on Fridays, Saturdays and Sundays during any period of time when the limited entry trip limit is set at 120,000 pounds. Once the Director declares 50% of the annual commercial Atlantic menhaden quota is landed, it shall be unlawful to use purse seines to fish for Atlantic menhaden on Saturdays and Sundays.~~

c. Commercial fishers shall not use purse seines that exceed 600 feet (100 fathom) length within the inshore restricted waters described at 322 CMR 4.02.

d. It shall be unlawful for a commercial fisher to use a purse seine that exceeds 450 feet long by 48 feet deep when fishing during a period when purse seines are authorized and the trip limit is at 6,000 pounds of Atlantic menhaden.

e. Effective in 2024, prior to the annual commencement of commercial purse seining activity for Atlantic menhaden, each commercial fisher shall have all nets inspected and certified by the Division as being in conformance with the relevant maximum purse seine net size requirements. Once inspected, DMF will certify the net by affixing a DMF Issued Tag. A certified net may be used throughout the duration of the certified calendar year, provided it is not altered in any manner affecting its overall dimensions. If the net is altered with regards to its overall dimensions, it must be reinspected and recertified prior to use. For the purpose of complying with 322 CMR 6.43(4)(b)5., DMF will accept purse seine inspections and certifications from states with similar programs.

6. Quota Closure. Except as provided at 322 CMR 6.43(5) and (6), it shall be unlawful to catch, retain, possess, land, sell, barter, exchange, or offer for sale, barter, or exchange any Atlantic menhaden once the Director has determined 100% of the annual commercial Atlantic menhaden quota has been landed. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

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6.44: Atlantic Mackerel Management

(1) **Definitions.** For the purposes of 322 CMR 6.44, the following terms shall have the following meanings:

Atlantic Mackerel means that species known as *Scomber scombrus*.

Commercial Fisher means any person who retains, possess, or lands Atlantic mackerel for the purpose of sale, barter, or exchange or keeps for personal or family use Atlantic mackerel taken under the authority of a commercial fishing permit and regulated fishery permit for Atlantic mackerel issued in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01: *Form, Use and Contents of Permits*.

Director means the Director of the Division of Marine Fisheries

Division means the Division of Marine Fisheries

Quota means the annual coastwide commercial quota for Atlantic mackerel set by the Mid-Atlantic Fishery Management Council and monitored by NOAA Fisheries.

Recreational Fisher means any person who harvests or attempts to harvest fish for personal or family use, sport or pleasure, and which are not sold, bartered, or exchanged.

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

(2) **Recreational Fishing Limit.** It shall be unlawful for any recreational fisher to harvest more than 20 Atlantic mackerel per calendar day or to possess more than 20 Atlantic mackerel while recreationally fishing.

(3) **Commercial Fishing.**

(a) **Permit Requirement.** To retain, possess, or land Atlantic mackerel in excess of the recreational fishing limit set forth at 322 CMR 6.44(2), a person shall obtain a commercial fishing permit and regulated fishery permit endorsement for Atlantic mackerel.

(b) Commercial fishers may retain, possess, and land Atlantic mackerel for use as bait in other commercial fisheries in quantities that exceed the recreational fishing limit set forth at 322 CMR 6.44(2).

(c) If a commercial fisher is recreationally fishing from shore, a private vessel, or charter vessel, it shall be unlawful to retain, possess, or land Atlantic mackerel in quantities exceeding the recreational fishing limit set forth at 322 CMR 6.44(2).

(d) **State Waters Trip Limit.** Within the waters under the jurisdiction of the Commonwealth, it shall be unlawful for any commercial fisher to retain, possess, or land more than 5,000 pounds of Atlantic mackerel during any trip or calendar day, whichever period of time is longer. Once NOAA Fisheries determines 80% of the quota has been taken, it shall be unlawful for any commercial fisher fishing in the waters under the jurisdiction of the Commonwealth to retain, possess, or land more than 2,500 pounds of Atlantic mackerel.

1. **Exemption to State Waters Trip Limit.** Vessels permitted by NOAA Fisheries to commercially harvest and land Atlantic mackerel may possess and land more than the state waters trip limit in Massachusetts provided the fish was lawfully caught outside of the waters under the jurisdiction of the Commonwealth; the vessel transits directly through the waters under the jurisdiction of the Commonwealth for the purposes of landing Atlantic mackerel; the vessel's gear is out of the water and stowed properly onboard while within the waters under the jurisdiction of the Commonwealth; and the vessel makes no stops upon entering the waters under the jurisdiction of the Commonwealth prior to landing unless so directed by the Massachusetts Environmental Police or authorized in writing by the Division.

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7.01 : Form, Use and Contents of Permits

(1) Definitions. For purposes of 322 CMR 7.01, unless the context requires otherwise, the following words shall have the following meanings:

At-sea Processing means to receive or transfer fish, fillet fish or shuck shellfish and/or freeze fish or shellfish. At-sea processing does not include the filleting of finfish for personal use as authorized pursuant to 322 CMR 6.41(2)(a): *Possession of Fish Parts by Commercial Fishers*; the evisceration of finfish, including the removal of codfish gonads and monkfish livers; the separating of monkfish tails from whole monkfish; and the shucking of bay scallops and sea scallops under the authority of a regulated fishery permit endorsement.

Bait means marine organisms including, but not limited to, fish, shellfish and seaworms exclusively used to attract and harvest other fish and shellfish.

Commercial Fishing means to take or harvest any fish or shellfish for purposes of sale, barter or exchange, or to keep for personal or family use any fish or shellfish taken under the authority of a commercial permit issued by the Director.

Commercial Purposes means the possession or attempted possession of any fish or shellfish in connection with any person, business or other undertaking intended for sale, barter, exchange or other forms of profit, excluding for-hire recreational fishing businesses permitted in accordance with 322 CMR 7.10(5).

Director means the Director of the Division of Marine Fisheries.

Harvest means to catch, dig, take or attempt to catch, dig or take any fish, shellfish or bait.

Immediate Family means a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, grandchild.

Land or Landing as used in 322 CMR 7.00, and in M.G.L. c. 130, § 80, means to transfer or attempt to transfer the catch of fish or shellfish 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.

Mobile Device means any electronic device that can be carried on one's person, such as a smartphone, which is capable of displaying a true, complete and legible image of a current and valid permit issued by the Division.

Mobile Gear means any movable fishing gear or nets which are set, towed, hauled, or dragged through the water for the harvest of fish, squid, and shellfish including, but not limited to, otter trawls, beam trawls, bottom and mid-water pair trawls, Scottish seines, Danish seines, pair seines, purse seines, and sea scallop dredges. For the purpose of this section, mobile gear does not include surf clam and ocean quahog dredges, bay quahog dredges or the use of moveable fishing gear by shellfish fishers authorized under a local permit to take shellfish and are fishing only within those city or town waters.

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Non-commercial means the harvest of fish, shellfish or bait for purposes of personal or family use only and not for purposes of sale, barter or exchange.

Online System means the online permitting systems for the issuance of permits issued by the Division of Marine Fisheries accessible via the agency's website. ~~means the online recreational permitting system of the Department of Fish and Game and the Division of Marine Fisheries, accessible via the Department's and the Division's website, which allows for the automated issuance of recreational saltwater and non-commercial lobster fishing permits. The purchase online of a recreational saltwater or non-commercial lobster permit requires an electronic signature made after an online affirmation under the pains and penalties of perjury by the applicant that the information provided is true and accurate and that the applicant shall comply with all applicable marine fisheries regulations.~~

Possession or to Possess means to have custody or control of, or to handle or hold.

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

Registered Length means that length set forth in either the U.S. Coast Guard or Massachusetts Boat and Recreational Vehicle Safety Bureau, whichever is applicable.

Shellfish means clams, conchs, limpets, mussels, oysters, periwinkles, quahogs, razor clams, bay scallops, sea scallops, surf clams, ocean quahogs and winkles.

