

322 CMR: DIVISION OF MARINE FISHERIES

322 CMR 7.00: PERMITS

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7.01: Form, Use and Contents of Permits

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

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

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

Director means the Director of the Division of Marine Fisheries.

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

Land or Landing as that term is used in 322 CMR 7.00 and in M.G.L. c. 130, § 80 means to transfer or attempt to transfer the catch of fish or shellfish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish on board to tie-up to any dock, pier or other artificial structure.

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

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

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

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

Recreational Fishing means the non-commercial taking or attempted taking of finfish for

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personal or family use, sport or pleasure which are not sold, traded or bartered.

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

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

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- (2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities:
- (a) Coastal Lobster. Issued to a named individual in accordance with 322 CMR 7.01 authorizing the possession and landing of lobster and fish for commercial purposes from waters within the jurisdiction and authority of the Commonwealth in accordance with M.G.L. c. 130, § 38B and 322 CMR 7.01. This permit may be endorsed for the harvest, possession and landing of shellfish and seaworms for commercial purposes. The permit shall include a restriction that memorializes the permit holders declaration of the ASMFC Lobster Management Areas the permit holder will fish during a calendar year. If the permit authorizes fishing in more than one area, the permit shall be subject to the most restrictive ASMFC lobster management regulations governing the permitted fishing area, as set forth at 322 CMR 6.01(1)(a) and 6.02(1)(a) and (3).
 - (b) Offshore Lobster. Authorizes the possession and landing of lobsters harvested from waters outside the jurisdiction of the Commonwealth using a vessel registered under the laws of the state and validly endorsed for FCZ fishing. This permit shall be further endorsed for gear type to enhance management, reporting, and enforcement of gear-specific trip limits by requiring a non-trap endorsement for those permit holders fishing with non-trap gear; permits fished with trap gear will be the default category and not require a distinct endorsement. Offshore lobster permit holders or users may not also hold, use or have on board an individual non-commercial or family non-commercial lobster permit. The permit shall include a restriction that memorializes the permit holders declaration of the ASMFC Lobster Management Areas the permit holder will fish during a calendar year. If the permit authorizes fishing in more than one area, the permit shall be subject to the most restrictive ASMFC lobster management regulations governing the permitted fishing area, as set forth at 322 CMR 6.01(1)(a) and 6.02(1)(a) and (3).
 - (c) Boat 100 Feet or Greater. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel 100 feet registered length or greater. Said permits shall authorize the crew of said vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
 - (d) Boat 60 to 99 Feet. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel from 60 to 99 feet registered length. Said permit shall authorize the crew of the vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
 - (e) Boat 0 to 59 Feet. Authorizes the harvest, possession and landing of fish for commercial purposes using a vessel from 0 to 59 feet registered length. Said permit shall authorize the crew of said vessel to fish under its authority and may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
 - (f) Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students no less than 12 years of age and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15th to September 15th of each year and further conditioned to the use of not more than 25 lobster pots.
 - (g) Shellfish and Seaworms. Authorizes only the named individual to harvest, possess and land shellfish and seaworms for commercial purposes, and may be endorsed for the shucking of bay scallops.
 - (h) Individual. Authorizes only the named individual to harvest, possess and land fish for commercial purposes. Said permit may be endorsed upon request of the applicant for the harvest, possession and landing of shellfish and seaworms for commercial purposes.
 - (i) Shellfish/Rod and Reel. Authorizes the harvest, possession and landing of shellfish for

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commercial purposes and/or the harvest, possession or landing of fish by means of a rod and reel for commercial purposes subject to 322 CMR 7.01(10).

(j) Rod and Reel. Authorizes only the named individual to harvest, possess and land for commercial purposes by means of a rod and reel.

(k) Shellfish Transaction Card. Authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

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(3) Dealer Permits. The following categories of permits may be issued by the Director and are required for the following activities:

- (a) Wholesale Dealer. Authorizes the wholesale possession, distribution, processing, sale or resale of raw fish and shellfish. Said permit includes authorization for the retail sale and retail resale of fish and shellfish from a fixed location approved in writing by the Massachusetts Department of Public Health.
- (b) Wholesale Broker. Authorizes the wholesale brokering, directing the transport of or any commercial transaction in the sale of raw or processed fish or shellfish.
- (c) Wholesale Truck. Authorizes the wholesale possession or distribution of raw or processed fish and shellfish for commercial purposes from a vehicle approved in writing by the Massachusetts Department of Public Health. Exception: Commercial Lobster Permit holders who also hold a Retail Boat Permit as defined in 322 CMR 7.01(3)(f) shall be exempt from the requirements to obtain this wholesale truck dealer's permit when transporting only live lobsters and live crabs for commercial sale.
- (d) Retail Dealer. Authorizes the retail sale of raw fish and shellfish from a fixed location approved in writing by the Massachusetts Department of Public Health.
- (e) Retail Truck. Authorizes the retail sale of raw fish from a vehicle approved in writing by a local or county Board of Health.
- (f) Retail Boat. Authorizes a fisherman with a Massachusetts commercial fishing permit to sell from a boat to the general public, product he lawfully harvested, including the sale of live lobsters and whole raw fish from a boat. For holders of any commercial lobster permit, the authorization granted under this retail boat dealer's permit shall also include the transport of live lobsters or live crabs, caught aboard the holder's permitted vessel, for sale to the public including to persons and businesses that are not retail or wholesale dealers of raw or processed fish or shellfish.

