

321 CMR 4.00: FISHING

Section

- 4.01: Taking of Certain Fish
- 4.02: Taking of Carp and Suckers for the Purpose of Sale
- 4.03: Taking of Commercial Eels From Inland Waters
- 4.04: Taking of Fish in Interstate Ponds Lying Between Massachusetts and New Hampshire
- 4.05: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Connecticut
- 4.06: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Rhode Island
- 4.09: Propagation, Culture, Maintenance and Sale of Protected Freshwater Fish

4.01: Taking of Certain Fish

In accordance with the authority vested in me by the provisions of M.G.L. c. 131, §§ 4, 5 and 51, I hereby declare an open season for the taking of fish throughout Massachusetts and promulgate the following rules and regulations relating to their taking as hereinafter provided:

(1) Definitions: For the purposes of 321 CMR 4.01, the following words or phrases shall have the following meanings:

Broodstock Salmon means an Atlantic salmon (*Salmo salar*) that has been reared in a hatchery for purposes of spawning and subsequently released into the wild.

Dealer means a person who commercially handles fish, birds, or mammals protected by M.G.L. c. 131 and who is licensed as a Class 6 dealer pursuant to M.G.L. c. 131, § 23.

Director means the Director of the Division of Fisheries and Wildlife or his authorized agent.

Float means any device, including a toggle, floating with a line and hook attached, baited with natural or artificial bait and not under the direct control of the hand of the person fishing.

Hook means an angling device which is attached to a fishing line and which is designed to take one fish at a time, including, but not limited to, devices commonly called spinners, spoons, bait harnesses, lead head jigs, or plugs, the purpose of which is to capture the fish by enticing it to take the device into its mouth, thereby engaging the fish upon it.

Lead Jig means any lead-weighted hook which has a mass of less than one ounce.

Lead Sinker or Lead Weight means any sinker or weight made from lead and which has a mass of less than one ounce. The term lead sinker shall not include any other sinkers, weights, fishing lures or fishing tackle including, but not limited to, artificial lures, hooks, weighted flies, and lead-core or other weighted fishing lines.

Licensed Fisherman means an angler who possesses a current valid Massachusetts fishing or sporting license in any of the following classes: F1, F2, F3, F4, F6, F7, F8, F9, S1, S2, or S3.

Minimum Legal Length in Inches means the greatest length in inches measured from the anterior extremity of the snout with the mouth closed to the posterior extremity of the tail with the lobes compressed when the fish is flat and fully extended.

Resident Licensed Fisherman means an angler who possesses a current valid Massachusetts fishing or sporting license in any of the following classes: F1, F2, F3, F4, F8, S1, S2, or S3.

Sell, in all its moods and tenses, means purchasing, selling, bartering, exchanging, and taking, offering, or exposing for the purpose of purchase, sale, barter, or exchange.

Snagging means the taking of fish, not attracted by bait or artificial lures, with hooks, gangs or lures either baited or unbaited, in a manner so as to pierce and hook a fish in any part of the body other than the mouth.

4.01: continued

Tiger Muskellunge means a sterile cross between a northern pike and a muskellunge.

Tiger Trout means a cross between a female brown trout and a male brook trout.

Transgenic Fish means any fish that possesses a new or unique combination of genetic material obtained through the use of biotechnological means. This definition does not include diploid, triploid, or hybrid-crossed fish

Words importing the singular number may extend and be applied to several persons or things, words importing the plural number may include the singular, and words importing the masculine gender may include the feminine and neuter.

(2) Catch and Release Areas.

(a) The following general requirements shall pertain to all catch-and-release fishing areas. All fish caught must be released. Fishing allowed with artificial lures only. The use of natural or artificial baits such as worms, shiners or other live bait, cheese, corn, or salmon or other fish eggs is prohibited. Fish in possession in any catch-and-release area is *prima facie* evidence of a violation of 321 CMR 4.01(2). Catch-and-release fishing areas are named in 321 CMR 4.01(2)(b) through (j).

(b) East Branch Westfield River: extending from the Chesterfield Gorge parking lot in the Town of Chesterfield downstream six miles to the gate north of the Corps of Engineers basin parking lot at Knightville in the Town of Huntington.

(c) Millers River: Bears Den Segment, extending from a railroad bridge in the Towns of Athol and Templeton downstream 6½ miles to the first dam in the Town of Athol. Wendell Segment, extending from the Wendell Road bridge in the Towns of Orange and Wendell downstream 1½ miles to a breached dam in the Towns of Erving and Wendell.

(d) Nissitissit River: in the Town of Pepperell, extending from the New Hampshire border downstream to the Prescott Street bridge. In addition to the provisions of 321 CMR 4.01(2)(a), fly fishing only is permitted on the Nissitissit River catch-and-release area. All anglers must use a conventional fly rod and fly line.

(e) Quashnet River: extending from Johns Pond in the Town of Mashpee downstream 4½ miles to the sign 0.1 miles south of Rte. 28 in the Town of Falmouth.

(f) Red Brook: from White Island Pond in the Town of Plymouth downstream 4½ miles to Buttermilk Bay in the Town of Wareham.

(g) Swift River: From the Winsor Dam to the Rte. 9 bridge crossing. In addition to the provisions of 321 CMR 4.01(2)(a), fly fishing only is permitted on the Swift River between Winsor Dam and the Rte. 9 crossing. All anglers must use a conventional fly rod and fly line.

(h) Swift River: From the Rte. 9 bridge crossing downstream to Cady Lane. Catch-and-release fishing is mandated during the period from July 1st through December 31st only.

(i) Upper Deerfield River: Segment 1, extending from Fife Brook Dam downstream 1½ miles to the Hoosac Tunnel railroad trestle. Segment 2, extending from the mouth of Pelham Brook downstream one mile to the Mohawk Campground.

(j) Housatonic River: from the Rte. 20 bridge in Lee downstream to the Willow Mill Dam in Lee, and, from the Glendale Dam in Great Barrington downstream to the Boston and Maine railroad bridge in Great Barrington.

