STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Division of Fish and Wildlife
Marine Fisheries

PUBLIC NOTICE CONCERNING PROPOSED REGULATORY CHANGES

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

Public comment will be solicited on the following proposals:

1) Amendments to the RI Marine Fisheries regulations Part XV - Lobsters, Other Crustaceans, and Horseshoe Crabs, regarding **Area 2 Lobster Trap Effort Control Program and Trap Transferability.**
2) Amendments to the RI Marine Fisheries regulations Commercial and Recreational Saltwater Fishing Licensing Regulations, to allow for endorsement changes relating to the **RI Lobster Trap Transferability Program** (in conjunction with public hearing item 1).

The public hearing will commence at 6:00 PM on **Wednesday, January 22, 2014** at Corless Auditorium located at the University of Rhode Island, Graduate School of Oceanography, South Ferry Road, Narragansett, RI 02882. The room is accessible to persons with disabilities. For persons who are deaf or hard of hearing, interpreter services will be provided if such services are requested at least two (2) weeks prior to the date of the public hearing. Requests for such services may be made in writing or by calling TTY (711) or (401) 222-5300.

Written comments concerning the proposed regulations may be submitted to the Division of Fish and Wildlife, Marine Fisheries section, 3 Fort Wetherill Road, Jamestown, RI 02835. Written comments must be received no later than 12:00 P.M., January 20, 2014, to be entered into the public record.

The Department has determined that small businesses may be adversely impacted by the proposed regulations. The public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may be adversely affected. Small businesses which are either currently licensed or in the future may seek permission to harvest, buy, sell, or produce seafood products as well as the small businesses that provide services related to those engaged in such industries and small businesses which buy, sell, or produce products or provide services related to fishing are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for review from December 20, 2013 through January 20, 2014 at the Marine Fisheries office located at 3 Fort Wetherill Road, Jamestown, RI 02835; and also online at the Marine Fisheries website at the following web address: http://www.dem.ri.gov/programs/bnatres/fishwild/pn022212.htm.

Janet L. Coit, Director
Department of Environmental Management

Date Posted: 12/23/2013

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES
FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

Part XV
Lobsters, Other Crustaceans, and Horseshoe Crabs

~~**December 19, 2013**~~

ANNOTATED
For Public Hearing on January 22, 2014

(section 15.14)

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

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
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RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

TABLE OF CONTENTS

RULE #1 PURPOSE 3

RULE #2 AUTHORITY 3

RULE #3 ADMINISTRATIVE FINDINGS 3

RULE #4 APPLICATION 3

RULE #5 REGULATIONS ..... Part XV, p4 - 50

RULE #6 SEVERABILITY 3

RULE #7 SUPERSEDED RULES AND REGULATIONS 3

RULE #8 EFFECTIVE DATE 51

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BUREAU OF NATURAL RESOURCES

FISH AND WILDLIFE
&
LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES STATUTES AND REGULATIONS

PURPOSE

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

AUTHORITY

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

ADMINISTRATIVE FINDINGS

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

APPLICATION

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

DEFINITIONS

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

SEVERABILITY

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

SUPERSEDED RULES AND REGULATIONS

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

PART XV - LOBSTERS, OTHER CRUSTACEANS, AND HORSESHOE CRABS

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

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

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

15.3 Non-commercial Lobster Licenses - A holder of a non-commercial lobster license may set, place, or maintain in the water at any one (1) time not more than five (5) lobster pots or traps. A non-commercial lobster licensee shall not offer for sale or sell lobsters. (RIGL 20-7-3) [Penalty - Part 1.16; (RIGL 20-1-16)]

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

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

15.5.1 Lobster Dealers License

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

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

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

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

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

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

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

15.5.2 Administrative Hearings Pursuant to R.I. Gen. Laws § 42-17.7-9

a. **Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within twenty (20) calendar days of receipt of the contested agency enforcement action.**
b. **Any person who seeks an adjudicatory hearing relative to license and permits appeals arising under these rules and regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.**

[RIMF REGULATION]