Vessel means any commercial fishing vessel, boat, ship or other water craft registered under the laws of the Commonwealth (state) as defined in M.G.L. c. 130, § 1, and which is used exclusively to harvest fish or shellfish for purposes of sale, barter or exchange, and shall include any vessel documented under the laws of the United States to carry passengers for hire exclusively to harvest fish or shellfish.

- (5) Application. Applicants for a permit shall comply with the following requirements:
- (a) Forms. Applications for a permit shall be on forms supplied by the Director **or through the online system**. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
 - (b) Information. An application for a permit required by M.G.L. c. 130 and 322 CMR 7.01 shall contain and include the following:
 - 1. the name and address of the applicant;
 - 2. the date of birth of the applicant;
 - ~~3. the last four digits of either the applicant's social security number or federal identification number;~~
 - ~~4. for applicants for a commercial fishermen permit endorsed for shellfish, the applicant's Massachusetts driver's license number or Registry of Motor Vehicles identification number;~~
 - 3. the name of the commercial fishing vessel;
 - 4. the required length of the fishing vessel;
 - 5. the Massachusetts vessel registration number;
 - 6. the homeport of the commercial fishing vessel; and

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7. the true and accurate signature of the applicant;
 8. any other information sufficient to fully identify the particular activity to be undertaken and the intended use for the permit.
- (c) Conditions. The following permit applicants shall comply with the following conditions:
3. Master digger permit applicants shall submit with their application a valid bond as required by 322 CMR 7.02(2)(b);
 4. Dealer permit applicants shall submit with their application an approved health inspection certificate validly issued by the Department of Public Health pursuant to a health inspection of the applicant's premises;
 5. Seasonal lobster permit applicants shall submit **a letter from their school ~~an affidavit supplied by the Director signed under the pains and penalties of perjury~~** attesting to their full-time student status; and
 6. Shellfish and seaworm permit applicants shall, for a bay scallop endorsement, submit a certified sanitary inspection approved by the Massachusetts Department of Public Health.
- (d) Multiple Applications. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
- (e) Signature.
1. Paper Permits. For all permits renewed on forms issued by the Director, the applicant shall sign their name on the paper permit application and paper permit issues.
 2. Online System. For all permits issued through the online system, the applicant shall attest under the pains and penalties of perjury that all information provided is true and accurate, which affirms the applicant's electronic signature. ~~—Applicants for recreational saltwater fishing permits and non-commercial lobster fishing permits issued in accordance with 322 CMR 7.01(4)(b) and 7.10 through the Online System shall electronically sign their permit after making an online affirmation under the pains and penalties of perjury that the information provided is true and accurate and that the applicant shall comply with all applicable marine fisheries regulations.~~
 - ~~3. Applicants for all other permits issued to an individual in accordance with 322 CMR 7.01 shall sign their name on the paper application and the permit.~~
 3. Except as otherwise provided at 322 CMR 7.01(5)(f), whenever a permit is issued to a boat, vessel or business entity, the permit may be signed **or the attestation in the online system may be made by the ~~of the~~ owner** of the boat or vessel or by a duly authorized officer of the business entity that includes the true and correct business title of the duly authorized officer.
- (f) Exception. Coastal lobster permits shall be issued to and renewed by a named individual only. The permit application and the permit itself shall be signed by a named individual **or the attestation in the online system be made by the named individual** who shall be the holder. In no event may a coastal lobster permit be issued to or renewed by a business entity or an officer of a business entity.
- (g) Effect of Signature or Attestation in the Online System. The applicant's signature on either the paper application or ~~their electronic signature through the attestation in the online system~~ **Online System** shall constitute:
3. a declaration under the pains and penalties of perjury that all information contained in the application is true and accurate to the best belief of the applicant;

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4. a statement that the applicant and all individuals conducting the activity under authority of the permit have read and are familiar with all applicable statutes contained in M.G.L. c. 130, all applicable regulations contained in 322 CMR and agree to fully comply therewith; and
5. an agreement to display all fish in possession of the applicant and all individuals conducting the activity under authority of the permit to any officer authorized to enforce the marine fishery laws of the Commonwealth.

(h) Fees. All fees required in accordance with M.G.L. c. 130, § 83 shall accompany each application in the form of checks or money orders made payable to the Commonwealth of Massachusetts. Cash may be used only when the application is made in person. In the event an applicant's personal check is not honored by the payor or bank, the permit issued to such applicant shall be void until such time as the required fee in the form of a bank check, certified check or postal money order is received by the Director. Any activity conducted by the applicant under the purported authority of said permit five or more days subsequent to the mailing to the applicant of a notice of the dishonored check shall constitute a violation of the applicable provisions of M.G.L. c. 130 and 322 CMR.

(6) Issuance. Permits shall not be validly issued or of full force and effect unless the following **applicable** requirements are met:

- (a) identify the activity authorized or privilege granted by the Director;
- (b) contain a financial transaction number;
- (c) contain a permit number;
- (d) contain a date of issuance;
- (e) contain a true and accurate copy of the Director's signature; and
- (f) contain a true and accurate signature of the holder, or if a boat, vessel, or business entity, the owner, or duly authorized officer of the business entity including their business title. Except for permits issued by the online system whereby the attestation of permit holder affirms the requirements of the signature as set forth at 322 CMR 7.01(5)(e).

~~(a) Paper permits must:~~

- ~~1. identify the activity which is authorized or the privilege which is granted by the Director;~~
 - ~~2. contain a financial transaction number;~~
 - ~~3. contain a permit number;~~
 - ~~4. contain the date of issuance;~~
 - ~~5. contain a true and accurate copy of the Director's signature;~~
 - ~~6. contain a true and accurate signature of the holder, or if a boat, vessel or business entity, the owner, master or duly authorized officer of the business entity including his or her business title.~~
- ~~(b) Recreational salt water fishing permits and non-commercial lobster permits issued through the Online System must be based on a completed form provided by the Director through the Online System and electronically signed in accordance with 322 CMR 7.01(5)(e).~~

7.03: Coastal Lobster Permit and Trap Allocation Transfer Programs

(1) **Purpose and Scope.** The purpose of 322 CMR 7.03 is to regulate the number of lobster traps on a regional and individual basis to prevent over-fishing within each Lobster Conservation Management Area (LCMA) managed by the Commonwealth through the ASMFC, and to establish a process to enable the transfer of existing commercial lobster permits and traps pursuant to M.G.L. c. 130, § 38B, and St. 1992, c. 369.

The American lobster fishery is the state's most economically important fishery conducted within the territorial waters. To meet conservation goals of the interstate plan specific to the nearshore waters around eastern Cape Cod and Southern New England, the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) and Lobster Conservation Management Area 2 (LCMA 2) were developed, respectively. 322 CMR 7.03 details the effort control plans for the OCCLCMA and LCMA 2 comprised of trap limit programs and transfer programs as well as transfer regulations for the remainder of the coastal lobster fishery conducted in LCMA 1.

The transfer program for the coastal lobster fishery conducted in LCMA 1 allows permit holders to transfer their permits along with lobster related business assets under the historical transfer criteria developed for the coastal lobster fishery. Beginning in 2004, the only permit transfers allowed between LCMAs are those involving the transfer of a permit to an LCMA under management of an effort control plan. This will enable commercial fishermen to retain the maximum flexibility in the conduct of their businesses while ensuring conservation goals of any area-specific effort control plans are not comprised by increases in traps fished.

(2) **Definitions.** For the purposes of 322 CMR 7.03, the following words shall have the following meanings.

Actively Fished means landing and selling at least 1,000 lbs. of lobster or landing and selling lobster on at least 20 occasions, in a single year.

Allocation Transferee means the holder of a commercial lobster permit to whom a transfer of trap allocation is made.

Immediate Family means a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, grandchild.