(3) Reservoirs under the Control of the Department of Conservation and Recreation. Quabbin Reservoir and that portion of its tributary streams within the Quabbin Reservation, Wachusett Reservoir, and Sudbury Reservoir are hereby closed to all fishing except during the open season for access as established by the Department of Conservation and Recreation.

(4) Prohibitions: Except as otherwise provided for in M.G.L. c. 131 and 321 CMR, it shall be unlawful:

(a) to fish in the Merrimack River in the area downstream from the Essex Dam to the Boston and Maine Railroad Bridge;

(b) to fish in the canal systems in the Cities of Lawrence and Lowell during the month of April;

(c) to take fish in the inland waters of Massachusetts by snagging;

(d) to take fish in the inland waters of Massachusetts by poison, explosive, float or toggle;

4.01: continued

- (e) to take fish in the inland waters of Massachusetts by any means other than angling, except that carp and suckers may be taken by spears or archery;
- (f) to take fish in the inland waters of Massachusetts by net, seine, trawl, or similar device, except for the taking of bait fish pursuant to M.G.L. c. 131, § 52, and 321 CMR 4.01(8), or for the taking of herring and alewives pursuant to M.G.L. c. 131, § 56;
- (g) to set or use more than two hooks for fishing, or, in the case of ice fishing, five hooks.
- (h) to take or attempt to take fish other than at a time provided in 321 CMR 4.01 or to possess at any time a greater number of fish or of fish of a length less than provided in 321 CMR 4.01 or to possess a fish at a period or in an area other than so provided. Such taking or possession shall be *prima facie* evidence of a violation of 321 CMR 4.01, provided, that the taking or having in possession of any fish of a length less than as provided in 321 CMR 4.01 if taken by a person lawfully fishing and immediately returned alive to the water from whence it was taken shall not constitute such a violation.
- (i) to use a lead sinker, lead weight, or lead jig in the inland waters of Massachusetts; provided that this prohibition shall be enforceable beginning January 1, 2012.

(5) Dukes and Nantucket Counties. The provisions of 321 CMR 4.01 shall not apply to the taking of white perch in Dukes and Nantucket Counties.

(6) Seasons, Dates, Creel and Size Limits, and Related Provisions. Open seasons, dates, provisions relative to certain waters, creel limits, minimum legal length in inches, and related provisions relative to the taking of certain fish in inland waters are set forth in Table 1.

(7) Jurisdictional Boundaries. For the purpose of determining inter-agency jurisdictional boundaries between the Division of Fisheries and Wildlife and the Division of Marine Fisheries, a marker is hereby established on the Merrimack River. The marker shall be the first upstream or easternmost (*i.e.*, northbound traffic) bridge of Rte. I-495 in the City of Haverhill. Waters of the Merrimack River downstream from said bridge shall be subject to the authority, rules and regulations, of the Division of Marine Fisheries. Waters upstream from said bridge shall be subject to the jurisdictional authority, rules and regulations, of the Division of Fisheries and Wildlife.

(8) Taking, Sale, Importation and Use of Baitfish.

(a) Definitions:

Baitfish means only live or dead fish of the following species. A person shall not use as bait any fish, alive or dead, including parts thereof, except the baitfish listed in 321 CMR 4.01(8)(a)1. through 10.

1. White sucker (*Catostomus commersoni*)
2. Banded killifish (*Fundulus diaphanus*)
3. Mummichog (*Fundulus heteroclitus*)
4. Pumpkinseed (*Lepomis gibbosus*)
5. Golden shiner (*Notemigonus crysoleucas*)
6. Rainbow smelt (*Osmerus mordax*), only as provided in 321 CMR 4.01: *Table 1*.
7. Yellow perch (*Perca flavescens*)
8. Fallfish (*Semotilus corporalis*)
9. Fathead minnow (*Pimephales promelas*)
10. Herring (*Clupea* spp.) may be used as bait in the Connecticut River, Merrimack River, and coastal rivers and streams only as provided in 321 CMR 4.01: *Table 1* and 322 CMR, but may not be possessed or used as bait in other rivers and streams, or in lakes, ponds, or reservoirs.

Commercial Baitfish means only live or dead fish of the following species lawfully imported into the Commonwealth, or propagated within the Commonwealth for purposes of sale as baitfish:

1. White sucker (*Catostomus commersoni*)
2. Mummichog (*Fundulus heteroclitus*)
3. Golden shiner (*Notemigonus crysoleucas*)
4. Fathead minnow (*Pimephales promelas*)

Baitfish taken from any inland waters of the Commonwealth shall not be considered commercial baitfish, and shall not be sold or offered for sale.

4.01: continued

- (b) Taking for Personal Use. Licensed fishermen may take baitfish defined as Baitfish in 321 CMR 4.01(8)(a) from the waters of the Commonwealth for personal use only.
- (c) Baitfish Harvest Zones. Except as prohibited by 321 CMR 4.01(7)(d), baitfish may be taken from the inland waters of the Commonwealth by licensed fishermen for personal use only.
- (d) Prohibited Areas. Baitfish may not be taken from great ponds, waters which are in whole or in part under lease or license as public fishing grounds, or other waterbodies designated as closed to the taking of baitfish by the Director.
- (e) Certain Fish Traps to Be Allowed. Licensed fishermen may take baitfish for personal use by all lawful methods, including by means of a single fish trap with openings of not over one inch, by a single circular net not exceeding six feet in diameter, or by means of a net, containing not more than 36 square feet of net surface. Nets designed to gill fish are prohibited. Any fish taken in such fish traps, other than those permitted by 321 CMR 4.01(8)(a) shall be immediately returned to the waters from where they were taken.
- (f) Importation of Baitfish. Only commercial baitfish defined in 321 CMR 4.01(8)(a) may be imported for use and sale as bait by a licensed dealer. Importation of any live fish, other than aquarium trade fish as defined in 321 CMR 9.01(2): *Definitions*, requires an importation permit from the Director, including commercial baitfish.
- (g) Sale of Commercial Baitfish. No person shall sell or offer for sale any commercial baitfish unless such person is licensed as a dealer and the commercial baitfish has been lawfully imported or propagated within the Commonwealth.
- (h) Sale of Preserved Baitfish. Notwithstanding the provisions of 321 CMR 4.01(8), baitfish or parts thereof which are canned, pickled or otherwise commercially preserved by a method other than by freezing, and lawfully imported or propagated may be used or sold as bait without a permit.

