



Rhode Island Marine Fisheries Council

3 Fort Wetherill Road Jamestown, Rhode Island 02835

(401) 423-1920 Fax: (401) 423-1925

MEETING NOTICE

June 1, 2015 – 6:00 PM

URI Narragansett Bay Campus, Corless Auditorium

South Ferry Road, Narragansett, RI

Robert Ballou
Chairman

Richard Hittinger
Vice Chair

Kenneth Booth

Jeff Grant

William Mackintosh, III

David Monti

Christopher Rein

Michael Rice, Ph.D.

Agenda item	Agenda item detail	Recommended action(s)
1. Approval of Agenda	6-1-2015 RIMFC agenda.	Approval of agenda.
2. Approval of Minutes	Review of RIMFC 3-2-2015 meeting minutes	Approval of minutes.
3. Public Comments	Comments from the public on any items not on agenda	Discussion and/or possible future action.
4. New business	a. <u>Public hearing (5/11) items:</u> <ul style="list-style-type: none"> • <u>BlueLine Tilefish Management Plan;</u> • <u>Lobster;</u> • <u>Crustacean reg re-write;</u> • <u>Menhaden</u> 	Provide recommendations to the Director on proposed regulations.
	b. <u>Advisory Panel reports:</u> <ul style="list-style-type: none"> • <u>Shellfish (3/4): J. Grant</u> 	FYI, discussion and determination of needed actions.
	c. <u>Expiration of Bissel Cove oyster moratorium on 9/15/2015: J. Grant; J. Mercer</u>	Recommendation to continue moratorium and/or determination of needed information.
	d. <u>Proposed advisory panel meetings:</u> <ul style="list-style-type: none"> • <u>Shellfish: J. Grant; J. Mercer</u> • <u>IAC: B. Ballou; J. Lake</u> 	Approval of meetings and agendas.
	e. <u>New IAC Chair: B. Ballou</u>	Appointment of new chair.
	f. <u>Special Council meeting – LEAN and Council policies: B. Ballou</u>	Discussion of Council policies and needed updates. Set meeting date.
	g. <u>Review of pending marine fisheries related legislative proposals: B. Ballou</u>	FYI, discussion and/or recommendations
5. FYI	<u>NEFMC Report - April/May 2015:</u>	FYI
6. Other business	Any other matters that Council members would like to discuss.	FYI, discussion, and/or consideration for future action.
7. Adjourn		

All RIMFC Meetings are open to the public



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MEETING MINUTES

March 2, 2015

Chairperson: *B. Ballou*

RIMFC Members Present: *K. Booth, R. Hittinger, D. Monti, B. Mackintosh, J. Grant, M. Rice, C. Rein, R. Bellavance*

DEM: *L. Mouradjian, M. Gibson, G. Powers, J. McNamee, J. Lake, N. Lengyel, P. Duhamel, Sgt. Dan White (DLE), D. Costa*

Public: Approximately 30 persons.

1. **Approval of the Agenda:** *B. Ballou* inquired as to any modifications to the agenda; hearing none, the agenda was approved.
2. **Approval of RIMFC meeting minutes from December 1, 2015:** *R. Ballou* inquired as to any proposed modifications or objections to approving the minutes. Hearing none, the minutes were approved.
3. **Public comments regarding other matters not on agenda:** No comments were made.
4. **Agenda item 4a., New Business – review and recommendations to the Director on the 2/16/2015 public hearing items:**

- **Editing Items – proposed modifications to multiple sections in a non-substantive way to improve clarity and readability: Including hearing items 2 (technical clarifications to Shellfish regulations); 13 (general editing of Finfish regulations for improved clarity); 14 and 15 (addition of a Quota Management section to Finfish regulations and deletion of same section from Part III – Marine Fisheries Council); and 16 (deletion of duplicate regulatory language from Part X, Equipment Restrictions, that are currently included elsewhere in RIMFR):**

B. Ballou and *P. Duhamel* provided a brief description of the proposed changes, which involve proposed non-substantive modifications to improve clarity and readability of the regulations. *D. Monti* offered a motion to recommend adoption of the modifications as proposed; 2nd by *M. Rice*. *J. Grant* commented that he was concerned that the regulations do not specifically allow for the harvest of whelk or bay scallop during Shellfish Management Area management closures and believed that they should. *B. Ballou* offered that *J. Grant* should coordinate with *J. Mercer* to look at the language and determine if modifications may be needed. **The motion passed by a vote of 8 – 0.**

- **Hearing item #1 - proposed amendments to RIMFR - Shellfish, regarding the establishment of regulations to reduce the risk of Vibrio illness associated with the consumption of commercially harvested quahaugs:**

M. Gibson offered support for the proposal; that it was a multi-agency effort to protect public health risks associated with *Vibrio* and also to protect industry. *B. Macintosh* commented that he was concerned for impacts to small commercial boats. *J. McNamee* offered that the requirements are mandated from the federal government (FDA). *J. Grant* offered that these requirements are necessary to maintain compliance with ISSC and therefore be allowed to ship harvested shellfish out of state. He offered that because Massachusetts and Connecticut have had numerous outbreaks, it affects RI. He offered that the requirements would get more restrictive should additional outbreaks occur in RI, and the regulations are meant to reduce this risk. ***D. Monti* offered a motion to recommend adoption of the modifications as proposed; 2nd by *C. Rein*. The motion passed by a vote of 8 – 0.**

- **Hearing item #3 – Proposed amendments to Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs regarding removal of escape vent placement requirement:**

S. Olszewski offered that the proposal originated with industry and that it is most likely a holdover regulation from when wooden traps were in use. He offered that there is no compliance issue with the ASMFC by removing this requirement, that it is not addressed in the FMP and Massachusetts currently does have such a requirement. *M. Gibson* offered support for the proposal; that it was also necessary to support the Jonah Crab fishery for which lobster traps are typically used. ***J. Grant* offered a motion to recommend adoption of the modification as proposed; 2nd by *C. Rein*. The motion passed by a vote of 8 – 0.**

- **Hearing item #4 - recreational Summer flounder:**

M. Gibson offered that the while both options are acceptable, there was a recommendation from ASMFC to reduce harvest. ***R. Hittinger* offered a motion to recommend adoption of option 1, status quo; 2nd by *R. Bellavance*.** *K. Booth* inquired as to the potential ramifications if over-harvest continues to occur. *J. McNamee* offered that it was unclear if the high catch rates in 2014 were an anomaly or will continue to be high, or that the MRIP data is inherent variability. *R. Hittinger* offered that he was against any option that would increase size, as this would increase harvest of spawning fish. He offered that changing the season is pointless as fish wouldn't be caught during the closed season. *D. Monti* offered that it appeared that ASMFC was looking for a “gesture” to for the appearance of attempting to reduce harvest. *B. Ballou* emphasized that there was no ASMFC requirement at this time to reduce harvest. *R. Bellavance* offered that he was in favor of seeing another year of MRIP data before making any changes. *G. Allen* offered support for status quo in favor of reviewing another year of MRIP data. **The motion passed 8 – 0.**

- **Hearing item #5 – Recreational Tautog:**

P. Duhamel offered that comments were evenly split between status quo and a change from the April 15 to an April 1 opening date. *M. Gibson* offered support for the noticed option of status quo while awaiting further information from ASMFC. *K. Booth* inquired as to the implications for opening earlier, to which *M. Gibson* replied that there would be no biological impact, but that notification to the ASMFC was necessary prior to adopting any such change. ***D. Monti* offered a motion to recommend adoption of status quo,**

modifying to change the opening date from April 15 to April 1; 2nd by R. Hittinger. *J. McNamee* offered that while a change to the season presented no biological impact, it could complicate management decisions for the following year. *B. Macintosh* offered that the fishery was in trouble and that alternate management was needed as soon as possible. *Barker* offered concern that changing the opening date could pose problems for next year's management decisions. **The motion passed 6-1 (*M. Rice* against; *J. Grant* abstaining).**

- **Hearing item #6 – commercial Tautog:**

M. Gibson offered support for status quo. *K. Booth* offered a motion to recommend adoption of option 1, status quo; 2nd by *B. Macintosh*. Discussion took place regarding the possibility of an earlier opening date. **The motion passed 8 – 0.**

- **Hearing item #7 – recreational Scup:**

M. Gibson offered support for status quo. *R. Bellavance* offered a motion to recommend adoption of option 1, status quo; 2nd by *M. Rice*. **The motion passed 8 – 0.**

- **Hearing item #8 - Recreational Black sea bass:**

J. McNamee provided a brief overview of the quota setting process and that a 33% reduction was needed for this fishery. *M. Gibson* offered that each of the options presented provided compliance; there was no Division preference. Discussion ensued regarding possible variations of the management options. *R. Bellavance* offered a motion to recommend adoption of the following: min. size 14"; 1 fish from 7/2 – 8/31; and 7 fish from 9/1 – 12/31; 2nd by *J. Grant*. **The motion passed 8 – 0.**

- **Hearing Item #9 – Spiny dogfish:**

M. Gibson offered support for the proposal as ASMFC compliant. *J. Grant* offered a motion to recommend adoption of the proposal, 2nd by *D. Monti*. **The motion passed 8 – 0.**

- **Hearing Item #10 – recreational Striped bass:**

P. Duhamel offered a summary of the public comments received. *M. Gibson* offered Division support either option proposed, but that option 1, status quo, was a more conservative approach. A great deal of discussion ensued regarding the reductions needed and ways by which to achieve the reduction. *R. Hittinger* offered that the most conservative approach is warranted to obtain the reductions necessary and to rebuild spawning stock biomass, and therefore was in support of option 1. *R. Bellavance* offered a motion to recommend adoption of option 2; 2nd by *W. Macintosh*. *R. Hittinger* inquired as to the impact to statistical data when having different regulations for the two modes, to which *J. McNamee* concurred. *M. Rice* offered an amended motion to recommend adoption of option 2, modified such that the P/C captain and mate not be permitted to take a recreational possession limit while in P/C mode; 2nd by *D. Monti*. *R. Bellavance* offered that the fish taken by captain and mate are negligible and does not represent any real reduction. He then inquired if it was legal that a captain and mate

could not take a recreational possession limit while chartering, to which *G. Powers* replied that he thought it was legal, in that they were engaging in a commercial activity. **The amended motion failed 3 – 5 (*M. Rice, R. Hittinger, and D. Monti* in support; *R. Bellavance, B. Macintosh, J. Grant, and C. Rein* opposed; *K. Booth* abstaining).** *D. Monti* offered that he believed that the P/C industry should be doing more to help rebuild the stocks, specifically by giving up the fish for captain and mate, to which *R. Bellavance* replied that the increase in size from 28” to 32” was very much a significant step towards achieving this reduction, to which *R. Hittinger* replied that harvesting only larger (i.e. 32”) fish only results in removing those fish that produce the most eggs. **The original motion (option 2 as proposed) passed 5 – 3 (*R. Bellavance, M. Rice, B. Macintosh, J. Grant, and C. Rein* in support; *R. Hittinger and D. Monti* opposed; *K. Booth* abstaining).**

- **Hearing Item #11 – commercial Striped bass:**

P. Duhamel offered that comments were split between supporting option 1, status quo, and an earlier opening date in late May. *M. Gibson* offered support for status quo. ***K. Booth* offered a motion to recommend adoption of option 1; 2nd by *M. Rice*. The motion passed 6 – 1 (*J. Grant* opposed; *R. Hittinger* had left the meeting).**

- **Hearing Item #12 – commercial Striped bass floating fish trap:**

M. Gibson offered support of option 1, status quo. ***K. Booth* offered a motion to recommend adoption of option 1; 2nd by *C. Rein*. The motion passed 7 - 0.**

5. **Agenda item 4b.: Presentation of RI Saltwater Recreational Fishing License Program Report.**

J. Lake provided a summary of the draft report and details of money expenditures and projects supported. *B. Ballou* provided an overview of the statutory language and the Council’s responsibility. *B. Macintosh* inquired as to the status of repairs to the Stonebridge bridge as it is a popular fishing location. *L. Mouradjian* responded that the facility is owned by RIDOT, and that there had been a plan to rehabilitate the area and then transfer ownership to the town, but has since been abandoned for lack of funding. ***Dennis* offered support for the program as very beneficial to shore fishermen, and that artificial reefs and structure should be considered for locations or new or repaired piers. *M. Rice* offered a motion to recommend that the program is doing good work and is continuing to meet its intended statutory purpose; 2nd by *R. Bellavance and D. Monti*. The motion passed 7 – 0.**

6. **Agenda item 4c.: Shellfish Advisory Panel reports – approval of minutes:**

J. Grant provided an overview of the meeting.

7. **Other:**

R. Bellavance inquired as to discussion needed regarding the Licensing overhaul. *B. Ballou* offered that a status report will be provided at the June meeting.

Meeting adjourned at approximately 8:00

Prepared by *P. Duhamel*

**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF FISH AND WILDLIFE
MARINE FISHERIES SECTION**

PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES

Pursuant to the provisions of Chapters 42-17.1 and 20-3 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes amendments to the **Rhode Island Marine Fisheries Regulations (RIMFR)** and gives notice of intent to hold a workshop and public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the following proposals:

- 1) Amendments to **“RIMFR - Finfish”**, regarding regulations for Blueline tilefish (section 7.23);
- 2) Amendments to **“RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”**, regarding the application period for transfer of lobster trap allocation (section 15.14.2-12); and landing limits of lobsters taken by gear or methods other than trap (section 15.18);
- 3) To repeal **“RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”**, and adopt in its place a new regulation entitled **“RIMFR - Lobsters, Crabs and Other Crustaceans”**, in order to effectuate a re-organization of the structure of the regulation to improve its readability; and to remove unnecessary duplicative, administrative, and/or non-regulatory statutory language;
- 4) Amendments to RIMFR **“Part XVI – Menhaden”**, regarding management of the commercial menhaden fishery;

The **workshop will commence at 4:30PM** on **May 11, 2015** followed by the **public hearing at 6:00PM** at the University of Rhode Island, Graduate School of Oceanography, **Coastal Institute Building, Hazard Room**, South Ferry Road, Narragansett, RI 02882. The room is accessible to the disabled. Interpreter services for the deaf and hard of hearing will be provided if such services are requested at least three (3) business days prior to the hearing by contacting the RI Commission on the Deaf and Hard of Hearing at (401) 222-5300; or (401) 222-5301 (TTY); or <http://www.cdhh.ri.gov/>.

The Department has determined that small businesses may be adversely impacted by the proposed regulations. Small businesses which are either currently licensed, or in the future may seek a license to harvest, buy, sell, or produce seafood products, as well as the small businesses that provide services related to those engaged in such industries, are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

Written comments concerning the proposed regulations may be submitted to Peter Duhamel, Division of Fish and Wildlife – Marine Fisheries office, 3 Fort Wetherill Road,

Jamestown, RI 02835 no later than 12:00 Noon on May 11, 2015. A copy of the proposed regulations will be available for review from April 10 through May 11, 2015 at the Marine Fisheries offices, or by mail. A copy of the proposed regulation(s) has been filed with the Office of the Secretary of State's website at <http://sos.ri.gov/ProposedRules/>. Proposed annotated regulations are also available on the DEM Marine Fisheries webpage at <http://www.dem.ri.gov/programs/bnatres/fishwild/pn051115.htm>.

Mark Gibson,
Deputy Chief

Hearing Item #1: Amendments to “RIMFR - Finfish”, regarding regulations for Blueline tilefish (section 7.23):

- ◆ Rapidly expanding fishery on deep water, long-lived, and slow growing stock without a FMP from VA northward;
- ◆ Mid-Atlantic Fisheries Management Council enacted emergency regulations to stem rapidly increasing landings in mid Atlantic, requests states reciprocate.

Proposed regulation:

7.23 Blueline tilefish (*Caulolatilus microps*)

7.23.1 Commercial

(A) Minimum Size: No minimum size.

(B) Fishing year: May through April 30 fishing year.

(C) Possession limit: Three hundred (300) pounds per vessel per calendar day.



Hearing Item #2: Amendments to “RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”:

- ◆ Application period for transfer of lobster trap allocation: This proposal stems from consistency with federal trap transferability plan and subsequent federal rule-making

- ◆ Proposed regulation:

15.14.2-12 LTA Transfers:

(f) Applications:

- (iv) Applications for transfers may be submitted from ~~June 1 through November 30~~ August 1 through September 30 for the following fishing year.



Hearing Item #2 cont'd: Amendments to “RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”:

- ◆ Landing limits of lobsters taken by gear or methods other than trap (section 15.18): This proposal is to clarify the original intent of the regulation.

15.14.1-2 Crab pots/traps, fish traps, fish weirs, minnow traps, eel pots/traps, conch pots/traps, gillnets or trammel nets, fyke nets, stake traps, trawling devices, clam and scallop dredges, beach seines, purse seines, and tongs or bullrakes shall be classified as non-lobster trap gear and shall be exempt from trap tagging requirements.

- ◆ Proposed regulation:

15.18 Landings of lobsters taken by gear or methods other than trap – Limits: Landings by fishermen using ~~gear or methods other than traps (non-trap fishermen)~~ gillnets or otter trawls will be limited to not more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips of five (5) days or longer.





STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

Part XV Lobsters, Other Crustaceans, and Horseshoe Crabs



~~May 16, 2014~~

Public hearing
May 11, 2015

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

Hearing Item #3: Repeal of “RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”, and adopt in its place a new regulation in order to improve its readability by re-organizing the structure of the regulation:

- ◆ Same approach as was taken for the Shellfish Reg. Re-Write;
- ◆ Improved table of contents;
- ◆ Improved structure;
- ◆ Removal of non-regulatory administrative and statutory language;
- ◆ Removal of duplicative and/or obsolete language;
- ◆ Removal of language throughout regulation regarding violations, assessment of penalties, appeals and adjudication, and replacement with general provisions. Procedures regarding enforceability, assessment of penalties and appeal provisions is guided by statute and by DEM’s Division of Law Enforcement and Administrative Adjudication Division regulations.



Hearing Item #3 cont'd:

◆ Companion Document:

- Prepared to assist the reader with following the proposed changes;
- Shows all proposed changes in standard annotated style (~~red strikethrough for language to be removed~~; red underline for new language)
- Identifies the new section in the new regulation where the language can be found (in **bold red parentheses** at the end of each section).

◆ Proposed final regulation:

- Read along with companion document to show re-organization of sections and final proposed language.



Hearing Item #3 cont'd:

◆ NEW OR AMENDED DEFINITIONS:

- **Catastrophic trap tag loss** means the loss of original lobster trap tags ~~that exceed in excess of~~ the 10% over-allotment trap tags issued for routine loss, ~~based on the maximum number of lobster traps deployed in which instance the original trap tags become invalid and are replaced in their entirety by catastrophic trap tags.~~
- **Exclusive Economic Zone (EEZ)** means those waters three (3) to two hundred (200) miles (five to 322 kilometers) offshore which are under the direct jurisdiction of the federal government.
- **Original trap tags** means the number of trap tags available for purchase to a RI commercial license holder or a Federal Limited Access Lobster Permit holder based on their lobster trap allocation, as determined by the Director, including an additional 10% over- allotment to allow for routine trap losses.
- **Routine trap tag loss** means the loss of original lobster trap tags that does not exceed the 10% over-allotment ~~trap tags allowance issued for routine loss,~~ based on the maximum number of lobster traps deployed.
(Part I)



Hearing Item #3 cont'd:

- ◆ Addition of language to clarify that a non-commercial lobster pot or diver license is available to RI residents only
 - Proposed regulation:

Section 15.3(A) ...A non-commercial lobster pot or diver license is available to RI residents only (RIGL 20-2-24)...





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DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
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RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

Part XV Lobsters, Other Crustaceans, and Horseshoe Crabs



~~May 16, 2014~~

Companion Document

Proposed annotated changes

Public hearing

May 11, 2015

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

IMPORTANT – PLEASE READ: This document is provided as a companion to the proposed regulations filed with the Office of the Secretary of State, in order to assist the reader with following the proposed changes. As indicated in the public notice, the proposal is to repeal the current regulation “Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs” and replace (adopt) with a new regulation in order to effectuate a re-organization of the structure of the regulation to improve its readability; and to remove unnecessary duplicative, administrative, and/or non-regulatory statutory language. This companion document shows all proposed annotated changes to the content of the language, and also provides the location/section in the new proposed regulation where the old regulation sections can be found.

The new location/section in the new regulation is found at the end of each section or paragraph in bold red parentheses.

At the end of this companion document is the final rule proposed for adoption.

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Public Hearing Item #3

-Entire regulation-

To repeal “RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”, and adopt in its place a new regulation entitled “RIMFR - Lobsters, Crabs and Other Crustaceans”, in order to effectuate a re-organization of the structure of the regulation to improve its readability; and to remove unnecessary duplicative, administrative, and/or non-regulatory statutory language;

1. PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

2. AUTHORITY

These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

~~3. ADMINISTRATIVE FINDINGS~~

~~Rules and regulations are based upon the need to modify existing regulations (RIGL 20-3-2 through 20-3-6).~~

~~4.3. APPLICATION~~

~~The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.~~

~~5. DEFINITIONS~~

~~See Rhode Island Marine Statutes and Regulations, Part I, '1.3.~~

~~6.4. SEVERABILITY~~

~~If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.~~

~~7.5. SUPERSEDED RULES AND REGULATIONS~~

~~On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XV shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.~~

6. DEFINITIONS

For the purposes of these regulations, the following terms shall have the

RI Marine Fisheries Statutes and Regulations –
Part XV – Lobsters, Other Crustaceans, and Horseshoe Crabs
[Companion Document for Public Hearing](#)

following meanings:

American lobster means *Homarus americanus*. (RIGL 20-1-3)

Blue crab means *Callinectes sapidus*. (RIGL 20-1-3)

Bycatch means fish, shellfish, or crustaceans that are taken while a fisherman is directing his/her effort toward the harvest of another fish, shellfish, or crustacean.

Carapace is the un-segmented body shell of the American lobster.

Carapace length means the length of a lobster measured from the rear of the eye socket along a line parallel to the center of the body shell to the rear of the body shell.

Catastrophic trap tag loss means the loss of **original** lobster trap tags ~~that exceed in excess of~~ the 10% over-allotment trap tags issued for routine loss, ~~based on the maximum number of lobster traps deployed~~ **in which instance the original trap tags become invalid and are replaced in their entirety by catastrophic trap tags.**

Colregs Demarcation Line means the lines of demarcation, as defined on National Oceanic and Atmospheric Administration chart #13221, delineating those waters upon which mariners must comply with the international regulations for preventing collisions at sea, and those waters upon which mariners must comply with the inland navigation rules. For Point Judith the "Port" is to be all waters inside of and north of the southern end of the riprap wall at Salty Brine State Beach so-called. The demarcation lines for Block Island are as follows: the area enclosed by the breakwaters at Old Harbor, and the entirety of Great Salt Pond so called.

Crab trap/pot means any pot or trap designed or adapted principally for the catching or taking of crabs.

Dealer means a person who is licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood.

DEM or Department means the Rhode Island Department of Environmental Management. (20-8.1-1, etc.)

DFW or Division means the Division of Fish and Wildlife, within the Rhode Island Department of Environmental Management.

Director means the Director of the Department of Environmental Management or his or her duly appointed agents. (20-2.1-3; 20-8.1-1; 20-10-2)

Dual federal permit/state license holder means an individual who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

Exclusive Economic Zone (EEZ) means those waters three (3) to two hundred (200) miles (five to 322 kilometers) offshore which are under the direct jurisdiction of the federal government.

Fishery means one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

Green crab means *Carcinus maenas*. (RIGL 20-1-3)

Initial LCMA 2 LTA means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2.

Jonah crab means Northern crab, *Cancer borealis*. (RIGL 20-1-3)

Land or landing means to off-load seafood products, including, but not limited to, finfish, shellfish, and crustaceans, for sale or intended sale, or to secure a vessel with the seafood products on board to a shoreside facility where the products may be off-loaded for sale or intended sale. (20-1-3)

LCMA means Lobster Conservation Management Area.

LCMA 2 means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

LCMA 2 Lobster Trap Allocation (LTA) means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

Lobster pot or trap means any pot or trap designed or adapted principally for the catching or taking of lobsters.

LTA means lobster trap allocation, either issued by the Department or NOAA Fisheries.

LTA transfer means a change in ownership of a partial or entire Department- or NOAA Fisheries-issued LTA by an individual or Corporation.

LTA transferor means the license or permit holder from whom an LTA transfer is made.

LTA transferee means the individual, corporations or fishing vessel to whom/which an LTA transfer is made.

Original trap tags means the number of trap tags available for purchase to a RI commercial license holder or a Federal Limited Access Lobster Permit holder

based on their lobster trap allocation, including an additional 10% over- allotment to allow for routine trap or tag losses.

Person means an individual, corporation, partnership, or other legal entity. (RIGL 20-1-3)

Port means any city or town with a harbor and docking facilities where vessels can land.

Possession means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. The decision must be made at the first practical opportunity.

Possession limit means the maximum quantity of marine product/species that may be possessed by a vessel or person per specified period of time (i.e., day or week).

Pot or Trap means any stationary bottom-fishing contrivance, **trap** or device made of wood, wire mesh, or plastic mesh, fished individually or linked by a common line and generally baited; used to catch finfish, crabs, conchs, or lobsters that enter through a conical or rectangular opening where escape is difficult.

Quota means the maximum amount of fish, in weight or number, that can legally be landed within a given time period. A quota can apply to an entire fishery, or segment thereof, or to an individual fisherman or vessel.

Resident means an individual who has had his or her actual place of residence and has lived in the state of Rhode Island for a continuous period of not less than six (6) months. (RIGL 20-1-3)

RIGL means Rhode Island General Laws.

RIMFC means the Rhode Island Marine Fisheries Council. (RIGL 20-10-2)

RIMFR means Rhode Island Marine Fisheries regulations

Rock crab means *Cancer irroratus*. (RIGL 20-1-3)

Routine trap tag loss means the loss of **original** lobster trap tags that does not exceed the 10% over-allotment **trap tags allowance issued for routine loss, based on the maximum number of lobster traps deployed.**

Comment [PD1]: Revised for accuracy

Season means a period of time established by regulation during which management rules specific to that period are in effect.

Take or Taking means the process and each of the activities in that process undertaken to remove the resource from its natural habitat until the time at which possession begins.

Transfer means to convey, pass, or remove something from one person, place, and/or vessel to another.

Trip means a fishing voyage beginning with the departure from any port and terminating with the return any port, regardless of the duration of time.

Vessel means any watercraft, other than a seaplane on the water, that is used, or is capable of being used, as a means of transportation on water.

V-Notched female American lobster means a v-notched female lobster means any female American lobster with a v-notch mark, or the remnant of a healed v-notch mark in the end part of the right tail flipper adjacent to the middle tail flipper, or any lobster which is mutilated in such a manner which could hide, obscure, or obliterate such a mark, including a missing right tail flipper. A v-notch shall be a notch or the remnant of a healed notch, with or without setal hairs, at least 1/8 (1/8) inch in depth. Any licensed/permitted commercial fisherman required or authorized to mark lobsters with a v-notch mark in LCMA 2 shall make a v-notch mark by means of a sharp-blade instrument, at least 1/4 inch (1/4") and not greater than 1/2 inch (1/2") in depth and tapering to a sharp point. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

R.I. Marine Fisheries Statutes and Regulations
PART XV - LOBSTERS, OTHER CRUSTACEANS,
AND HORSESHOE CRABS

15.1 License Required for Taking of Lobsters: No person either as principal, agent, or servant shall at any time catch or take any lobster from any of the waters in the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise, or draw in or from any of those waters or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters any pot or other contrivance, designed or adapted for the catching or taking of lobsters unless licensed to do so. **Refer to DEM's "Commercial and Recreational Saltwater Fishing Licensing Regulations".** (RIGL 20-7-1) ~~[Penalty – Part 1.16; (RIGL 20-1-16)]~~ **(8.1.1)**

15.2 Taking of Lobsters by Commercial Fishing Vessels: No operator of a Rhode Island registered boat engaged in trawling for finfish in Rhode Island territorial waters may retain and sell any lobsters taken unless that operator shall have a commercial lobster license. (RIGL 20-7-2) ~~[Penalty – Part 1.16; (RIGL 20-1-16)]~~ **(8.1.3)**

15.2.1 Licensing of owner-operated vessels -- No vessel may be used in the commercial taking of lobsters unless the operator is the registered or documented owner of said vessel. If a corporation is the documented owner of a vessel, the operator shall be the majority owner of that corporation. This regulation shall in no way abridge a licensee's right pursuant to RIGL 20-7-6. ~~[Penalty – Part 3.3 (RIGL 20-1-16)]~~ **(8.1.3(A))**

15.3 Non-commercial Lobster Licenses: ~~A holder of a non-commercial lobster license may set, place, or maintain in the water at any one (1) time not more than five (5) lobster pots or traps. A non-commercial lobster licensee shall not offer for sale or sell lobsters. (RIGL 20-7-3) [Penalty – Part 1.16; (RIGL 20-1-16)]~~ **Non-commercial (i.e., recreational) pot and possession limits: (8.1.2(A)&(B))**

(A) A non-commercial lobster pot or diver license is available to RI residents only. A non-commercial lobster licensee shall not offer for sale or sell lobsters. (RIGL 20-2-24 and 20-7-3) (8.1.2(A))

(B) Non-commercial lobster pots:

(1) A holder of a non-commercial lobster pot license may set, place, or maintain in the water not more than five (5) lobster pots at any one (1) time. (RIGL 20-7-3) [Penalty – Part 1.16; (RIGL 20-1-16)] (8.1.2(B)(1))

(2) Trap tags: A lobster trap tag issued by the Director is required to be attached to each deployed trap. Tags shall be permanently attached to the trap bridge or central cross member of each trap and be clearly visible for inspection. A one (1) tag over-allotment will be issued for a routine loss. Tags shall be valid for the calendar year in which the license is issued.

Comment [PD2]: Re-written below.

Comment [PD3]: RIGL 20-2-24

Comment [PD4]: Not new; relocated from 15.14.1 et seq.

(8.1.2(B)(2))

5.4 Diver's Lobster License: A holder of a **non-commercial lobster** diver license shall take no more than eight (8) lobsters in any one (1) day. ~~No~~ ~~it shall be unlawful for any~~ ~~diver to shall~~ use a spear, gig, gaff, or other penetrating device to harvest lobsters or while diving to set, open or tend lobster pots. ~~It shall be unlawful for lobsters taken by divers to be sold or offered for sale.~~ (RIGL 20-7-4) ~~[Penalty – Part 1.16; (RIGL 20-1-16)]~~ **(8.1.2(C))**

Comment [PD5]: Duplicate

~~15.5 Seller's License: Any person having charge of a vessel carrying lobsters who lands in the State of Rhode Island and who is not licensed under any of the provisions of this Chapter shall be required to have a seller's license. Any person violating the provisions of this Section shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than thirty (30) days or both. (RIGL 20-7-5) (Penalty 20-7-5)~~

Comment [PD6]: Obsolete. There is no "sellers" license

~~15.5.1 Lobster Dealers License:~~

~~(a) No person, partnership, firm, association, or corporation shall barter or trade in lobsters taken by persons licensed under this Chapter unless a license so to do has been obtained from the Director.~~

~~(b) Any licensee operating under the provisions of this section shall purchase lobsters from licensed persons only and shall purchase or possess only those lobsters legally taken or possessed.~~

Comment [PD7]: Duplicate - Licensing section 6.11-5

~~(c) The Director shall issue and enforce rules and regulations and orders governing bartering and trading in lobsters by licensed fishers of lobster and licensed lobster buyers and other persons, partnerships, firms, associations, or corporations.~~

Comment [PD8]: Director Authority per RIGL 20-1-4 and 42-17.1-2(19); not regulation

~~(d) The Director may suspend, revoke, or deny the license of a lobster buyer or fisher of lobster for the violation of any provision of this title or the rules, regulations, or orders adopted or issued pursuant to this title.~~

Comment [PD9]: Director Authority, not regulation. RIGL 20-2-13 . Suspension/revocation of marine licenses governed by DLE regs "Comm. License Suspension and Revocation regulations".

~~(e) Any person aggrieved by the decision of the Director may appeal the decision pursuant to the provision of the Administrative Procedures Act, Chapter 35 of Title 42.~~

~~(f) The Director is authorized to enter and inspect the business premises, appurtenant structures, vehicles or vessels of any lobster buyer and to inspect records maintained by a lobster buyer for the purposes of determining compliance with the provisions of this section and any rules, regulations, or orders issued under this section, and no person shall interfere with or obstruct the entrance or inspection of the Director of those business premises, appurtenant structures, vehicles, or vessels.~~

Comment [PD10]: Director Authority, not regulation. RIGL 20-1-15 and 20-7-5.1

~~(g) Any violation of the provisions of this section or any rule, regulation, or order adopted hereunder shall be subject to the penalties prescribed in § 20-1-16. (RIGL 20-7-5.1)~~

Comment [PD11]: This section is duplicate of RIGL 20-7-5.1. Also duplicate with Licensing regs and covered by general sections at end of reg

~~15.5.2 Administrative Hearings Pursuant to R.I. Gen. Laws § 42-17-7-9:~~

~~a. Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.~~

~~b. Any person who seeks an adjudicatory hearing relative to license and permits appeals arising under these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.~~

Comment [PD12]: RIGL 42-17.7 and in General Appeals at end of reg

15.6 Use of License by Agent or Employee: ~~If any person to whom a seller's or commercial lobster license is granted becomes incapacitated for any reason from using that their license, that person may permit his or her agent or employee, if a citizen of the United States, to perform those duties under the license that may be necessary during the period of the licensee's incapacity, provided that the incapacitated licensee has notified the Director prior to the transfer of those duties. Prior authorization from the Director is required for the use of a commercial license by an agent or employee due to incapacitation.~~ (RIGL 20-7-6) **(8.1.3(B))**

Comment [PD13]: Duplicate with apply in writing below

15.6.1 Criteria for Use of License by Agent or Employee: ~~In order to obtain approval by the Director for the use of a seller's license, a lobster license, or a multi-purpose license used in the lobster fishery, by an agent or employee, the applicant/licensee must:~~

~~(a) Prove to the satisfaction of the Director that the agent or employee meets the requirements of section 15.6;~~

~~(b)(a) **The applicant must provide application** apply in writing, on forms provided prescribed by the Director for permission to transfer his/her duties to an agent or employee;~~

~~**(b) The agent or employee must be a citizen of the United States;**~~

~~(c) **The application must include** submit to the Director a written statement signed by a duly-licensed physician stating that the applicant/licensee is incapacitated and unable to participate in the lobster fishery, the reason for that incapacity, and the anticipated duration of such incapacity. For the purpose of this section, the term incapacity shall be defined as the inability, due to medical~~

reasons, to place, set, keep, maintain, supervise, lift, raise, or draw in any pot or other contrivance designed or adapted for the catching of lobsters. The Director may grant permission to the incapacitated applicant/licensee, for a period not to exceed ninety (90) days, to transfer his/her duties under such license to a designated agent or employee. This permission may be continued for an additional ninety (90) days upon submission to the Director of a duly-licensed physician's statement documenting such need. Further extensions may be granted at the discretion of the Director, but in no case may the period of transfer of duties exceed a total of one year.

Upon ~~the granting of permission~~ Director authorization for use of a license by an agent or employee, the authority of the ~~applicant~~/licensee to sell or commercially harvest lobsters under such license shall be transferred in its entirety to the designated agent or employee. The agent or employee must carry the license of the incapacitated ~~applicant~~/licensee and the written authorization by the Director on his/her person at all times while engaged in any portion of the lobster fishery.

~~It shall be considered a violation of this section and shall be subject to the penalties described in RIGL 20-1-16 for the incapacitated applicant/licensee to participate in any land or non-land based activity in any fishery for which authority was granted under said license.~~

By making application for the transfer of duties to an agent or employee, the applicant/licensee accepts responsibility for the actions of the transferee under the authority of said license. ~~This regulation 15.6.1 is promulgated through the Director's authority granted through RIGL 20-1-4, and any violations of this regulation would be subject to the penalties described in RIGL 20-1-16, a fine of not more than \$500.00 or imprisonment of up to 90 days in jail, or both. [Penalty - Part 3.3 (RIGL 20-1-16)]~~

Comment [PD14]: Director Authority (RIGL 20-1-4) and Appeals

~~15.7 Revocation of Licenses:~~

~~(a) If a person licensed under this chapter is convicted of any of the following offenses, his or her license shall be suspended for the following periods:~~

~~(1) Possession of ten (10) or more undersize lobsters but not more than nineteen (19) in violation of § 20-7-10, one (1) month;~~

~~(2) Possession of twenty (20) or more undersize lobsters, in violation of § 20-7-10, one (1) year;~~

~~(3) Possession of mutilated lobsters or lobster meat in violation of § 20-7-14, one (1) year;~~

~~(4) Possession of one (1) or more brushed female berried lobsters in violation of § 20-7-10, one (1) year;~~

~~(5) Possession of ten (10) or more egg bearing female lobsters in violation of § 20-7-10, one (1) year;~~

~~(6) Un-authorized raising of another's lobster pots in violation of § 20-4-8, one (1) year;~~

~~(7) Use or possession of a lobster pot from which the markings or branded numbers have been removed, altered or obliterated in violation of § 20-7-12, one (1) year;~~

~~(8) Failure to file reports of lobsters taken as required by § 20-7-9, one (1) year.~~

~~(b) Any person whose license is so suspended shall not engage in the lobster fishery of this state during the specified period of suspension. Any person who is convicted of engaging in the lobster fishery during the specified period of suspension shall be fined five thousand dollars (\$5,000) or imprisoned for thirty (30) days, or both. The license of any person convicted a second time of any of the offenses set forth in subsection (a) [above] shall be revoked for three (3) years, and the person whose license is revoked shall not engage in the lobster fishery of this State in any way while the revocation is in force, under a penalty of sixty (60) days' imprisonment or a fine of ten thousand dollars (\$10,000) or both, for each offense. (RIGL 20-7-7)~~

Comment [PD15]: RIGL 20-7-7

~~15.8 Administrative Suspension/Revocation of Licenses and Penalties — Appeal:~~

~~(a) If a person licensed under this chapter is found, pursuant to § 42-17.1-2, to have violated any of the following offenses, his or her license shall be suspended for the periods:~~

~~(1) Possession of ten (10) or more undersized lobsters but not more than nineteen (19) in violation of § 20-7-10, one (1) month;~~

~~(2) Possession of twenty (20) or more undersized lobsters, in violation of § 20-7-10, one (1) year;~~

~~(3) Possession of mutilated lobsters or lobster meat in violation of § 20-7-14, one (1) year;~~

~~(4) Possession of one (1) or more brushed female berried lobsters in violation of § 20-7-10, one (1) year;~~

~~(5) Possession of ten (10) or more egg bearing female lobsters in violation of § 20-7-10, one (1) year;~~

~~(6) Un-authorized raising of another's lobster pots in violation of § 20-4-8, one (1) year;~~

~~(7) Use or possession of a lobster pot from which the markings or branded numbers have been removed, altered or obliterated in violation of § 20-7-12, one (1) year;~~

~~(8) Failure to file reports of lobsters taken as required by § 20-7-9, one (1) year.~~

~~(b) Any person whose license is so suspended shall not engage in the lobster fishery of this state during the specified period of suspension. Any person who is found, pursuant to § 42-17.1-2, to have engaged in the lobster fishery during the specified period of suspension shall pay an administrative penalty of five thousand dollars (\$5,000).~~

~~(c) The license of any person found, pursuant to § 42-17.1-2, to have violated any of the offenses set forth in subsections (a) [above], a second time shall be revoked for three (3) years, and the person whose license is revoked shall not engage in the lobster fishery of this State in any way while the revocation is in force, and in addition shall pay an administrative penalty of ten thousand dollars (\$10,000) for each violation.~~

~~(d) In addition to any other sanctions provided by law, any person found, pursuant to § 42-17.1-2, to have violated any of the provisions of this Chapter shall pay an administrative penalty of not less than fifty dollars (\$50), nor more than five hundred dollars (\$500), for each lobster taken or possessed in violation of the provisions of this Chapter.~~

~~(e) Any person aggrieved by a final decision under this section may appeal the decision in accordance with the provisions of the Administrative Procedures Act, Chapter 35 of Title 42. (RIGL 20-7-7.1)~~

Comment [PD16]: RIGL 20-7-7.1

~~15.8.1 Administrative Hearings Pursuant to R.I. Gen. Laws § 42-17.7-9:~~

~~(a) Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.~~

~~(b) Any person who seeks an adjudicatory hearing relative to license and permits appeals arising under these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.~~

Comment [PD17]: General sections at end of reg; Suspension/revocation of marine licenses governed by statute and DLE regs "Comm. License Suspension and Revocation regulations".

~~15.9 Exhibition of Certificate: Each person or agent as defined in § 20-7-1 licensed under the provisions of this Chapter shall, upon demand of the Director of the Department of Environmental Management or any of the Director's deputies, exhibit the license~~

~~issued to him or her as provided in § 20-7-1. Every person violating the provisions of this section shall, for each offense, be fined up to fifty dollars (\$50). (RIGL 20-7-8)~~

Comment [PD18]: Director Authority via RIGL 20-2-9 and 20-7-8. Also Licensing section 6.12-4.

~~15.10 Report of Lobsters Taken: For the purpose of determining whether the number of lobsters caught in the waters of this State are increasing or decreasing during any period, every person licensed pursuant to RIGL §20-2-24 to catch, take, and/or sell lobsters in Rhode Island shall, upon request of the Director, report catch and effort statistics upon forms furnished by the Department. The returns from any person shall not be made public, shall be kept only in the files of the Department and shall be used only for statistical purposes. (RIGL 20-7-9) (Penalty 20-7-7 and 20-1-16 -- Part 15.7 and 1.16)~~

Comment [PD19]: Director Authority per RIGL 20-1-20 and 20-7-9; not regulation.

~~15.11 Minimum Size of Lobsters Taken -- Egg Bearing Females:~~

~~(a) No person shall catch or take from any of the waters within the jurisdiction of this State or have in his or her possession within this State any lobster or parts thereof, cooked, or uncooked, which is less than the size specified in the minimum gauge increase schedule described below, and as measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the carapace.~~

Comment [PD20]: Duplicate

Comment [PD21]: Relocated to definitions "Carapace length"

(b) **Egg-bearing female lobsters:** No person shall have in his or her possession within this State any female lobster bearing eggs or from which the eggs have been brushed or removed. **(8.1.6)**

~~(c) In addition to any penalties specified in other Sections of this Chapter, every person violating any of the provisions of this Section shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) for each lobster in violation of this regulation or be imprisoned not exceeding thirty (30) days, or both. Any person, licensed under this Chapter, catching and taking any lobster as described in subsections (a) or (b), and immediately returning the lobster alive to the water from which it was taken shall not be subject to these fines or penalties. The possession of any lobster as described in subsection (a) or (b), cooked or uncooked, shall be prima facie evidence that the lobster was caught and taken in violation of this Section. Any person convicted a second time of a violation of this Section shall be fined five hundred dollars (\$500) and be deprived of the privilege of fishing for lobsters within the State for three (3) years after conviction under a penalty of sixty (60) days' imprisonment or a fine of five hundred dollars (\$500) or both for each offense. (RIGL 20-7-10) (Revocation of license under RIGL 20-7-7 -- Part 15.7)~~

Comment [PD22]: RIGL 20-7-10; Penalties

15.11.1 - Minimum and Maximum Size of Lobsters:

a. **Minimum Size of Lobsters:** ~~No person shall catch or take from any of the waters within the jurisdiction of this state or have in their possession within this state any lobster or parts of lobsters, cooked or uncooked, which is less than the minimum gauge sizes as specified in this section,~~ measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end

of the carapace, ~~unless said person possesses a Lobster Exemption Certificate issued by the Director consistent with the requirements of 15.11.1-1 or 15.11.1-2.~~

Comment [PD23]: Relocated to definitions "Carapace length"

~~As of July 1, 2003 the~~ minimum gauge size shall be 3-3/8 inches (85.73mm) **carapace length. (8.1.5(A))**

b. ~~Maximum Size of Lobsters: No person shall catch or take from any of the waters within the jurisdiction of this state or have in their possession within this state any lobster or parts of lobsters, cooked or uncooked, which is greater than the maximum gauge size as specified in this section,~~ measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the carapace.