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(g) Bait Dealer. Authorizes the possession and sale of bait.

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

(a) Regulated Fishery. Authorizes only the named individual and/or a commercial fishing vessel to engage in the harvest, possession and landing of fish or shellfish from a fishery regulated pursuant to M.G.L. c. 130, § 17A, to be issued in addition to those permits required pursuant to 322 CMR 7.01(2).

1. State Waters Multispecies Groundfish Permit Endorsement. Authorizes only the named individual and/or vessel to harvest and possess for commercial purposes from waters under the jurisdiction of the Commonwealth the following species: cod, haddock, pollock, redfish, white hake, yellowtail flounder, winter flounder, windowpane flounder, American plaice, witch flounder, monkfish, ocean pout and wolffish.

a. State Waters Multispecies Groundfish Permit Endorsement Eligibility. The Director may issue a single State Waters Multispecies Groundfish Permit Endorsement to permit holders who held a state-issued commercial permit on November 4, 2004, renewed their permit in 2005, and are not authorized by a federal permit to take Multispecies Groundfish or monkfish. The Multispecies Groundfish Endorsement may only be issued as an endorsement on the state-issued commercial boat and lobster permits, but not the seasonal lobster permit.

b. Exceptions.

i. Limited Harvest of Multispecies Permit Groundfish in State Waters. Notwithstanding permit prohibitions on the take of finfish described in 322 CMR, any state permitted commercial fisherman who does not hold a State Waters Multispecies Groundfish Permit Endorsement may take, possess and sell up to 75-lbs. of cod per vessel per 24-hour day harvested from waters under the jurisdiction of the commonwealth.

ii. Eligibility for Permit Holders Who Have Surrendered Their Federal Permits. Notwithstanding permit prohibitions on eligibility described in 322 CMR 7.01(4)(a), the Director may issue a single State Waters Multispecies Groundfish Permit Endorsement to a state-issued commercial permit holder for a vessel that has been authorized by a federal permit to take Multispecies groundfish or monkfish if the permit holder has surrendered said federal permit to NOAA Fisheries.

c. Renewals. In 2007 and beyond, the Director may issue a State Waters Multispecies Groundfish Endorsement only to those commercial fishermen who received a State Waters Multispecies Groundfish Permit Endorsement in 2006 and renew their permits in accordance with 322 CMR 7.00.

2. Striped Bass. Authorizes only the named individual and/or commercial fishing vessel to take, possess and land striped bass for commercial purposes in accordance with 322 CMR 6.07: *Striped Bass Fishery (Morone Saxatalis)*. All persons must apply for or apply to renew their commercial striped bass regulated fishery permit prior to the last day of February in the effective permitting year.

3. Gillnets. A regulated fishery permit shall be required to set, fish, or harvest any species by means of a gillnet.

a. Sink Gillnet Permit. Authorizes only the named individual and/or vessel to use a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column. Sink gillnet permits are limited to renewals only and are not transferable. Holders of sink gillnet permits may

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fish surface gillnets under the authority of their sink gillnet permit.

b. Surface Gillnet Permit. Authorizes only the named individual and/or vessel to use a gillnet, anchored, drifting or otherwise, that is designed to be, capable of being, or is fished in the upper two-thirds of the water column. Exemptions: No permit shall be required for fishermen using a surface gillnet less than 250 square feet.

4. Atlantic Menhaden. A regulated fishery permit shall be required to harvest, possess or land Atlantic menhaden for commercial purposes. This permit authorizes only the named individual and/or vessel to catch and retain or land more than 6,000 lbs. of menhaden.

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- a. Eligibility. For 2014, the Director may issue a single Atlantic Menhaden Regulated Fishery Permit Endorsement to a Massachusetts commercial fisherman permit holder, provided:
 - i. there is valid documentation of landing more than 6,000 pounds of Atlantic menhaden in Massachusetts during any trip in 2009, 2010, 2011 or 2012; or
 - ii. the individual holds a commercial inshore net permit endorsement that authorizes the use of purse seines in the inshore net areas, as described at 322 CMR 4.02: *Use of Nets in Inshore Restricted Waters*; or
 - iii. the individual held a 2013 Coastal Access Permit, issued pursuant to M.G.L. c. 130, §§ 2 and 80 and 322 CMR 7.05, prior to July 1, 2013 or obtains a limited entry Coastal Access Permit through transfer, pursuant to M.G.L. c. 130, § 2 and 322 CMR 7.06, after July 1, 2013.
 - b. Renewals. In 2015 and beyond, the Director may issue an Atlantic Menhaden Regulated Fishery Permit Endorsement to only those commercial fisherman permit holders who received an Atlantic Menhaden Regulated Fishery Permit Endorsement in 2013 and have renewed their permits in accordance with 322 CMR 7.00.
- (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. Pursuant to M.G.L. c. 130, § 38, the Director may issue a non-commercial lobster permit to authorize:
 - a. Pot Fishing. Issued to a named individual authorizing the harvest, possession and landing of lobsters by means of 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.
- (c) Special Project. Authorizes only the named individual to engage in a specified marine fishery project, including but not limited to aquaculture or mariculture; scientific, environmental and biological collection and study, assessment or experimentation; collection and possession for education purposes; shellfish relay; and shellfish propagation.
- (d) Anadromous Fish Passageway. Authorizes the named individual to carry out activities related to the construction, reconstruction, repair, or alteration of any anadromous fish passageway, as defined in M.G.L. c. 130, §§ 1 and 19.
- (5) Application. Applicants for a permit shall comply with the following requirements:
- (a) Forms. Applications for a permit shall be on forms supplied by the Director. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
 - (b) Information. An application for a permit required by M.G.L. c. 130 and 322 CMR 7.01 shall contain and include the following:
 1. the name and address of the applicant;
 2. the date of birth of the applicant;
 3. the last four digits of either the applicant's social security number or federal identification number;