4.01: continued

TABLE 1

SPECIES		DAILY CREEL	MINIMUM LENGTH (INCHES)	OPEN SEASON (ALL DATES INCLUSIVE
Brown Trout	Special Management Lakes/Ponds (as listed) ¹	1	15	Jan. 1 - Dec. 31
	Total daily creel not to exceed one brown trout			
Brook, Brown, Tiger & Rainbow Trout	Other Lakes/Ponds	3	None	Jan. 1 - Dec. 31
	Total daily creel not to exceed three trout in any combination			
Brook, Brown, Tiger & Rainbow Trout	Major Rivers (as listed) ²	3	None	Jan. 1 - Dec. 31
	Total daily creel not to exceed three trout in any combination			
Brook, Brown, Tiger & Rainbow Trout	Other Rivers and Streams ³	8	None	Apr. 1 - Sep. 10
	Total daily creel not to exceed eight trout in any combination			
Brook, Brown, Tiger & Rainbow Trout	Other Rivers and Streams ³	3	None	Sep. 11 - Mar. 31
	Total daily creel not to exceed three trout in any combination			
Lake Trout (Wachusett Res.)		3	None	Jan. 1 - Dec. 31
Lake Trout (Quabbin Res.)		2	18	Jan. 1 - Dec. 31
Landlocked Salmon		2	15	Jan. 1 - Dec. 31

¹ Special Brown Trout Management Waters: South Pond (Quacumquasit), Brookfield.

² Major Trout Rivers: Childs River (Falmouth, Mashpee), Coonamesset River, Deerfield River, East Branch Swift River, East and West Branches Tully River, East Branch Ware River, Farmington River, Green River (Colrain), Green River (Great Barrington), Jones River (Kingston, Plympton), Ipswich River, Mashpee River, Millers River, Nissitissit River, North River (Colrain), Parker River, Quaboag River, Quinebaug River, Quinapoxit River, Santuit River, Scorton Creek, Seven Mile River, Shawsheen River, Squannacook River, Stillwater River, Swift River (Winsor Dam to Ware River, except as posted), Ware River, West Branch North River, Westfield River (all branches).

³ Exclusive of the areas set forth in 321 CMR 4.01(2)(j), in the area from the confluence of the East and West Branches of the Housatonic River in Pittsfield to the Connecticut border in Sheffield, the total daily creel (January 1st through December 31st) shall not exceed one trout (minimum length of 20 inches).

4.01: continued

TABLE 1 (continued)

SPECIES	DAILY CREEL	MINIMUM LENGTH (INCHES)	OPEN SEASON (ALL DATES INCLUSIVE
Broodstock Salmon ⁴	2	15	See Note # 4
Atlantic Salmon ⁴	2	15	See Note # 4
Smelt ⁵	-	None	May 16 - last day of Feb.
Sturgeon	-	-	No Open Season
Black Bass (Largemouth or Smallmouth)	5	12	Jan. 1 - Dec. 31
Chain Pickerel	5	15	Jan. 1 - Dec. 31
Northern Pike	1	28	Jan. 1 - Dec. 31
Tiger Muskellunge	1	28	Jan. 1 - Dec. 31
Walleye	5	14	Jan. 1 - Dec. 31
American Shad (Connecticut River and tributaries and Merrimack Rivers and tributaries)	3	None	Jan. 1 - Dec. 31
American Shad (All Other Waters)	0 (Catch and Release Only)	None	Jan. 1 - Dec. 31
Striped Bass ⁶	See 322 CMR		
Herring	See 322 CMR		
All Other Species	-	None	Jan. 1 - Dec. 31

⁴ Atlantic Salmon and Broodstock Salmon: The harvest of Atlantic salmon, including broodstock salmon, and broodstock is lawful in all inland waters of Massachusetts, except:

- (a) Connecticut River and all its tributaries,
- (b) the Merrimack River downstream of the Essex Dam in the City of Lawrence, and all tributaries of the Merrimack River downstream of the Essex Dam in the City of Lawrence, and
- (c) the harvest of any Atlantic Salmon or broodstock salmon in the Merrimack River upstream of the Essex dam in Lawrence MA and in all tributaries of the Merrimack River upstream of the Essex dam in Lawrence MA not marked with an external plastic Floy tag ("thread" or "spaghetti" tag) that is approximately 1/8 inch in diameter and that is 3 and 1/2 inches long and attached to the salmon at the base of the dorsal fin.

No person shall possess an Atlantic salmon (including broodstock salmon) while fishing in the Connecticut River and all its tributaries, or in the Merrimack River downstream of the Essex Dam in the City of Lawrence, or in any tributary of the Merrimack River downstream of the Essex Dam in the City of Lawrence.

⁵ Smelt may be taken in all inland waters by hook and line only from May 16th to the last day of February, excepting Quabbin Reservoir, where smelt may only be taken in open water where legal fishing is permitted from May 16th to the end of the Quabbin fishing season. There is no daily or seasonal limit for smelt on these waters. The possession of smelt or their use as bait in inland waters other than during the established open season on smelt is prohibited.

⁶ Sale of striped bass from inland waters is prohibited.

No person shall take more than eight brook, brown, tiger, or rainbow trout in any one day in the aggregate from all waters.

4.02: Taking of Carp and Suckers for the Purpose of Sale

(1) Definitions:

Carp means only the common carp (*Cyprinus carpio*)

Sucker means only the white sucker (*Catostomus commersoni*)

(2) Carp and suckers shall not be taken from the inland waters of the Commonwealth and shall not be sold or offered for sale.