Owner-operator means the individual named on the Coastal Lobster Permit must be onboard the vessel listed on the Coastal Lobster Permit when said vessel is at sea during a commercial fishing trip or the vessel is fishing for, retaining, possessing, or landing any fish taken under the authority of the Coastal Lobster Permit. This shall not extend to the sale of any fish harvested or landed under the authority of the Coastal Lobster Permit to a primary buyer authorized at 322 CMR 7.07, nor the overland transportation of any fish harvested or landed under the authority of the Coastal Lobster Permit for the purposes of sale to a primary buyer authorized at 322 CMR 7.07.

Permit Holder means a holder of a coastal commercial lobster permit endorsed for either LCMAs 1, 2 or OCC.

Permit Transferee means the person to whom a commercial lobster permit is transferred who must document that he or she has at least one year of full-time or equivalent part-time experience in the commercial lobster trap fishery or two years of full-time or equivalent part-time experience in other commercial fisheries, according to criteria developed by the Division.

Transfer Trap Debit means the area-specific percentage of each allocation transfer transaction retained by the Division for conservation purposes as defined by the Division and subject to criteria developed by the Division, and not restricted by the Director under his authority to condition permits.

(3) **Renewals.**

(a) The Director shall renew all existing Coastal Commercial Lobster Permits in accordance with M.G.L. c.130, § 38B, and 322 CMR 7.01(2)(a) and (5)(f), provided that catch reports and renewal applications are received by February 28th and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31st of any year.

(b) Coastal Lobster Permit holders are prohibited from multiple LCMA endorsements, except those commercial lobster permits held by persons with valid federal authorization for LCMA 3 who may additionally receive authorization for either LCMA 1, 2 or Outer Cape Cod or those commercial lobster permit holders not fishing with trap gear who may additionally receive authorization for LCMA 1, 2, or Outer Cape Cod.

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(c) Those authorized for more than one LCMA as designated on their permits shall observe the most restrictive of different regulations for the areas declared as established by 322 CMR and the ASMFC Lobster Management Plan.

(d) Coastal Lobster Permit holders are prohibited from making changes in area designations during the annual renewal period except to drop a LCMA or to add a LCMA under management of an approved effort control plan for which the permit holder has received a LCMA-specific trap allocation.

(4) Forfeiture. All Coastal Lobster Permits which are not renewed in accordance with 322 CMR 7.03 shall be forfeited to the Division. The Director may transfer, in order, no more than 50% of the forfeited permits to waiting list applicants.

(5) Transfer Programs.

(a) OCC Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No applications may be accepted after November 30th for the following fishing year. Commercial lobster permit holders endorsed for Outer Cape Cod may:

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. in compliance with 322 CMR 7.03(9)(d), transfer part of their transferable allocation in multiples of ten traps to an allocation transferee.

(b) LCMA 2 Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No trap allocation transfer applications may be accepted after November 30th for the following fishing year. Commercial lobster permit holders endorsed for LCMA 2 may:

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. transfer part of their transferable allocation in multiples of 10 traps to an allocation transferee.

(c) LCMA 1 Transfer Program enables commercial lobster permit holders endorsed for LCMA 1 to transfer their permits to a permit transferee, provided the permit has been actively fished for four of the last five years, as evidenced by valid catch reports filed with the Division, subject to criteria developed by the Division, and is not restricted by the Director under his authority to prohibit transfers. The transfer program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the transferee, and must be notarized prior to submission to the Division. Commercial lobster permit holders endorsed for LCMA 1 may transfer their commercial lobster permit involving the sale or transfer of lobster related business assets to a permit transferee.

(6) Restrictions.

(a) Transfers shall involve the sale or transfer of lobster related business assets.

(b) Permit and allocation transfers may be denied if any evidence of fraud is found, or the Director determines that the transfer is not in the best interests of the Commonwealth.

(c) All lobster businesses fishing under the authority of a coastal lobster permit as defined in 322 CMR 7.01(2)(a) shall be owner-operated.

(d) Trap Allocation transfers may be subject to a transfer trap debit of 10% of the total amount of traps transferred through the trap transfer process.

(e) Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13: *Lobster Trap Limit in the Coastal Waters of the Commonwealth* shall be prohibited from transferring any part of their trap allocation except when transferring their commercial lobster permit.

(f) Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13: *Lobster Trap Limit in the Coastal Waters of the Commonwealth* shall be prohibited from transferring their trap allocation along with their commercial lobster permit until the permit has been actively fished for four of the last five years as evidenced by valid catch reports filed with the Division, subject to criteria developed by the Division, and not restricted by the Director under his authority to prohibit transfers. Catch history prior to the issuance of a trap allocation shall not apply towards fulfilling meeting actively fished requirements.

(7) Exceptions.

(a) The permit holder's actively fished performance criteria for the Coastal Lobster Transfer programs, established at 322 CMR 7.03(5), may be waived by the Director in instances of posthumous transfer; a recent disability to the Coastal Lobster Permit holder; or for persons

on active military duty, provided the permit holder actively fished their permit for four out of the past five years prior to death, disability, or military duty. In the case of disability, there must be a signed statement from a physician that verifies the disability prevented the permit holder from fishing.

(b) The permit holder's actively fished performance criteria **and the permit transferee's experience criteria** for Coastal Lobster Transfer programs ~~, established at 322 CMR 7.03(5)~~ may be waived for **posthumous** transfers to immediately family.

~~Performance criteria established by 322 CMR 7.03(5) shall be waived for forfeited permits issued to waiting list applicants.~~

(c) The requirement that permit holders be owner/operators may be waived through a letter of authorization issued by the Director that is subject to annual renewal. Letters of authorization may be issued for use of the permit and associated fishing operation that includes the gear and vessel owned by the permit holder that was actively fished prior to the request. Authorizations may be issued for permit holders on active military service or for immediate family members. For the recipient of a posthumous transfer, or disabled permit holder, authorizations may be issued for up to two years, provided the disability prevents the permit holder from fishing their permit as evidenced by a signed statement from a physician.

(7) **Reserved.** ~~Waiting List. Persons on the established waiting list for Coastal Commercial Lobster Permits must reapply to hold their relative positions on the list prior to August 1, 1993, after which the list will be closed. Persons who can document, to the satisfaction of the Director, that, due to unforeseen circumstances, they were unable to reapply before the list closure date may be reinstated to the bottom of the waiting list.~~

(8) **Prohibitions.** It shall be unlawful:

- (a) To loan, lease, or sell a Coastal Commercial Lobster Permit except under the provisions of 322 CMR 7.03.
- (b) To submit false or incomplete forms or applications according to the provisions of M.G.L. c. 130, § 38B.
- (c) For the holder of a Coastal Commercial Lobster Permit to acquire an additional permit(s) through a transfer pursuant to 322 CMR 7.03 or from the established waiting list unless specifically authorized by the Director as a means to mitigate trap allocation cuts required by the interstate management plan.
- (d) for a permit holder to retain a trap allocation greater than 800 traps after they receive a trap allocation from another permit holder, unless specifically authorized by the Director as a means to mitigate trap allocation cuts required by the interstate management plan;
- (e) for allocation transfers to involve the transfer of traps outside of the specific LCMA for which the trap allocation is designated;
- (f) to transfer a commercial lobster permit from one LCMA to another LCMA, unless the permit is transferred to an LCMA under management of an approved effort control plan for which the permit holder has received an LCMA-specific trap allocation.

7.06: Limited Entry Permits

(1) Definitions.

Black Sea Bass means that species of fish known as *Centropristes striata*.

Black Sea Bass Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 322 CMR 7.06, that authorize commercial fishing for black sea bass in accordance with the regulations set forth at 322 CMR 6.28.

Black Sea Bass Pot Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 7.06, that authorize a named individual to use black sea bass pots, as defined at 322 CMR 6.12(1): *Definitions*, for the taking of black sea bass for commercial purposes.