15.6 Use of License by Agent or Employee -- If any person to whom a seller's or commercial lobster license is granted becomes incapacitated for any reason from using that

license, that person may permit his or her agent or employee, if a citizen of the United States, to perform those duties under the license that may be necessary during the period of the licensee's incapacity, provided that the incapacitated licensee has notified the Director of Environmental Management prior to the transfer of those duties. (RIGL 20-7-6)

15.6.1 Criteria for Use of License by Agent or Employee -- In order to obtain approval by the Director for the use of a seller's license, a lobster license, or a multi-purpose license used in the lobster fishery, by an agent or employee, the applicant/licensee must:
(a) prove to the satisfaction of the Director that the agent or employee meets the requirements of Section 15.6 of Rhode Island Marine Fisheries Statutes and Regulations;

(b) apply in writing, on forms provided by the Director, for permission to transfer his/her duties to an agent or employee;

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

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

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

By making application for the transfer of duties to an agent or employee, the applicant/licensee accepts responsibility for the actions of the transferee under the authority of said license. This regulation 15.6.1 is promulgated through the Director's authority granted through RIGL 20-1-4, and

any violations of this regulation would be subject to the penalties described in RIGL 20-1-16, a fine of not more than $500.00 or imprisonment of up to 90 days in jail, or both.

RIMFC REGULATION [Penalty - Part 3.3 (RIGL 20-1-16)]

15.7 Revocation of Licenses

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

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

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

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

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

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

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

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

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

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

(RIGL 20-7-7)

15.8 Administrative Suspension/Revocation of Licenses and Penalties -- Appeal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.9 Exhibition of Certificate -- Each person or agent as defined in § 20-7-1 licensed under the provisions of this Chapter shall, upon demand of the Director of the Department of Environmental Management or any of the Director's deputies, exhibit the license issued to him or her as provided in § 20-7-1. Every person violating the provisions of this section shall, for each offense, be fined up to fifty dollars ($50). (RIGL 20-7-8)

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

15.11 Minimum Size of Lobsters Taken -- Egg Bearing Females

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

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

(c) In addition to any penalties specified in other Sections of this Chapter, every person violating any of the provisions of this Section shall be fined not less than fifty

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

15.11.1 - Minimum and Maximum Size of Lobsters –

a. Minimum Size of Lobsters - No person shall catch or take from any of the waters within the jurisdiction of this state or have in their possession within this state any lobster or parts of lobsters, cooked or uncooked, which is less than the minimum gauge sizes as specified in this section, measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the carapace, unless said person possesses a Lobster Exemption Certificate issued by the Director consistent with the requirements of 15.11.1-1 or 15.11.1-2.

As of July 1, 2003 the minimum gauge size shall be 3-3/8 inches (85.73mm).

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

As of July 1, 2008 the maximum gauge size shall be 5-1/4 inches (133.35mm).

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

a. A dealer receiving a shipment of lobsters from outside of the state

any of which do not conform to the minimum size as specified in 15.11.1, after having obtained an Exemption Certificate as described in 15.11.1-1, must notify the Division of Law Enforcement by phone at 401-222-2284 or 401-222-3070 at least one hour prior to but not more than six hours prior to receiving the shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel.

b. All shipments of lobsters not conforming to the minimum size as described in 15.11.1 must be culled out immediately and stored separately on the business premises of the Certificate holder

c. Each dealer who possesses a Lobster Exemption Certificate shall maintain a written record of all transactions taking place under the provisions of this section including: the date of purchase; time of purchase; location of purchase; name of selling dealer or vessel; the person in charge of the vessel; amount of lobster received, including number of animals and total weight. Records shall be maintained documenting the sale of lobsters received pursuant to this section, including the date and time of sale, and the name of the person or dealer to whom the lobsters were sold. Records must be available for inspection 8:00AM – 4:00PM at the dealer's Rhode Island office or with an authorized business agent for a period of three (3) years from the date of the acquisition of the lobsters. Records shall be available for immediate inspection as a condition of this permit.

d. To be eligible to receive and hold a Lobster Exemption Certificate, a dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the Area 2 minimum gauge size.