4.03: Taking of Eels From Inland Waters

Eels shall not be taken from the inland waters of the Commonwealth for personal use as baitfish or for any commercial purposes.

4.04: Taking of Fish in Interstate Ponds Lying Between Massachusetts and New Hampshire

(1) Persons duly licensed or otherwise entitled to fish under the laws of the Commonwealth or the State of New Hampshire may fish in all portions of Lake Monomonac, Robbin Pond, (Winchendon), Long Pond, (Tyngsboro, Dracut), Bent Pond, (Warwick), and Tuxbury Pond, (Amesbury) in accordance with the New Hampshire fishing regulations.

4.05: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Connecticut

(1) Persons duly licensed or otherwise entitled to fish under the laws of this Commonwealth or the State of Connecticut may fish in all portions of the following named waters.

(2) Massachusetts laws and regulations relating to fishing shall apply to all waters of Congamond Lake (Southwick), and Hamilton Reservoir (Holland). Connecticut laws and regulations relating to fishing shall apply to all the waters of Colebrook Reservoir, (Sandisfield), Perry Pond, (Dudley), Muddy Pond, and Breakneck Pond, (Southbridge).

4.06: Taking of Fish in Interstate Ponds Lying Between Massachusetts and Rhode Island

Pursuant to authority contained in M.G.L. c. 131, § 49, and in conference with the Chief of the Division of Fisheries and Wildlife in the State of Rhode Island, I hereby promulgate the following rules and regulations relative to fishing in Wallum Lake lying between the Commonwealth of Massachusetts and the State of Rhode Island.

Wallum Lake.

(a) All persons licensed or otherwise entitled to fish under the laws of this Commonwealth or the State of Rhode Island may fish in all portions of Wallum Lake (Douglas) in accordance with Rhode Island regulations pertaining to dates, times, bag limits, and minimum lengths.

(b) Patients in the State Sanitorium, Burrillville, Rhode Island shall be entitled to fish without a license only in that portion of said Wallum Lake lying within the State of Rhode Island.

(c) Rules and regulations for fishing in Wallum Lake promulgated on April 8, 1968 are hereby revoked.

4.09: Propagation, Culture, Maintenance and Sale of Protected Freshwater Fish

(1) Purpose and Scope. The purpose of 321 CMR 4.09 is to establish the procedural and substantive requirements for licenses for the possession, propagation, culture, maintenance, sale, purchase and disposition of fish. The provisions of 321 CMR 4.09 are designed to protect fish and their habitats from unnecessary or undesirable impacts and from improper treatment or exploitation. These provisions are also necessary for the protection of the public health, welfare and safety when fish are possessed, maintained, cultured or propagated in Massachusetts.

4.09: continued

Fish retained in captivity and dependent on humans for care may not be capable of surviving in the wild if problems arise and they are liberated by those who had attempted to care for them. The result is an animal that may suffer a lingering fate prior to death and may be a potential danger to the public or the aquatic environment. The purpose of 321 CMR 4.09 is to prevent not only the potential public menace, disease, or damage to the environment which may result when the fish are liberated, but to protect them from the potential for needless or unnecessary suffering as well. Thus, the scope of 321 CMR 4.09 is to

- (a) regulate the taking from the wild, possession, propagation, purchase, receipt or sale of protected fish intended to be kept by any person in Massachusetts;
- (b) define specific categories for which licenses may be issued for the possession, maintenance, propagation or culture, or sale of protected fish;
- (c) establish minimum requirements for the possession, maintenance and culture or propagation of protected fish;
- (d) establish administrative procedures for the initial issuance and subsequent renewal of licenses, and
- (e) otherwise implement the licensing provisions of M.G.L. c. 131, § 23.

(2) Definitions. For the purposes of 321 CMR 4.09, the following words have the following meanings:

Aquaculture means the propagation, culture and maintenance of fish for the purpose of selling such fish or a product derived from such fish in the regular course of business, or the culture of fish pursuant to a class 1 or class 2 license, but not including the scientific or educational propagation, culture and maintenance of fish, or the sale of exempt live fish as pets in a pet shop as regulated pursuant to M.G.L. c. 129.

Aquarium means a permanent site or a permanent location of less than 4356 square feet of surface area where a collection of living nondomesticated animals are maintained for regular exhibition to the public or as pets, and includes a zoo as defined in 321 CMR 2.12(2).

Class 1 - Class 3, and Class 6 Licenses means respectively licenses issued under authority of clauses 1 through 3, and clause 6, M.G.L. c. 131, § 23.

Culture means to use an artificial or enhanced natural environment in order to induce growth, development, or reproduction.

4.09: continued

Director means the Director of the Division of Fisheries and Wildlife or his agents.

Division means the Massachusetts Division of Fisheries and Wildlife, 251 Causeway Street, Boston, MA 02114 (telephone 617-626-1590).

Educational Use means a use or uses as contained in a course of training, of any extent or duration, and which pertains to the acquisition, development, or maintenance of a person's moral, intellectual, vocational, and physical faculties, insofar as such course of training shall relate to fisheries or wildlife, and the habitats, ecological relationships, or the environment thereof.

Expansion means an increase in the area used to hold fish during culture or maintenance.

Fish means any vertebrate of the classes *Cyclostomata* or *Osteichthyes* not otherwise exempted in the exemption list at 321 CMR 9.01: *Exemption List*, and shall additionally include the parts, spawn and viable eggs thereof.

Gender means, unless the context requires otherwise, that words importing the masculine gender shall include the feminine and neuter.

Maintain means that fish are kept in indoor or outdoor confinement by a person or otherwise held under artificial conditions which allows exclusive control over them. Fish which are maintained remain in the same physical condition and life stage at which they were obtained by the permittee. Such fish may be supplied with food, or are otherwise cared for, but are not bred or allowed to reproduce.

Native means fish species that either occur or have occurred within Massachusetts, provided that the original occurrence of such species was not the result of deliberate or accidental introductions by humans.

Naturalized means fish species that have been introduced to Massachusetts by humans and have established self-sustaining populations.

