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### **MEMORANDUM**

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Acting Director

DATE: December 18, 2019

SUBJECT: Regulatory Housekeeping Proposals

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On at least an annual basis, DMF moves to make minor adjustments to its rules in order to implement more consistent and precise regulatory language, streamline and consolidate existing regulations, clarify provisions that may be confusing to the regulated community, and ensure regulatory language is consistent with DMF's interpretation of its rules.

For 2020, DMF has identified several areas of regulation in need of such adjustments. Accordingly, DMF is making a series of regulatory proposals to be taken to public hearing in early-March 2020 for potential implementation later in the spring. These proposals are enumerated below.

1. Edible Crabs.

- a. Consolidate cancer crab and blue crab regulations in one regulatory section managing the harvest of "edible crabs."
- b. Define the term edible crab to not include invasive crab species (e.g., green crabs). This will further accommodate the eradication of these invasive species by potentially allowing their sale for consumption without requiring the harvester hold a commercial coastal lobster permit.
- c. Clarify a non-commercial lobster and edible crab permit is needed only to take lobsters and edible crabs by a five or six sided trap. Such a permit is not needed to harvest edible crabs by other means (e.g., hand, net, collapsible trap).

2. Permitting.

- a. For the lobster fisheries with effort control plans, allow a minimum trap allocation transfer of 10 traps (rather than 50) to facilitate the consolidation of trap allocations in LMA2. This will complement federal regulations and was previously allowed by policy of the Director.
- b. Eliminate the provision that requires permits coastal lobster be retired after their trap allocations are reduced to less than 50 traps.
- c. Clarify that while performance criteria for the transfer of coastal lobster permits may be waived in certain circumstances (i.e., death, disability and military duty), the permit must have been actively fished prior to the qualifying circumstance.
- d. Make explicit that the initial sale of any fish from a commercial fisherman must be to a primary buyer.
- e. Further explain that a for-hire permit covers the recreational fishing activity of paying customers on a for-hire trip and the private recreational fishing activity of the named

individual. The for-hire permit does not cover private recreational fishing of anglers other than the named permit holder onboard the for-hire vessel. This interpretation has been published in our sportfish guide and in our annual letter to for-hire permit holders, but for the purpose of improving outreach and education it should be codified in regulation.

**Attachments**

Draft strikethrough regulations

### 6.19: Blue Crab Restrictions

~~(1) Definition.~~

~~Blue Crab means that species of crustacean known as *Callinectes sapidus*.~~

~~(2) Minimum Size. No person shall take, offer for sale, or possess at any time any blue crab measuring less than five inches across the shell from tip to tip of the posterior-most, longest spines along the lateral margins of the carapace.~~

~~(3) Possession Limits. It shall be unlawful for any recreational fisherman or commercial fisherman to take or possess:~~

~~(a) more than 25 blue crabs per 24-hour day; or~~

~~(b) any egg-bearing blue crab or female crabs with the egg mass (sponge), egg pouch or burian removed at any time.~~

### 6.19: Edible Crab Management

(1) Definitions. For the purpose of 322 CMR 6.19, the following words shall have the following meaning:

Asian Shore Crab means that species of crustacean known as *Hemigrapsus sanguineus*.

Blue Crab means that species of crustacean known as *Callinectes sapidus*.

Cancer Crab means that genus of crustacean that includes Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*).

Commercial Fisherman means any person who holds a commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits*, 7.03: *Coastal Lobster Permit and Trap Allocation Transfer Programs*, and 7.08: *Offshore Lobster Fishery Control Date and Moratorium*, to take, possess and land lobsters and edible crabs in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange or keep for personal or family use any edible crabs, including cancer crabs, taken under the authority of the commercial coastal or offshore lobster permit.

Dealer means 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 or their designee.

Edible Crab means blue crabs, cancer crabs, and other native species of crabs that are suitable for human consumption. This shall not include species of non-native crabs, including but not limited to the European green crab or the Asian shore crab.

Gillnet means any anchored vertical wall of webbing that is buoyed at the top and weighted at the bottom and is designed to capture fish by entanglement, gilling or wedging.

**Green crab** means that species of crustacean known as *Carcinus maenas*.

**Incidental Catch** means fish, shellfish or other marine species, taken by a gear that is not the primary species targeted by that gear.

**Jonah Crab** means the species of crustacean known as *Cancer borealis*.

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

**Open or Collapsible Trap** means any collapsible device constructed of wire or other material that is fished in an open configuration until retrieved.