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4. for applicants for a commercial fishermen permit endorsed for shellfish, the applicant's Massachusetts driver's license number or Registry of Motor Vehicles identification number;
5. the name of the commercial fishing vessel;
6. the required length of the fishing vessel;
7. the Massachusetts vessel registration number;
8. the homeport of the commercial fishing vessel; and
9. the true and accurate signature of the applicant;
10. any other information sufficient to fully identify the particular activity to be undertaken and the intended use for the permit.

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- (c) Conditions. The following permit applicants shall comply with the following conditions:
1. Master digger permit applicants shall submit with their application a valid bond as required by 322 CMR 7.02(2)(b);
 2. Dealer permit applicants shall submit with their application an approved health inspection certificate validly issued by the Department of Public Health pursuant to a health inspection of the applicant's premises;
 3. Seasonal lobster permit applicants shall submit an affidavit supplied by the Director signed under the pains and penalties of perjury attesting to their full-time student status; and
 4. Shellfish and seaworm permit applicants shall, for a bay scallop endorsement, submit a certified sanitary inspection approved by the Massachusetts Department of Public Health.
- (d) Multiple Applications. A separate application shall be made for each individual, boat, vessel, plant, firm, establishment, corporation, partnership or other business entity.
- (e) Signature. Permit applicants shall comply with the following applicable signature requirements:
1. Applicants for recreational saltwater fishing permits and non-commercial lobster fishing permits issued in accordance with 322 CMR 7.01(4)(b) and 7.10 through the Online System shall electronically sign their permit after making an online affirmation under the pains and penalties of perjury that the information provided is true and accurate and that the applicant shall comply with all applicable marine fisheries regulations.
 2. Applicants for all other permits issued to an individual in accordance with 322 CMR 7.01 shall sign their name on the paper application and the permit.
 3. Except as otherwise provided at 322 CMR 7.01(5)(f), whenever a permit is issued to a boat, vessel or business entity, the permit may be signed by of the owner of the boat or vessel or by a duly authorized officer of the business entity that includes the true and correct business title of the duly authorized officer.
- (f) Exception. Coastal lobster permits shall be issued to and renewed by a named individual only. The permit application and the permit itself shall be signed by a named individual who shall be the holder. In no event may a coastal lobster permit be issued to or renewed by a business entity or an officer of a business entity.
- (g) Effect of Signature. The applicant's signature on either the paper application or their electronic signature through the Online System shall constitute:
1. a declaration under the pains and penalties of perjury that all information contained in the application is true and accurate to the best belief of the applicant;
 2. a statement that the applicant and all individuals conducting the activity under authority of the permit have read and are familiar with all applicable statutes contained in M.G.L. c. 130, all applicable regulations contained in 322 CMR and agree to fully comply therewith; and
 3. an agreement to display all fish in possession of the applicant and all individuals conducting the activity under authority of the permit to any officer authorized to enforce the marine fishery laws of the Commonwealth.
- (h) Fees. All fees required in accordance with M.G.L. c. 130, § 83 shall accompany each application in the form of checks or money orders made payable to the Commonwealth of Massachusetts. Cash may be used only when the application is made in person. In the event an applicant's personal check is not honored by the payor or bank, the permit issued to such applicant shall be void until such time as the required fee in the form of a bank check, certified check or postal money order is received by the Director. Any activity conducted by the applicant under the purported authority of said permit five or more days subsequent to

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the mailing to the applicant of a notice of the dishonored check shall constitute a violation of the applicable provisions of M.G.L. c. 130 and 322 CMR.