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

f. In addition to the penalty described in RIGL 20-1-16, the license of any person who violates any of the terms of 15.11.1-1 shall be suspended by the Director for a period of 1 year for a first offence, 2 years for a second offence and revoked for a third offence. A person who was or is a Lobster Dealer, Multi-purpose Dealer, or a partner, manager, principal or shareholder of a Lobster or Multi-purpose Dealer, whose license has been suspended or revoked, is not eligible

to receive or hold a Lobster Exemption Certificate or otherwise participate in any facet of the lobster industry. A facility for which the license has been suspended may not be reopened or operated under any other persons name or license during the suspension period.

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

15.11.1-3 - Application for Lobster Exemption Certificate

a. A person who possesses a license to deal in lobsters in this state and wishes to obtain a Lobster Exemption Certificate pursuant to Section 15.11.1-1 may apply for same with the Office of Boat Registration and Licensing. The applicant shall provide the Office with the following:
   1. a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of the Rhode Island; and
   2. the address of the dealer's facility for which the certificate is being requested
   3. Written confirmation by the Division of Law Enforcement that the dealer complies with or the requirements of 15.11.1-1, a – f inclusive.

b. Repealed (effective 9/6/04)

15.11.1-4 - Appeals --

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

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

within thirty (30) days of a person's receipt of notice of the contested agency action.

15.12 Buoying of Pots - Escape Vents -- Each and every lobster pot, set, kept, or maintained or caused to be set, kept, or maintained in any of the waters in the jurisdiction of this State by any person licensed under this Chapter, shall contain an escape vent in accordance with the size required by regulation of the Marine Fisheries Council [see Part 15.13]. (ref 20-7-11a)

The Marine Fisheries Council shall have the power to establish larger escape vent sizes by regulation. (ref 20-7-11c)

Each lobster pot shall be separately and plainly buoyed; except that in cases where natural conditions render it impractical to separately buoy each pot, the Director of Environmental Management may, upon application from any person licensed under this Chapter, grant permission to otherwise buoy those pots subject to rules and regulations promulgated by the Director; and each and every permit so granted shall set forth the name of the person to whom the permit is granted, the number of the permit, the place or places where the lobster pots are to be located, the manner in which lobster pots shall be set, and the period of time during which the permit shall extend. (ref RIGL 20-7-11d)

15.12.1 Lobster Pots

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

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

(c) The Rhode Island marine fisheries council has the authority to promulgate regulations requiring the tagging of lobster traps. The director of the department of environmental management is authorized to promulgate regulations which establish a fee for official state lobster trap tags. Any fee collected by the

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

(d) The department shall create an advisory committee composed of five (5) members of the lobster industry that utilize trap tags. The director or his or her designee will serve on the committee and act as chairperson. The committee will formulate recommendations on the expenditure of the funds derived from the tagging program. The department shall prepare an annual report for submittal to the general assembly which summarizes the status of the lobster management and trap tag program, management actions, program needs, and catch and effort data, and which provides an itemized listing of all program expenses. This report shall be available to the public and provided to each commercial fishing organization in the state.
(RIGL 20-7-11.1) (Penalty RIGL. 20-1-16 - Part 1.16)

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

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

RIMFC REGULATION [Penalty - Part 3.3 (RIGL 20-1-16)]

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

15.13.1 Subsection I

15.13.1-1 A rectangular escape vent with an unobstructed opening not less than 2 inches (50.8mm) by 5-3/4 inches (146mm); or

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

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

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

15.13.1-5 **An unobstructed gap created by cutting wires in a wire trap in such a manner as to meet the minimum size and number of vents required under Paragraphs 15.12.2-1 and 15.12.1-1.**

15.13.1-6 **Lobster traps not constructed entirely of wood must contain a ghost panel with the following specifications:**

(a) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3-3/4 inches (9.53 cm) by 3-3/4 inches (9.53 cm).

(b) The panel must be constructed of, or fastened to the trap with one of the following untreated materials: wood lath, cotton, hemp, sisal, or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.

(c) The door of the trap may serve as the ghost panel if fastened with a material specified in previous paragraph.

