

**2023 -- H 5863 SUBSTITUTE A**

LC001800/SUB A

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2023**

**A N A C T**

**RELATING TO FISH AND WILDLIFE -- GENERAL PROVISIONS**

Introduced By: Representatives Spears, Casimiro, Kazarian, Boylan, McGaw, Fenton-Fung, Speakman, Craven, and Cortvriend

Date Introduced: March 01, 2023

Referred To: House Environment and Natural Resources

(Dept. of Environmental Management)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 20-1-5.1 and 20-1-12 of the General Laws in Chapter 20-1 entitled  
2 "General Provisions" are hereby amended to read as follows:

3           **20-1-5.1. Advice of the marine fisheries council.**

4           The director, in exercising authority under this title for the planning, management, and  
5 regulation of marine fisheries, shall request and consider in the record as applicable the advice of  
6 the marine fisheries council, ~~and in the adoption of management plans and regulations affecting~~  
7 ~~licensing for marine fisheries, the director~~ and shall provide a written response to ~~the~~ such advice  
8 of the marine fisheries council.

9           **20-1-12. Fixing of seasons and bag limits.**

10           (a) The director is authorized to adopt regulations fixing seasons, bag limits, size limits,  
11 possession limits, and methods of taking on any species of fish, game, bird, or other wild animal  
12 occurring within the state, ~~other than marine species regulated by the marine fisheries council.~~

13           (1) These regulations may prohibit the taking, holding, or possession of any species;  
14 prohibit the taking, molestation, or disturbance in any way of nesting, breeding, or feeding sites of  
15 any species; and/or prohibit, control, or regulate any commercial use, importation into the state, or  
16 exportation from the state of any species.

17           (2) These regulations may be of statewide applicability or may be applicable in any  
18 specified locality, or localities, within the state when the director shall find, after investigation, that  
19 the regulations are appropriate.

1 (b) Any person who violates any provision of this section, or any rule or regulation made  
2 under the provisions of this section, shall be guilty of a civil violation and subject to a fine of one  
3 hundred dollars (\$100) for each offense.

4 (c) Notwithstanding any inconsistent provision of law, the traffic tribunal shall have  
5 jurisdiction to hear and determine all violations specified in this section.

6 (d) The regulations shall be adopted only after the holding of a public hearing subject to  
7 the provisions of the Administrative Procedures Act, chapter 35 of title 42.

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

10 **20-2.1-9. Powers and duties of the director.**

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

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

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

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

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

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

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

31 (vi) Emergency rules, as provided for in chapter 35 of title 42, to protect an unexpectedly  
32 imperiled fishery resource to provide access to a fisheries resource that is unexpectedly more  
33 abundant and to protect the public health and safety from an unexpected hazard or risk. The marine  
34 fisheries council shall be notified of all emergency rules on or before their effective date, and no

1 emergency rule shall become a final rule unless it is promulgated as provided for in subdivision (3)  
2 of this section.

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

7 (i) The effectiveness of the limitation:

8 (A) In achieving duly established conservation or fisheries regeneration goals or  
9 requirements;

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

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

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

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

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

19 (C) The economics of the fishery;

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

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

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

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

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

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

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

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

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

5 (F) Conservation and management measures shall, consistent with conservation  
6 requirements of this chapter (including the prevention and overfishing and rebuilding of overfished  
7 stocks), take into account the importance of fishery resources to fishing communities in order to (I)  
8 Provide for the sustained participation of those communities and (II) To the extent practicable,  
9 minimize adverse economic impacts on those communities;

10 (G) Conservation and management measures shall, to the extent practicable: (I) Minimize  
11 by-catch and (II) To the extent by-catch cannot be avoided, minimize the mortality of the by-catch;  
12 and

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

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

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

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

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

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

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

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

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

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

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

21 ~~(5) The director shall, annually, with the advice of the marine fisheries council, develop~~  
22 ~~and update conservation and management plans for the fishery resources of the state, which~~  
23 ~~conservation and management plans shall be developed and updated prior to, and at the same time~~  
24 ~~as, adoption of any license restrictions on effort or catch. Such plans shall address stock status,~~  
25 ~~performance of fisheries and quotas, and management and licensing programs, and offer any~~  
26 ~~recommendations for new or alternative approaches to management and/or licensing identified by~~  
27 ~~the department or the marine fisheries council. In the development of the fishery conservation and~~  
28 ~~management plans, priority shall be given to those resources with the highest value to the state,~~  
29 ~~either for commercial or recreational purposes.~~

30 (6) The director, with the advice of the marine fisheries council shall report annually to the  
31 governor, general assembly and to the citizens concerning the conservation and management of the  
32 fishery resources of the state, ~~noting particularly the status of any fishery resources that are~~  
33 ~~considered to be over-fished or were considered to be over-fished in the preceding year~~ addressing  
34 stock status, performance of fisheries and quotas, management and licensing programs, and other

1 [matters of importance.](#)

2 SECTION 3. Sections 20-3-1 and 20-3-2 of the General Laws in Chapter 20-3 entitled  
3 "Marine Fisheries Council" are hereby amended to read as follows:

4 **20-3-1. Council created — Membership — Compensation.**

5 There is hereby created a marine fisheries council. The council shall be composed of the  
6 director of the department of environmental management, or the director's designee, who shall  
7 serve as chairperson, and eight (8) private citizen members. The private citizen members shall be  
8 chosen from among those with skill, knowledge, and experience in the commercial fishing industry,  
9 the ~~sport~~ [recreational and for-hire](#) fishing industry, and in the conservation and management of  
10 fisheries resources and shall be appointed by the governor with the advice and consent of the senate.  
11 Three (3) of the private citizen members shall be representatives of the commercial fishing industry;  
12 three (3) shall be representatives of the ~~sport~~ [recreational and for-hire](#) fishing industry; and the  
13 remaining two (2) shall have skill, knowledge, and experience in the conservation and management  
14 of fisheries resources and/or marine biology. The chairperson of the coastal resources management  
15 council and the chiefs of the divisions of enforcement and marine fisheries in the department of  
16 environmental management shall serve in an advisory capacity to the council. Members of the  
17 council shall serve for a term of four (4) years, ~~and may not succeed themselves more than once~~  
18 ~~after January 1, 2002~~ [not to exceed two \(2\) four \(4\) year terms, notwithstanding a partial mid-term](#)  
19 [appointment.](#) ~~Initial appointments to the council shall be appointed as follows: three (3) members~~  
20 ~~for a term of two (2) years; three (3) members for a term of three (3) years; and two (2) members~~  
21 ~~for a term of four (4) years.~~ All members of the council shall serve without compensation and shall  
22 be reimbursed for their necessary expenses incurred in travel and in the performance of their duties.  
23 [No person may serve on the council if assessed a criminal or administrative penalty in the past three](#)  
24 [\(3\) years for a violation of a marine fisheries law or regulation, including any suspension or](#)  
25 [revocation of a commercial or recreational fishing license or permit or dealers license, or any fine,](#)  
26 [donations, probation, imprisonment, or other filing, imposed administratively or by a court of law.](#)

27 **20-3-2. Powers and duties.**

28 (a) The marine fisheries council shall serve in an advisory capacity only to the state and  
29 agencies of the state regarding marine fisheries issues and [shall have the power and duty to advise](#)  
30 the director of the department of environmental management in the exercise of his or her authority  
31 under this title for the planning, management, and regulation of marine fisheries on matters [\(except](#)  
32 [emergency rules adopted pursuant to § 42-35-2.10\)](#), including, but not limited to, the following  
33 activities:

34 (1) The manner of taking ~~fish, lobsters, and shellfish~~ [marine species from the waters of the](#)

1 [state](#);

2 (2) The legal size limits of ~~fish, lobsters, and shellfish~~ [marine species](#) to be taken or  
3 possessed;

4 (3) The seasons and hours during which ~~fish, lobsters, and shellfish~~ [marine species](#) may be  
5 taken or possessed;

6 (4) The numbers or quantities of ~~fish, lobsters, and shellfish~~ [marine species](#) which may be  
7 taken or possessed; ~~and~~

8 (5) The opening and closing of areas within the coastal waters to the taking of any and all  
9 types of ~~fish, lobsters, and shellfish~~ [marine species](#); ~~and-~~