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

(a) Paper permits must:

1. identify the activity which is authorized or the privilege which is granted by the Director;
2. contain a financial transaction number;
3. contain a permit number;

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4. contain the date of issuance;
 5. contain a true and accurate copy of the Director's signature;
 6. contain a true and accurate signature of the holder, or if a boat, vessel or business entity, the owner, master or duly authorized officer of the business entity including his or her business title.
- (b) Recreational salt water fishing permits and non-commercial lobster permits issued through the Online System must be based on a completed form provided by the Director through the Online System and electronically signed in accordance with 322 CMR 7.01(5)(e).
- (7) Conditions. The Director may at any time, in his discretion, attach any written conditions or restrictions to the permit deemed necessary or appropriate for purposes of conservation and management or to protect the public health, welfare and safety.
- (8) Duplicates. Duplicate permits may be issued by the Director provided that a satisfactory affidavit signed under the pains and penalties of perjury is submitted by the person who signed the original application and permit attesting to the disposition of the original permit sought to be replaced.
- (9) Suspension and Revocation. In accordance with M.G.L. c. 30A, §§ 10, 11 and 13, and pursuant to the procedural rules of 801 CMR 1.00, any permit issued by the Director may be suspended or revoked for falsifying any application form, violation of any condition or restriction of the permit, or for violation of any provision of M.G.L. c. 130 or 322 CMR.
- (10) Alteration. Any permit validly issued by the Director which is subsequently and substantially altered, erased or mutilated is invalid.
- (11) Expiration. All permits validly issued shall expire on December 31 following the date of issuance unless otherwise provided by law, modified or extended by the Director in writing, or suspended or revoked by the Director or a court of competent jurisdiction.
- (12) Transfer. Unless otherwise provided in writing by the Director, or in accordance with 322 CMR or M.G.L. c. 130, permits may not be transferred, loaned, leased, exchanged, bartered, sold or possessed by a person other than the holder, boat, vessel, or business entity to which it was issued.
- (13) Requirement to Accommodate Sea Samplers. For the purpose of observing and acquiring information about fishing operations and sampling catches for biological information, all permit holders, as condition of their permit, shall agree to take on board and provide safe access for sea samplers authorized by the Division of Marine Fisheries at a location established by the Division.
- (14) Prohibitions. It is unlawful to:
- (a) conduct any marine fishery activity which is subject to a permit pursuant to M.G.L. c. 130 or 322 CMR without such permit or during a period of suspension or revocation of the permit, or five days after the mailing of a notice pursuant to 322 CMR 7.01(5)(d);
 - (b) falsify any application form, documentation or letters of support in conjunction with any application form;
 - (c) alter, erase, mutilate or falsify any permit issued by the Director;
 - (d) violate or fail to comply with any permit condition or restriction;
 - (e) transfer, loan, lease, exchange, barter or sell any permit or for any person other than the

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holder to possess a permit except as otherwise provided for in writing by the Director or in accordance with 322 CMR or M.G.L. c. 130;

(f) violate any provision of M.G.L. c. 130 or 322 CMR when conducting an activity authorized by permit;

(g) fail to produce a permit upon demand of any officer authorized to enforce the marine fishery laws of the Commonwealth, except that persons who have purchased a recreational saltwater fishing permit or non-commercial lobster permit through the Online System may produce their permit by displaying a true, complete and legible image of it on their mobile device;

(h) fail to display fish harvested or possessed under authority of a permit to any officer authorized to enforce the marine fishery laws of the Commonwealth;

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- (i) harass, threaten, intimidate, coerce or assault any officer authorized to enforce the marine fishery laws of the Commonwealth;
- (j) have more than one individual, boat, vessel or business entity fish or conduct business under authority of a permit, unless otherwise provided for in M.G.L. c. 130, 322 CMR or in writing by the Director;
- (k) sell or offer to sell any shellfish harvested under authority of a commercial fishermen permit endorsed for shellfish to any person without a valid Massachusetts shellfish transaction card and either a valid Massachusetts driver's license or a Registry of Motor Vehicles Identification card;
- (l) have a non-commercial lobster permit on board any vessel fishing under authority of an offshore lobster permit;
- (m) conduct any activity designed to construct, reconstruct, rebuild, repair, or alter any anadromous fish passageway as defined in M.G.L. c. 130, §§ 1 and 19, or to construct or build any new anadromous fish passageway without a special permit issued pursuant to 322 CMR 7.01(4).
- (n) to sell or offer to sell any regulated groundfish species as defined in 322 CMR 8.12(1) harvested by persons aboard vessels that are engaged in for-hire fishing.
- (o) obtain multiple State Waters Multispecies Groundfish Endorsements for the same vessel regardless of the number of commercial permits associated with said vessel.
- (p) obtain a State Waters Multispecies Groundfish Endorsement for a vessel authorized to take Multispecies Groundfish or monkfish under a federal permit.
- (q) obtain a State Waters Multispecies Groundfish Endorsement for a vessel authorized on or before January 1, 2006 to take Multispecies Groundfish or monkfish under a federal permit if that federal permit has been transferred, leased or sold on or after January 1, 2006;
- (r) take, possess or sell greater than 75-lbs. of cod harvested from waters under the jurisdiction of the Commonwealth without a State Waters Multispecies Groundfish Endorsement or a valid federal permit authorizing the take and/or possession of Multi species Groundfish or monkfish.

7.02: Master and Subordinate Digger Permits

(1) Definitions. For purposes of 322 CMR 7.02 only the following words shall have the following meanings:

Moderately Contaminated Shellfish means any shellfish from an area classified as "restricted" and suitable for the harvest of shellfish with purification.

Purification means the process of purifying moderately contaminated shellfish at the purification plant operated by the Division and located at Plum Island, Newburyport, Massachusetts.