Comment [PD24]: Relocated to definitions "Carapace length"

~~As of July 1, 2008 the~~ maximum gauge size shall be 5-1/4 inches (133.35mm) **carapace length. (8.1.5(B))**

15.11.1-1 **Lobster Exemption Certificate for Dealers:** Dealers wishing to purchase, barter, trade or import lobsters from outside of the state or receive lobsters from LCMA 3 which ~~do not conform to~~ **are smaller than** the minimum size ~~as specified in 15.11.1~~ **for LCMA 2** may apply to the Director for **must obtain** a Lobster Exemption Certificate ~~allowing the holder to possess lobsters that are at least 3-1/4 inches (82.55mm) measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the carapace~~ **for Dealers from the Director. (8.1.15)**

a. ~~A dealer receiving a shipment of lobsters from outside of the state, any of which do not conform to the minimum size as specified in 15.11.1, after having obtained an Exemption Certificate as described in 15.11.1-1,~~ **Conditions to maintain compliance: The certificate holder** must notify the Division of Law Enforcement (DLE) by phone ~~at 401-222-3070~~ at least one hour prior to but not more than six hours prior to receiving the shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel. **(8.1.15(C)(1))**

b. All shipments of lobsters ~~not conforming to~~ **smaller than** the minimum size ~~as described in 15.11.1~~ **for LCMA 2** must be culled out immediately and stored separately on the business premises of the Certificate holder. **(8.1.15(C)(2))**

c. ~~Each dealer who possesses a Lobster Exemption~~ **The Certificate holder** shall maintain a written record of all transactions taking place under the provisions of this section including: the date of purchase; time of purchase; location of purchase; name of selling dealer or vessel; the person in charge of the vessel; amount of lobster received, including number of animals and total weight. Records shall be maintained documenting the sale of lobsters

received pursuant to this section, including the date and time of sale, and the name of the person or dealer to whom the lobsters were sold. Records must be available for inspection 8:00AM – 4:00PM at the dealer's Rhode Island office or with an authorized business agent for a period of three (3) years from the date of the acquisition of the lobsters. Records shall be available for immediate inspection as a condition of this permit. **(8.1.15(C)(3))**

d. ~~To be eligible to receive and hold a Lobster Exemption Certificate, a~~ **The applicant** dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the Lobster Conservation Management Area (LCMA) 2 minimum gauge size. **(8.1.15(A)(3))**

e. Lobsters not conforming to the LCMA 2 minimum size may only be exported out of state or sold to another dealer possessing a Lobster Exemption Certificate for export out of state. No lobsters smaller than the LCMA 2 minimum size may be offered for sale on the retail market in Rhode Island. **(8.1.15(C)(4))**

~~f. In addition to the penalty described in RIGL 20-1-16, the license of any person who violates any of the terms of 15.11.1-1 shall be suspended by the Director for a period of 1 year for a first offence, 2 years for a second offence and revoked for a third offence. A person who was or is a Lobster Dealer, Multi-purpose Dealer, or a partner, manager, principal or shareholder of a Lobster or Multi-purpose Dealer, whose license has been suspended or revoked, is not eligible to receive or hold a Lobster Exemption Certificate or otherwise participate in any facet of the lobster industry. A facility for which the license has been suspended may not be reopened or operated under any other persons name or license during the suspension period.~~

Comment [PD25]: Obsolete. General Penalties and enforcement

~~15.11.1-2 Repealed (effective 9/6/04)~~

15.11.1-3 Application for Lobster Exemption Certificate:

(1) Application shall be made on forms prescribed by the Director.
(8.1.15(B))

a. ~~A person who~~ **The applicant dealer must** possesses **hold** a **valid commercial dealers** license to deal in lobsters in ~~this state~~ **Rhode Island** and wishes to obtain a Lobster Exemption Certificate pursuant to Section 15.11.1-1 may apply for same with the Office of Boat Registration and Licensing. ~~The applicant shall provide the Office with the following:~~
(8.1.15(A)(1))

1. **The applicant dealer shall provide** a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of the Rhode

Island; and **(8.1.15(A)(2))**

~~2. the address of the dealer's facility for which the certificate is being requested~~

Comment [PD26]: Administrative. Application form

~~3. Written confirmation by the DLE that the dealer complies with or the requirements of sections 15.11.1-1, a – f inclusive.~~

Comment [PD27]: Not possible as permit hasn't been issued. These are conditions of compliance, not eligibility/application requirements. Also note there currently is no such application available – would have to be developed if the situation arose again

~~b. Repealed (effective 9/6/04)~~

~~15.11.1-4 Appeals:~~

~~a. The procedure for the appeal of decisions relative to Sections 15.11.1-1 through 15.11.1-3 is governed by the provisions of Chapter 42-17.7 of the Rhode Island General Laws, "Administrative Adjudication for Environmental Matters," and the rules and regulations duly promulgated pursuant thereto.~~

~~b. The request for hearing before the Administrative Adjudication Division (the "AAD") concerning imposition of enforcement penalties, including the suspension or revocation of Lobster Exemption Certificates, or concerning denial of an application for a Lobster Exemption Certificate, shall be in writing and filed with the AAD within the time periods set forth in Section 42-17.7-9 of the Rhode Island General Laws. Rhode Island General Laws Section 42-17.7-9 provides that all requests for an adjudicatory hearing concerning enforcement actions must be received by the AAD within twenty (20) days of a person's receipt of notice of the contested enforcement action. Rhode Island General Laws Section 42-17.7-9 further provides that all requests for an adjudicatory hearing concerning the denial of applications must be received by the AAD within thirty (30) days of a person's receipt of notice of the contested agency action.~~

Comment [PD28]: General Appeals. DEM AAD regs

15.12 **Buoying of Pots - Escape Vents:** Each and every lobster pot, set, kept, or maintained or caused to be set, kept, or maintained in any of the waters in the jurisdiction of this State by any person properly licensed, shall contain an escape vent in accordance with the **size required by regulation following specifications:** (20-7-11a) **(8.1.9(B))**

~~The Director shall have the power to establish larger escape vent sizes by regulation. (20-7-11c)~~

Comment [PD29]: Director Authority, not regulation

~~Each lobster pot shall be separately and plainly buoyed; except that in cases where natural conditions render it impractical to separately buoy each pot, the Director may, upon application from any person licensed under this Chapter, grant permission to otherwise buoy those such pots in an alternative manner, subject to rules and regulations promulgated by the Director; and Each and every permit so granted shall set forth the name of the person to whom the permit is granted, the number of the permit, the place or places where the lobster pots are to be located, the manner in which lobster~~

Comment [PD30]: Same as 15.12.1(a)

~~pots shall be set, and the period of time during which the permit shall extend.~~ (RIGL 20-7-11(d)) **(7.4)**

Comment [PD31]: Administrative

15.12.1 Lobster Pots:

(a) Each ~~and every pot, trap, or other device~~ used for the taking of lobsters or crabs ~~in any of the waters of this State~~ shall bear a color scheme on the attached buoy **consistent with the color** ~~Each applicant for a lobster license shall state the color scheme that he or she desires to use. These colors, unless disapproved by the Director, shall be stated in on the license, and all buoys used by the licensee shall be marked accordingly. Each licensee shall cause his or her~~ **The buoy color scheme shall be** ~~to be~~ displayed on any lobster boat used by the licensee ~~in the waters of this State.~~ **such that** those colors shall be painted on port and starboard sides of the hull in a section not less than one foot (1') square, or a clearly painted buoy shall be set at the highest point on the boat excluding the mast and be visible for three hundred sixty degrees (360°). The buoy or colors must be prominently displayed on the vessel at all times that lobster gear fished under that license is in the water. (RIGL 20-7-11.1(a)) **(7.4; 7.4.1)**

Comment [PD32]: "Pot" is defined as a trap or any device

Comment [PD33]: Administrative. Application form

Comment [PD34]: Says same thing as 1st sentence

(b) No person shall place, set, lift, raise, unduly disturb, draw in, or transfer any ~~pot, trap, or other device~~ used for the taking of lobsters unless the color scheme of the attached buoy is the same as the color scheme that is on file with the license application and displayed on the boat used by that person, or unless that person is duly licensed and possesses written permission from the rightful owner of the pot, trap, or other device. (RIGL 20-7-11.1(b)) **(7.4.2)**

~~(c) The Director is authorized to promulgate regulations which establish a fee for official state lobster trap tags. Any fee collected by the Department will be retained by the agency subject to RIGL §20-2-28.2 to be used for the exclusive purpose of producing and distributing the trap tags and, if necessary, supporting other lobster fishery management measures, including enforcement of the trap tag program; provided, however, that (1) the Department shall not establish a fee to cover any cost other than the cost of trap tags without first obtaining a recommendation from an advisory committee in accordance with subsection (d); and (2) the Department shall report to the general assembly regarding the need for the fee to cover any such additional cost in accordance with subsection (d).~~

Comment [PD35]: Director Authority via RIGL 42-17.1(19) and 20-7-11.1; not regulation

~~(d) The Department shall create an advisory committee composed of five (5) members of the lobster industry that utilize trap tags. The Director or his or her designee will serve on the committee and act as chairperson. The committee will formulate recommendations on the expenditure of the funds derived from the tagging program. The Department shall prepare an annual report for submittal to the general assembly which summarizes the status of the lobster management and trap tag program, management actions, program needs, and catch and effort data, and which provides an itemized listing of all program~~

~~expenses. This report shall be available to the public and provided to each commercial fishing organization in the state. (RIGL 20-7-11.1) (Penalty RIGL 20-1-16 - Part 1.16)~~

Comment [PD36]: RIGL 20-7-11.1(d); not regulation

~~15.12.2 Maximum Trap Size: It shall be unlawful to place, set, keep, maintain, supervise, lift, raise, or draw in from any of the waters in the jurisdiction of this state, or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in from any of these waters any pot or other fixed gear contrivance designed or adapted for the catching or taking of lobsters, with a volume greater than 22,950 cubic inches. (8.1.9(A))~~

~~15.12.3 Trap Limit/Reduction Schedule: Effective June 1, 2001, it shall be unlawful for any person licensed under this chapter to place, set, keep, maintain, supervise, lift, raise, or draw in from any of the waters in the jurisdiction of this state any pot or other fixed gear contrivance designed or adapted for the catching or taking of lobsters which exceeds a maximum number of 800. [Penalty - Part 3.3 (RIGL 20-1-16)]~~

Comment [PD37]: Duplicate

~~15.13 Escape Vents Sizes - Penalty: Effective June 1, 2003, it shall be unlawful to fish for or take lobsters by use of any lobster trap within the territorial waters of the State of Rhode Island unless the trap is equipped with:~~

~~15.13.1 Subsection I:~~

~~15.13.1-1 Minimum escape vent size: A **At least one** rectangular escape vent with an unobstructed opening measuring not less than 2 inches (50.8mm) by 5-3/4 inches (146mm); or (8.1.9(B)(1)(a))~~

~~15.13.1-2 Prior to December 31, 2004 the requirement will be two circular escape vents, each with an unobstructed opening not less than 2 1/2 inches (63.5mm) in diameter. Beginning December 31, 2004 at 12:01 AM the requirements will be two circular escape vents, each with an unobstructed opening not less than 2-5/8 inches (66.68mm) in diameter; or (8.1.9(B)(1)(b))~~

~~15.13.1-3 An unobstructed gap caused by raising both ends of a bottom lath in the parlor section 2 inches (50.8mm) from the bottom; or (8.1.9(B)(1)(c))~~

~~15.13.1-4 An unobstructed gap caused by separating both ends of 2 vertical laths on the end of the parlor section by 2 inches (50.8mm); or (8.1.9(B)(1)(d))~~

~~15.13.1-5 An unobstructed gap created by cutting wires in a wire trap in such a manner as to meet the minimum size and number of vents required under sections 15.12.2-1 and 15.12.1-4 in accordance with this section. (8.1.9(B)(1)(e))~~

~~15.13.1-6 Lobster traps not constructed entirely of wood must contain a ghost~~

panel with the following specifications: **(8.1.9(B)(1)(g))**

- (a) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3-3/4 inches (9.53 cm) by 3-3/4 inches (9.53 cm).
- (b) The panel must be constructed of, or fastened to the trap with one of the following untreated materials: wood lath, cotton, hemp, sisal, or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.
- (c) The door of the trap may serve as the ghost panel if fastened with a material specified in previous paragraph.
- (d) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

15.13.2 **Subsection II:** The vent or gap shall be: installed or made in **the each** parlor section on the sides, end panel or door of the trap. Traps equipped with multiple parlor sections and having a central entrance funnel(s) separating the parlor sections must adhere to the escape vent requirements specified above in each parlor section. Traps equipped with multiple parlor sections that are linked in series ("in-line") must adhere to the escape vent requirements specified **above** in the terminal, or end parlor section. ~~Any fisherman not complying with the provisions of Section 1 or Section 2 shall be fined not more than twenty dollars (\$20) for each trap not conformed to the specifications. (Penalty 20-1-16 - Part 1.16 and 15.12)~~
(8.1.9(B)(1)(f))

Comment [PD38]: Penalty

15.14 **Marking of Traps Pots:** The owner of every trap, pot, or other stationary contrivance used for the taking of marine fish, shellfish, crustaceans, or other invertebrates being fished in the waters of this State, and the owner of any trap or pot for catching or cars or other contrivances for keeping lobsters shall mark each trap, pot, or contrivance, together with the buoy which is attached thereto, with the name or names of the owners of the contrivance or the person or persons using the same, and the license number or numbers of such person or persons. ~~Every person failing to mark each trap, as provided in this Section shall be fined not less than twenty dollars (\$20) nor more than five hundred dollars (\$500) for each offense and all traps, pots, or other contrivances used contrary to the provisions of this and other Sections of this Chapter shall be seized by any officer engaged in the enforcement of this Chapter; and the property shall be forfeited to the State. (RIGL 20-4-7) (7.6)~~

Comment [PD39]: RIGL 20-4-7; penalty

15.14.1 **Commercial Lobster Trap Tags:** No person shall have on board a vessel or set, deploy, place, keep, maintain, lift, or raise; from, in, or upon the waters under the jurisdiction of the State of Rhode Island any lobster trap/pot ~~as defined in 1.3~~ for taking of American lobster (*Homarus americanus*) without **the pot** having a valid State of Rhode Island lobster trap tag permanently attached to the trap bridge or central cross member **of each trap, that is and be** clearly visible for inspection.

(8.1.13(A)&(B))

15.14.1-1 The State of Rhode Island, under a signed Memorandum of Agreement (MOA) with the Northeast Region, National Marine Fisheries Service (NMFS), shall recognize lobster trap tags issued by NMFS to a Federal Limited Access Lobster Permit holder as being valid within waters under the jurisdiction of the state, provided that the Federal Limited Access Lobster Permit holder also possesses a valid state license pursuant to ~~section 15.4~~ **harvest lobster**.

(8.1.13(J)(2))

15.14.1-1(a) For persons possessing a valid RI commercial fishing license (licensee) for the catching, taking, or landing of American lobster, and who also own or are incorporated/partnered in a vessel(s) holding a Federal Limited Access Lobster Permit (Federal Lobster Permit), the following shall apply: **(8.1.13(L))**

(1) No harvesting of lobsters may occur in any LCMA by means of any lobster trap for which an appropriately designated lobster trap tag has not been issued. All vessels owned/incorporated/partnered by said licensee which hold a Federal Lobster Permit shall annually declare all LCMA(s) in which the licensee intends to fish during the fishery year. Said declaration shall be made at the time of application for issuance of lobster trap tags, on forms provided by the DFW.

(2) Once declared, an LCMA may not be changed until the next fishery year. An LCMA declared to DFW shall be identical to the LCMA declared to the NOAA Fisheries on forms provided by NOAA Fisheries concerning the fishing activities during the subject period by the vessel owned/incorporated/partnered by said licensee.

(3) If any discrepancies between the LCMA declared to DFW and NOAA Fisheries are revealed, the NOAA Fisheries LCMA declarations shall govern. Any lobster trap tags issued on the basis of the information provided to DFW which is later superseded by conflicting information provided to NMFS shall become null and void, must be returned to the issuing authority (DFW), and a new trap tag order application shall be required to be submitted to DFW.

(4) Appropriately designated lobster trap tags shall be issued to federally-permitted vessels for the declared LCMA(s), pursuant to section 15.14.1-5. Federal (EEZ) waters lobster trap tags shall be distinguishable from RI State waters lobster trap tags (i.e. Federal Lobster Permit number, color, EEZ/NMFS designation, LCMA(s) declared fished).

(5) No licensees owning/partnered/incorporated in vessel(s) holding a LCMA 2 Federal Lobster Permit shall be permitted to deploy, place, set,

tend, haul, lift, raise, supervise, or maintain lobster traps from said LCMA 2 federally-permitted vessel(s), or to catch/take American lobster within the jurisdiction of the State of RI from said LCMA 2 federally-permitted vessel(s), unless the lobster traps are tagged with federally-designated lobster trap tags that includes a LCMA 2 declaration, issued to said federally-permitted vessel(s).

(6) If multiple LCMA's are declared, pursuant to part (1) above, and management measures for the declared LCMA's differ, any vessel owner permitted to fish in the federal exclusive economic zone (EEZ) must comply with the most restrictive management measures of the LCMA's declared, except in regard to trap caps and trap allocations. For trap caps and trap allocations, the most restrictive rule will be applied on an LCMA trap cap/trap allocation basis without regard to the individual's or vessel's trap cap or trap allocation.

15.14.1-2 Crab pots/traps, fish traps, fish weirs, minnow traps, eel pots/traps, conch pots/traps, gillnets or trammel nets, fyke nets, stake traps, trawling devices, clam and scallop dredges, beach seines, purse seines, and tongs or bullrakes shall be classified as non-lobster trap gear and shall be exempt from trap tagging requirements. **(8.1.13(M))**

~~15.14.1-3 Holders of a Non-Commercial Lobster Divers license shall be exempt from lobster trap tagging requirements while engaged in the harvesting of lobsters by diving.~~

Comment [PD40]: Divers don't use traps.

15.14.1-4 Issuing Authority: The Director ~~shall be~~ is the issuing authority ~~(RIGL 20-2-28.2)~~ for the issuance of lobster trap tags for the state of RI. ~~The issuing authority shall issue lobster trap tags to residents licensed only to catch or take lobsters within the waters under the jurisdiction of the state. The Atlantic States Marine Fisheries Commission (ASMFC) approved trap tag vendor may make actual trap tag issuance, but the issuing authority~~ and shall have complete oversight ~~and responsibility for timeliness and accuracy~~ over the program. **(8.1.13(J))**

Comment [PD41]: Not relevant to trap tags

(a) For state-licensed residents and non-residents who possess a Federal Limited Access Lobster Permit, the Director may request authority to issue trap tags to Federal Limited Access Lobster Permit holders under a signed Memorandum of Agreement (MOA) with the National Marine Fisheries Service (NMFS). If such an agreement is not established, the NMFS shall be the issuing authority for those who possess a Federal Limited Access Lobster Permit. **(8.1.13(J)(1))**

~~15.14.1-5 Trap Tag Type and Information: Lobster trap tags shall be a "truck seal" design to be provided by the Department through an approved trap tag vendor. Each trap tag shall be color-coded coastwide by fishing year.~~

~~Information printed on commercial lobster trap tags shall be: issuing authority (state/NMFS); LCMA(s) the trap tag is valid including state/EEZ; year(s) the trap tag is valid; and state license or federal permit number. Information printed on recreational lobster trap tags shall be: issuing authority (state); year(s) the trap tag is valid; and a unique recreational designation.~~

Comment [PD42]: Administrative, not regulation

15.14.1-6 **Non-transferability of Trap Tags:** All lobster trap tags shall be a permanent, single-use, design and not transferable. ~~Lobster trap tags must be permanently attached to the trap bridge or central cross member and shall be clearly visible for inspection.~~ No person shall transfer lobster trap tags between lobster traps or between individuals or vessels. ~~All commercial and recreational lobster traps must be tagged pursuant to section 15.14.1. (8.1.13(D)&(E))~~

Comment [PD43]: Duplicate

~~15.14.1-7 **Trap Tag Purchase:** The holder of a commercial lobster license or multipurpose commercial marine license shall submit a Trap Tag Order Form in duplicate, and including (1) a copy of official State of Rhode Island Commercial Fishing Tax Exemption Certificate and (2) payment in full for said order, directly to the ASMFC approved trap tag vendor. Said licensees shall also submit a copy of the Trap Tag Order Form directly to the DFW.~~

~~(a) Baseline trap tag cost shall be determined by signed contract with an approved trap tag vendor. Additional fees may be added to the baseline cost to be used exclusively for enforcement and administration of the Lobster Trap Tag Program, as provided by section 15.14.1-9 (b)-(d).~~

~~(b) Commercial lobster trap tags shall be purchased by said licensees directly from the approved vendor on official Trap Tag Order Forms provided by the DFW.~~

Comment [PD44]: Administrative

~~(c) Non-Commercial (i.e. Recreational) lobster trap tags shall be distributed by the issuing authority directly to holders of a Non-Commercial Trap license upon renewal of said license and shall be valid for the calendar year (January 1—December 31) in which said license is issued. (8.1.2(B)(2))~~

Comment [PD45]: Administrative

~~(d) **Gear Rotation Trap Tags:** Commercial licensees may pre-order trap tags to be used for gear rotation and maintenance. Said licensees may pre-order gear rotation trap tags up to the maximum number of traps fished by said licensee, not including 10% over-allotment for routine losses. Pre-ordered gear rotation trap tags shall be held by the issuing authority. **The number of gear rotation trap tags issued shall not exceed the licensee's original trap tag allocation. Gear rotation trap tags shall be held by the Director. The Director shall issue gear rotation trap tags on a one-for-one basis upon receipt of the original tags. (8.1.13(K)(2))**~~

~~(e) **Catastrophic Loss Trap Tags:** Commercial licensees may pre-order a **up to two (2)** complete duplicate set of **catastrophic** trap tags, including 10% over-allotment for routine losses, to be used in the event of catastrophic gear~~

~~loss (i.e. greater than 10% of maximum number of traps fished) in an amount equal to the number of original tags ordered, to be used in the event of catastrophic loss.~~ Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color). ~~Pre-ordered~~ Catastrophic Loss trap tags shall be held by the ~~issuing authority~~ **Director. (8.1.13(K)(3))**

(f) No person shall possess at any one time more lobster trap tags than are authorized ~~pursuant to sections 15.14.1-8(b)-(c) and 15.14.1-12.~~ **(8.1.13(G))**

15.14.1-8 **Trap Tag Issuance Season:** Lobster trap tags shall be valid from June 1 through May 31, annually. ~~Official forms will be mailed to all persons licensed by the State of Rhode Island to catch or take American lobster no later than ten (10) days from receipt of the renewal application or December 15, annually. Trap tags will be issued and mailed directly to commercial licensees as orders are received and processed by the approved trap tag vendor.~~ **(8.1.13(C))**

Comment [PD46]: Administrative

(a) ~~For holders of only a State of Rhode Island license for the catching and taking of lobsters within waters under the jurisdiction of the state, lobster trap tags shall be issued to the license holder.~~ Commercial licensees may be issued **order up to** their original trap tag allotment, ~~as specified in sections 15.12.3 and 15.14.1-12,~~ plus a 10% over-allotment to allow for routine trap losses. **(8.1.13(K)(1))**

Comment [PD47]: Administrative

(b) Recreational lobster trap license holders may be issued one allotment of up to five (5) recreational lobster trap tags, along with one (1) over-allotment trap tag for routine losses, ~~directly from the issuing authority.~~ **(8.1.2(B)(2))**

Comment [PD48]: Administrative

(c) **Gear Rotation Trap Tags:** ~~Commercial licensees may return currently valid original trap tags to the issuing authority for gear rotation trap tags on a one-for-one basis to allow for necessary gear rotation and maintenance. The number of gear rotation trap tags issued shall not exceed the number of currently valid original trap tags returned to the issuing authority.~~ **Commercial licensees may order trap tags to be used for gear rotation and maintenance. The number of gear rotation trap tags issued shall not exceed the licensee's original trap tag allocation. Gear rotation trap tags shall be held by the Director. The Director shall issue gear rotation trap tags on a one-for-one basis upon receipt of the original tags.** **(8.1.13(K)(2))**

~~(d) Catastrophic Trap Tag Loss: Commercial licensees must submit an application to the issuing authority and follow the procedure described in Part 15.14.1-10(b)-(e), below.~~

Comment [PD49]: Duplicate

~~(e) Lobster trap tags shall not be issued to any license holder/vessel that does not submit an official State of Rhode Island Lobster Fishery Catch/Effort Logbook report for the previous calendar year.~~

Comment [PD50]: Cannot track. Non-compliance effects issuance of License, not tags

~~15.14.1-9 Trap Tag Cost, Fees, and Administration: The Director shall have the authority to promulgate regulations requiring the tagging of lobster traps. The Director is authorized to promulgate regulations that establish a fee for official State lobster trap tags. Any fee collected by the Department will be retained by the agency subject to RIGL Section 20-2-28.2 to be used for the exclusive purpose of producing and distributing the trap tags and, if necessary, supporting other lobster fishery management measures, including enforcement of the trap tag program, provided that:~~

Comment [PD51]: Director Authority; RIGL 20-2-28.2 and RIGL 20-7-11.1(c); not regulation

~~(a) Baseline trap tag cost shall be determined by signed contract with an ASMFC-approved trap tag vendor.~~

Comment [PD52]: Administrative; not regulation

~~(b) The Department shall create an advisory committee composed of five (5) members of the lobster industry that utilize trap tags. The Director or his/her designee will serve on the committee and act as chairperson. The committee will formulate recommendations on the expenditure of funds derived from the trap tagging program. The Department shall prepare an annual report for submittal to the General Assembly which summarizes the status of the lobster management and trap tag program, management actions, program needs, and catch and effort data, and which provides an itemized listing of all program expenses. This report shall be available to the public and provided to each commercial fishing organization in the State.~~

Comment [PD53]: RIGL 20-7-11.1(d); not regulation

~~(c) The Department shall not establish a fee to cover any cost other than the cost of the trap tags without first obtaining a recommendation from the advisory committee in accordance with section 15.14.1-9 (b) above.~~

Comment [PD54]: RIGL 20-7-11.1(c); not regulation.

~~(d) The Department shall report to the General Assembly regarding the need for the fee to cover any such additional cost in accordance with section 15.14.1-9 (b) (c) above.~~

Comment [PD55]: Administrative; non-regulation

Comment [PD56]: RIGL 20-7-11.1(c); not regulation

15.14.1-10 Trap Tag Loss: ~~Routine loss of lobster trap tags are not required to be reported to the DLE. Catastrophic trap tag~~ loss of trap tags greater than 10% of the maximum number of traps deployed (catastrophic losses) shall be reported immediately to the DLE. Recovery of lobster trap tags (traps) that have been reported as catastrophic loss shall be reported immediately to the Division of Enforcement. **(8.1.13(K)(3)(h))**

(a) Routine Trap Tag Loss: Routine **trap tag** loss shall be defined as **the losses of original trap tags** that do not exceed the 10% over-allotment trap tags issued for routine loss, based on the maximum number of lobster traps deployed **allowance for routine loss**. When a routine loss **of an original trap tag or trap** occurs, the 10% over-allotment **of original** trap tags **issued** shall be used to **identify and validate traps from which a trap tag has been lost or to identify and validate a trap that is replacing** **replace** the lost **tag or** trap. **(8.1.13(K)(1)(a))**

Comment [PD57]: Relocated to Definitions

(b) Catastrophic Trap Tag Loss: Catastrophic loss shall be defined as losses that exceed the 10% over-allotment for routine loss, based on the maximum number of traps deployed. When a catastrophic loss occurs, a complete duplicate set of ordered catastrophic trap tags ~~including 10% over-allotment for routine loss may~~ shall be issued, ~~at cost, to the commercial licensee.~~ Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color). Original trap tags will ~~not be valid once catastrophic loss trap tags are issued and placed in traps~~ become null and void upon the issuance of catastrophic loss trap tags. In state waters, catastrophic loss trap tags must be placed in traps within 10 days after issuance. The DLE must be notified, in writing by certified mail, in cases of extenuating circumstances that do not permit catastrophic loss trap tags to be attached to traps ~~within the time frame specified above.~~ **(8.1.13(K)(3))**

Comment [PD58]: Relocated to definitions, "Catastrophic trap tag loss"

DFW shall report the issuance of catastrophic loss trap tags and the voiding of original trap tags to the DLE.

(c) Application for catastrophic loss trap tags shall be made on ~~official~~ forms ~~provided by the DFW~~ prescribed by the Director and signed by the commercial licensee under the penalty of perjury. The DFW shall review the application for catastrophic loss tags form, within 1 week after receipt. **(8.1.13(K)(3)(d))**

~~(d) After review of the application for issuance of catastrophic loss trap tags by the DFW, if a decision is reached that is unsatisfactory to the commercial licensee, said licensee who seeks an adjudicatory hearing relative to license and permits appeals arising under these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action. In the event that catastrophic loss trap tags are not immediately available, the Director may issue an exemption letter to allow the commercial licensee to fish new traps until catastrophic loss trap tags are received by said licensee, for a time period not to exceed two (2) months.~~

Comment [PD59]: General Appeals; AAD regs

~~(e) The Director shall have the right to invoke emergency measures to suspend trap tag regulations in the event of area-wide catastrophic losses, for a time period not to exceed two (2) months.~~

Comment [PD60]: Director Authority

15.14.1-11 Violations:

~~(a) It shall be a violation of these regulations to file a false claim of trap or trap tag loss.~~

Comment [PD61]: General Violations

(b) **Non-transferability:** It shall be a violation of these regulations to **No**

person shall transfer lobster trap tags between lobster traps or between individuals or vessels. **(8.1.13(E))**

(c) Following the issuance of ~~lobster trap tags pursuant to 15.14.1-10 (b)~~ (Catastrophic Trap Tags Losses), ~~it shall be a violation of these regulations to~~ **no person shall** deploy a lobster trap for which a catastrophic loss trap tag has been issued and which does not display a valid catastrophic loss trap tag. **(8.1.13(K)(3)(j))**

(d) ~~It shall be a violation of these regulations to deploy more than the total maximum number of lobster traps authorized under 15.12.3 and 15.14.1-12. The 10% over-allotment trap tags for routine losses, as established in sections 15.12.3, 15.14.1-8 (c) and 15.14.1-12, shall not be deployed (if issued) such that the total number of traps deployed is greater than the number permitted pursuant to said regulations authorized allocation.~~ **(8.1.13(I))**

Comment [PD62]: Duplicate with new section 8.1.4(B)

(e) Only lobster trap tags for the current fishing year and the immediate previous fishing year shall be allowed to remain attached to each lobster trap. ~~[Penalty — Part 3.3 (RIGL 20-1-16)]~~ **(8.1.13(H))**

~~15.14.1-12 Trap Allocations and Trap Tag Allotments: The following table describes the trap allocations, and maximum allotment of trap tags for Rhode Island state waters of LCMA 2. The maximum trap tag allotment includes a 10% over-allotment for routine losses.~~

LCMA	License Type	Effective Date	Trap Limit	Trap Tag Allotment
2	State only	6/1/2001	800	0 – 880 (8.1.14(D)(13))

~~15.14.1-13 In state waters, no vessel shall deploy, place, set, keep, maintain, supervise, lift, raise, or draw in or from any waters in the jurisdiction of this state any lobster trap gear (1.3 Definition) that has not been affixed with a valid lobster trap tag pursuant to section 15.14.1 issued to the owner/operator of the vessel. [Penalty 3.3 (RIGL 20-1-16)] No person shall have on board a vessel or set, deploy, place, keep, maintain, lift, or raise; from, in, or upon the waters under the jurisdiction of the State of Rhode Island any lobster pot for taking of American lobster without having a valid State of Rhode Island lobster trap tag. (8.1.13(A))~~

Comment [PD63]: Duplicate with 15.14.1

Comment [PD64]: Used 15.14.1 language for consistency

~~15.14.2 LCMA 2 Lobster Trap Effort Control Program:~~

~~15.14.2-1 Purpose: This program is promulgated in order to fully implement the State provisions of Addendum VII, Addendum XII, Addendum XVIII, Addendum XIX, Addendum XXI and Addendum XXII to Amendment 3 to the~~

~~Interstate Fishery Management Plan for American Lobster, as adopted by the ASMFC in November 2005., February 2009, May 2012, October 2012, February 2013, and August 2013, respectively. The purpose of the program is to help achieve a healthy and sustainable lobster resource in LCMA 2 by capping effort at 2001–2003 levels, and establishing a mechanism for future adjustments in effort in response to changes in resource status.~~

Comment [PD65]: Programmatic/administrative; not regulation

~~All LTAs will be subject to reductions in accordance with section 15.14.2-5(d). Also, any and all LTAs may be adjusted (increased or reduced) by any future addenda of amendments to the ASMFC's Interstate Fishery Management Plan for American Lobster in response to changes in resource status; accordingly, any and all LTAs obtained via transfer will be subject to reductions over a six-year period, and may be subject to future adjustments pending any future actions taken by the ASMFC.~~

Comment [PD66]: There is no "(d)"

15.14.2-2 – Definitions: As used in section 15.14.2:

Comment [PD67]: Programmatic, not regulation

Adjusted LCMA 2 Lobster Trap Allocation (LTA) means an increase or decrease in an individual LCMA 2 LTA resulting from a Department-sanctioned transfer of traps from one individual to another.

Comment [PD68]: Relocated to Definitions section, Section 6

Department or DEM means the Rhode Island Department of Environmental Management.

DFW means the DEM Division of Fish and Wildlife.

DLE means the DEM Division of Law Enforcement

Dual federal permit/state license holder means an individual who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

Fish~~ing~~ery Performance means properly documented commercial lobster fishing activity – namely pounds landed and traps fished in LCMA 2 during the applicable qualifying period.

Initial LCMA 2 LTA means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2.

LCMA means Lobster Conservation Management Area.

LCMA 2 means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

LCMA 2 Lobster Trap Allocation (LTA) means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

~~Logbook Report means the RI Catch and Effort Logbook that is provided to all RI commercial fishing license holders who are authorized to fish commercially for lobster, and which must be filed with the Department by any fisher who does not report his/her landings to NOAA Fisheries via VTRs.~~

Comment [PD69]: Not relevant to regulation

LTA means lobster trap allocation, either issued by the Department or NOAA Fisheries.

LTA transfer means a change in ownership of a partial or entire Department- or NOAA Fisheries-issued LTA by an individual or Corporation .

LTA transferor means the license or permit holder from whom an LTA transfer is made.

LTA transferee means the individual, corporations or fishing vessel to whom/which an LTA transfer is made.

Material Incapacitation means a verifiable event beyond the control of the license/ permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001-2003, inclusive. Military service performed during the three-year period 2001-2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation can not involve a choice by the license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

NOAA Fisheries means the National Oceanic and Atmospheric Administration Fisheries (formerly referred to as National Marine Fisheries Service)

Qualifying Period means the entire three-year period from January 1, 2001 through December 31, 2003. For individuals meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.

~~Vessel Trip Report means the NOAA Fisheries report that must be filed with NOAA Fisheries by all federal permit holders except those who fish exclusively commercially for lobster.~~

Comment [PD70]: Licensing

~~15.14.2-3 — Authorization to Fish Commercially for Lobsters in LCMA 2:~~

- (a) ~~After May 1, 2007,~~ no person may **take or** possess lobsters **commercially in LCMA 2 unless** taken by **a** lobster traps ~~in LCMA 2 unless they are authorized to do so~~ pursuant to an LTA issued by the Department₁

~~or by an otter trawl or gillnet.~~ (8.1.4)

Comment [PD71]: Added this language for consistency with the language added in section 15.18 from May public hearing

(b) ~~After May 1, 2007,~~ no person may employ more lobster traps in LCMA 2 than the maximum number authorized by their LCMA 2 LTA. (8.1.14(A))

(c) ~~Recreational (non-commercial) lobster trap license holders are exempt from the LCMA 2 LTA process, and associated provisions, set forth herein.~~

Comment [PD72]: Is reg by default as there are no requirements identified herein

15.14.2-4 – Trap Allocation Authority:

(a) The ~~Department, through the DFW, shall be~~ **Director is** the LCMA 2 LTA authority for all Rhode Island residents, both state-licensed and federally permitted. (8.1.14(B))

Issuance of initial LCMA 2 LTA: (8.1.14(C))

(b) The Department ~~shall process all LCMA 2 LTA applications from Rhode Island residents, and~~ shall determine LCMA 2 LTAs for all eligible applicants. (8.1.14(C)(1))

(c) For resident applicants who are dual state-license/federal-permit holders, the Department shall forward all proposed LCMA 2 LTAs, and the basis for each such determination, to NOAA Fisheries for that agency's consideration, prior to final issuance. (8.1.14(C)(2))

(d) The Department and NOAA Fisheries shall seek to ensure that dual state-license/federal permit holders do not receive duplicate LCMA 2 LTAs from different jurisdictions for the same fishery performance. (8.1.14(C)(3))

(e) If there is a discrepancy between Department and NOAA Fisheries proposed LCMA 2 LTAs for a dual state-license/federal permit holder, then the license/permit holder is bound by the lesser of the ~~two~~ LCMA 2 LTAs until a final, joint determination is rendered by the agencies. (8.1.14(C)(4))

15.14.2-5 – Issuance of LCMA 2 LTAs:

(a) Initial LCMA 2 LTAs will only be issued to qualified applicants in accordance with ~~subsection 15.14.2-6~~ **these regulations.** (8.1.14(C)(5))

(b) Adjustments to initial LCMA 2 LTAs, and issuances of new LCMA 2 LTAs, may occur, by rule, if associated with Department-sanctioned transfers, or if warranted or required by changes in LCMA 2 lobster stock assessments or other ASMFC actions. (8.1.14(C)(6))

15.14.2-6 – Qualifications for Initial LCMA 2 LTAs: (8.1.14(D))

(a) To be eligible for an initial LCMA 2 LTA, an applicant **must meet the following:**

(i) Must have held a Department-issued commercial fishing license, authorizing the individual to fish commercially for lobster, or a federal lobster permit endorsed for LCMA 2, at some point during the period 2001-2003; and

(ii) Must have documented fishing performance during the period 2001-2003, i.e., must have landed lobsters with traps from LCMA 2 at some point during that period; or if unable to do so due to material incapacitation, ~~pursuant to the provisions set forth in section 15.14.2-8,~~ must have documented fishing performance during the period 1999-2000 and during the year 2004, i.e., must have landed lobsters with traps from LCMA 2, with a valid license/permit, at some point during those periods; and

(iii) Must have renewed his/her license/permit annually since 2003.

(b) Alternatively, an applicant is eligible for an initial LCMA 2 LTA if he/she has:

(i) Lawfully acquired a federal lobster permit that comports with the above-specified qualifications; or

(ii) Acquired the vessel and gear of a RI license holder who meets the above-specified qualifications, and has been issued a new license with a lobster endorsement, in accordance with ~~the provisions of section 6.7-8 of the Rules and Regulations Governing the Management of Marine Fisheries~~ **DEM's "Commercial and Recreational Saltwater Fishing Licensing Regulations"**.

(c) Documented fishing performance shall be based upon a license/permit holder's logbook reports and/or federal VTRs pertaining to the applicable qualifying period. In accordance with ~~subsection 15.14.2-10~~ **these regulations**, the Department will consider other information, offered by the applicant, but only if it pertains to documentation already furnished to a state or federal government agency.

15.14.2-7 – Application for Initial LCMA 2 LTA: (8.1.14(E))

(a) ~~To obtain an initial LCMA 2 LTA,~~ individuals must **apply have applied** to the Department on forms ~~provided by the Department~~ by February 1, 2007. **(8.1.14(D)(1)(a))**

Applications shall be made on forms prescribed by the Director

(8.1.14(E)(1))

(b) Separate applications must be submitted for each LCMA 2 LTA being sought. **(8.1.14(E)(2))**

(c) If an applicant seeks consideration pursuant to ~~the~~ material incapacitation ~~provisions set forth in section 15.14.2-8~~, the applicant must submit the appropriate documentation along with his/her application. **(8.1.14(E)(3))**

(d) The Department shall notify each LCMA 2 LTA applicant, in writing, regarding the applicant's initial LCMA 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied. **(8.1.14(E)(4))**

15.14.2-8 – Material Incapacitation: (8.1.14(D)(4))

(a) An individual who meets the qualifying criteria ~~set forth in section 15.14.2-6(a)~~, but had no documented, or had reduced, fishing performance during the three-year period 2001-2003, inclusive, due to material incapacitation, ~~as specified in section 15.14.2-2 herein, and as further described below~~, may request that his/her initial LCMA 2 LTA be based on his/her fishing performance in LCMA 2 during the period 1999-2000.

(b) In order to establish material incapacitation on the basis of a medical condition, an applicant must present the following notarized documentation, which may pertain to the applicant or to the applicant's family member, i.e., a parent, spouse, child, mother-in-law, or father-in-law:

(i) Evidence that the applicant or family member had a physical or mental impairment during the period 2001-2003, inclusive, involving inpatient care in a hospital, a nursing home, or a hospice, or outpatient care requiring continuing treatment or supervision by a health care provider; and/or

(ii) Evidence that the applicant or family member received, during the period 2001-2003, inclusive, social security disability benefits (SSDI), and/or supplemental security income benefits (SSI), and/or 100 percent disabled benefits from the U.S. Department of Veteran Affairs; and

(iii) If the material incapacitation involves a family member, evidence that the applicant had a direct role in the care of the family member.

(c) In order to establish material incapacitation on the basis of military service, an applicant must present appropriate documentation (namely, Form DD214) establishing that he/she served, for one hundred eighty (180) or

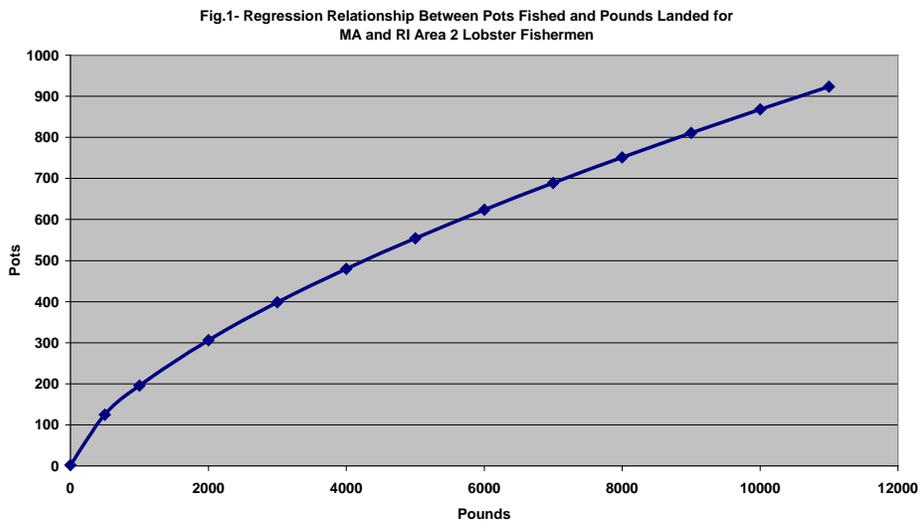
more days during the years 2001-2003, either on active duty in the U.S. Army, Navy, Air Force, Marines, or Coast Guard, or as a member of a national guard or reserve component of the same, activated by order of an appropriate state or federal authority.

(d) Applicants seeking consideration under this section may be required to submit additional information, as deemed necessary by the Department, in order to establish eligibility pursuant to this section.

(e) The Department will review all documentation submitted by applicants seeking consideration under this section, and shall render a decision, in writing, regarding each applicant's eligibility pursuant to this section. On the basis of that decision, the Department shall notify each applicant, in writing, regarding the applicant's initial LCMA 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied.

15.14.2-9 – Determination of Initial LCMA 2 LTAs: For each qualified applicant, the Department shall determine initial LCMA 2 LTAs as follows: **(8.1.14(F))**

(a) "Predicted Traps Fished" values shall be calculated for 2001, 2002, and 2003 from the applicant's total lobster landings in each of those years using the established regression relationship for LCMA 2 [see Figure 1]



(b) "Reported Traps Fished" values, constituting the maximum number of lobster traps reported fished in LCMA 2 for 2001, 2002, and 2003, shall be obtained from the applicant's logbook reports and/or federal Vessel Trip Reports (VTRs).

(c) “Effective Traps Fished” values shall be determined by comparing the “Predicted Traps Fished” and “Reported Traps Fished” values for each of the three years, and identifying the lower value for each year.

(d) The initial LCMA 2 LTA is determined by selecting the highest value of the three annual “Effective Traps Fished” values.

(e) No initial LCMA 2 LTA shall exceed 800 traps.

(f) For applicants who qualify for ~~consideration in accordance with the material incapacitation provisions set forth in section 15.14.2-8~~, the Department shall determine initial LCMA 2 LTAs pursuant to ~~subsections (a) through (e) above~~ **this section**, except that the years 1999 and/or 2000 will be used in lieu of the years 2001, 2002, and 2003.

15.14.2-10 – Corrections to or Revocations of LCMA 2 LTAs: (8.1.14(G))

(a) A recipient of an LCMA 2 LTA may request, and the Department may make, corrections to qualifying data if errors are found attributable to data entry or mathematical errors in logbook or landing reports or any other mistakes by the Department.

(b) A recipient of an LCMA 2 LTA may request, and the Department may make, corrections to qualifying data based on additional documentation, provided by the applicant, that reflects catch (landings) or effort (traps fished) data/information differing from the applicant’s logbook or VTR reports. To be considered eligible for review, such documentation must have been previously furnished to a state or federal government agency. Such additional information may include: trap tag orders; state report cards; state vessel interview forms; state license application forms; state sea sampling observer reports, and catch reports; federal fishing trip reports (NOAA form 88-30); federal port agent vessel interview forms (NOAA Form 88-30); federal sea sampling observer reports; federal fishing vessel and gear, or damage compensation fund reports (NOAA Form 88-176); personal vessel logbooks; sales receipts or landing slips; and/or tax returns.

(c) Requests made pursuant to ~~subsections (a) and (b) above~~ **this section** must be made in writing to the Department and must be accompanied by all supporting information/ documentation. The Department shall respond to all such requests, in writing, within thirty (30) days of receipt.

(d) The Department may make corrections to any initial LCMA 2 LTA if it is determined that the applicant or recipient did not purchase and use valid lobster trap tags for any period used in determining the initial LCMA 2 LTA; or if it is determined that the applicant or recipient submitted inaccurate

data/information/documentation relating to the determination of his/her LCMA 2 LTA.

(e) The Department may temporarily or permanently revoke any LCMA 2 LTA if the applicant or recipient is found to have submitted fraudulent data/information/ documentation relating to the determination of his/her LCMA 2 LTA.

(f) Any actions or decisions made by the Department pursuant to ~~subsections (d) or (e)~~ **this section** above shall be issued in writing.

15.14.2-11 – Disputes and Appeals: (8.1.14(H))

(a) Upon the issuance of a written decision by the Department regarding an initial, corrected, or revoked LCMA 2 LTA, an applicant may appeal the decision by submitting a written request for an adjudicatory hearing with the clerk of the RIDEM Administrative Adjudication Division, 235 Promenade Street, Providence, RI 02908. Such a request must be submitted by the applicant to the RIDEM Administrative Adjudication Division within thirty (30) calendar days of receipt of the Department's written decision.

(b) During the time period from which an appeal has been filed, and until a final determination has been rendered by the AAD, the appellant shall be restricted to fishing his/her initial or corrected LCMA 2 LTA, as set forth by the Department.

15.14.2-12 LTA Transfers: (8.1.14(K))

~~(a) The purpose of this section is to enable holders of Department- or NOAA Fisheries-issued LTAs who are state-licensed, federally-permitted, or dual federal permit/state license holders to transfer LTAs, in whole or in part.~~

(b) **Eligibility: (8.1.14(K)(1))**

(i) **LTA Transferors:** Any state-licensed, federally-permitted, or dually federally-permitted/state-licensed holder of a Department- or NOAA Fisheries-issued LTA is eligible to transfer some or all of his/her LTA, subject to the terms and conditions set forth below.

(ii) **LTA Transferees:** Any RI resident is eligible to obtain one or more transfers of Department issued LTAs, subject to the terms and conditions set forth below. Any RI resident or non-resident is eligible to obtain one or more transfers of NOAA Fisheries-issued LTAs, subject to the terms and conditions set forth below.

(c) **Types of Allowable Transfers: (8.1.14(K)(2))**

(i) Partial or Full LTA Transfers Without Sale of Business: An LTA transferor may transfer a portion or all of his/her Department- or NOAA Fisheries-issued LTA. In any such case, the LTA transferor may retain his/her license/permit and fishing business.