**Recreational Fisherman** means any person who takes, possesses or lands edible crabs in the Commonwealth for personal or family use, sport or pleasure, which are not to be sold, traded or bartered.

**Rock Crab** means that species of crab known as *Cancer irroratus*.

**Trap** means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, scup pot or other, other than nets, that is five or six sided, placed on the ocean bottom, and designed to catch lobsters, crabs or finfish.

**(2) Permit Requirements.**

(a) **Commercial.** A commercial coastal lobster permit, issued by the Director in accordance with G.L. c. 130 §§ 2, 37, 38, and 80 and 322 CMR 7.01(2) and 7.03, is required to retain, possess, or land edible crabs by any method or gear in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange.

(2) **Non-Commercial.** A non-commercial lobster and edible crab permit, issued by the Director in accordance with G.L. c. 130 §38 and 322 CMR 7.01(4)(b)(2), is required to fish for edible crabs with trap gear or retain, possess, or land edible crabs taken by trap gear in the waters under the jurisdiction of the Commonwealth of Massachusetts for personal or familial use and which are not to be sold, traded, or bartered. No permit is required to fish for, retain, or land edible crabs taken by hand, handline, dip net, or open and collapsible trap.

**(3) Size Limits.**

(a) **Blue Crabs.** No person shall take, offer for sale, or possess at any time any blue crab measuring less than five inches across the shell from tip to tip of the posterior-most, longest spines along the lateral margins of the carapace.

(b) **Jonah Crabs.** Commercial fishermen and dealers shall not take, possess, or land Jonah crabs that have a carapace width less than 4 3/4" inch.

(c) **Mutilation.** The mutilation of any edible crab regulated by a size limit which affects

its measurement shall be prima facie evidence that the edible crab was or is less than the required length.

(d) **Disposition.** Commercial and recreational fishermen shall not land any parts of a cancer crab other than a whole cancer crab.

(4) **Egg Bearing Crabs.** It shall be unlawful for any person to take, possess, or land any cancer crab or blue crab that is egg bearing, from which eggs have been removed, or has come in contact with any substance capable of removing eggs.

(5) **Cancer Crab Rules for Commercial Fishermen Using Lobster Trap Gear.**

(a) Commercial fishermen are prohibited from setting any lobster trap gear to take or attempt to take cancer crabs, unless the lobster trap gear complies with the applicable:

1. trap gear marking regulations at 322 CMR 4.13: *Trap Gear Marking and Maximum Trawl Length*;
2. lobster gear restrictions at 322 CMR 6.02(1);
3. lobster trap limits or allocations at 322 CMR 6.13;
4. lobster trap tag requirements at 322 CMR 6.31(a); and
5. protected species regulations at 322 CMR 12.00: *Protected Species*.

(b) **Catch Limits.** For commercial fishermen fishing exclusively with lobster trap gear in accordance with 322 CMR 6.44(4), there shall be no catch, possession or landing limit for cancer crabs.

(6) **Cancer Crab Rules for Commercial Fishermen Using Gillnets or Mobile Gear.**

(a) **Incidental Catch Limit.** Commercial fishermen fishing with gillnets or mobile gear may possess and land an incidental catch of up to 1,000 cancer crabs per calendar day or per trip, whichever duration is longer. It is unlawful at any time for the incidental catch of cancer crabs to exceed 50% the catch in weight of other species onboard.

(b) **Catch Limit Exemption.** The incidental catch limit at 322 CMR 6.44(5)(a) shall not apply to any commercial fisherman who has obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.

(7) **Cancer Crab Possession Limits for Recreational Fishermen.** It shall be

unlawful for a recreational fisherman to take, possess or land more than 50 cancer crabs per calendar day or possess more than 50 cancer crabs while fishing. This limit shall not apply to any fishermen who have obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.

(8) **Blue Crab Possession Limits.** It shall be unlawful for any recreational fisherman or commercial fisherman to take, possess, or land more than 25 blue crabs per 24-hour day.

(9) **Night Closure.** It shall be unlawful for any person to tend, lift, raise, or draw any trap or to take edible crabs from a trap from one-half hour after sunset to one-half hour before sunrise. This shall not apply to the taking of edible crabs by hand, handline, dip net, or open and collapsible trap.

## 6.44: Cancer Crab Management

### (1) Definitions.

Cancer Crab means that *genus* of crab, that includes Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*).

