

(2) Egg-bearing lobsters.

- (a) It is unlawful to remove eggs from any berried lobster.
- (b) It is unlawful to land or possess any lobster:
 - 1. from which eggs have been removed.
 - 2. that has come in contact with any substance capable of removing lobster eggs.

6.03: Cod, Haddock, Pollock and Yellowtail Flounder

(1) Definitions. For the purpose of 322 CMR 6.00 only, the following words shall have the following meanings:

- (a) Cod means that species of fish known as *Gadus morhua*.
- (b) Fish for means to harvest, catch, take, have on board, possess or land or attempt to harvest, catch, take, have on board, possess or land any cod, haddock, pollock or yellowtail flounder.
- (c) Haddock means that species of fish known as *Melanogrammus aeglefinus*.
- (d) Land means to transfer or offload any cod, haddock, pollock or yellowtail flounder onto any vessel, boat, watercraft, land, dock, pier, wharf or other artificial structure used for the purpose of receiving fish.
- (e) Recreational fishing means fishing for cod, haddock, pollock or yellowtail flounder with hand-held gear other than nets for a purpose or use other than sale, exchange or barter.
- (f) Pollock means that species of fish known as *Pollachius virens*.
- (g) Yellowtail flounder means that species of fish known as *Limanda ferruginea*.

(2) Minimum size. It is unlawful to fish for cod, haddock, pollock or yellowtail flounder of a size less than the following:

- (a) Commercial fishing.
 1. Cod and haddock and Pollock: 19 inches.
 2. Yellowtail flounder: 13 inches.
- (b) Recreational fishing.
 1. Cod and haddock: 20 inches during the period July 26, 1996 through December 31, 1996 and 21 inches effective January 1, 1997.
 2. Yellowtail flounder: 13 inches.

(3) Method of Measurement. The minimum sizes established by 322 CMR 6.03(2) shall be determined by a straight line measurement from the tip of the snout to the farthest extremity of the tail.

(4) Recreational Fishery Limit. It is unlawful for recreational fishermen fishing from shore or on private vessels to possess more than ten cod and haddock in any combination.

6.04: Atlantic Bluefin Tuna

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

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

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

(2) Notwithstanding 322 CMR 6.05(1), it is lawful to fish for, catch, take, have on board, or off-load from any fishing vessel Atlantic Sea Scallops with shells less than 3½ inches in the longest diameter provided said Atlantic Sea Scallops comprise no more than 10% of the entire lot of Atlantic Sea Scallops. This 10% tolerance shall be determined by numerical count taken at random of not less than one peck no more than four pecks of the entire lot of Atlantic Sea Scallops.

6.06: Atlantic Salmon Restoration

- (1) **Purpose.** 322 CMR 6.06 is in support of the international management program for Atlantic salmon and interstate Atlantic salmon restoration programs.
- (2) **Prohibition.** It shall be unlawful to harvest, catch, take, possess, transport, sell or offer to sell any Atlantic salmon from the coastal waters of the Commonwealth or from the U.S. Exclusive Economic Zone.
- (3) **Incidental Catch.** All Atlantic salmon caught incidental to fisheries directed towards other species must be released in such a manner as to insure maximum probability of survival.
- (4) **Presumption.** The possession of Atlantic salmon will be *prima facie* evidence that such Atlantic salmon were taken in violation of 322 CMR 6.06. Evidence that such fish were harvested from foreign waters or from aquaculture enterprises will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

6.07: Striped Bass Fishery (*Morone saxatilis*)

(1) **Purpose and Scope.** Since approximately October 1981 the Atlantic coastal states, through the auspices of the Atlantic States Marine Fisheries Commission, have been developing conservation and management measures to arrest the severe decline in the stocks of striped bass and to manage restored stocks. This cooperative management effort has been successful and as a consequence, the Chesapeake Bay Stock of the Atlantic Coast striped bass resource has been declared recovered as of January 1, 1995. A new striped bass Plan Amendment (#5) has been implemented by the Atlantic States Marine Fisheries Commission that provides for harvesting of this recovered resource.