(ii) Full LTA Transfer With Sale of Business: Pursuant to ~~section 6.7-8 of DEM's Rules and Regulations Governing the Management of Marine Fisheries~~ **RIMFR "Commercial and Recreational Saltwater Fishing Licensing Regulations"**, a licensed fishermen who has been actively fishing his license/permit and wishes to sell his vessel and gear and retire his license may do so, and in so doing, enable the buyer (transferee) to acquire a new, corresponding license and endorsement. In any such situation, the transaction must include the transfer of all of the seller's (transferor's) Department- or NOAA Fisheries-issued LTA, along with any and all history associated with the license/permit.

(iii) Partial and Full Business Transfers of Multi-LCMA LTA: Recipients of either a partial LTA transfer or full LTA transfer with sale of business from a federal permit that has a multi-LCMA LTA shall retain the multi-LCMA history and may fish in any of the LCMA that the LTA allows and would be bound by the most restrictive rule when declaring to be fishing in multiple LCMA.

(d) Trap Allocation LTA Reduction Schedules: ~~The following tables show the lobster trap allocation reduction schedules for LCMA 2 and LCMA 3:~~ **(8.1.14(N))**

(i) Active Trap LTA Reduction for LCMA 2: **(8.1.14(Q)(1))**

a. Initial Trap LTA Reduction: Effective Year 1 of ~~Trap LTA~~ **Trap LTA** Reduction Schedule, each and every LCMA 2 LTA shall be reduced by twenty-five percent (25%) from the original LCMA 2 LTA determination and be permanently retired from the LCMA 2 lobster trap fishery for conservation purposes. For state-only license holders, LTA reductions are from the original LCMA 2 LTA determinations and any LCMA 2 LTA obtained subsequent to the initial LCMA 2 LTA determination. For federal permit or dual state license/federal permit holders, LTA reductions are from the LTA accepted by the federal permit or dual state license/federal permit holders after NOAA Fisheries completes their LTA process. Additionally, any other LTA from any other LCMA that was obtained by the federal permit or dual state license/federal permit holder subsequent to the initial LTA determination is also subject to this twenty-five percent (25%) LTA reduction.

(8.1.14(Q)(1)(a))

b. Annual ~~Trap LTA~~ Reduction Schedule: Effective beginning Year 2 of ~~Trap LTA~~ Reduction Schedule and on June 1st in each of the next four (4) consecutive years, each and every LCMA 2 LTA shall be reduced by five percent (5%) from the preceding year's LCMA 2 LTA ~~(see LCMA 2 annual LTA reduction schedule below)~~. The annual LTA reductions shall be assessed to both active and banked LCMA 2 LTA's, with the annual LTA reductions being permanently retired from the LCMA 2 lobster trap fishery for conservation purposes.
(8.1.14(Q)(1)(b))

LCMA 2 - Lobster Trap Allocation Reduction Schedule:

Year	% Reduction
Year 1	25%
Year 2	5%
Year 3	5%
Year 4	5%
Year 5	5%
Year 6	5%

~~(ii) Active Trap Reduction for LCMA 3:~~

a. Annual ~~Trap LTA Allocation~~ Reduction Schedule **for LCMA 3:** Effective Year 1 of ~~Trap LTA~~ Reduction Schedule and on June 1st in each of the next four (4) consecutive years, each and every LCMA 3 LTA shall be reduced by five percent (5%) from the preceding year's LCMA 3 LTA ~~(see LCMA 3 annual LTA reduction schedule below)~~. The annual LTA reductions shall be assessed to both active and banked LCMA 3 LTA's, with the annual LTA reductions being permanently retired from the LCMA 3 lobster trap fishery for conservation purposes.
(8.1.14(Q)(2))

LCMA 3 - Lobster Trap Allocation Reduction Schedule:

Year	% Reduction
Year 1	5%
Year 2	5%
Year 3	5%
Year 4	5%
Year 5	5%

~~(e) Terms and Conditions:~~

(i) LTAs assigned to a dual federal permit/state license holder cannot be treated as separate fishing histories and stacked for the purposes of qualification and allocation. A single fishing entity is considered to have

established a single lobster fishing history even if that person is a dual federal permit/state license holder. **(8.1.14(D)(5))**

(ii) LTAs assigned to a dual federal permit/state license holder cannot be divided and apportioned between the permit/license. A dual federal permit/state license holder's LTA will be considered indivisible. If a dual federal permit/state license holder "splits" his/her permits/license by transferring either the federal permit or state license to another entity, then the entire fishing history, including any LTA is to remain with the federal permit. **(8.1.14(K)(3))**

(iii) A dual federal permit/state license holder who permanently relinquishes or surrenders his/her federal limited access lobster permit can allow his/her LTA to be transferred to his/her state license. **(8.1.14(K)(4))**

(iv) Transfers of any LTA must remain within the LCMA from which they originate. An LTA from one LCMA is only valid in the LCMA from which it originally qualified and cannot be transferred to another LCMA. **(8.1.14(K)(5))**

(v) The LTA of the seller (LTA transferor) shall be reduced in all LCMAs in which the seller has been assigned a LTA by the amount of LTA that is transferred, prior to application of the 10% conservation tax. **(8.1.14(K)(6))**

(vi) Partial transfers of LTA assigned to LCMA 2, whether state-licensed, federally-permitted, or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps. **(8.1.14(K)(7))**

(vii) If a LTA assigned to LCMA 2 falls below ten (10) lobster traps, and the holder wishes to transfer his/her allocation, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 2 commercial lobster trap fishery until such time as said license holder re-acquires LTA assigned to LCMA 2. **(8.1.14(K)(8))**

(viii) All transfers of LCMA 2 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of business, shall be subject to a ten percent (10%) conservation tax. The tax shall be applied to each and every transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten (10) lobster traps shall not be subject to the 10% conservation tax. **(8.1.14(K)(9))**

(ix) Transfers of LTA assigned to LCMA 3 may only be made to individuals/entities with a federal lobster permit. **(8.1.14(N)(1))**

(x) Partial transfers of LTA assigned to LCMA 3, whether federally permitted or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps. **(8.1.14(N)(2))**

(xi) If LTA assigned to LCMA 3 falls below ten (10) lobster traps, and the holder wishes to transfer the LTA, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 3 commercial lobster trap fishery until such time as said individual/entity re-acquires LTA assigned to LCMA 3. **(8.1.14(N)(3))**

(xii) All Transfers of LCMA 3 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of a business, shall be subject to a 10% conservation tax. The tax shall be applied to each and every LTA transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten lobster traps shall be prohibited. **(8.1.14(N)(4))**

(xiii) The maximum allowable LTA assigned to LCMA 2 shall be eight hundred (800) traps. An LCMA 2 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed eight hundred (800). **(8.1.14(F)(5)); (8.1.14(K)(14))**

Comment [PD73]: 1st sentence is re: initial LTA; 2nd is re: transfers. Split into different sections.

(xiv) Single Ownership Trap Cap or Individual Permit Cap for LCMA 2: Single ownership cap allows the purchase and accumulation of traps over and above the *active trap cap (currently 800 traps for LCMA 2)*. The single ownership cap is 1600 traps for an individual or corporation at a given time. Traps in excess of the active trap cap may not be fished until activated by the permitting state or agency. A transfer tax will not be assessed on traps activated from the permit holder's individual permit cap (Trap Bank) to an active trap. Newly purchased traps, along with traps already owned by a permit holder may combine to equal the number of traps necessary to go through active reductions, in order to end up at the final trap level of 800 traps. **(8.1.14(L))**

(xv) Sunset Provision for the Single Ownership Cap: The single ownership cap allows the purchase and accumulation of traps over and above the active trap cap (currently 800 traps for LCMA 2). This is to allow for businesses that are cut in the upcoming annual trap reductions to efficiently rebuild their business. The single ownership cap will expire two (2) years after the last trap reduction as specified in Addendum XVIII. At

that time, LCMA 2 will revert back to the historical 800 active trap cap allocation only. **(8.1.14(L)(1))**

(xvi) Aggregate Ownership Cap or Owner Accumulation Limits for LCMA 2: Under this addendum, an entity may not own more than 1600 traps (800 active and 800 banked traps). However, those individuals who had more than two (2) permits in December 2003 may retain the number they had at that time, but may not own or share ownership of any additional permits. **(8.1.14(M))**

(xvii) The maximum allowable LTA assigned to LCMA 3 shall be two thousand (2,000) traps. An LCMA 3 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed two thousand (2,000). **(8.1.14(N)(5))**

Active Trap Cap for LCMA 3: **(8.1.14(N)(6))**

Year	Trap Cap
Year 0	2,000
Year 1	1,900
Year 2	1,805
Year 3	1,715
Year 4	1,629
Year 5	1,548

(xviii) Single Ownership Cap or Individual Permit Cap for LCMA 3: The Single Ownership Cap allows for the purchase and accumulation of traps over and above the *Active Trap Cap* limit. This will allow a permit holder to obtain trap allocation from other permit holder in excess of the individual trap cap limit. This additional allocation may not be fished until activated by the permit holder's governing agency. **(8.1.14(N)(7))**

~~The single ownership cap allows the purchase and accumulation of traps over and above the Active Trap Cap Limit.~~ This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years. **(8.1.14(N)(6))**

Comment [PD74]: Duplicate with above paragraph

Individual Permit Cap Table for LCMA 3: **(8.1.14(N)(8))**

Year	Number of Traps
Year 0	2,333
Year 1	2,216
Year 2	2,105
Year 3	2,000
Year 4	1,900
Year 5	1,800

(xix) Aggregate Ownership Cap or Ownership Accumulation Limits (Full Exemption): No single company or individual may own traps greater than five times the Single Ownership Cap if they have not already accumulated them prior to the NMFS publishing a present-day control date. However, should an individual owner qualify to be in excess of the Aggregate Ownership Cap before the control date is published, that owner will retain their existing trap ownership and that owner may only increase trap ownership up to the Single Ownership / Individual Permit Cap. Any ownership with an accumulation of fewer traps than the Aggregate Cap at the time the control date is published may not exceed the Aggregate Ownership Cap, as detailed in the table below. **(8.1.14(N)(9))**

<u>Year</u>	<u>Active Trap Cap</u>	<u>Individual Permit Cap</u>	<u>Aggregate Permit Cap (5x Individual Permit Cap)</u>
Year 0	2,000	2,333	11,665
Year 1	1,900	2,216	11,080
Year 2	1,805	2,105	10,525
Year 3	1,715	2,000	10,000
Year 4	1,629	1,900	9,500
Year 5	1,548	1,800	9,000

(xx) Any LTA transferee who obtains a LCMA 2 LTA assigned to a RI state commercial fishing license only (i.e. no federal permit) must currently have a Principle Effort License with a lobster endorsement or a state multipurpose endorsement, which shall be necessary in order to commercially harvest lobsters from RI state waters with lobster traps. **(8.1.14(K)(15))**

~~(xxi) All LTA transferees must purchase lobster trap tags from the approved lobster trap tag vendor in order to deploy and fish the transferred lobster trap allocation.~~

Comment [PD75]: duplicate

(xxii) No holder of any LTA may lease his/her allocation, or any portion thereof. **(8.1.14(I))**

(xxiii) All holders of LTAs assigned to a RI state commercial fishing license only (i.e. no federal permit) must annually renew their RI state commercial fishing license, or that portion of their RI state commercial fishing license that authorizes them to commercially harvest lobsters from RI state waters with lobster traps, in order to remain eligible to transfer any portion of their LTA. **(8.1.14(J))**

(f) **LTA transfer Applications: (8.1.14(O))**

(i) All transfers of LTAs must be authorized and approved by the ~~Department via an application process~~ **Director**.

(ii) Applications for LTA transfers ~~are to be made to the DFW, on forms provided by DFW~~ **shall be made of forms prescribed by the Director**. All applications must be ~~filled out completely~~, signed by both the transferor and transferee, and notarized ~~prior to submission to the DFW~~.

~~(iii) Requests for lobster trap allocation transfer application forms shall be made to: RI Division of Fish and Wildlife, Marine Fisheries Section, 3 Fort Wetherill Rd., Jamestown, RI 02835. Phone: (401) 423-1931, or 423-1934.~~

Comment [PD76]: Administrative

(iv) Applications for transfers may be submitted from ~~June 1 through November 30~~ **August 1 through September 30** for the following fishing year.

Comment [PD77]: Application period subject of May 2015 public hearing

(v) Transfers shall become effective the year following the approval of the application ~~by the Department~~.

(vi) The LTA transferor and transferee are not bound by any rules or regulations of the Department relating to any payment or compensation between LTA transferor and transferee associated with any LTA transfer. Holders of LCMA 2 LTAs assigned to RI state waters may sell, give, or otherwise convey some or all of their allocation without limitation, provided that they comply with all terms and conditions set forth herein.

(g) **License and LTA Tracking:** The Department shall maintain records to track all Department- or NOAA Fisheries-issued LTAs and LTA transfers for resident state license holders and resident federal permit holders. **(8.1.14(P))**

15.15 **Unauthorized Raising of Traps, Pots, and Devices:** No person except the - Director, ~~enforcement officers, and authorized technical personnel of the Department~~ shall unduly disturb, lift, raise, molest, or remove any animal from a trap, pot, or other such device ~~of a person licensed under this Title~~, without the written permission of that person. (RIGL 20-4-8) ~~(Penalty 20-1-16 -- Part 1.16)~~ **(7.1)**

15.16 **Removal of Branded Numbers from Lobster Pots:** No person shall set, maintain, or have in his or her possession any lobster pots from which the branded numbers have been altered, obliterated, or removed, with the intent to defraud or deprive the owner. ~~Every person convicted of violating the provision of this Section shall be fined one hundred dollars (\$100) for each of those traps or be imprisoned not more than thirty (30) days, or both. All pots used or possessed contrary to the provisions of this Section and other Sections of this Chapter shall be seized by any officer engaged in the enforce-~~

~~ment of this Chapter, and that property shall be forfeited.~~ (RIGL 20-7-12) **(7.5)**

15.16.1 Unauthorized Possession and/or Transfer of Pots and Traps:

(a) No person except the Director shall place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner. **(7.2)**

(b) No person shall place, set, lift, raise, unduly disturb, draw in, or transfer any pot, ~~trap, or other device~~ used for the taking of lobsters unless the color scheme of the attached buoy is the same as the color scheme that is on file with the license application and displayed on the boat used by that person, or unless that person is duly licensed and possesses written permission from the rightful owner of the pot, trap, or other device. (RIGL 20-7-11.1(b)) **(7.4.2)**

~~(b) Every person convicted of violating this Section shall be fined not more than one thousand dollars (\$1,000) for each offense, or be imprisoned not exceeding one year, or both, and each pot, trap, car, or other device used in violation of this Section shall constitute a separate offense. In addition, if that person is licensed, his or her license shall be revoked for one (1) year. (RIGL 20-7-12.1)~~

Comment [PD78]: Penalties

15.17 Raising Pots at Night: No person shall raise or unduly disturb any lobster pot or trap within the territorial waters of this State between the hours of one (1) hour after sundown and one (1) hour before sunrise. ~~Every person violating this Section shall, upon conviction, be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or be imprisoned not exceeding one (1) year, or both. However, in situations of emergency upon application being made, the owner of the lobster pots or traps may be authorized to remove the pots or traps by the Director during the prohibited hours. All boats, pots, or other equipment used in violation of this Section shall be seized and forfeited to the State.~~ (RIGL 20-7-13) **(7.3)**

15.18 Commercial landings possession limit of lobsters taken by gear or methods other than trap — Limits gillnet or otter trawl: ~~Landings by fishermen using gear or methods other than traps (non trap fishermen) will be limited to not more than~~ **Maximum of** one hundred (100) lobsters per day (based on a 24-hour period), ~~or up to a maximum of five hundred (500) lobsters per trip for trips of five (5) days or longer. [Part 3.3 (RIGL 20-1-16)] (8.1.4(A))~~

Comment [PD79]: Subject of May 2015 public hearing

15.19 Mutilation and/or Possession of Lobster Meat: cooked and uncooked:

(a) Mutilation of uncooked lobster meat:

(1) No person shall mutilate any uncooked lobster by severing its tail from its body or have in his or her possession any part or parts of any uncooked lobster

so mutilated. ~~In any and all prosecutions under this Section, the possession of any part or parts of any uncooked lobster so mutilated shall be prima facie evidence sufficient to convict.~~ **(8.1.12)**

~~(2) The Director is authorized to promulgate regulations exempting land-based processing facilities from the provisions of this chapter. Those regulations shall prescribe the procedures to apply for the subject exemption permit and the standards to be employed by the Director in his or her consideration of said application. Those regulations shall prescribe rules governing the conduct and operation of the facility and may include restrictions on product forms, sizes, possession requirements, and other provisions in order to maintain the protection of the lobster resource, and enforcement of the provision of this chapter.~~

Comment [PD80]: Director Authority. APA requirements

(b) **Possession of Lobster Meat:** ~~Any No~~ fishing vessel operating in Rhode Island territorial waters shall ~~not~~ have on board at any time more than one (1) pound of cooked or uncooked lobster meat for each person on board that vessel. ~~Any violation of this Section shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500), and imprisonment for not less than thirty (30) days, or both. (RIGL 20-7-14) (Penalty 20-7-14-Part 15.17)~~ **(8.1.11)**

(c) Prior to application for a land-based lobster processing permit, the applicant must possess a State of Rhode Island Department of Health Food Processor's License and a Rhode Island Lobster Dealer's License. **(8.1.16(E))**

~~(d) Notwithstanding the provisions of this section, the Director, upon receipt and approval of application by the land-based processor, may permit the land-based (onshore) processing of whole uncooked lobsters provided that:~~ **A land-based lobster processing permit is required for the land-based processing of whole uncooked lobsters.** **(8.1.16(A))**

(1) **The** possession of lobster tails, claws, or other lobster body parts at sea or in any unlicensed facility ~~shall be is~~ prohibited ~~and subject to the provisions of 15.19 (a), and 15.19 (b).~~ **(8.1.16(B))**

(2) Lobster body parts which are possessed by the land-based processor shall come from legal-sized lobsters only. For the purposes of this section, a legal-sized lobster meets the minimum carapace length in section 15.11 (a) and has a dorsal midline length of the sixth abdominal (tail) segment of at least 1-1/16 inches; **(8.1.16(C))**

(3) Containers in which processed lobster body parts are packed and which are to be sold, shipped, or transported shall be clearly labeled with the license number of the processor. **(8.1.16(F))**

Application: Application for a Land-Based Lobster Processing Permit shall be made on forms prescribed by the Director. **(8.1.16(D))**

(e) ~~By applying for this permit, the applicant authorizes Department of Environmental Management agents to inspect the premises where lobsters are processed, packaged, or shipped any time during which the processing facility is receiving, processing, or shipping lobster products, and further by applying for this permit, the applicant agrees to shall~~ maintain records at the processing facility of lobster purchases, including the license numbers of the sellers, ~~and make said records of lobster purchases available for inspection and review by Department of Environmental Management agents. These records shall be required to be maintained at the facility~~ for a period of two years. **(8.1.16(G))**

Comment [PD81]: Director Authority per RIGL 20-1-15

~~[Sections (c) through (e) are regulations promulgated under the Director's authority granted through 20-7-14 and any violations of these regulations are subject to the penalties described in RIGL 20-1-16, a fine of not more than \$500.]~~

Comment [PD82]: Director Authority per RIGL 20-1-20

Comment [PD83]: Director Authority; General Violations

15.20 Additional Management Measures:

15.20.1 Penetrating Devices: It shall be unlawful for any person to use a spear, gig, gaff, or other penetrating device to harvest lobsters. **(8.1.10)**

15.20.2 Prohibition on possession of V-Notched female American lobsters: No person ~~shall retain on board, land, or possess any V-Notched female American lobster. The prohibition on possession of V-notched female lobster applies to all persons,~~ including, but not limited to fishermen, dealers, shippers, and restaurants, **shall retain on board, land, or possess any v-notched female American lobster.** V-notched female lobster means any female American lobster with a V-notch mark, or the remnant of a healed V-notch mark in the end part of the right tail flipper adjacent to the middle tail flipper, or any lobster which is mutilated in such a manner which could hide, obscure, or obliterate such a mark, including a missing right tail flipper. A V-notch shall be a notch or the remnant of a healed notch, with or without setal hairs, at least 1/8 inch (1/8") in depth. Any licensed/permitted commercial fisherman required or authorized to mark lobsters with a v-notch mark in LCMA 2 shall make a v-notch mark by means of a sharp-blade instrument, at least 1/4 inch (1/4") and not greater than 1/2 inch (1/2") in depth and tapering to a sharp point. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination. **(8.1.8)**

Comment [PD84]: Relocated to definitions, "V-notched female American lobster"

15.20.3 ASMFC LCMA Management Measures:

1. LCMA 1 (Inshore Gulf of Maine): **(8.2)**

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in LCMA 1 shall be no lower than~~ 3-1/4 inches (82.55 mm) carapace length. **(8.2.1)**

B. Maximum Gauge Size: ~~It shall be unlawful by any person or vessel permitted~~

~~or declared to fish in LCMA 1 to possess an American lobster with a carapace length of greater than 5 inches (127.0 mm) **carapace length.** (8.2.2)~~

~~C. **Minimum Escape Vent Size:** For any person or vessel permitted or declared to fish in LCMA 1, all lobster traps fished in LCMA 1, whether fished commercially or recreationally, must contain In each parlor section of the lobster trap, at least one (1) rectangular escape vent **with an un-obstructed opening measuring not less than 1 and 15/16 inches by 5-3/4 inches (49.21mm X 146mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than 2 and 7/16 inches (63.5mm) diameter,** according to the following schedule: (8.2.3)~~

YEAR One (1)	Rectangular Escape Vent	Two (2) Circular Escape Vents
2007*	2 inches by 5-3/4 inches	2-1/2 inches

~~*NOTE: LCMA 1 will implement a 2" rectangular / 2-1/2" circular escape vent increase in 2007, if, following an updated stock assessment, it is necessary to meet lobster management plan goals and objectives.~~

~~D. **Maximum Trap Size:** It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 1. (8.2.4)~~

~~E. **Prohibition on possession of v-notched female American lobsters - Zero Tolerance V-Notching Definition:** No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. For any person or vessel permitted or declared to fish in LCMA 1, a v-notched female lobster means any female lobster bearing a v-shaped notch of any size in the flipper next to and to the right of the center flipper, as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in such a manner as to hide, obscure, or obliterate such a mark. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.~~

~~F. **Mandatory V-Notching Requirements:** For any person or vessel permitted or declared to fish in LCMA 1, it shall be required to v-notch all **legal size** egg-bearing female lobsters caught in the process of lobstering and return them to the water immediately. (8.2.5)~~

~~G. **Limits on Landings by Fishermen Using Gear or Methods other than Traps:** Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. (8.2.6)~~

2. LCMA 2 (Inshore Southern New England):

A. Minimum Gauge Size: ~~Effective January 1, 2003, the minimum gauge size for American lobster in LCMA 2 shall be no lower than the~~ carapace length of 3-3/8 inches (85.73 mm). **(8.1.5(A))**

B. Maximum Gauge Size: ~~The maximum gauge size for American lobster in LCMA 2 shall be no greater than the~~ carapace length of 5-1/4 inches (133.35 mm). **(8.1.5(B))**

C. Minimum Escape Vent Size: ~~For any person or vessel permitted or declared to fish in LCMA 2, all lobster traps fished in LCMA 2, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent~~ **with an un-obstructed opening** or two (2) circular escape vents, **each with an un-obstructed opening measuring not less** than ~~of~~ the following size:

One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2 inches by 5-3/4 inches (50.8mm X 146mm)	2-5/8 inches (66.68mm diameter (8.1.9(B)(1)(a)&(b))

D. Maximum Trap Size: ~~It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 2~~ **(8.1.9(A))**

E. Prohibition on possession of V-Notched female American lobsters: ~~It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 2 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all~~ **No** persons, including, but not limited to fishermen, dealers, shippers, and restaurants **shall retain on board, land, or possess any y-notched female American lobster.** A V-notched female lobster is defined in section 15.20.2 of this section. **(8.1.8)**

F. Mandatory V-Notching Requirements: ~~Effective June 1, 2012, any person or vessel permitted or declared to fish in LCMA 2 shall~~ **be required to** v-notch all legal-sized egg bearing female lobsters and return them to the water immediately. **(8.1.7)**

G. Commercial landings possession limit of lobsters taken by ~~gear or methods other than trap—Limits gillnet or otter trawl:~~ Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to not more than **Maximum of** one hundred (100) lobsters per day (based on a 24-hour period), **or up to a maximum of** five hundred (500) lobsters per trip for trips of five (5) days or longer. **(8.1.4(A))**

H. LCMA 2 Effort Control Measures:

(1) Minimum Gauge Size: ~~The minimum size for American lobster in LCMA 2 shall be no lower than 3-3/8" Carapace length~~ **is the straight-line measurement from the rear of the eye socket parallel to the centerline of the**

~~carapace to the posterior edge of the carapace.~~ The carapace is the un-segmented body shell of the American lobster. **(8.1.5(A))**

Comment [PD85]: Definition

Comment [PD86]: Definiton "Carapace"

~~(2) **Minimum Escape Vent Size Management Measures:** Each minimum gauge size has a corresponding rectangular and circular vent size. When a LCMA has an increase in the minimum gauge size, the corresponding vent size changes are required at the same time. For those areas that have already implemented a 3-3/8" minimum gauge size, the increase in circular vent size would be required by December 31, 2004. The changes and/or additions to previous ASMFC measures are highlighted in bold and italics.~~

Minimum Gauge Size	Rectangular Vent	Circular Vent
3-1/4"	1-15/16" x 5-3/4"	2-7/16"
3-3/8"	2" x 5-3/4"	2-5/8" (8.1.9(B)(1)(a)&(b))

Comment [PD87]: Obsolete

~~* The LCMA 1 plan maintains a 3-1/4" minimum gauge size and adds a 2" x 5-3/4" rectangular vent and corresponding circular vent to be implemented in 2007 if necessary.~~

~~I. **Groundline Conversion Program:** This regulation establishes eligibility criteria for commercial fishers, engaged in the harvest of lobsters with lobster traps in LCMA 2, to obtain vouchers for the purchase of sinking groundline. The program is designed to assist LCMA 2 trap fishermen from RI with regard to the required use of sinking groundlines, as mandated in rules issued by NOAA/NMFS (Final Rule 72 FR 57104 – October 2007) in accordance with the Atlantic Large Whale Take Reduction Plan. Pursuant to the terms of the federal grant, and the eligibility criteria set forth below, each approved applicant will receive a voucher based on the number of traps they have been fishing in LCMA 2, which can be applied toward the purchase of sinking groundlines.~~

~~(1) **Eligibility Criteria:** In order to be determined to be eligible for the issuance of a voucher by the Commercial Fisheries Research Foundation, an applicant must satisfy the following criteria:~~

~~A. Must apply to the Commercial Fisheries Research Foundation (the "CFR Foundation") by the deadline specified by the CFR Foundation;~~

~~B. Must be a RI resident;~~

~~C. Must hold a current and valid 2010 RI state license (Multipurpose License, Principal Effort License with Lobster endorsement, or Commercial Fishing License with Lobster endorsement) and/or a 2009 federal lobster permit for LCMA 2;~~

~~D. Must have a current and valid LCMA 2 trap allocation;~~

~~E. Must have purchased lobster trap tags for either the 2009 (6/09-5/10) or 2008 (6/08-5/09) fishing years;~~

~~F. Must have actively fished for lobster during the 2009 or 2008 fishing years (i.e., must have had some activity during at least two months during either year);~~

~~G. Must have actively fished south of the COLREGS lines and outside of all RI coastal pond inlets; and~~

~~H. In addition to satisfying the requirements set forth in sections A through G above, any applicants who have fished less than 50 traps during the 2009 or 2008 fishing years must submit an affidavit certifying that they have fished their traps using trawls and groundline.~~

~~(2) Determination of Traps Fished:~~

~~A. DEM will review trap tag orders for the 2009 and 2008 fishing years, and Vessel Trip Reports (VTRs) or state logbooks for the same years and, on the basis thereof, determine the number of traps fished, per applicant. That number will be the highest number of traps fished in either year.~~

~~B. The number of traps fished may be equal to, or less than, the applicant's LCMA 2 trap allocation~~

~~(3) Added credit:~~

~~A. Fishermen who responded to the Lobster Trap Fishery Gear Survey conducted by DEM in October/November 2006 and, in response thereto, stated that they were using floating groundline, will receive added credit in the form of a 50% bonus added to the total amount of their vouchers.~~

~~(4) Proof of Eligibility:~~

~~A. DEM records and Vessel Trip Reports (VTRs) will be used to verify eligibility with regard to all of the above-noted criteria.~~

~~B. Applicants must submit, with their application, a copy of their 2010 RI state license or 2009 federal lobster permit for LCMA 2.~~

~~C. Applicants who have not yet submitted to DEM copies of their VTRs or state logbooks for the 2009 fishing year (to date) must do so, prior to applying for vouchers. The VTRs or logbooks must be submitted directly to DEM; these documents should not be submitted to the CFR Foundation with the application.~~

Comment [PD88]: Obsolete. Program no longer in effect

3. LCMA 3 (Offshore Waters):

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in LCMA 3 shall be no lower than 3-1/2 inches (88.90 mm) carapace length. However, effective January 1, 2013, the minimum gauge size for American lobster in LCMA 3 shall be no lower than the~~ carapace length of 3-17/32 inches (89.69 mm). **(8.3.1)**

B. Maximum Gauge Size: ~~Effective July 1, 2010, the maximum gauge size for American lobster in LCMA 3 shall be no greater than the~~ carapace length of 6-3/4 inches (171.45 mm). **(8.3.2)**

C. Minimum Escape Vent Size: ~~For any person or vessel permitted or declared to fish in LCMA 3, all lobster traps fished in LCMA 3, whether fished commercially or recreationally, must contain~~ **In each parlor section of the lobster trap,** at least one (1) rectangular escape vent **with an un-obstructed opening** or two (2) circular vents, **each with an un-obstructed opening measuring not less than** of the following size:

One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2-1/16 inches by 5-3/4 inches <u>(53.39mm X 146.05mm)</u>	2-11/16 inches <u>(68.26mm)</u> <u>diameter (8.3.3)</u>

D. Maximum Trap Size: ~~It shall be unlawful to possess a lobster trap with a volume of greater than~~ 30,100 cubic inches in LCMA-3. **(8.3.4)**

E. Prohibition on possession of V-Notched female American lobsters: ~~It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 3 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants.~~ **No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. A V-notched female lobster is defined in section 15.20.2 of this section. (8.3.5)**

F. Mandatory V-Notching Requirements: ~~There are currently is no mandatory V-notching requirements for any person or vessel permitted and declared to fish in~~ LCMA 3. **(8.3.6)**

G. Limits on Landings by Fishermen Using Gear or Methods other than Traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. **(8.3.7)**

H. Limits on the Number of Traps: **(8.3.8)**

(1) Qualification Criteria: The trap limit in LCMA 3 shall be based on the

historical level of traps fished by a vessel in LCMA 3. To qualify for LCMA 3 participation, vessels must meet all of the following criteria:

- A. A vessel must be able to demonstrate a history of two (2) consecutive calendar-months of active lobster trap fishing in LCMA 3 in any year between March 25, 1991 and November 1, 1997.
- B. A vessel must hold a current federal lobster permit endorsed for traps.
- C. Applicants for an LCMA 3 trap allocation are required to produce sales receipts or records showing the landing of at least 25,000 pounds of lobster from throughout the range of the resource during the year used as the qualifying year and between March 25, 1991 and November 1, 1997.

(2) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying vessels (Federal Limited Access Lobster Permit holders that meet the performance criteria listed above) shall be based on the applicant's choice of year and trap level, in the water in LCMA 3, during the period from January 1, 1994 through November 1, 1997. Vessels that did not lobster trap fish in LCMA 3 during the period from January 1, 1994 through November 1, 1997, but did qualify as a Federal Limited Access Lobster Permit holder, must pick the most recent year in which they actively fished lobster traps in LCMA 3, such year not to pre-date the March 25, 1991 control date.

(3) Maximum Initial Trap Allocation is 3250 Traps: No vessel shall be given an Initial trap allocation of more than 3,250 traps, regardless of previous historical participation.

(4) Vessels Applying for both LCMA 3 and Additional LCMA Trap Allocations: Vessels applying for multiple LCMA trap allocations must use the same period to determine their total trap numbers to avoid allocating more total traps to an individual/vessel than that individual/vessel had in the water at any one time. Applicants for LCMA 3 trap allocations, who are also applicants for trap allocations in other LCMA's, must meet the same qualifying criteria as defined above.

(5) Certification of Initial trap Allocation Applications: Within 60 days of the close of the trap application period, the Regional Administrator should publish a notice that specifies preliminary initial lobster trap allocations for each Federal Limited Access Lobster Permit holder. The amounts will be based on lobster trap information submitted by the applicant in accordance with the evaluation process, and other information considered appropriate by the Regional Administrator. The notice will provide for a 30-day public comment period. Simultaneous with the publication, the same information contained in the notice (including the 30-day comment period) will appear in a *Notice to Permit Holders*.

I. Trap Reduction Schedule for LCMA 3: Each LCMA 3 trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale basis over a 4 year period. Trap reduction will not go below a baseline level of 1,200 lobster traps. LCMA 3 trap allocations of less than 1,200 lobster traps will remain at their initial qualifying level and will not be permitted to increase up from that number. The LCMA 3 trap reduction schedule is as follows: **(8.3.9)**

INITIAL ALLOCATION	3250	3000	2800	2600	2400	2200	2000	1800	1600	1400
Year 1	2656	2493	2357	2218	2076	1930	1762	1628	1467	1290
Year 2	2493	2351	2230	2107	1981	1849	1715	1573	1423	1251
Year 3	2351	2225	2117	2008	1896	1776	1654	1523	1380	1213
Year 4	2267	2150	2050	1949	1845	1732	1616	1492	1352	1200

J. No Closure between LCMA 1 and LCMA 3: There shall be no area closure between LCMA 1 and LCMA 3. **(8.3.10)**

~~K. Limit on Vessel Upgrades: It shall be unlawful for a vessel over 50 feet in length or upgrading over 50 feet in length, receiving an LCMA 3 trap allocation, to upgrade and/or replace their vessel by more than 10% increase in length overall nor 20% increase in shaft horsepower for two years, from January 1, 2000 to December 31, 2001.~~

Comment [PD89]: Obsolete

~~L. Plan Review at the end of the Stock Rebuilding Period: The LCMA 3 Lobster Conservation Management Team (LCMT) shall review the LCMA 3 management program at the end of the stock rebuilding period to allow for additional effort and entry into the LCMA 3 fishery.~~

Comment [PD90]: Not a reg

M. Reporting requirements for LCMA 3: For any person or vessel permitted and declared to fish in LCMA 3, it shall be required to fill out multi-species logbooks until a lobster-specific logbook is approved. **(8.3.11)**

N. LCMA 3 "Choose and Use" Provision: Once qualified for historic participation in LCMA 3, a federal lobster permit holder requesting an LCMA 3 designation (LCMA declaration) is required to permanently designate LCMA 3 on his/her/vessel federal permit. Federal permit holders have a one-time opportunity to drop the LCMA 3 designation. In addition, when an LCMA 3 federal permit is sold or transferred, permanent designation can be reconsidered, which allows the new owner the decision of whether or not they wish to designate/declare LCMA 3 on his/her/vessel federal permit. **(8.3.12)**

4. LCMA 4 (Inshore Northern Mid-Atlantic):

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in LCMA 4 shall be no lower than the carapace length identified in the following schedule. The 2001 year indicated runs throughout the entire calendar year~~

(January 1-December 31). July 1st is the deadline for implementing regulations in years 2002-2004.

Year	LCMA 4
2001	3-9/32"* (83.34 mm)
2002	3-5/16" (84.14 mm)
2003	3-11/32" (84.93 mm)
2004	3-3/8" (85.72 mm) (8.4.1)

*NOTE: No action may be taken in LCMA 4 until 2002.

B. **Maximum Gauge Size:** ~~As of July 1, 2008, for any person or vessel permitted or declared to fish in LCMA 4, the maximum gauge size for American lobster shall be no greater than 5-1/4 inches (133.35 mm)~~ **carapace length. (8.4.2)**

C. **Minimum Escape Vent Size:** ~~For any person or vessel permitted or declared to fish in LCMA 4, all lobster traps fished in LCMA 4, whether fished commercially or recreationally, must contain~~ **In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening or two (2) circular escape vents in each parlor section of the lobster trap, each with an un-obstructed opening measuring not less than** ~~according to the following schedule:~~

Year One (1)	Rectangular Escape Vent	Two (2) Circular Escape Vents
2003	2 inches by 5¾ inches <u>(50.8mm X 146.05mm)</u>	2½ inches <u>(63.5mm) diameter</u> <u>(8.4.3)</u>

D. **Maximum Trap Size:** ~~It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 4.~~ **(8.4.4)**

E. **Prohibition on possession of V-Notched female American lobsters:** ~~It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 4 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.~~ **No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. (8.4.5)**

F. **Mandatory V-Notching Requirements:** ~~Mandatory V-notching and immediate release of egg-bearing female lobsters is required for any person or vessel permitted and declared to fish in LCMA 4. V-notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The V-notch should be made by the means of a sharp bladed instrument, at least ¼ inch and not greater than ½ inch in depth and tapering to a sharp point.~~ **Any person or vessel permitted or declared to fish in LCMA 4 shall v-notch all legal-sized egg bearing female lobsters and**

return them to the water immediately. (8.4.6)

G. Limits on Landings by Fishermen Using Gear or Methods other than Traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. **(8.4.7)**

H. Limits on the Number of Traps: **(8.4.8)**

(1) Qualification Criteria: The trap limit in LCMA 4 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 4 participation, individuals must prove participation in the LCMA 4 lobster fishery between March 25, 1991 and September 15, 1998.

(2) Basis for Initial Trap Limit Number : Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1994 through September 15, 1998. Individuals that did not lobster trap fish in LCMA 4 during the period from January 1, 1994 through September 15, 1998, but did fish between 1991 and 1993, inclusive, must pick the most recent year in which they actively fished lobster traps in LCMA 4, such year not to pre-date the March 25, 1991 control date. Individuals shall be allocated the total number of traps fished.

I. Area Closures: It shall be unlawful to harvest lobsters using trap gear in four (4) closed areas: (1) Fire Island; (2) Moriches; (3) Shinnecock and; (4) Montauk. Fishermen may fish traps for finfish in these areas, but may not possess lobsters while fishing in these designated areas. These areas were designated using LORAN coordinates. The following GPS coordinates are rough conversions of the LORAN line coordinates. The closed area boundaries are: **(8.4.9)**

FIRE ISLAND:

<u>POINT</u>	<u>LATITUDE(°N)</u>	<u>LONGITUDE(°W)</u>	<u>LORAN</u>
A (NW)	40° 31.344	73° 25.823	26730 / 43710
B (NE)	40° 33.233	73° 09.249	26600 / 43710
C (SE)	40° 23.377	73° 11.708	26600 / 43620
D (SW)	40° 23.464	73° 10.976	26730 / 43620

MORICHES:

<u>POINT</u>	<u>LATITUDE(°N)</u>	<u>LONGITUDE(°W)</u>	<u>LORAN</u>
A (NW)	40° 24.276	72° 46.617	26400 / 43605
B (NE)	40° 25.688	72° 34.048	26300 / 43605
C (SE)	40° 18.380	72° 35.063	LCMA 3 boundary; 26300 line
D (SW)	40° 12.831	72° 48.559	26400 / 43500

SHINNECOCK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 34.389	72° 27.420	14960 / 43670
B (NE)	40° 35.904	72° 16.223	14890 / 43670
C (SE)	40° 27.997	72° 13.117	LCMA 3 boundary; 14890 line
D (SW)	40° 23.105	72° 23.782	LCMA 3 boundary; 14960 line

MONTAUK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 43.678	72° 12.521	14850 / 43730
B (NE)	40° 46.053	71° 56.974	17850 / 43730
C (SE)	40° 37.120	71° 53.188	LCMA 3 boundary; 26300 line
D (SW)	40° 30.741	72° 07.616	LCMA 3 boundary; 26300 line

J. Season Closure: A season closure to the landing of lobsters from February 1 **through** March 31 annually is required for any person or vessel permitted and declared to fish in LCMA 4. During ~~the February 1 to March 31~~ **this** closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season. **(8.4.10)**

5. LCMA 5 (Inshore Southern Mid-Atlantic):

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in LCMA 5 shall be no lower than the~~ carapace length identified in the following schedule. ~~The 2001 year indicated runs throughout the entire calendar year (January 1- December 31). July 1st is the deadline for implementing regulations in years 2002-2004.~~

Year	LCMA 5
2001	3-9/32" (83.34 mm)
2002	3-5/16" (84.14 mm)
2003	3-11/32" (84.93 mm)
2004	3-3/8" (85.72 mm) (8.5.1)

~~*NOTE: No action may be taken in LCMA 5 until 2002.~~

B. Maximum Gauge Size: ~~As of July 1, 2008, for any person or vessel permitted or declared to fish in LCMA 5, the maximum gauge size for American lobster shall be no greater than~~ 5-1/4 inches (133.35 mm) **carapace length**. **(8.5.2)**

C. Minimum Escape Vent Size: ~~For any person or vessel permitted or declared to fish in LCMA 5, all lobster traps fished in LCMA 5, whether fished commercially or recreationally, must contain~~ **In each parlor section of the lobster trap**, at least one (1) rectangular escape vent **with an un-obstructed opening** or two (2) circular escape vents, **each with an un-obstructed opening measuring not less than** according to the following schedule:

Year One (1)	Rectangular Escape Vent	Two (2) Circular Escape Vents
2003	2 inches by 5¾ inches (50.8mm X 146.05mm)	2½ inches (63.5mm) diameter (8.5.3)

D. Maximum Trap Size: ~~It shall be unlawful to possess a lobster trap with a volume of greater than~~ 22,950 cubic inches ~~in LCMA 5.~~ **(8.5.4)**

E. Prohibition on possession of V-Notched female American lobsters: ~~It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 5 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.~~ **No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. (8.5.5)**

F. Mandatory V-Notching Requirements: ~~Mandatory V-notching and immediate release of egg-bearing female lobsters is required for any person or vessel permitted and declared to fish in LCMA 5. V-notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The V-notch should be made by the means of a sharp bladed instrument, at least ¼ inch and not greater than ½ inch in depth and tapering to a sharp point.~~ **Any person or vessel permitted or declared to fish in LCMA 5 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately. (8.5.6)**

G. Limits on Landings by Fishermen Using Gear or Methods other than Traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. **(8.5.7)**

H. Limits on the Number of Traps: **(8.5.8)**

(1) Qualification Criteria: The trap limit in LCMA 5 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 5 participation, individuals must prove participation in the LCMA 5 lobster fishery between March 25, 1991 and September 15, 1998.

(2) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1994 through September 15, 1998. Individuals that did not lobster trap fish in LCMA 5 during the period from January 1, 1994 through September 15, 1998, but did fish between 1991 and 1993, inclusive, must pick the most recent year in which they actively fished lobster traps in LCMA 5, such year not to pre-date the March 25, 1991 control

date. Individuals shall be allocated the total number of traps fished.

I. Season Closure: A season closure to the landing of lobsters from February 1 **through** March 31 annually is required for any person or vessel permitted and declared to fish in LCMA 5. During ~~the February 1 to March 31~~ **this** closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season. **(8.5.9)**

6. LCMA 6 (New York and Connecticut State Waters):

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in LCMA 6 (New York and Connecticut state waters) shall be no lower than the carapace length identified in the following schedule. July 1st is the deadline for implementing these regulations in the calendar years indicated below:~~

Year	LCMA 6
2004*	3-9/32" (83.34 mm)
2005*	3-5/16" (84.14 mm) (8.6.1)

~~*NOTE: LCMA 6 will implement minimum gauge size increases beyond 3-1/4", at the rate of 1/32" per year, beginning in 2004, until a final minimum gauge size of 3-5/16" is reached, if, following an updated stock assessment, it is necessary to meet lobster management goals and objectives.~~

B. Maximum Gauge Size: ~~The maximum gauge size for American lobster in LCMA 6 shall be no greater than the~~ carapace length of 5-1/4 inches (133.35mm). **(8.6.2)**

~~C. LCMA 6 Lobster Management Program after Calendar Year 2005: The LCMA 6 Lobster Conservation Management Team (LCMT) will choose among two (2) possible paths for lobster management beyond 2005. July 1st is the deadline for implementing regulations in the calendar year indicated below:~~

Comment [PD91]: Obsolete; not regulation

~~PATH 1~~

Year	Action
2006	Evaluate minimum gauge increase and effort reduction from trap tag buy-back program.
2007*	Implement 1/32" minimum gauge increase, and/or 2" escape vent increase, and/or V-notch some(?) percentage of female lobsters, and/or establish a maximum gauge size.
2008*	Implement 1/32" minimum gauge increase, and/or 2" escape vent increase, and/or V-notch some(?) percentage of female lobsters, and/or establish a maximum gauge size.

~~*NOTE: LCMA 6 will implement the above management measures, if following an updated stock assessment, it is necessary to meet lobster management plan goals and objectives.~~

~~-OR-~~

PATH 2

Year	Action
2006	Implement a 2" escape vent size if a gauge increase was implemented in 2005.
2007	Evaluate with new information, confirm that the overfishing threshold has been met or exceeded.
2008	Evaluate with new information, confirm that the overfishing threshold has been met or exceeded.

D. Minimum Escape Vent Size: For any person or vessel permitted or declared to fish in LCMA 6, all lobster traps fished in LCMA 6, whether fished commercially or recreationally, must contain **In each parlor section of the lobster trap,** at least one (1) rectangular escape **vent with an un-obstructed opening** or two (2) circular escape vents according to the following schedule. If PATH 2 (see Part C above) is selected for implementation, then all lobster traps in LCMA 6, whether fished commercially or recreationally, must contain at least one rectangular escape vent per trap or at least two circular escape vents according to the following schedule. July 1st is the deadline for implementing regulations in the calendar year indicated below. **, each with an un-obstructed opening measuring not less than**

Year One (1)	Rectangular Escape Vent	Two (2) Circular Escape Vents
2006*	2 inches by 5¾ inches <u>(50.8mm X 146.05mm)</u>	2½ inches <u>(63.5mm) diameter</u> <u>(8.6.3)</u>

*NOTE: LCMA 6 will implement a 2" escape vent size increase if a minimum gauge size increase is implemented in 2005.