(d) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

15.13.2 Subsection II -- The vent or gap shall be: installed or made in the parlor section on the sides or end panel. A legal rectangular vent or gap or circular vent shall be located no more than three (3) inches from the sill of the trap. Traps equipped with multiple parlor sections and having a central entrance funnel(s) separating the parlor sections must adhere to the escape vent requirements specified above in each parlor section. Traps equipped with multiple parlor sections that are linked in series ("in-line") must adhere to the escape vent requirements specified above in the terminal, or end parlor section. Any fisherman not complying with the provisions of Section 1 or Section 2 shall be fined not more than twenty dollars ($20) for each trap not conformed to the specifications.

(RIMFC REGULATION) (Penalty 20-1-16 - Part 1.16 and 15.12)

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

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

15.14.1-1 The State of Rhode Island, under a signed Memorandum of Agreement (MOA) with the Northeast Region, National Marine Fisheries Service (NMFS), shall recognize lobster trap tags issued by NMFS to a Federal Limited Access Lobster Permit holder as being valid within waters under the jurisdiction of the state, provided that the Federal Limited Access Lobster Permit holder also possesses a valid state license pursuant to RIMFC Regulation 15.1.

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

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

(2) Once declared, LCMA's may not be changed until the next fishery

year. LCMA's declared to RIDFW shall be identical to LCMA's declared to the National Marine Fisheries Service (NMFS) on forms provided by NMFS concerning the fishing activities during the subject period by the vessel owned/incorporated/partnered by said licensee.

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

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

(5) No licensees owning/partnered/incorporated in vessel(s) holding a Area 2 Federal Lobster Permit shall be permitted to deploy, place, set, tend, haul, lift, raise, supervise, or maintain lobster traps from said Area 2 federally-permitted vessel(s), or to catch/take American lobster within the jurisdiction of the State of RI from said Area 2 federally-permitted vessel(s), unless the lobster traps are tagged with federally-designated lobster trap tags that includes a Lobster Conservation Management Area 2 declaration, issued to said federally-permitted vessel(s).

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

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

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

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

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

15.14.1- 5 Trap Tag Type and Information – Lobster trap tags shall be a "truck seal" design to be provided by the Department through an approved trap tag vendor. Each trap tag shall be color-coded coastwide by fishing year. Information printed on commercial lobster trap tags shall be: issuing authority (state/NMFS); area(s) the trap tag is valid including state/EEZ; year(s) the trap tag is valid; and state license or federal permit number. Information printed on recreational lobster trap tags shall be: issuing authority (state); year(s) the trap tag is valid; and a unique recreational designation.

15.14.1- 6 Transferability of Trap Tags – All lobster trap tags shall be a permanent, single-use, design and not transferable. Lobster trap tags must be permanently attached to the trap bridge or central cross member and shall be clearly visible for inspection. No person shall transfer lobster trap tags between lobster traps or between individuals or vessels. All commercial and recreational lobster traps must be tagged pursuant to RIMFC Regulation 15.14.1.

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

Form directly to the Department of Environmental Management/Division of Fish and Wildlife.

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

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

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

(d) <u>Gear Rotation Trap Tags</u> – Commercial licensees may pre-order trap tags to be used for gear rotation and maintenance. Said licensees may pre-order gear rotation trap tags up to the maximum number of traps fished by said licensee, not including 10% over-allotment for routine losses. Pre-ordered gear rotation trap tags shall be held by the issuing authority.

(e) <u>Catastrophic Loss Trap Tags</u> – Commercial licensees may pre-order a complete duplicate set of trap tags, including 10% over-allotment for routine losses, to be used in the event of catastrophic gear loss (i.e. greater than 10% of maximum number of traps fished). Catastrophic loss trap tags shall be distinguishable from original trap tags (i.e. color). Pre-ordered Catastrophic Loss trap tags shall be held by the issuing authority.

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

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

(a) For holders of only a State of Rhode Island license for the catching and

taking of lobsters within waters under the jurisdiction of the state, lobster trap tags shall be issued to the license holder. Commercial licensees may be issued their original trap tag allotment, as specified in RIMFC Regulations 15.12.3 and 15.14.1-12, plus a 10% over-allotment to allow for routine trap losses.

