

**2015 -- S 0702 SUBSTITUTE A**

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LC001737/SUB A  
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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

Introduced By: Senators Sosnowski, Conley, and Goldin

Date Introduced: March 18, 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           **20-1-12.1. Modifications to possession limits for marine species managed under**  
4 **quota, possession limit, and/or by seasons, compliance with a federal or regional fisheries**  
5 **management plan (FMP).** -- (a) In accordance with regulatory programs promulgated pursuant  
6 to the administrative procedures act, chapter 35 of title 42, and pursuant to the exemption  
7 afforded by § 42-35-18(b)(5), and notwithstanding the provisions of chapter 35.1 of title 42, the  
8 director shall have the authority to modify possession limits and seasons in order to meet the  
9 harvest allocation for a given marine species managed under a quota.

10           (b) Notification of changes to public. For all such changes identified in subsection (a) of  
11 this section, the director shall provide notification via a dedicated phone line, electronic  
12 notification to dealers, listserv, and website posting. At least three (3) of these notifications shall  
13 occur a minimum of forty-eight (48) hours prior to the date that the change is to be effective.

14           (c) Record of change. For all such changes identified in subsection (a) of this section, the  
15 director shall certify the record of the change, maintain the record, and make it available for  
16 public inspection.

17           SECTION 2. Section 20-2.1-9 of the General Laws in Chapter 20-2.1 entitled  
18 "Commercial Fishing Licenses" is hereby amended to read as follows:

19           **20-2.1-9. Powers and duties of the director.** -- It shall be the duty of the director to

1 adopt, implement effective January 1, 2003, and maintain a commercial fisheries licensing system  
2 that shall incorporate and be consistent with the purposes of this chapter; in performance of this  
3 duty the director shall follow the guidelines and procedures set forth below:

4 (1) The rule making powers of the director to accomplish the purposes of this chapter  
5 shall include the following with regard to commercial fishing licenses and commercial fishing by  
6 license holders:

7 (i) Types of licenses and/or license endorsement consistent with the provisions of this  
8 chapter and applicable sections of this title, and limitations on levels of effort and/or on catch by  
9 type of license and/or license endorsement;

10 (ii) Design, use, and identification of gear;

11 (iii) Declarations for data collection purposes of vessels used in commercial fishing,  
12 which declaration requirements shall in no way, except as otherwise provided for in law, restrict  
13 the use of any vessel less than twenty-five feet (25') in length overall by appropriate holders of  
14 commercial fishing licenses;

15 (iv) Areas in Rhode Island waters where commercial fishing of different types may take  
16 place, and where it may be prohibited or limited, and the times and/or seasons when commercial  
17 fishing by type or species may be allowed, restricted, or prohibited;

18 (v) Limitations and/or restrictions on effort, gear, catch, or number of license holders and  
19 endorsements;

20 (vi) Emergency rules, as provided for in chapter 35 of title 42, to protect an unexpectedly  
21 imperiled fishery resource, to provide access to a fisheries resource that is unexpectedly more  
22 abundant, and to protect the public health and safety from an unexpected hazard or risk. The  
23 marine fisheries council shall be notified of all emergency rules on or before their effective date,  
24 and no emergency rule shall become a final rule unless it is promulgated as provided for in  
25 subdivision (3) of this section.

26 (2) When implementing the system of licensure set forth in §§ 20-2.1-4, 20-2.1-5, 20-  
27 2.1-6, and 20-2.1-7 and other provisions of this title pertaining to commercial fishing licenses,  
28 permits, and registrations, the director shall consider the effect of the measure on the access of  
29 Rhode Islanders to commercial fishing and when establishing limitations on effort and/or catch:

30 (i) The effectiveness of the limitation:

31 (A) In achieving duly established conservation or fisheries regeneration goals or  
32 requirements;

33 (B) In maintaining the viability of fisheries resources overall, including particularly, the  
34 reduction of by-catch, discards, and fish mortality, and in improving efficiency in the utilization

1 of fisheries resources;

2 (C) In complementing federal and regional management programs and the reciprocal  
3 arrangements with other states;

4 (ii) The impact of the limitation on persons engaged in commercial fishing on:

5 (A) Present participation in the fishery, including ranges and average levels of  
6 participation by different types or classes of participants;

7 (B) Historical fishing practices in, and dependence on, the fishery;

8 (C) The economics of the fishery;

9 (D) The potential effects on the safety of human life at sea;

10 (E) The cultural and social framework relevant to the fishery and any affected fishing  
11 communities; and

12 (iii) Any other relevant considerations that the director finds in the rule making process;

13 (iv) The following standards for fishery conservation and management, which standards  
14 shall understood and applied so far as practicable and reasonable in a manner consistent with  
15 federal fisheries law, regulation, and guidelines:

16 (A) Conservation and management measures shall prevent overfishing, while achieving,  
17 on a continuing basis, the optimum yield from each fishery;

18 (B) Conservation and management measures shall be based upon the best scientific  
19 information available; and analysis of impacts shall consider ecological, economic and social  
20 consequences of the fishery as a whole;

21 (C) Conservation and management measures shall, where practicable, consider  
22 efficiency in the utilization of fisheries resources; except that no such measure shall have  
23 economic allocation as its sole purpose;

24 (D) Conservation and management measures shall take into account and allow for  
25 variations among, and contingencies in, fisheries, fishery resources, and catches;

26 (E) Conservation and management measures shall, where practicable, minimize costs  
27 and avoid unnecessary duplication;

28 (F) Conservation and management measures shall, consistent with conservation  
29 requirements of this chapter (including the prevention and overfishing and rebuilding of  
30 overfished stocks), take into account the importance of fishery resources to fishing communities  
31 in order to (I) provide for the sustained participation of those communities, and (II) to the extent  
32 practicable, minimize adverse economic impacts on those communities;

33 (G) Conservation and management measures shall, to the extent practicable: (I)  
34 minimize by-catch and (II) to the extent by-catch cannot be avoided, minimize the mortality of

1 the by-catch;

2 (H) Conservation and management measures shall, to the extent practicable, promote the  
3 safety of human life at sea.