10 [\(6\) Marine fisheries licensing, including commercial, recreational and for-hire, necessary](#)  
11 [to implement the provisions of chapters 2, 2.1, and 2.2 of title 20.](#)

12 [\(b\) The marine fisheries council shall advise the director in the development of the](#)  
13 [rulemaking agenda for marine fisheries pursuant to § 42-35-5.1, and shall have the power to initiate](#)  
14 [rulemaking by petition as provided for by § 42-35-6.](#)

15 [\(c\) The marine fisheries council shall advise the department regarding development of](#)  
16 [annual plans for the allocation and use of the funds made available to the department from](#)  
17 [commercial fishing license fees, tags, permits, and vessel fees as provided in § 20-2-28.2.](#)

18 [\(d\) The marine fisheries council shall review applications to CRMC for permits to conduct](#)  
19 [aquaculture, and provide recommendations to CRMC on all such applications, in accordance with](#)  
20 [§ 20-10-5.](#)

21 ~~(b)~~(e) The council shall report annually by ~~March~~ [April](#) 1 of each year to the governor, the  
22 speaker of the house, the president of the senate, the chairperson of the house committee on  
23 environment and natural resources, the chairperson of the senate committee on environment and  
24 agriculture, and to the house oversight committee and the senate committee on government  
25 oversight, for the preceding calendar year with regard to:

26 (1) The advice it has given to state agencies, including specifically the department of  
27 environmental management, on marine fisheries issues;

28 (2) The response it received to the advice it gave;

29 (3) Any findings or position it may have with regard to the status and/or condition of marine  
30 fisheries; and

31 (4) Any recommendations it may have for maintaining, improving, or changing laws,  
32 regulations, or management programs for marine fisheries.

33 SECTION 4. Sections 20-4-2, 20-4-3, 20-4-9 and 20-4-12 of the General Laws in Chapter  
34 20-4 entitled "Commercial Fisheries" are hereby amended to read as follows:

1           **20-4-2. Otter trawls, pair trawls, and beam trawls — Areas prohibited.**

2           Unless otherwise specified in regulations ~~adopted by the marine fisheries council~~ and  
3 except for those areas described in § 20-4-3, no person shall operate a beam, pair, or otter trawl or  
4 other mechanical trawling device in the Sakonnet River; Narragansett Bay; in Point Judith Pond,  
5 so-called, in the towns of Narragansett and South Kingstown; or the Harbor of Refuge, so-called,  
6 in the town of Narragansett; or in Potter Pond, so-called, in the town of South Kingstown; or in  
7 Great Salt Pond, so-called, in the town of New Shoreham.

8           **20-4-3. Otter trawls, pair trawls, and beam trawls — Areas allowed.**

9           Any duly licensed resident commercial fisherman and a nonresident commercial fisherman  
10 licensed pursuant to § 20-2-28 [repealed], may operate otter, beam, or pair trawls or other  
11 mechanical trawling device subject to rules and regulations of the marine fisheries council, in the  
12 area of Narragansett Bay, and Sakonnet River south of a line, extending from Spink Neck in the  
13 town of North Kingstown in a northeasterly direction to Pine Hill Point on Prudence Island and  
14 from a point at Homestead Dock on the easterly shore of Prudence Island, thence northeasterly to  
15 Hog Island shoal light, thence to the north abutment of Mt. Hope Bridge in the town of Bristol, and  
16 south of a line extending from McCurry Point on the east side of the town of Portsmouth  
17 northeasterly in a line to southerly point of Jack's Island, so-called, in the town of Tiverton. ~~The~~  
18 ~~area subject to this section may be changed by rules and regulations adopted by the marine fisheries~~  
19 ~~council.~~

20           **20-4-9. Striped bass — Minimum size.**

21           Unless otherwise specified in regulations ~~adopted by the marine fisheries council~~, no  
22 person shall take in any manner whatsoever from the territorial waters of this state, including the  
23 waters of the Atlantic Ocean, or have in his or her possession, any striped bass measuring less than  
24 sixteen inches (16") in length. Striped bass shall be measured from the tip of the snout to the fork  
25 of the tail.

26           **20-4-12. Striped bass — Use of nets and seines prohibited — Traps.**

27           Unless otherwise specified by regulation ~~of the marine fisheries council~~, no person, firm,  
28 or corporation shall take, or attempt to take, with or by the use of a net, seine, or any other  
29 contrivance of any kind or description except by hook and line, spear, or by fish traps authorized  
30 under authority of chapter 5 of this title, as amended, any striped bass from the public waters of  
31 this state northerly of a line commencing at upper pier in the town of Narragansett and extending  
32 in a straight line in a northeasterly direction to Beavertail Lighthouse and thence continuing in a  
33 northeasterly direction in a straight line to Castle Hill Lighthouse in the city of Newport; nor shall  
34 any person, firm, or corporation take, or attempt to take, with or by the use of a seine, any striped

1 bass from the beach in the town of Charlestown for a distance of three (3) miles to the east of  
2 Charlestown Inlet; provided, however, that it shall not be a violation of this section for any person  
3 to take striped bass by means of the seine, net, or other contrivance while fishing for other fish for  
4 the catching of which the use of the seine, net, or other contrivance is permitted if the striped bass  
5 is immediately returned to the waters from which taken; provided further, however, at all fish traps,  
6 between September first and October fourteenth in any year, there is no obstruction, except the trap  
7 anchor warp of the leader within one hundred fifty feet (150') from the mean high water mark on  
8 shore that will stop the free passage of striped bass. For the purpose of this chapter, a "trap anchor  
9 warp" is any cable, wire, line, or like material or device, and shall not exceed three inches (3") in  
10 diameter.

11 SECTION 5. Sections 20-6-1, 20-6-2, 20-6-3, 20-6-7, 20-6-8, 20-6-10, 20-6-12, 20-6-16  
12 and 20-6-19 of the General Laws in Chapter 20-6 entitled "Shellfish" are hereby amended to read  
13 as follows:

14 **20-6-1. Taking of shellfish without a license.**

15 Unless otherwise specified in regulations ~~adopted by the marine fisheries council~~, any  
16 resident of this state may, without a license, take in any one day during the open season, if  
17 applicable, not more than one half (½) bushel each of quahaugs, soft-shell clams, sea clams, oysters,  
18 and mussels, and not more than one bushel of scallops; provided, that those quahaugs, soft-shell  
19 clams, sea clams, oysters, mussels, or scallops shall not be sold or offered for sale.

20 **20-6-2. Oysters — Open season.**

21 Unless otherwise specified in regulations ~~adopted by the marine fisheries council~~, the open  
22 season for taking oysters from the free and common oyster fisheries in any of the waters of this  
23 state shall be between the fifteenth day of September and the fifteenth day of May. Any person  
24 taking any oysters or exposing any oysters for sale taken from the free and common fisheries in  
25 state waters in violation of the provisions of this section shall, upon conviction, be fined no less  
26 than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and costs for each offense.

27 **20-6-3. Scallops — Open season.**

28 Unless otherwise specified in regulations ~~adopted by the director, in consultations with the~~  
29 ~~marine fisheries council~~, the open season for taking scallops from the free and common scallop  
30 fisheries in any of the waters of the state shall be between sunrise of the first day of October and  
31 sunset on the last day of December of every year. Any person taking scallops in violation of this  
32 section shall, upon conviction, be fined not less than fifty dollars (\$50.00) nor more than five  
33 hundred dollars (\$500) or imprisoned exceeding thirty (30) days for each offense.