E. Maximum Trap Size: It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 6. **(8.6.4)**

F. Prohibition on possession of V-Notched female American lobsters: It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 6 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section. **No person or vessel permitted or declared to fish in LCMA 6 shall possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants.** **(8.6.5)**

G. Mandatory V-Notching Requirements: There are currently **is** no mandatory V-notching requirements for any person or vessel permitted and declared to fish in LCMA 6. **(8.6.6)**

H. Limits on Landings by Fishermen Using Gear or Methods other than Traps – Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. **(8.6.7)**

I. Limits on the Number of Traps: **(8.6.8)**

(1) Qualification Criteria: The trap limit in LCMA 6 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 6 participation, individuals must prove participation in the LCMA 6 lobster fishery between January 1, 1995 and June 8, 1998.

(2) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1995 through June 8, 1998.

J. Season Closure: A season closure to the landing of lobsters from September 8 **through** November 28 annually is required for any person or vessel permitted and declared to fish in LCMA 6. The season closure applies ~~to all Long Island Sound waters (LCMA 6), extends from September 8 through November 28, inclusive, and applies~~ to both recreational and commercial fisheries and all gears. Between those dates possession of lobsters taken from LCMA 6 or from traps with LCMA 6 trap tags is prohibited. During ~~the September 8 – November 28~~ **this** closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season. Traps cannot be baited until one week prior to reopening (November 22). **(8.6.9)**

7. Outer Cape Cod LCMA:

A. Minimum Gauge Size: ~~The minimum gauge size for American lobster in the Outer Cape Cod LCMA shall be no lower than the carapace length identified in the following schedule. The 2001 year indicated runs throughout the entire calendar year (January 1 – December 31). July 1st is the deadline for implementing these regulations in the calendar years indicated below:~~

Year	Outer Cape Cod —
2001	3-9/32" (83.34 mm)
2002	3-5/16" (84.14 mm)
2003	3-11/32" (84.93 mm)
2004	3-3/8" (85.72 mm)
2005*	3-13/32"* (86.52 mm)
2006*	3-7/16"* (87.31 mm)
2007*	3-15/32"* (88.11 mm)

2008*	3-1/2"* (88.90 mm) (8.7.1)
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~~*NOTE: The Outer Cape Cod LCMA will implement minimum gauge size increases beyond 3-3/8", at the rate of 1/32" per year, until a final minimum gauge size of 3-1/2" is reached, if, following an updated stock assessment, it is necessary to meet lobster management plan goals and objectives.~~

B. Maximum Gauge Size: There is **currently** no maximum gauge size for American lobster in the Outer Cape Cod LCMA. **(8.7.2)**

C. Minimum Escape Vent Size: ~~For any person or vessel permitted or declared to fish in the Outer Cape Cod LCMA, all lobster traps fished in the Outer Cape Cod LCMA, whether fished commercially or recreationally, must contain~~ **In each parlor section of the lobster trap,** at least one (1) rectangular escape vent **with an un-obstructed opening** or two (2) circular escape vents, **each with an un-obstructed opening measuring not less than** according to the following schedule: **(8.7.3)**

~~December 31, 2004 is the deadline for implementing the new circular escape vent size (2-5/8 inches).~~

~~July 1, 2008 is the deadline for implementing the scheduled escape vent size increases for both rectangular and circular escape vents.~~

<u>Year One (1)</u>	<u>Rectangular Escape Vent</u>	<u>Two (2) Circular Escape Vents</u>
2003	2 inches by 5-3/4 inches	2-1/2 inches
2004	2 inches by 5-3/4 inches	2-5/8 inches
2008	2-1/16 X 5-3/4 inches (53.39mm X 146.05mm)	2-11/16 inches (68.26mm) diameter (8.7.3)

D. Maximum Trap Size: ~~It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in the Outer Cape Cod LCMA.~~ **(8.7.4)**

E. Prohibition on possession of V-Notched female American lobsters: ~~It shall be unlawful for any person or vessel permitted or declared to fish in the Outer Cape Cod LCMA to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.~~ **No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster.** **(8.7.5)**

F. Mandatory V-Notching Requirements: There ~~are currently~~ **is** no mandatory V-notching requirements ~~for any person or vessel permitted and declared to fish in the Outer Cape Cod LCMA.~~ **(8.7.6)**

G. Limits on Landings by Fishermen Using Gear or Methods other than Traps:

Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer. **(8.7.7)**

H. Trap Reduction Schedule for Outer Cape Cod LCMA: Beginning in 2002 and extending through 2008, a 20% reduction in the total number of lobster traps allowed to be fished will occur in the Outer Cape Cod LCMA. An additional 5% reduction in the total number of lobster traps allowed to be fished per year may be employed in 2006 and 2007, if necessary, to meet lobster egg production goals and objectives. **(8.7.8)**

In order to control the expansion of fishing effort, an overall total number of traps allowed to be fished in the Outer Cape Cod LCMA has been established from the sum of individual maximum traps reported by each Outer Cape Cod LCMA lobster fisher on Massachusetts (MA) catch reports in the year 1998. A reduction of this total number of traps by 20% will be implemented and resulting individual trap allotments will be defined accordingly during the stock rebuilding period. The starting trap allotments for each lobster fisher in the year 2002 will be based on MA 2000 catch report statistics. Allotments will be debited thereafter as needed by MA Division of Marine Fisheries (DMF). Participants in the 2001 Outer Cape Cod lobster trap fishery, who received a license through the MA DMF or waiting list provisions during 2001, and as a result, have no prior lobster fishing history (i.e. filed catch reports) in the Outer Cape Cod LCMA, will receive a trap allotment based on proof of documentation of the number of traps they fished during 2001. These allotments will be apportioned from a percentage of the overall trap cap, not to exceed 2% of the total. Those who received a transferred license with an Outer Cape Cod LCMA fishing history will receive a starting trap allotment based on that history.

The annual trap transfer period will be January 1 – March 31. Trap tags may be transferred among Outer Cape Cod LCMA lobster fishers to allow an individual business to build up or down within the maximum allowable 800 trap limit, however, a passive reduction in traps will occur with each trap transfer event at the rate of 10%. For example, if 100 trap tags are transferred to a lobster fisher, the net transaction received by that lobster fisher will be 90 and the overall Outer Cape Cod LCMA trap cap will be reduced accordingly. The trap cap may be adjusted downward over time through active and/or passive reduction measures until such time that the Fishing mortality rate is reduced to a level below F10%.

Each time a lobster license is transferred to another lobster fisher within the Outer Cape Cod LCMA, the trap tag allowance associated with that license will be reduced by 10%. No new participants will be permitted to partake in the Outer Cape Cod LCMA lobster fishery without receiving trap tags through a transfer from those fishing within the established total trap cap.

A trap haul-out period will occur from January 1 – March 31 each year to assist in the enforcement of the trap cap. There will be no lobster trap in the waters of the Outer Cape Cod LCMA during this time period. [Penalty - Part 3.3 (RIGL 20-1-16)]

15.21 Blue Crabs: **(section 9)**

15.21.1 Harvest Restrictions: No person shall possess, take or attempt to take more than twenty-five (25) blue crabs from any of the waters in this State except when taken by a scoop or crab net, trot, or hand line. Taking of blue crabs shall be restricted to residents of this State. No person shall take blue crabs from the waters of the State between the hours of sunset and sunrise. ~~[Penalty – Part 3.3 (RIGL 20-4-16)~~ (RIGL 20-7-15) **(9.2, 9.5, 9.5.1, 9.6.1)**

15.21.2 Egg-Bearing Blue Crabs [Restriction]: and Minimum Size: No person shall take, offer for sale, or possess at any time any female blue crab bearing eggs visible thereon or from which the egg pouch or bunion shall have been removed. No person shall take, buy, sell, give away, or expose for sale, or possess any blue crab measuring less than five inches (5") across the shell from tip to tip of spike. ~~[Penalty – Part 3.3 (RIGL 20-4-16)~~ (RIGL 20-7-16) **(9.3, 9.6.2)**

~~15.21.3 Violations: Any person violating any of the provisions of §§ 20-7-15 and 20-7-16 shall be fined up to fifty dollars (\$50) and costs for each offense. (RIGL 20-7-17)~~

15.22 Horseshoe Crabs:

Commercial harvest: ~~It is illegal for any~~ **No** person ~~to~~ **shall** harvest horseshoe crabs, *Limulus polyphemus*, in Rhode Island for commercial purposes without a valid commercial marine fishing license and a Horseshoe Crab Harvest Permit **obtained from the Director.** **(10.1.1)**

Recreational harvest: **No person shall** ~~or to~~ harvest horseshoe crabs for recreational purposes without a **valid** Horseshoe Crab Harvest Permit obtained from the Director. **(10.1.2)**

Application for a Horseshoe Crab Harvest Permit shall be made on forms prescribed by the Director. **(10.1.3)**

15.22.1 Harvest Permit: ~~Persons harvesting horseshoe crabs from the shoreline or waters in the State of Rhode Island must apply for a Horseshoe Crab Harvest Permit from the DFW. A Horseshoe Crab Harvest Permit is required for all harvesters of horseshoe crabs.~~ A Horseshoe Crab Harvest Permits ~~shall be~~ **is** valid only for the calendar year of issuance. The conditions of the permit require a weekly report of landings either by telephone or in writing. In addition, a monthly report in writing is required on forms furnished by the DFW. The report must include the number of crabs taken, locations of harvest, and use (bait, biomedical purposes, or other

reasons). These reports shall not be made public and shall be kept only for statistical purposes. Failure to report will result in forfeiture of the Harvest Permit and/or revocation of license and permit as provided for in RIGL 20-4-5. **(10.1.4, 10.1.5)**

15.22.2 Quota – A total allowable harvest (quota) of horseshoe crabs for the bait fishery and biomedical industry will be established annually. The quota will be the amount allocated to the State of Rhode Island by the ASMFC or as determined by the DFW based on the current stock status. ~~The quota may only be harvested by licensed, commercial fishermen in accordance with all rules and regulations promulgated by the Department.~~ **(10.3.2)**

15.22.3 Possession limit:

A. Commercial – Bait and biomedical fishery: ~~Any person issued a valid commercial marine fishing license and Horseshoe Crab Harvest Permit may possess horseshoe crabs in numbers not to exceed the established annual quota.~~ Horseshoe crabs employed in the biomedical industry for purposes of extracting bodily fluids shall be returned to the waters from which they came within 72 hours following the completion of the intended biomedical procedure. **(10.4.3)**

Comment [PD92]: Duplicate with above

B. Recreational: Any R.I. resident with a Horseshoe Crab Harvest Permit may possess not more than five (5) horseshoe crabs in any calendar day. **(10.2, 10.3.1(A))**

C. Prohibition on possession of non-indigenous horseshoe crab species: No person shall possess or attempt to possess in the cooked or un-cooked (frozen) state any non-indigenous (non-native) Horseshoe Crab species ~~within the State of Rhode Island~~ without prior, written authorization ~~by from~~ the ~~Department Director~~. The only species of Horseshoe Crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*. **(10.3.3)**

15.22.4 Harvesting Restrictions:

A. No person shall harvest horseshoe crabs for commercial or recreational purposes on or within 100 feet seaward of Patience and Prudence Islands in Narragansett Bay. **(10.4.1)**

B. No person shall harvest horseshoe crabs from waters or shoreline of the state during the period 48-hours preceding and 48-hours following the new and full moons during the months of May, June, and July, annually. **(10.4.2)**

11. VIOLATIONS FOR NON-COMPLIANCE

11.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16 as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period.

12. PENALTIES

12.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

12.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife".

13. APPEALS

13.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"

13.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters.

EFFECTIVE DATE

The foregoing rules and regulations “Rhode Island Marine Statutes and Regulations, Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”, after due notice, are hereby adopted and filed with the Secretary of State this 16th day of May, 2014 to become effective 20 days after filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~12/23/2013~~ **04/10/2015**
Public Hearing: ~~01/22/2014~~ **05/11/2015**
Filing date: ~~05/16/2014~~
Effective date: ~~06/05/2014~~
ERLID # ~~7635~~



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE
DIVISION OF LAW ENFORCEMENT



**Rhode Island Marine Fisheries Regulations
LOBSTERS, CRABS, AND OTHER CRUSTACEANS**

May XX, 2014

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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1. PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

2. AUTHORITY

These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

4. SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

5. SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XV of these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

6. DEFINITIONS

For the purposes of these regulations, the following terms shall have the following meanings:

American lobster means *Homarus americanus*. (RIGL 20-1-3)

Blue crab means *Callinectes sapidus*. (RIGL 20-1-3)

Bycatch means fish, shellfish, or crustaceans that are taken while a fisherman is directing his/her effort toward the harvest of another fish, shellfish, or crustacean.

Carapace is the un-segmented body shell of the American lobster.

Carapace length means the length of a lobster measured from the rear of the eye socket along a line parallel to the center of the body shell to the rear of the body shell.

Catastrophic trap tag loss means the loss of original lobster trap tags in excess of the 10% over-allotment trap tags issued for routine loss, in which instance the

original trap tags become invalid and are replaced in their entirety by catastrophic trap tags.

Colregs Demarcation Line means the lines of demarcation, as defined on National Oceanic and Atmospheric Administration chart #13221, delineating those waters upon which mariners must comply with the international regulations for preventing collisions at sea, and those waters upon which mariners must comply with the inland navigation rules. For Point Judith the "Port" is to be all waters inside of and north of the southern end of the riprap wall at Salty Brine State Beach so-called. The demarcation lines for Block Island are as follows: the area enclosed by the breakwaters at Old Harbor, and the entirety of Great Salt Pond so called.

Crab trap/pot means any pot or trap designed or adapted principally for the catching or taking of crabs.

Dealer means a person who is licensed by the State of Rhode Island to sell, purchase, barter, and/or trade seafood.

DEM or **Department** means the Rhode Island Department of Environmental Management. (20-8.1-1, et al.)

DFW or **Division** means the Division of Fish and Wildlife, within the Rhode Island Department of Environmental Management.

DLE means the DEM Division of Law Enforcement

Director means the Director of the Department of Environmental Management or his or her duly appointed agents. (20-2.1-3; 20-8.1-1; 20-10-2)

Dual federal permit/state license holder means an individual who holds both a federal limited access lobster permit and a State of RI commercial fishing license endorsed for American lobster.

Exclusive Economic Zone (EEZ) means those waters three (3) to two hundred (200) miles (five to 322 kilometers) offshore which are under the direct jurisdiction of the federal government.

Fishery means one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographic, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

Fishery Performance means properly documented commercial lobster fishing activity – namely pounds landed and traps fished in LCMA 2 during the applicable qualifying period.

Green crab means *Carcinus maenas*. (RIGL 20-1-3)

Initial LCMA 2 LTA means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in LCMA 2.

Jonah crab means Northern crab, *Cancer borealis*. (RIGL 20-1-3)

Land or landing means to off-load seafood products, including, but not limited to, finfish, shellfish, and crustaceans, for sale or intended sale, or to secure a vessel with the seafood products on board to a shoreside facility where the products may be off-loaded for sale or intended sale. (20-1-3)

LCMA means Lobster Conservation Management Area.

LCMA 2 means Lobster Conservation Management Area 2, as delineated in Amendment 3, Appendix 1 to the Interstate Fishery Management Plan for American Lobster, adopted by the ASMFC in December 1997.

LCMA 2 Lobster Trap Allocation (LTA) means the maximum number of lobster traps authorized to be fished by an individual permit or license holder in LCMA 2.

Lobster pot means any pot or trap designed or adapted principally for the catching or taking of lobsters.

LTA means lobster trap allocation, either issued by the Department or NOAA Fisheries.

LTA transfer means a change in ownership of a partial or entire Department- or NOAA Fisheries-issued LTA by an individual or Corporation.

LTA transferor means the license or permit holder from whom an LTA transfer is made.

LTA transferee means the individual, corporations or fishing vessel to whom/which an LTA transfer is made.

Material Incapacitation means a verifiable event beyond the control of the license/permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001-2003, inclusive. Military service performed during the three-year period 2001-2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation cannot involve a choice by the license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

Original trap tags means the number of trap tags available for purchase to a RI commercial license holder or a Federal Limited Access Lobster Permit holder based on their lobster trap allocation, including an additional 10% over- allotment to allow

for routine trap or tag losses.

Person means an individual, corporation, partnership, or other legal entity. (RIGL 20-1-3)

Port means any city or town with a harbor and docking facilities where vessels can land.

Possession means the exercise of dominion or control over the resource commencing at the time at which a decision is made not to return the resource to the immediate vicinity from which it was taken. The decision must be made at the first practical opportunity.

Possession limit means the maximum quantity of marine product/species that may be possessed by a vessel or person per specified period of time (i.e., day or week).

Pot means any stationary bottom-fishing contrivance, trap or device made of wood, wire mesh, or plastic mesh, fished individually or linked by a common line and generally baited; used to catch finfish, crabs, conchs, or lobsters that enter through a conical or rectangular opening where escape is difficult.

Qualifying Period means the entire three-year period from January 1, 2001 through December 31, 2003. For individuals meeting the standards governing material incapacitation, the qualifying period means the entire two-year period from January 1, 1999 through December 31, 2000.

Quota means the maximum amount of fish, in weight or number, that can legally be landed within a given time period. A quota can apply to an entire fishery, or segment thereof, or to an individual fisherman or vessel.

Resident means an individual who has had his or her actual place of residence and has lived in the state of Rhode Island for a continuous period of not less than six (6) months. (RIGL 20-1-3)

RIGL means Rhode Island General Laws.

RIMFC means the Rhode Island Marine Fisheries Council. (RIGL 20-10-2)

RIMFR means Rhode Island Marine Fisheries regulations

Rock crab means *Cancer irroratus*. (RIGL 20-1-3)

Routine trap tag loss means the loss of original lobster trap tags that does not exceed the 10% over-allotment allowance for routine loss.

Season means a period of time established by regulation during which management

rules specific to that period are in effect.

Take or Taking means the process and each of the activities in that process undertaken to remove the resource from its natural habitat until the time at which possession begins.

Transfer means to convey, pass, or remove something from one person, place, and/or vessel to another.

Trip means a fishing voyage beginning with the departure from any port and terminating with the return any port, regardless of the duration of time.

Vessel means any watercraft, other than a seaplane on the water, that is used, or is capable of being used, as a means of transportation on water.

V-Notched female American lobster means a V-notched female lobster means any female American lobster with a V-notch mark, or the remnant of a healed V-notch mark in the end part of the right tail flipper adjacent to the middle tail flipper, or any lobster which is mutilated in such a manner which could hide, obscure, or obliterate such a mark, including a missing right tail flipper. A V-notch shall be a notch or the remnant of a healed notch, with or without setal hairs, at least 1/8 (1/8) inch in depth. Any licensed/permitted commercial fisherman required or authorized to mark lobsters with a v-notch mark in LCMA 2 shall make a v-notch mark by means of a sharp-blade instrument, at least 1/4 inch (1/4") and not greater than 1/2 inch (1/2") in depth and tapering to a sharp point. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination. A V-notched female lobster also means any female lobster which is mutilated in such a manner as to hide, obscure, or obliterate such a mark.

7. GENERAL POT AND TRAP PROVISIONS

7.1 **Unauthorized raising of pots:** No person except the Director shall unduly disturb, lift, raise, molest, or remove any animal from a trap, pot, or other such device without the written permission of that person. (RIGL 20-4-8)

7.2 No person except the Director shall place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner.

7.3 **Raising lobster pots at night:** No person shall raise or unduly disturb any lobster pot or trap within the territorial waters of this State between the hours of one (1) hour after sundown and one (1) hour before sunrise. (RIGL 20-7-13)

7.4 Buoys: Each pot used for the taking of lobsters or crabs shall bear a color scheme on the attached buoy consistent with the color stated on the license. In cases where natural conditions render it impractical to separately buoy each pot, the Director may grant permission to buoy such pots in an alternative manner. (RIGL 20-7-11(a)&(d))

7.4.1 Color scheme: The buoy color scheme shall be displayed on any lobster boat used by the licensee such that those colors shall be painted on port and starboard sides of the hull in a section not less than one foot (1') square. Or a clearly painted buoy shall be set at the highest point on the boat excluding the mast and be visible for three hundred sixty degrees (360°). The buoy or colors must be prominently displayed on the vessel at all times that lobster gear fished under that license is in the water. (RIGL 20-7-11.1(a))

7.4.2 No person shall place, set, lift, raise, unduly disturb, draw in, or transfer any pot used for the taking of lobsters unless the color scheme of the attached buoy is the same as the color scheme that is on file with the license application and displayed on the boat used by that person, or unless that person is duly licensed and possesses written permission from the rightful owner of the pot, trap, or other device. (RIGL 20-7-11.1(b))

7.5 Removal of branded numbers from lobster pots: No person shall set, maintain, or have in his or her possession any lobster pots from which the branded numbers have been altered, obliterated, or removed, with the intent to defraud or deprive the owner. (RIGL 20-7-12)

7.6 Marking of pots: The owner of every trap, pot, or other stationary contrivance used for the taking of marine fish, shellfish, crustaceans, or other invertebrates being fished in the waters of this State, and the owner of any trap or pot for catching or cars or other contrivances for keeping lobsters shall mark each trap, pot, or contrivance, together with the buoy which is attached thereto, with the name or names of the owners of the contrivance or the person or persons using the same, and the license number or numbers of such person or persons. (RIGL 20-4-7)

8. LOBSTER

8.1 RI State Waters and LCMA 2 (Inshore Southern New England) regulations:

8.1.1 License required for the taking of lobster: No person either as principal, agent, or servant shall at any time catch or take any lobster from any of the waters in the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise, or draw in or from any of those waters or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters any pot or other contrivance, designed or adapted for the catching or taking of lobsters unless licensed to do so. Refer to DEM's "*Commercial and Recreational Saltwater Fishing Licensing Regulations*". (RIGL 20-7-1)

8.1.2 Non-commercial (i.e., recreational) pot and possession limits:

(A) A non-commercial lobster pot or diver license is available to RI residents only. A non-commercial lobster licensee shall not offer for sale or sell lobsters. (RIGL 20-2-24 and 20-7-3)

(B) Non-commercial lobster pots:

(1) A holder of a non-commercial lobster pot license may set, place, or maintain in the water not more than five (5) lobster pots at any one (1) time. (RIGL 20-7-3)

(2) Trap tags: A lobster trap tag issued by the Director is required to be attached to each pot deployed. Tags shall be permanently attached to the trap bridge or central cross member of the trap and be clearly visible for inspection. A one (1) tag over-allotment will be issued for a routine loss. Tags shall be valid for the calendar year in which the license is issued.

(C) Diver lobster license: A holder of a non-commercial lobster diver license shall take no more than eight (8) lobsters in any one (1) day. No diver shall use a spear, gig, gaff, or other penetrating device to harvest lobsters or while diving to set, open or tend lobster pots. (RIGL 20-7-4)

8.1.3 Taking of lobsters by commercial fishing vessels: No operator of a Rhode Island registered boat engaged in trawling for finfish in Rhode Island territorial waters may retain and sell any lobsters taken unless that operator shall have a commercial lobster license. (RIGL 20-7-2)

(A) Licensing of owner-operated vessels: No vessel may be used in the commercial taking of lobsters unless the operator is the registered or documented owner of said vessel. If a corporation is the documented owner of a vessel, the operator shall be the majority owner of that corporation. This regulation shall in no way abridge a licensee's right pursuant to RIGL 20-7-6.

(B) Use of commercial license by agent or employee: If a commercial lobster licensee becomes incapacitated for any reason from using that license, that person may permit his or her agent or employee to perform those duties under the license. Prior authorization from the Director is required for the use of a commercial license by an agent or employee due to incapacitation. (RIGL 20-7-6)

(1) Criteria for use of license:

(a) The applicant must provide application on forms prescribed by the Director;

(b) The agent or employee must be a citizen of the United States;

(c) The application must include a written statement signed by a duly-licensed physician stating that the applicant/licensee is incapacitated and unable to participate in the lobster fishery, the reason for that incapacity, and the anticipated duration of such incapacity. For the purpose of this section, the term incapacity shall be defined as the inability, due to medical reasons, to place, set, keep, maintain, supervise, lift, raise, or draw in any pot or other contrivance designed or adapted for the catching of lobsters. The Director may grant permission to the incapacitated applicant/licensee, for a period not to exceed ninety (90) days, to transfer his/her duties under such license to a designated agent or employee. This permission may be continued for an additional ninety (90) days upon submission to the Director of a duly-licensed physician's statement documenting such need. Further extensions may be granted at the discretion of the Director, but in no case may the period of transfer of duties exceed a total of one year.

(2) Upon Director authorization for use of a license by an agent or employee, the authority of the licensee to sell or commercially harvest lobsters under such license shall be transferred in its entirety to the designated agent or employee. The agent or employee must carry the license of the incapacitated licensee and the written authorization by the Director on his/her person at all times while engaged in any portion of the lobster fishery.

(3) By making application for the transfer of duties to an agent or employee, the applicant/licensee accepts responsibility for the actions of the transferee under the authority of said license.

8.1.4 No person may take or possess lobster commercially in LCMA 2 unless taken by a lobster trap authorized pursuant to a lobster trap allocation (LTA) issued by the Department, or by an otter trawl or gillnet.

(A) Commercial possession limit of lobsters taken by gillnet or otter trawl:
Maximum of one hundred (100) lobsters per day (based on a 24-hour period), or five hundred (500) lobsters per trip for trips five (5) days or longer.

8.1.5 Minimum and maximum size of lobster:

(A) Minimum size: Three and three-eighths (3-3/8) inches (85.73 mm) carapace length.

(B) Maximum Size: Five and one-quarter (5-1/4) inches (133.35 mm) carapace length.

8.1.6 Egg-bearing female lobsters: No person shall have in his or her possession at any time any female lobster bearing eggs or from which the eggs have been brushed or removed. (RIGL 20-7-10)

8.1.7 Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 2 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately.

8.1.8 Prohibition on possession of v-notched female American lobsters: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster.

8.1.9 Lobster pots:

(A) Maximum size: 22,950 cubic inches.

(B) Escape vents: Each and every lobster pot, set, kept, or maintained or caused to be set, kept, or maintained in any of the waters in the jurisdiction of this State by any person properly licensed, shall contain an escape vent in accordance with the following specifications: (20-7-11(a))

(1) Minimum escape vent size:

(a) At least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters ($2 \times 5\frac{3}{4}$) inches (50.8mm X 146mm); or

(b) Two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and five eighths ($2\text{-}5/8$) inches (66.68mm) in diameter; or

(c) An unobstructed gap caused by raising both ends of a bottom lath in the parlor section 2 inches (50.8mm) from the bottom; or

(d) An unobstructed gap caused by separating both ends of 2 vertical laths on the end of the parlor section by 2 inches (50.8mm); or

(e) An unobstructed gap created by cutting wires in a wire trap in such a manner as to meet the minimum size and number of vents required in accordance with this section.

(f) The vent or gap shall be installed or made in each parlor section on the sides or end panel. Traps equipped with multiple parlor sections and having a central entrance funnel(s) separating the parlor sections must adhere to the escape vent requirements specified above in each parlor section. Traps equipped with multiple parlor sections that are linked in series ("in-line") must adhere to the escape vent requirements specified in the terminal, or end parlor section.

(g) Lobster traps not constructed entirely of wood must contain a ghost panel with the following specifications:

- (1) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3-3/4 inches (9.53 cm) by 3-3/4 inches (9.53 cm).
- (2) The panel must be constructed of, or fastened to the trap with one of the following untreated materials: wood lath, cotton, hemp, sisal, or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.
- (3) The door of the trap may serve as the ghost panel if fastened with a material specified in previous paragraph.
- (4) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

8.1.10 Penetrating devices: No person shall use a spear, gig, gaff, or other such penetrating device to harvest lobsters.

8.1.11 Possession of lobster meat: No fishing vessel operating in Rhode Island territorial waters shall have on board at any time more than one (1) pound of cooked or uncooked lobster meat for each person on board that vessel. (RIGL 20-7-14)

8.1.12 Mutilation of uncooked lobster meat: No person shall mutilate any uncooked lobster by severing its tail from its body or have in his or her possession any part or parts of any uncooked lobster so mutilated. (RIGL 20-7-14)

8.1.13 Commercial lobster trap tags:

(A) No person shall have on board a vessel or set, deploy, place, keep, maintain, lift, or raise; from, in, or upon the waters under the jurisdiction of the State of Rhode Island any lobster pot for taking of American lobster without the pot having a valid State of Rhode Island lobster trap tag.

(B) Tags shall be permanently attached to the trap bridge or central cross member of each trap and be clearly visible for inspection.

(C) Season: Commercial lobster trap tags shall be valid from June 1 through May 31, annually.

(D) All lobster trap tags shall be a permanent, single-use design.

(E) Non-transferability: No person shall transfer lobster trap tags between

lobster traps or between individuals or vessels.

(F) No person shall file a false claim of trap or trap tag loss.

(G) No person shall possess at any one time more lobster trap tags than are authorized.

(H) Only lobster trap tags for the current fishing year and the immediate previous or following fishing year shall be allowed to remain attached to each lobster trap.

(I) The 10% over-allotment of original trap tags for routine losses shall not be deployed (if issued) such that the total number of traps deployed is greater than the authorized allocation.

(J) Issuing authority: The Director is the authority for the issuance of lobster trap tags for the state of RI, and shall have complete oversight over the program.

(1) For state-licensed residents and non-residents who possess a Federal Limited Access Lobster Permit, the Director may request authority to issue trap tags to Federal Limited Access Lobster Permit holders under a signed Memorandum of Agreement (MOA) with the National Marine Fisheries Service (NMFS). If such an agreement is not established, the NMFS shall be the issuing authority for those who possess a Federal Limited Access Lobster Permit.

(2) The State of Rhode Island, under a signed Memorandum of Agreement (MOA) with the NMFS, shall recognize lobster trap tags issued by NMFS to a Federal Limited Access Lobster Permit holder as being valid within waters under the jurisdiction of the state, provided that the Federal Limited Access Lobster Permit holder also possesses a valid RI commercial fishing license to harvest lobster.

(K) Trap tag types and issuance:

(1) Original trap tags: Commercial licensees may order up to their original trap tag allocation, plus a 10% over-allotment to allow for routine trap losses.

(a) Routine trap or tag loss: When a routine loss of an original trap tag or trap occurs, the 10% over-allotment of original trap tags issued shall be used to replace the lost tag or trap.

(2) Gear rotation trap tags: Commercial licensees may order trap tags to be used for gear rotation and maintenance. The number of gear rotation trap tags issued shall not exceed the licensee's original trap tag allocation. Gear rotation trap tags shall be held by the Director. The Director shall issue gear rotation trap tags on a one-for-one basis upon receipt of the original tags.

(3) Catastrophic loss trap tags: Commercial licensees may order up to two (2) complete sets of catastrophic trap tags, in an amount equal to the number of original tags ordered, to be used in the event of catastrophic loss.

(a) Catastrophic loss trap tags shall be held by the Director.

(b) When a catastrophic loss occurs, a complete duplicate set of ordered catastrophic trap tags shall be issued. Original trap tags will become null and void upon issuance of catastrophic loss trap tags.

(c) Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color).

(d) Application for catastrophic loss trap tags shall be made on forms prescribed by the Director and signed by the commercial licensee under penalty of perjury. The DFW shall review the application for catastrophic loss tags form within 1 week after receipt.

(e) In state waters, catastrophic loss trap tags must be placed in traps within 10 days after issuance.

(f) DFW shall report the issuance of catastrophic loss trap tags and the voiding of original trap tags to the DLE.

(g) The DLE must be notified, in writing by certified mail, in cases of extenuating circumstances that do not permit catastrophic loss trap tags to be attached to traps.

(h) Catastrophic trap tag loss shall be reported immediately to the DLE. Recovery of original lobster trap tags that have been reported as catastrophic loss shall be reported immediately to the DLE.

(i) In the event that catastrophic loss trap tags are not immediately available, the Director may issue an exemption letter to allow the commercial licensee to fish new traps until catastrophic loss trap tags are received by said licensee.

(j) Following the issuance of catastrophic trap tags, no person shall deploy a lobster trap for which a catastrophic loss trap tag has been issued and which does not display a valid catastrophic loss trap tag.

(L) For persons possessing a valid RI commercial fishing license (licensee) for the catching, taking, or landing of American lobster, and who also own or are incorporated/partnered in a vessel(s) holding a Federal Limited Access Lobster Permit (Federal Lobster Permit), the following shall apply:

- (1) No harvesting of lobsters may occur in any LCMA by means of any lobster trap for which a trap tag has not been issued. All vessels owned/incorporated/partnered by said licensee which hold a Federal Lobster Permit shall annually declare all LCMA(s) in which the licensee intends to fish during the fishery year. Said declaration shall be made at the time of application for the issuance of lobster trap tags on forms prescribed by the Director.
 - (2) Once declared, an LCMA may not be changed until the next fishery year. An LCMA declared to the Director shall be identical to the LCMA declared to the NOAA Fisheries on forms provided by NOAA Fisheries concerning the fishing activities during the subject period by the vessel owned/incorporated/partnered by said licensee.
 - (3) If any discrepancies between the LCMA declared to the Director and NOAA Fisheries are revealed, the NOAA Fisheries LCMA declarations shall govern. Any lobster trap tags issued based on conflicting information provided to NMFS shall become null and void and must be returned to the issuing authority.
 - (4) Federal (EEZ) waters lobster trap tags shall be distinguishable from RI State waters lobster trap tags by color.
 - (5) No licensees owning/partnered/incorporated in vessel(s) holding a LCMA 2 Federal Lobster Permit shall be permitted to deploy, place, set, tend, haul, lift, raise, supervise, or maintain lobster traps from said LCMA 2 federally-permitted vessel(s), or to catch/take American lobster within the jurisdiction of the State of RI from said LCMA 2 federally-permitted vessel(s), unless the lobster traps are tagged with federally-designated lobster trap tags that includes a LCMA 2 declaration, issued to said federally-permitted vessel(s).
 - (6) If multiple LCMA's are declared, pursuant to part (1) above, and management measures for the declared LCMA's differ, any vessel owner permitted to fish in the federal exclusive economic zone (EEZ) must comply with the most restrictive management measures of the LCMA's declared, except in regard to trap caps and trap allocations. For trap caps and trap allocations, the most restrictive rule will be applied on an LCMA trap cap/trap allocation basis without regard to the individual's or vessel's trap cap or trap allocation.
- (M) Crab pots/traps, fish traps, fish weirs, minnow traps, eel pots/traps, conch pots/traps, gillnets or trammel nets, fyke nets, stake traps, trawling devices, clam and scallop dredges, beach seines, purse seines, and tongs or bullrakes shall be classified as non-lobster trap gear and shall be exempt from trap tagging requirements.

8.1.14 Lobster trap allocation (LTA):

(A) No person may deploy more lobster traps than the number allocated per their LTA.

(B) The Director is the LTA authority in LCMA 2 for all Rhode Island residents, both state-licensed and federally permitted.

(C) Issuance of initial LCMA 2 LTA:

(1) The Department shall determine LCMA 2 LTAs for all eligible applicants.

(2) For resident applicants who are dual state-license/federal-permit holders, the Department shall forward all proposed LCMA 2 LTAs, and the basis for each such determination, to NOAA Fisheries for that agency's consideration, prior to final issuance.

(3) The Department and NOAA Fisheries shall seek to ensure that dual state-license/federal permit holders do not receive duplicate LCMA 2 LTAs from different jurisdictions for the same fishery performance.

(4) If there is a discrepancy between Department and NOAA Fisheries proposed LCMA 2 LTAs for a dual state-license/federal permit holder, then the license/permit holder is bound by the lesser of the LCMA 2 LTAs until a final, joint determination is rendered by the agencies.

(5) Initial LCMA 2 LTAs will only be issued to qualified applicants in accordance with these regulations.

(6) Adjustments to initial LCMA 2 LTAs, and issuances of new LCMA 2 LTAs, may occur, by rule, if associated with Department-sanctioned transfers, or if warranted or required by changes in LCMA 2 lobster stock assessments or other ASMFC actions.

(D) Qualifications for initial LCMA 2 LTAs:

(1) To be eligible for an initial LCMA 2 LTA, an applicant must meet the following:

(a) Individuals must have applied to the Department by February 1, 2007.

(b) Must have held a Department-issued commercial fishing license, authorizing the individual to fish commercially for lobster, or a federal lobster permit endorsed for LCMA 2, at some point during the period 2001-2003; and

(c) Must have documented fishing performance during the period 2001-2003 (i.e., must have landed lobsters with traps from LCMA 2 at some point during that period); or if unable to do so due to material incapacitation, must have documented fishing performance during the period 1999-2000 and during the year 2004 (i.e., must have landed lobsters with traps from LCMA 2, with a valid license/permit, at some point during those periods); and

(d) Must have renewed his/her license/permit annually since 2003.

(2) Alternatively, an applicant is eligible for an initial LCMA 2 LTA if he/she has:

(a) Lawfully acquired a federal lobster permit that comports with the above-specified qualifications; or

(b) Acquired the vessel and gear of a RI license holder who meets the above-specified qualifications, and has been issued a new license with a lobster endorsement, in accordance with DEM's *"Commercial and Recreational Saltwater Fishing Licensing Regulations"*.

(3) Documented fishing performance shall be based upon a license/permit holder's logbook reports and/or federal VTRs pertaining to the applicable qualifying period. In accordance with these regulations, the Department will consider other information, offered by the applicant, but only if it pertains to documentation already furnished to a state or federal government agency.

(4) Material Incapacitation:

(a) An individual who meets the qualifying criteria, but had no documented, or had reduced, fishing performance during the three-year period 2001-2003, inclusive, due to material incapacitation, may request that his/her initial LCMA 2 LTA be based on his/her fishing performance in LCMA 2 during the period 1999-2000.

(b) In order to establish material incapacitation on the basis of a medical condition, an applicant must present the following notarized documentation, which may pertain to the applicant or to the applicant's family member (i.e., a parent, spouse, child, mother-in-law, or father-in-law):

(i) Evidence that the applicant or family member had a physical or mental impairment during the period 2001-2003, inclusive, involving inpatient care in a hospital, a nursing home, or a hospice, or outpatient care requiring continuing treatment or supervision by a health care provider; and/or

(ii) Evidence that the applicant or family member received, during the period 2001-2003, inclusive, social security disability benefits (SSDI), and/or supplemental security income benefits (SSI), and/or 100 percent disabled benefits from the U.S. Department of Veteran Affairs; and

(iii) If the material incapacitation involves a family member, evidence that the applicant had a direct role in the care of the family member.

(c) In order to establish material incapacitation on the basis of military service, an applicant must present appropriate documentation (namely, Form DD214) establishing that he/she served for one hundred eighty (180) or more days during the years 2001-2003, either on active duty in the U.S. Army, Navy, Air Force, Marines, or Coast Guard, or as a member of a national guard or reserve component of the same, activated by order of an appropriate state or federal authority.

(d) Applicants seeking consideration under this section may be required to submit additional information, as deemed necessary by the Department, in order to establish eligibility pursuant to this section.

(e) The Department will review all documentation submitted by applicants seeking consideration under this section, and shall render a decision, in writing, regarding each applicant's eligibility pursuant to this section. On the basis of that decision, the Department shall notify each applicant, in writing, regarding the applicant's initial LCMA 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied.

(5) LTAs assigned to a dual federal permit/state license holder cannot be treated as separate fishing histories and stacked for the purposes of initial trap qualification and allocation. A single fishing entity is considered to have established a single lobster fishing history even if that person is a dual federal permit/state license holder.

(E) Application for initial LCMA 2 LTA:

(1) Application shall be made on forms prescribed by the Director.

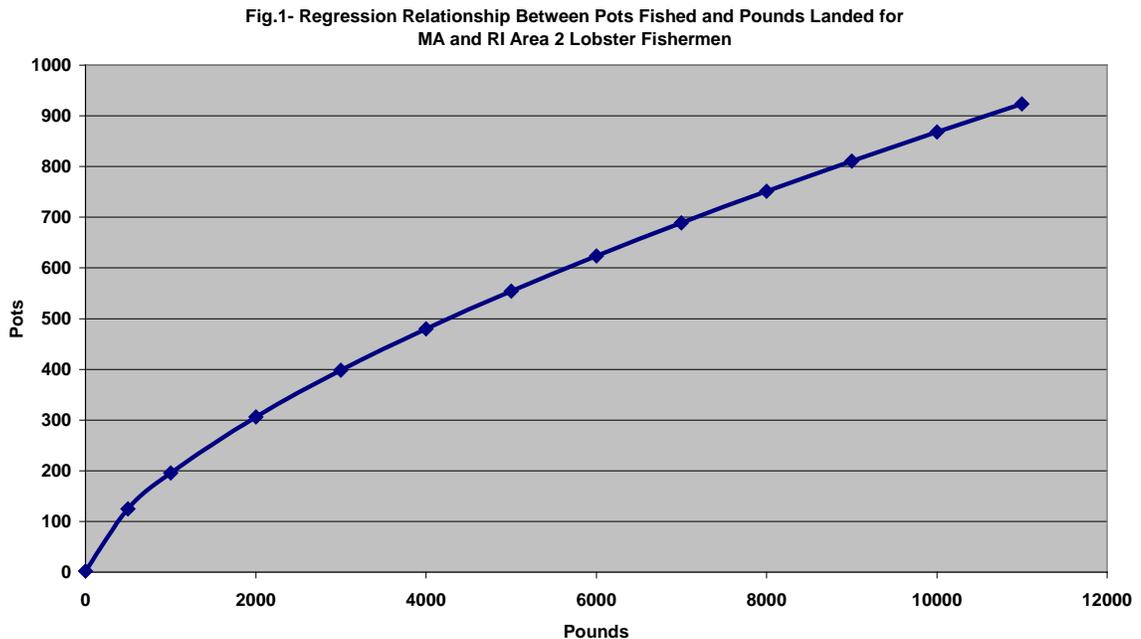
(2) Separate applications must be submitted for each LCMA 2 LTA being sought.

(3) If an applicant seeks consideration material incapacitation, the applicant must submit the appropriate documentation along with his/her application.

(4) The Department shall notify each LCMA 2 LTA applicant, in writing, regarding the applicant's initial LCMA 2 LTA, noting the values used in making the determination, or the reason(s) why the application was denied.

(F) Determination of initial LCMA 2 LTAs: For each qualified applicant, the Department shall determine initial LCMA 2 LTAs as follows:

(1) "Predicted Traps Fished" values shall be calculated for 2001, 2002, and 2003 from the applicant's total lobster landings in each of those years using the established regression relationship for LCMA 2 [see Figure 1]



(2) "Reported Traps Fished" values, constituting the maximum number of lobster traps reported fished in LCMA 2 for 2001, 2002, and 2003, shall be obtained from the applicant's logbook reports and/or federal Vessel Trip Reports (VTRs).

(3) "Effective Traps Fished" values shall be determined by comparing the "Predicted Traps Fished" and "Reported Traps Fished" values for each of the three years, and identifying the lower value for each year.

(4) The initial LCMA 2 LTA is determined by selecting the highest value of the three annual "Effective Traps Fished" values.

(5) The maximum initial LTA assigned to LCMA 2 shall be eight hundred (800) traps.

(6) For applicants who qualify for material incapacitation, the Department

shall determine initial LCMA 2 LTAs pursuant to this section, except that the years 1999 and/or 2000 will be used in lieu of the years 2001, 2002, and 2003.

(G) Corrections to or revocations of LCMA 2 LTAs:

(1) A recipient of an LCMA 2 LTA may request, and the Department may make, corrections to qualifying data if errors are found attributable to data entry or mathematical errors in logbook or landing reports or any other mistakes by the Department.

(2) A recipient of an LCMA 2 LTA may request, and the Department may make, corrections to qualifying data based on additional documentation, provided by the applicant, that reflects catch (landings) or effort (traps fished) data/information differing from the applicant's logbook or VTR reports. To be considered eligible for review, such documentation must have been previously furnished to a state or federal government agency. Such additional information may include: trap tag orders; state report cards; state vessel interview forms; state license application forms; state sea sampling observer reports, and catch reports; federal fishing trip reports (NOAA form 88-30); federal port agent vessel interview forms (NOAA Form 88-30); federal sea sampling observer reports; federal fishing vessel and gear, or damage compensation fund reports (NOAA Form 88-176); personal vessel logbooks; sales receipts or landing slips; and/or tax returns.

(3) Requests made pursuant to this section must be made in writing to the Department and must be accompanied by all supporting information/documentation. The Department shall respond to all such requests, in writing, within thirty (30) days of receipt.

(4) The Department may make corrections to any initial LCMA 2 LTA if it is determined that the applicant or recipient did not purchase and use valid lobster trap tags for any period used in determining the initial LCMA 2 LTA; or if it is determined that the applicant or recipient submitted inaccurate data/information/documentation relating to the determination of his/her LCMA 2 LTA.

(5) The Department may temporarily or permanently revoke any LCMA 2 LTA if the applicant or recipient is found to have submitted fraudulent data/information/ documentation relating to the determination of his/her LCMA 2 LTA.

(6) Any actions or decisions made by the Department pursuant to this section shall be issued in writing.

(H) Disputes and Appeals:

(1) Upon the issuance of a written decision by the Department regarding an initial, corrected, or revoked LCMA 2 LTA, an applicant may appeal the decision by submitting a written request for an adjudicatory hearing with the clerk of the RIDEM Administrative Adjudication Division, 235 Promenade Street, Providence, RI 02908. Such a request must be submitted by the applicant to the RIDEM Administrative Adjudication Division within thirty (30) calendar days of receipt of the Department's written decision.

(2) During the time period from which an appeal has been filed, and until a final determination has been rendered by the AAD, the appellant shall be restricted to fishing his/her initial or corrected LCMA 2 LTA, as set forth by the Department.

(I) No holder of any LTA may lease his/her allocation, or any portion thereof.

(J) All holders of LTAs assigned to a RI state commercial fishing license only (i.e. no federal permit) must annually renew their RI state commercial fishing license, or that portion of their RI state commercial fishing license that authorizes them to commercially harvest lobsters from RI state waters with lobster traps, in order to remain eligible to transfer any portion of their LTA.

(K) LTA transfers:

(1) Eligibility:

(a) LTA transferors: Any state-licensed, federally-permitted, or dually federally-permitted/state-licensed holder of a Department- or NOAA Fisheries-issued LTA is eligible to transfer some or all of his/her LTA, subject to the terms and conditions set forth below.

(b) LTA transferees: Any RI resident is eligible to obtain one or more transfers of Department issued LTAs, subject to the terms and conditions set forth below. Any RI resident or non-resident is eligible to obtain one or more transfers of NOAA Fisheries-issued LTAs, subject to the terms and conditions set forth below.

(2) Types of allowable transfers:

(a) Partial or full LTA transfers without sale of business: An LTA transferor may transfer a portion or all of his/her Department- or NOAA Fisheries-issued LTA. In any such case, the LTA transferor may retain his/her license/permit and fishing business.