Director means the Director of the Division of Marine Fisheries or his designee, 251 Causeway Street, Suite 400, Boston, MA 02114.

Division means the Massachusetts Division of Marine Fisheries.

DPH means the Massachusetts Department of Public Health, Division of Food and Drugs, 305 South Street, Jamaica Plain, Massachusetts.

Master Digger means any person authorized by the Director pursuant to 322 CMR 7.02 to engage in the harvest, possession and transportation of moderately contaminated shellfish.

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Subordinate Digger means any person authorized by the Director pursuant to 322 CMR 7.02 to harvest and possess moderately contaminated shellfish for sale to a master digger only.

- (2) Master Digger Eligibility. An applicant for a master digger permit shall:
- (a) be at least 18 years of age or older, and, except for renewals, shall present documented proof of birth date in person at the Division office in Boston;

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(b) be bonded by a recognized insurance bonding company to assure full faith and compliance with 322 CMR 7.02, 322 CMR 10.00, DPH regulations at 105 CMR 515.000: *Action Levels for Poisonous or Deleterious Substances in Food*, 105 CMR 520.000: *Labeling*, 105 CMR 525.000: *Newburyport Shellfish Treatment Plant*, and 105 CMR 533.000: *Fish and Fishery Products*, M.G.L. c. 130, §§ 74, 75 and 80 and any other conditions or restrictions applicable to the master digger permit. Said bond shall be a surety bond in the sum of \$1,000.00 fully executed with an effective term coextensive with that of the master digger permit, generally from January 1 to December 31 of each year. Master diggers with one prior judicial or administrative conviction related to the above mentioned statutes and regulations shall be required to obtain a bond in the amount of \$2,500.00. Master diggers with two or more prior judicial or administrative sanctions shall be required to obtain a bond in the amount of \$5,000.00;

(c) submit a satisfactory annual DPH inspection certificate certifying that the transport vehicle used by the applicant fully complies with appropriate sanitary standards and requirements of the latest revision of part II of the National Shellfish Sanitation Program manual of operations pertaining to the interstate shipment of shellfish; and

(d) submit a signed statement on forms supplied by the Director that the applicant has read, is familiar with and agrees to fully comply with 322 CMR 7.02, 322 CMR 10.00, DPH regulations at 105 CMR 515.000: *Action Levels for Poisonous or Deleterious Substances in Food*, 105 CMR 520.000: *Labeling*, 105 CMR 525.000: *Newburyport Shellfish Treatment Plant*, and 105 CMR 533.000: *Fish and Fishery Products*, M.G.L. c. 130, §§ 74A, 75 and 80 and any other conditions or restrictions applicable to the master digger permit.

(3) Subordinate Digger Eligibility. An applicant for a subordinate digger permit shall:

(a) be at least eighteen years of age or older, and, except for renewals, shall present documented proof of birth date in person at the Division;

(b) submit a signed statement on forms supplied by the Director that the applicant has read, is familiar with and agrees to fully comply with 322 CMR 7.02, 322 CMR 10.00, DPH regulations at 105 CMR 515.000: *Action Levels for Poisonous or Deleterious Substances in Food*, 105 CMR 520.000: *Labeling*, 105 CMR 525.000: *Newburyport Shellfish Treatment Plant*, and 105 CMR 533.000: *Fish and Fishery Products*, M.G.L. c. 130, §§ 74, 74A, 75 and 80 and any other conditions or restrictions applicable to the subordinate digger permit.

(4) Restrictions. A master or subordinate digger shall not harvest, possess, transport, or sell any shellfish from:

(a) an approved area, unless the master or subordinate digger permit is in the possession of a duly appointed shellfish constable in a city or town with shellfish management plan approval by the Director;

(b) an area classified as prohibited and closed to shellfishing by the Director;

(c) any other area which is not opened by the Director for moderately contaminated shellfishing and classified as restricted.

(5) Conditions. Master and subordinate digger permits may be conditioned by the Director, at any time, to limit the days on which moderately contaminated shellfish may be harvested, the number of racks to be harvested by each digger, or any other condition necessary to limit the harvest of moderately contaminated shellfish to the capacity of the purification plant, or to insure proper maintenance of shellfish growing areas. Permit conditions shall be effective upon posting and five days after mailing to the master digger permit holders; except that permit conditions shall be effective upon verbal notification from any Division employee, environmental police officer, or shellfish constable when the Director determines that immediate action is necessary

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for the public health, welfare and safety.

(6) Enforcement Report. Alleged violations by a master digger or subordinate digger of 322 CMR 7.02, 322 CMR 10.00, DPH regulations at 105 CMR 515.000: *Action Levels for Poisonous or Deleterious Substances in Food*, 105 CMR 520.000: *Labeling*, 105 CMR 525.000: *Newburyport Shellfish Treatment Plant*, and 105 CMR 533.000: *Fish and Fishery Products*, M.G.L. c. 130, §§ 74, 74A, 75 and 80, or any other condition or restriction applicable to the permit shall be submitted to the Director in writing by any officer authorized to enforce the marine fishery laws of the Commonwealth, or charged to investigate alleged violations thereof.