34 **20-6-7. Use of dredges.**

1 Except as hereinafter provided and unless otherwise specified by regulation ~~of the marine~~  
2 ~~fisheries council~~, no person shall take any oysters, bay quahaugs, or soft-shell clams from the  
3 waters of this state by dredges, rakes, or other apparatus operated by mechanical power or hauled  
4 by power boats. No licensed person shall cast, haul, or have overboard any dredges while fishing  
5 for oysters, bay quahaugs, or soft-shell clams from the free and common fisheries of this state, nor  
6 shall any licensed boat be used for fishing oysters, soft-shell clams, or bay quahaugs with dredges,  
7 except as provided in this section; provided, that any person having a license issued under this title  
8 for the taking of scallops may use a dredge or dredges, not exceeding six (6) in number nor  
9 exceeding twenty-eight inches (28") each in width, for that purpose; provided further, that the  
10 licensee shall immediately return all oysters, soft-shell clams, or bay quahaugs caught by the  
11 licensee to the waters from which they were taken. Any licensed boat may be used in dredging for  
12 mussels by the licensee of that boat, the licensee having first obtained a permit from the director of  
13 environmental management allowing the licensee so to do; provided, the licensee, while dredging  
14 for mussels under the permit granted the licensee by the director, shall immediately return all  
15 oysters, scallops, or bay quahaugs caught by him or her to the waters from which they were taken.  
16 The fact of any licensed person being found with oysters, scallops, or bay quahaugs in his or her  
17 possession while dredging for mussels shall be prima facie evidence that person was fishing in  
18 violation of the provisions of this chapter and shall be subject to the penalties and fines imposed by  
19 this chapter. Any resident dredging for surf clams or skimmers shall not be in violation of this  
20 section if that dredging is done southerly of the coastline of Little Compton, southerly of a line  
21 extending from Church point, in the town of Little Compton, to Flint point on Aquidneck Island,  
22 southerly of the coastline of Aquidneck Island, southerly of a line extending from Castle Hill point  
23 on Aquidneck Island, to southwest point of Conanicut Island to Bonnet point, Narragansett, easterly  
24 of the coastline of the town of Narragansett, southerly of the coastline of the towns of Narragansett,  
25 South Kingstown, and Charlestown, and westerly to the Connecticut line. For the purpose of this  
26 section, "coastline" refers to the land facing the open sea.

27 **20-6-8. Opening areas for quahaug dredging.**

28 Pursuant to good conservation practices, the ~~marine fisheries council~~ director shall be  
29 authorized to open areas of the public waters of the state for taking quahaugs under license by a  
30 registered boat, by dredges, rakes, or other apparatus operated by mechanical power or hauled by  
31 power boats, and shall be authorized to close those areas at any time there is a danger of depletion  
32 of quahaugs or when flagrant violations of this chapter occur.

33 **20-6-10. Allowance of shellfish taking under license.**

34 (a) Unless otherwise specified by regulation ~~of the marine fisheries council~~, a holder of a

1 commercial shellfishing license may take and/or possess, in any one day, up to twelve (12) bushels  
2 of quahaugs, twelve (12) bushels of soft-shell clams, and three (3) bushels of oysters.

3 (b) A holder of a nonresident shellfishing license may take in any one day not more than  
4 one peck each of oysters, quahaugs, soft-shell clams, surf clams, or mussels. Any person taking  
5 more than these allowances in any one day shall be fined upon conviction one hundred dollars  
6 (\$100) for each bushel or part of a bushel exceeding the prescribed quantity or be imprisoned not  
7 exceeding thirty (30) days, or both.

8 **20-6-12. Maximum take for dredged quahaugs.**

9 Any person licensed to take quahaugs by dredge, rake, or other apparatus operated by  
10 power or hauled by a power boat may take and possess, between sunrise and sunset of any one day,  
11 thirty (30) bushels of quahaugs, unless a different amount is specified by regulation ~~of the marine~~  
12 ~~fisheries council~~. Any person taking more than the prescribed quantity shall be fined, upon  
13 conviction, not more than one hundred dollars (\$100) for each bushel exceeding the prescribed  
14 quantity or be imprisoned not exceeding thirty (30) days, or both.

15 **20-6-16. Scallops — Commercial allowance.**

16 Unless otherwise specified by regulation ~~of the marine fisheries council~~, a person holding  
17 a license for the commercial taking of scallops shall take in any one day not more than ten (10)  
18 bushels of scallops, including shells, from the waters of the state.

19 **20-6-19. Number, size, and handling of dredges.**

20 Unless otherwise specified by regulation ~~of the marine fisheries council~~, no person engaged  
21 in the taking of scallops shall use more than six (6) single dredges, the blades of which shall not be  
22 more than twenty-eight inches (28") in width, and the bag used shall not be more than thirty-six  
23 inches (36") in length. Every single dredge shall be towed and hauled aboard the registered boat  
24 individually.

25 SECTION 6. Sections 20-7-10, 20-7-11, 20-7-11.1, 20-7-15 and 20-7-16 of the General  
26 Laws in Chapter 20-7 entitled "Lobsters and Other Crustaceans" are hereby amended to read as  
27 follows:

28 **20-7-10. Minimum size of lobsters taken — Egg-bearing females.**

29 (a)(1) Unless otherwise specified by regulations ~~adopted by the marine fisheries council~~,  
30 no person shall catch or take from any of the waters within the jurisdiction of this state, or have in  
31 his or her possession within this state, any lobster, or parts of lobsters, cooked or uncooked, that is  
32 less than three and three sixteenths inches (33/16") measured from the rear of the eye socket along  
33 a line parallel to the center line of the body shell to the rear end of the carapace.

34 (2) The minimum size of three and three sixteenths inches (33/16") shall be increased as

1 follows:

2 (i) On January 1, 1988, 1/32" from 33/16" to 37/32";

3 (ii) On January 1, 1989, 1/32" from 37/32" to 31/4";

4 (iii) On January 1, 1991, 1/32" from 31/4" to 39/32";

5 (iv) On January 1, 1992, 1/32" from 39/32" to 35/16".

6 (b) No person shall have in his or her possession within this state any female lobster bearing  
7 eggs or from which the eggs have been brushed or removed.

8 (c) In addition to any penalties specified in other sections of this chapter, every person  
9 violating any of the provisions of this section shall be fined not less than fifty dollars (\$50.00) nor  
10 more than five hundred dollars (\$500) for each lobster in violation of this regulation or be  
11 imprisoned not exceeding thirty (30) days, or both. Any person licensed under this chapter catching  
12 and taking any lobster as described in subsection (a) or (b), and immediately returning the lobster  
13 alive to the water from which it was taken, shall not be subject to these fines or penalties. The  
14 possession of any lobster as described in subsection (a) or (b), cooked or uncooked, shall be prima  
15 facie evidence that the lobster was caught and taken in violation of this section. Any person  
16 convicted a second time of a violation of this section shall be fined five hundred dollars (\$500) and  
17 be deprived of the privilege of fishing for lobsters within the state for three (3) years, after  
18 conviction, under a penalty of sixty (60) days' imprisonment or a fine of five hundred dollars  
19 (\$500), or both, for each offense.

20 **20-7-11. Buoying of pots — Escape vents.**

21 (a) Each and every lobster pot, set, kept, or maintained, or caused to be set, kept, or  
22 maintained, in any of the waters in the jurisdiction of this state by any person licensed under this  
23 chapter, shall contain an escape vent in accordance with the following specifications:

24 (1) A rectangular escape vent with an unobstructed opening not less than 13/4 inches  
25 (44.5mm) by 6 inches (152.5mm); or

26 (2) Two (2) circular escape vents with an unobstructed opening not less than 21/4 inches  
27 (57.2mm) in diameter; or

28 (3) An unobstructed gap caused by raising both ends of a bottom lath in the parlor section  
29 11/4 inches (44.5mm) from the bottom; or

30 (4) An unobstructed gap caused by separating both ends of two (2) vertical laths on the end  
31 of the parlor section by 13/4 inches (44.5mm); or

32 (5) An unobstructed gap created by cutting wires in a wire trap in such a manner as to meet  
33 the minimum size and number of vents required under subsections (a)(1) and (a)(2).

34 (b) The vent or gap shall be installed or made in the parlor section on the sides or end panel.

1 No horizontal rectangular vent or gap or circular vent shall be located more than three inches (3")  
2 from the sill of the trap. Traps equipped with multiple opposing parlor sections must adhere to the  
3 escape vent requirements specified in subsection (a)(1) or (a)(2) in each parlor section. Any fisher  
4 not complying with the provisions of this section or § 20-7-10 shall be fined in compliance with §  
5 20-3-3.

6 (c) The ~~marine fisheries council~~ director shall have the power to establish larger escape  
7 vent sizes by regulation.