Commercial Fisherman means any person who holds a commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits*, 7.03: *Coastal Lobster Permit and Trap Allocation Transfer Programs*, and 7.08: *Offshore Lobster Fishery Control Date and Moratorium*, to take, possess and land lobsters and edible crabs in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange or keep for personal or family use any edible crabs, including cancer crabs, taken under the authority of the commercial coastal or offshore lobster permit.

Dealer means 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*.

Gillnet means any anchored vertical wall of webbing that is buoyed at the top and weighted at the bottom and is designed to capture fish by entanglement, gilling or wedging.

Incidental Catch means fish, shellfish or other marine species, taken by a gear that is not the primary species targeted by that gear.

Jonah Crab means the species of crab known as *Cancer borealis*.

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

Trap means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, scup pot or other, other than nets, that is placed on the ocean bottom and designed to catch finfish or lobsters.

Recreational Fisherman means any person who takes, possesses or lands edible crabs, including cancer crabs, in the Commonwealth for personal or family use, sport or pleasure, which are not to be sold, traded or bartered.

Rock Crab means that species of crab known as *Cancer irroratus*.

(2) Permit Requirements. A commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits*, 7.03: *Coastal Lobster Permit and Trap Allocation Transfer Programs*, and 7.08: *Offshore Lobster Permit Control Date, Moratorium, and Transfers* is required to take, possess or land cancer crabs by any method or gear in the Commonwealth of Massachusetts for the purpose of sale, barter or exchange.

~~(3) General Requirements.~~

~~(a) Size Limit. Commercial fishermen and dealers are prohibited from taking, possessing or landing jonah crabs that have a carapace width less than 4¾ inch. The mutilation of any Jonah crab which affects its measurement shall be *prima facie* evidence that the Jonah crab was or is less than the required length.~~

~~(b) Disposition. Commercial and recreational fishermen are prohibited from landing any parts of cancer crabs other than whole cancer crab.~~

~~(c) Egg Bearing Females. Commercial and recreational fishermen and dealers are prohibited from taking, possessing or landing female cancer crabs:~~

- ~~1. that are egg bearing;~~
- ~~2. from which eggs have been removed; or~~
- ~~3. that have come in contact with any substance capable of removing eggs.~~

~~(4) Commercial Fishermen Using Lobster Trap Gear.~~

~~(a) Commercial fisherman are prohibited from setting any lobster trap gear to take or attempt to take cancer crabs, unless the lobster trap gear complies with the applicable:~~

- ~~1. trap gear marking regulations at 322 CMR 4.13: *Trap Gear Marking and Maximum Trawl Length*;~~
- ~~2. lobster gear restrictions at 322 CMR 6.02(1);~~
- ~~3. lobster trap limits or allocations at 322 CMR 6.13;~~
- ~~4. lobster trap tag requirements at 322 CMR 6.31(a); and~~
- ~~5. protected species regulations at 322 CMR 12.00: *Protected Species*.~~

~~(b) Catch Limits. For commercial fishermen fishing exclusively with lobster trap gear in accordance with 322 CMR 6.44(4), there shall be no catch, possession or landing limit for cancer crabs.~~

~~(5) Commercial Fishermen Using Gillnets or Mobile Gear.~~

~~(a) Incidental Catch Limit. Commercial fishermen fishing with gillnets or mobile gear may possess and land an incidental catch of up to 1,000 cancer crabs per calendar day or per trip, whichever duration is longer. It is unlawful at any time for the incidental catch of cancer crabs to exceed 50% the catch in weight of other species onboard.~~

~~(c) Catch Limit Exemption. The incidental catch limit at 322 CMR 6.44(5)(a) shall not apply to any commercial fisherman who has obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.~~

~~(6) Recreational Fishing Limits: Catch Limits. It shall be unlawful for a recreational fisherman to take, possess or land more than 50 cancer crabs per calendar day or possess more than 50 cancer crabs while fishing. This limit shall not apply to any fishermen who have obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.~~

**6.44 Reserved for Future Regulation**

7.01: Form, Use and Contents of Permits

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

- (b) Non-commercial Fishing Permits.

1. Recreational Saltwater Fishing Permits. Pursuant to M.G.L. c. 130, § 17C and 322 CMR 7.10, the Director may issue a recreational saltwater fishing permit to authorize:
  - a. recreational saltwater fishing; and
  - b. for-hire vessels.
2. Non-commercial Lobster and Edible Crab. Pursuant to M.G.L. c. 130, § 38, the Director may issue a non-commercial lobster **and edible crab** permit to authorize:
  - a. Pot-Trap Fishing. Issued to a named individual authorizing the harvest, possession and landing of lobsters **and edible crabs** by means of **traps** ~~pots~~ for non-commercial purposes by that individual or by members of that individual's immediate family residing in the same household.
  - b. Diver Fishing. Issued to a named individual authorizing the harvest, possession and landing of lobsters by diving for non-commercial purposes by that individual only. A noncommercial lobster permit may not be carried on board any vessel fishing under authority of an offshore lobster permit.