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

322 CMR 6.07 is designed to identify the various user groups, implement conservation and management measures tailored to each group, and compile accurate statistics on striped bass catch levels. Persons intending to fish for striped bass have the option of classifying their activity as recreational or commercial. If a person intends to catch striped bass only for personal consumption and not for sale, that person need not obtain a license, may fish year round but may not retain more than one striped bass at any one time. Any person intending to catch and possess striped bass in excess of the limits and/or intends to sell striped bass so caught must obtain a special permit for striped bass, in which case there is no catch and possession limit. However, 322 CMR 6.07 establishes a commercial fishing season that shall begin on July 1 and close upon reaching the commercial catch quota, and requires fish of the minimum size to be sold in the round only to dealers licensed and authorized by the Commonwealth.

Finally, 322 CMR 6.07 allows wholesale and retail dealers to sell striped bass landed in Massachusetts during the open commercial fishing season. A five day sale period beginning immediately after the close of the season will be allowed for dealers to sell any remaining striped bass that were harvested during the open season. Striped bass landed in other states and imported into Massachusetts may be sold only during those months that striped bass are not abundant in state waters, namely the winter months of December through March. Each imported fish must be marked with a numbered tag that identifies the state of origin and must be accompanied by documents that verify state of origin.

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

Closed fishing period means those seven consecutive day periods within the commercial fishing season when the first sale of striped bass is prohibited. Closed fishing periods shall be July 22-28, August 19-25, September 16-22, October 14-20, and November 11-17.

Commercial Quota means the allowable annual Massachusetts commercial harvest of striped bass approved annually by the Director and Marine Fisheries Commission pursuant to Amendment V of the Atlantic States Marine Fisheries Commission interstate striped bass management plan. The Director and the Commission may reduce a year's commercial quota to compensate for any overage incurred in the previous year. Commercial fishing for striped bass shall end when the quota is reached.

Commercial fisherman means any person who harvests or attempts to harvest striped bass for any purpose other than personal consumption.

Commercial fishing season means that period when commercial fishing is allowed. During 1995 the commercial fishing season shall be further regulated by alternating open 21-day and seven-day closed fishing periods beginning on July 1 and ending when the quota is reached.

Director means the Director of the Division of Marine Fisheries, 100 Cambridge Street, Room 1901, Boston Massachusetts.

First Sale means the first commercial transaction, by sale, barter or exchange, of any striped bass after its harvest from the waters.

Open fishing period means those 21 consecutive day periods within the commercial season when commercial fishermen may harvest or attempt to harvest striped bass.

Recreational fisherman means any person who harvests or attempts to harvest any striped bass for personal consumption.

Total length means the greatest straight line length in inches as measured from the tip of the jaw or snout to the farthest extremity of the tail.

(3) Special Permit. The following special permit shall be required:

- (a) A commercial fisherman shall have issued to him or her by the Director a special permit for striped bass, in addition to any other permits required by the Massachusetts General Laws, in the following categories:
 - (1) resident; and
 - (2) non-resident.
- (b) Applications for a striped bass special permit shall be obtained from the Director.
- (c) A striped bass special permit shall be valid only during the striped bass open commercial season as provided for in 322 CMR 6.07(4)(b).
- (d) A striped bass special permit shall be carried by the holder at all times when catching, taking, possessing or selling striped bass, and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce 322 CMR 6.07.

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

- (a) Massachusetts commercial striped bass harvest will be limited annually by a commercial quota of 750,000 lbs, less any amount deducted to compensate for the previous year's overage.
- (b) Commercial fishermen may fish for striped bass only during the open season and open fishing periods within said open season beginning on July 1 of each year and ending upon the reaching of the commercial quota.
- (c) All striped bass shall be no less than 34 inches in total length. Striped bass less than 34 inches in total length shall be returned immediately to the waters from which taken.
- (d) All striped bass which are the subject of a first sale shall be in the round, with the head, body and tail fully intact.