8 (d) Each lobster pot shall be separately and plainly buoyed; except that in cases where  
9 natural conditions render it impracticable to separately buoy each pot, the director of environmental  
10 management may, upon application from any person licensed under this chapter, grant permission  
11 to otherwise buoy those pots subject to rules and regulations promulgated by the director; and each  
12 and every permit so granted shall set forth the name of the person to whom the permit is granted;  
13 the number of the permit; the place or places where the lobster pots are to be located; the manner  
14 in which lobster pots shall be set; and the period of time during which the permit shall extend.

15 **20-7-11.1. Lobster pots — Tagging — Advisory committee.**

16 (a) Each and every pot, trap, or other device used for the taking of lobsters or crabs in any  
17 of the waters of this state shall bear a color scheme on the attached buoy. Each applicant for a  
18 lobster license shall state the color scheme that he or she desires to use. These colors, unless  
19 disapproved by the director of environmental management, shall be stated in the license, and all  
20 buoys used by the licensee shall be marked accordingly. Each licensee shall cause his or her color  
21 scheme to be displayed on any lobster boat used by the licensee in the waters of this state. Those  
22 colors shall be painted on the port and starboard sides of the hull in a section not less than one foot  
23 (1') square, or a clearly painted buoy shall be set at the highest point on the boat excluding the mast  
24 and be visible for three hundred sixty degrees (360 degrees). The buoy or colors must be  
25 prominently displayed on the vessel at all times that lobster gear fished under that license is in the  
26 water.

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

32 (c) The ~~Rhode Island marine fisheries council~~ director has the authority to promulgate  
33 regulations requiring the tagging of lobster traps. ~~The director of the department of environmental~~  
34 ~~management is authorized to promulgate regulations that~~ and to establish a fee for official state

1 lobster trap tags. Any fee collected by the department will be retained by the agency, subject to §  
2 20-2-28.2, to be used for the exclusive purpose of producing and distributing the trap tags and, if  
3 necessary, supporting other lobster fishery management measures, including enforcement of the  
4 trap tag program; provided, however, that: (1) The department shall not establish a fee to cover any  
5 cost other than the cost of trap tags without first obtaining a recommendation from an advisory  
6 committee in accordance with subsection (d); and (2) The department shall report to the general  
7 assembly regarding the need for the fee to cover any additional cost in accordance with subsection  
8 (d).

9 (d) The department shall create an advisory committee composed of five (5) members of  
10 the lobster industry that utilize trap tags. The director, or his or her designee, will serve on the  
11 committee and act as chairperson. The committee will formulate recommendations on the  
12 expenditure of the funds derived from the tagging program. The department shall prepare an annual  
13 report for submittal to the general assembly that summarizes the status of the lobster management  
14 and trap tag program, management actions, program needs, and catch and effort data, and that  
15 provides an itemized listing of all program expenses. This report shall be available to the public  
16 and provided to each commercial fishing organization in the state.

17 **20-7-15. Methods of taking blue crabs — Nonresidents.**

18 Unless otherwise specified by regulation ~~of the marine fisheries council~~, no person shall  
19 take, or attempt to take, any blue crabs from any of the waters in this state except by a scoop or  
20 crab net, trot, or land line. Taking of blue crabs shall be restricted to residents of this state. No  
21 person shall take blue crabs from the waters of the state between the hours of sunset and sunrise.

22 **20-7-16. Egg-bearing blue crabs — Minimum size.**

23 No person shall take, offer for sale, or possess at any time any female blue crab bearing  
24 eggs visible thereon, or from which the egg pouch or bunion has been removed. Unless otherwise  
25 specified by regulation ~~of the marine fisheries council~~, no person shall take, buy, sell, give away,  
26 expose for sale, or possess any blue crab measuring less than four and one eighth inches (4 $\frac{1}{8}$ "")  
27 across the shell from tip to tip of spike.

28 SECTION 7. Section 42-17.1-2 of the General Laws in Chapter 42-17.1 entitled  
29 "Department of Environmental Management" is hereby amended to read as follows:

30 **42-17.1-2. Powers and duties.**

31 The director of environmental management shall have the following powers and duties:

32 (1) To supervise and control the protection, development, planning, and utilization of the  
33 natural resources of the state, such resources, including, but not limited to: water, plants, trees, soil,  
34 clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,

1 shellfish, and other forms of aquatic, insect, and animal life;

2 (2) To exercise all functions, powers, and duties heretofore vested in the department of  
3 agriculture and conservation, and in each of the divisions of the department, such as the promotion  
4 of agriculture and animal husbandry in their several branches, including the inspection and  
5 suppression of contagious diseases among animals; the regulation of the marketing of farm  
6 products; the inspection of orchards and nurseries; the protection of trees and shrubs from injurious  
7 insects and diseases; protection from forest fires; the inspection of apiaries and the suppression of  
8 contagious diseases among bees; the prevention of the sale of adulterated or misbranded  
9 agricultural seeds; promotion and encouragement of the work of farm bureaus, in cooperation with  
10 the University of Rhode Island, farmers' institutes, and the various organizations established for  
11 the purpose of developing an interest in agriculture; together with such other agencies and activities  
12 as the governor and the general assembly may, from time to time, place under the control of the  
13 department; and as heretofore vested by such of the following chapters and sections of the general  
14 laws as are presently applicable to the department of environmental management and that were  
15 previously applicable to the department of natural resources and the department of agriculture and  
16 conservation or to any of its divisions: chapters 1 through 22, inclusive, as amended, in title 2  
17 entitled "Agriculture and Forestry"; chapters 1 through 17, inclusive, as amended, in title 4 entitled  
18 "Animals and Animal Husbandry"; chapters 1 through 19, inclusive, as amended, in title 20 entitled  
19 "Fish and Wildlife"; chapters 1 through 32, inclusive, as amended, in title 21 entitled "Food and  
20 Drugs"; chapter 7 of title 23, as amended, entitled "Mosquito Abatement"; and by any other general  
21 or public law relating to the department of agriculture and conservation or to any of its divisions or  
22 bureaus;

23 (3) To exercise all the functions, powers, and duties heretofore vested in the division of  
24 parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled  
25 "Parks and Recreational Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning  
26 Prevention and Lifesaving"; and by any other general or public law relating to the division of parks  
27 and recreation;

28 (4) To exercise all the functions, powers, and duties heretofore vested in the division of  
29 harbors and rivers of the department of public works, or in the department itself by such as were  
30 previously applicable to the division or the department, of chapters 1 through 22 and sections  
31 thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or public  
32 law relating to the division of harbors and rivers;

33 (5) To exercise all the functions, powers, and duties heretofore vested in the department of  
34 health by chapters 25, 18.9, and 19.5 of title 23, as amended, entitled "Health and Safety"; and by

1 chapters 12 and 16 of title 46, as amended, entitled “Waters and Navigation”; by chapters 3, 4, 5,  
2 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended, entitled “Animals and Animal Husbandry”; and  
3 those functions, powers, and duties specifically vested in the director of environmental  
4 management by the provisions of § 21-2-22, as amended, entitled “Inspection of Animals and  
5 Milk”; together with other powers and duties of the director of the department of health as are  
6 incidental to, or necessary for, the performance of the functions transferred by this section;

7 (6) To cooperate with the Rhode Island commerce corporation in its planning and  
8 promotional functions, particularly in regard to those resources relating to agriculture, fisheries,  
9 and recreation;

10 (7) To cooperate with, advise, and guide conservation commissions of cities and towns  
11 created under chapter 35 of title 45 entitled “Conservation Commissions”, as enacted by chapter  
12 203 of the Public Laws, 1960;

13 (8) To assign or reassign, with the approval of the governor, any functions, duties, or  
14 powers established by this chapter to any agency within the department, except as hereinafter  
15 limited;

16 (9) To cooperate with the water resources board and to provide to the board facilities,  
17 administrative support, staff services, and other services as the board shall reasonably require for  
18 its operation and, in cooperation with the board and the statewide planning program, to formulate  
19 and maintain a long-range guide plan and implementing program for development of major water-  
20 sources transmission systems needed to furnish water to regional- and local-distribution systems;

21 (10) To cooperate with the solid waste management corporation and to provide to the  
22 corporation such facilities, administrative support, staff services, and other services within the  
23 department as the corporation shall reasonably require for its operation;