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(7) Permit Suspension. Upon receipt of a written enforcement report alleging violations by a master or subordinate digger, the master digger permit or subordinate digger permit shall be suspended. Such suspension shall not be effective until the master or subordinate digger is in receipt of:

- (a) the written enforcement report;
- (b) a notice of statutory permit suspension setting forth the grounds and authority for the suspension; and
- (c) an order to show cause establishing a date, time and location for an adjudicatory proceeding and informing the respondent of his or her right to request an expedited proceeding at an earlier date.

(8) Adjudicatory Proceeding. The Director, or his authorized designee, shall as expeditiously as possible conduct an adjudicatory proceeding to adjudicate the alleged violations contained in the enforcement report under authority of M.G.L. c. 130, § 80, and pursuant to M.G.L. c. 30A and the formal rules of adjudicatory practice and procedure appearing at 801 CMR 1.01.

(9) Sanctions. Based on the record of the adjudicatory proceeding including the findings of fact, conclusions of law and the recommendation of the presiding officer as contained in the memorandum of final decision, the Director, if a violation of violations are found of 322 CMR 7.02, 322 CMR 10.00, DPH regulations at 105 CMR 515.000: *Action Levels for Poisonous or Deleterious Substances in Food*, 105 CMR 520.000: *Labeling*, 105 CMR 525.000: *Newburyport Shellfish Treatment Plant*, and 105 CMR 533.000: *Fish and Fishery Products*, M.G.L. c. 130, §§ 74, 74A, 75 and 80, or any other condition or restriction applicable to the master digger permit, may take the following administrative action:

- (a) For the first offense - a 30 day suspension of the master digger or subordinate digger permit.
- (b) For a second offense:
 1. a 60 day suspension of the master digger or subordinate digger permit; and
 2. in the case of a master digger, enforcing the terms and conditions of the bond through payment of the bond value or portion thereof by the master digger and, in the event of his or her default, by the insurance company as surety.
- (c) For a third offense:
 1. not less than a 90 day nor more than one year suspension of the master or subordinate digger permit; and
 2. in the case of a master digger, enforcing the terms and conditions of the bond through payment of the bond value or portion thereof by the master digger and, in the event of his or her default, by the insurance company as surety.
- (d) For a fourth offense:
 1. revocation of the master or subordinate digger permit;
 2. prohibiting for a period of time to be determined by the Director the issuance of a new mater digger or subordinate digger permit; and
 3. in the case of a master digger, enforcing the terms and conditions of the bond through payment of the bond value or portion thereof by the master digger and, in the event of his or her default, by the insurance company as surety.

(10) Administrative Action. The Director may take additional administrative action necessary for the public health, welfare and safety whenever an enforcement report is submitted to him an an order to show cause is issued by him including but not limited to:

- (a) establishing a temporary moratorium on the approval and issuance of any new master digger or subordinate digger permits to any applicant pending the outcome of the scheduled

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adjudicatory proceeding;

(b) disapproval of the nomination by any master digger or a new supervisor or transportation agent pending the outcome of the adjudicatory proceeding; and

(c) disapproval of the use by any master digger of the shellfish transportation vehicle used by the master digger who is the subject of the adjudicatory proceeding pending the outcome of said proceeding.

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 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 28th and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31st of any year.

(b) Coastal Lobster Permit holders are prohibited from multiple LCMA endorsements, except those commercial lobster permits held by persons with valid federal authorization for

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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.

7.03: continued

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

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

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

(5) Transfer Programs.

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

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. in compliance with 322 CMR 7.03(9)(d), transfer part of their transferable allocation in multiples of 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 30th for the following fishing year. Commercial lobster permit holders endorsed for LCMA 2 may:

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. transfer part of their transferable allocation in multiples of 50 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.

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- (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.
- (f) Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13 shall be prohibited from transferring any part of their trap allocation except when transferring their commercial lobster permit.

7.03: continued

(g) Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13 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.

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

(c) The requirement that permit holders be owner/operators may be waived through a letter of authorization issued by the Director that is subject to annual renewal. Letters of authorization may be 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.

(d) for a Permit Holder to retain a trap allocation equal to less than 50 traps after they have transferred part of their trap allocation to another permit holder or a trap allocation greater than 800 traps after they receive a trap allocation from another permit holder;

7.03: continued

- (e) for allocation transfers to involve the transfer of traps outside of the specific LCMA for which the trap allocation is designated;
- (f) to transfer a commercial lobster permit from one LCMA to another LCMA unless the permit is transferred to an LCMA under management of an approved effort control plan for which the permit holder has received an LCMA-specific trap allocation.

7.04: Commercial Fisheries Control Date

(1) Purpose. The purpose of 322 CMR 7.04 is to provide the Director and Marine Fisheries Advisory Commission with time to develop further access controls in certain commercial fisheries, including moratoria and limited entry, without the Director and Commission having to deal with large numbers of applicants attempting to enter the fisheries before access is restricted or denied. The implementation of the control date on an emergency basis is necessary to prevent a surge of applicants for licenses into fisheries for which the Director and the Commission may decide to restrict access in the future.

(2) Control Dates.