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

(c) <u>Gear Rotation Trap Tags</u> – Commercial licensees may return currently valid original trap tags to the issuing authority for gear rotation trap tags on a one-for-one basis to allow for necessary gear rotation and maintenance. The number of gear rotation trap tags issued shall not exceed the number of currently valid original trap tags returned to the issuing authority.

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

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

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

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

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

which provides an itemized listing of all program expenses. This report shall be available to the public and provided to each commercial fishing organization in the State.

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

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

<u>15.14.1-10</u> <u>Trap Tag Loss</u> – Routine loss of lobster trap tags are not required to be reported to the Division of Enforcement. Loss of trap tags greater than 10% of the maximum number of traps deployed (catastrophic losses) shall be reported immediately to the Division of Enforcement. Recovery of lobster trap tags (traps) that have been reported as catastrophic loss shall be reported immediately to the Division of Enforcement.

(a) <u>Routine Trap Tag Loss</u> – Routine loss shall be defined as losses that do not exceed the 10% over-allotment trap tags issued for routine loss, based on the maximum number of lobster traps deployed. When a routine loss occurs, the 10% over-allotment trap tags shall be used to identify and validate traps from which a trap tag has been lost or to identify and validate a trap that is replacing a lost trap.

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

(c) Application for catastrophic loss trap tags shall be made on official forms provided by the Department of Environmental Management/Division of Fish and Wildlife and Division of Enforcement and signed by the commercial licensee under the penalty of perjury. The Division of Fish and Wildlife and Division of Enforcement shall

review the application for catastrophic loss tags form, within 1 week after receipt.

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

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

15.14.1-11 Violations

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

(b) It shall be a violation of these regulations to transfer lobster trap tags between lobster traps or between individuals or vessels.

(c) Following the issuance of lobster trap tags pursuant to 15.14.1-10 (b) (Catastrophic Trap Tag Losses), it shall be a violation of these regulations to deploy a lobster trap for which a catastrophic loss trap tag has been issued and which does not display a valid catastrophic loss trap tag.

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

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

RIMF REGULATION [Penalty – Part 3.3 (RIGL 20-1-16)]

15.14.1-12 - Trap Allocations and Trap Tag Allotments – The following table describes the trap allocations, and maximum allotment of trap tags for Rhode Island state waters of ASMFC Lobster Management Area 2. The maximum trap tag allotment includes a 10% over-allotment for routine

losses.

Lobster Management Area	License Type	Effective Date	Trap Limit	Trap Tag Allotment
2	State only	6/1/2001	800	0 - 880

15.14.1-13 - In state waters, no vessel shall deploy, place, set, keep, maintain, supervise, lift, raise, or draw in or from any waters in the jurisdiction of this state any lobster trap gear (1.3 Definition) that has not been affixed with a valid lobster trap tag pursuant to RIMFC regulation 15.14.1 issued to the owner/operator of the vessel.
[RIMFC REGULATION [Penalty 3.3 (RIGL 20-1-16)]

15.14.2 – Area 2 Lobster Trap Effort Control Program

15.14.2-1 – Purpose

This program is promulgated in order to ~~bring~~ fully-implement the State provisions of ~~Rhode Island into compliance with~~ Addendum VII, Addendum XII, Addendum XVIII, Addendum XIX, Addendum XXI and Addendum XXII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster, as adopted by the Atlantic States Marine Fisheries Commission (ASMFC) in November 2005~~.~~, February 2009, May 2012, October 2012, February 2013, and August 2013, respectively. The purpose of the program is to help achieve a healthy and sustainable lobster resource in Area 2 by capping effort at 2001- 2003 levels, and establishing a mechanism for future adjustments in effort in response to changes in resource status.

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

15.14.2-2 – Definitions - As used in this (15.14.2) section:

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

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

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

Department – means the Rhode Island Department of Environmental Management

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

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

Initial Area 2 LTA – means the initial (maximum) number of lobster traps authorized in 2007 to be fished by an individual permit or license holder in Lobster Conservation Management Area 2 ~~in 2007~~.