(b) Full LTA transfer with sale of business: Pursuant to RIMFR "*Commercial and Recreational Saltwater Fishing Licensing Regulations*", a

licensed fishermen who has been actively fishing his license/permit and wishes to sell his vessel and gear and retire his license may do so, and in so doing, enable the buyer (transferee) to acquire a new, corresponding license and endorsement. In any such situation, the transaction must include the transfer of all of the seller's (transferor's) Department- or NOAA Fisheries-issued LTA, along with any and all history associated with the license/permit.

(c) Partial and full business transfers of multi-LCMA LTA: Recipients of either a partial LTA transfer or full LTA transfer with sale of business from a federal permit that has a multi-LCMA LTA shall retain the multi-LCMA history and may fish in any of the LCMA's that the LTA allows and would be bound by the most restrictive rule when declaring to be fishing in multiple LCMA's.

(3) LTAs assigned to a dual federal permit/state license holder cannot be divided and apportioned between the permit/license. A dual federal permit/state license holder's LTA will be considered indivisible. If a dual federal permit/state license holder "splits" his/her permits/license by transferring either the federal permit or state license to another entity, then the entire fishing history, including any LTA is to remain with the federal permit.

(4) A dual federal permit/state license holder who permanently relinquishes or surrenders his/her federal limited access lobster permit can allow his/her LTA to be transferred to his/her state license.

(5) Transfers of any LTA must remain within the LCMA from which they originate. An LTA from one LCMA is only valid in the LCMA from which it originally qualified and cannot be transferred to another LCMA.

(6) The LTA of the seller (LTA transferor) shall be reduced in all LCMA's in which the seller has been assigned a LTA by the amount of LTA that is transferred, prior to application of the 10% conservation tax.

(7) Partial transfers of LTA assigned to LCMA 2, whether state-licensed, federally-permitted, or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps.

(8) If a LTA assigned to LCMA 2 falls below ten (10) lobster traps, and the holder wishes to transfer his/her allocation, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 2 commercial lobster trap

fishery until such time as said license holder re-acquires LTA assigned to LCMA 2.

(9) All transfers of LCMA 2 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of business, shall be subject to a ten percent (10%) conservation tax. The tax shall be applied to each and every transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten (10) lobster traps shall not be subject to the 10% conservation tax.

(14) An LCMA 2 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed eight hundred (800).

(15) Any LTA transferee who obtains a LCMA 2 LTA assigned to a RI state commercial fishing license only (i.e. no federal permit) must currently have a Principle Effort License with a lobster endorsement or a state multipurpose endorsement, which shall be necessary in order to commercially harvest lobsters from RI state waters with lobster traps.

(L) Single Ownership Trap Cap or Individual Permit Cap for LCMA 2: Single ownership cap allows the purchase and accumulation of traps over and above the *active trap cap (currently 800 traps for LCMA 2)*. The single ownership cap is 1600 traps for an individual or corporation at a given time. Traps in excess of the active trap cap may not be fished until activated by the permitting state or agency. A transfer tax will not be assessed on traps activated from the permit holder's individual permit cap (Trap Bank) to an active trap. Newly purchased traps, along with traps already owned by a permit holder may combine to equal the number of traps necessary to go through active reductions, in order to end up at the final trap level of 800 traps.

(1) Sunset Provision for the Single Ownership Cap: The single ownership cap allows the purchase and accumulation of traps over and above the active trap cap (currently 800 traps for LCMA 2). This is to allow for businesses that are cut in the upcoming annual trap reductions to efficiently rebuild their business. The single ownership cap will expire two (2) years after the last trap reduction as specified in Addendum XVIII. At that time, LCMA 2 will revert back to the historical 800 active trap cap allocation only.

(M) Aggregate Ownership Cap or Owner Accumulation Limits for LCMA 2: Under this addendum, an entity may not own more than 1600 traps (800 active and 800 banked traps). However, those individuals who had more than two (2) permits in December 2003 may retain the number they had at that time, but may not own or share ownership of any additional permits.

(N) LCMA 3 LTA transfers:

- (1) Transfers of LTA assigned to LCMA 3 may only be made to individuals/entities with a federal lobster permit.
- (2) Partial transfers of LTA assigned to LCMA 3, whether federally permitted or dually federally-permitted/state-licensed, shall involve a minimum of ten (10) LTA units (i.e. lobster traps), and occur in minimum units of ten (10) LTA units thereafter, until the remaining LTA is less than ten (10) lobster traps.
- (3) If LTA assigned to LCMA 3 falls below ten (10) lobster traps, and the holder wishes to transfer the LTA, the entire allocation must be transferred in a single transaction, and the lobster trap allocation transferor shall be prohibited from participation in the LCMA 3 commercial lobster trap fishery until such time as said individual/entity re-acquires LTA assigned to LCMA 3.
- (4) All transfers of LCMA 3 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of a business, shall be subject to a 10% conservation tax. The tax shall be applied to each and every LTA transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten lobster traps shall be prohibited.
- (5) The maximum allowable LTA assigned to LCMA 3 shall be two thousand (2,000) traps. An LCMA 3 LTA transferee may engage in any number of transfers, provided that the total number of traps held at any one time does not exceed two thousand (2,000).
- (6) Active Trap Cap for LCMA 3*:

Year	Trap Cap
Year 0	2,000
Year 1	1,900
Year 2	1,805
Year 3	1,715
Year 4	1,629
Year 5	1,548

* This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years.

- (7) Single Ownership Cap or Individual Permit Cap for LCMA 3: The Single Ownership Cap allows for the purchase and accumulation of traps over and above the Active Trap Cap limit. This will allow a permit holder to obtain trap allocation from other permit holder in excess of the individual trap cap limit. This additional allocation may not be fished until activated by the permit holder's governing agency.
- (8) Individual Permit Cap Table for LCMA 3*:

Year	Number of Traps
Year 0	2,333
Year 1	2,216
Year 2	2,105
Year 3	2,000
Year 4	1,900
Year 5	1,800

* This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years.

(9) Aggregate Ownership Cap or Ownership Accumulation Limits (Full Exemption): No single company or individual may own traps greater than five times the Single Ownership Cap if they have not already accumulated them prior to the NMFS publishing a present-day control date. However, should an individual owner qualify to be in excess of the Aggregate Ownership Cap before the control date is published, that owner will retain their existing trap ownership and that owner may only increase trap ownership up to the Single Ownership / Individual Permit Cap. Any ownership with an accumulation of fewer traps than the Aggregate Cap at the time the control date is published may not exceed the Aggregate Ownership Cap, as detailed in the table below.

Year	Active Trap Cap	Individual Permit Cap	Aggregate Permit Cap (5x Individual Permit Cap)
Year 0	2,000	2,333	11,665
Year 1	1,900	2,216	11,080
Year 2	1,805	2,105	10,525
Year 3	1,715	2,000	10,000
Year 4	1,629	1,900	9,500
Year 5	1,548	1,800	9,000

(O) LTA transfer application:

- (1) All transfers of LTAs must be authorized by the Director.
- (2) Applications for LTA transfers shall be made on forms prescribed by the Director. All applications must be signed by both the transferor and transferee, and notarized.
- (3) Applications for transfers may be submitted from August 1 through September 30 for the following fishing year.
- (4) Transfers shall become effective the year following the approval of the application.

(5) The LTA transferor and transferee are not bound by any rules or regulations of the Department relating to any payment or compensation between LTA transferor and transferee associated with any LTA transfer. Holders of LCMA 2 LTAs assigned to RI State waters may sell, give, or otherwise convey some or all of their allocation without limitation, provided that they comply with all terms and conditions set forth herein.

(P) License and LTA Tracking: The Department shall maintain records to track all Department- or NOAA Fisheries-issued LTAs and LTA transfers for resident state license holders and resident federal permit holders.

(Q) LTA reduction schedules:

(1) Active LTA reduction for LCMA 2:

(a) Initial LTA reduction: Effective Year 1 of LTA reduction schedule, each and every LCMA 2 LTA shall be reduced by twenty-five percent (25%) from the original LCMA 2 LTA determination and be permanently retired from the LCMA 2 lobster trap fishery for conservation purposes. For state-only license holders, LTA reductions are from the original LCMA 2 LTA determinations and any LCMA 2 LTA obtained subsequent to the initial LCMA 2 LTA determination. For federal permit or dual state license/federal permit holders, LTA reductions are from the LTA accepted by the federal permit or dual state license/federal permit holders after NOAA Fisheries completes their LTA process. Additionally, any other LTA from any other LCMA that was obtained by the federal permit or dual state license/federal permit holder subsequent to the initial LTA determination is also subject to this twenty-five percent (25%) LTA reduction.

(b) Annual LTA reduction schedule: Effective beginning Year 2 of LTA reduction schedule and on June 1st in each of the next four (4) consecutive years, each and every LCMA 2 LTA shall be reduced by five percent (5%) from the preceding year's LCMA 2 LTA. The annual LTA reductions shall be assessed to both active and banked LCMA 2 LTA's, with the annual LTA reductions being permanently retired from the LCMA 2 lobster trap fishery for conservation purposes.

LCMA 2 – LTA Reduction Schedule:

Year	% Reduction
Year 1	25%
Year 2	5%
Year 3	5%
Year 4	5%
Year 5	5%
Year 6	5%

(2) Annual LTA reduction schedule for LCMA 3: Effective Year 1 of LTA reduction schedule, and on June 1st in each of the next four (4) consecutive years, each and every LCMA 3 LTA shall be reduced by five percent (5%) from the preceding year's LCMA 3 LTA. The annual LTA reductions shall be assessed to both active and banked LCMA 3 LTA's, with the annual LTA reductions being permanently retired from the LCMA 3 lobster trap fishery for conservation purposes.

LCMA 3 – LTA Reduction Schedule:

Year	% Reduction
Year 1	5%
Year 2	5%
Year 3	5%
Year 4	5%
Year 5	5%

8.1.15 Lobster Exemption Certificate for Dealers: Dealers wishing to purchase, barter, trade or import lobsters from outside of the state or receive lobsters from LCMA 3 which are less than the minimum size for LCMA 2 must obtain a Lobster Exemption Certificate for Dealers from the Director.

(A) Eligibility:

- (1) The applicant dealer must hold a valid commercial dealers license to deal in lobsters in Rhode Island;
- (2) The applicant dealer shall provide a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of the Rhode Island;
- (3) The applicant dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the LCMA 2 minimum size.

(B) Application shall be made on forms prescribed by the Director.

(C) Conditions to maintain compliance:

- (1) The Certificate holder must notify the DLE by phone between one (1) hour and six (6) hours prior to receiving a shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel.
- (2) All shipments of lobsters less than the LCMA 2 minimum size as must be

culled out immediately and stored separately on the business premises of the Certificate holder.

(3) The Certificate holder shall maintain a written record of all transactions taking place under the provisions of this section including: the date of purchase; time of purchase; location of purchase; name of selling dealer or vessel; the person in charge of the vessel; amount of lobster received, including number of animals and total weight. Records shall be maintained documenting the sale of lobsters received pursuant to this section, including the date and time of sale, and the name of the person or dealer to whom the lobsters were sold. Records must be available for inspection 8:00AM – 4:00PM at the dealer's Rhode Island office or with an authorized business agent for a period of three (3) years from the date of the acquisition of the lobsters. Records shall be available for immediate inspection as a condition of this permit.

(4) Lobsters not conforming to the LCMA 2 minimum size may only be exported out of state or sold to another dealer who possesses a Lobster Exemption Certificate for Dealers for export out of state. No lobsters less than the LCMA 2 minimum size may be offered for sale on the retail market in Rhode Island.

8.1.16 Land-based lobster processing permit:

(A) A land-based lobster processing permit is required for the land-based processing of whole uncooked lobsters.

(B) The possession of lobster tails, claws, or other lobster body parts at sea or in any unlicensed facility is prohibited.

(C) Lobster body parts which are possessed by the land-based processor shall come from legal-sized lobsters only. For the purposes of this section, a legal-sized lobster meets the minimum size and has a dorsal midline length of the sixth abdominal (tail) segment of at least 1-1/16 inches;

(D) Application: Application for a Land-Based Lobster Processing Permit shall be made on forms prescribed by the Director.

(E) The applicant must possess a State of Rhode Island Department of Health Food Processor's License and a Rhode Island Lobster Dealer's License.

(F) Containers in which processed lobster body parts are packed and which are to be sold, shipped, or transported shall be clearly labeled with the license number of the processor.

(G) The applicant shall maintain records at the processing facility of lobster purchases, including the license numbers of the sellers for a period of two years.

8.2 LCMA 1 (Inshore Gulf of Maine):

8.2.1 Minimum size: Three and one-quarter (3-1/4) inches (82.55 mm) carapace length.

8.2.2 Maximum size: Five (5) inches (127.0 mm) carapace length.

8.2.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters (2 X 5³/₄) inches (50.8mm X 146mm), or two (2) circular escape vents, each measuring not less than two and one half (2¹/₂) inches (63.5mm) diameter.

8.2.4 Maximum trap size: 22,950 cubic inches.

8.2.5 Prohibition on possession of v-notched female American lobsters - zero tolerance v-notching definition: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. In LCMA 1, a v-notched female lobster means any female lobster bearing a v-shaped notch of any size in the flipper next to and to the right of the center flipper, as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in such a manner as to hide, obscure, or obliterate such a mark. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

8.2.5 Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 1 shall v-notch all legal-size egg-bearing female lobsters and return them to the water immediately.

8.2.6 Limits on landings by fishermen using gear or methods other than traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.3 LCMA 3 (Offshore Waters) regulations:

8.3.1 Minimum size: Three and 17/32 (3-17/32) inch (89.69 mm) carapace length.

8.3.2 Maximum size: Six and 3/4 inch (6 3/4) inch (171.45 mm) carapace length.

8.3.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two and one sixteenth inches by five and three quarter (2-1/16 X 5³/₄) inches (53.39mm X 146.05mm) or two (2) circular vents, each with an un-obstructed

opening measuring not less than two and eleven sixteenths (2-11/16) inches (68.26mm) diameter.

8.3.4 Maximum trap size: 30,100 cubic inches.

8.3.5 Prohibition on possession of v-notched female American lobsters: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster.

8.3.6 Mandatory v-notching: There is no v-notching requirement in LCMA 3.

8.3.7 Limits on Landings by fishermen using gear or methods other than traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.3.8. Limits on the Number of Traps:

(A) Qualification Criteria: The trap limit in LCMA 3 shall be based on the historical level of traps fished by a vessel in LCMA 3. To qualify for LCMA 3 participation, vessels must meet all of the following criteria:

(1) A vessel must be able to demonstrate a history of two (2) consecutive calendar-months of active lobster trap fishing in LCMA 3 in any year between March 25, 1991 and November 1, 1997.

(2) A vessel must hold a current federal lobster permit endorsed for traps.

(3) Applicants for an LCMA 3 trap allocation are required to produce sales receipts or records showing the landing of at least 25,000 pounds of lobster from throughout the range of the resource during the year used as the qualifying year and between March 25, 1991 and November 1, 1997.

(B) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying vessels (Federal Limited Access Lobster Permit holders that meet the performance criteria listed above) shall be based on the applicant's choice of year and trap level, in the water in LCMA 3, during the period from January 1, 1994 through November 1, 1997. Vessels that did not lobster trap fish in LCMA 3 during the period from January 1, 1994 through November 1, 1997, but did qualify as a Federal Limited Access Lobster Permit holder, must pick the most recent year in which they actively fished lobster traps in LCMA 3, such year not to pre-date the March 25, 1991 control date.

(C) Maximum Initial Trap Allocation is 3250 Traps: No vessel shall be given an Initial trap allocation of more than 3,250 traps, regardless of previous historical

participation.

(D) Vessels Applying for both LCMA 3 and Additional LCMA Trap Allocations: Vessels applying for multiple LCMA trap allocations must use the same period to determine their total trap numbers to avoid allocating more total traps to an individual/vessel than that individual/vessel had in the water at any one time. Applicants for LCMA 3 trap allocations, who are also applicants for trap allocations in other LCMA's, must meet the same qualifying criteria as defined above.

(E) Certification of Initial trap Allocation Applications: Within 60 days of the close of the trap application period, the Regional Administrator should publish a notice that specifies preliminary initial lobster trap allocations for each Federal Limited Access Lobster Permit holder. The amounts will be based on lobster trap information submitted by the applicant in accordance with the evaluation process, and other information considered appropriate by the Regional Administrator. The notice will provide for a 30-day public comment period. Simultaneous with the publication, the same information contained in the notice (including the 30-day comment period) will appear in a Notice to Permit Holders.

8.3.9 Trap Reduction Schedule for LCMA 3: Each LCMA 3 trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale basis over a 4 year period. Trap reduction will not go below a baseline level of 1,200 lobster traps. LCMA 3 trap allocations of less than 1,200 lobster traps will remain at their initial qualifying level and will not be permitted to increase up from that number. The LCMA 3 trap reduction schedule is as follows:

INITIAL ALLOCATION	3250	3000	2800	2600	2400	2200	2000	1800	1600	1400
Year 1	2656	2493	2357	2218	2076	1930	1762	1628	1467	1290
Year 2	2493	2351	2230	2107	1981	1849	1715	1573	1423	1251
Year 3	2351	2225	2117	2008	1896	1776	1654	1523	1380	1213
Year 4	2267	2150	2050	1949	1845	1732	1616	1492	1352	1200

8.3.10 No closure between LCMA 1 and LCMA 3: There shall be no area closure between LCMA 1 and LCMA 3.

8.3.10 Trap reduction schedule for LCMA 3: Each LCMA 3 trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale basis over a 4 year period. Trap reduction will not go below a baseline level of 1,200 lobster traps. LCMA 3 trap allocations of less than 1,200 lobster traps will remain at their initial qualifying level and will not be permitted to increase up from that number. The LCMA 3 trap reduction schedule is as follows:

8.3.11 Reporting requirements for LCMA 3: For any person or vessel permitted and declared to fish in LCMA 3, it shall be required to fill out multi-species logbooks until a lobster-specific logbook is approved.

8.3.12 LCMA 3 “Choose and Use” provision: Once qualified for historic participation in LCMA 3, a federal lobster permit holder requesting an LCMA 3 designation (LCMA declaration) is required to permanently designate LCMA 3 on his/her/vessel federal permit. Federal permit holders have a one-time opportunity to drop the LCMA 3 designation. In addition, when an LCMA 3 federal permit is sold or transferred, permanent designation can be reconsidered, which allows the new owner the decision of whether or not they wish to designate/declare LCMA 3 on his/her/vessel federal permit.

8.4 LCMA 4 (Inshore Northern Mid-Atlantic) regulations:

8.4.1 Minimum size: Three and three eighths (3 3/8) inch (85.72 mm) carapace length.

8.4.2 Maximum size: Five and ¼ (5 ¼) inch (133.35 mm) carapace length.

8.4.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and one half (2½) inches (63.5mm) diameter.

8.4.4 Maximum trap size: 22,950 cubic inches.

8.4.5 Prohibition on possession of v-notched female American lobsters: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster.

8.4.6 Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 4 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately.

8.4.7 Limits on landings by fishermen using gear or methods other than traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.4.8 Limits on the Number of Traps:

(A) Qualification Criteria: The trap limit in LCMA 4 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 4 participation, individuals must prove participation in the LCMA 4 lobster fishery between March 25, 1991 and September 15, 1998.

(B) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1994 through September 15, 1998. Individuals that did not lobster trap fish in LCMA 4 during the period from January 1, 1994 through September 15, 1998, but did fish between 1991 and 1993, inclusive, must pick the most recent year in which they actively fished lobster traps in LCMA 4, such year not to pre-date the March 25, 1991 control date. Individuals shall be allocated the total number of traps fished.

8.4.9 Area closures: It shall be unlawful to harvest lobsters using trap gear in four (4) closed areas: (1) Fire Island; (2) Moriches; (3) Shinnecock and; (4) Montauk. Fishermen may fish traps for finfish in these areas, but may not possess lobsters while fishing in these designated areas. These areas were designated using LORAN coordinates. The following GPS coordinates are rough conversions of the LORAN line coordinates. The closed area boundaries are:

FIRE ISLAND:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 31.344	73° 25.823	26730 / 43710
B (NE)	40° 33.233	73° 09.249	26600 / 43710
C (SE)	40° 23.377	73° 11.708	26600 / 43620
D (SW)	40° 23.464	73° 10.976	26730 / 43620

MORICHES:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 24.276	72° 46.617	26400 / 43605
B (NE)	40° 25.688	72° 34.048	26300 / 43605
C (SE)	40° 18.380	72° 35.063	LCMA 3 boundary; 26300 line
D (SW)	40° 12.831	72° 48.559	26400 / 43500

SHINNECOCK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 34.389	72° 27.420	14960 / 43670
B (NE)	40° 35.904	72° 16.223	14890 / 43670
C (SE)	40° 27.997	72° 13.117	LCMA 3 boundary; 14890 line
D (SW)	40° 23.105	72° 23.782	LCMA 3 boundary; 14960 line

MONTAUK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 43.678	72° 12.521	14850 / 43730
B (NE)	40° 46.053	71° 56.974	17850 / 43730
C (SE)	40° 37.120	71° 53.188	LCMA 3 boundary; 26300 line
D (SW)	40° 30.741	72° 07.616	LCMA 3 boundary; 26300 line

8.4.10 Season closure: A season closure to the landing of lobsters from February 1 through March 31 annually is required for any person or vessel permitted and

declared to fish in LCMA 4. During this closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season.

8.5 LCMA 5 (Inshore Southern Mid-Atlantic) regulations:

8.5.1 Minimum size: Three and three eighths (3-3/8) (85.72mm) inch carapace length.

8.5.2 Maximum size: Five and one quarter (5¼) inch (133.35 mm) carapace length.

8.5.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two (2) inches by five and three-quarters (5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and one half (2½) inches (63.5mm) diameter.

8.5.4 Maximum trap size: 22,950 cubic inches.

8.5.5 Prohibition on possession of v-notched female American lobsters: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster.

8.5.6 Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 5 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately.

8.5.7 Limits on Landings by fishermen using gear or methods other than traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.5.8 Limits on the Number of Traps:

(A) Qualification Criteria: The trap limit in LCMA 5 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 5 participation, individuals must prove participation in the LCMA 5 lobster fishery between March 25, 1991 and September 15, 1998.

(B) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1994 through September 15, 1998. Individuals that did not lobster trap fish in LCMA 5 during the period from January 1, 1994 through September 15, 1998, but did fish between 1991 and

1993, inclusive, must pick the most recent year in which they actively fished lobster traps in LCMA 5, such year not to pre-date the March 25, 1991 control date. Individuals shall be allocated the total number of traps fished.

8.5.9 Season closure: A season closure to the landing of lobsters from February 1 through March 31 annually is required for any person or vessel permitted and declared to fish in LCMA 5. During this closure, lobster potters will have a two week period to remove lobster pots from the water, and may set lobster pots one week prior to the end of the closed season.

8.6 LCMA 6 (New York and Connecticut State Waters) regulations:

8.6.1 Minimum size: Three and five sixteenths (3-5/16) inch carapace length.

8.6.2 Maximum size: Five and one quarter (5-1/4) inch (133.35mm) carapace length.

8.6.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than or two (2) inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents each with an un-obstructed opening measuring not less than two and one half (2½) inches (63.5mm) diameter.

8.6.4 Maximum trap size: 22,950 cubic inches.

8.6.5 Prohibition on possession of V-Notched female American lobsters: No person or vessel permitted or declared to fish in LCMA 6 shall possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants.

8.6.6 Mandatory v-notching: There is no v-notching requirement in LCMA 6.

8.6.7 Limits on Landings by Fishermen Using Gear or Methods other than Traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.6.8 Limits on the Number of Traps:

(A) Qualification Criteria: The trap limit in LCMA 6 shall be based on the historical level of traps fished by an individual. To qualify for LCMA 6 participation, individuals must prove participation in the LCMA 6 lobster fishery between January 1, 1995 and June 8, 1998.

(B) Basis for Initial Trap Limit Number: Initial trap allocations to qualifying individuals shall be based on the number of traps fished in any one calendar year during the period from January 1, 1995 through June 8, 1998.

8.6.9 Season Closure: A season closure to the landing of lobsters from September 8 through November 28 annually is required for any person or vessel permitted and declared to fish in LCMA 6. The season closure applies to both recreational and commercial fisheries and all gears. Between those dates possession of lobsters taken from LCMA 6 or from traps with LCMA 6 trap tags is prohibited. During this closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season. Traps cannot be baited until one week prior to reopening (November 22).

8.7 Outer Cape Cod LCMA regulations:

8.7.1 Minimum size: Three and one half (3 ½) inch (88.90mm) carapace length.

8.7.2 Maximum size: There is no maximum size for American lobster in the Outer Cape Cod LCMA.

8.7.3 Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two and one sixteenths inches by five and three-quarters (2-1/16 X 5¾) inches or two (2) circular escape vents measuring two and eleven sixteenths (2-11/16) inches.

8.7.4 Maximum trap size: 22,950 cubic inches.

8.7.5 Prohibition on possession of v-notched female American lobsters: It shall be unlawful for any person or vessel permitted or declared to fish in the Outer Cape Cod LCMA to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants.

8.7.6 Mandatory v-notching requirements: There is no v-notching requirement in the Outer Cape Cod LCMA.

8.7.7 Limits on landings by fishermen using gear or methods other than traps: Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to no more than one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

8.7.8 Trap Reduction Schedule for Outer Cape Cod LCMA: Beginning in 2002 and extending through 2008, a 20% reduction in the total number of lobster traps

allowed to be fished will occur in the Outer Cape Cod LCMA. An additional 5% reduction in the total number of lobster traps allowed to be fished per year may be employed in 2006 and 2007, if necessary, to meet lobster egg production goals and objectives.

(A) In order to control the expansion of fishing effort, an overall total number of traps allowed to be fished in the Outer Cape Cod LCMA has been established from the sum of individual maximum traps reported by each Outer Cape Cod LCMA lobster fisher on Massachusetts (MA) catch reports in the year 1998. A reduction of this total number of traps by 20% will be implemented and resulting individual trap allotments will be defined accordingly during the stock rebuilding period. The starting trap allotments for each lobster fisher in the year 2002 will be based on MA 2000 catch report statistics. Allotments will be debited thereafter as needed by MA Division of Marine Fisheries (DMF). Participants in the 2001 Outer Cape Cod lobster trap fishery, who received a license through the MA DMF or waiting list provisions during 2001, and as a result, have no prior lobster fishing history (i.e. filed catch reports) in the Outer Cape Cod LCMA, will receive a trap allotment based on proof of documentation of the number of traps they fished during 2001. These allotments will be apportioned from a percentage of the overall trap cap, not to exceed 2% of the total. Those who received a transferred license with an Outer Cape Cod LCMA fishing history will receive a starting trap allotment based on that history.

(B) The annual trap transfer period will be January 1 – March 31. Trap tags may be transferred among Outer Cape Cod LCMA lobster fishers to allow an individual business to build up or down within the maximum allowable 800 trap limit, however, a passive reduction in traps will occur with each trap transfer event at the rate of 10%. For example, if 100 trap tags are transferred to a lobster fisher, the net transaction received by that lobster fisher will be 90 and the overall Outer Cape Cod LCMA trap cap will be reduced accordingly. The trap cap may be adjusted downward over time through active and/or passive reduction measures until such time that the Fishing mortality rate is reduced to a level below F10%.

(C) Each time a lobster license is transferred to another lobster fisher within the Outer Cape Cod LCMA, the trap tag allowance associated with that license will be reduced by 10%. No new participants will be permitted to partake in the Outer Cape Cod LCMA lobster fishery without receiving trap tags through a transfer from those fishing within the established total trap cap.

(D) A trap haul-out period will occur from January 1 – March 31 each year to assist in the enforcement of the trap cap. There will be no lobster trap in the waters of the Outer Cape Cod LCMA during this time period.

9. BLUE CRAB

9.1 License required:

9.1.1 Commercial harvest: No person shall harvest blue crab for commercial purposes without a valid commercial marine fishing license.

9.1.2 Recreational harvest: No license is required for the recreational harvest of blue crab.

9.2 Harvest by RI residents only: The harvest of blue crabs by non-residents is prohibited. (RIGL 20-7-15)

9.3 Minimum size: Five (5) inches as measured across the shell from tip to tip of spike.

9.4 Season: Open all year.

9.5 Possession limit: Twenty-five (25) crabs.

9.5.1 Exception: The possession limit is unlimited if harvested by a scoop or crab net, trot, or hand line.

9.6 Harvest restrictions:

9.6.1 No person shall take blue crabs from the waters of the State between the hours of sunset and sunrise. (RIGL 20-7-15)

9.6.2 Egg-bearing blue crabs: No person shall take, offer for sale, or possess at any time any female blue crab bearing eggs visible thereon or from which the egg pouch or bunion shall have been removed. (RIGL 20-7-16)

10. HORSESHOE CRAB

10.1 License and permit required:

10.1.1 Commercial harvest: No person shall harvest horseshoe crabs for commercial purposes without a valid commercial marine fishing license and a Horseshoe Crab Harvest Permit obtained from the Director.

10.1.2 Recreational harvest: No person shall harvest horseshoe crabs for recreational purposes without a valid Horseshoe Crab Harvest Permit obtained from the Director.

10.1.3 Application for a Horseshoe Crab Harvest Permit shall be made on forms prescribed by the Director.

10.1.4 A Horseshoe Crab Harvest Permit is valid only for the calendar year of issuance.

10.1.5 The conditions of the permit require a weekly report of landings either by telephone or in writing. In addition, a monthly report shall be provided to the DFW on forms prescribed by the DFW. This report must include the number of crabs taken, locations of harvest, and use (bait, biomedical purposes, or other reasons). These reports shall not be made public and shall be kept only for statistical purposes.

10.2 Harvest by RI residents only: The harvest of horseshoe crabs by non-residents is prohibited.

10.3 Possession limit:

10.3.1 Recreational: Five (5) horseshoe crabs per person per day.

10.3.2 Commercial: A total allowable harvest (quota) of horseshoe crabs for the bait fishery and biomedical industry will be established annually. The quota will be the amount allocated to the State of Rhode Island by the ASMFC or as determined by DFW based on the current stock status.

10.3.3 Prohibition on possession of non-indigenous horseshoe crab species: No person shall possess or attempt to possess in the cooked or un-cooked (frozen) state any non-indigenous (non-native) Horseshoe Crab species without prior, written authorization by the Department. The only species of Horseshoe Crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*.

10.4 Harvest Restrictions:

10.4.1 No person shall harvest horseshoe crabs for commercial or recreational purposes on or within one hundred (100) feet seaward of Patience and Prudence Islands in Narragansett Bay.

10.4.2 No person shall harvest horseshoe crabs from waters or shoreline of the state during the period 48-hours preceding and 48-hours following the new and full moons during the months of May, June, and July, annually.

10.4.3 Bait and biomedical fishery: Horseshoe crabs employed in the biomedical industry for purposes of extracting bodily fluids shall be returned to the waters from which they came within 72 hours following the completion of the intended biomedical procedure.

11. VIOLATIONS FOR NON-COMPLIANCE

11.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16 as well as the ineligibility to reapply for a permit for the subject vessel for the remainder of the Summer sub-period.

12. PENALTIES

12.1 Judicially imposed penalty for violations: Unless otherwise specifically provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

12.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "*Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife"*.

13. APPEALS

13.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "*Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*"

13.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

14. EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine Regulations - Lobsters, Crabs, and Other Crustaceans", after due notice, are hereby adopted and filed with the Secretary of State this ~~16th day of May, 2014~~ to become effective 20 days after filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Given: 04/10/2015
Public Hearing: 05/11/2015
Filing date: 06/~~XX~~/2015
Effective date: 06/~~XX~~/2015
ERLID #: 8087

From: [Jeff Grant](#)
To: [Duhamel, Peter \(DEM\)](#)
Cc: [McNamee, Jason \(DEM\)](#); [Ballou, Robert \(DEM\)](#)
Subject: Re: Crustacean regulation re-write
Date: Tuesday, April 21, 2015 4:48:27 PM

All,

looks good to me. The only concern I had were for and 15.3. I want to make sure that legal feels comfortable with removing the language that it is illegal to set gear without acceptable escape vents. It silly, but I remember when the length of conch was 2 1/2", and enforcement had a difficult time because it did not say shell length. This is really semantics, but I don't want loopholes for people to take advantage. Other than that I see no issues. Jeff

On 4/20/15 12:31 PM, "Duhamel, Peter (DEM)" <peter.duhamel@dem.ri.gov> wrote:

Hi Jeff,

Jeff, you had the best eyes on the Shellfish Reg re-write so want to reach out to you in particular regarding this re-write. Please let me know any questions or concerns you have. Anytime day or early evening you want to meet to look over just let me know.

Thanks
Pete

Peter A. Duhamel, Principal Planner
RI Department of Environmental Management
Division of Fish and Wildlife, Marine Fisheries
3 Fort Wetherill Road
Jamestown, RI 02835
401-423-1927

From: Duhamel, Peter (DEM)
Sent: Thursday, April 16, 2015 11:18 AM
To: Ballou, Robert (DEM); Christopher G. Rein; Dave Monti ; Jeff Grant; Ken Booth; Michael Rice; Richard Bellavance; Richard Hittinger; William Mackintosh

Cc: Angell, Thomas (DEM); Brown, Patrick (DEM); Deacutis, Christopher (DEM); Duhamel, Peter (DEM); Erkan, Dennis (DEM); Gibson, Mark (DEM); Lake, John (DEM); Lengyel, Nicole (DEM); McNamee, Jason (DEM); Mello, Richard (DEM); Mercer, Jeff (DEM); Nichole Ares; Olszewski, Scott (DEM); Rosa, Tom (DEM); Satchwill, Richard (DEM); Schneider, Eric (DEM); Smith, Kevin (DEM); Powers, Gary (DEM)

Subject: Crustacean regulation re-write

Greetings Council members,

Regarding the workshop/public hearing scheduled for May 11th, please see the attached annotated companion document for the proposed Crustacean regs ("RIMFR Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs") re-write in MS word. The MS Word version allows the reader to more closely review the comments made relative to the selected text.

Due to the extent of changes and re-structuring of the regulation, it is administratively necessary to repeal the current reg and adopt in its place a new regulation. In order to communicate the changes in the most efficient manner, a

companion document has been developed that's shows all of the changes proposed in the usual annotated (~~stricken~~/underline) fashion, and provides rationale as to the modification proposed. This is the same approach we took with the Shellfish regulation re-write.

Also attached are a summary of the changes. As you can see, the actual amount of changes is quite small, with the bulk representing improvements (hopefully!) only to improve clarity and readability of the document.

When we re-did the Shellfish regulations, the public notice stated that there were "no regulatory or management changes with the proposed rulemaking", which may have resulted in only a cursory review by many, but which turned up to be not quite accurate due to several instances of proposed "clarifications" being more significant than originally thought. So for the Crustacean regulation re-write, we made sure not to make the same claim in the notice, while at the same time flagging the more significant additions or deletions from the regulations. However, as much as we took extra care with this re-write, there is always the possibility that we have made a change that could be considered by some readers to be more significant. So our aim here is to solicit a thorough read, so that any such language problems can then be discussed during the public comment period and corrected before the regs are filed.

If you have any questions or comments, please let me know. Or I would also be happy to meet and go over the entire regulation in detail.

Thank you
Pete

Peter A. Duhamel, Principal Planner
RI Department of Environmental Management
Division of Fish and Wildlife, Marine Fisheries
3 Fort Wetherill Road
Jamestown, RI 02835
401-423-1927

From: Duhamel, Peter (DEM)
To: "saklob@aol.com"
Cc: [Olszewski, Scott \(DEM\)](#); [McNamee, Jason \(DEM\)](#) (jason.mcnamee@DEM.RI.GOV); [Jeff Grant](#)
Subject: RE: Lobster/Crustacean regs
Date: Thursday, May 14, 2015 1:35:00 PM

Hi Greg. Scott and I have gone through again and made some minor edits based on your comments. Here's what we have:

- "Affixed" and "Attached" are synonymous (at least per MS Word). We went with "attached" as it was already being used. The regs would appear clear, but please see additional language for added clarity:

8.1.12 (new section in new regs) Commercial lobster trap tags:

(B) Tags shall be permanently attached to the trap bridge or central cross member **of each trap** and be clearly visible for inspection.

- Regarding the location of vents in the "terminal" parlor, please see below in **yellow**. So while we believe this requirement was adequately included in current regs, it may not have been abundantly clear due to its location. We therefore re-located this paragraph so that it immediately follows vent requirement language (as shown below). This hopefully will now allow the reader to see it more clearly, which is certainly the intent of the reg re-write.

~~15.13 Escape Vents Sizes — Penalty: Effective June 1, 2003, it shall be unlawful to fish for or take lobsters by use of any lobster trap within the territorial waters of the State of Rhode Island unless the trap is equipped with:~~

~~15.13.1 Subsection I:~~

~~15.13.1-1 **Minimum escape vent size:** **A At least one** rectangular escape vent with an unobstructed opening **measuring** not less than 2 inches (50.8mm) by 5-3/4 inches (146mm); or **(8.1.8(A))**~~

~~15.13.1-2 **Prior to December 31, 2004 the requirement will be two circular escape vents, each with an unobstructed opening not less than 2 — 1/2 inches (63.5mm) in diameter. Beginning December 31, 2004 at 12:01 AM the requirements will be** two circular escape vents, each with an unobstructed opening not less than 2-5/8 inches (66.68mm) in diameter; or **(8.1.8(B))**~~

~~15.13.1-3 An unobstructed gap caused by raising both ends of a bottom lath in the parlor section 2 inches (50.8mm) from the bottom; or **(8.1.8(C))**~~

~~15.13.1-4 An unobstructed gap caused by separating both ends of 2 vertical laths on the end of the parlor section by 2 inches (50.8mm); or **(8.1.8(D))**~~

~~15.13.1-5 An unobstructed gap created by cutting wires in a wire trap in such~~

a manner as to meet the minimum size and number of vents required ~~under sections 15.12.2-1 and 15.12.1-1~~ **in accordance with this section. (8.1.8(E))**

15.13.2 **Subsection II:** The vent or gap shall be installed or made in **the each** parlor section on the sides, end panel or door of the trap. Traps equipped with multiple parlor sections and having a central entrance funnel(s) separating the parlor sections must adhere to the escape vent requirements specified above in each parlor section. Traps equipped with multiple parlor sections that are linked in series (“in-line”) must adhere to the escape vent requirements specified **above in the terminal, or end parlor section.** ~~Any fisherman not complying with the provisions of Section 1 or Section 2 shall be fined not more than twenty dollars (\$20) for each trap not conformed to the specifications. [PD1] (Penalty 20-1-16 – Part 1.16 and 15.12) (8.1.8(F))~~

15.13.1-6 Lobster traps not constructed entirely of wood must contain a ghost panel with the following specifications: **(8.1.8(G))**

(a) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3-3/4 inches (9.53 cm) by 3-3/4 inches (9.53 cm).

(b) The panel must be constructed of, or fastened to the trap with one of the following untreated materials: wood lath, cotton, hemp, sisal, or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.

(c) The door of the trap may serve as the ghost panel if fastened with a material specified in previous paragraph.

(d) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

- Your last comment regarding vent size in LCMA 1 – Good catch! We revised accordingly.

C. **Minimum Escape Vent Size:** ~~For any person or vessel permitted or declared to fish in LCMA 1, all lobster traps fished in LCMA 1, whether fished commercially or recreationally, must contain~~ **In each parlor section of the lobster trap,** at least one (1) rectangular escape vent **with an un-obstructed opening measuring not less than 1 and 15/16 inches by 5-3/4 inches (49.21mm X 146mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than 2 and 7/16 inches (63.5mm) diameter.** ~~according to the following schedule: (8.2.3)~~

YEAR One (1)	Rectangular Escape Vent	Two (2) Circular Escape Vents
2007*	2 inches by 5-3/4	2-1/2 inches

Thanks again! Please let me know if these changes satisfy your concerns or if you would like additional modifications. Please don't hesitate to let me know, as minor modifications can often have significant meaning. It won't be until after the Council meeting on June 1st until we file the regs. Comments can also be made at the Council meeting as well.

Peter A. Duhamel, Principal Planner
RI Department of Environmental Management
Division of Fish and Wildlife, Marine Fisheries
3 Fort Wetherill Road
Jamestown, RI 02835
401-423-1927

From: saklob@aol.com [mailto:saklob@aol.com]
Sent: Monday, May 04, 2015 10:13 PM
To: Duhamel, Peter (DEM)
Subject: Re: Lobster/Crustacean regs

Hi Peter,

The new regulations are certainly streamlined. I looked through the companion document and found a few things I wanted to mention. On page 20 in section 15.13.1-1 it mentions having a legal escape vent in each parlor section; I think that should be legal escape vent in the "terminal" parlor. I saw that the regulation is further explained in 15.3.2 on the next page to delineate the difference but in my opinion some ambiguity is introduced in the first section.

In sections 15.14.1 and 15.14.1-13 it might be better to include "affixed" at the end (after "State of Rhode Island lobster trap tag"). The proposed configuration says that a trap tag is required but not necessarily that the tag has to be attached to the trap. It might even be possibly interpreted as only a *single* trap tag is required to set lobster traps. I would suggest a little more detail is necessary regarding the fact that a tag is supposed to be physically attached to *each* trap. Just trying to cover the bases.

On page 46 in section 8.2 for LCMA 1 the legal vents are 1 15/16" and 2 7/16" unless they just changed very recently? The same goes for LCMA 6.

Thanks,
Greg

-----Original Message-----

From: Duhamel, Peter (DEM) (DEM) <peter.duhamel@dem.ri.gov>
To: saklob <saklob@aol.com>
Sent: Mon, May 4, 2015 12:55 pm
Subject: Lobster/Crustacean regs

Greg here you go. Thanks for taking a look

Peter A. Duhamel, Principal Planner
RI Department of Environmental Management
Division of Fish and Wildlife, Marine Fisheries
3 Fort Wetherill Road
Jamestown, RI 02835
401-423-1927

Hearing Item #4: Amendments to RIMFR “Part XVI – Menhaden”, regarding management of the commercial menhaden fishery

- ◆ Use of non-directed gear: This proposal stems from an industry request to allow access to menhaden commercially during closed periods if using non-directed gear.
- ◆ Proposed regulations (3 sections):

16.2.3 Possession Limits:

(B) No commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset, unless the fisher is using a non-directed gear type for menhaden. Non-direct gear will be defined as cast nets, floating fish traps, and rod and reel.



Hearing Item #4 cont'd:

16.2.7 Harvest of Menhaden in Permanently Closed Areas: No person harvesting menhaden by any fishing method shall possess more than two hundred (200) menhaden per vessel per calendar day in any closed area of the Management Area as set forth above, unless the individual is properly commercially licensed to harvest menhaden and is not using purse seine gear.

16.3 Landing of Menhaden in RI under State Quota Program:

16.3.2 All commercial Menhaden operations conducted in the Management Area, prior to and after the State's quota has been reached, are subject to the provisions of section 16.2, unless the fisher is using a non-directed gear type for menhaden, as defined in 16.2.3(B) of this rule.



Hearing Item #4 cont'd:

- ◆ Directed fisheries: This proposal is to clarify existing regulations.
- ◆ Proposed regulation:

16.4 Episodic Event Set Aside Program:

16.4.3 Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of sub-sections 16.2.3 (A) and (B), but ~~are subject to the provisions of section 16.2 with regard to operations conducted in the Management Area, and~~ are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.



Hearing Item #4 cont'd:

- ◆ Fall Opening of the Narragansett Bay Marine Life Management Area: This stems from an industry request to allow limited access to menhaden commercially if the fall pulse of fish comes in to Narr. Bay.
- ◆ Proposed regulation:

16.9 Fall Opening of the Narragansett Bay Marine Life Management Area:

16.9.1 Beginning September 1 of each year, the area south of a line from the Jamestown and Newport Bridges, and the area south of a line from Fogland Point to Sandy Point in the Sakonnet River, to the southern extent of the Narragansett Bay Marine Life Management Area as defined in 16.2, will be open to the harvest of menhaden by purse seine as long as the states quota has not been exhausted or if the Episodic Event Set Aside Program has been enacted in RI.

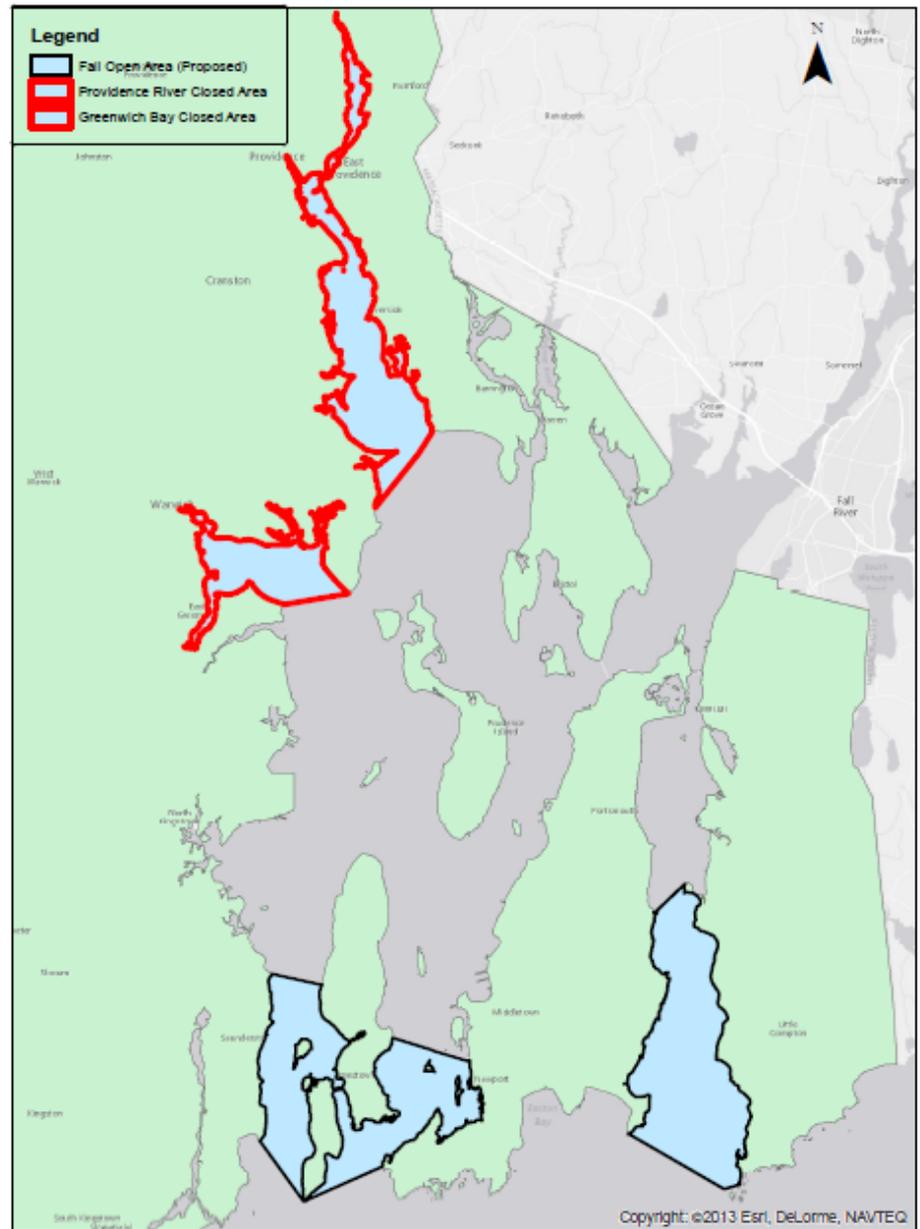
16.9.2 A possession limit of 25,000 lbs will be allowed in this area under the conditions defined in 16.9.1.