(e) Except as provided for in 322 CMR 6.07(4)(f), no striped bass may be filleted or processed in any manner except by evisceration. In all prosecutions or non-criminal citations issued, mutilation of a striped bass which interferes with or affects a proper or adequate measurement of the fish shall be *prima facie* evidence that the striped bass was or is less than 34 inches in total length.

(f) Charter boat operators actively engaged in charter boat fishing operations may fillet or process legal sized striped bass for their recreational charter customers at sea provided that:

1. charter boat operators have written authorization from the Director which shall be immediately produced upon demand of any officer authorized to enforce the marine fishery laws of the Commonwealth;
2. not more than two fillets taken from legal sized striped bass are in possession for each customer of that charter boat trip for a total not to exceed 12 fillets representing the equivalent of one fish per customer; the skin must be left on the fillet; and
3. the frames (or racks) from which the fillets were removed must be retained aboard the boat to check for minimum size, and the number of frames must not exceed the number of customers. Frames may be disposed of the following day, or just prior to subsequent trips that occur the same day.

(g) Commercial fishermen shall accurately report to the Director on forms supplied by the Division the catch by month, location and size of all striped bass harvested during the open season. Said catch report shall be filed no later than November 30 of each year, shall be held strictly confidential by the Director and shall be signed under the pains and penalties of perjury. Failure to complete and submit an accurate form prior to November 30 or falsification of any such form shall result in a non-renewal of the striped bass special permit.

(h) Commercial fishermen shall sell striped bass only to dealers duly authorized by the Director to purchase striped bass.

(i) Non-resident commercial fishermen shall sell striped bass only to duly authorized dealers.

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

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

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

(a) All striped bass shall be no less than 34 inches in total length. Striped bass less 34 inches in total length shall be released immediately to the waters from which taken.

(b) Recreational fishermen may retain no more than:

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

(c) Recreational fishermen may not sell, barter or exchange any striped bass.

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

(a) Dealers shall not purchase striped bass from commercial fishermen without written authorization from the Director.

(b) Dealers shall report all striped bass purchases from commercial fishermen by phone and in writing based on schedules and on forms to be provided by the Division.

(c) Dealers may not purchase or receive from a commercial fisherman any striped bass which is less than 34 inches in total length.

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

(e) Except as provided for in 322 CMR 6.07(6)(g) dealers may possess, sell, barter or exchange or offer to sell, barter or exchange striped bass only during the authorized dealer season beginning on July 1 and ending at 12 o'clock midnight on the day five days after the commercial quota is reached.

(f) Dealers may not purchase or receive from a commercial fisherman any striped bass during the closed fishing periods within the commercial fishing season.