LCMA – means Lobster Conservation Management Area

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

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

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

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

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

Material Incapacitation – means a verifiable event beyond the control of the license/ permit holder, such as a medical condition, that adversely affected his/her fishing performance during the three-year period 2001-2003, inclusive. Military service performed during the three-year period 2001-2003 also constitutes material incapacitation. Other than a decision to serve in the military, material incapacitation can not involve a choice by the

license/permit holder to pursue other interests; or to a short-term illness or injury that would not have incapacitated a person for the three qualifying years.

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

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

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

15.14.2-3 – Authorization to Fish Commercially for Lobsters in Area 2

(a) After May 1, 2007, no person may possess lobsters taken by lobster traps in Area 2 unless they are authorized to do so pursuant to an Area 2 LTA issued by the Department.

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

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

15.14.2-4 – Trap Allocation Authority

(a) The Department, through the Division of Fish and Wildlife, shall be the Area 2 LTA authority for all Rhode Island residents, both state-licensed and federally permitted.

(b) The Department shall process all Area 2 LTA applications from Rhode Island residents, and shall determine Area 2 LTAs for all eligible applicants.

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

(d) The Department and ~~NMFS~~ NOAA Fisheries shall seek to ensure that

dual state-license/federal permit holders do not receive duplicate Area 2 LTAs from different jurisdictions for the same fishery performance.

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

15.14.2-5 – Issuance of Area 2 LTAs

(a) Initial Area 2 LTAs will only be issued to qualified applicants in accordance with subsection 15.14.2-6.

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

15.14.2-6 – Qualifications for Initial Area 2 LTAs

(a) To be eligible for an initial Area 2 LTA, an applicant:

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

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

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

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

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

(ii) Acquired the vessel and gear of a RI license holder who meets the

above-specified qualifications, and has been issued a new license with a lobster endorsement, in accordance with the provisions of section 6.7-8 of the *Rules and Regulations Governing the Management of Marine Fisheries*.

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

15.14.2-7 – Application for Initial Area 2 LTA

(a) To obtain an initial Area 2 LTA, individuals must apply to the Department, on forms provided by the Department, by February 1, 2007.

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

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

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

15.14.2-8 – Material Incapacitation

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

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

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

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

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

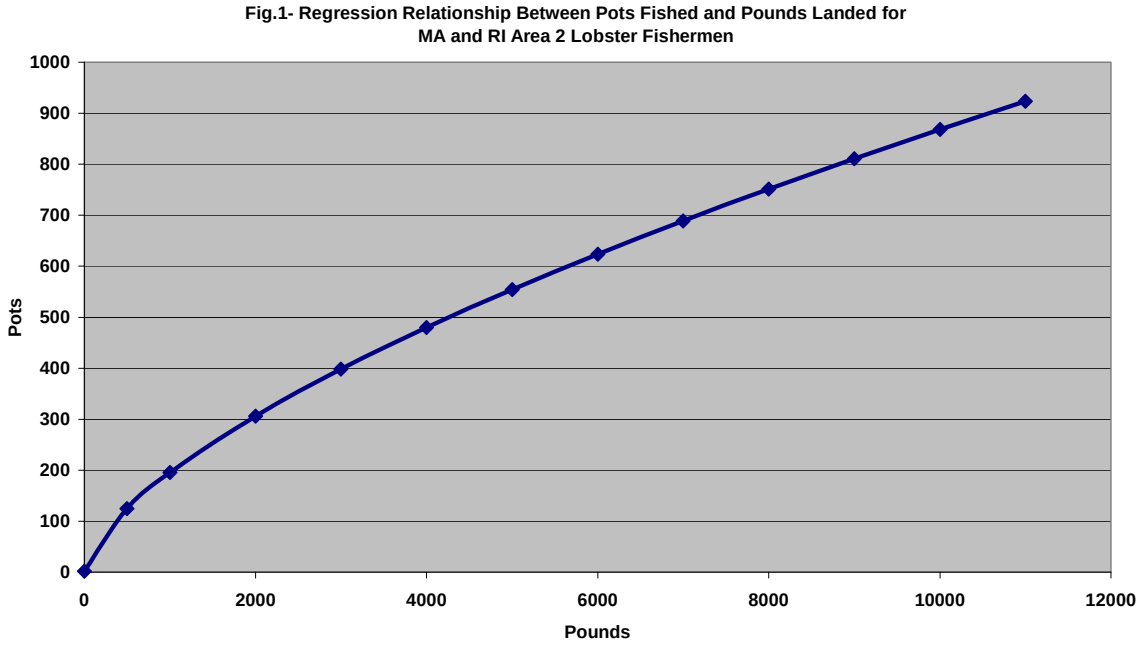
(c) In order to establish material incapacitation on the basis of military service, an applicant must present appropriate documentation (namely, Form DD214) establishing that he/she served, for one hundred eighty (180) or more days during the years 2001-2003, either on active duty in the U.S. Army, Navy,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