24 (11) To provide for the maintenance of waterways and boating facilities, consistent with  
25 chapter 6.1 of title 46, by: (i) Establishing minimum standards for upland beneficial use and  
26 disposal of dredged material; (ii) Promulgating and enforcing rules for water quality, ground water  
27 protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) Planning for the upland  
28 beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the council  
29 pursuant to § 46-23-6(2); and (iv) Cooperating with the coastal resources management council in  
30 the development and implementation of comprehensive programs for dredging as provided for in  
31 §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) Monitoring dredge material management and disposal  
32 sites in accordance with the protocols established pursuant to § 46-6.1-5(a)(3) and the  
33 comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties granted herein  
34 shall be construed to abrogate the powers or duties granted to the coastal resources management

1 council under chapter 23 of title 46, as amended;

2 (12) To establish minimum standards, subject to the approval of the environmental  
3 standards board, relating to the location, design, construction, and maintenance of all sewage-  
4 disposal systems;

5 (13) To enforce, by such means as provided by law, the standards for the quality of air, and  
6 water, and the design, construction, and operation of all sewage-disposal systems; any order or  
7 notice issued by the director relating to the location, design, construction, or maintenance of a  
8 sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director  
9 shall forward the order or notice to the city or town wherein the subject property is located and the  
10 order or notice shall be recorded in the general index by the appropriate municipal official in the  
11 land evidence records in the city or town wherein the subject property is located. Any subsequent  
12 transferee of that property shall be responsible for complying with the requirements of the order or  
13 notice. Upon satisfactory completion of the requirements of the order or notice, the director shall  
14 provide written notice of the same, which notice shall be similarly eligible for recordation. The  
15 original written notice shall be forwarded to the city or town wherein the subject property is located  
16 and the notice of satisfactory completion shall be recorded in the general index by the appropriate  
17 municipal official in the land evidence records in the city or town wherein the subject property is  
18 located. A copy of the written notice shall be forwarded to the owner of the subject property within  
19 five (5) days of a request for it, and, in any event, shall be forwarded to the owner of the subject  
20 property within thirty (30) days after correction;

21 (14) To establish minimum standards for the establishment and maintenance of salutary  
22 environmental conditions, including standards and methods for the assessment and the  
23 consideration of the cumulative effects on the environment of regulatory actions and decisions,  
24 which standards for consideration of cumulative effects shall provide for: (i) Evaluation of potential  
25 cumulative effects that could adversely affect public health and/or impair ecological functioning;  
26 (ii) Analysis of other matters relative to cumulative effects as the department may deem appropriate  
27 in fulfilling its duties, functions, and powers; which standards and methods shall only be applicable  
28 to ISDS systems in the town of Jamestown in areas that are dependent for water supply on private  
29 and public wells, unless broader use is approved by the general assembly. The department shall  
30 report to the general assembly not later than March 15, 2008, with regard to the development and  
31 application of the standards and methods in Jamestown;

32 (15) To establish and enforce minimum standards for permissible types of septage,  
33 industrial-waste disposal sites, and waste-oil disposal sites;

34 (16) To establish minimum standards, subject to the approval of the environmental

1 standards board, for permissible types of refuse disposal facilities; the design, construction,  
2 operation, and maintenance of disposal facilities; and the location of various types of facilities;

3 (17) To exercise all functions, powers, and duties necessary for the administration of  
4 chapter 19.1 of title 23 entitled "Rhode Island Hazardous Waste Management Act";

5 (18) To designate, in writing, any person in any department of the state government or any  
6 official of a district, county, city, town, or other governmental unit, with that official's consent, to  
7 enforce any rule, regulation, or order promulgated and adopted by the director under any provision  
8 of law; provided, however, that enforcement of powers of the coastal resources management  
9 council shall be assigned only to employees of the department of environmental management,  
10 except by mutual agreement or as otherwise provided in chapter 23 of title 46;

11 (19) To issue and enforce the rules, regulations, and orders as may be necessary to carry  
12 out the duties assigned to the director and the department by any provision of law; and to conduct  
13 investigations and hearings and to issue, suspend, and revoke licenses as may be necessary to  
14 enforce those rules, regulations, and orders. Any license suspended under the rules, regulations,  
15 and/or orders shall be terminated and revoked if the conditions that led to the suspension are not  
16 corrected to the satisfaction of the director within two (2) years; provided that written notice is  
17 given by certified mail, return receipt requested, no less than sixty (60) days prior to the date of  
18 termination.

19 Notwithstanding the provisions of § 42-35-9 to the contrary, no informal disposition of a  
20 contested licensing matter shall occur where resolution substantially deviates from the original  
21 application unless all interested parties shall be notified of the proposed resolution and provided  
22 with opportunity to comment upon the resolution pursuant to applicable law and any rules and  
23 regulations established by the director;

24 (20) To enter, examine, or survey, at any reasonable time, places as the director deems  
25 necessary to carry out his or her responsibilities under any provision of law subject to the following  
26 provisions:

27 (i) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a  
28 search warrant from an official of a court authorized to issue warrants, unless a search without a  
29 warrant is otherwise allowed or provided by law;

30 (ii)(A) All administrative inspections shall be conducted pursuant to administrative  
31 guidelines promulgated by the department in accordance with chapter 35 of this title;

32 (B) A warrant shall not be required for administrative inspections if conducted under the  
33 following circumstances, in accordance with the applicable constitutional standards:

34 (I) For closely regulated industries;

- 1 (II) In situations involving open fields or conditions that are in plain view;
- 2 (III) In emergency situations;
- 3 (IV) In situations presenting an imminent threat to the environment or public health, safety,
- 4 or welfare;
- 5 (V) If the owner, operator, or agent in charge of the facility, property, site, or location
- 6 consents; or
- 7 (VI) In other situations in which a warrant is not constitutionally required.
- 8 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the
- 9 director in his or her discretion deems it advisable, an administrative search warrant, or its
- 10 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose of
- 11 conducting an administrative inspection. The warrant shall be issued in accordance with the
- 12 applicable constitutional standards for the issuance of administrative search warrants. The
- 13 administrative standard of probable cause, not the criminal standard of probable cause, shall apply
- 14 to applications for administrative search warrants;
- 15 (I) The need for, or reliance upon, an administrative warrant shall not be construed as
- 16 requiring the department to forfeit the element of surprise in its inspection efforts;
- 17 (II) An administrative warrant issued pursuant to this subsection must be executed and
- 18 returned within ten (10) days of its issuance date unless, upon a showing of need for additional
- 19 time, the court orders otherwise;
- 20 (III) An administrative warrant may authorize the review and copying of documents that
- 21 are relevant to the purpose of the inspection. If documents must be seized for the purpose of
- 22 copying, and the warrant authorizes the seizure, the person executing the warrant shall prepare an
- 23 inventory of the documents taken. The time, place, and manner regarding the making of the
- 24 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of the
- 25 inventory shall be delivered to the person from whose possession or facility the documents were
- 26 taken. The seized documents shall be copied as soon as feasible under circumstances preserving
- 27 their authenticity, then returned to the person from whose possession or facility the documents were
- 28 taken;
- 29 (IV) An administrative warrant may authorize the taking of samples of air, water, or soil
- 30 or of materials generated, stored, or treated at the facility, property, site, or location. Upon request,
- 31 the department shall make split samples available to the person whose facility, property, site, or
- 32 location is being inspected;
- 33 (V) Service of an administrative warrant may be required only to the extent provided for
- 34 in the terms of the warrant itself, by the issuing court.