Navigable Waters means all waters in creeks, coves, inlets, and arms of the sea or rivers that are:

- (a) within the ebb and flow of the tide, or
- (b) defined as navigable by the U.S. Army Corps of Engineers.

Permit or License means a license issued pursuant to M.G.L. c. 131, § 23.

Person means any individual, corporation, partnership, trust, association or other private entity or any officer, agent, department or instrumentality of the federal government or any state or its political subdivisions, including but not limited to any agency, department, board, commission or authority thereof.

Propagate means the natural or artificial reproduction of fish.

Scientific Use means a use or uses concerned with the classification, formulation, verification, and documentation of various natural laws, principles, and events by induction, deduction, hypothesis, and experimentation, including, but not limited to, the collection, analysis, propounding, and display of data, whether written, recorded or otherwise, and of artifacts, specimens, and similar physical samples, and shall further relate generally to the physical world and its associated phenomena, and specifically to those branches of systematized knowledge categorized as zoology, botany, ecology, wildlife management, fisheries management, medicine, and veterinary medicine, or such other skills and disciplines which shall require such use or uses.

(3) Licenses. Unless otherwise provided by M.G.L. c. 130 or c. 131, or any rule or regulation issued under the authority thereof, it is unlawful for any person to possess, maintain, propagate or culture, sell, barter, or offer to sell or barter any fish without having a valid license issued to them by the Director in one of four classes.

4.09: continued

(a) A class 1 private waters license (including a class 1 special propagator's license) authorizes any individual to possess, propagate, culture, maintain and buy fish at any time for the personal use of himself, his immediate family or guests; or to any club or association, or its members or guests, a special propagator's license to possess, propagate, culture and maintain fish at any time for the purpose of fishing within waters under the exclusive control of such club or association for the personal use of the members and guests thereof. A class 1 private waters license may be issued for Type A fish species only. Sale of fish is not allowed under a class 1 private waters license.

(b) A class 2 public stocking license (including a class 2 special propagator's license) authorizes any individual, club or association to possess, propagate, culture, maintain and buy fish for the purpose of liberation into public waters. Notwithstanding the species restrictions in 321 CMR 4.09(4)(b), a class 2 public stocking license shall allow the propagation and liberation of fish in waters approved by the Director. A class 2 public stocking license may be issued as a Letter Permit in accordance with M.G.L. c. 131, § 4(2) and 321 CMR 2.02: *Permits to Take or Possess* but shall otherwise conform to the requirements of 321 CMR 4.09.

(c) A class 3 aquaculture license (including a class 3 propagator's license) authorizes any individual, club or association to possess, propagate, culture, maintain, buy, sell or otherwise dispose of fish at any season of the year. A class 3 aquaculture license may be issued for Type A, B, or C Aquaculture Facilities, as the case may be, and shall be designated class 3A, 3B, or 3C licenses.

(d) A class 6 dealer's license authorizes an individual to possess, maintain, buy, sell, or offer for sale fish or parts thereof lawfully imported or propagated within Massachusetts. Fish maintained alive under a class 6 dealer's license are subject to the species and facilities restrictions established in 321 CMR 4.09(4).

(4) Aquaculture Facilities. Aquaculture licenses issued pursuant to 321 CMR 4.09 may be obtained for the following types of aquaculture facilities:

(a) Type A Aquaculture Facility. This facility authorizes the propagation, culture or maintenance of those fish specified in 321 CMR 4.09(4)(b). Type A facilities must have all intake and outflow water conduits screened in such a manner as to prevent the escape of the smallest life stage of the fish being cultured at the facility.

(b) Type A Fish Species. These fish are native or naturalized and present in the majority of watersheds in Massachusetts or are listed as commercial bait species in 321 CMR 4.01(8)(a). The species which may be propagated or maintained in Type A Aquaculture Facilities shall include only: bluegill, brook trout, brown bullhead, brown trout, chain pickerel, fathead minnow, golden shiner, largemouth bass, mummichog, pumpkinseed, rainbow trout, white sucker, and yellow perch.

(c) Type B Aquaculture Facility. This facility authorizes the propagation, culture or maintenance of those fish specified in 321 CMR 4.09(4)(d). Type B facilities shall be enclosed by a fence or other barrier which will effectively prevent trespass, theft, and vandalism. Intake and outflow water conduits must be screened in such a manner as to prevent the escape of the smallest life stage of the fish being cultured at the facility.

(d) Type B Fish Species. The species which may be propagated or maintained in Type B Aquaculture Facilities shall include only those species that exist, as determined by the Director, in the watershed of operation, provided that any species which may be propagated or maintained in a Type A Aquaculture Facility may also be propagated or maintained in a Type B Aquaculture Facility.

(e) Type C Aquaculture Facility. This facility authorizes the propagation, culture or maintenance of those fish specified in 321 CMR 4.09(4)(f). Fish species propagated or maintained under this facility shall be separated physically and biologically from the aquatic resources of Massachusetts. Type C Aquaculture Facilities shall not be allowed in the 100 year flood plain as defined by the U.S. Federal Emergency Management Agency. Type C facilities shall be located within a secure, permanent, and enclosed building constructed so as to prevent mammalian or avian predation and the escape of fish contained therein, and to minimize trespass, theft, or vandalism. The facility shall also have an effective means of preventing the discharge into the environment of biological effluents (including eggs, larvae, fry, parasites, and diseases), a functional backup electrical system to insure the continual maintenance of water quality treatment and water supply unless all discharge from the aqua-

4.09: continued

culture facility is to a municipal waste treatment facility, and an acceptable non-polluting waste disposal plan which includes provisions for the disposal of fish carcasses and offal.

(f) Type C Fish Species. The species which may be propagated or maintained in Type C Aquaculture Facilities shall include only: coho salmon, tilapia, white bass, and white bass X striped bass hybrids, provided that any species which may be propagated or maintained in a Type A or Type B Aquaculture Facility may also be propagated or maintained in a Type C Facility. Species not listed in 321 CMR 4.09(b), (d), or (f) may be permitted, at the discretion of the Director, for culture in Type C aquaculture facilities.