Bluefish Gillnet Permit Endorsement means those limited entry regulated fishery permit endorsements issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 322 CMR 7.06, that authorize commercial fishing with a bluefish gillnet in accordance with the regulations set forth at 322 CMR 6.18.

Coastal Access Permit means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130 §§ 2 and 80, and 322 CMR 7.01, 7.05 and 7.06, that authorize the permit holder to use mobile gear in the waters under the jurisdiction of the Commonwealth.

Coastal Commercial Lobster Permit means the commercial **fishing fisherman** permit, issued and managed pursuant to M.G.L. c. 130, §§ 2, 37 and 38, and 322 CMR 7.01(2) and 7.03, that authorizes a named individual to fish for, possess and land lobsters and finfish taken from the waters under the jurisdiction of the Commonwealth for commercial purposes.

Conch Pot Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 7.06, that authorize a named individual to use conch pots, as defined at 322 CMR 6.12(1): *Definitions*, for the taking of whelks for commercial purposes.

Director means the Director of the Division of Marine Fisheries

Fish Pot Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements for black sea bass pots, scup pots and conch pots, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 7.06.

Immediate Family Member means a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild. ~~means the legal father, mother, wife, husband, sister, brother, son, daughter, grandparent or grandchild.~~

Limited Entry Regulated Fishery Permit Endorsement means any regulated fishery permit endorsement that is issued, pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a), and is limited in distribution to renewals only and may be transferred in accordance with this section. Limited entry regulated fishery permit endorsements include, but are not limited to: Atlantic menhaden; black sea bass; black sea bass pots; bluefish gillnets; bluefin tuna seines; coastal access permits; conch pots, fluke, horseshoe crabs, sink gillnets; ocean quahog, scup pots, state-waters groundfish, surf clams, and quahog dredges.

Menhaden means that species of fish known as *Brevoortia tyrannus*.

Menhaden Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 322 CMR 7.06, that authorize a named individual to commercially fish for menhaden in accordance with the regulations set forth at 322 CMR 6.43.

Owner-operator means the individual named on the commercial **fishing fisherman** permit must be onboard the vessel listed on the said commercial **fishing fisherman** permit when the vessel is at sea during a commercial fishing trip and fishing for, retaining, possessing, or landing any fish taken under the authority of the limited entry regulated fishery permit endorsement appurtenant to said commercial **fishing fisherman** permit. This shall not extend to the sale of

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any fish harvested or landed under the authority of the limited entry regulated fishery permit endorsement to a primary buyer authorized at 322 CMR 7.07, nor the overland transportation of any fish harvested or landed under the authority of that limited entry regulated fishery permit endorsement for the purpose of sale to a primary buyer authorized at 322 CMR 7.07.

Regulated Fishery Permit Endorsement means any required special permit, issued in accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(4)(a), for a fishery, gear type or fishing activity regulated by the Director in the form of an endorsement to the commercial fishing permit.

Scup means that species of fish known as *Stenotomus chrysops*.

Scup Pot Regulated Fishery Permit Endorsement means those regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 7.06, that authorize a named individual to use scup pots, as defined at 322 CMR 6.12(1): *Definitions*, for the taking of scup.

Tautog means that species of fish known as *Tautoga onitis*.

Tautog Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 322 CMR 7.06, that authorize commercial fishing for tautog in accordance with the regulations set forth at 322 CMR 6.40.

Whelk means those species known as *Busyon carica* (knobbed whelk) and *Busycotypus canaliculatus* (channeled whelk).

(2) Renewal of Limited Entry Regulated Fishery Permit Endorsements. Annual applications for the renewal of limited entry regulated fishery permit endorsements, which shall include any catch reports or other documentation required by any provision of M.G.L. c. 130, and 322 CMR must be post marked or otherwise marked with the date of receipt by the Division of Marine Fisheries no later than 12:00 A.M. on the last day of February. Renewal applications not post marked or otherwise received by the Division of Marine Fisheries by this deadline may be denied and returned to the applicant. Limited entry regulated fishery permit endorsements that are not post marked or received by the Division of Marine Fisheries prior to 12:00 A.M. on the last day of February may not be approved by the Director.

(3) Retiring of Limited Entry Regulated Fishery Permit Endorsements. All limited entry regulated fishery permit endorsements that are not renewed in accordance with 322 CMR 7.06(2) are automatically forfeited to the Division of Marine Fisheries. All forfeited limited entry regulated fishery permits are retired.

(4) Transfers of Limited Entry Regulated Fishery Permit Endorsements.

(a) Transfer Eligibility Criteria. Limited entry regulated fishery permit endorsements are nontransferable, unless approved by the Director. The Director may approve the transfer of a limited entry regulated fishery permit endorsement subject to the following criteria:

1. The holder of the limited entry regulated fishery permit endorsement is in good standing with the marine fisheries laws and regulations at M.G.L. c. 130, and 322 CMR.
2. The limited entry regulated fishery permit endorsement has been actively fished during four of the last five years, as evidenced by commercial fisherman catch reports and SAFIS dealer reports. Final determination of active fishing shall be specified in written policy provided by the Director. **Except that black sea bass, fluke, and tautog limited entry regulated fishery permit endorsements need only to have been actively fished during two out of the last five years, as evidenced by commercial fisher catch reports and SAFIS dealer reports.**
3. If a permit holder transfers a limited entry regulated fishery Coastal Access Permit endorsement or a Coastal Lobster Permit other limited entry regulated fishery permit endorsements held in conjunction with that permit or permit endorsement may be transferred as part of that transaction, at the request of the permit holder and with approval of the Director.

(b) Transferee Eligibility Criteria.

1. Fish Pot Regulated Fishery Permit Endorsements. To be eligible to obtain a transferable limited entry regulated fishery fish pot permit endorsement, the transferee must document that he or she has one year full-time or the equivalent part-time commercial fishing experience in a commercial pot fishery or two-year full-time or the equivalent part time commercial fishing experience in another commercial fishery, as determined by the Director.

2. All Other Limited Entry Regulated Fishery Permit Endorsements. To be eligible to obtain any limited entry regulated fishery permit endorsement, other than a limited entry regulated fishery fish pot permit endorsement, the transferee must document that he or she has one year full-time or the equivalent part-time commercial fishing experience in a commercial fishery, as determined by the Director.
 - (c) Exceptions to Transfer Eligibility Criteria.
 1. The actively fished performance criteria established at 322 CMR 7.06(4)(a)2. may be waived in instances of a posthumous transfer; a recent disability to the permit holder; or for persons on active military duty, provided that the limited entry regulated fishery permit endorsement was fished four out of the five years preceding the death, disability or military duty. In the case of disability there must be a signed statement from a physician that verifies that the disability prevents the permit holder from fishing. Final determination of active fishing shall be specified in written policy provided by the Director.
 2. The **permit holder's actively fished criteria and the transferee's** experience criteria at 322 CMR 7.06(4)(~~b~~) may be waived for **posthumous** transfers to immediate family members.
 3. **The transfer of regulated fishery permit endorsements for fluke or black sea bass which accompany the transfer of a federal permit for fluke or black sea bass.**
 - (d) Restrictions.
 1. Transfers shall involve the sale or transfer of fishing-related business assets.
 2. Transfers may be denied if any evidence of fraud is found, or if the Director determines that the transfer is not in the best interests of the Commonwealth.
 - (e) Restrictions Specific to the Coastal Access Permit.
 1. Coastal Access Permits are authorized for use on a specific vessel. If the Coastal Access Permit is issued to the recipient of a transfer, the vessel that is authorized may be either the same vessel as the original permit holder or another vessel that does not exceed by more than 20% the horsepower of the original vessel, nor exceed by more than 10% the length overall, gross registered or net tonnage of the original vessel for which the Coastal Access Permit was issued. Vessel length overall shall not exceed that specified in 322 CMR 7.05(13).
 2. No person or corporation may hold more than 5% of the existing Coastal Access Permits issued by DMF.
 3. The recipient of a transfer, after obtaining a permit, may not transfer the permit until he or she has fished said permit for two years. This requirement may be waived in instances of a posthumous transfer, a recent disability to the permit holder, or active military duty, provided the performance criteria at 322 CMR 7.06(4)(a)2. were met before death, disability or military service occurred.
- (5) Owner-operator Requirements. All Fish Pot Regulated Fishery Permit Endorsements and Menhaden Regulated Fishery Permit Endorsements are issued to a named individual who shall be the owner-operator of that commercial fishing business. This requirement may be waived by means of a letter of authorization from the Director for:
- (a) immediate family;
 - (b) active military duty; or
 - (c) for up to two years for good cause, including death or disability to the permit holder, subject to annual renewal. In all instances, the performance criteria at 322 CMR 7.06(4)(a)2. shall be met prior to the request for a letter of authorization.