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

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

<u>15.14.2-9</u> – <u>Determination of Initial Area 2 LTAs</u>
For each qualified applicant, the Department shall determine initial Area 2 LTAs as follows:

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



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

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

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

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

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

<u>15.14.2-10</u> – <u>Corrections to or Revocations of Area 2 LTAs</u>

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

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

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

(d) The Department may make corrections to any initial Area 2 LTA if it is determined that the applicant or recipient did not purchase and use valid lobster trap tags for any period used in determining the initial Area 2 LTA; or if it is determined that the applicant or recipient submitted inaccurate data/information/documentation relating to the determination of his/her Area 2 LTA.

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

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

<u>15.14.2-11</u> – <u>Disputes and Appeals</u>

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

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

15.14.2-12 – ~~Transfers of Area 2 LTAs~~LTA Transfers:

~~Pending~~

~~[Purpose: To allow for transferability of initial Area 2 LTAs among permit holders, resulting in Adjusted Area 2 LTAs.]~~

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

(b) Eligibility

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

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

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

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

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

(d) Trap Allocation Reduction Schedules – The following tables show the lobster trap allocation reduction schedules for LCMA 2 and LCMA 3.

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

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

TRAP FLOOR OPTION

*Option 1 – Institute a trap floor (continue from section above)

(c) Trap Reduction Exception- Paragraphs (a) and (b) above, do not apply to individuals with an initial lobster trap allocation (LTA) of 10 traps or less

*Option 2 – No trap floor (Section (c) will not be included)

LCMA 2 - Lobster Trap Allocation Reduction Schedule

YEAR	% Reduction
Year 1	- 25%

Year 2	- 5%
Year 3	- 5%
Year 4	- 5%
Year 5	- 5%
Year 6	- 5%

(ii) Active Trap Reduction for LCMA 3

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

LCMA 3 - Lobster Trap Allocation Reduction Schedule

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

(e) Terms and Conditions

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

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

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

(iv) Transfers of any LTA must remain within the Lobster Conservation

Management Area (LCMA) from which they originate. An LTA from one area is only valid in the LCMA from which it originally qualified and can not be transferred to another LCMA.

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

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

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

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

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

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

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

(xii) All Transfers of LCMA 3 LTAs, including all partial and full trap allocation transfers and all transfers associated with the sale of a business,

shall be subject to a 10% conservation tax. The tax shall be applied to each and every LTA transfer, including all initial transfers and any/all subsequent transfers. Transfers of less than ten lobster traps shall be prohibited.

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

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

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

OWNERSHIP CAP OPTION

*Option 1 – Institute an ownership cap per ASMFC Addendum XXI (continue from section above)

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

*Option 2 – No ownership cap (Section xvi above would be removed from the proposed regulation)

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

Active Trap Cap for Area 3

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

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

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

Individual Permit Cap Table for Area 3

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

(xix) Aggregate Ownership Cap or Ownership Accumulation Limits (Full Exemption). No single company or individual may own traps greater than five times the Single Ownership Cap if they have not already accumulated them prior to the NMFS publishing a present-day control date. However, should an individual owner qualify to be in excess of the Aggregate Ownership Cap before the control date is published, that owner will retain

their existing trap ownership and that owner may only increase trap ownership up to the Single Ownership / Individual Permit Cap. Any ownership with an accumulation of fewer traps than the Aggregate Cap at the time the control date is published may not exceed the Aggregate Ownership Cap, as detailed in the table below.