(5) Requirements for Aquacultural Facilities:

(a) Aquaculture shall not be permitted in great ponds or in navigable waters, except as authorized by the Division of Marine Fisheries pursuant to M.G.L. c. 130.

(b) No riparian property owner of a natural pond other than a great pond, or of an artificial pond of any size, or of a non-navigable stream or brook shall enclose the waters therein within the limits of his own premises unless he furnishes a suitable passage for all anadromous fish naturally or historically frequenting such waters.

(c) No person shall take or attempt to take fish from a natural pond which is not a great pond, or an artificial pond of any size, or a non-navigable stream or brook, where fish are propagated or maintained under authority of a license issued pursuant to 321 CMR 4.09, without the written consent of the owner, proprietor, or lessee thereof.

(d) All waters in which fish are propagated and maintained subject to 321 CMR 4.09 shall be conspicuously posted to that effect and shall bear the name of the permittee.

(e) The propagation and maintenance of fish for scientific and educational purposes shall be as provided in 321 CMR 4.09(8).

(f) Records and reports shall be kept and submitted as provided in 321 CMR 4.09(24).

(g) Culture of Atlantic salmon may be conducted only with eggs, fry, parr, smolts, or adult fish which have been obtained from a source approved by the Director.

(6) Recreational Fishing in Aquacultural Facilities. Recreational fishing may be allowed in waters licensed under a class 1 private waters license or a class 3 aquaculture license, provided that no person shall take or attempt to take fish from a natural pond which is not a great pond, or an artificial pond of any size, or a non-navigable stream or brook, where fish are propagated or maintained under authority of a license issued pursuant to 321 CMR 4.09, without the written consent of the owner, proprietor, or lessee thereof. Recreational fishing shall not be allowed in waters licensed under a class 2 license. A class 1 private waters permittee, or a class 3 aquaculture permittee allowing recreational angling shall maintain a logbook, in which shall be recorded the date, number and species of fish, and the name and signature of each angler removing any fish for which a bag limit is established pursuant to 321 CMR 4.01 and which is removed for purposes other than for aquaculture. Alternatively, in lieu of a logbook, a Class 3 permittee may issue to the angler a dated receipt with the name of the permittee and number and species of fish removed. Permittees shall keep said logbook, or a copy of the dated receipt, as the case may be, for a period of two years.

(7) Propagation, Maintenance, and Sale of Baitfish. Baitfish may be propagated, cultured, maintained, bought, and sold in accordance with the following:

(a) A class 3 aquaculture license may authorize the permittee to propagate, culture, maintain and sell commercial bait species as listed in 321 CMR 4.01(8)(a), but shall not authorize the taking of such fish from the wild in Massachusetts. An importation permit pursuant to 321 CMR 2.15: *Importation, Liberation, and Transportation of Fish, Amphibians, Reptiles, Birds, and Mammals* shall be required to import such commercial baitfish.

(b) A class 6 dealer's license may authorize the permittee to maintain and sell commercial bait fish as listed in 321 CMR 4.01(8), but shall not authorize the taking of such fish from the wild in Massachusetts. An importation permit pursuant to 321 CMR 2.15: *Importation, Liberation, and Transportation of Fish, Amphibians, Reptiles, Birds, and Mammals* shall be required to import such commercial baitfish.

4.09: continued

(8) Propagation, Culture and Maintenance of Fish for Scientific and Educational Purposes. A person seeking a class 3 aquaculture license for scientific or educational purposes shall provide such justification and supporting documentation as shall be required by the Director pertinent to the particular situation. A class 3 aquaculture license for scientific or educational purposes may be issued for any species, notwithstanding the species restrictions specified in 321 CMR 4.09(4).

(9) Application. A person seeking a license provided for in 321 CMR 4.09(3) shall complete a written application on forms supplied by the Director. Completed applications shall include a self-addressed stamped envelope and be addressed to the Permit Section of the Division.

(10) Information and Requirements. All initial license applications shall contain the following information. Renewal license applications shall include but not be limited to 321 CMR 4.09(10)(a), (c), (e), (g), and (h):

- (a) the applicant's name, address and telephone number where he can be reached between the hours of 9:00 A.M. to 5:00 P.M.;
- (b) the applicant's date of birth;
- (c) in the event the applicant is a corporation, firm, partnership, institution or agency, either public or private, the name, address and telephone number of the president, director, head or principal officer;
- (d) the location or locations where the licensed activity will be conducted;
- (e) the species or types of fish or parts thereof which are to be propagated, cultured, maintained, or sold;
- (f) the specific source or sources from which the fish are to be obtained;
- (g) the date of the application;
- (h) the applicant's signature executed under the pains and penalties of perjury;
- (i) for a class 3 license, accurate diagrams, models or drawings in scale or pictures depicting the precise physical conditions under which the fish will be maintained;
- (j) for a class 6 license, or for a class 3 license issued for commercial purposes, a signed affidavit certifying that the applicant has to the best of his knowledge paid all state taxes as required by the Massachusetts Department of Revenue;
- (k) a written plan detailing the intended activity for which the fish are to be maintained, the disposition of the fish if relevant, and other information pertinent to a full explanation and justification for the possession of the fish; and
- (l) for a class 3C aquaculture license, a waste management plan as provided for in 321 CMR 4.09(4)(e).

(11) Special Requirements for Sale of Fish as Food.

- (a) A class 6 dealer shall obtain a license for each additional place of business, at a cost to be determined annually by the Commissioner of Administration and Finance.
- (b) Class 6 dealer's licenses shall be conspicuously posted in a public place in the permittee's place of business.
- (c) Packaging, marking or tagging of fish shall be as provided in 321 CMR 4.09(20)(b) and (c).

(12) Fees. All applications and renewals shall be accompanied by the appropriate fee indicated on the application in the form of a check or money order payable to the Division of Fisheries and Wildlife. Cash may be used only when the application is made in person.