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8.05: Commercial Groundfish Closures

- (3) May in Massachusetts Bay from Boston to the New Hampshire Border. Except as provided at 322 CMR 8.05(9), from May 1st through May 31st, it is unlawful for **a** commercial fisher~~men~~ to fish for, possess or land regulated groundfish species taken within the waters under the jurisdiction of the Commonwealth from latitude 42°25'20~~1~~—north to the Massachusetts/New Hampshire border.

16.02: General Definitions

The following definitions apply for the purposes of M.G.L. c. 130, and 322 CMR 16.00:

Approved Area means any shellfish growing area classified, pursuant to M.G.L. c. 130, § 74 or 74A, as Approved or Conditionally Approved, and not in a closed status pursuant to M.G.L. c. 130, § 74A or under the provisions of a Conditional Area Management Plan.

Approved Standard Source of Ice means ice obtained from facilities permitted to manufacture ice pursuant to 105 CMR 500.000: *Good Manufacturing Practices for Food* or retail food facilities permitted to sell ice pursuant to 105 CMR 590.000: *State Sanitary Code Chapter X- Minimum Sanitation Standards for Food Establishments*.

Bay Scallop means that species of shellfish known as *Argopectin irradians* and may be commonly referred to as a scallop.

Channeled Whelk means that species known as *Busycotypus canaliculatus*.

Closed Status means that a shellfish growing area classified as Approved, Conditionally Approved, Restricted or Conditionally Restricted has been closed to shellfish harvesting activities pursuant to M.G.L. c. 130, § 74A or, in the case of a Conditionally Approved area, when the municipality closes an area under provisions of a Conditional Area Management Plan.

Commercial Fisherman means any person who may catch, possess and land shellfish for the purpose of sale, barter or exchange or keeps for family use any shellfish taken under the authority of a commercial **fishing fisherman** permit issued by the Director pursuant to M.G.L. c. 130, §§ 2, 75 and 80, and 322 CMR 7.01(2): *Commercial **Fishing Fisherman** Permits*. This shall include shellfish aquaculturists and wild shellfish harvesters.

Commercial Fishing means fishing for shellfish for the purpose of sale, barter or exchange.

Commercial Purposes means the possession or transportation of any shellfish for any fare, fee, rate, charge, sale, exchange, trade or other consideration that is either directly or indirectly in connection with any business or any other undertaking intended for profit.

Conditional Area Management Plan means a plan required by the NSSP that is approved by the Division and sets forth the criteria and performance standards to open and close Conditionally Approved and Conditionally Restricted shellfish growing areas to the harvest of shellfish.

Container means any bag, sack, tote, conveyance or other receptacle used for containing shellfish for holding or transporting.

Contaminated Area means any shellfish growing area classified, pursuant to M.G.L. c. 130, § 74 or 74A, as Prohibited, Restricted, Conditionally Restricted, Conditionally Approved or Approved and in a closed status.

Contaminated Shellfish means any shellstock within or taken from any contaminated area.

Contaminated Transplant or Relay means the transfer of any sized shellfish by municipalities from a Restricted, Conditionally Restricted or Conditionally Approved shellfish growing area in the closed status to any Approved or Conditionally Approved area for propagation and natural purification to enhance the public shellfisheries.

Cull means to discard undersize or broken shellfish during harvest by fishers~~men~~ or shellfish aquaculturists; or the sorting, grading and cleaning of shellfish for purposes of sale; or replanting of shellfish at the licensed shellfish aquaculture grant site by a shellfish aquaculturist or their employee.

Culture Activity means those activities conducted by shellfish aquaculturists or their employees that are authorized in writing by the Director and occur at locations other than the licensed shellfish aquaculture grant site. This includes, but is not limited to, the sorting, cleaning, culling, grading, pitting or over-wintering of cultured shellfish.

Dealer means any person, business or entity that is permitted in accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(3): *Dealer Permits* to purchase, or sell shellfish at a wholesale or retail level.

Depuration means the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.

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Director means the Director of the Division of Marine Fisheries or his or her designee.

Discard means to return live shellfish to the sea.

Division means the Massachusetts Division of Marine Fisheries.

European Oyster means that species of shellfish known as *Ostrea edulis*.

FDA means the United States Food and Drug Administration.

Fishing or Fish For means to harvest, catch or take, or attempt to harvest, catch or take any shellfish. For vessels using mobile gear, a vessel is presumed to be fishing unless the dredge gear is out of the water and secured to the vessel's side or stern, or otherwise stowed.

Growing Area means any site which supports or could support the propagation of shellfish by natural or artificial means. The Division has listed and mapped all growing areas in the waters under the jurisdiction of the Commonwealth and these geographic areas are made available to the public on the Division's website at www.mass.gov/marinefisheries.

Icing means to apply ice made from a DMF approved potable water source to shellfish for temperature control.

Knobbed Whelk means that species known as *Busycon carica*.

Land means to transfer or attempt to transfer shellfish onto any land, pier, wharf, dock or other artificial structure or for a vessel with any shellfish onboard to tie-up to any dock, pier or artificial structure.

Lot means containers of shellfish identified with the same time of removal from a single defined growing area gathered by a single permit holder.

Market Bound means all shellfish removed from a shellfish growing area by a commercial fisherman intended for commercial purposes on that calendar day.

Market Sized means any shellfish that conform to minimum shellfish sizes, as established at 322 CMR 6.00: *Regulation of Catches*, and may be harvested and sold for commercial purposes.

Model Ordinance or MO means that part of the most recent version of the *National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish* that sets forth the requirements that states have agreed to enforce through their participation in the Interstate Shellfish Sanitation Conference (ISSC), which are minimally necessary for the sanitary control of shellfish produced from that state to ensure that it is safe for human consumption.

Moderately Contaminated Shellfish means any shellstock within a shellfish growing area classified as Restricted or Conditionally Restricted in the open status.

National Shellfish Sanitation Program or NSSP means the cooperative State, FDA, Industry program for the sanitary control of shellfish that is adequate to ensure that the shellfish produced in accordance with these guidelines will be safe and sanitary.

Ocean Quahog means that species of shellfish known as *Arctica islandica* and may be commonly referred to as a sea quahog or mahogany quahog.

Open Status means a shellfish growing area classified as Approved, Conditionally Approved, Restricted or Conditionally Restricted that has not been closed pursuant to M.G.L. c. 130, § 74 or under provisions of a Conditional Area Management Plan.

Oyster means that species of shellfish known as *Crassostrea virginica* and also commonly known as the eastern oyster or American oyster.

Primary Buyer means any wholesale dealer, permitted in accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(3): *Dealer Permits* and further authorized by the Director pursuant to 322 CMR 7.07: *Dealers Acting as Primary Buyers* to engage in the primary purchase of shellfish from any permitted commercial fisherman.

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

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Prohibited Shellfish Growing Area means a growing area classified pursuant to M.G.L. c. 130, § 74 or 74A as Prohibited, where the harvest of shellfish is prohibited for any purpose, except if otherwise approved by the Director for the purposes of depletion or the nursery grow-out of seed for aquaculture and propagation.

