

2015 -- S 0702 SUBSTITUTE A AS AMENDED

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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 and seasons for marine species**
4 **managed under quotas.** -- (a) In accordance with regulatory programs promulgated pursuant to
5 the administrative procedures act, chapter 35 of title 42, and pursuant to the exemption afforded
6 by § 42-35-18(b)(5), and notwithstanding the provisions of chapter 35.1 of title 42, the director
7 shall have the authority to modify possession limits and seasons in order to meet the harvest
8 allocation for a given marine species managed under a quota.

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

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

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

18 **20-2.1-9. Powers and duties of the director.** -- It shall be the duty of the director to
19 adopt, implement effective January 1, 2003, and maintain a commercial fisheries licensing system

1 that shall incorporate and be consistent with the purposes of this chapter; in performance of this
2 duty the director shall follow the guidelines and procedures set forth below:

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

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

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

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

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

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

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

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

29 (i) The effectiveness of the limitation:

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

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

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

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

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

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

7 (C) The economics of the fishery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SECTION 3. 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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