Hearing Item #4 cont'd:



Narragansett Bay Marine Life Management Area



0 1.5 3 6 Miles



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT



**RHODE ISLAND MARINE FISHERIES
REGULATIONS**

**Part XVI
Menhaden**

May 8, 2014
Proposed/annotated regulations
Public hearing
May 11, 2015

AUTHORITY: Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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PURPOSE

The purpose of these rules and regulations is to supplement and simplify and/or clarify existing regulations in order to more efficiently manage the marine resources of Rhode Island.

AUTHORITY

These regulations are adopted pursuant to Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

DEFINITIONS

See Rhode Island Marine Statutes and Regulations, Part I, '1.3.

SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

SUPERSEDED RULES AND REGULATIONS

On the effective date of these rules and regulations, all previous rules and regulations, and any policies regarding the administration and enforcement of Part XVI shall be superseded.

Public Hearing Item #4
Commercial Menhaden

R.I. Marine Fisheries Regulations
PART XVI - MENHADEN REGULATIONS

16.1 Prohibition on the Harvesting of Menhaden for Reduction Processing: The taking of Menhaden for reduction (fish meal) purposes is prohibited in Rhode Island waters. A vessel will be considered in the reduction (fish meal) business if any portion of the vessel's catch is sold for reduction.

16.2 Narragansett Bay Marine Life Management Area: This area shall include the east and west passages of Narragansett Bay, Mt. Hope Bay, and the Sakonnet River, and be bordered on the south by a line from Bonnet Point to Beavertail Point to Castle Hill Light. The southern boundary further extends from Land's End to Sachuest Point and then to Sakonnet Light. The following regulations govern all commercial Menhaden operations conducted in the Narragansett Bay Management Area (Management Area).

16.2.1 Gear Restrictions: The use of purse seines shall be permitted only in accordance with the following terms and conditions:

(A) All nets shall be less than 100 fathoms (600 feet) in length and less than 15 fathoms (90 feet) in depth.

(B) All nets shall be marked with fluorescent-colored float buoys, distinguishable from the other float buoys on the net, at intervals of 50 feet.

(C) Annually, prior to use, all nets shall be inspected and certified as being in conformance with the provisions of this section by the DEM Division of Law Enforcement (DLE). Once inspected and certified, a net may be used throughout the duration of the calendar year in which it was inspected, provided that it is not altered with regard to any of the provisions of this section. Any net that is altered with regard to any of the provisions of this section must be re-inspected and recertified prior to use.

16.2.2 Vessel Restrictions: When engaged in the commercial Menhaden fishery, vessels may not have a useable fish storage capacity greater than 120,000 pounds. Prior to the commencement of fishing, for any vessel not previously certified through this process, each vessel must be inspected by a certified marine surveyor and assessed with regard to its fish storage capacity. A document reflecting the assessment must be kept aboard the vessel at all times. Any vessel with a fish storage capacity greater than 120,000 pounds may only engage in the fishery if the excess capacity is rendered unusable in accordance with the specifications set forth in the assessment.

16.2.3 Possession Limits:

(A) When the commercial Menhaden fishery opens, per section 16.2.5 of this part, the possession limit shall be 120,000 pounds per vessel per calendar day. The possession limits may be modified by the Division of Fish & Wildlife (DFW) on the basis of the estimated weekly standing stock of Menhaden in the Management Area derived, in accordance with section 16.2.5, via approved scientific monitoring methods.

(B) No commercial Menhaden fisher shall possess Menhaden or otherwise engage in the taking of Menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset, **unless the fisher is using a non-directed gear type for menhaden. Non-direct gear will be defined as cast nets, floating fish traps, and rod and reel.**

16.2.4 Reporting Requirements: In order to permit the DFW to monitor the fishery, any fisher intending to engage in the commercial Menhaden fishery shall notify the DLE at (401) 222-3070 prior to taking or coming into possession of Menhaden in the Management Area. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification which may have been established in the possession limit for menhaden. Each commercial Menhaden fisher shall also contact the DFW at (401) 423-1940 at the end of each trip to report the amount of menhaden in possession by the fisher in pounds and area fished.

16.2.5 Opening/Closure of Fishery Based on Biomass Estimates:

(A) **Biomass “Floor”:** On an annual basis beginning every spring, the DFW, utilizing approved scientific monitoring methods, shall conduct regular estimates of the weekly standing stock of Menhaden present in the Management Area. On the basis of those estimates, the DFW shall issue a notice when the estimated weekly standing stock reaches a threshold of 1,500,000 pounds, and the DFW shall open the commercial fishery, at an initial possession limit of 120,000 pounds per vessel per calendar day, when the estimated weekly standing stock reaches 2,000,000 pounds. If, at any time, the stock estimate drops below 1,500,000 pounds, the DFW shall close the commercial fishery until further notice.

(B) **Biomass “Ceiling”:** When 50% of the estimated weekly standing stock of menhaden stock present in the management area, above the minimum threshold amount of 1,500,000 pounds, is harvested, the DFW shall close the menhaden fishery until further notice.

(C) A possession limit of 6,000 lbs per vessel per day will be allowed once the Management Area closes.

16.2.6 Permanent Closures: The following areas are permanently closed to purse

seining for menhaden:

(A) Providence River: All waters north of a straight line running from Rocky Point to Conimicut Light to Nayatt Point.

(B) Greenwich Bay: All waters in Greenwich Bay west of a line from the flag pole on Warwick Point to Sandy Point.

16.2.7 Harvest of Menhaden in Permanently Closed Areas: No person harvesting menhaden by any fishing method shall possess more than two hundred (200) menhaden per vessel per calendar day in any closed area of the Management Area as set forth above, **unless the individual is properly commercially licensed to harvest menhaden and is not using purse seine gear.**

16.3 Landing of Menhaden in RI under State Quota Program: A total annual statewide quota for Menhaden shall be the most recent allocation as established for the State by the Atlantic States Marine Fisheries Commission (ASMFC). The quota shall pertain solely to landings of Menhaden in RI and shall not pertain to the possession of Menhaden in RI waters prior to landing. The quota may only be harvested and landed by fishermen licensed and vessels duly authorized in accordance with the provisions of Title 20 of the General Laws and in accordance with all rules and regulations promulgated by the DEM. The State's Menhaden quota will be managed as follows:

16.3.1 The landing limit for Menhaden in RI will be unlimited until the quota has been reached, as determined by the DFW. Once the quota has been reached: (i) the landing limit will be zero for vessels associated with directed fisheries for Menhaden, including but not limited to purse seine operations, and (ii) the landing limit will be 6,000 pounds per vessel per day for all vessels not associated with directed fisheries for Menhaden. Non-directed fisheries for Menhaden include but are not limited to cast net fishing and the floating fish trap fishery.

16.3.2 All commercial Menhaden operations conducted in the Management Area, prior to and after the State's quota has been reached, are subject to the provisions of section 16.2, **unless the fisher is using a non-directed gear type for menhaden, as defined in 16.2.3(B) of this rule.**

16.4 Episodic Event Set Aside Program:

16.4.1 After the State's quota has been reached, if RI is approved to participate in the Episodic Event Set Aside Program for Menhaden, as established by the ASMFC, the landing limit for menhaden will be 120,000 pounds per vessel per day for vessels associated with directed fisheries for Menhaden, until the Set Aside quota has been exhausted, as determined by the ASMFC and/or the DFW, at which time the program will end and the directed fishery will close. Vessels that target and land Menhaden in RI under this program must harvest only from RI waters and, if operating in the Management Area, must adhere to all of the provisions as specified

in these regulations.

16.4.2 Reporting Requirements: Any commercial fisher intending to target Menhaden under the Episodic Event Set Aside Program for Menhaden must notify the DLE at (401) 222-3070 prior to taking or coming into possession of Menhaden. At the time that a fisher advises the DLE of his/her intent to harvest menhaden, the DLE shall notify said fisher of any modification to the possession limit for menhaden that is applicable to operations conducted in the Management Area. Each said fisher shall also contact the DFW at (401) 423-1940 at the end of each daily trip or within four hours thereof to report the amount of Menhaden landed by the fisher in pounds. These Menhaden-specific reporting requirements are in addition to all other existing commercial fishing reporting requirements as set forth in the RI Marine Fisheries Regulations (RIMFR).

16.4.3 Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of sub-sections ~~16.2.3~~~~16.3.2~~(A) and (B), but ~~are subject to the provisions of section 16.2 with regard to operations conducted in the Management Area, and~~ are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.

16.4.4 The Episodic Event Set Aside Program will end on November 1 annually or when the set aside quota has been harvested, whichever first occurs. If the Episodic Event Set Aside Program ends prior to November 1, a notice will be filed with the Secretary of State.

16.5 No fisher may transfer or attempt to transfer Menhaden to another fisher.

16.6 Violations for Non-compliance:

16.6.1 If the DFW and/or the Chief of the Division of Law Enforcement determine that there has been non-compliance with the provisions of these regulations or a permit agreement, the owner and/or operator of the permitted vessel shall be advised of such determination and the specific grounds therefore in writing by delivery of same by certified mail or by personal service upon the owner or operator in compliance with the requirements set out in Rule 4 of the Rhode Island Superior Court Rules of Civil Procedure. The determination shall specifically include notice that an opportunity for an impartial hearing is available before the Administrative Adjudication Division pursuant to R.I. Gen. Laws Chapter 42-17.7 relative to either or both the finding that sufficient evidence exists of non-compliance with the provisions of these regulations or the permit agreement as well as the termination of the permit and or the imposition of a penalty pursuant to RIGL 20-1-16.

16.7 Penalties:

16.7.1 Judicially imposed penalty for violations: Unless otherwise specifically

provided, the violation of any law or rule or regulation relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) or imprisonment for up to ninety (90) days, or both (RIGL §20-1-16)

16.7.2 Additionally, a person may be subject to the imposition of a administrative penalty pursuant to DEM's "*Rules and Regulations Governing the Suspension/Revocation of Commercial Marine Fisheries, Shellfish Buyer, Lobster Dealer, Finfish Dealer, and Multi-purpose Dealer, licenses issued pursuant to Title 20 of RIGL "Fish and Wildlife"*."

16.8 Appeals:

16.8.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's "*Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*"

16.8.2 Enforcement Action: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal in accordance with RIGL Chapter 42-17.7 and DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

16.9 Fall Opening of the Narragansett Bay Marine Life Management Area:

16.9.1 Beginning September 1 of each year, the area south of a line from the Jamestown and Newport Bridges, and the area south of a line from Fogland Point to Sandy Point in the Sakkonet River, to the southern extent of the Narragansett Bay Marine Life Management Area as defined in 16.2 will be open to the harvest of menhaden by purse seine as long as the states quota has not been exhausted or if the Episodic Event Set Aside Program has been enacted in RI.

16.9.2 A possession limit of 25,000 lbs will be allowed in this area under the conditions defined in 16.9.1.

EFFECTIVE DATE

The foregoing rules and regulations "Rhode Island Marine Fisheries Regulations, Part XVI - Menhaden" after due notice, are hereby adopted and filed with the Secretary of State this 8th day of May, 2014 to become effective 20 days from filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35, Administrative Procedures, of the Rhode Island General Laws of 1956, as amended.

Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~02/21/2014~~ 04/10/2015
Public Hearing: ~~03/25/2014~~ 05/11/2015
Filing date: ~~05/08/2014~~
Effective date: ~~05/28/2014~~
ERLID# ~~7676~~



Rhode Island
Department of Environmental Management
DIVISION OF FISH AND WILDLIFE
3 Fort Wetherill Road
Jamestown, RI 02835

401 423-1923
FAX 401 423-1925

SUMMARY OF PUBLIC HEARING COMMENTS

A public hearing was held on **May 11, 2015** at 6:00 PM Corless Auditorium, URI Narragansett Bay Campus, South Ferry Road, Narragansett, RI. Approximately 25 persons from the public were present.

Hearing Officer: B. Ballou

DEM Staff: L. Mouradjian, G. Powers, J. McNamee, S. Olszewski, P. Duhamel, Sgt. Ed Cabral.

Public comments were solicited on the following four items:

- 1) Amendments to **“RIMFR - Finfish”**, regarding regulations for Blueline tilefish.
 - *No comments were made for this hearing item.*
- 2) Amendments to **“RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”**, regarding the application period for transfer of lobster trap allocation; and landing limits of lobsters taken by gear or methods other than trap.
 - Application period for LTA transfer:
 - *P. Duckworth: Not in support of the proposal as could create a hardship for the fishermen that may need additional time to make business decisions;*
 - *P. Brodeur: Not in support of the proposal.*
 - Landing limits of lobsters taken by gear or methods other than trap:
 - *J. Carvalho: Not in support of the proposal;*
 - *P. Duckworth: Not in support of the proposal; in support of a reduced possession limit, either as number of lobsters or poundage, in order to provide some access of the resource to non-lobster fishermen as a bycatch.*
- 3) To repeal **“RIMFR - Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs”**, and **adopt** in its place a new regulation entitled **“RIMFR - Lobsters, Crabs and Other Crustaceans”**, in order to effectuate a re-organization of the structure of the regulation to improve its readability; and to remove unnecessary duplicative, administrative, and/or non-regulatory statutory language.
 - *No comments germane to this proposal were made.*

4) Amendments to RIMFR **“Part XVI – Menhaden”**, regarding management of the commercial menhaden fishery;

- Section 16.2.3 - Possession Limits: (B) No commercial menhaden fisher shall possess menhaden or otherwise engage in the taking of menhaden anytime on Saturday, Sunday, on any official state holiday, or prior to sunrise or following sunset, **unless the fisher is using a non-directed gear type for menhaden. Non-direct gear will be defined as cast nets, floating fish traps, and rod and reel.**
- Section 16.2.7 - Harvest of Menhaden in Permanently Closed Areas: No person harvesting menhaden by any fishing method shall possess more than two hundred (200) menhaden per vessel per calendar day in any closed area of the Management Area as set forth above, **unless the individual is properly commercially licensed to harvest menhaden and is not using purse seine gear.**
 - *M. Bucko:* In support of these proposals to maintain fresh bait menhaden over the weekend;
 - *R. Jobin:* In support of these proposals;
 - *J. Macari:* In support of these proposals;
 - *J. Donahue:* In support of these proposals;
 - *R. ??:* In support of these proposals;
 - *J. Barker:* Opposed to the proposal in that he feels that there are plenty of non-closed areas to fish, and that any opening in the closed area results in additional pressure on the fishery.
- Section 16.3 - Landing of Menhaden in RI under State Quota Program:
Section 16.3.2 All commercial Menhaden operations conducted in the Management Area, prior to and after the State’s quota has been reached, are subject to the provisions of section 16.2, **unless the fisher is using a non-directed gear type for menhaden, as defined in 16.2.3(B) of this rule.**
 - *M. Bucko:* In support of the proposal;
 - *R. Jobin:* In support of the proposal;
 - *J. Macari:* In support of the proposal;
 - *J. Donahue:* In support of the proposal;
 - *J. Barker:* In support of the proposal except in closed areas currently established.
- Section 16.4 Episodic Event Set Aside Program:
Section 16.4.3 Vessels not associated with directed fisheries for menhaden may continue to harvest and land in RI up to 6,000 pounds per vessel per day as bycatch. Such vessels are not subject to the provisions of sub-sections 16.2.3 (A) and (B), but ~~are subject to the provisions of section 16.2 with regard to operations conducted in the Management Area, and~~ are subject to all existing commercial fishing reporting requirements as set forth in the RIMFR.
 - *J. Donahue:* In support of the proposal;

- Section 16.9 - Fall Opening of the Narragansett Bay Marine Life Management Area:
 - R. Jobin: *In support of the proposal;*
 - G. ?? (unable to hear last name): *In support of the proposal;*
 - R. ?? (did not state last name): *In support of the proposal;*
 - M. Bucko: *In support of the proposal*
 - J. Barker: *In support of the proposal;*
 - J. Macari: *In support of the proposal;*
 - J. Donahue: *In support of the proposal.*

Prepared by P. Duhamel

Rhode Island Fishermen's Alliance

P.O. Box 337
East Greenwich, RI 02818

May 18, 2015

The following is submitted for the record regarding proposed regulatory changes by the Division of Fish and Wildlife that were made at the Rhode Island Marine Fisheries Public Hearing held on May 11, 2015.

1. The Alliance is opposed to the proposed changes regarding the “*transfer of lobster trap Allocation*” (section 15.14,2-12).

This proposal by the department further facilitates the direct exchange of limited issue lobster trap tags from one person to another. Limited issue lobster trap tags are in effect an exclusive license to fish traps designed specifically to take lobsters. The proposed rule allows for the transfer or exchange of the limited issue tags from one person to another with the accompanying exchange of money between the parties therefore creating a private property right for the possessor of the limited issued lobster trap tags. The director has no authority to create a property right of access to the RI marine fisheries and is prohibited by RIGL 20-2.1-5 *Resident licenses* (4) “*Issuance of license shall not be deemed to create a property right such that the license can be sold or transferred by license holder; fishing licenses shall be surrendered to the state upon their non-renewal, forfeiture or revocation.*”

Note:

Every RI resident possesses a fundamental right to equal access to the marine fisheries and a fundamental right to engage in the trade of fishing. No person fishing commercially possesses a private right of access but is allowed by his commercial license to exercise the rights of others for their benefit. The lobster resource and access to that resource belongs to all the people equally and cannot be made the private property of individuals. The director has no constitutional authority to take the people's wealth in the marine resources and grant it to private individuals. The state may lease limited access tags for a fixed period of time and set a fixed price per tag, a graduated price for multiple tags or simply place tags out to the highest bidder. It has no authority to create an exclusive property right of access out of whole cloth or thin air and give it to private individuals. (See attached article *PRIVATIZING RIGHTS OF ACCESS FOR THE RHODE ISLAND LOBSTER FISHERY*, Revised April 200, Proxy Commissioners Gil Pope & Jerry Carvalho.) Submitted for the record

2. The Alliance is opposed to the proposed changes regarding “*landing limits of lobsters taken by gear or methods other than trap*” (section 15.18).

This proposal intends to magnify the present discrimination in access to the commercial lobster fishery. Presently, any holder of a limited issue lobster trap tag may take and possess unlimited numbers of lobsters per day while all other methods are limited to one hundred (100) lobsters per

Rhode Island Fishermen's Alliance

P.O. Box 337
East Greenwich, RI 02818

day. This proposal would disenfranchise entirely all other similarly licensed fishermen using all other methods of harvest except lobster traps, otter trawls and gill nets. Those issued exclusive access lobster trap tags will still be unlimited in the number of lobsters they are allowed to take per day.

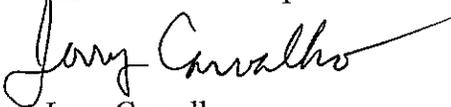
Note:

The RI lobster management plan is flawed because unlike all other species management plans, the lobster plan relies on limiting access through discrimination but allows unlimited landings for those gifted with the access tags. On its face the plan creates exclusivity, perpetuates selfishness, and is doomed to fail as a resource management tool. Limiting the number of available lobster trap tags simply increases the exchange value to those who possess them. Discrimination in access will not determine how much of the commercial resource will be harvested but will simply change who will have access to that wealth. To add insult to this proposal, the holders of exclusive trap tags are not discriminated against in access to all other marine species including several quota limited fin fisheries. This proposal to expand discrimination in access shocks the conscience of the average person.

3. The Alliance supports the proposal for the Menhaden fishery.

Note:

Rhode Island was the first state to utilize the menhaden resource and has a long history in that endeavor. Over the last sixty years, RI fishermen have landed millions of pounds of menhaden per year with a recorded high in 1960 of twenty four and half million pounds. The resource has not substantially changed over those years but RI has allowed itself to be reduced by a quota limit of less than one hundred thousand pounds for the entire year. Out of state fishermen can come into RI waters and take unlimited numbers of menhaden so long as they don't land them at a RI port. Embarrassment and humiliation are the only words that I can use to describe such failure of leadership.



Jerry Carvalho
Vice President, RIFA

A CRITICAL VIEW

PRIVATIZING RIGHTS OF ACCESS

FOR

THE RHODE ISLAND

LOBSTER FISHERY

American Lobster Plan, Amendment III, Addendum VII
Report to RIDEM Director Michael Sullivan, 3/31/06
Atlantic States Marine Fisheries Commission
Proxy Commissioners Gil Pope & Jerry Carvalho
For RI General Assembly Representative Eileen Naughton

Revised April 2007

PROBLEM PRESENTED

In 2002, the General Assembly enacted the RI Commercial Fisheries Licensing Act. The act allowed for the application of statutory and regulatory rules of discrimination in granting or denying access to the commercial marine fisheries for RI residents.

The Atlantic States Marine Fisheries Commission, through its American Lobster Management Plan, has mandated that RI apply limited access to the lobster trap fishery in RI waters; that limited access trap tags be granted to qualified individuals as a private property transferable right; that RI apply the standards established by the plan for qualification in the issuance of lobster trap access tags; that a limit be placed on the total number of lobster traps employed in RI waters; and that the State of Rhode Island engage in the regulation and enforcement of the lobster fishery in federal waters.

The director of the Department of Environmental Management (DEM) has employed the use of RI lobster logbooks as qualifying criteria for the allocation of limited access to the lobster fishery and granted private property transferable rights of access to qualifying individuals through the issuance of limited access trap tags.

Are these actions lawful under the Rhode Island Constitution and Rhode Island legislative law?

A CRITICAL VIEW OF PRIVATIZING RIGHTS OF ACCESS FOR THE RHODE ISLAND LOBSTER FISHERY

Introduction

The Magnuson Stevens Fishery Conservation and Management Act (MSCMA) of 1983 extended US jurisdiction over the marine fisheries resources from 12 miles out to 200 miles in order to address the negative affects of foreign fishing in US waters. The Act was amended by Congress in 1996, and that amendment is commonly referred to as the “Sustainable Fisheries Act” (SFA). It mandated the development and implementation of Fisheries Management Plans (FMPs) in order to achieve and maintain, on a continuing basis, the optimum yield from each fishery. There are nine area councils that are overseen by the National Marine Fisheries Service (NMFS), a branch of the National Oceanic and Atmospheric Administration (NOAA) and are responsible for the development of these FMPs.

The Atlantic States Marine Fisheries Compact, authorized by Congress in 1942, was created for the cooperative management of inter-state marine fisheries. The Atlantic States Marine Fisheries Commission (ASMFC) is charged with creating FMPs for the shared fisheries of each member state from Maine to Florida to a distance of 3 miles from shore. The American Lobster fishery was originally managed through The New England Fisheries Management Council. In 1999, the responsibility for conservation and management of the American Lobster fisheries was transferred to the Commission. Lobster management was broken down into 6 geo-political management areas. The management area encompassing Rhode Island and Southern New England (SNE) waters is designated as Area 2. Biologists have declared Area 2 as “over-fished” and have called for greater conservation measures with emphasis on reducing both the numbers of participants and the overall numbers of lobster traps.

The American Lobster has been fished since the earliest beginnings of our nation and during that time has experienced periods or cycles of natural abundances and declines due to varying conditions. Accompanying many successive years of increasing biomass that peaked sometime in the 1990’s, the industry expanded with a subsequent increase in landings. Beginning in 2000, warming temperatures, disease, pollution, and over population contributed to a large spike in mortality that resulted in a reciprocal drop in landings. Lobster fishermen, biologists, administrators, and politicians all had their own ideas and goals in addressing the sudden lack of abundance of the resource.

Licensing History

The trade of fishing in Rhode Island has a long history and has been an essential part of RI society and its economy. Until recently, any resident who wished to engage in the trade was required to apply for a license and pay a fee to the state. Licenses have

been deemed necessary in order to regulate the harvest of fisheries resource for the greater benefit of all residents.

In the 10 year period from 1990 to 1999, the total numbers of commercial fishing licenses issued dropped from over 5300 to just over 3200. Licensing continued to be available and opened to all residents during that 10 year period. The number of active licenses had decreased by approximately 2100 in number despite the availability to all resident applicants. The number of commercial fishermen engaged in the trade at any one time will always be reflected by the natural abundance levels of fish and competitive economic forces present at the time.

A small but highly vocal group of members from the RI Lobstermen's Association (RILA) had been lobbying the RI General Assembly continuously since 1992 to stop the issuance of any new RI commercial fishing licenses. Their stated reason for requesting the limit or moratorium on the issuance of new licenses was two fold. The first was to address the problems associated with the non-resident landing of limited-harvest species that had been assigned to individual states by quotas. The second was to simplify and upgrade what had become an antiquated and cumbersome state licensing system. In 1999/2000, the director of DEM, Jan Reitsma, initiated a two-year, two-phase series of licensing workshops to explore how to reform the system. However, it soon became apparent at that time that the Lobsterman's Association's real objective was to establish in the lobster fishery a private property, transferable right of access. This limited access right was to be granted to those already established in the business and was offered as the only possible solution to over-fishing and the so-called "race for fish". As a result of this surge for change, the RI Commercial Fisheries Licensing Act of 2002 was adopted and signed into law by then Governor Lincoln Almond.

The General Assembly, through this Licensing Act and at the advice of former director Reitsma, invented a new category of and an unlimited number of basically worthless licenses, established statutory rules of discrimination for new license applicants, and codified into law a limited entry or no entry program for different limited harvest species. Unfortunately, individual avarice and political agendas have too often been the driving forces behind federal and state changes in fisheries law and policy. Finfish species which are subject to a limited harvest plan, quahogs, and lobsters are generally the species that commercial fishermen can competitively make money with, as these are the species with a lucrative commercial market. This Licensing Act ended the moratorium on new licenses but only through a clever and manipulative maneuver to grant new licenses with little or no real purpose or economic value.

What has now become glaringly apparent is that too little attention was given to constitutional law or historical legal precedent in the development of these dramatic licensing changes. Although originally intended to address both the non-resident landing of quota-limited species allocated to RI and also to simplify and upgrade what had become a cumbersome licensing system, the new Licensing Act failed to do either.

Science

The role of science should be to lend an objective and dispassionate perspective to the management issues. However, fisheries management is too often politically agenda driven. Fishermen's livelihoods are many times damaged or even lost by the balancing of science with the politics of the moment. Most fisheries policies, management plans, regulations, and laws that are implemented, have needed the support of science. Too often, the greater end result of these policies has simply been to provide economic protection for one user group at the expense of another. This latest Lobster Plan Addendum has less to do with research based science and more to do with privatization and allocation of the wealth of the resource.

In the 2004 seven million-dollar study on the recent collapse of the lobster fishery in Long Island Sound, "*over crowding*" was but one of four likely causes cited. There were purportedly too many lobsters living too close to one another which helped to facilitate the spread of a fatal disease. The simple and easily enforceable restrictions applied for lobster conservation in the 1990's had proven so successful that landings reached a record high and the total biomass was at its greatest numbers. Absent from causes cited for the collapse in the study were both **over-fishing** and **too many lobster traps**. (See NY/CT Sea Grant's Long Island Sound Lobster Initiative") The conclusions were the consensus of seventeen independent study groups. Yet, when disease and increased mortality spread into RI and SNE waters due in part to these "*increases in population densities*", the plan of salvation has been to reduce the number of fishermen and reduce the number of pots.

RI Division of Fish and Wildlife Deputy Chief, Mark Gibson has stated that in order to have a healthy, sustainable and viable fishery, higher numbers of adult lobsters must be maintain in the resource. This is in comparison to heavily fished yet continual increasing large biomass of the 1990's. Gibson claims that we can achieve this conservation goal by so greatly reducing the number of participants and the number of traps, that the industry in RI will no longer have the logistical capacity to fully exploit the available resource. The larger scientific community including NY, CN and MA still cannot tell us what the total biomass of lobsters in the SN stock should be or how few lobster fishermen will be enough. Gibson has received little administrative guidance from DEM directors on these matters and DEM legal council has thus far found no legal failings with the provisions of the latest lobster plan. In contrast to the objectives and effort control tools in the Area 2 plan, the state of Maine fishery is doing a study on the conservation benefits of deploying **high numbers of lobster traps**, claiming that the feeding and sheltering of lobsters creates a "farming" effect resulting in greater sustainability and proliferation of the resource.

Gibson also serves as DEM director's proxy to the ASMFC Lobster Management Board. In addressing the over-fishing status of Area 2 lobsters, Gibson has moved the Lobster Management Board to consider common management tools used in every other FMP that the ASMFC has created. Annual quota on harvest, universal daily possession limits and /or closed seasons were all viable methods proposed for limiting the lobster harvest. The RILA has robustly rejected Gibson's motions and instead used their political influence to persuade the ASMFC Lobster Management Board to adopt their own proposals. What had not been achieved by the RILA in their drive for privatization

at the state General Assembly level had now been accomplished at the ASMFC level. Thus, we are now confronted with Amendment III, Addendum VII of the Lobster Management Plan and the privatization of access to the lobster fishery.

Policy

An expanding bureaucracy has been created to climb aboard this new wave of reform. Academic economists now lecturer fishermen on how best to run their business and what is most appropriate for the business of fishing. The Pew foundation, with its unending supply of money, has been furthering its version of social and economic order by financially supporting the proponents of privatization in fisheries management. Environmentalists have cast their own net of opportunity with a surge of self-promoting agendas focused upon limiting participants. Millions are now being spent on every imaginable cause or idea even remotely related to the marine fisheries.

The present U.S. administration's latest stated policy on fisheries management is now in support of Individual Transferable Quotas (ITQs) and the promotion of private property rights of access as the preferred fisheries management tools. Neither of these policies will change anything but the economics of the fisheries. Overall allocations and quotas for the commercial side of our fisheries will remain the same no matter what the number of participants or vessels. Although limited license management schemes are being applied to the commercial fisheries, the application of similar restrictions on other user groups is conspicuously absent. In many of our shared fisheries, the main harvesters of an individual species are the yet unfettered recreational and for-hire fishermen. To this day these two groups have no total allowable catch or quota, no limits on the numbers of participants and no limit to the numbers of trips they can make in a year. If the conservation of our marine resources were truly the validation for limited access, then all users would be held to the same standards.

Limited access plans and privatization schemes are fueled by the self serving part of industry's quest for self preservation and wealth. The result of these policies has created the biggest public resource grab in this nation since the Great Western Expansion. To site two examples of the consequence of limited Federal Vessel Permitting plans, a full Atlantic Scallop permit for federal waters is now selling in the range of 1.5 million dollars. One single dealer in New Bedford is reported to possess 18 scallop permits out of the approximately 200 that are available and in 2006, grossed over 100 million dollars in final sales. The ocean quahog and sea claim fishery is now owned by five corporations, three of them with principally foreign interests.

Lobster Conservation Management Teams (LCMTs)

Oddly and cleverly effective in its use, the Lobster Management Plan is the only ASMFC fisheries plan with "Area Management Teams". Embedded industry members have been the driving force behind every effort to protect their economic interest first but at the expense of all other management remedies. None of the other fisheries species management plans have these so-called area management teams. As a direct result of this parochial style of management, the lobster trap fishery continues to have no yearly quota, no closed season(s), and no daily possession limit for those fishermen. The prevailing

lobster trap fisherman's doctrine regarding access to the resource has been, as stated by a former RI Lobstermen's Association president is "You will be limited, I will not".

The Lobster Management Plan is the only plan which contains a mandatory provision that imposes a daily possession limit on one user group [non-trap caught lobsters] while allowing unlimited possession by the prevailing user group [trap caught lobsters]. Non trap fishermen harvest less than 1 ½ % of the total lobster landings. This daily possession limit imposed on non-trap caught lobster fishermen has no basis in science to justify its existence in Amendment 3. Politics, greed and ignorance have driven this policy.

The primary but purposely unstated objectives of the Commission's current lobster management plan for RI and SNE are, in reality, to permanently end open access to the lobster fishery. Those individuals who continued to fish on a depleted resource are rewarded with exclusive private property rights of access while those who did not fish the maximum number of traps or chose to engage other resources during the qualifying period lose. Technical measures will determine what amounts of resource will actually be harvested while this plan simply determines who will get it. With the privatization of access to the lobster resource, the state has transferred the public trust and the wealth of that resource to a relatively few fishermen under the guise of conservation. The Plan does not manage with the intent to provide the maximum employment or business opportunity for RI residents. This form of management will never provide the optimum sustainable yield of resource and economic gain for all the residents of RI.

RI Constitution, Charter, and Law

The Rhode Island Charter

Charter granted by King Charles II (1663); " Provided also, and our express will and pleasure is, and we do by those presents, for us, our heirs and successor, ordain and appoint that these presents, shall not, in any manner, hinder any of our loving subjects, whatsoever, from using and exercising the trade of fishing upon the coast of new England, in America; [but that they, and every or any of them, shall have full and free power and liberty to continue and use the trade of fishing upon the said coast.]" (emphasis mine)

The Rhode Island Constitution

RI Cont. Art I, Sec 17; "The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the [Charter] and usages of this state." (emphasis mine)

Precedent in Law

The court so recognized in identifying the rights of the fishery and privileges of the shore “*that there must have been some such ‘privileges’ which were then recognized as belonging to the people and which the framers and adopters of the constitution intended to change into [rights] beyond the power of the general assembly to destroy.*” (*Jackvony v. Powel*, 67 RI 218, [1941]) (emphasis added)

“It is self evident that each person does not annually get, and never can get, his or her proportional part of the total catch of lobsters in any year, therefore a division of the catch of lobsters among the people of the state cannot be considered to be a feasible way in which to preserve the [rights] of the people in the lobster fishery.” (*State v. Constantine Kofines et al.*, 33 RI 211, 224, [1911]) (emphasis added)

The “*rights of fishery*” and the “*trade of fishing*” as clearly stated in both our Constitution and our Charter can not exist in union if those rights so designated are then reserved for a privileged and selected few. In the following statement, the court recognizes the state’s authority to license “*agents*” or residents who engage in the trade of fishing. From this authority that is lodged in the state flows a responsibility to regulate the harvest of lobsters in order to provide to the people the benefits of the resource.

“We have already seen that it is impossible for every one of the people of the State personally to exercise the franchise of fishing for lobsters in the public waters of the State, and that if such fishing is to be done for all it must be done by [agents], in order that the people may receive the benefits thereof.” (*State v. Constantine Kofines et al.*, 33 RI 211, 240, [1911]) (emphasis added)

It has been clearly established in law that the marine resources found within the territorial borders of the state of RI belong to all the people and that the General Assembly has the full authority and responsibility to manage those resources. Kofines further delineates:

“...the power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals, as distinguished from the public good.” (*State v. Constantine Kofines et al.*, 33 RI 211, 232, [1911])

“It goes without saying that people of the state residing in portions of its territory remote from the seashore could hardly afford, even if it were possible for them to do so, to go to the shore and attempt to engage in lobster fishing merely for the purpose of obtaining what they might deem to be their fair share of lobsters from the public waters of the state. All

children of tender years, the aged and infirm, together with delicate women would be absolutely debarred from participation in a fishery in which all are interested. In such circumstances it is necessary to consider how the people of the state may receive the greatest benefit from the conservation of their interests in this regard. The great majority of the people undoubtedly have heretofore bought and in the future will be obliged to buy their lobsters, therefore, it is for their interest to have them plentiful and cheap.” (State v. Constantine Kofines et al., 33 RI 211, 225, [1911])

As recently as 2004, RI’s Honorable Court again reaffirmed the extent of the people’s rights to the marine fisheries quoting *Kofines*, and *Cozzens* in *Cherenzia v. Lynch*. The Court additionally identified the standard of importance for any statutory or regulatory infringements on those rights.

“The scope of the [fundamental right] protected in art. 1, sec. 17, is that all the inhabitants of the state shall continue to enjoy and freely exercise [equal access] to the state’s fishery resources.” “This gives the benefits of fishery to all the people in equal measure.” (Cherenzia v. Lynch, 847,A.2d,818) (emphasis added)

“If a statute or regulation contained restrictions that infringed upon the [fundamental right] of the inhabitants of the state to have [equal access] to the ‘rights of fishery,’ then such a regulation or law would be subject to strict-scrutiny analysis” (emphasis added)

From the likes of these judicial pronouncements comes the time-honored belief that all Rhode Islanders are entitled to what has been traditionally termed the “free and common fisheries”. Has the proclamation “...they, and every or any of them, shall have full and free power and liberty to continue and use the trade of fishing upon the said coast” been arbitrarily extinguished? Is what the Court previously recognize as a “fundamental right” to “equal access” no longer entitled to the protection of law?

How does it benefit the people by limiting their number of competitive “agents” who may engage in the business of harvesting lobsters? Are the people better served by the creation of a private property right of access to the lobster resource with what has heretofore been considered “common ownership”? In the future, will privatized access schemes help to insure the people’s interest in providing the resource both “plentiful and cheap”? Is it no longer necessary “to consider how the people of the state may receive the greatest benefit from the conservation of their interests”? Finally, why has the state adopted a plan that grants economic interest to only some of those presently engaged in the lobster fishing business and all of those previously engaged during the qualifying period, including some individuals who no longer fish?

Commercial Fishing License Revision of 2002

The General Assembly revised and changed the commercial fishing licensing system through an act of law in 2002. The new law supports limited entry and closed entry into the RI commercial fisheries. The act gives broad and sweeping powers to the Director to limit both the number of commercial fishing license holders, and the number of fishing endorsements attached to each license.

The Act created three classes of commercial license holders whereby residents who are qualified to obtain a license are forcibly directed into different categories of privilege regarding access to the fisheries. It established statutory rules of discrimination and qualification in the issuance of commercial fishing licenses. It granted priority privilege to certain classes of applicants who met the qualifications of the new rules while denying or limiting licenses to others.

Further, the director has been given the regulatory authority to regulate commercial fishing based on social criteria including past performance, dependence, classes of license holders, and “*any other relevant considerations that the director finds in the rule making process.*” (RIGL 20-2.1-9 (2) (iii)). “[T]he director shall by rule... *develop conservation and management plans for the fishery resources of the state*” with priority given “*to those resources with the highest value to the state, either for commercial or recreational purposes.*” (RIGL 20-2.1-9 (5)). The director has been granted unrestricted and poorly defined authority to regulate commercial fishing based on non-conservation based economic criteria.

Personal note: The above stated act may well represent the most ill-conceived and poorly written legislation adopted by the RI General Assembly in our lifetime. There are contradictions in language within the act, conflicts with collateral legislative language still in force and effect, and hostility toward historical principles established in RI’s Constitution and Charter. The principles of “rights of fishery” and “trade of fishing” are illusory at best if one is relegated to the harvesting of periwinkles and other low value fisheries. One would have thought that the universal establishment and ready acceptance of statutory rules of discrimination involving fundamental rights had met their final demise in the 1960’s. Discrimination in access will not change how much of the commercial resource will be harvested. It will simply change who will have access to that wealth.

“.....a statutory discrimination must be based on differences that are reasonably relevant to the purposes of the Act in which it is found....distinctions cannot be so justified if the discrimination has no reasonable relation to these differences.” (Morey v. Dodd, 354 U.S. 457, 464-466 [1957]; Graham v. Richardson, 403 U.S. 365, 371 [1971]; State v. Rishardson, 285 A. 2d. 842 [1972])

The primary “*purposes*” of the Act is to discriminate. The Act, on its face, is designed and directed to embrace discrimination and privatization as acceptable tools for fisheries management. The inequity of treating residents of this state or even similarly

licensed people differently as a matter of law has bred a new era for economic discrimination. The Act further states that the director may discriminate, “*except that no such measure shall have economic allocation as its sole purpose;*” (RIGL 20-2.1-9 (2) (iv) (C)) (emphasis added). All class discrimination in society has economics at its roots.

The Atlantic States Marine Fisheries Compact

The Compact, authorized by Congress in 1942, created the Atlantic States Marine Fisheries Commission as “*a fact finding deliberative body with the power to make recommendations to the Member States and to the Congress of the United States*” These “*recommendations*” were for the cooperative management of inter-state marine fisheries and while the Commission may recommend, the Compact also states that “*nothing in this compact shall be construed to limit the power of any signatory state...*” and that states may renounce the Compact by giving “*six months notice in writing of [its] intention to withdraw from the Compact...*” (emphasis added)

In 1993 the US Congress passed the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) which in effect created an unincorporated amendment to the original Compact. (See below)

The Commission and its proceedings are not required to adhere to the principals of a governmentally adopted Administrative Procedure Act and are not subject to Congressional Oversight. The Commission does receive funding from the US Congress and the legal protections of a governmental administrative body. The Commission, in its proceedings, is guided by the ASMFC Charter and its rules titled “*Standards*” in developing fisheries management plans. Section (3) states “*Conservation programs and management measures shall be designed to achieve equivalent management results throughout the range of the stock or subgroups of the stock.*” Further, section (7) (i) states “*An FMP should allow internal flexibility within states to achieve its objectives while implemented and administered by the state.*” Again, the Charter under *Standards* states in part “*Management measures should focus on conservation while allowing states to make allocation decisions.*”

Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA)

The ACFCMA of 1993 empowers the Secretary of Commerce to enforce fishery management regulations promulgated by the Commission against uncooperative member states. For any state that fails to implement recommended conservation measures, the federal government has reserved the right to bar any fishing in state waters for a particular species. This Act, which in effect amended and altered the terms found in the original compact, did so without the specific consent of all of the member states. This conveyance of enforcement power to the Secretary may be an unconstitutional attempt by Congress to amend the Compact’s express terms. Congress possesses no authority to impair the obligations of a contract and States are expressly prohibited from doing so. The federalization of all fishery management plans put forth by the Commission could not have been contemplated by the RI General Assembly when it voluntarily joined in the Compact in the 1940s. Further, this issue has raised serious constitutional challenges regarding the US Tenth Amendment and the principles of federalism. Federal agencies

are prohibited from “commandeering” a state government by forcing that state to adopt federal laws.

The Public Trust Doctrine

All marine resources found in the territorial waters of the State of RI are held in “Public Trust” for the benefit of the people. History and tradition have imbedded in the hearts and minds of RI inhabitants that all manner of fish, lobsters and clams are **free and common** to all. It has long been established in law that these common privileges of the people to freely access the marine resources have been changed into rights subject only to the fiduciary responsibility of the General Assembly. This responsibility to manage the marine resources for the benefit of the people does not progress to the private ownership or privatization of access to the public’s resource.

(See “Who Owns America’s Fisheries?” Seth Macinko, University of Rhode Island, and Daniel W. Bromley, University of Wisconsin, 2002) (See “Managing Our Nation’s Fisheries II” Conference on Fisheries Management in the United States, Washington DC, March 24-25, 2005, In Search of Transition, Community, and a New Federalism, Seth Macinko)

Amendment III, Addendum VII, Interstate Fisheries Management Plan for American Lobster

Addendum 7 attempts to address the stock decline in Area 2 with a primary focus on reducing “overall effort”. Reducing harvest, or what in the plan is more pointedly referred to as effort, is specifically directed toward prohibiting any new entrants into the fishery, reducing the number of participants presently engaged in the fishery, and reducing the total number of traps employed by the fishery. Reducing effort is therefore more accurately defined as the mandatory reduction in the number of participants. The following summarizes **Actions** stated in the Plan and a response:

A. Mandatory Measures

1. The plan prohibits the State of RI from issuing any new lobster fishing licenses.

The ASMFC has no authority to prohibit RI from issuing new lobster fishing licenses. (See ASMFC Compact) This ASMFC mandate would prohibit all those persons born and yet born, not presently holding a lobster license, from ever obtaining one, or force RI to provide for the exchange or sale of an existing license. Allowing for the transfer or sale of licenses to fish creates a property right of exchange. The granting of private property rights of exchange to individuals changes entirely the scope of the public trust forever. Attrition by failing to renew one’s license or the extinguishment of a license through the purchase or consolidation of businesses will lead to the concentration of the wealth of the resource into the hands of a few.

2. The trap effort reduction plan requires a limit on the total number of traps employed in RI waters through the assigned allocation of [trap access tags]. The plan establishes “standards for qualification” in the issuance of an initial access tag allocation scheme.

The Commission has no authority to limit the number of lobster traps employed within the territorial waters of the State of RI. (See ASMFC Compact) Allocation schemes and the setting of “standards for qualification” are the prerogative of the RI General Assembly not the Commission. No science has been presented that suggests that a reduction in the use of lobster traps is beneficial to the resource, in fact, the opposite is contemplated.

3. State issued recall-log catch reports and /or logbooks signed by the [license] holder are considered the best available data used to determine initial access tag allocations.

The use of history in support of an individual allocation scheme has not been clearly established in law. Regarding the use of Lobster Log Books, RIGL 20-7-9 states in part, *“The returns from any person shall not be made public, shall be kept only in the files of the department, and shall be used only for statistical purposes.”* (Emphasis added)

B. Optional Elements

Optional elements suggest:

- The initial allocation of access tags could be based on participants “...*recent fishery performance in traps and landing*”;
- Allow transferability of access tags among [license] holders and among states;
- Advocates the establishment of a private property right of ownership in access to the public marine resource and;
- Reduce the total number of access tags through a “*tax*” loss provision place on all transfers or sales of access tags from one license holder to another.

RIDFW Regulations for the Implementation of the ASMFC Lobster Plan, Amendment III, Addendum VII.

Rhode Island has implemented a series of new marine regulations that complement the ASMFC Plan. The following summarizes **Actions** stated in the regulations and a response:

1. The above mandatory requirements in the ASMFC American Lobster Plan are implemented in the RIDFW regulations.

The Department and the Governor’s Office have accepted the assumption that all of the provisions in the ASMFC plan are both lawful and enforceable under RI

law. The Governor has failed to identify and oppose those provisions of the ASMFC Plan that are hostile to RI's Constitution and/or State Statutes. He has failed to enforce and hold fast to those protections provided for in state law for the benefit of all the people. In fact, the Governor has embraced the offensive elements of the ASMFC Plan and has now implemented them through his departmental regulatory authority.