(a) Mobile Gear. After April 2, 1992, any person issued a commercial fisherman's permit to conduct any fishery using gillnets or trammel nets, or any mobile 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 otter trawls, beam trawls, pair trawls, mid-water trawls, Scottish seines, Danish seines, pair seines, or sea scallop dredges, excluding purse seines and shellfish dredges, within waters under the jurisdiction of the Commonwealth, will not be assured of future access to or participation in these fisheries if a management regime is developed and implemented that limits the number of participants in these fisheries.

(b) Hook Gear. After March 6, 2008, any person issued a new commercial fisherman's permit to conduct any fishery using hook-and-line, longline, or handgear within waters under the jurisdiction of the Commonwealth, excluding the commercial striped bass fishery, may be subject to eligibility criteria for determining levels of future access to and allowable harvest of these fisheries. Future entry into such fisheries may be based on historic harvest levels of a vessel, person, or other criteria established by the Director.

(c) Spiny Dogfish. After November 6, 2008, any person issued a new regulated fishery endorsement for spiny dogfish may be subject to eligibility criteria for determining levels of future access to and allowable harvest of this fishery. Future entry into such fisheries may be based on historic harvest levels of the permit holder.

(d) Striped Bass. Any person who did not hold a regulated fishery permit endorsement on September 8, 2013 may not be provided future access into this fishery and may be subject to eligibility criteria for determining levels of future access to and allowable harvest in this fishery. Future access may be based on historic landings of a vessel or person, or other criteria established by the Director.

7.05: Coastal Access Permit (CAP)

(1) The purpose of 322 CMR 7.00 is to help prevent:

- (a) uncontrolled, opportunistic, new mobile gear fishing effort from developing in state waters by commercial fishermen not traditionally dependent on state waters' fisheries, and
- (b) a shift of mobile gear effort from federal to state waters in response to the 50% fishing effort reduction scheduled by the New England Fishery Management Council to occur by 1998 and described in the Council's Amendment #5 to the Northeast Multispecies Fishery Management Plan. Furthermore, its purpose is to establish the basis for developing a more

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comprehensive limited access program involving additional conservation measures and CAP transfers.

(2) Definitions.

Eligibility Period means January 1, 1989 through the April 2, 1992 commercial fisheries control date described in 322 CMR 7.04.

7.05: continued

Mobile Gear means any movable fishing gear or nets which are set, towed, hauled, or dragged through the water for the harvest of fish, squid, and shellfish including but not limited to otter trawls, beam trawls, bottom and mid-water pair trawls, Scottish seines, Danish seines, pair seines, purse seines, and sea scallop dredges. Shell fishermen authorized by city or town regulations to take shellfish under authority of a local permit and fishing only within those city or town waters are exempt from 322 CMR 7.05: *Mobile Gear*.

Vessel Overall Length means the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments.

(3) Permit Holders. All mobile gear fishermen fishing in waters under the jurisdiction of the Commonwealth shall obtain a coastal access regulated fishery permit pursuant to 322 CMR 7.01(4).

(4) Permit Endorsements. The coastal access permit may be endorsed by the Director allowing the permit holder to participate in fisheries described in 322 CMR 3.02(2): *North Shore Region Year-round Closure (New Hampshire Border to Winthrop)*, 8.08(3), (4), (5) and (6).

(5) Prohibition. It is unlawful for mobile gear fishermen to fish in waters under the jurisdiction of the Commonwealth without a coastal access permit. The coastal access permit shall be carried by the holder at all times and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce regulations in 322 CMR.

(6) Renewals. The Director shall renew all limited entry permits for which transfers are authorized by 322 CMR 7.06, in accordance with 322 CMR 7.01, provided that renewal applications and all required catch reports are received by February 28th of each year, and the renewal process, including late renewals approved for sufficient cause, is completed prior to June 30th of each year.

(7) Forfeiture. Beginning January 1, 2000, all limited entry permits subject to 322 CMR 7.06 which are not renewed in accordance with 322 CMR 7.06(2) shall be forfeited to the Division. All forfeited permits shall be retired.

(8) Moratorium. A Coastal Access Permit will be issued only to mobile gear fishermen who renew their permits in accordance with 322 CMR 7.05(6). Purse seiners fishing for sea herring, menhaden, may apply for a Coastal Access permit exclusively for purse seining and are exempted from the moratorium.

(9) Eligibility Criteria. (Reserved)

(10) Appeals Process. (Reserved)

(11) Coastal Access Permit (CAP) Transfer Criteria. (Reserved)

(12) Vessel Replacement.

(a) Guidelines. A Coastal Access Permit holder may change the authorized vessel listed on the permit provided that the replacement vessel does not exceed the horsepower of the vessel being replaced by more than 20%, and length overall, gross registered or net tonnage does not exceed those of the vessel being replaced by more than 10%. Vessel length overall shall

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not exceed that specified in 322 CMR 7.05(13). Changes may occur only once during any five year period. The permit holder must document his/her ownership of the authorized vessel.

(b) Exception. Coastal Access Permit holders authorized to fish a vessel that measures 40 feet or less in length overall may appeal to the Director for an exemption to exceed the allowed increases in length and/or tonnage up to 20%. The Director may not grant the appeal if the vessel being replaced remains in a federal fishery using mobile gear.