4.09: continued

(13) Exception. Payment of fees shall not be required of any federal, state, or municipal agency or official, nor of any person under contract to the Division of Fisheries and Wildlife or otherwise involved in projects conducted or directly supervised by the Division of Fisheries and Wildlife.

(14) Abandoned Applications. Upon receipt of an incomplete application, an improperly executed application, or an insufficient fee, the applicant shall be notified of the deficiency. If the applicant fails to supply the requested information, pay the required fee or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned and shall be returned to the applicant.

(15) Denials. Applications for a license provided for in 321 CMR 4.09(3) shall, unless otherwise provided, be denied when:

- (a) the application is for a license to possess, maintain, propagate or culture fish as pets except as otherwise provided for in 321 CMR 4.09(15)(f);
- (b) the application is for a class 3 license to possess, maintain, culture or propagate fish for purposes or intentions based purely on curiosity, impulse or novelty, or to provide for personal amusement or entertainment;
- (c) the applicant has previous to the date of application been criminally convicted of a violation of any provision of M.G.L. c. 131 or c. 131A, any provision of 321 CMR, or any federal statute or federal regulation which is related to the activity for which the license is sought;
- (d) the applicant has failed to disclose or submit material information or has made false statements as to any fact in connection with the application;
- (e) a prior inspection of the facilities where the fish will be possessed, maintained, propagated or cultured by a duly authorized state or federal official has disclosed that the facilities do not meet the requirements found in 321 CMR 4.09(4) and (19) and such deficiencies have not been corrected within 30 days;
- (f) the application is for a license to possess fish in a commercial venture involving amusement or sport, other than recreational fishing under a class 1 private waters license;
- (g) the applicant for a class 3 or class 6 license has imported into or received in Massachusetts any fish without a valid importation license as required by M.G.L. c. 131, § 19A;
- (h) propagation, culture, maintenance of fish at the facilities or in the waters described in the application may, in the opinion of the Director, put the aquatic resources of Massachusetts at risk.

(16) Issuance. Class 3 or class 6 licenses may be issued only to applicants who substantially document that the intended possession, maintenance, culture or propagation is for:

- (a) A class 3 license for an authentic and legitimate scientific use certified by officials of a generally recognized scientific institution such as museums of a zoological or biological nature, zoological or biological departments of an accredited college or university, or a public or private research institute for fish studies;
- (b) A class 3 license for an authentic and legitimate educational use certified by zoological or biological officials of a generally recognized educational institution such as an accredited college or university or a public or private school;
- (c) A class 3 license for the commercial propagation, culture or maintenance of fish for sale other than sale as pets;
- (d) A class 6 license for the commercial maintenance of fish for sale other than sale as pets;
- (e) A class 3 license for fish held or propagated under holding agreements or in conjunction with breeding programs of established zoos or aquaria licensed by the U.S. National Marine Fisheries Service;

4.09: continued

(f) A class 3 license for the captive propagation of endangered or threatened fish under the auspices of a written captive propagation program approved by both the Director and the Fisheries and Wildlife Board;

(g) A class 3 license for any protected fish lawfully possessed prior to July 1, 1980.

(17) Temporary Possession Permit. Persons may temporarily possess fish in Massachusetts provided a temporary possession permit is obtained from the Director. The applicant shall supply the Permit Section of the Division with the dates, times and locations where the animals will be possessed, the purposes of the temporary possession, a list of the animals being temporarily possessed, the dates of their removal, and shall justify to the satisfaction of the Director the necessity for such temporary possession.

(18) Inspections. Upon submission of a properly completed application for a class 3C aquaculture license to be issued pursuant to 321 CMR 4.09(3) and all required supporting documentation, an Environmental Police Officer or an official of the Division, or both, shall inspect the facilities to be used by the applicant for the culture and maintenance of fish. Facilities may also be inspected at any reasonable time after completion. The licensee shall provide conditions, as determined by the director, sufficient to maintain all fish species being cultured, prevent disease and parasitism of the cultured species, dispose of waste, and provide for the maintenance or disposition of cultured fish in the event of the licensee's absence, illness or death.

Class 3A or 3B aquaculture facilities, may, at the discretion of the Director, be inspected prior to issuance of the license and at any time thereafter to insure the well-being of the fish being propagated, the safeguarding of the aquatic environment of Massachusetts, and compliance with the provisions of 321 CMR 4.09. Class 1 and class 2 permittees and class 6 dealers shall, where applicable to the class of license, conform to the requirements specified in 321 CMR 4.09(4) and (18). Class 1 and class 2 facilities and class 6 dealers may, at the discretion of the Director, be inspected prior to issuance of the license and at any time thereafter to insure the well-being of the fish being propagated, the safeguarding of the aquatic environment of Massachusetts, and compliance with the provisions of 321 CMR 4.09.

(19) Restrictions. Applications for a license issued pursuant to 321 CMR 4.09(3) shall additionally comply with the following restrictions.

(a) Fish may be procured in the following manner only:

1. lawfully propagated, harvested, or taken outside of Massachusetts; or
2. lawfully propagated within Massachusetts; and
3. unless otherwise provided for by law or by permit from the Director, fish taken from the wild within Massachusetts may not be propagated, cultured or maintained pursuant to M.G.L. c. 131, § 23.

(b) Except as provided in 321 CMR 4.09(19)(c), fish sold for food purposes must first be killed and shall be packaged or wrapped in cartons, boxes, cans or other containers which shall be plainly labelled with the name and address of the permittee, and the species name, number and net weight of the fish contained therein, provided that individual fish sold to an individual for his own consumption as food may be tagged with a metal tag to be furnished to the permittee at a cost to be determined annually by the Commissioner of Administration and Finance and such tag shall remain attached to the fish until prepared for consumption and shall not be reused. Permittee shall additionally maintain a logbook or issue a dated receipt as provided for in 321 CMR 4.09(6). A common victualler or a dealer may purchase dead fish or parts thereof from a class 3 or class 6 permittee and sell the same to an individual for his own consumption as food when the fish are wrapped, packaged, and labelled in accordance with 321 CMR 4.09(19)(c) and such common victualler or dealer need not be licensed pursuant to 321 CMR 4.09.