## Draft Permitting Regulations

### 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 **Area 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.

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/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 28<sup>th</sup> and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31<sup>st</sup> 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.

(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 30<sup>th</sup> 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 50 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 30<sup>th</sup> 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 ~~50~~ 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 authorized to fish traps in OCCLMA or LCMA 2 who transfers a portion of their Trap Allocation resulting in the Allocation totaling less than 50 traps shall have their permit retired immediately.~~

(e) ~~(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 any part of their trap allocation except when transferring their commercial lobster permit.

(f) ~~(g)~~ 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) Performance criteria for permit holders as established by 322 CMR 7.03(2) may be waived for the following reasons:~~

~~1. documented disability of the permit holder, provided that the permit holder fished during at least four of the five years immediately preceding the disability as evidenced by catch reports, and provided further that a signed statement by a physician verifies the disability precludes the permit holder from fishing.~~

~~2. for the purposes of transferring a permit to an immediate family member, including transfers involving the death of the permit holder. Immediate family member shall mean the legal father, mother, wife, husband, sister, brother, son, daughter, or grandchild of the permit holder in the direct line.~~

(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 for Coastal Lobster Transfer programs, established at 322 CMR 7.03(5) may be waived for posthumous transfers to immediately family.**

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

~~(c)~~ (d) 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 granted** 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.

~~(d) The requirement that allocation transfers involve multiples of 50 traps may be waived for permit holders who transfer all of their transferable allocation.~~

(8) 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.

(9) 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 equal to less than ~~50~~ **10** traps after they have transferred part of their trap allocation to another permit holder;

(e) 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;

(f) for allocation transfers to involve the transfer of traps outside of the specific LCMA for which the trap allocation is designated;

(g) 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.

## 7.07: Dealers Acting as Primary Buyers

(1) Purpose. The purpose of 322 CMR 7.07 is to establish consistent standards for dealers to purchase certain species from commercial fishermen managed by DMF, including those under commercial quotas pursuant to interstate and federal management plans. To provide a mechanism to collect and verify landings of all species landed and sold in Massachusetts, dealers are required to maintain and report on records concerning sale of fish within Massachusetts. In addition, dealers are required to provide access to said records to law enforcement officials at a permanent place of business within the Commonwealth.

(2) Definitions.

**Dealer means any whole sale or retail seafood dealer permitted by the Director pursuant to G.L. c. 130 s. 80 and 322 CMR 7.01(3).**

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

Quota Managed Species means those species managed by DMF with annual commercial quotas pursuant to interstate and/or federal management plans. Quota managed species include striped bass, summer flounder, scup, black sea bass, spiny dogfish, squid, bluefish, horseshoe crabs and tautog.

(3) Authorization. ~~Dealers~~ **Persons** shall not **make a primary purchase of** any species without being properly permitted by DMF **as a dealer and authorized as a primary buyer**. In addition, dealers buying quota managed species must have written authorization from the Director.

(4) Dealer Requirements.

(a) Dealers must have a permanent place of business in Massachusetts. Dealers shall maintain a written record, at their Massachusetts place of business, of all primary purchases of any species from commercial fishermen in Massachusetts.

(b) Dealers accepting any species from fishermen shall record all purchases at the time of landing with number of containers per species, date, time, fishermen's name and DMF ~~III~~ **commercial fisherman permit identification** number for reporting purposes and inspection by law enforcement officials. Each container shall be labeled with vessel name and fishermen's DMF ~~III~~ **commercial fisherman permit identification** number to identify who the product was purchased from.

(c) Dealers shall report all purchases of all species either electronically or by phone or in writing based on schedules established and on forms provided by the Division.

(5) Prohibitions. It is unlawful for dealers:

(a) to purchase any species in excess of any species-specific possession limits established by 322 CMR from a single commercial fisherman regardless of the number of commercial fisherman permits in possession.

(b) to purchase any species when the commercial fishery for that species is closed.

(c) to accept or purchase any species from commercial fishermen during any species-specific no-fishing days established by any section of 322 CMR or during those species-specific hours of

the day when landing is prohibited established by any section of 322 CMR.