- (g) Dealers may store lawfully purchased striped bass during the closed commercial season provided that:
1. such striped bass are kept in a frozen condition;
 2. such striped bass are not sold, bartered or exchanged in Massachusetts or offered for sale, barter or exchange in Massachusetts;
 3. the dealer has applied for authorization to do so by the Director on application forms supplied by the Division; and
 4. the Director has approved the application form and issued a valid authorization to the dealer.
- (h) During the months of December, January, February and March, dealers may purchase and offer for sale striped bass imported into Massachusetts from states where they have been lawfully landed. Such fish may measure less than the Massachusetts commercial minimum size but shall meet or exceed the minimum size in place for the state of origin. All such fish imported into the Commonwealth shall be whole and individually tagged with state of origin listed. If fish are re-sold whole, tags shall remain attached to the fish. If fish are filleted after importation, all containers of fillets shall be documented describing fish origin, name of the Massachusetts dealer that processed the fish, quantity, and species. Original tags shall be maintained on the dealer's premises for 30 days after processing.
- (7) **Prohibitions.** It shall be unlawful for:
- (a) a recreational fisherman to retain more than one striped bass per day;
 - (b) a recreational fisherman to possess more than one striped bass at any one time;
 - (c) a recreational fisherman to sell, barter or exchange or offer to sell, barter or exchange any striped bass;
 - (d) a recreational fisherman to take or possess any striped bass less than 34 inches in total length;
 - (e) a recreational fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper and adequate measurement of the fish; such mutilation shall be *prima facie* evidence of a violation of this section;
 - (f) a commercial fisherman to sell striped bass to other than an authorized dealer;
 - (g) a non-resident commercial fisherman to possess more than one striped bass upon leaving Massachusetts;
 - (h) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass without having issued to him or her a valid permit to do so;
 - (i) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to catch, take, possess, sell, barter or exchange any striped bass once the commercial quota is reached and the commercial fishery is closed, or to possess more than one striped bass during the closed fishing periods;
 - (j) a commercial fisherman to sell, barter, exchange or attempt to sell, barter, exchange any striped bass during the closed fishing periods within the commercial fishing season;
 - (k) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass less than 34 inches in total length;
 - (l) a commercial fisherman to fillet or process any striped bass other than by evisceration;
 - (m) a commercial fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper or adequate measurement of the fish;
 - (n) a commercial fisherman to participate in the first sale of any striped bass which is not in the round, or which has had the head or tail removed;
 - (o) a commercial fisherman to fail to file a complete and accurate catch report by November 30 of each year, or falsify any such catch report;
 - (p) a wholesale or retail dealer to purchase or receive during a first sale any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish;
 - (q) a wholesale or retail dealer to purchase or receive from a commercial fisherman any striped bass which is less than 34 inches in total length;
 - (r) a wholesale or retail dealer to possess, sell, barter or exchange or offer to sell, barter or exchange any striped bass during the closed dealer season beginning five days after the commercial quota is reached unless authorized by the Director pursuant to 322 CMR 6.07(6)(g) and (6)(h).

(2) Minimum Sizes

- (a) No person shall take or have in possession quahogs less than one inch shell thickness (hinge width) to the amount of more than 5% of any batch unless authorized by a permit issued by the Director.
- (b) No person shall take or have in possession soft shelled clams less than two inches in longest diameter to the amount of more than 5% of any batch unless authorized by a permit issued by the Director.
- (c) No person shall take or have in possession oysters less than three inches in longest diameter to the amount of more than 5% of any batch unless authorized by a permit issued by the Director.

6.21: Minimum Size for Conch

(1) Definitions

- (a) Conch means that species of whelk known as *Busycon carica* (knobbed whelk) and *Busycon canaliculatus* (channeled whelk).
- (b) Shell width means the diameter of the shell measured across its greatest width perpendicular to the long axis of the shell.
- (c) Batch means all conchs in each separate container.
- (d) Container means any bag, box, basket, cage or other receptacle containing loose conchs which may be separated from the entire load or shipment.

(2) Minimum size. No person shall take or have in possession conchs less than 2%" shell width to the amount of more than 5% of any batch unless authorized by a permit issued by the Director. All conchs shall be landed whole in the shell and processed in a facility licensed for that purpose.

(3) Enforcement. For purposes of enforcing 322 CMR 6.21, a sample of 10% of the entire catch shall be measured. If over 5% but less than 6% of the subsample is below the minimum size then 25% of the catch shall be unlawful. If 6% or greater but less than 7% of the subsample is below the minimum size then 50% of the catch shall be unlawful. If 7% or greater of the subsample is below the minimum size then the entire catch shall be unlawful.

6.22: Summer Flounder (Fluke) Restrictions

(1) Definitions

Summer flounder means fluke or that species of fish known as *Paralichthys dentatus*.

Quota means the Commonwealth's 6.8% share of the annual commercial summer flounder quota adopted by the Atlantic States Marine Fisheries Commission.

Commercial fishermen means fishermen fishing for purposes of sale, barter, or exchange.

Recreational fishermen means fishermen fishing for purposes of personal or family use by angling.

(2) Seasonal Allocations. The quota shall be split with 30% being allocated for the period January 1 through May 31 (winter/spring) and 70% being allocated for the period June 1 through December 31 (summer/fall).