4 (3) (i) The rule making process set forth in this subdivision shall conform with the  
5 requirements of the Administrative Procedures Act, chapter 35 of title 42, and shall include a  
6 regulatory agenda for marine fisheries management, with the advice of the marine fisheries  
7 council, in accordance with the requirements of § 42-35-5.1;

8 (ii) The director shall submit a proposed rule to the marine fisheries council at least ~~sixty~~  
9 ~~(60)~~ thirty (30) days prior to the proposed date of the public hearing on the rule;

10 (iii) The public hearing shall be on either the rule as proposed to the marine fisheries  
11 council by the director or a proposed revision to that rule adopted by the marine fisheries council;

12 (iv) The proposed rule as submitted by the director to the marine fisheries council and  
13 the council report and recommendation regarding the rule shall both be entered into the record of  
14 the hearing conducted in accordance with the requirements of chapter 35 of title 42;

15 (v) Notwithstanding the provisions of paragraphs (i) -- (iv) of this subdivision, the  
16 director may promulgate a rule with less than ~~sixty (60)~~ thirty (30) days notice to the marine  
17 fisheries council if and to the extent necessary to comply with federal requirements or to respond  
18 to a sudden change in conditions, where failure to take immediate action would likely cause harm  
19 to fishery resources or participants;

20 (vi) The decision of the director shall state the basis for adopting the rule including a  
21 concise statement giving the principal reasons for and against its adoption and the response to  
22 positions entered into the record; and in the case of a rule promulgated in accordance with  
23 paragraph (v) of this subdivision, the reasons for having to take immediate action.

24 (4) Matters to be considered in establishing license programs under this chapter. - The  
25 director shall be consistent with the requirements of § 20-2.1-2(6) in establishing and  
26 implementing a licensing system in accordance with the provisions of this chapter that shall be  
27 designed to accomplish marine fisheries management objectives. The licensing system may limit  
28 access to fisheries, particularly commercial fisheries for which there is adequate or greater than  
29 adequate harvesting capacity currently in the fishery and for which either a total allowable catch  
30 has been set or a total allowable level of fishing effort has been established for the purpose of  
31 preventing over-fishing of the resource or the dissipation of the economic yield from the fishery.  
32 This authority shall include the authority of the director to:

33 (i) Differentiate between the level of access to fisheries provided to license holders or  
34 potential license holders on the basis of past performance, dependence on the fishery, or other

1 criteria;

2 (ii) Establish prospective control dates that provide notice to the public that access to,  
3 and levels of participation in, a fishery may be restricted and that entrance into, or increases in  
4 levels of participation in a fishery after the control date may not be treated in the same way as  
5 participation in the fishery prior to the control date; retroactive control dates are prohibited and  
6 shall not be used or implemented, unless expressly required by federal law, regulation or court  
7 decision;

8 (iii) Establish levels of catch by type of license and/or endorsement which shall provide  
9 for basic and full harvest and gear levels; quotas may be allocated proportionally among classes  
10 of license holders as needed to maintain the viability of different forms of commercial fishing.

11 (5) The director shall, ~~by rule~~ annually, with the advice of the marine fisheries council,  
12 develop and update conservation and management plans for the fishery resources of the state,  
13 which conservation and management plans shall be ~~adopted~~ developed and updated prior to and  
14 at the same time as adoption of any license restrictions on effort or catch. Such plans shall address  
15 stock status, performance of fisheries and quotas, and management and licensing programs, and  
16 offer any recommendations for new or alternative approaches to management and/or licensing  
17 identified by the department or the marine fisheries council. In the development of the fishery  
18 conservation and management plans, priority shall be given to those resources with the highest  
19 value to the state, either for commercial or recreational purposes.

20 (6) The director shall report annually to the general assembly and to the citizens  
21 concerning the conservation and management of the fishery resources of the state, noting  
22 particularly the status of any fishery resources that are considered to be over-fished or were  
23 considered to be over-fished in the preceding year.

24 SECTION 3. Section 20-2.1-11 of the General Laws in Chapter 20-2.1 entitled  
25 "Commercial Fishing Licenses" is hereby repealed.

26 ~~20-2.1-11. Industry advisory committee. -- The council shall establish an industry~~  
27 ~~advisory committee to provide coordination among commercial fisheries sectors and to review~~  
28 ~~plans and recommendations that affect more than commercial fishery sector, and to advise the~~  
29 ~~council and the department on matters which affect commercial fishing as a whole, which~~  
30 ~~committee shall include representatives of each commercial fisheries sector and of manners of~~  
31 ~~commercial fishing.~~

32 SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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- 1 This act would make changes to the process for setting marine species catch limits.
- 2 This act would take effect upon passage.

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