(d) to accept any species of fish from persons not commercially permitted by DMF.

(6) Exceptions. Prohibitions in 322 CMR 7.07(5)(a) through (c) shall not apply to the purchase of aquaculture-reared product.

## 7.10: Recreational Saltwater Fishing Permits

(1) Authority and Purpose.

(a) The Director is authorized, pursuant to St. 2009, c. 161, § 8, to establish the Commonwealth's recreational saltwater fishing permit program in compliance with the state exemption requirements of section 401(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1881 (the "Federal Act"). The Director, pursuant to his authority under the Federal Act, and M.G.L. c. 130, §§ 17 and 17A, has promulgated 322 CMR 7.10 for the purposes of implementing the state recreational saltwater fishing permit program in regulation.

(b) 322 CMR 7.10 identifies the persons who must apply for or are exempt from a recreational saltwater fishing permit, sets forth the application and permit requirements applicable to individual and for-hire permits, and gives notice of the penalties that may be assessed against persons who violate M.G.L. c. 130, § 17C, or 322 CMR 7.10.

(2) Definitions. As used in 322 CMR 7.10, the definitions have the following meaning, unless the context otherwise requires. Other words used in 322 CMR 7.10 have the meaning set forth in 322 CMR 7.01(1).

**For-Hire means that activity permitted in accordance with G.L. c. 130 s. 17C and 322 CMR 7.10(5), whereby the vessel named on the for-hire permit is carrying paying customers for the purpose of recreational fishing.**

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

**Trip means the period of time that begins with the fishing vessel departs from the dock, berth, mooring, beach, seawall, ramp, or port to carry out recreational fishing and terminates with a return to a dock, berth, mooring, beach, seawall, ramp, or port.**

(3) Persons Required to Obtain a Permit. Unless exempted pursuant to 322 CMR 7.10(4), all persons engaged in the recreational fishing, or who take or land finfish for recreational purposes in or from the coastal waters of the Commonwealth, shall obtain a recreational saltwater fishing permit from the Director in accordance with 322 CMR 7.10.

(4) Persons Exempt from Obtaining a Permit. A recreational saltwater fishing permit is not required in the following circumstances:

(a) persons younger than 16 years old;

(b) persons who, regardless of their age, otherwise meet the definition of a disabled person in M.G.L. c. 19C;

(c) persons fishing **during a for-hire trip conducted under the authority of a for-hire permit issued in accordance with G.L. c. 130 s. 17C and 322 CMR 7.10(5). ~~as a passenger from a for-hire vessel; provided that the owner of the vessel has obtained a for-hire permit from the Director in accordance with 322 CMR 7.10;~~**

(d) persons who hold a commercial fishing permit from the Director and keep for personal use any fish taken under the authority of that permit **in accordance with the applicable commercial fishing regulations set forth at 322 CMR 6.00 or 9.00;** or

(e) non-resident persons holding a valid recreational saltwater fishing permit of any coastal state, provided however, that the Director has determined in writing that the requirements of such other state permit is substantially the same as the permit issued by the Director pursuant to 322 CMR 7.10 and that the other state provides similar privileges granted under its law to residents as permitted by the Director.

(5) **For-Hire Permit Requirements** ~~Applicable to For-hire Vessels~~. The Director may issue a recreational for-hire permit to a named individual for use onboard the vessel identified on the permit application. This permit shall cover all recreational fishing during a for-hire trip, as well as any private recreational fishing conducted by the individual person named on the for-hire permit. ~~As provided in 322 CMR 7.10(4)(e), persons who engage in recreational fishing as a passenger from a for-hire vessel are exempt from the requirement to obtain an individual recreational saltwater permit, ; provided that the owner of the for-hire vessel has obtained a permit from the Director. The owner of the for-hire vessel shall obtain the applicable recreational saltwater fishing permit in accordance with permit categories for the following for-hire permit categories:~~

(a) Permit Categories. The following for-hire permit categories are available based on vessel capacity:

1. Charter Boat. The for-hire vessel has a capacity to carry up to six persons fishing as passengers from the for-hire vessel.
2. Head Boat. The for-hire vessel has a capacity to carry seven or more persons fishing as passengers from the for-hire vessel.