1 (D) Penalties. Any willful and unjustified refusal of right of entry and inspection to  
2 department personnel pursuant to an administrative warrant shall constitute a contempt of court and  
3 shall subject the refusing party to sanctions, which in the court's discretion may result in up to six  
4 (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per refusal;

5 (21) To give notice of an alleged violation of law to the person responsible therefor  
6 whenever the director determines that there are reasonable grounds to believe that there is a  
7 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted  
8 pursuant to authority granted to him or her. Nothing in this chapter shall limit the authority of the  
9 attorney general to prosecute offenders as required by law;

10 (i) The notice shall provide for a time within which the alleged violation shall be remedied,  
11 and shall inform the person to whom it is directed that a written request for a hearing on the alleged  
12 violation may be filed with the director within twenty (20) days after service of the notice. The  
13 notice will be deemed properly served upon a person if a copy thereof is served him or her  
14 personally; or sent by registered or certified mail to his or her last known address; or if he or she is  
15 served with notice by any other method of service now or hereafter authorized in a civil action  
16 under the laws of this state. If no written request for a hearing is made to the director within twenty  
17 (20) days of the service of notice, the notice shall automatically become a compliance order;

18 (ii)(A) Whenever the director determines that there exists a violation of any law, rule, or  
19 regulation within his or her jurisdiction that requires immediate action to protect the environment,  
20 he or she may, without prior notice of violation or hearing, issue an immediate-compliance order  
21 stating the existence of the violation and the action he or she deems necessary. The compliance  
22 order shall become effective immediately upon service or within such time as is specified by the  
23 director in such order. No request for a hearing on an immediate-compliance order may be made;

24 (B) Any immediate-compliance order issued under this section without notice and prior  
25 hearing shall be effective for no longer than forty-five (45) days; provided, however, that for good  
26 cause shown, the order may be extended one additional period not exceeding forty-five (45) days;

27 (iii) The director may, at his or her discretion and for the purposes of timely and effective  
28 resolution and return to compliance, cite a person for alleged noncompliance through the issuance  
29 of an expedited citation in accordance with § 42-17.6-3(c);

30 (iv) If a person upon whom a notice of violation has been served under the provisions of  
31 this section or if a person aggrieved by any such notice of violation requests a hearing before the  
32 director within twenty (20) days of the service of notice of violation, the director shall set a time  
33 and place for the hearing, and shall give the person requesting that hearing at least five (5) days'  
34 written notice thereof. After the hearing, the director may make findings of fact and shall sustain,

1 modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that  
2 decision shall be deemed a compliance order and shall be served upon the person responsible in  
3 any manner provided for the service of the notice in this section;

4 (v) The compliance order shall state a time within which the violation shall be remedied,  
5 and the original time specified in the notice of violation shall be extended to the time set in the  
6 order;

7 (vi) Whenever a compliance order has become effective, whether automatically where no  
8 hearing has been requested, where an immediate compliance order has been issued, or upon  
9 decision following a hearing, the director may institute injunction proceedings in the superior court  
10 of the state for enforcement of the compliance order and for appropriate temporary relief, and in  
11 that proceeding, the correctness of a compliance order shall be presumed and the person attacking  
12 the order shall bear the burden of proving error in the compliance order, except that the director  
13 shall bear the burden of proving in the proceeding the correctness of an immediate compliance  
14 order. The remedy provided for in this section shall be cumulative and not exclusive and shall be  
15 in addition to remedies relating to the removal or abatement of nuisances or any other remedies  
16 provided by law;

17 (vii) Any party aggrieved by a final judgment of the superior court may, within thirty (30)  
18 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to  
19 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the  
20 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of  
21 certiorari;

22 (22) To impose administrative penalties in accordance with the provisions of chapter 17.6  
23 of this title and to direct that such penalties be paid into the account established by subdivision (26);

24 (23) The following definitions shall apply in the interpretation of the provisions of this  
25 chapter:

26 (i) *Director*: The term “director” shall mean the director of environmental management of  
27 the state of Rhode Island or his or her duly authorized agent;

28 (ii) *Person*: The term “person” shall include any individual, group of individuals, firm,  
29 corporation, association, partnership, or private or public entity, including a district, county, city,  
30 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual  
31 having active and general supervision of the properties of the corporation;

32 (iii) *Service*:

33 (A) Service upon a corporation under this section shall be deemed to include service upon  
34 both the corporation and upon the person having active and general supervision of the properties

1 of the corporation;

2 (B) For purposes of calculating the time within which a claim for a hearing is made  
3 pursuant to subdivision (21)(i), service shall be deemed to be the date of receipt of such notice or  
4 three (3) days from the date of mailing of the notice, whichever shall first occur;

5 (24)(i) To conduct surveys of the present private and public camping and other recreational  
6 areas available and to determine the need for and location of other camping and recreational areas  
7 as may be deemed necessary and in the public interest of the state of Rhode Island and to report  
8 back its findings on an annual basis to the general assembly on or before March 1 of every year;

9 (ii) Additionally, the director of the department of environmental management shall take  
10 additional steps, including, but not limited to, matters related to funding as may be necessary to  
11 establish such other additional recreational facilities and areas as are deemed to be in the public  
12 interest;

13 (25)(i) To apply for and accept grants and bequests of funds, with the approval of the  
14 director of administration, from other states, interstate agencies, and independent authorities, and  
15 private firms, individuals, and foundations, for the purpose of carrying out his or her lawful  
16 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt  
17 account created in the natural resources program for funds made available for that program's  
18 purposes or in a restricted receipt account created in the environmental protection program for  
19 funds made available for that program's purposes. All expenditures from the accounts shall be  
20 subject to appropriation by the general assembly, and shall be expended in accordance with the  
21 provisions of the grant or bequest. In the event that a donation or bequest is unspecified, or in the  
22 event that the trust account balance shows a surplus after the project as provided for in the grant or  
23 bequest has been completed, the director may utilize the appropriated unspecified or appropriated  
24 surplus funds for enhanced management of the department's forest and outdoor public recreation  
25 areas, or other projects or programs that promote the accessibility of recreational opportunities for  
26 Rhode Island residents and visitors;

27 (ii) The director shall submit to the house fiscal advisor and the senate fiscal advisor, by  
28 October 1 of each year, a detailed report on the amount of funds received and the uses made of such  
29 funds;

30 (26) To establish fee schedules by regulation, with the approval of the governor, for the  
31 processing of applications and the performing of related activities in connection with the  
32 department's responsibilities pursuant to subsection (12); chapter 19.1 of title 23, as it relates to  
33 inspections performed by the department to determine compliance with chapter 19.1 and rules and  
34 regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to inspections

1 performed by the department to determine compliance with chapter 18.9 and the rules and  
2 regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12 of  
3 title 46, insofar as it relates to water-quality certifications and related reviews performed pursuant  
4 to provisions of the federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the regulation and  
5 administration of underground storage tanks and all other programs administered under chapter 12  
6 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46, insofar as  
7 they relate to any reviews and related activities performed under the provisions of the Groundwater  
8 Protection Act; chapter 24.9 of title 23 as it relates to the regulation and administration of mercury-  
9 added products; and chapter 17.7 of this title, insofar as it relates to administrative appeals of all  
10 enforcement, permitting and licensing matters to the administrative adjudication division for  
11 environmental matters. Two (2) fee ranges shall be required: for “Appeal of enforcement actions,”  
12 a range of fifty dollars (\$50) to one hundred dollars (\$100), and for “Appeal of application  
13 decisions,” a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000). The monies  
14 from the administrative adjudication fees will be deposited as general revenues and the amounts  
15 appropriated shall be used for the costs associated with operating the administrative adjudication  
16 division.

17         There is hereby established an account within the general fund to be called the water and  
18 air protection program. The account shall consist of sums appropriated for water and air pollution  
19 control and waste-monitoring programs and the state controller is hereby authorized and directed  
20 to draw his or her orders upon the general treasurer for the payment of the sums, or portions thereof,  
21 as may be required, from time to time, upon receipt by him or her of properly authenticated  
22 vouchers. All amounts collected under the authority of this subdivision for the sewage-disposal-  
23 system program and freshwater wetlands program will be deposited as general revenues and the  
24 amounts appropriated shall be used for the purposes of administering and operating the programs.  
25 The director shall submit to the house fiscal advisor and the senate fiscal advisor by January 15 of  
26 each year a detailed report on the amount of funds obtained from fines and fees and the uses made  
27 of the funds;

28         (27) To establish and maintain a list or inventory of areas within the state worthy of special  
29 designation as “scenic” to include, but not be limited to, certain state roads or highways, scenic  
30 vistas, and scenic areas, and to make the list available to the public;

31         (28) To establish and maintain an inventory of all interests in land held by public and  
32 private land trust and to exercise all powers vested herein to ensure the preservation of all identified  
33 lands;

34         (i) The director may promulgate and enforce rules and regulations to provide for the orderly

1 and consistent protection, management, continuity of ownership and purpose, and centralized  
2 records-keeping for lands, water, and open spaces owned in fee or controlled in full or in part  
3 through other interests, rights, or devices such as conservation easements or restrictions, by private  
4 and public land trusts in Rhode Island. The director may charge a reasonable fee for filing of each  
5 document submitted by a land trust;