2. The RIDFW shall process and determine allocation of access tags for federal waters.

The RIDFW has no statutory authority to manage marine resources in federal waters. RI need not assume responsibility for any allocation and access schemes to marine resources outside of its territorial waters. The federal government has the authority and responsibility to regulate lobster trap fishing in federal waters and presently assigns operator permits and lobster vessel permits for those qualifying vessels fishing in the EEZ. Rhode Island has a greater obligation to protect its residents from the overreach of a federal agency than to assume and implement the responsibilities of that agency.

3. No person shall land lobsters taken by lobster traps from Area 2 federal waters in any state unless that person has been issued an Area 2 access tag allocation.

This provision is beyond RI's ability to implement and enforce.

4. Establish rules governing access tag transfers and access tag business sales.

The establishment of rules governing access tag transfers and sales between "*both the seller and buyer*" establishes a private property transferable right of access. The Governor presupposes that the creation of a private property right of access derived from the Public Trust is a lawful act of his executive authority.

5. Any person wishing to participate in Area 2 state or federal waters lobster trap fisheries must register a specific vessel with the RI Division of Licensing and Boat and Registration.

RI can not require the "registration" of a federally documented vessel. RI may assign a vessel permit for the purpose of engaging in the lobster trap fishery in RI waters. Fishing in federal waters is a federal responsibility.

Critical Questions of Law

1. Does the Rhode Island General Assembly have the constitutional authority to create statutory rules of discrimination in granting or denying access to the commercial marine fisheries?

2. Does the General Assembly have the constitutional authority to create private property rights of access to the commercial marine fisheries?
3. Does the General Assembly have the constitutional authority to relinquish to the Executive Branch of government its plenary and fiduciary responsibility to manage the State's marine resources?
4. Does the General Assembly have the constitutional authority to relinquish state sovereignty over the marine fisheries in RI state waters to the Atlantic States Marine Fisheries Commission, other states, the federal government, and/or the fishing industry?
5. Has the General Assembly agreed to allow the Commission to mandate access discrimination among RI residents in granting or denying access to the lobster fishery in RI waters?
6. Has the General Assembly agreed to allow the Commission to mandate a limit on the total number of lobster traps that may be employed in RI waters?
7. Has the General Assembly agreed to allow the Commission to create and mandate standards for qualification in the issuance of lobster trap access tags among Rhode Island residents?
8. Is it lawful under the United States Constitution and the Rhode Island Constitution for the State to regulate, implement and enforce fisheries management plans outside its territorial borders?
9. Does the Governor have the constitutional and/or statutory authority to create private property rights of access to the marine resource?
10. Is it lawful for the Division of Fish and Wildlife to use lobster logbooks and/or history as qualifying criteria for the allocation of access tags to the lobster fishery? Beginning in what year?

Critical Questions of Management

1. What is the mortality reduction associated with the limited participation and limited access tag provisions of Addendum VII to the lobster management plan?
2. Should the SNE stock of lobsters be managed as a unit as defined under the ASMFC Charter and incorporated with the same output restrictions throughout its range?
3. Is the present so called rebuilding plan in conflict with science in obtaining the optimum sustainable yield when taking into account that the Long Island Study found that "*overcrowding*" and "*increases in population densities*" was a likely contributor to the die off in the Southern New England (SNE) lobster stock?

4. Should geo-political “*area management*” and “*lobster management teams*” be limited in or prohibited from driving the Commission management process?
5. What relief will be established for those Rhode Island residents who have been licensed to fish for lobsters but now have been disenfranchised from the lobster fishery?
6. Will the lobster trap fishermen who now possess exclusive trap access to the lobster fishery be allowed to participate and share in the taking of species that are limited to other fishermen by a quota?
7. If lobster landings increase again to 1990’s landing levels, will those trap fishermen embedded with exclusive access to the lobster fishery remain the sole recipients of this new increase in wealth?
8. Based on the record growth in biomass and landings of lobsters in SNE during the 1990s under the previous regiment of regulatory restrictions, what is the basis for an entirely new and more restrictive program of management?
9. Will the privatization of access to the lobster resource translate into a wholesale reallocation of all public resources to private hands? Will access to all out natural resources be for sale?

RHODE ISLAND MARINE FISHERIES COUNCIL

Shellfish Advisory Panel

January 21, 2015, 4:00 pm

Warwick Public Library, Room 101

600 Sandy Lane, Warwick, RI

Meeting Minutes

RIMFC Members Present: J. Grant (Chair)

SAP Members Present: M. McGiveney; D. Ghigliotty; R. Rheault

Public Present: B. Silkes; A. Silkes; A. Pinheiro; J Pinheiro; M. Behan; R. Krause

CRMC: D. Beutel

DEM: J. Mercer;

1. New Lease Proposal

- a. Proposed Aquaculture Lease: CRMC File # 2014-12-056, Pinheiro, Dutch Island Harbor, Jamestown.

J. Pinheiro gave a brief presentation of the proposed methods. Mercer presented a map of the location and noted that a field survey was not completed due to ice at the location but noted that previous DEM dredge survey assessments in the area had low densities. The applicant stated that he is a bullraker and has not observed many quahogs in the lease site. McGiveney asked about trap fishery usage in the area. The applicant stated that there is minimal trap usage to the north but none the specific area. Motion made by McGiveney to not object, Rheault seconded the motion. The board voted 2-0 to not object to the application.

2. Existing Lease Expansions

- a. Proposed Aquaculture Lease Expansion: CRMC File # 2015-01-043, Behan, Ninigret Pond, Charlestown.

Beutel gave a brief overview of the lease expansion and stated that there was an agreement with the Town of Charlestown not to expand to the west on the overwash fan. This expansion is to the north and east. Beutel stated that previous assessments on the overwash fan showed low density of quahogs. Motion made by McGiveney to not object, Rheault seconded the motion. The board voted 2-0 to not object to the application.

- b. Proposed Aquaculture Lease Expansion: CRMC File # 2015-01-051, Krause, Ninigret Pond, Charlestown.

Mercer gave a brief overview of the site. Beutel stated that the proposal from the PD meeting was modified based upon comments received and the lease is now more simplistic in shape and designed to avoid encroaching existing eelgrass beds to the northeast. Beutel stated that there assessments yielded 0.4 quahogs per square meter. Mercer stated that DEM assessments in the area last year yielded no clams. Motion made by McGiveney to not object, Rheault seconded the motion. The board voted 2-0 to not object to the application.

3. Existing Lease Operational Plan Modification

- a. Proposed Aquaculture Lease Modification: CRMC File # 2013-04-057, Silkes, West passage, Jamestown.

Mercer stated that the modification is to add eastern oysters to the allowable species. The current mussel farm suffered mortality from duck predation so the applicant would like to diversify the crop. Beutel stated that it was his opinion that this modification did not need to be voted upon by the SAP as the area is already dedicated to aquaculture. Motion made by McGiveney to not object, Rheault seconded the motion. The board voted 2-0 to not object to the application.

- b. Proposed Aquaculture Lease Modification: CRMC File # 2011-01-014, Salt Water Farms, LLC, Rhode Island Sound, Newport.

Mercer stated that the modification is to add eastern oysters to the allowable species. The current mussel farm suffered mortality from duck predation so the applicant would like to diversify the crop. There was some discussion about the probability of success of oyster restoration in the area. Beutel stated that it was his opinion that this modification did not need to be voted upon by the SAP as the area is already dedicated to aquaculture. Motion made by McGiveney to not object, Rheault seconded the motion. The board voted 2-0 to not object to the application.

- c. Proposed Aquaculture Lease Modification: CRMC File # 2011-02-049, Goerner, West passage, Jamestown.

Mercer gave a brief description of the current configuration of the lease and the proposed configuration to add floating OysterGro cages. Beutel stated that it is suspended culture now and he has 2 stings of lines now and his permit allows him to have six strings. Questions were raised about visual impact. Mercer stated that DEM enforcement has raised concerns about the gear at the surface being a navigational hazard. Mercer stated that he thinks modifications like this one that are significant that add a lot of gear to the water surface should be reviewed by the SAP as they can affect other uses that occur in the area. There was further discussion about the gear to be used and the number of lines and size of the lease. Jeff Grant reminded the board that only impacts to marine

fisheries are to be considered by the board. Motion made by Rheault to not object, McGiveney seconded the motion. The board voted 2-0-0 to not object to the application with Ghigliotty abstaining as he arrived late to the conversation.

Prepared by: Jeff Mercer



Rhode Island Marine Fisheries Council

3 Fort Wetherill Road Jamestown, Rhode Island 02835
(401) 423-1920 Fax: (401) 423-1925

Panel Chair:
Jeff Grant

Scientific Advisor:
Dale Leavitt

DFW Staff:
Jeff Mercer

Advisory Panel Members:

Commercial User Groups:

Aquaculture:
Primary: Jeff Gardner
Alternate: Bob Rheault

Bullrakers:
Primary: David Ghigliotti
Alternate: open
Primary: Mike McGiveneey
Alternate: Bruce Eastman
Primary: Robert Bercaw
Alternate: James Logiodice
Primary: Gerald Schey
Alternate: open
Primary: Owen Kelly
Alternate: Martin McGiveneey
Primary: Donald Goebel
Alternate: Michael Bradshaw
Primary: William Cote
Alternate: John Nolan

Tong:
Primary: open
Alternate: open

Diver:
Primary: Bill Blank
Alternate: Russell Blank

East Bay:
Primary: Katie Eagan
Alternate: open

Dealer:
Primary: Bob Smith
Alternate: open

Recreational User Group:
Primary: John Vivari
Alternate: open

Meeting Notice

Shellfish Advisory Panel

Date: TBD

Fort Wetherill Marine Laboratory
3 Fort Wetherill Road, Jamestown, RI

MEETING AGENDA

1. Bissel Cove (North Kingstown) oyster harvest moratorium expiration. Recommendation to RIMFC to continue moratorium and/or determination of needed information.

All RIMFC Species Advisory Panel meetings are open to the public.

For more information please contact Jeff Mercer at (401) 423-1937.



Rhode Island Marine Fisheries Council

3 Fort Wetherill Road, Jamestown, RI 02835
(401) 423-1923 Fax: (401) 423-1925

Panel Chair
Rick Belevance

IAC:

Commercial Rod and Reel
Robert Mattiucci
Gerard Tremblay

Commercial Inshore Trawler
Carl Granquist
Jerry Carvalho

Seafood Dealer
Eric Reid

Commercial Offshore Trawler
Michael Roderick

Commercial Lobster Fishermen
Lanny Dellinger

Commercial Fish Potter
Robert Smith

Commercial Fishing License Representative
Steven Anderson

Commercial Gillnet Representative
Aaron Gerwitz

DFW Staff
John Lake

Industry Advisory Committee (IAC) Meeting

July 9, 2015 – 6:00 PM

URI Narragansett Bay Campus
Coastal Institute Building, Hazard Conference Room
South Ferry Road, Narragansett, RI 02835

AGENDA (draft)

1. Determination of availability of new restricted finfish, quahaug, soft shell clam, and whelk endorsements
2. Amendments to licensing regulations
3. Other Business

ALL RIMFC Species Advisory Panel meetings are open to the public.

For more information, please contact John Lake at (401) 423-1942.

Date Posted: XX/XX/20XX

2015 -- S 702 **Sub A**

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO FISH AND WILDLIFE - ~~AMOUNT OF CATCH REGULATION OF~~
~~MARINE FISHERIES~~

Introduced By: Senators Sosnowski, Conley, and Goldin

Date Introduced: March 18, 2015

Referred To: Senate Environment & Agriculture
(Environmental Management)

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 20-1 of the General Laws entitled "General Provisions" is hereby amended by adding thereto the following section:

20-1-12.1. Modifications to possession limits and seasons for marine species managed under quotas. -- (a) In accordance with regulatory programs promulgated pursuant to the Administrative Procedures Act, chapter 42-35, and pursuant to the exemption afforded by Section 42-35-18(b)(5) of the Act, and notwithstanding the provisions of chapter 42-35.1, the Director shall have the authority to modify possession limits and seasons in order to meet the harvest allocation for a given marine species managed under a quota.

(b) Notification of changes. For all such changes identified in subsection (a) of this section, the director shall provide public notification via a dedicated phone line, electronic

notification to dealers, list serve, and website posting. At least three of these notifications shall occur a minimum of forty- eight (48) hours prior to the date that the change is to be effective.

(c) Record of change. For all such changes identified in subsection (a) of this section, the director shall certify the record of the change, maintain the record, and make it available for public inspection.

SECTION 2. Section 20-2.1-9 of the General Laws in Chapter 20-2.1 entitled "Commercial Fishing Licenses" is hereby amended to read as follows:

20-2.1-9. Powers and duties of the director. -- It shall be the duty of the director to adopt, implement effective January 1, 2003, and maintain a commercial fisheries licensing system that shall incorporate and be consistent with the purposes of this chapter; in performance of this duty the director shall follow the guidelines and procedures set forth below:

(1) The rule making powers of the director to accomplish the purposes of this chapter shall include the following with regard to commercial fishing licenses and commercial fishing by license holders:

(i) Types of licenses and/or license endorsement consistent with the provisions of this chapter and applicable sections of this title, and limitations on levels of effort and/or on catch by type of license and/or license endorsement;

(ii) Design, use, and identification of gear;

(iii) Declarations for data collection purposes of vessels used in commercial fishing, which declaration requirements shall in no way, except as otherwise provided for in law, restrict the use of any vessel less than twenty-five feet (25') in length overall by appropriate holders of commercial fishing licenses;

(iv) Areas in Rhode Island waters where commercial fishing of different types may take place, and where it may be prohibited or limited, and the times and/or seasons when commercial fishing by type or species may be allowed, restricted, or prohibited;

(v) Limitations and/or restrictions on effort, gear, catch, or number of license holders and

endorsements;

(vi) Emergency rules, as provided for in chapter 35 of title 42, to protect an unexpectedly imperiled fishery resource, to provide access to a fisheries resource that is unexpectedly more abundant, and to protect the public health and safety from an unexpected hazard or risk. The marine fisheries council shall be notified of all emergency rules on or before their effective date, and no emergency rule shall become a final rule unless it is promulgated as provided for in subdivision (3) of this section.

(2) When implementing the system of licensure set forth in §§ 20-2.1-4, 20-2.1-5, 20-2.1-6, and 20-2.1-7 and other provisions of this title pertaining to commercial fishing licenses, permits, and registrations, the director shall consider the effect of the measure on the access of Rhode Islanders to commercial fishing and when establishing limitations on effort and/or catch:

(i) The effectiveness of the limitation:

(A) In achieving duly established conservation or fisheries regeneration goals or requirements;

(B) In maintaining the viability of fisheries resources overall, including particularly, the reduction of by-catch, discards, and fish mortality, and in improving efficiency in the utilization of fisheries resources;

(C) In complementing federal and regional management programs and the reciprocal arrangements with other states;

(ii) The impact of the limitation on persons engaged in commercial fishing on:

(A) Present participation in the fishery, including ranges and average levels of participation by different types or classes of participants;

(B) Historical fishing practices in, and dependence on, the fishery;

(C) The economics of the fishery;

(D) The potential effects on the safety of human life at sea;

(E) The cultural and social framework relevant to the fishery and any affected fishing

communities; and

(iii) Any other relevant considerations that the director finds in the rule making process;

(iv) The following standards for fishery conservation and management, which standards shall be understood and applied so far as practicable and reasonable in a manner consistent with federal fisheries law, regulation, and guidelines:

(A) Conservation and management measures shall prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery;

(B) Conservation and management measures shall be based upon the best scientific information available; and analysis of impacts shall consider ecological, economic and social consequences of the fishery as a whole;

(C) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fisheries resources; except that no such measure shall have economic allocation as its sole purpose;

(D) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches;

(E) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication;

(F) Conservation and management measures shall, consistent with conservation requirements of this chapter (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (I) provide for the sustained participation of those communities, and (II) to the extent practicable, minimize adverse economic impacts on those communities;

(G) Conservation and management measures shall, to the extent practicable: (I) minimize by-catch and (II) to the extent by-catch cannot be avoided, minimize the mortality of the by-catch;

(H) Conservation and management measures shall, to the extent practicable, promote the

safety of human life at sea.

(3) (i) The rule making process set forth in this subdivision shall conform with the requirements of the Administrative Procedures Act, chapter 35 of title 42, and shall include a regulatory agenda for marine fisheries management, with the advice of the marine fisheries council, in accordance with the requirements of § 42-35-5.1;

(ii) The director shall submit a proposed rule to the marine fisheries council at least ~~sixty~~ thirty (30) days prior to the proposed date of the public hearing on the rule;

(iii) The public hearing shall be on either the rule as proposed to the marine fisheries council by the director or a proposed revision to that rule adopted by the marine fisheries council;

(iv) The proposed rule as submitted by the director to the marine fisheries council and the council report and recommendation regarding the rule shall both be entered into the record of the hearing conducted in accordance with the requirements of chapter 35 of title 42;

(v) Notwithstanding the provisions of paragraphs (i) -- (iv) of this subdivision, the director may promulgate a rule with less than ~~sixty (60)~~ thirty (30) days notice to the marine fisheries council if and to the extent necessary to comply with federal requirements or to respond to a sudden change in conditions, where failure to take immediate action would likely cause harm to fishery resources or participants;

(vi) The decision of the director shall state the basis for adopting the rule including a concise statement giving the principal reasons for and against its adoption and the response to positions entered into the record; and in the case of a rule promulgated in accordance with paragraph (v) of this subdivision, the reasons for having to take immediate action.

(4) Matters to be considered in establishing license programs under this chapter. - The director shall be consistent with the requirements of § 20-2.1-2(6) in establishing and implementing a licensing system in accordance with the provisions of this chapter that shall be designed to accomplish marine fisheries management objectives. The licensing system may limit access to fisheries, particularly commercial fisheries for which there is adequate or greater than

adequate harvesting capacity currently in the fishery and for which either a total allowable catch has been set or a total allowable level of fishing effort has been established for the purpose of preventing over-fishing of the resource or the dissipation of the economic yield from the fishery.

This authority shall include the authority of the director to:

(i) Differentiate between the level of access to fisheries provided to license holders or potential license holders on the basis of past performance, dependence on the fishery, or other criteria;

(ii) Establish prospective control dates that provide notice to the public that access to, and levels of participation in, a fishery may be restricted and that entrance into, or increases in levels of participation in a fishery after the control date may not be treated in the same way as participation in the fishery prior to the control date; retroactive control dates are prohibited and shall not be used or implemented, unless expressly required by federal law, regulation or court decision;

(iii) Establish levels of catch by type of license and/or endorsement which shall provide for basic and full harvest and gear levels; quotas may be allocated proportionally among classes of license holders as needed to maintain the viability of different forms of commercial fishing.

(5) The director shall, annually, by rule, with the advice of the marine fisheries council, develop and update conservation and management plans for the fishery resources of the state, which conservation and management plans shall be ~~adopted~~ developed and updated prior to and at the same time as adoption of any license restrictions on effort or catch. Such plans shall address stock status, performance of fisheries and quotas, and management and licensing programs, and offer any recommendations for new or alternative approaches to management and/or licensing identified by the department or the marine fisheries council. In the development of the fishery conservation and management plans, priority shall be given to those resources with the highest value to the state, either for commercial or recreational purposes.

(6) The director shall report annually to the general assembly and to the citizens concerning the conservation and management of the fishery resources of the state, noting particularly the status of any fishery resources that are considered to be over-fished or were considered to be over-fished in the preceding year.

SECTION 3. This act shall take effect upon passage.

DRAFT



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
235 Promenade Street, Providence, RI 02908-5767 Rhode Island Relay 711

Office of the Director

Proposed Sub A for DEM's Marine Fisheries "Lean" Bill

For H-5924 and S-702

Purpose: The bill proposes to implement three recommendations developed during the application of the Lean Initiative to DEM's regulatory program for marine fisheries. The Initiative sought to identify and address inefficiencies in the system. Several opportunities to streamline the system were revealed, some requiring legislative changes. The bill advances three such changes.

Key Element: The major focal point of the bill is Section 1, which would establish a new approach for enacting routine adjustments to quota-managed fisheries.

Background:

DEM's Marine Fisheries Program administers a huge number of fishery-specific regulatory programs. Many stem from federal and regional mandates; others are based on state statutory requirements. All are designed to achieve sound resource protection, while supporting the needs and interests of Rhode Island fishermen.

To keep pace with the dynamic nature of fisheries management, DEM employs a management system that is responsive and adaptive. Regulatory programs are subject to annual review, via quarterly workshops and hearings, and regulatory changes are routinely enacted in response to new mandates and new proposals offered by fishermen. All substantive, programmatic changes are administered in accordance with the Administrative Procedures Act, and include public notice, public comment, and public hearing. They are also subject to review and recommendation by the Rhode Island Marine Fisheries Council. Once regulatory programs are enacted, they are subject to routine adjustments, per the parameters of the regulatory program, throughout the course of the year. All regulatory changes, including all routine adjustments, are filed with the RI Secretary of State's Office. During a typical year, DEM files about 70 regulatory changes pertaining to marine fisheries. About half of the changes involve substantive programmatic changes; the others involve routine adjustments to commercial possession limits and seasons for quota-managed fisheries.

The Lean Initiative found that DEM wastes considerable time and effort by filing, via hand delivery, all routine adjustments to already enacted regulatory programs with the Secretary of State's Office. DEM employs a redundant and effective process of notifying

fishermen of all regulatory changes, so the filings with the Secretary of State's Office serve little purpose.

Proposal

The bill proposes a new, more efficient approach, whereby fishermen will continue to be notified of all changes via multiple forms of communication. However, in lieu of having to file every routine change with the Secretary of State's Office, the bill would authorize the DEM Director to certify and record the changes administratively.

The new approach is set forth in accordance with the following provisions:

1. **Scope.** The new process would only apply to the administration of quota management programs already enacted in accordance with the Administrative Procedures Act (APA), and already filed with the Secretary of State's Office. Regarding those programs, the new process would only apply to modifications to possession limits and seasons.
2. **Authority.** All state agencies are required to conduct all rule-making in accordance with the APA. However, section 42-35-18(b)(5) of the APA provides an exemption for rules promulgated pursuant to the Atlantic States Marine Fisheries Compact (ASMFC). Many of DEM's marine fisheries regulations – and all regulations pertaining to quota-managed fisheries -- are enacted pursuant to ASMFC requirements. As a matter of public policy, DEM follows the APA process for all substantive programmatic changes. For routine adjustments to quota-managed fisheries, which need to be enacted quickly, and which fall under the APA exemption, DEM employs the following process: 1) providing fishermen with ample notification, at least 48 hours in advance of each change; and 2) filing each change with the Secretary of State's Office, at least 48 hours in advance. While the notification process is essential, the filing process is inefficient and unnecessary – ergo the proposal to codify an alternative approach, consistent with the exemption afforded by section 42-35-18(b)(5) of the APA.

RIGL Chapter 42-35.1 imposes a broad set of requirements pertaining to rule-making, with particular emphasis on the assessment of impacts to small businesses. All commercial fishermen, in essence, constitute small businesses. It would be impossible for DEM to manage the State's quota fisheries, in accordance with duly promulgated regulatory programs, if it had to comply with the provisions of Chapter 42-35.1 prior to making routine adjustments to possession limits and seasons. Accordingly, the bill includes a clause that renders Chapter 42-35.1 non-applicable to the new approach.

3. **Notification.** The bill obligates DEM to notify fishermen of all changes enacted pursuant to the new approach, using at least three of the same four forms of communication for regulatory changes that DEM has long employed, and

fishermen have long relied upon – a dedicated phone line, faxes to seafood dealers, list serve emails, and website postings.

4. **Certification.** To establish a formal record of all changes enacted pursuant to the new approach, the bill obligates the director to certify every regulatory change, maintain the record, and make it available for public inspection.

Additional Elements:

The bill includes two additional elements, which are both set forth in Section 2. They both involve straightforward fixes to two statutory quirks that pose unnecessary regulatory burdens to the overall regulatory process governing marine fisheries. The two additional elements are:

1. Aligning the regulatory process governing changes to commercial fishing licenses with the standard regulatory process (60-day advance notice to RIMFC would be changed to standard 30-day notice); and
2. Repealing the requirement that annual updates to the three fishery management and conservation plans -- finfish, shellfish, and crustacean -- must be done by rule. (The plans are plans, and serve as guidance for the development of rules).

2015 -- S 0703 AS AMENDED

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LC001730
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO FISH AND WILDLIFE -- SEAFOOD MARKETING

Introduced By: Senators Sosnowski, Conley, and Goldin

Date Introduced: March 18, 2015

Referred To: Senate Environment & Agriculture

(Environmental Management)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 20-38-2, 20-38-3 and 20-38-4 of the General Laws in Chapter 20-
2 38 entitled "The Rhode Island Seafood Marketing Collaborative of 2011" are hereby amended to
3 read as follows:

4 **20-38-2. Legislative findings.** -- The general assembly hereby finds that there are
5 currently insufficient resources and information necessary to support Rhode Island's local
6 fishermen and aquaculturists and related small businesses ~~and~~ to ensure the best possible
7 economic and environmental outcomes for the creation of more locally produced sustainable food
8 systems, that in particular includes seafood, in the State of Rhode Island.

9 **20-38-3. Definitions.** -- When used in this chapter, the following terms shall have the
10 following meanings:

11 (1) "Collaborative" means the Rhode Island seafood marketing collaborative established
12 under § 20-38-4;

13 (2) "Rhode Island's local fishermen and aquaculturists" means commercial fishermen
14 and aquaculturists licensed in the State of Rhode Island.

15 (3) "State agencies" means state entities responsible for the implementation of Rhode
16 Island's fishery management and economic development, including, but not be limited to:

17 (i) The department of environmental management, which shall include:

18 (A) The division of ~~agricultural and resource management,~~ agriculture; and

19 (B) The division of fish and wildlife ~~marine program;~~

1 (ii) The ~~economic development~~ commerce corporation;

2 (iii) The coastal resources management council;

3 (iv) The department of health;

4 (v) The department of administration.

5 (4) "Aquaculture" means the farming of aquatic organisms such as fish, crustaceans,
6 mollusks and aquatic plants.

7 (5) "Sustainable food system" means one in which resources (including natural resources
8 such as soil and water, as well as human resources such as labor) are used at or below their rate of
9 recovery.

10 (6) "Seafood dealers" means any person engaged in purchasing, raising, propagating,
11 breeding, or acquiring or possessing live fish or fish eggs to be sold or furnished to others for the
12 purpose of resale licensed in the State of Rhode Island.

13 ~~(7) "Locally landed" means legally produced species of fish or aquaculture caught by a~~
14 ~~vessel landing and licensed to fish in the State of Rhode Island.~~

15 **20-38-4. Collaborative established.** -- (a) There is hereby created ~~an interagency a~~
16 collaborative known as "The Rhode Island Seafood Marketing Collaborative" consisting of ~~nine~~
17 ~~(9)~~ nineteen (19) members as follows:

18 (1) The director of the department of environmental management or his or her designee,
19 who shall serve as chairperson;

20 (2) The executive director of the ~~economic development~~ commerce corporation, or his or
21 her designee;

22 (3) The chief of the division of fish and wildlife ~~in marine management~~ of the
23 department of environmental management, or his or her designee;

24 (4) The director of the department of health, or his or her designee;

25 (5) The chief of the division of ~~agricultural management~~ agriculture of the department of
26 environmental management, or his or her designee;

27 (6) The executive director of the coastal resources management council, or his or her
28 designee;

29 (7) The director of administration, or his or her designee;

30 (8) The dean of the University of Rhode Island ~~department~~ college of environment and
31 life sciences, or his or her designee; ~~and~~

32 ~~(9) One representative of higher education to be appointed by the senate president.~~

33 (9) The director of the Rhode Island sea grant program, or his or her designee; and

34 (10) Ten (10) additional members, each of whom shall be appointed by the director of the

1 department of environmental management, in accordance with the following categories:

2 (i) Two (2) Rhode Island-based dealers/wholesalers/processors who purchase and sell
3 finfish, shellfish, and/or crustaceans;

4 (ii) Two (2) commercial aquaculturists;

5 (iii) A Rhode Island-based retailer of seafood products associated with a restaurant or
6 restaurant organization;

7 (iv) A Rhode Island-based retailer of seafood products associated with an independent or
8 franchised store;

9 (v) Two (2) commercial fishermen licensed to harvest and/or land in Rhode Island;

10 (vi) A member of an independent organization or association representing the Rhode
11 Island hospitality industry;

12 (vii) An economist with expertise in seafood marketing.

13 (b) Forthwith upon the passage of this chapter, the members of the collaborative shall
14 meet at the call of the chairperson and organize. Thereafter, the collaborative shall meet ~~quarterly~~
15 ~~and~~ at the call of the chairperson or three (3) members of the collaborative.

16 (c) All departments and agencies of the state shall furnish such advice and information,
17 documentation, and otherwise to the collaborative and its agents as is deemed necessary or
18 desirable by the collaborative to facilitate the purposes of this chapter.

19 (d) The members of the collaborative shall receive no compensation for their services.

20 SECTION 2. Section 20-38-6 of the General Laws in Chapter 20-38 entitled "The Rhode
21 Island Seafood Marketing Collaborative of 2011" is hereby repealed.

22 ~~**20-38-6. Advisory council.** --- (a) The Rhode Island seafood marketing collaborative~~
23 ~~advisory council is hereby established. The advisory council shall consist of ten (10) members~~
24 ~~each of whom shall be appointed by the director of the department of environmental~~
25 ~~management:~~

26 ~~(1) A fish dealer/wholesaler/processor or representative;~~

27 ~~(2) A shellfish dealer or processor of lobster and crab;~~

28 ~~(3) A shellfish dealer or processor of clams, etc;~~

29 ~~(4) A aquaculture dealer or processor;~~

30 ~~(5) A retailer of seafood product representing a restaurant organization;~~

31 ~~(6) A seafood retailer representing an independent or franchised store;~~

32 ~~(7) A shellfish harvester;~~

33 ~~(8) A fisheries manager specialist;~~

34 ~~(9) A marine scientist;~~

1 ~~(10) An independent organization or association representing the hospitality industry.~~

2 ~~(b) Advisory council members shall serve two (2) year terms and are eligible to succeed~~
3 ~~themselves. In the event a member is unable to complete his or her term, the director of the~~
4 ~~department of environmental management shall appoint a successor, and the successor appointed~~
5 ~~to the vacancy shall serve for the remainder of the unexpired term. The members of the board~~
6 ~~shall receive no compensation.~~

7 ~~(c) The advisory council shall elect annually a chairperson from among its members.~~

8 ~~(d) The advisory council shall meet at least quarterly at the call of the chairperson or~~
9 ~~three (3) council members. The chairperson of the Rhode Island seafood marketing collaborative,~~
10 ~~or designee from among the members of the collaborative, shall be present for all advisory~~
11 ~~council meetings.~~

12 ~~(e) The advisory council shall advise the collaborative on all matters pertaining to the~~
13 ~~collaborative duties and powers.~~

14 SECTION 3. This act shall take effect upon passage.

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LC001730
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FISH AND WILDLIFE -- SEAFOOD MARKETING

1 This act would add aquaculturist membership and representation to the seafood
2 marketing collaborative of 2011.

3 This act would take effect upon passage.

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LC001730
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RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street,
Providence, RI 02908

Office: 401.222.2771
Fax: 401.222.6802

April 2, 2015

Representative Arthur Handy, Chair
House Committee on Environment and Natural Resources
82 Smith Street
Providence, Rhode Island 02903

Re: H-5897

Dear Chairman Handy:

Thank you for providing the Department of Environmental Management (DEM) the opportunity to comment in support of H-5897, which would update and improve the statute governing the Rhode Island Seafood Marketing Collaborative. This bill has been developed by the Department, in coordination with the Collaborative.

The RI Seafood Marketing Collaborative was established by statute in 2011. The primary purpose of the Collaborative was, and is, to support the Rhode Island seafood industry by identifying opportunities to promote Rhode Island seafood. In accordance with the statute, the 9-member collaborative is comprised of representatives from five state agencies, as well as the University of Rhode Island. The collaborative is advised by a 10-member Advisory Council comprised mainly of industry representatives.

The Collaborative has met regularly since 2012, and remains active and effective. A key initiative launched by the Collaborative is the adoption of a RI Seafood brand (logo), and the development of a RI seafood marketing campaign, tied to the brand. The initiative is fully developed and poised for a major launch in 2015. From the onset, the members of the Collaborative and the Advisory Council members have met jointly, and for all intents and purposes, have functioned as single body.

The proposed bill seeks to build on the success of the Collaborative by formally consolidating the Collaborative and its Advisory Council into a single Collaborative; tweaking the membership of the Collaborative to reflect balanced, diverse, and relevant participation by key interests; affording more flexibility by removing the Collaborative's quarterly-meeting mandate; improving and updating some provisions pertaining to aquaculture and the definition of RI seafood; and making a few technical corrections.

Specifically, the bill would amend the Act in the following ways:

- Clarify that the Act pertains to seafood produced by commercial aquaculturists in addition to commercial fishermen.
- Consolidate the 9-member Collaborative and 10-member Advisory Council into a single 17-member Collaborative.
- Reconfigure the membership of the Collaborative, as follows:
 - Replace “a representative of higher education appointed by the senate president” with the “director of the RI sea grant program.”
 - Clarify that all industry and academic representatives appointed by the director are to be Rhode Island-based.
 - Streamline representation by dealers/processors/wholesalers (from three to two)
 - Increase representation by commercial, wild-fishery harvesters (from one to two)
 - Increase representation by commercial aquaculturists (from one to two)
 - Add an “economist with expertise in seafood marketing”; and
 - Delete “fisheries manager specialist” and “marine scientist”
- Repeal the quarterly-meeting mandate for the Collaborative.

As a whole, the proposed changes are intended to better align the statute with the evolving and successful program that has developed in the years since the statute was first enacted.

For further information on this issue, please contact Robert Ballou, Assistant to the Director, at 222.4700, Ext. 4420, or Robert.Ballou@dem.ri.gov. Thank you for your continued interest in and support for Rhode Island seafood!

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Coit".

Janet Coit
Director

cc: Members, House Committee on Environment and Natural Resources

2015 -- S 0751

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LC001733
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO FISH AND WILDLIFE

Introduced By: Senators Sheehan, and Sosnowski

Date Introduced: March 24, 2015

Referred To: Senate Environment & Agriculture

(Environmental Management)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 20-2.1-4 and 20-2.1-5 of the General Laws in Chapter 20-2.1
2 entitled "Commercial Fishing Licenses" are hereby amended to read as follows:

3 **20-2.1-4. Licenses -- General provisions governing licenses issued.** -- (a) Licenses and
4 vessel declarations required. - It shall be unlawful for any person in Rhode Island or the waters of
5 the state: (1) to catch, harvest, or to hold or transport for sale in Rhode Island any marine finfish,
6 crustacean, or shellfish without a license issued under the provisions of this title, provided,
7 however, that marine finfish, crustaceans, or shellfish may be transported by a duly licensed
8 dealer if the marine finfish, crustaceans, or shellfish has previously been sold by a duly licensed
9 person, or (2) to engage in commercial fishing from a vessel unless the vessel has been declared a
10 commercial fishing vessel as provided in § 20-2.1-5(2) and has a decal affixed to it or is
11 displaying a plate.

12 (b) Validation of license. - No license issued under this chapter shall be valid until
13 signed by the licensee in his or her own handwriting.

14 (c) Transfer or loan of license. - Unless otherwise provided for in this title, a license
15 issued to a person under this chapter shall be good only for the person to whom it is issued; and
16 any transfer or loan of the license shall be grounds for revocation or suspension of that license
17 pursuant to § 20-2-13.

18 (d) Reporting and inspections condition of license. - All persons granted a license under
19 the provisions of this chapter are deemed to have consented to the reporting requirements

1 applicable to commercial fishing actively that are established pursuant to this title and to the
2 reasonable inspection of any boat, vessel, net, rake, bullrake, tong, dredge, trap, pot, vehicle,
3 structure, or other contrivance used regularly for the keeping or storage of fish, shellfish or
4 crustaceans, and any creel, box, locker, basket, crate, blind, fishing, or paraphernalia used in
5 conjunction with the licensed activity by persons duly authorized by the director. The provisions
6 of § 20-1-8(a)(7)(ii) shall apply to these inspections.

7 (e) Possession, inspection, and display of license. - Every person holding a license issued
8 under this chapter shall have that license in his or her possession at all times while engaged in the
9 licensed activity and shall present the license for inspection on demand by any authorized person.
10 Any person who shall refuse to present a license on demand shall be liable to the same
11 punishment as if that person were fishing without a license.

12 (f) Application for license. - Every person entitled to a license under this chapter shall
13 file an application with the director or the director's authorized agent, properly sworn to, stating
14 the name, age, occupation, place of residence, mailing address, weight, height, and color of hair
15 and eyes of the applicant for whom the license is wanted and providing any other information that
16 may be required pursuant to rule in order to effectuate the purposes of this chapter, and pay the
17 fees as provided in this chapter. All licenses issued under this chapter shall be valid only for the
18 calendar year of issuance, unless otherwise specified in this chapter or in the rules and regulations
19 adopted pursuant to this chapter. If the person will be either the owner or the operator as provided
20 in § 20-2.1-5(5) of a commercial fishing vessel, the person shall declare on the application for
21 each commercial fishing vessel, the vessel name, length, horsepower, registration number, federal
22 permit number if any, gear type(s), the principal fishery or fisheries, and average projected crew
23 size.

24 (g) Application deadline, grace period for renewals, and limitation on appeals after the
25 deadlines. - For commercial marine fishing licenses provided for in §§ 20-2.1-5 and 20-2.1-6, the
26 following provisions shall apply: (1) unless otherwise specified in this chapter, an individual
27 qualified to obtain a license must submit an application to the department of environmental
28 management no later than February 28 of each year; license application shall be deemed valid if
29 submitted to the department prior to the close of regular office hours on February 28, or if
30 postmarked by February 28; (2) unless otherwise specified in this title, no new or renewed
31 licenses shall be issued after February 28 of each year, unless an applicant has submitted an
32 application by the February 28 deadline required by this section; (3) the department shall notify
33 all license holders, in writing, regarding the December 31 expiration and the February 28 renewal
34 deadline no later than November 1 of each year; (4) for renewals of existing commercial marine

1 fishing licenses that expire on December 31 of the immediately preceding year, there shall be a
2 sixty (60) day grace period from the renewal deadline of February 28; licenses issued during the
3 grace period shall be subject to a late fee in the amount of two-hundred dollars (\$200) in addition
4 to all other applicable fees; (5) except as provided for in subsection (g)(4) [or § 20-2.1-5 \(1\)\(iv\)\(A\)](#)
5 the department shall not accept any applications submitted after February 28; and (6) there shall
6 be no right to request reconsideration by the commercial fishing license review board or appeal to
7 the department of environmental management's administrative adjudication division (AAD) for
8 the rejection of any new license applications submitted after February 28, or any license renewal
9 applications submitted after the sixty (60) day grace period, except in the case of a documented
10 medical hardship as defined herein.

11 (h) Lost or destroyed licenses and duplicate licenses. - Whoever loses or by a mistake or
12 accident destroys his or her certificate of a commercial marine fisheries license may, upon
13 application to the department accompanied by an affidavit fully setting forth the circumstances of
14 the loss, receive a duplicate certificate for the remainder of the year covered by the original
15 certificate, for a fee of ten dollars (\$10.00) for each duplicate license.

16 (i) Revocation of licenses.

17 (1) License revocation. - The license of any person who has violated the provisions of
18 this chapter, or rules adopted pursuant to the provisions of this chapter or rules and regulations
19 that pertain to commercial fishing and reporting issued pursuant to this title, may be suspended or
20 revoked by the director as the director shall determine by regulation. Any person aggrieved by an
21 order of suspension or revocation may appeal this order in accordance with the provisions of the
22 Administrative Procedures Act, chapter 35 of title 42.

23 (2) False statements and violations; cancellation of license. - Any person who willfully
24 makes a false representation as to birthplace or requirements of identification or of other facts
25 required in an application for license under this chapter, or is otherwise directly or indirectly a
26 party to a false representation, shall be punished by a fine of not more than fifty dollars (\$50.00).
27 A license obtained by any person through a false representation shall be null and void, and the
28 license shall be surrendered immediately to the director. No license shall be issued under this title
29 to this person for a period of one year from the date of imposition of a penalty under this section.

30 (3) False, altered, forged, or counterfeit licenses. - Every person who falsely makes,
31 alters, forges, or counterfeits, or who causes to be made, altered, forged, or counterfeited, a
32 license issued under this chapter or title or purporting to be a license issued under this chapter or
33 title, or who shall have in his or her possession such a license knowing it to be false, altered,
34 forged, or counterfeit, is guilty of a misdemeanor and is subject to the penalties prescribed in §

1 20-1-16.

2 (j) Expiration. - Unless otherwise specified in this title, all licenses issued under this
3 chapter shall be annual and shall expire on December 31 of each year. It shall be unlawful for any
4 person to fish commercially in Rhode Island waters on an expired license; and the application and
5 grace periods set forth in subsections (g)(1) and (g)(4) above shall not extend the validity of any
6 expired license.

7 (k) Notice of change of address. - Whenever any person holding any commercial fishing
8 license shall move from the address named in his or her last application, that person shall within
9 ten (10) days subsequent to moving notify the office of boat registration and licensing of his or
10 her former and current address.

11 **20-2.1-5. Resident licenses.** -- The director shall establish as a minimum the following
12 types of licenses set forth in this section. In addition, the director may establish any other classes
13 and types of licenses and endorsements, consistent with the provisions of this chapter and with
14 adopted management plans, that may be necessary to accomplish the purposes of this chapter:

15 (1) Types of licenses.

16 (i) Commercial fishing license. - Rhode Island residents shall be eligible to obtain a
17 commercial fishing license; the license shall allow the holder to engage in commercial fishing in
18 fisheries sectors, per endorsement at basic harvest and gear levels. The annual fee for a
19 commercial fishing license shall be fifty dollars (\$50.00) and twenty-five dollars (\$25.00) for
20 each endorsement at the basic harvest and gear levels.

21 (ii) Principal effort license. - Duly licensed persons in a fishery as of December 31 of the
22 immediately preceding year, shall be eligible to obtain a principal effort license for the fishery
23 sector for which they were licensed on December 31 of the immediately preceding year, which
24 principal effort license shall allow its holder to fish in a fishery sector at the full harvest and gear
25 levels. The annual fee for a principal effort license shall be one hundred fifty dollars (\$150).
26 Principal effort license holders, in addition to the fishery sector of their principal effort, shall be
27 eligible to obtain endorsements for the other fishery sectors at the full harvest and gear levels, if
28 and when those endorsements are made available; the annual fee for each other fishery sector
29 endorsement shall be seventy-five dollars (\$75.00). Principal effort license holders shall also be
30 eligible to obtain a commercial fishing license with endorsements except for fisheries in which
31 the license holder can fish at the full harvest and gear levels.

32 (iii) Multi-purpose license. - All multi-purpose license holders as of December 31 of the
33 immediately preceding year, shall be eligible to obtain a multi-purpose license, which shall allow
34 the holder to engage in commercial fishing in all fisheries sectors at the full harvest and gear

1 levels. At the time of application for a multi-purpose license and each annual renewal of it, the
2 applicant shall make a non-binding declaration of which fishing sectors the applicant intends to
3 place significant fishing effort during the period covered by the license. The annual fee for multi-
4 purpose license shall be three hundred dollars (\$300).

5 (iv) Special licenses.

6 (A) Student shellfish license. - A resident twenty-three (23) years or younger shall pay
7 fifty dollars (\$50.00) for a student commercial license to take shellfish upon provision of proof of
8 full-time student status. [An individual qualified to obtain a license must submit an application to](#)
9 [the department of environmental management no later than June 30 of each year; a license](#)
10 [application shall be deemed valid if submitted to the department prior to the close of regular](#)
11 [office hours on June 30, or if postmarked by June 30.](#)

12 (B) Over sixty-five (65) shellfish license. - A resident sixty-five (65) years of age and
13 over shall be eligible for a shellfish license to shellfish commercially and there shall be no fee for
14 this license.

15 (2) Vessel declaration and fees; gear endorsement and fees.

16 (i) Vessel declaration and fee. - (A) The department shall require the owner and/or the
17 operator of a commercial fishing vessel to declare the vessel on the owner/operator's commercial
18 fishing license. The declaration shall be made at the time of initial license issuance and each
19 renewal, or prior to the vessels being used for commercial fishing by the owner and/or operator if
20 the first usage of the vessel for commercial fishing occurs during the course of a year after the
21 license has been issued or renewed. If the declaration is for a vessel of less than twenty-five feet
22 (25') in length, the declaration shall be transferable to another vessel less than twenty-five feet
23 (25') in length, provided the vessel is identified as commercial fishing vessel while it is being
24 used for commercial fishing by displaying a plate as provided in § 20-2.1-4.

25 (B) The annual fee for each vessel declaration shall be twenty-five dollars (\$25.00) for
26 the first twenty-five feet (25') or under, plus fifty cents (\$0.50) per foot for each whole foot over
27 twenty-five feet (25'); this declaration fee shall entitle the holder to a decal. The holder of a valid
28 decal for a vessel twenty-five feet (25') in length or under may obtain a plate from the department
29 for display on a vessel twenty-five feet (25') in length that is being used temporarily for
30 commercial fishing; the annual fee for a plate shall be fifteen dollars (\$15.00).

31 (ii) Gear endorsements and fees.

32 (A) Shellfish dredging endorsement. - A resident of this state who holds a multipurpose
33 license and/or an appropriate shellfish license is also eligible to apply for a shellfish dredging
34 endorsement to take quahogs, mussels, and surf clams by dredges hauled by powerboat. The

1 annual fee shall be twenty dollars (\$20.00).

2 (B) Fish trap endorsements. - A person who holds a multi-purpose license and/or a
3 principal effort license for finfish is also eligible to apply for a fish trap endorsement in
4 accordance with the permitting provisions in chapter 5 of this title. The fee shall be twenty dollars
5 (\$20.00) per trap location for a three (3) year period. Applicants who possessed a valid fish trap
6 endorsement as of the immediately preceding year may obtain a fish trap endorsement for the
7 immediately following year, subject to the same terms and conditions in effect as the immediately
8 preceding year. New fish trap endorsement opportunities shall be established by the department
9 by rule, pursuant to applicable management plans and the provisions in chapter 5 of this title.