7.05: continued

(13) Vessel Length Limit.

(a) Limit. Beginning in 1995 the issuance of a Coastal Access Permit shall be limited to those fishermen who held a Coastal Access Permit in 1994 and with vessels equal to or less than 72 feet in overall length. For those vessels determined by the Director to need verification of overall length, written certification of overall length shall be obtained by the vessel owner based on the vessel's construction plans or by a marine surveyor certified by the National Association of Marine Surveyors or accredited by the Society of American Marine Surveyors, and shall be submitted to the Director.

(b) Exceptions.

1. The maximum vessel length limit of 72 feet in overall length may be waived for vessels that were built in or prior to the year 1945 provided the mobile gear fisherman held a 1994 Coastal Access Permit for that vessel, and provided further that the mobile gear fisherman had not previously exercised his right to replace the vessel listed on his 1994 Coastal Access Permit. Replacement vessels shall meet the length and performance requirements effective at the time of transfer.

2. The maximum vessel length limit of 72 feet in overall length may be waived for permit holders who apply for a Coastal Access Permit exclusively for purse seining provided that the permit holder and vessel legally fished with a purse seine for menhaden, herring or mackerel in Massachusetts waters since 1995. Replacement vessels shall meet the 72 foot maximum vessel length requirement.

7.06: Transfer of Limited Entry Permits

(1) Definitions.

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

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

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

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

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

Director means the Director of the Division of Marine Fisheries

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Immediate Family Member means the legal father, mother, wife, husband, sister, brother, son, daughter, grandparent or grandchild.

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

7.06: continued

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

Owner-operator means that the named individual listed on the limited entry regulated fishery permit endorsement must be onboard the vessel when commercial fishing is being conducted under the authority of that limited entry regulated fishery permit endorsement.

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

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

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

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

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

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

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

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

1. The holder of the limited entry regulated fishery permit endorsement is in good standing with the marine fisheries laws and regulations at M.G.L. c. 130 and 322 CMR.
2. The limited entry regulated fishery permit endorsement has been actively fished during four of the last five years, as evidenced by commercial fisherman catch reports and SAFIS dealer reports. Final determination of active fishing shall be specified in

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written policy provided by the Director.

3. If a permit holder transfers a limited entry regulated fishery Coastal Access Permit endorsement or a Coastal Lobster Permit other limited entry regulated fishery permit endorsements held in conjunction with that permit or permit endorsement may be transferred as part of that transaction, at the request of the permit holder and with approval of the Director.

7.06: continued

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

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the request for a letter of authorization.

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.

7.07: continued

(2) Definitions.

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 shall not purchase any species without being properly permitted by DMF. 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 ill number for reporting purposes and inspection by law enforcement officials. Each container shall be labeled with vessel name and fishermen's DMF ill 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.

7.08: Offshore Lobster Fishery Control Date and Moratorium

(1) Purpose. The purpose of 322 CMR 7.08 is to provide the Director and the Marine Fisheries Advisory Commission with controls on the offshore lobster fishery and to prevent holders of both coastal and federal offshore permits on a single vessel from increasing the cumulative effort attributable to both permits. The implementation of the control date and moratorium will prevent increases in lobster effort to accomplish the goals and objectives of the interstate lobster management plan.

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(2) Control Date. After February 6, 2003 any person, vessel, or business entity issued a new offshore lobster permit may not be assured of future access to this fishery.

(3) Moratorium. After February 6, 2003, the Director may not issue new offshore lobster permits for the purpose of landing lobsters taken with traps from federal waters. The Director shall renew all existing Offshore Commercial Lobster Permits in accordance with M.G.L. c. 130, § 38B, and 322 CMR 7.01(2)(b), provided that catch reports and renewal applications are received by February 28th and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31st of any year.

7.08: continued

Exception. Holders of federal permits authorized to fish traps in Lobster Conservation Management Area 3 may apply to the Director for a new offshore landing permit. The Director may issue the permit if it is determined to result in no increased trap fishing effort in waters adjacent to Massachusetts.

(4) Forfeiture. All Offshore Lobster Permits which are not renewed in accordance with 322 CMR 7.08 shall be forfeited to the Division.

7.09: Further Regulation of Permits (Reserved)

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).

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.

(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 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; 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

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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) Permit Requirements Applicable to For-hire Vessels. As provided in 322 CMR 7.10(4)(c), 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:

7.10: continued

- (a) Permit Categories:
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).

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(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;

7.10: continued

- (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;
- (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.

(10) Requirements Applicable to Agents Authorized to Sell Permits.

- (a) The Director may authorize agents who are not employed by the Commonwealth to sell recreational saltwater fishing permits at point of sale locations.
- (b) Authorized agents at point of sale locations may charge and retain a fee not to exceed \$1.50 for their service of selling the permit.

The Director may further specify the eligibility, operational and sale of permit conditions applicable to authorized agents.

REGULATORY AUTHORITY

322 CMR 7.00: M.G.L. c. 130, §§ 2, 17, 17A, 38B, 75, 80 and 104.

NON-TEXT PAGE