6 (ii) The term “public land trust” means any public instrumentality created by a Rhode  
7 Island municipality for the purposes stated herein and financed by means of public funds collected  
8 and appropriated by the municipality. The term “private land trust” means any group of five (5) or  
9 more private citizens of Rhode Island who shall incorporate under the laws of Rhode Island as a  
10 nonbusiness corporation for the purposes stated herein, or a national organization such as the nature  
11 conservancy. The main purpose of either a public or a private land trust shall be the protection,  
12 acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other natural features,  
13 areas, or open space for the purpose of managing or maintaining, or causing to be managed or  
14 maintained by others, the land, water, and other natural amenities in any undeveloped and relatively  
15 natural state in perpetuity. A private land trust must be granted exemption from federal income tax  
16 under Internal Revenue Code 501(c)(3) [26 U.S.C. § 501(c)(3)] within two (2) years of its  
17 incorporation in Rhode Island or it may not continue to function as a land trust in Rhode Island. A  
18 private land trust may not be incorporated for the exclusive purpose of acquiring or accepting  
19 property or rights in property from a single individual, family, corporation, business, partnership,  
20 or other entity. Membership in any private land trust must be open to any individual subscribing to  
21 the purposes of the land trust and agreeing to abide by its rules and regulations including payment  
22 of reasonable dues;

23 (iii)(A) Private land trusts will, in their articles of association or their bylaws, as  
24 appropriate, provide for the transfer to an organization, created for the same or similar purposes, of  
25 the assets, lands and land rights, and interests held by the land trust in the event of termination or  
26 dissolution of the land trust;

27 (B) All land trusts, public and private, will record in the public records, of the appropriate  
28 towns and cities in Rhode Island, all deeds, conservation easements, or restrictions or other interests  
29 and rights acquired in land and will also file copies of all such documents and current copies of  
30 their articles of association, their bylaws, and their annual reports with the secretary of state and  
31 with the director of the Rhode Island department of environmental management. The director is  
32 hereby directed to establish and maintain permanently a system for keeping records of all private  
33 and public land trust land holdings in Rhode Island;

34 (29) The director will contact in writing, not less often than once every two (2) years, each

1 public or private land trust to ascertain: that all lands held by the land trust are recorded with the  
2 director; the current status and condition of each land holding; that any funds or other assets of the  
3 land trust held as endowment for specific lands have been properly audited at least once within the  
4 two-year (2) period; the name of the successor organization named in the public or private land  
5 trust's bylaws or articles of association; and any other information the director deems essential to  
6 the proper and continuous protection and management of land and interests or rights in land held  
7 by the land trust. In the event that the director determines that a public or private land trust holding  
8 land or interest in land appears to have become inactive, he or she shall initiate proceedings to  
9 effect the termination of the land trust and the transfer of its lands, assets, land rights, and land  
10 interests to the successor organization named in the defaulting trust's bylaws or articles of  
11 association or to another organization created for the same or similar purposes. Should such a  
12 transfer not be possible, then the land trust, assets, and interest and rights in land will be held in  
13 trust by the state of Rhode Island and managed by the director for the purposes stated at the time  
14 of original acquisition by the trust. Any trust assets or interests other than land or rights in land  
15 accruing to the state under such circumstances will be held and managed as a separate fund for the  
16 benefit of the designated trust lands;

17 (30) Consistent with federal standards, issue and enforce such rules, regulations, and orders  
18 as may be necessary to establish requirements for maintaining evidence of financial responsibility  
19 for taking corrective action and compensating third parties for bodily injury and property damage  
20 caused by sudden and non-sudden accidental releases arising from operating underground storage  
21 tanks;

22 (31) To enforce, by such means as provided by law, the standards for the quality of air, and  
23 water, and the location, design, construction, and operation of all underground storage facilities  
24 used for storing petroleum products or hazardous materials; any order or notice issued by the  
25 director relating to the location, design, construction, operation, or maintenance of an underground  
26 storage facility used for storing petroleum products or hazardous materials shall be eligible for  
27 recordation under chapter 13 of title 34. The director shall forward the order or notice to the city or  
28 town wherein the subject facility is located, and the order or notice shall be recorded in the general  
29 index by the appropriate municipal officer in the land-evidence records in the city or town wherein  
30 the subject facility is located. Any subsequent transferee of that facility shall be responsible for  
31 complying with the requirements of the order or notice. Upon satisfactory completion of the  
32 requirements of the order or notice, the director shall provide written notice of the same, which  
33 notice shall be eligible for recordation. The original, written notice shall be forwarded to the city  
34 or town wherein the subject facility is located, and the notice of satisfactory completion shall be

1 recorded in the general index by the appropriate municipal official in the land-evidence records in  
2 the city or town wherein the subject facility is located. A copy of the written notice shall be  
3 forwarded to the owner of the subject facility within five (5) days of a request for it, and, in any  
4 event, shall be forwarded to the owner of the subject facility within thirty (30) days after correction;

5 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in  
6 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage Tank  
7 Financial Responsibility Act, as amended;

8 (33) To support, facilitate, and assist the Rhode Island Natural History Survey, as  
9 appropriate and/or as necessary, in order to accomplish the important public purposes of the survey  
10 in gathering and maintaining data on Rhode Island natural history; making public presentations and  
11 reports on natural history topics; ranking species and natural communities; monitoring rare species  
12 and communities; consulting on open-space acquisitions and management plans; reviewing  
13 proposed federal and state actions and regulations with regard to their potential impact on natural  
14 communities; and seeking outside funding for wildlife management, land management, and  
15 research;

16 (34) To promote the effective stewardship of lakes, ponds, rivers, and streams including,  
17 but not limited to, collaboration with watershed organizations and associations of lakefront property  
18 owners on planning and management actions that will prevent and mitigate water quality  
19 degradation, reduce the loss of native habitat due to infestation of non-native species, abate  
20 nuisance conditions that result from excessive growth of algal or non-native plant species as well  
21 as promote healthy freshwater riverine ecosystems;

22 (35) In implementing the programs established pursuant to this chapter, to identify critical  
23 areas for improving service to customers doing business with the department, and to develop and  
24 implement strategies to improve performance and effectiveness in those areas. Key aspects of a  
25 customer-service program shall include, but not necessarily be limited to, the following  
26 components:

27 (i) Maintenance of an organizational unit within the department with the express purpose  
28 of providing technical assistance to customers and helping customers comply with environmental  
29 regulations and requirements;

30 (ii) Maintenance of an employee-training program to promote customer service across the  
31 department;

32 (iii) Implementation of a continuous business process evaluation and improvement effort,  
33 including process reviews to encourage development of quality proposals; ensure timely and  
34 predictable reviews; and result in effective decisions and consistent follow up and implementation

1 throughout the department; and publish an annual report on such efforts;

2 (iv) Creation of a centralized location for the acceptance of permit applications and other  
3 submissions to the department;

4 (v) Maintenance of a process to promote, organize, and facilitate meetings prior to the  
5 submission of applications or other proposals in order to inform the applicant on options and  
6 opportunities to minimize environmental impact; improve the potential for sustainable  
7 environmental compliance; and support an effective and efficient review and decision-making  
8 process on permit applications related to the proposed project;

9 (vi) Development of single permits under multiple authorities otherwise provided in state  
10 law to support comprehensive and coordinated reviews of proposed projects. The director may  
11 address and resolve conflicting or redundant process requirements in order to achieve an effective  
12 and efficient review process that meets environmental objectives; and

13 (vii) Exploration of the use of performance-based regulations coupled with adequate  
14 inspection and oversight, as an alternative to requiring applications or submissions for approval  
15 prior to initiation of projects. The department shall work with the office of regulatory reform to  
16 evaluate the potential for adopting alternative compliance approaches and provide a report to the  
17 governor and the general assembly by May 1, 2015;

18 (36) To formulate and promulgate regulations requiring any dock or pier longer than twenty  
19 feet (20') and located on a freshwater lake or pond to be equipped with reflective materials, on all  
20 sides facing the water, of an appropriate width and luminosity such that it can be seen by operators  
21 of watercraft; and

22 (37) To temporarily waive any control or prohibition respecting the use of a fuel or fuel  
23 additive required or regulated by the department if the director finds that:

24 (i) Extreme or unusual fuel or fuel additive supply circumstances exist in the state or the  
25 New England region that prevent the distribution of an adequate supply of the fuel or fuel additive  
26 to consumers;

27 (ii) Extreme or unusual fuel or fuel additive supply circumstances are the result of a natural  
28 disaster, an act of God, a pipeline or refinery equipment failure, or another event that could not  
29 reasonably have been foreseen; and

30 (iii) It is in the public interest to grant the waiver.