10 (C) Gill net endorsements. - A person who holds a multi-purpose license and/or a
11 principal effort license for finfish is also eligible to apply for a commercial gill net endorsement
12 in accordance with the provisions of this section. The annual fee for a commercial gill net
13 endorsement is twenty dollars (\$20.00). Applicants who possessed a gill net endorsement as of
14 the immediately preceding year may obtain a gill net endorsement for the immediately following
15 year. New gill net endorsement opportunities shall be established by the department by rule,
16 pursuant to applicable management plans.

17 (D) Miscellaneous gear endorsements. - The department may establish by rule any
18 specific gear endorsements that may be necessary or appropriate to effectuate the purposes of this
19 chapter and facilitate participation in a specific fishery with a specific type of gear; the fee for
20 such a gear endorsement shall not be greater than two hundred dollars (\$200), but may be a lesser
21 amount. This endorsement shall be issued only in a manner consistent with the general
22 requirements of this chapter, including specifically those governing residency.

23 (3) New licenses.

24 (i) Eligibility. - For new principal effort and multi-purpose licenses priority shall be
25 given to applicants who have held a lower level of license for two (2) years or more, with
26 preference to family members and crew members of a license holder who is retiring his or her
27 license.

28 (ii) Priority or preference applicants. - A new license shall be granted to
29 priority/preference applicants who have acquired vessel and or gear from a license holder who
30 has retired a license, provided that as the result of any such transaction for each license retired not
31 more than one new license may be granted, nor may the nominal effort, including the total
32 number of licenses, in a fishery subject effort or catch restrictions be increased.

33 (iii) Availability of new or additional licenses. - New principal effort and multi-purpose
34 licenses that increase the total number of licenses in the fishery may be made available by rule

1 consistent with management plan for issuance effective January 1, in any year, based on status of
2 resource and economic condition of fishery. Priority for new licenses shall be given to Rhode
3 Island residents.

4 (4) Retirement of licenses. - Issuance of license shall not be deemed to create a property
5 right such that the license can be sold or transferred by license holder; fishing licenses shall be
6 surrendered to the state upon their non-renewal, forfeiture or revocation.

7 (5) Transfer for hardship. - Notwithstanding the provisions of § 20-2.1-4(c), a license
8 may be transferred to a family member upon the incapacity or death of the license holder who has
9 actively participated in commercial fishing. The transfer shall be effective upon its registration
10 with the department. A family member shall be defined as the spouse, mother, father, brother,
11 sister, child or grandchild of the transferor. The department shall make available as necessary
12 operator permits to provide solely for the continued operation of a fishing vessel upon the illness,
13 incapacity or death of a license holder who has actively participated in commercial fishing, which
14 operator permits shall be subject at a minimum to the conditions and restrictions that applied to
15 the license holder.

16 (6) Transfer of vessels and gear. - Vessels and gear may be sold, transferred, or disposed
17 at the sole discretion of the owner; provided, however, that the subsequent level of use of the gear
18 may be restricted in Rhode Island waters in order to accomplish the purposes of a duly adopted
19 management plan or other duly adopted program to reduce effort.

20 SECTION 2. This act shall take effect upon passage.

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LC001733
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FISH AND WILDLIFE

- 1 This act requires applications for student shellfish licenses to be submitted no later than
- 2 June 30 of each year.
- 3 This act shall take effect upon passage.

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LC001733
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RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street,
Providence, RI 02908

Office: 401.222.2771
Fax: 401.222.6802

April 8, 2015

Senator V. Susan Sosnowski
Chair, Senate Committee on Environment and Agriculture
82 Smith Street
Providence, Rhode Island 02903

Re: S-751

Dear Chair Sosnowski:

Thank you for providing the Department of Environmental Management (DEM) the opportunity to comment on S-751, which would extend the annual application period for commercial student shellfishing licenses.

The bill has been introduced at the request of the Department. We thank you and Senator Sheehan for your support and co-sponsorship.

The bill would implement a key recommendation of the recently completed Rhode Island Shellfish Management Plan (SMP). During the plan development process, Rhode Island's commercial quahog fishery was found to be strong and viable; in fact, with annual landings of about \$5 million dollars (based solely on ex-vessel prices), the fishery remains the single most valuable fishery in Narragansett Bay. It was also found that the fishery continues to serve as a significant source of employment for Rhode Islanders, with over 500 active licensed fishermen. However, it was also found that there are relatively few young people entering and remaining in the fishery. Just 18 percent of all active participants in the fishery are under the age of forty. With major impetus from the Rhode Island Shellfishermen's Association, the SMP recommended actions that would incentivize more young Rhode Islanders to become commercial quahoggers.

In accordance with state law, Commercial Student Shellfish Licenses are openly available to RI residents who are twenty-three years of age or younger and who are full-time students. DEM typically issues about 50 of these student licenses each year. DEM's licensing regulations allow any student license holder who has actively fished his/her license for two years to qualify for a standard commercial license, and then be further qualified to retain that license indefinitely. As

such, the student license program offers a direct pathway to becoming a full-time commercial quahog fisherman in Rhode Island

Currently, in accordance with the commercial licensing statute, the annual deadline for obtaining commercial fishing licenses, including the Student Shellfish License, is February 28. During the development of the SMP, it was recognized that this deadline likely serves as an impediment to new entry into the student program, since many students tend not to think about their summer plans months prior to the end of the school year. Accordingly, a recommendation was developed, and widely supported, to extend the license application deadline. S-751 would implement this recommendation by establishing a new June 30 annual application deadline for Student Shellfish Licenses.

The bill is intended to increase opportunities for more students to enter the commercial quahog fishery, with the possibility that many will decide to continue shellfishing after they complete their education, adding new blood to Rhode Island's commercial quahog fishery and helping to keep it strong and viable well into the future.

DEM strongly supports the proposal, and urges its favorable consideration by the Committee. If you or any members of Committee have any questions about the bill, please contact Robert Ballou, Assistant to the Director, 222-4700, ext. 4420, Robert.Ballou@dem.ri.gov; or Jeff Mercer, Principal Marine Biologist, 423-1937, Jeff.Mercer@dem.ri.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Coit".

Janet Coit
Director

cc: Members, Senate Committee on Environment and Agriculture

2015 -- S 0885

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LC001600
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO FISH AND WILDLIFE - GENERAL PROVISIONS

Introduced By: Senators Ruggerio, Sosnowski, Lombardi, Miller, and Walaska

Date Introduced: May 07, 2015

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 20-1 of the General Laws entitled "General Provisions" is hereby
2 amended by adding thereto the following section:

3 **20-1-29. Trade in shark fins. – (a) For the purpose of this section:**

4 (1) "Shark" means any species of the subclass Elasmobranchii; and

5 (2) "Shark fin" means the raw, dried or otherwise processed detached fin, or the raw,
6 dried or otherwise processed detached tail, of a shark

7 (b) Except as provided in this section, no person shall possess, sell, offer for sale, trade or
8 distribute a shark fin.

9 (c) A person who holds a license or permit to take or land sharks may separate a shark fin
10 from a lawfully landed shark during the ordinary course of preparing the body of the shark for
11 consumption, sale, trade or distribution; provided, however, that a shark fin so separated from the
12 shark shall be immediately destroyed unless used by the person for the purposes of taxidermy and
13 subsequent display.

14 (d) The director of the department of environmental management may issue a permit for
15 the possession of a shark fin to a person conducting noncommercial, scientific research.

16 (e) Any shark fin seized by the director of the department of environmental management
17 or the director's agents through the enforcement of this section shall be destroyed.

18 (f) Any person who violates the provisions of this section shall be punished by a fine of
19 not less than five hundred (\$500) dollars, nor more than one thousand (\$1,000) dollars, or by

1 imprisonment for not more than ninety (90) days or by both such fine and imprisonment;
2 provided, however, that each shark fin possessed, sold, offered for sale, traded or distributed in
3 violation of this section shall constitute a separate offense. Provided further a violation of this
4 section by a person holding a commercial or recreational license or permit pursuant to this
5 chapter shall result in the suspension or revocation of such license or permit.

6 SECTION 2. This act shall take effect on January 1, 2016.

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LC001600
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FISH AND WILDLIFE - GENERAL PROVISIONS

- 1 This act would prohibit and/or regulate the possession or sale of shark fins.
- 2 This act would take effect on January 1, 2016.

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LC001600
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RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street,
Providence, RI 02908

Office: 401.222.2771
Fax: 401.222.6802

May 20, 2015

Senator V. Susan Sosnowski, Chairwoman
Senate Committee on Environment and Agriculture
82 Smith Street
Providence, Rhode Island 02903

Re: S-885

Dear Chairwoman Sosnowski:

Thank you for providing the Department of Environmental Management (DEM) the opportunity to comment on S-885, which would prohibit and/or regulate the possession or sale of shark fins. The Department supports the bill, provided that it is amended to exclude skates and dogfish.

The cruel and destructive practice of removing fins from sharks and then discarding the animals is abhorrent. To put an end to the practice, Congress has passed two federal statutes -- the Shark Finning Prohibition Act of 2000, which was replaced by the Shark Conservation Act of 2010 -- that prohibit shark finning, and all states, including Rhode Island, have enacted complementary state regulations. It is therefore illegal to remove the fins from any shark, except smooth dogfish, in all federal waters and all state waters along the U.S. East Coast, including Rhode Island.

S-885 would expand on the current laws prohibiting shark finning at sea by banning the possession and sale of shark fins, including those that have been removed on land during processing from a shark legally harvested and landed with the fins attached. The bill would require that any shark fin removed on land during processing must be immediately destroyed. The bill provides a blanket exemption for fins used "for the purposes of taxidermy and subsequent display," and a specific exemption for fins possessed by an individual conducting noncommercial, scientific research who is permitted by the DEM Director.

The bill, as introduced, has one significant issue that warrants attention. It defines "shark" as "any species of the subclass Elasmobranchii." That subclass includes skates (suborder batoidea), and spiny dogfish, both of which are commonly landed in RI and constitute significant commercial fisheries. The subclass also includes smooth dogfish, also known as smooth hound, for which there are special finning provisions set forth by federal law and DEM regulation. To address these issues, the Department recommends amending the bill by adding the following provision between lines 4 and 5:

(2) "Shark" does not include smooth dogfish (smooth hounds), spiny dogfish, or species in the superorder batoidea;

The need to exempt skates seems obvious. Skates are not sharks, although they are closely related. Fins from skates are widely consumed as food. The commercial fishery for skates is an important part of the RI commercial fishing industry, with an annual ex-vessel value of nearly \$2 million.

The need to exempt smooth dogfish – aka smooth hounds – is necessary in order to render the bill consistent with the federal Shark Conservation Act of 2010 and complementary state regulations. In accordance with federal law, and the regulations of all coastal states, including Rhode Island, at-sea processing of smooth dogfish may occur, provided that the total weight of smooth dogfish fins landed or found on board a vessel does not exceed 12 percent of the total weight of smooth dogfish carcasses landed or found on board. Commercial landings of smooth dogfish in Rhode Island are not significant (about 9,000 pounds, with an ex-vessel value of less than \$4,000, landed in 2014), so the proposed exemption is primarily aimed at achieving state-federal and interstate consistency.

The need to exempt spiny dogfish is necessary in order to support the interests of Rhode Island's commercial fishing industry. The commercial spiny dogfish fishery in Rhode Island is valuable and expected to grow. Almost 700,000 pounds, with an ex-vessel value of nearly \$114,000, were landed in RI in 2014. Currently, all spiny dogfish landed in Rhode Island (fins attached) are shipped to Massachusetts for processing. Massachusetts has a law that is identical to S-885, except that it specifically excludes both smooth and spiny dogfish. As a result, the fins from spiny dogfish processed in Massachusetts are marketed, along with the rest of the animal. If, in the near or distant future, a Rhode Island-based processor were to expand its operations by processing spiny dogfish, it would be important to have a level playing field with Massachusetts.

Ostensibly, the primary purpose of S-885 is to support the ban on at-sea finning, and dissuade the harvest of sharks solely for their fins, by eliminating the market for shark fins, including fins from sharks that are legally harvested and landed with the fins attached. The proposed exemption for smooth and spiny dogfish is consistent with that purpose. Dogfish fins are readily distinguishable from other shark fins, and the large commercial fisheries for dogfish rely upon full utilization of the animals.

Thank you for your interest in and support for the sound conservation and wise utilization of our marine fishery resources.

For further information on this issue, please contact Robert Ballou, Assistant to the Director, at 222.4700, Ext. 4420, or Robert.Ballou@dem.ri.gov. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Coit".

Janet Coit

Director

cc: Members, Senate Committee on Environment and Agriculture

2015 -- S 0416

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

WATERS AND NAVIGATION - COASTAL RESOURCES MANAGEMENT COUNCIL -
THE RHODE ISLAND LOCAL AGRICULTURE AND SEAFOOD ACT

Introduced By: Senators Sosnowski, Walaska, Coyne, McCaffrey, and Gee

Date Introduced: February 25, 2015

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 46-23-1 of the General Laws in Chapter 46-23 entitled "Coastal
2 Resources Management Council" is hereby amended to read as follows:

3 **46-23-1. Legislative findings.** -- (a)(1) Under article 1, § 17 of the Rhode Island
4 Constitution, the people shall continue to enjoy and freely exercise all the rights of fishery, and
5 the privileges of the shore, to which they have been heretofore entitled under the charter and
6 usages of this state, including, but not limited to, fishing from the shore, the gathering of
7 seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be
8 secure in their rights to use and enjoyment of the natural resources of the state with due regard for
9 the preservation of their values; and it is the duty of the general assembly to provide for the
10 conservation of the air, land, water, plant, animal, mineral and other natural resources of the state,
11 and to adopt all means necessary and proper by law to protect the natural environment of the
12 people of the state by providing adequate resource planning for the control and regulation of the
13 use of the natural resources of the state and for the preservation, regeneration, and restoration of
14 the natural environment of the state.

15 (2) The general assembly recognizes and declares that the coastal resources of Rhode
16 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of
17 immediate and potential value to the present and future development of this state; that unplanned
18 or poorly planned development of this basic natural environment has already damaged or

1 destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has
2 restricted the most efficient and beneficial utilization of these resources; that it shall be the policy
3 of this state to preserve, protect, develop, and, where possible, restore the coastal resources of the
4 state for this and succeeding generations through comprehensive and coordinated long range
5 planning and management designed to produce the maximum benefit for society from these
6 coastal resources; and that preservation and restoration of ecological systems shall be the primary
7 guiding principle upon which environmental alteration of coastal resources will be measured,
8 judged, and regulated.

9 (b)(1) That effective implementation of these policies is essential to the social and
10 economic well-being of the people of Rhode Island because the sea and its adjacent lands are
11 major sources of food and public recreation, because these resources are used by and for industry,
12 transportation, waste disposal, and other purposes, and because the demands made on these
13 resources are increasing in number, magnitude, and complexity; and that these policies are
14 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. § 1452
15 ("The Coastal Zone Management Act"), the general assembly hereby directs the council (referred
16 to as "CRMC") to exercise effectively its responsibilities in the coastal zone through the
17 development and implementation of management programs to achieve wise use of the land and
18 water resources of the coastal zone.

19 (2) Furthermore, that implementation of these policies is necessary in order to secure the
20 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state
21 with due regard for the preservation of their values, and in order to allow the general assembly to
22 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and
23 other natural resources of the state, and to adopt all means necessary and proper by law to protect
24 the natural environment of the people of the state by providing adequate resource planning for the
25 control and regulation of the use of the natural resources of the state and for the preservation,
26 regeneration, and restoration of the natural environment of the state.

27 (c) That these policies can best be achieved through the creation of a coastal resources
28 management council as the principal mechanism for management of the state's coastal resources.

29 (d) The general assembly recognizes and declares that maintenance dredging is required
30 to remove natural silt accumulations; Rhode Island has not had a general maintenance dredging
31 policy and programs for ports, port facilities, channels, harbors, public and private marinas and
32 boating facilities, recreational facilities and habitat areas; other major coastal states have
33 maintenance dredging policies and in-water maintenance dredge disposal sites; as a result of the
34 lack of a general maintenance dredging policy and program and as a result there has been:

1 (1) A decrease in the depth of the Providence Channel from forty-four (44) feet in 1971
2 to twenty-four (24) feet in 1996;

3 (2) Navigational restrictions on ocean going vessels through the state's waterways and
4 channels; and

5 (3) A decrease in the number of available slips and moorings at marinas throughout the
6 state; and the lack of a maintenance dredging policy and programs have significant adverse
7 environmental and economic effects on the state and therefore it is in the best interest of the state,
8 the cities and towns of the state, and the citizens thereof for the state to have a general
9 maintenance dredging policy and programs to resolve issues related to dredge maintenance and
10 disposal and avoid future significant direct and indirect adverse impact on the environment and
11 economy of the state.

12 (e) The coastal resources management council is hereby designated as the lead state
13 agency for purposes of dredging in tidal waters and as such shall have the following duties and
14 responsibilities:

15 (1) To coordinate the interest of the state with regard to dredging;

16 (2) To formulate and adopt a state policy with regard to dredging which integrates those
17 interests;

18 (3) To cooperate with, negotiate, and to enter into agreements on behalf of the state with
19 the federal government and with other public bodies and private parties with regard to dredging;

20 (4) To act as the initial and primary point of contact for all applications to the state for
21 dredging projects in tidal waters;

22 (5) To develop, prepare, adopt pursuant to § 46-23-11, implement, and maintain a
23 comprehensive plan for dredge material management; and

24 (6) To cooperate and coordinate with the departments of environmental management,
25 transportation, administration, and health, and the economic development corporation in the
26 conduct of these duties and responsibilities.

27 (f)(1) The legislature recognizes that under Article I, § 17, the submerged lands of the
28 state are impressed with a public trust and that the state is responsible for the protection of the
29 public's interest in these lands. The state maintains title in fee to all soil within its boundaries that
30 lies below the high water mark, and it holds that land in trust for the use of the public. In
31 benefiting the public, the state preserves certain public rights which include, but are not limited
32 to, fishery, commerce, and navigation in these waters and the submerged lands that they cover.

33 (2) Since its establishment in 1971, the CRMC has had the authority to manage and plan
34 for the preservation of the coastal resources of the state including, but not limited to, submerged

1 lands. The legislature hereby declares that, in light of the unique size, scope, and overall potential
2 impact upon the environment of large scale filling projects involving twenty-five (25) acres or
3 more, any lease of tidal lands, or any license to use those lands, is subject to approval,
4 disapproval, or conditional approval by the direct enactment of the general assembly by
5 legislative action. The CRMC shall review all requests for leases, licenses to use the land, and
6 other authority to use the land made by any applicant prior to presentation of the request to the
7 general assembly, and the CRMC shall make recommendations on the request to the general
8 assembly. With the exception of any and all projects to fill land of twenty-five (25) acres or more,
9 the general assembly hereby recognizes and declares that the CRMC is delegated the sole and
10 exclusive authority for the leasing of submerged and filled lands and giving licenses for the use of
11 that land. Accordingly, the CRMC will develop, coordinate, and adopt a system for the leasing of
12 submerged and filled lands, and licenses for the use of that land, and will ensure that all leases
13 and licenses are consistent with the public trust. Pursuant thereto, the CRMC shall impose a
14 maximum fee of eighty thousand dollars (\$80,000) per annum for any transatlantic cable that
15 makes landfall in Rhode Island. All such fees collected shall be deposited into the Bays, Rivers
16 and Watersheds Fund, established pursuant to § 46-31-12.1, and shall be disbursed according to
17 the purposes of that fund. [All fees collected for the lease of tidal lands for any renewable energy
18 project with a project cost exceeding five million dollars \(\\$5,000,000\) shall be deposited into the
19 Rhode Island local agriculture and seafood fund established pursuant to § 2-25-6, and shall be
20 disbursed according to the purposes of that fund.](#) Nothing contained in this subsection negates,
21 repeals, or alters the provisions, processes, and requirements for the leasing of submerged land
22 for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore, nothing in this
23 chapter shall be construed to limit or impair the authority of the state, or any duly established
24 agency of the state, to regulate filling or dredging affecting tidal lands owned by the state or any
25 other entity, and nothing in this chapter shall be construed to limit or impair the obligation of the
26 applicant to obtain all applicable regulatory approvals. Specifically, and without limiting the
27 foregoing, nothing in this subsection negates, repeals, or alters the provisions, processes, and
28 requirements for water quality certification contained in chapter 12 of this title.

29 (3) Definitions.

30 (i) "Filled land" means portions of tidal lands which have been rendered by the acts of
31 man to be no longer subject to tidal action or beneath tidal waters.

32 (ii) "Tidal Lands" means those lands that are below the mean high water.

33 (iii) "Mean high water" means a line of contour representing the 18.6 year average as
34 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum,

1 and methodology of the United States Coastal Geodetic Survey within the National Oceanic and
2 Atmospheric Administration.

3 SECTION 2. Sections 2-25-2, 2-25-3, 2-25-5, 2-25-6 and 2-25-7 of the General Laws in
4 Chapter 2-25 entitled “The Rhode Island Local Agriculture and Seafood Act” are hereby
5 amended to read as follows:

6 **2-25-2. Legislative findings.** -- The general assembly hereby finds and declares:

7 (1) A viable agricultural and seafood sector in Rhode Island represents part of a secure
8 regional food supply, which in turn lends itself to energy and economic efficiencies;

9 (2) The federal government and regional entities have established and continue to
10 establish programs and processes to support local agricultural production and increased
11 consumption of locally produced food, and Rhode Island functions in whole or in part in the
12 context of federal and regional programs;

13 (3) The general public is increasingly interested in locally produced food;

14 (4) The benefits of local food systems to local communities include open land, jobs,
15 nutritious and safe foods, and youth education opportunities;

16 (5) Farms and commercial fishing are an integral part of Rhode Island's overall economy;

17 (6) Encouraging the continued growth of Rhode Island's agricultural and seafood sectors
18 is integral to reducing food insecurity in Rhode Island;

19 (7) Relationship-based food systems such as farm-to-school programs, community
20 supported agriculture (CSA) programs, farmers' markets, and pick-your-own operations are
21 increasingly popular and offer areas of opportunity for new farmers; ~~and~~

22 (8) The state of Rhode Island has historically established programs to provide for and
23 regulate the agriculture and commercial fishing sectors;

24 (9) Expanding and strengthening the local food system supports a diverse range of
25 economic activities and benefits that extend well beyond fisheries and agricultural industries and
26 includes new businesses and job growth, increased property values, generation of new revenues
27 and stronger Rhode Island communities; and

28 (10) The increasing volume, complexity and burden of fisheries management policies and
29 regulations threatens the viability of the Rhode Island fishing industry and serves as a barrier to
30 growth of this important sector of the state's economy.

31 **2-25-3. Legislative intent.** -- The general assembly intends:

32 (1) To support and develop more robust and self-sustaining agricultural and seafood
33 sectors that also promotes emerging agricultural industries;

34 (2) That policies and programs of the state will support and promote the Rhode Island

1 agriculture and seafood industries as a vital component of the state's economy and essential
2 steward of our land and coastal waters;

3 (3) That current policies and programs pertaining to the viability of Rhode Island's
4 agricultural and seafood industries be reviewed and confirmed or changed in order to assure the
5 long-term economic prosperity of the industries; ~~and~~

6 (4) That Rhode Island will promote processing and consumption of agricultural and
7 seafood products from within Rhode Island; and

8 (5) That Rhode Island's fishing industry has the resources to participate in matters
9 concerning fisheries management regulations and policies.

10 **2-25-5. Small grants and technical assistance program established.** -- The department
11 of environmental management shall establish the local agriculture and seafood small grants and
12 technical assistance program. Through the program the department shall:

13 (1) Assist in the marketing of Rhode Island grown agricultural products and local seafood
14 for the purpose of sale and promotion within the state of Rhode Island or United States;

15 (2) Enhance the economic competitiveness of Rhode Island grown agricultural products
16 and local seafood;

17 (3) Provide financial and technical assistance support to organizations and farmers for
18 activities and programs which enhance the economic viability of local agriculture, and support the
19 development of a locally based, safe and sustainable food system;

20 (4) Provide individual farm grants to small or beginning Rhode Island farmers that
21 support the entry or sustainability within the respective industry;

22 (5) Provide grant funding up to fifty thousand dollars (\$50,000) to allow the fishing
23 community to fully participate in the development of fisheries management policies and
24 regulations;

25 ~~(5)(6)~~ Work with the state department of health to further develop and support food
26 safety related programs and standards pertaining to local agriculture and seafood; and

27 ~~(6)(7)~~ Perform other activities necessary to facilitate the success and viability of the
28 state's agricultural and seafood sectors.

29 **2-25-6. Local agriculture and seafood small grants and technical assistance fund**
30 **established and solicitation of funding.** -- (a) For the purpose of paying the costs to the

31 department of environmental management of administering the local agriculture and seafood
32 small grants and technical assistance program and for the purpose of carrying out the purposes of
33 the program as stated in subdivisions 2-25-5(3) ~~and~~, 2-25-5(4) and 2-25-5(5) a restricted receipt
34 account is hereby created and known as the "local agriculture and seafood small grants and

1 technical assistance fund."

2 (b) The program shall be empowered to apply for and receive from any federal, state, or
3 local agency, private foundation, or individual, any grants, appropriations, or gifts in order to
4 carry out the purposes of the program established in § 2-25-5.

5 **2-25-7. Use of funds.** -- (a) A non-profit entity or small or beginning farmer may apply to
6 the department of environmental management for a grant to be used to fulfill the purposes of the
7 program as stated in subdivisions 2-25-5(3) and 2-25-5(4). Any grant disbursed under this
8 program shall not exceed twenty thousand dollars (\$20,000) per year. Applications for grants
9 authorized under this section shall:

10 (1) Provide a brief summary of the nonprofit entity or small or beginning farmer's
11 mission, goals, history, programs, and major accomplishments, success stories and qualifications;

12 (2) Briefly describe the proposed project or program, the capacity to carry out the
13 program and who will benefit from the program;

14 (3) Describe the expected outcomes and the indicators of those outcomes;

15 (4) Outline the timeline to be used in the implementation of the program or project; and

16 (5) Provide a program or project budget.

17 (b) A nonprofit entity or person may apply to the department for a grant to be used to
18 fulfill the purposes of the program as stated in § 2-25-5(5). Applications for grants authorized
19 under this section shall conform to specifications as determined by the department of
20 environmental management. Any funds not disbursed under § 2-25-5(5) shall be disbursed for the
21 purposes of the program as stated in §§ 2-25-5(3) and 2-25-5(4).

22 ~~(b)~~(c) The funds shall also be used by the department to provide administrative and
23 technical support of the program, and to leverage program funds with other potential federal, state
24 or nonprofit funding sources, and shall serve to develop, implement and enforce when appropriate
25 food safety related standards and programs related to local agriculture and seafood in
26 coordination with the Rhode Island department of health and appropriate federal agencies.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

WATERS AND NAVIGATION - COASTAL RESOURCES MANAGEMENT COUNCIL -
THE RHODE ISLAND LOCAL AGRICULTURE AND SEAFOOD ACT

1 This act would establish a dedicated funding stream for the "Local Agriculture and
2 Seafood Grants Program", and would expand the program to include support to the fishing
3 community, to fully participate in the development of fisheries management policies and
4 regulations, by depositing all fees collected for the lease of tidal lands from certain renewable
5 energy projects into the Rhode Island local agriculture and seafood fund and made available as
6 grants to qualified nonprofit entities or persons.

7 This act would take effect upon passage.

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Council Report

April/May 2015

The Council Report summarizes major actions approved at NEFMC meetings or highlights items of interest to stakeholders.

At its April meeting in Mystic, CT, the Council:

- ◆ Identified preferred alternatives in Groundfish Amendment 18
- ◆ Discussed the costs of NOAA's at-sea monitoring program
- ◆ Approved several changes to the alternatives proposed in Framework 9 to the Monkfish FMP
- ◆ Made decisions on the alternatives proposed in Omnibus Habitat Amendment 2, with others to be considered in June
- ◆ Adopted an approach to tackle EBFM

Next Council Meeting
June 16-18, 2015
Newport, RI

Groundfish

Amendment 18 moves on to public hearings

Now that it has identified its preferred alternatives among the provisions in the Draft Environmental Impact Statement for Amendment 18 to the Groundfish Plan, the Council will schedule public hearings for late July and August. An announcement with the details will be widely distributed to encourage public input.

Amendment 18 focuses on accumulation limits and fleet diversity by including measures concerning Potential Sector Contributions (PSC) and permit caps, Handgear A permits, data confidentiality, formalizing redfish fishing opportunities, and the delineation of inshore and offshore fishing areas in the Gulf of Maine.

The following section describes the categories of management measures in the amendment and the **preferred alternatives** identified by the Council within those categories. The choices supported in April do not bind the NEFMC's 18 voting members in September when final decisions are to be approved. Here's how it went last month.

- **Accumulation limits** – Create two types of accumulation limits --- on individuals and entities: 1) On the Potential Sector Contribution that may be held in aggregate to no more than 15.5% of the aggregated stocks in total, and 2) on the Northeast multispecies permits that may be held to no more than 5%. The PSC cap selected (Alternative 6) would be the least constraining on fishing businesses, but does limit holdings.
- **Handgear A Permits** - Create a sub-annual catch limit for Handgear A (HA) permits, remove the March 1-20 closure for common pool HA vessels, remove the standard fish tote requirement for Handgear A vessels, and allow sectors to annually request that HA vessels fishing in the sector be exempt from the requirement to use a vessel monitoring system, but instead be allowed to use an Interactive Voice Response (IVR) Call-In System. IVR is already used in the groundfish fishery and is a less expensive data reporting alternative than VMS.
- **Data Confidentiality** - Do not adjust current fishery data confidentiality practices and protocols, specifically the price of annual catch entitlement (ACE) transferred within a sector or leased between sectors. The Council felt it is unnecessary to make changes to data that are currently considered confidential and had concerns about the legality of releasing price information.
- **Inshore/Offshore Gulf of Maine (GOM)** - Do not consider the establishment of an inshore/offshore boundary within the GOM and associated measures. The Council considers this type of measure unnecessary, given the current restrictions on the groundfish fishery in the area at this time.
- **Redfish Exemption Area** - Define an area where sector vessels could fish with a smaller net mesh (5.5 inches) than the standard size to target redfish. This would allow groundfish sector vessels to target redfish without applying for an annual sector exemption, thereby streamlining the process to access this resource.

Notes on the NOAA/Council Industry-Funded Monitoring Amendment

Additional portside sampling and electronic monitoring options now will be included in the joint NOAA/NEFMC/MAFMC draft industry-funded monitoring omnibus amendment, based on unanimous Council approval at the Council's April meeting. A follow-up motion specified that the herring and mackerel midwater trawl fleets will be the focus of the new options.

The amendment is currently under development to address industry-funded monitoring across all federally managed fisheries in the Northeast. Final action on the amendment is scheduled for this December.

New Groundfish Framework Discussed

Details to be provided at next Council meeting

Concerning the costs associated with the operations of the current NOAA Fisheries at-sea monitoring program, the Council requested that the agency provide an estimate of the cost/revenue ratio of monitoring groundfish sectors in 2015.

NOAA leadership comments sparked the reaction when they discussed the very real possibility that sectors could become responsible for covering the cost of some aspects of the at-sea monitoring program as early as late summer 2015 --- when federal funding that has to date covered the cost of this program is likely to run out.

The at-sea monitoring requirement, initially detailed in Amendment 16 to the NEFMC's Groundfish Plan, mandates the program to help determine, among other things, compliance with annual catch limits (or ACLs).

Industry representatives and many Council members are currently concerned that the cost of the program may compromise the ability of the groundfish fishery to operate. This sentiment was reflected in the unanimous vote by the Council to initiate a framework adjustment, if necessary, based on the NOAA report.

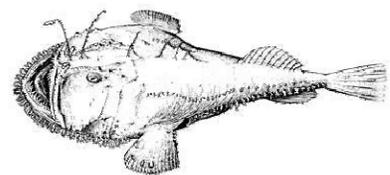
The details about how a framework might be developed and what issues will be addressed is currently a matter of discussion between NOAA Fisheries and the Council. The issue will be included on the June 16-19 Council meeting agenda, so stay tuned for further developments.

Monkfish

Framework 9 to be finalized in June

While work on draft Framework 9 to the Monkfish Plan continues at the committee level, the Council approved changes to several of the alternatives under consideration to streamline development of this action. The Council is scheduled to approve the framework at its June meeting.

At the request of the Monkfish Committee, Council members eliminated options that focused on when and where a Northeast multispecies day-at-sea could be declared in order to increase operational flexibility outside of the current monkfish exempted fisheries. The two options that were considered and rejected addressed both the Northern and Southern Fishery Management Areas as defined in the plan, while those that remain in the framework focus only on the Northern Area --- a change that was supported by fishermen from both regions.



A measure to increase monkfish-only days-at-sea based on a higher groundfish common pool days-at-sea counting was also considered unnecessary at this time and will not receive further consideration in Framework 9.

And finally, the Council approved, for further analysis by the Plan Development Team, a measure that could allow limited access monkfish vessels, when fishing on a monkfish-only or monkfish/Northeast multispecies day-at-sea, to retain legal size monkfish and dogfish using 5-7 inch mesh in stand-up gillnets.

Omnibus Habitat Amendment Approved

Remaining issues to be decided in June

The Council made final decisions, referred to at the meeting as final preferred alternatives, on most sections of the amendment at its meeting in Mystic, CT. Once all elements of the action — proposed area designations and those identified as vulnerable and requiring protection from the impacts of fishing — receive Council approval they will be forwarded to NOAA Fisheries for agency approval and implementation. NOAA is always the final decision maker on any measures moved forward by the Council.

To better understand the Council's intent in developing the Habitat Amendment, it may be helpful to review an introductory paragraph in the draft amendment document that helps explain what types of areas are being considered and why.

- * Essential Fish Habitat and Habitat Area of Particular Concern designations are based on species-specific distributions and life-history information, and are used primarily for analytical approaches in impact analyses and agency consultations.
- * Spatial management areas, on the other hand, contain habitats of importance to multiple species, are vulnerable to impacts from fishing, and as such, could be subject to gear restrictions for conservation purposes on the basis of gear type.
- * Three types of spatial management areas are being proposed in the Habitat Amendment, year-round *habitat management areas* and *dedicated habitat research areas*, both discussed below; and groundfish seasonal spawning areas. The latter will be discussed at the June Council meeting.

An additional Georges Bank Habitat Management Area alternative, discussed at the April meeting but not previously analyzed, will also be considered in June, along with the groundfish spawning areas. The April decisions are provided on page 5. Again, they are subject to final approval by NOAA Fisheries.

Essential Fish Habitat (EFH) Designations

EFH designations were specified for all managed species and life stages, including a small number of specific modifications discussed at the meeting. By definition, fishing restrictions are not associated with these areas.

Habitat Areas of Particular Concern

The approved HAPC designations involve six nearshore/continental shelf areas, two seamounts, and eleven submarine canyons or groups of canyons. These areas are not subject to gear or other restrictions, but are singled out because they encompass important and sensitive habitats that should receive careful consideration for conservation purposes.

Habitat Management Areas (HMAs)

Approved for the Eastern Gulf of Maine - The area defined as the Small Eastern Maine HMA would include a complete restriction on use of mobile bottom-tending gears.

Approved for the Central Gulf of Maine - Gear restrictions for the Cashes Ledge, Jeffreys Bank, and Fippennies Ledge HMAs as mapped in the draft amendment. The Cashes and Jeffreys Bank areas were modified from their previous configurations to focus more closely on shallow, hard bottom habitats. Each would prohibit the use of mobile bottom-tending gears.

The Cashes Ledge Closure Area would be maintained as is. Specifically, it would continue to be off limits year-round to all fishing activity except for the following: (a) charter and party vessels with a letter of authorization; and (b) vessels fishing with "exempted gears" that catch only small amounts of groundfish: spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dip nets, stop nets, pound nets, pots and traps, surfclam/quahog dredge gear, pelagic hook and line, pelagic longline, single pelagic gillnets, and shrimp trawls.

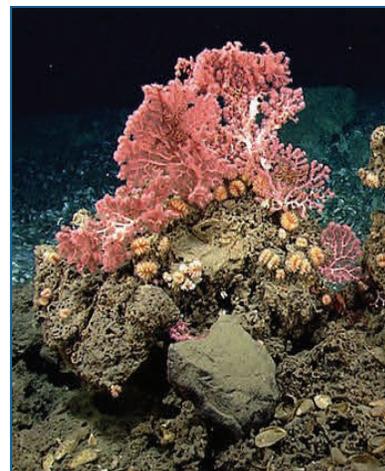


Photo courtesy of the NOAA Office of Ocean Exploration

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In accordance with the current groundfish regulations, mid-water trawl gear, and also vessels that are transiting the area with gear that is properly stowed, would be allowed in the Cashes Ledge Closure Area.

For the Western Gulf of Maine - The scenario adopted took into account the existing habitat and groundfish closures in the Western Gulf of Maine. The habitat closure would be maintained as-is, while the groundfish closure would have its eastern boundary shifted 5 minutes of longitude to match the habitat closure boundary.

Ammen Rock, an underwater peak that lies just below the surface of the water on Cashes Ledge, would be closed to all fishing gears except lobster traps. The lobster fishery is not managed by the NEFMC.

Within the habitat/groundfish area, current fishing restrictions would be maintained. The exception is an exemption for shrimp trawls from the mobile bottom-tending gear restrictions in the northwestern corner of the area, located in the deep waters west of Jeffreys Ledge. In addition, the Council would continue to limit trawl roller gear to 12 inches in diameter in the existing inshore roller gear area.

For the Great South Channel - A new HMA was adopted with a complete restriction on the use of mobile bottom-tending gears in the northeast corner, and a restriction on the use of mobile bottom-tending gears with an exemption for hydraulic clam dredges throughout the remainder of the area. The dredge exemption would sunset one year after the implementation of the Habitat Amendment. This window of time would provide an opportunity for a more refined clam dredge exemption area or areas to be developed.

The Council also took action in southern New England to create a new HMA near Cox Ledge. Trawls in this area would not be allowed to use ground cables and hydraulic clam dredges will be prohibited.

Dedicated Habitat Research Areas (DHRAs)

The Stellwagen DHRA in the Gulf of Maine, developed to facilitate fisheries research, was approved although a “no fishing” reference area component was not approved. If the research area is not used for scientific investigations within three years, a sunset provision would apply.

The DHRA would be closed to mobile bottom-tending gear, demersal longlines, and sink gillnets, while recreational vessels, midwater gear and other pelagic gear would be allowed. All of these fishing restrictions are currently in place as a result of the existing Western Gulf of Maine habitat and groundfish closures, which overlap the proposed DHRA.

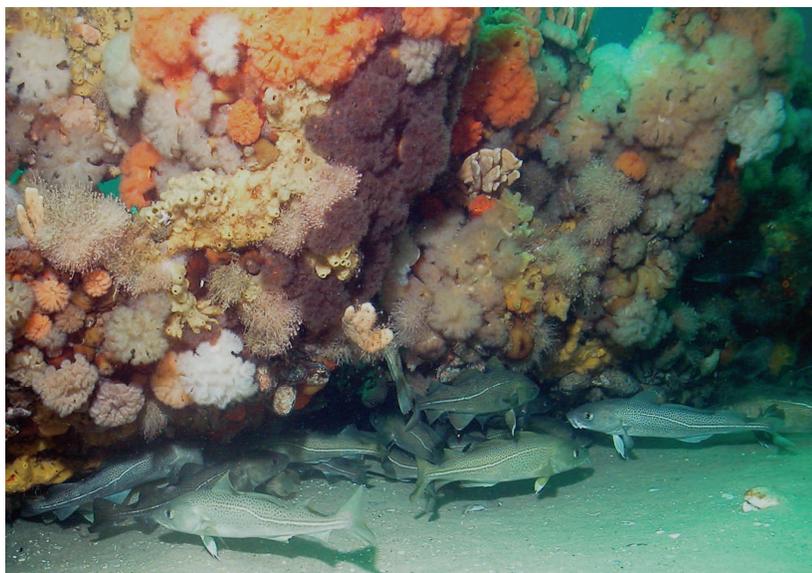


Photo courtesy of Matthew Lawrence, SBNMS - SBNMS file photo

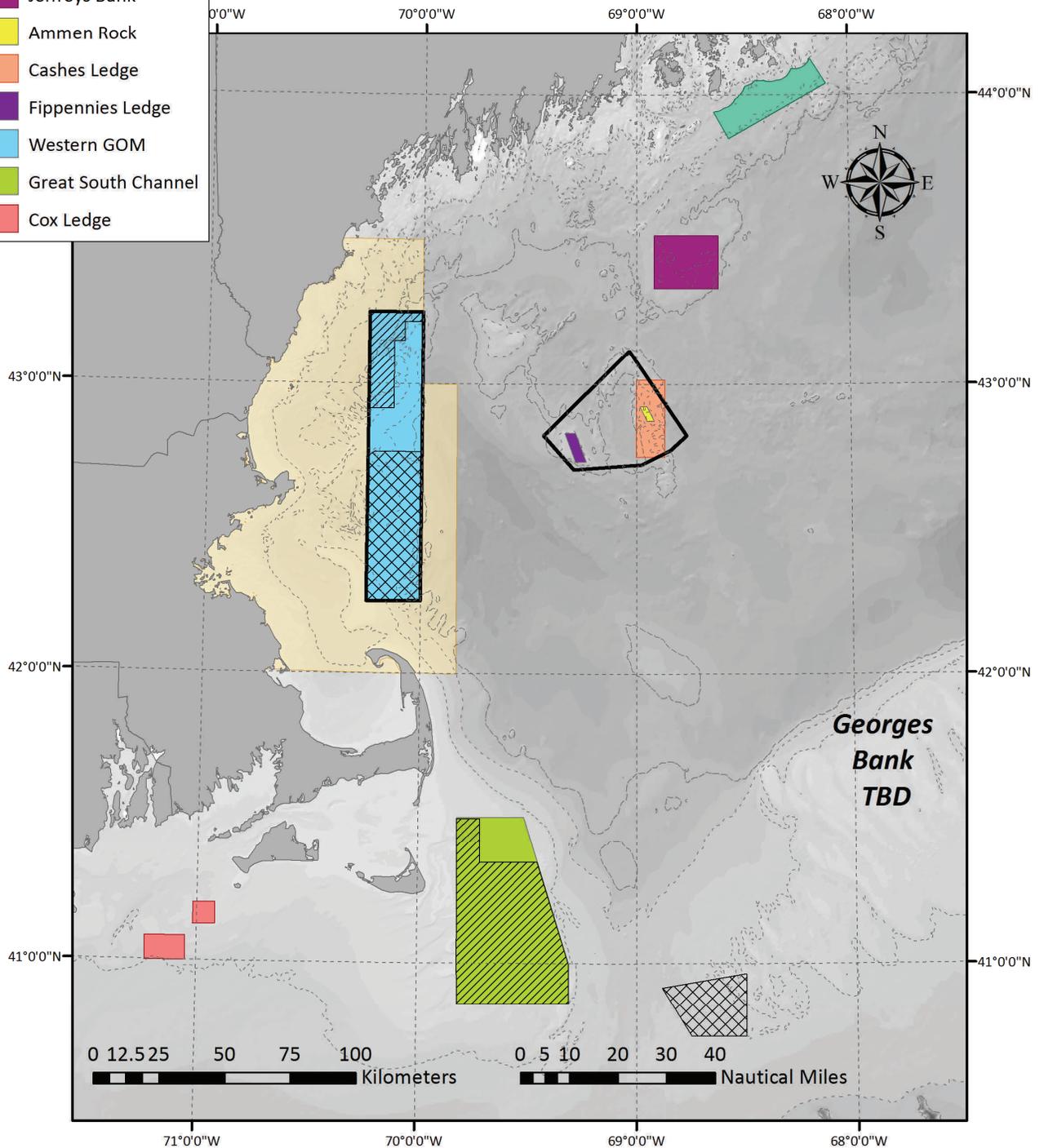
The same three-year sunset provision that is in the Stellwagen DHRA, as proposed by the Council would apply to an approved Georges Bank DHRA. Again, the area would be closed to mobile bottom-tending gear types. This area is currently closed to these gears as a habitat closure (Closed Area I South).

The Council further recommended that NOAA Fisheries allow habitat studies to be conducted within the HMAs using commercial fishing vessels as research platforms, but contingent on the approval of an exempted fishing permit. The intent is to evaluate the effectiveness of the closed areas.

Legend

-  Gear exemption
-  DHRA
-  Mortality closure
-  Roller gear area
-  Eastern Maine
-  Jeffreys Bank
-  Ammen Rock
-  Cashes Ledge
-  Fippennies Ledge
-  Western GOM
-  Great South Channel
-  Cox Ledge

- Gear exemption areas are hatched. In western Gulf of Maine, shrimp trawls exempt. In Great South Channel, clam derdges exempt.
- Dedicated Habitat Research Areas are cross-hatched. Stellwagen DHRA (north), Georges Bank DHRA (south)
- Mortality closures outlined in black. Current gear restrictions.
- Large shaded area is the roller gear restricted area.
- Other shaded/colored areas are mobile bottom-tending gear closures, with gear exemptions as noted above. Cox Ledge closed to clam dredges and trawls cannot use ground cables.
- Ammen Rock closed to all gears except lobster traps.
- Spawning areas (GB and GOM) and GB habitat areas have not been decided on yet.



**NEW ENGLAND
FISHERY
MANAGEMENT
COUNCIL**

50 Water Street,
Mill 2
Newburyport,
MA 01950

Phone: 978.465.0492
Fax: 978.465.3116
www.nefmc.org

For more
information about
this publication,
please contact
Patricia Fiorelli
at
pfiorelli@nefmc.org
or 978 465 0492
ext. 106

The New England Fishery Management Council is one of eight regional organizations created by the Magnuson-Stevens Fishery Conservation and Management Act, initially enacted in 1976.

The Council develops rules for both commercial and recreational fisheries that operate between three and 200 miles off the region's coastline. NEFMC management authority extends to fishing grounds in the Gulf of Maine, Georges Bank and southern New England and overlaps with the Mid-Atlantic Council for some species.

Ecosystem-Based Fisheries Management

Pilot program approach adopted

The Council adopted an official approach that will be used to address ecosystem-based fisheries management very soon. The initiative, led by the NEFMC's EBFM Committee and its Plan Development Team, calls for the development of a prototype or pilot fisheries ecosystem plan (FEP) that could be tested and verified, and also be used as a tool to engage and seek comments from the public during the pilot period.

The FEP would be used as a platform to assess, among other important elements, predator-prey relationships, trends in species groups, and climate change impacts, in the context of a specific ecosystem production unit, or management area that has not yet been identified.

NEFMC Website

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