4.09: continued

(c) A common victualler or a dealer, when licensed in accordance with 321 CMR 4.09, may purchase live fish for resale to an individual for his personal consumption as food, provided that a dated bill of sale accompanies the purchase and is kept with the fish during the shipping thereof and bears the name and address of the permittee and the purchaser, and the species name, number, and net weight of the fish contained in the shipment.

(d) Common victuallers or unlicensed dealers may not possess or sell fish, live or dead, or parts thereof, except in accordance with 321 CMR 4.09(19)(b) or (c).

(e) Live fish may not be taken from the premises of class 1, 3, or 6 licensees except by holders of valid aquaculture or liberation permits for the purposes of aquaculture or liberation, and except that commercial bait fish may be removed from a licensed aquaculture facility for use as bait. The seller must keep a record of the name, address, and permit number of the buyer.

(20) Conditions. The Director may at any time, in writing, establish conditions or restrictions to a license issued pursuant to 321 CMR 4.09(3) if, in his opinion, the conditions or restrictions are necessary for the preservation and protection of the health, welfare or safety of the citizens of Massachusetts or of the fish, or to establish criteria in furtherance of particular scientific or educational uses of fish. The Director may, in all cases where such act would be possible, remove all fish then inhabiting a pond or stream and plant them in waters open to the public before a class 1 or class 3 license may be issued. Where such action is impractical, the owner shall agree to reimburse the Commonwealth with purchased fish of a kind and number designated by the Director.

(21) Agreement. All licenses issued pursuant to 321 CMR 4.09(3) shall be signed by the licensee and such signature shall constitute:

(a) an agreement by the licensee to fully comply with all relevant provisions of law including but not limited to M.G.L. c. 131, c. 131A, 321 CMR, and all applicable conditions and restrictions of the license;

(b) an agreement by the licensee to allow inspections at reasonable times of the premises where the fish are kept by the Director, his agent, or an Environmental Police Officer; and

(c) liability agreement.

(22) Amendments. Class 3 license holders shall submit to the Director in writing any proposed change in the culture facility or the species held at the facility covered by a pending application or a current license. All such requested amendments and modifications shall be subject to the provisions of 321 CMR 4.09.

(23) Records and Reports. Licensees shall keep and maintain for no less than two years accurate records on forms supplied by the Division of all animals possessed and maintained under authority of a license. Said records shall be made available to the Director or to an Environmental Police Officer upon request. Records shall contain the number, place, method of disposition of fish, the person or persons to whom disposed of, whether disposed of for aquaculture, food or otherwise, and such other information as the Director may require. The Director may require, as a condition of renewal, an annual report containing such information on fish propagated, cultured, maintained, bought, or sold as he may deem appropriate and such report shall be submitted not later than January 31st for the preceding year.

(24) Renewal. Applications for renewal of any license authorized to be renewed:

(a) shall be filed with the Division no later than December 31st of each year;

(b) shall contain any change in protected fish to be maintained;

(c) shall include an annual report as provided in 321 CMR 4.09(23), where required;

(d) shall be subject to the provisions of 321 CMR 4.09 and relevant provisions of M.G.L. c. 131; and

(e) are subject to M.G.L. c. 30A, § 13, and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* in the event a renewal is denied.

4.09: continued

(25) Suspension or Revocation. Licenses issued pursuant to 321 CMR 4.09 may be suspended or revoked in accordance with the relevant provisions of M.G.L. c. 30A and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* for:

- (a) a violation of any provision of M.G.L. c. 131 or c. 131A;
- (b) a violation of any provision of 321 CMR;
- (c) a violation of any federal statute or regulation which is related to the activity for which the license has been obtained;
- (d) a violation of any condition or restriction of the license; or
- (e) upon the request of an Environmental Police Officer if it is determined that the licensee's operation causes an unnecessary threat to the public health, welfare or safety or is not in the best interest of the fish.

(26) Effect of Suspension, Revocation, or Non-Renewal. In the event a license is suspended, revoked or not renewed, the licensee shall dispose of the fish within 60 days in a manner required by the Director or in a manner provided for by the licensee with the approval of the Director.

(27) Prohibitions. Unless otherwise provided by M.G.L. c. 130, c. 131, c. 131A, or any rule or regulation issued under authority thereof, it is unlawful for any person:

- (a) to import, possess, maintain, culture, propagate or have custody of in Massachusetts any fish without a valid license issued pursuant to 321 CMR 4.09;
- (b) to falsify any license application or renewal, provide false documentation in support of a license application or renewal or fail to provide relevant and material information regarding a license application or renewal;
- (c) to refuse to allow reasonable inspections of the premises where the fish are kept at reasonable times by an Environmental Police Officer or by the Director or his agent;
- (d) to keep and maintain any fish in a condition or under conditions which do not comply with 321 CMR 4.09(4) or (18);
- (e) to import, possess, sell or purchase any fish which was taken or propagated unlawfully in or out of Massachusetts;
- (f) to liberate into the wild fish possessed and maintained under authority of a class 2 license without the Director or his agent being present, unless the Director waives such right, or into waters not otherwise approved by the Director;
- (g) to sell a fish for food purposes which has not been killed first and marked, labelled, or tagged as required by the Director, except as provided in 321 CMR 4.09(19)(c) and (d);
- (h) to violate any condition or restriction of a license issued prior to 321 CMR 4.09;
- (i) not to provide the Director with written notification of a change in protected fish stock which is covered by a pending application or a current license;
- (j) not to maintain for at least two years accurate records of all fish maintained and possessed or to falsify any such record or to refuse to provide such records upon request to an Environmental Police Officer or the Director;
- (k) to refuse or fail to comply with a disposal order of the Director issued pursuant to 321 CMR 4.09(26).

REGULATORY AUTHORITY

321 CMR 4.00: M.G.L. c. 131, §§ 4, 5, 23, 24, 26, 30, 49, 50, 51, and 52(a);