Propagation means any shellfish planting activity conducted by municipalities or the Division to increase the supply of shellfish available to the public fishery.

Public Health means the Massachusetts Department of Public Health.

Sanitation Device means a U.S.C.G. approved sewage disposal device, toilet or receptacle designed to prevent the overboard discharge of sewage or bodily fluids. This device shall conform to the regulations set forth at 33 CFR 159.57.

Sea Scallop means the species known as *Placopecten magellanicus* and commonly known as the Atlantic deep sea scallop.

Seed means shellstock that is less than the minimum size prescribed at 322 CMR 6.20: *Quahogs, Soft Shelled Clams and Oysters*.

Shellfish means blood arcs, clams, conchs, limpets, mussels, american oyster, european oyster, periwinkles, quahogs, razor clams, bay scallops, surf clams, ocean quahogs, sea scallops, softshell clams, whelks and winkles.

Shellfish Aquaculture means the planting and raising of shellfish at a specific location, licensed in accordance with M.G.L. c. 130, § 57, which results in the commercial production of shellfish.

Shellfish Aquaculturist means any person permitted by the Division pursuant to M.G.L. c. 130, §§ 2, 17B and 80, and 322 CMR 7.01(4)(c): *Special Project* and 322 CMR 15.04: *Permits* to plant and raise shellfish at a specific location, licensed in accordance with M.G.L. c. 130, § 57, which results in the commercial production of shellfish.

Shellfish Aquaculture Grant Site means the specific portion of the coastal waters of the Commonwealth granted by the municipality where a shellfish aquaculturist is licensed to propagate shellfish in accordance with M.G.L. c. 130, § 57.

Shellstock means any live shellfish in the shell.

Shuck means the removal of one or both shells to process, remove and retain only the meat or the adductor muscle from the shellstock.

Standard Fish Tote means a container that does not exceed the volume of 6,525 cubic inches.

Surf Clam means that species of shellfish known as *Spisula solidissima* and may be commonly referred to as a sea clam or Atlantic surf clam.

Time of Harvest means for sub-tidal areas when the first piece of shellfish in a lot is taken from the water on any calendar day. Time of harvest for intertidal areas means when the first piece of shellfish in a lot is exposed during a single low tide cycle or when the first piece of shellfish in a lot is taken from the water or sediment, whichever occurs first.

Trip means that period of time that begins when a fishing vessel or shellfish harvester departs from a dock, berth, beach, mooring, seawall, ramp or port to carry out a commercial fishing operation and terminates with the return to that dock, berth, beach, mooring, seawall, ramp or port, or with the landing of any fish.

Vessel means any commercial fishing vessel, boat, ship or other water craft registered under the laws of the Commonwealth, as defined at M.G.L. c. 130, § 1, and which is used to harvest shellfish for any purpose of sale, barter, or exchange and shall include any vessel authorized under the laws of the United States to carry passengers for-hire exclusively to harvest shellfish.

Wet Storage means the storage by a dealer of shellstock from an Approved growing area in the open status or a Conditionally Approved growing area in the open status in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater at any permitted land-based activity or facility. When engaged in the wet storage of shellfish at its Newburyport Shellfish Depuration Plant, the Division does not act as a dealer for the purpose of Wet Storage and therefore does not require a separate permit or other authorization for such activity.

16.04: The Sanitary Harvest, Handling and Transportation of ~~Market Bound~~ Shellfish

(1) Purpose. The purpose of 322 CMR 16.04 is to set forth the requirements applicable to the sanitary harvest, handling and transportation ~~of shellfish~~ by commercial ~~fishers~~ ~~fishermen of market-bound shellfish~~ to prevent the contamination and deterioration of such shellfish and to safeguard public health. The additional requirements that apply to the harvest of oysters during the *Vibrio parahaemolyticus* (*Vp*) control season are set forth in 322 CMR 16.07.

(2) Vessels Used in the Harvest and Transport of Shellstock.

- (a) Vessels used in the harvest and transport of shellstock shall be kept clean and free of debris during the harvest and transport of shellstock.
- (b) Vessels used in the harvest and transport of shellstock shall have a sanitation device secured onboard the vessel in a manner that prevents the contamination of shellstock. The sanitation device shall be constructed of impervious, cleanable materials and have a tight fitting lid. The sanitation device shall be indelibly marked in a contrasting color “HUMAN WASTE” in letters that are at least three inches in height.
- (c) No dogs, cats and other pets shall be onboard the vessel while harvesting or transporting market bound shellstock.
- (d) Shellstock shall be stored onboard the vessel in raised areas to prevent contact with bilge water, fuel, oil or other chemicals and covered to prevent exposure to hot sun and birds.

(3) Containers of Shellstock.

- (a) Following harvest, market bound shellstock shall be stored in containers.
- (b) Containers of shellstock shall be transported in a manner that prevents exposure to the sun and defecation by birds.
- (c) Materials in direct contact with shellstock shall be smooth, easily cleanable and impervious to water.

(4) Washing of Market Bound Shellfish and Shellstock.

- (a) All market bound shellfish and shellstock shall be washed reasonably free of bottom sediments as soon after harvesting as practicable and prior to loading onto a vehicle for transportation for sale to a Massachusetts wholesale dealer with a primary buyer endorsement for shellfish, permitted in accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(2): *Commercial ~~Fishing~~ ~~Fisherman~~ Permits* and 322 CMR 7.07: *Dealers Acting as Primary Buyers* or prior to the sale to such dealer, whichever action occurs first.
- (b) All market bound shellfish and shellstock shall be washed with either potable water or seawater from the growing area where the shellfish and shellstock was harvested from or from another growing area with the same classification and in the open status.
- (c) It shall be unlawful to wash market bound shellfish or shellstock with seawater taken from:
 - 1. a growing area classified as Prohibited;
 - 2. a growing area classified as Restricted, Conditionally Restricted, Conditionally Approved or Approved while in a closed status; or
 - 3. a growing area with a classification and status other than the growing area where harvested.

(5) ~~Sanitary Post-harvest~~ Icing of Shellfish.

- (a) Restrictions on the Source of Ice Used in the Post-harvest Icing of Shellfish. Except as provided at 322 CMR 16.04(5)(b), it shall be unlawful for any commercial fisher~~man~~ to ice shellstock with ice obtained from any source other than an approved standard source of ice.
- (b) Exceptions. Subject to the conditions in 322 CMR 16.04(5)(b)1., a commercial fisher~~men~~ may ice shellstock with ice obtained from sources other than an approved standard source of ice.
 - 1. Potable Water Source. Ice shall be made from a potable water source that meets the drinking water quality standards in the Massachusetts Department of Environmental Protection’s regulations at 310 CMR 22.00: *Drinking Water*.
 - a. Municipal Drinking Water Sources. Compliance with drinking water quality standards at 310 CMR 22.00: *Drinking Water* shall be documented through annual water quality reports or other data or information from the municipal public water supplier.
 - b. Non-municipal Water Sources. Compliance with drinking water quality standards at 310 CMR 22.00: *Drinking Water* shall be documented by proof of water quality testing completed within the previous six months by a laboratory certified by the Massachusetts Department of Environmental Protection or the U.S. Environmental Protection Agency to perform drinking water analyses in accordance with standard water quality testing methods.