(b) Requirement to Post and Give Notice of Rules. The owner or operator, if different from the owner, of a for-hire vessel shall:

1. Charter Boats: give verbal notice to all persons fishing as passengers from the vessel about their compliance with the catch sizes and possession limits.
2. Head Boats:
  - a. post written rules on the minimum catch sizes and possession limits applicable to the target fish species in a conspicuous and accessible location on the vessel; and
  - b. give verbal notice to all persons fishing as passengers from the vessel about their compliance with the catch sizes and possession limits, and direct their attention to the posted rules.

(c) Requirement to Carry Measuring Devices. For the purposes of ensuring compliance with the minimum catch size rules:

1. all charter boats shall be equipped with at least one ruler or other appropriate measuring device that is visible and accessible to the passengers; and
2. all head boats shall be equipped with at least five rulers or other appropriate measuring devices that is visible and accessible to the passengers.

(6) Application for a Permit. All applicants for a recreational saltwater fishing permit shall comply with the following requirements:

(a) Application Forms. Application for a recreational saltwater fishing permit shall be made by completing the applicable application form provided by the Director, and by paying the application fee, if applicable, established in 801 CMR 4.00: *Rates*.

(b) Information Required to Be Provided by the Applicant. In order for an application for a recreational saltwater fishing permit to be considered complete, the applicant shall provide the

following information to the Director:

1. An applicant seeking an individual permit shall provide their full name, address, date of birth, and telephone number;
2. An applicant seeking a for-hire vessel permit shall provide the following information about the vessel and the owner, and if applicable, the operator:
  - a. the name of the vessel, the vessel's registration or documentation number and the vessel's home port;
  - b. the full name, address, date of birth and telephone number of the owner of the vessel; if there is more than one owner, this identification information shall be provided by each person holding an ownership interest in the vessel;
  - c. the full name, address and telephone number of the operator; if the operator is different from the vessel owner;
  - d. if the owner or operator of the vessel is a corporation or other legal entity, the name, address and any other identification information specified in the application form; and
  - e. any other information deemed necessary or appropriate by the Director to complete the Division's review and action on the application.

(c) Completeness of the Application. The Director shall not issue a recreational saltwater fishing permit before receiving a complete application and payment of the application fee, if applicable, as required under 322 CMR 7.10(6).

(7) Permit Conditions. The Director may include general or special conditions in recreational saltwater fishing permits to provide for and ensure compliance with the requirements of M.G.L. c. 130, § 17C, or 322 CMR 7.10.

(8) Penalties for Violations of M.G.L. c. 130, § 17C, or 322 CMR 7.10. Any person who violates M.G.L. c. 130, § 17C, or 322 CMR 7.10 may be subject to one or more of the following penalties:

- (a) the suspension or revocation of the recreational saltwater fishing permit, or the suspension or revocation of a non-resident's authorization to engage in recreational fishing in the coastal waters of the Commonwealth;
- (b) the confiscation of all finfish caught, possessed or sold in violation of M.G.L. c. 130, § 17C, or 322 CMR 7.10;
- (c) a non-criminal fine in the amount of \$50, as provided under M.G.L. c. 21A, §§ 10G and 10H;
- (d) when the violator has failed to obtain an individual permit, a criminal fine of not less \$50 nor more than \$250;
- (e) when the violator has failed to obtain an individual permit and has two or more such offenses in violation of M.G.L. c. 130, § 17C, or 322 CMR 7.10, a criminal fine of not less \$100 nor more than \$500;
- (f) when the violator has failed to obtain, or is the holder of, a for-hire permit and the offense is a violation of 322 CMR 7.10, a criminal fine of not less \$250 nor more than \$1000;
- (g) when the violator has failed to obtain, or is the holder of, a for-hire permit and has two or more offenses in violation of 322 CMR 7.10, a criminal fine of not less \$500 nor more than \$1000;
- (h) when the violator has failed to obtain, or is the holder of, a for-hire permit and the offense is a violation of M.G.L. c. 130, § 17C, a criminal fine of not less \$500 nor more than \$5000;
- (i) when the violator has failed to obtain, or is the holder of, a for-hire permit and has two or more offenses in violation of M.G.L. c. 130, § 17C, a criminal fine of not less \$1000 nor more than \$5000; and

(j) any other sanction or penalty authorized under M.G.L. c. 130.

(9) Permit Fees.

(a) The Director may charge a separate annual fee for each category of permits established by the Director pursuant to 322 CMR 7.10, provided that the amount of such permit fees shall be established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B.

(b) The Director or agents authorized by the Director to sell permits may not charge a permit fee to those persons applying for an individual recreational saltwater fishing permit who at the time of the permit application are 60 years of age or older.