31 Any temporary waiver shall be made in writing and shall be effective for twenty (20)  
32 calendar days; provided, that the director may renew the temporary waiver, in writing, if it is  
33 deemed necessary.

34 [\(38\)\(i\) To designate by rule certain waters of the state as shellfish or marine life project](#)

1 management areas for the purpose of enhancing the cultivation and growth of marine species,  
2 managing the harvest of marine species, facilitating the conduct by the department of experiments  
3 in planting, cultivating, propagating, managing, and developing any and all kinds of marine life,  
4 and any other related purpose.

5 (ii) Any such designation shall be by reference to fixed landmarks and include an explicit  
6 description of the area to be designated.

7 (iii) Once so designated, the director may adopt any rules and regulations deemed  
8 necessary for the protection and management of the management area and the animal life and  
9 property in the management area, including the restrictions on the quantities, types, or sizes of  
10 marine species which may be taken in such area, the times during which marine species may be  
11 taken, the manner or manners in which marine species may be taken, the closure of such area to the  
12 taking of marine species, or any other restrictions as may be deemed necessary. Such rules shall be  
13 exempt from the requirements of §§ 42-35-2.7, 42-35-2.8, and 42-35-2.9.

14 (iv) The director, upon the designation of a management area, may place any stakes,  
15 bounds, buoys or markers with the words "Rhode Island department of environmental  
16 management" plainly marked on them, as will approximate the management area. Failure to place  
17 or maintain the stakes, bounds, buoys, or markers shall not be admissible in any judicial or  
18 administrative proceeding.

19 (v) Nothing in this section shall prevent the director from implementing emergency rules  
20 pursuant to § 42-35-2.10.

21 SECTION 8. Chapter 20-1 of the General Laws entitled "General Provisions" is hereby  
22 amended by adding thereto the following section:

23 **20-1-30. Regulation of fishing in Great Salt Pond.**

24 Notwithstanding the provisions of this title, the electors of the town of New Shoreham may,  
25 in a town meeting called for that purpose, enact any ordinances to protect and to regulate the taking  
26 of shellfish and other fish in Great Salt Pond, and may impose penalties for violations of these  
27 ordinances not exceeding a fine or two hundred dollars (\$200) and three (3) months imprisonment  
28 for any one offense.

29 SECTION 9. Chapter 20-3 of the General Laws entitled "Marine Fisheries Council" is  
30 hereby amended by adding thereto the following section:

31 **20-3-8. Established of advisory committees.**

32 The marine fisheries council may establish any advisory committees or panels that it may  
33 deem appropriate to fulfill its responsibilities.

34 SECTION 10. Sections 20-2.1-10 and 20-2.1-11 of the General Laws in Chapter 20-2.1

1 entitled "Commercial Fishing Licenses" are hereby repealed.

2 ~~**20-2.1-10. Powers and duties of the marine fisheries council with regard to licensure.**~~

3 ~~The marine fisheries council, established by chapter 3 of this title, shall have the power and~~  
4 ~~the duty to advise the director in accordance with § 20-2.1-9(3) on all rules, except emergency~~  
5 ~~rules, necessary to implement the provisions of this chapter. The council may establish any~~  
6 ~~committees and hold any meetings and hearings that it may deem appropriate to fulfill this~~  
7 ~~responsibility. The council shall advise the director on the development of the regulatory agenda~~  
8 ~~for marine fisheries and shall have the power to initiate rule making by petition as provided for in~~  
9 ~~§ 42-35-6. The council shall advise the department concerning the development of annual plans for~~  
10 ~~the allocation and use of the funds made available to the department from commercial fishing~~  
11 ~~license fees, tags, permits, and vessel fees as provided in § 20-2-28.2.~~

12 ~~**20-2.1-11. Industry advisory committee.**~~

13 ~~The council shall establish an industry advisory committee to provide coordination among~~  
14 ~~commercial fisheries sectors and to review plans and recommendations that affect more than~~  
15 ~~commercial fishery sector, and to advise the council and the department on matters that affect~~  
16 ~~commercial fishing as a whole, which committee shall include representatives of each commercial~~  
17 ~~fisheries sector and of manners of commercial fishing.~~

18 SECTION 11. Sections 20-3-3, 20-3-4, 20-3-6 and 20-3-7 of the General Laws in Chapter  
19 20-3 entitled "Marine Fisheries Council" are hereby repealed.

20 ~~**20-3-3. Penalties.**~~

21 ~~Unless another penalty is specified in this title, any person who violates a rule or regulation~~  
22 ~~of the marine fisheries council shall, upon conviction, be punished by a fine of not more than five~~  
23 ~~hundred dollars (\$500), or imprisonment for not more than thirty (30) days, or both.~~

24 ~~**20-3-4. Shellfish and marine life management areas.**~~

25 ~~The council may recommend to the director of environmental management, the designation~~  
26 ~~of certain portions of the shores of the public waters of the state, or land within the state covered~~  
27 ~~by tidewater at either high or low tide, or portions of the free and common fisheries of the state as~~  
28 ~~shellfish or marine life project management areas for the purpose of enhancing the cultivation and~~  
29 ~~growth of marine species; managing the harvest of marine species; facilitating the conduct by the~~  
30 ~~department of experiments in planting, cultivating, propagating, managing, and developing any and~~  
31 ~~all kinds of marine life; and any other related purpose. The designation shall be pursuant to the~~  
32 ~~Administrative Procedures Act, chapter 35 of title 42, and shall be by reference to fixed landmarks.~~  
33 ~~The council, upon the designation of a management area, shall propose any rules and regulations~~  
34 ~~as it shall deem necessary for the protection and management of the management area and the~~

1 ~~animal life and property in the management area, including the exclusion or restriction of persons~~  
2 ~~from the area or the prohibition of certain activities within the areas or other restrictions as it may~~  
3 ~~deem necessary. Upon the designation of a management area, the director of environmental~~  
4 ~~management shall place any stakes, bounds, buoys, or markers with the words "Rhode Island~~  
5 ~~department of environmental management" plainly marked on them, as will approximate the~~  
6 ~~management area. Failure to place or maintain the stakes, bounds, buoys, or markers shall not be~~  
7 ~~admissible in any judicial or administrative proceeding. The director may make any experiments~~  
8 ~~or conduct any activities as in his or her discretion are appropriate in these management areas.~~

9 **20-3-6. Suspension and revocation of licenses.**

10 ~~The director of environmental management has the authority to suspend or revoke any~~  
11 ~~shellfishing, lobster, or fishing license issued pursuant to any provision of this title, for violation of~~  
12 ~~a rule and regulation adopted by the marine fisheries council, in any manner and for any period as~~  
13 ~~the director determines by regulation. Any person aggrieved by an order of suspension or~~  
14 ~~revocation may appeal the order in accordance with the provisions of the Administrative Procedures~~  
15 ~~Act, chapter 35 of title 42.~~

16 **20-3-7. Regulation of fishing in Great Salt Pond.**

17 ~~Notwithstanding the provisions of §§ 20-10-1 through 20-10-4, the electors of the town of~~  
18 ~~New Shoreham may, in a town meeting called for that purpose, enact any ordinances to protect and~~  
19 ~~to regulate the taking of shellfish and other fish in Great Salt Pond, and may impose penalties for~~  
20 ~~violations of these ordinances not exceeding a fine of two hundred dollars (\$200) and three (3)~~  
21 ~~months imprisonment for any one offense.~~

22 SECTION 12. This act shall take effect upon passage.

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LC001800/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FISH AND WILDLIFE -- GENERAL PROVISIONS

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1           This act would provide amendments to multiple sections of law related to the marine  
2 fisheries council.

3           This act would take effect upon passage.

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LC001800/SUB A  
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