2. Ice Machines and Ice Makers.
 - a. Schematics for ice machines or makers shall be maintained that demonstrate adequate protection from backflow or back-siphonage; adequate air gaps in all drain pipes; food grade fittings and hosing; and adequate protection from water supply reservoirs.
 - b. Ice machines and ice makers, including all bins, nozzles and enclosed components, shall be cleaned at the frequency specified by the manufacturer, or absent manufacturer specifications, at a frequency necessary to preclude the accumulation of soil or mold.
 - c. A sanitation log shall be maintained that includes information on the dates and times the ice machine or ice maker was cleaned and the initials of the individual who conducted the cleaning.
 3. All documents and records required to be maintained pursuant to 322 CMR 16.04 shall be made available upon request by either the Division or the Massachusetts Environmental Police. Failure to produce such documents and records upon request shall be *prima facie* evidence of a violation of 322 CMR 16.04(5).
- (6) Commercial Harvest and Sale of Shellfish and Shellstock.
- (a) Commercial fisher~~men~~ shall sell shellfish only to a Massachusetts wholesale dealer with a primary buyer endorsement for shellfish, permitted in accordance with M.G.L. c. 130, § 80, and 322 CMR 7.01(2): *Commercial Fishing Fisherman Permits* and 322 CMR 7.07: *Dealers Acting as Primary Buyers*.
 - (b) Commercial fisher~~men~~ shall not handle or store shellfish at a facility that has not been authorized by Public Health or municipal Boards of Health prior to the sale of the shellfish to a wholesale dealer. **The sale of shellfish between a commercial fisher and a wholesale dealer shall occur at the landing site, the wholesale dealer's facility, or at a municipally managed site approved by the Director.**
 - (c) Commercial fisher~~men~~ shall deliver shellfish to a Massachusetts wholesale dealer on the same calendar day the shellfish was harvested. During the period of May 1st through October 31st, all shellstock shall be sold to a wholesale dealer within 18 hours of the harvest of the shellstock, unless they are surf clams or ocean quahogs intended for thermal processing only.
 - (d) **It shall be unlawful for any commercial fisher to harvest shellfish from one half hour before sunset to one half hour before sunrise.**
- (7) Exemptions. The provisions of 322 CMR 16.04 shall not apply to the commercial harvest, handling or transportation of moderately contaminated shellfish conducted in accordance with 322 CMR 10.00: *Management of Moderately Contaminated Shellfish*.

16.05: Tagging of Shellfish

(1) Requirements to Tag Containers of Market Bound Shellfish. All commercial fisher~~men~~ harvesting shellfish for commercial purposes shall affix a tag with the features and information specified at 322 CMR §16.05(1)(a). to each container of shellfish prior to landing.

(a) Tag Features and Required Information. The tag shall be comprised of durable and waterproof material and at least 13.8 square inches in size and at least 2 5/8 inches in height by 5 1/4 inches in width. The tag shall contain, in order specified, the following information written in indelible ink:

1. The full name of the harvester;
2. The commercial shellfish permit identification number assigned by the Division;
3. The date and time of harvest;
4. The type of shellfish harvested;
5. The quantity of shellfish harvested;
6. The initials of the state of harvest;
7. The **most specific alpha-numeric sequence, including any decimals, that describes the** shellfish growing area name and number from where the shellfish was harvested;
8. The licensed shellfish aquaculture grant site number, if applicable; and
9. The following statement in bold and capitalized letters:
“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS
EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90
DAYS.”

(b) Requirements for Dealers Accepting Shellfish. Dealers accepting shellfish from any person shall ensure that all containers of shellfish are properly tagged as required by 322 CMR 16.05.

(2) Prohibitions. It shall be unlawful for:

- (a) Any person to land or transport shellfish for commercial purposes unless each container of such shellfish bears a tag that strictly conforms to the requirements of 322 CMR 16.05;
- (b) Any dealer to accept any container of shellfish from any person unless each container of such shellfish bears a tag that strictly conforms to the requirements of 322 CMR 16.05; and
- (c) It shall be unlawful for any person to bulk tag shellfish in transport for commercial purposes, except that shellfish aquaculturists who are also wholesale dealers and primary buyers of shellfish may bulk tag shellfish taken from their licensed shellfish aquaculture grant site for transport to their wholesale dealer facility in accordance with a Bulk Tagging Plan approved by the Director.

(3) Exemption. The prohibitions at 322 CMR 16.05(2) shall not apply to containers of shucked bay scallops and sea scallops or to shellfish harvested in accordance with 322 CMR 10.00: *Management of Moderately Contaminated Shellfish.*

(4) When harvest occurs in an inter-tidal area and time of harvest is accurately recorded as the time when the first piece of shellfish in a lot is exposed during a single low tide cycle, then the time of harvest recorded on the shellfish tag shall not be deemed a violation of the prohibition on nighttime fishing at M.G.L. c. 130, § 68.

16.07 *Vibrio* Management Plan for Harvest and Handling of Oysters

16.08

(1) Purpose. The purpose of 322 CMR 16.07 is to set forth the protocols and performance standards of the *Vibrio* Management Plan for shellfish harvesters and dealers to minimize the risk to consumers of pathogens, including *Vibrio parahaemolyticus* (*Vp*) associated with consumption of raw oysters. 322 CMR 16.07 applies to commercial **fishers fishermen** and dealers possessing shellstock oysters.

(2) Definitions. For the purpose of 322 CMR 16.05, the following terms hold the following meanings:

Adequately Iced means the amount and methods of applying ice to completely surround all the oysters in a shellfish icing container to ensure their immediate and ongoing cooling, as further specified at 322 CMR 16.07(3).

Adequately Shaded means the measures required to be taken to protect oysters from direct exposures to sunlight.

Broadcast Re-submergence means the return of loose, market-sized oysters to the waters of the original licensed shellfish aquaculture grant site from which they were harvested following the off-site culling and/or oyster culture activities requiring re-submergence, specified in 322 CMR 16.07(4).

Market Bound Oysters means all oysters removed from a designated shellfish growing area by a commercial fisherman intended for commercial purposes on that calendar day.

Market Sized Oysters means those oysters that measure at least three inches shell length or 2½ inches shell length for those shellfish aquaculturists authorized by the Division pursuant 322 CMR 6.20(3): *Restrictions on Oysters and Quahogs Raised by Aquaculturists and Sold to Dealer* to possess and sell "petit" oysters.

Off-site Culling means an aquaculture practice of temporarily removing shellfish from the licensed shellfish aquaculture grant site to a shellfish aquaculturists' permitted off-site culling location for the purposes of sorting, grading and cleaning the individual shellfish.

Oyster Culture Activities means activities conducted by some shellfish aquaculturists that involve the removal of oysters from the waters of the licensed shellfish aquaculture grant site for the purposes of sorting, culling, grading, pitting, over-wintering and/or the removal of fouling organisms to enhance oyster marketability.

Re-submergence means the return of market size oysters back to the water of the licensed shellfish aquaculture grant site from which they were harvested after being previously removed for off-site culling and/or oyster culture activities, or after being returned by a primary buyer, as a result of recall specified at 322 CMR 16.07(4).

Shellfish Icing Container means a conveyance that is smooth, in good condition, is easily cleaned, impervious to water, insulated, self-draining, has a tight fitting lid, and a light-colored exterior.

Time of Icing means the time when the last oyster or bag of oysters in a harvester's lot is placed in a shellfish icing container and is adequately iced in accordance with the procedure at 322 CMR 16.07(3).

Vp Logbook means the Division issued logbook required to be used by all commercial fishermen during the *Vp* season to record required icing and re-submergence information described at 322 CMR 16.07(3) and (4).

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Vp Season means the time period from May 19th through October 19th when the Vibrio Management Plan is in effect.

- (3) Commercial Harvester Restrictions. The following shall apply to all commercial **fishers fishermen** harvesting oysters during the Vp season.
- (a) Icing Requirements.
1. General Time to Icing. All commercial **fishers fishermen** shall adequately ice oysters, as defined in 322 CMR 16.07(2), within two hours of time of harvest or exposure, or prior to leaving the point of landing, whichever occurs first. Oysters must remain adequately iced until received by a wholesale dealer. **This requirement shall be waived if the responsibility for icing is taken on by the wholesale dealer at the landing site at primary purchase and the primary purchase occurs within two hours of time of harvest.**
 2. Seasonal Time to Icing Requirements for Certain Growing Areas. From July 1st through September 15th, all commercial **fishers fishermen** who are harvesting oysters in shellfish growing areas CCB-42, CCB-43, CCB-44, CCB-45, CCB-46, CCB-47 and V-20, shall adequately ice oysters, as defined in 322 CMR 16.07(2), within one hour of time of harvest or exposure, or prior to leaving the point of landing, whichever occurs first. Oysters must remain adequately iced until received by a wholesale dealer.
 3. Methods for Icing. To meet the time to icing requirements specified at 322 CMR 16.07(3)(a), commercial **fishermen** shall place oysters and ice into a shellfish icing container using one of the following methods:
 - a. Mesh bags containing oysters shall be completely surrounded by ice, **including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice. ~~with at least two inches of ice between the bags and the bottom and sides of the shellfish icing container, and at least three inches of ice on top of the mesh bags;~~**
 - b. Loose oysters placed into a shellfish icing container shall be completely surrounded by ice, **including at the bottom and sides of the container so that each oyster is continuously and completely surrounded with ice. ~~with at least two inches of ice at the bottom and sides of the shellfish icing container, and at least three inches of ice on top of the loose oysters;~~**
 - c. Oysters held in an ice and water mixture (e.g., ice slurry or cold water dip) shall be fully submerged and the ice and water mixture must be at or below 45°F to inhibit growth and proliferation of bacteria; or
 - d. All ice and/or water used to cool oysters shall originate from a fresh potable water source or ocean water from an area classified as "Approved" or "Conditionally Approved" by the Division of Marine Fisheries and in the "openstatus".
- (4) Restrictions that Apply to Shellfish Aquaculturists Only.
- (a) Re-submergence Requirements for Off-site Culling Practices. Market-sized oysters may be removed by a shellfish aquaculturist from licensed shellfish aquaculture grant site for the purpose of off-site culling, provided:
1. All removed oysters are returned to and segregated on the licensed shellfish aquaculture grant site of at least ten days prior to being harvested for commercial purposes;
 2. Off-site culling activities are conducted in accordance with conditions to the

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Aquaculture Propagation Permit, issued to the shellfish aquaculturist by the Division pursuant to the authority at M.G.L. c. 130, § 80, and 322 CMR 7.01(7): *Conditions*; and

3. Shellfish aquaculturists shall notify the local municipal shellfish authority prior to the removal of any shellstock from a licensed shellfish aquaculture grant site.

(b) Re-submergence Requirements for Oyster Processing Activities Conducted on Barges, Boats and Other Floating Structures. Market-sized oysters may be brought onboard barges, boats and other floating structures for the purpose of oyster processing activities, provided:

1. All oyster processing activities that are not conducted on the licensed shellfish aquaculture grant site shall take place within same designated shellfish growing area as the licensed shellfish aquaculture grant site;
2. When oyster processing activities exceed two hours from the time of harvest or time of first exposure, all oysters subject to such activities must be returned to the licensed shellfish aquaculture, segregated and re-submerged for at least ten days prior to being harvested for commercial sale; and
3. When oyster processing activities do not exceed two hours from the time of harvest or first exposure, all oysters subject to such activities may either be properly tagged and harvested during that calendar day, in accordance with the procedures set forth at 322 CMR 16.00, or returned to the licensed shellfish aquaculture grant site, but shall not be harvested until at least the following calendar day.
4. Between July 1st and September 15th, in shellfish growing areas CCB-42, CCB-43, CCB-44, CCB-45, CCB-46, CCB-47 and V-20, when oyster culture activities exceed the one hour time to icing requirement at 322 CMR 16.07(3)(a)(2), but do not exceed two hours from the time of harvest or first exposure, all oysters subject to such activities must be returned to the licensed shellfish aquaculture grant site and shall not be harvested until the following calendar day.

(c) Tagging and Logbook Requirements for Re-submerged Oysters.

1. Logbook Requirements. Shellfish aquaculturists shall maintain a record in their *Vp* logbook of all market-sized oysters returned to the licensed shellfish aquaculture grant site after off-site culling or oyster processing activities requiring re-submergence. The *Vp* logbook shall be filled out at the time of re-submergence when the last market-sized oyster is returned to the licensed shellfish aquaculture grant site, except that the date-out information shall not be completed prior to the end of the ten day re-submergence period.

2. Container Tagging Requirement. All containers of re-submerged oysters shall be marked with a waterproof green tag and legibly labeled in indelible ink with the statement "re-submerged" and with the date that the oysters were returned to the licensed shellfish aquaculture grant site for re-submergence. After such oysters have remained on the licensed shellfish aquaculture grant site for at least ten days, the green "re-submerged" tag may be removed from the containers and the oysters may then be harvested in accordance with those procedures set forth at 322 CMR 16.00.

3. Alternatives to Container Tagging Requirements. Shellfish aquaculturists who engage in broadcast re-submergence or want to mark multiple containers of re-submerged oysters using a single re-submergence tag shall submit a re-submergence plan for the Division's approval at least 30 days prior to the start of the proposed activities. There- submergence plan shall include, at a minimum, the following information:

- a. A description of the re-submergence method (*e.g.*, broadcast, holding cars, cages, *etc.*);

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- b. A description of the segregation method to be utilized, including a site map marking the segregated re-submergence area; and
 - c. A description of the re-submergence tagging method to be utilized.
 - d. All such re-submergence activities shall be conducted in accordance with the re-submergence plan approved by the Division.
- (d) Additional Re-submergence Restrictions.
 1. Re-submergence of oysters may only be conducted by the permitted aquaculturists on the same licensed shellfish aquaculture grant site where the oysters originated, unless otherwise approved in advance in writing by the Division.
 2. Except as provided for at 322 CMR 16.07(4)(b), market-sized oysters returned to a licensed shellfish aquaculture grant site will be considered off-site culled and subject to the tagging, *Vp* log book and re-submergence requirements set forth at 322 CMR 16.07(4).
- (5) Disposition and Handling of Non-compliant Oysters and Recalled Oysters.
 - (a) Destruction of Non-complaint Oysters.
 1. In the event that the Division, the local Shellfish Constable or the Massachusetts Environmental Police determines that a commercial **fisher fisherman** is in possession of oysters that are in violation of the tagging, icing or other requirements set forth at 322 CMR 16.00, such oysters shall be destroyed and properly disposed of by the commercial **fisher fisherman** at his or her own expense.
 2. In the event that oysters distributed into commerce are recalled in the case of illness, such oysters shall be destroyed and properly disposed of by the commercial **fisher fisherman** at his or her own expense.
 - (b) Re-submergence of Non-compliant Oysters.
 1. In the event of a recall resulting from the closure of a growing area due to illness, only those oysters received from harvesters and stored at a primary buyer's facility may be re-submerged.
 2. In the event that the Division or the Department of Public Health determines that a primary buyer is in possession of oysters that violate the tagging, icing or other requirements set forth at 322 CMR 16.00, such oysters may be returned to the shellfish aquaculturists, and re-submerged and segregated on the licensed shellfish aquaculture grant site where they originated for ten days under the supervision of the local Shellfish Constable.
 3. Shellfish aquaculturists may harvest oysters that have been re-submerged in accordance with 322 CMR 16.05(5)(b), provided the following actions are taken:
 - a. Recalled oysters have been segregated and re-submerged on the licensed shellfish aquaculture grant site for a minimum period of ten days;
 - b. Recalled oysters are tagged with a waterproof green tag labeled in indelible ink with the statement "non-compliant" or "recalled" and the date of re-submergence;
 - c. The return, segregation and re-submergence of oysters are documented in the *Vp* logbook, including recording the quantity of oysters, and date and purpose of the return and re-submergence, in accordance with 322 CMR 16.07(4); and
 - d. After such oysters remain on-site for at least ten days, the green "non-compliant" or "recalled" tag may be removed and the oysters may then be harvested, subject to being tagged as specified in 322 CMR 16.00.