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

LICENSE OPTION

*Option 1: provide a new license with purchase of a trap allocation (continue from section above)

(xx) Any unlicensed LTA transferee who is a resident of the State of Rhode Island and who obtains a LCMA 2 LTA assigned to a RI state commercial fishing license only (i.e. no federal permit) shall be automatically eligible to obtain a Principle Effort License with a lobster endorsement, which shall be necessary in order to commercially harvest lobsters from RI state waters with lobster traps. Upon initial application, any new license and/or endorsement obtained pursuant to this sub-section shall not be subject to the application deadline provisions set forth in section 6.7-3 of DEM's Rules and Regulations Governing the Management of Marine Fisheries. During all years subsequent to the year of the initial issuance, the application renewal deadline provisions set forth in section 6.7-3 of DEM's Rules and Regulations Governing the Management of Marine Fisheries shall apply.

Any lobster trap allocation (LTA) transferee who is a resident of the State of Rhode Island and has a PEL license without a lobster endorsement and obtains a LCMA 2 LTA assigned to a RI state commercial fishing license only (i.e. no federal permit) shall be automatically eligible to obtain a lobster endorsement, which shall be necessary in order to commercially harvest lobsters from RI state waters with lobster traps. Upon initial application, any new endorsement obtained pursuant to this sub-section

shall not be subject to the application deadline provisions set forth in section 6.7-3 of this regulation. During all years subsequent to the year of the initial issuance, the application renewal deadline provisions set forth in section 6.7-3 of this regulation shall apply.

*Option 2: trap allocations can only be transferred amongst current license holders (continue from section above)

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

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

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

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

(f) Applications

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

(ii) Applications for LTA transfers are to be made to the Department's Division of Fish and Wildlife, on forms provided by the Division. All applications must be filled out completely, signed by both the transferor and transferee, and notarized prior to submission to the Division.

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

APPLICATION DEADLINE OPTION

***Option 1 – application can occur anytime of the year (continue from section above)**

(iv) Applications may be submitted at any time of the year.

***Option 2 – application has a set time to occur during the year (continue from section above)**

(iv) Applications for transfers for the 2014 fishing season may be submitted at any time during 2014. Thereafter no applications may be accepted after November 30 for the following fishing year.

(v) Transfers shall become effective upon approval of the application by the Department and, if already purchased for the current fishing year (June 1 – May 31), upon surrender to the Department of the lobster trap tags held by the LTA transferor in an amount equal to the number of lobster trap tags transferred, plus the corresponding number of any over-allotment tags purchased by the LTA transferor, as determined by the Department. Additionally, the LTA transferor shall lose his/her interest in any catastrophic loss lobster trap tags purchased for the current fishing year (June 1-May 31), that are in the possession of the Department, in an amount equal to the number of lobster trap tags transferred, plus the corresponding number of any over-allotment tags purchased by the LTA transferor, as determined by the Department. If the transferor has ordered less tags than their LTA, the transfer of not fished LTA shall be allowed as determined by the Department without the surrender of transferred tags.

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

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

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

15.16 Removal of Branded Numbers from Lobster Pots -- No person shall set, maintain, or have in his or her possession any lobster pots from which the branded numbers have

been altered, obliterated, or removed, with the intent to defraud or deprive the owner. Every person convicted of violating the provision of this Section shall be fined one hundred dollars ($100) for each of those traps or be imprisoned not more than thirty (30) days, or both. All pots used or possessed contrary to the provisions of this Section and other Sections of this Chapter shall be seized by any officer engaged in the enforcement of this Chapter, and that property shall be forfeited. (RIGL 20-7-12)

15.16.1 Unauthorized Possession and/or Transfer of Pots and Traps. --

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

(b) Every person convicted of violating this Section shall be fined not more than one thousand dollars ($1,000) for each offense, or be imprisoned no exceeding one year, or both, and each pot, trap, car, or other device used in violation of this Section shall constitute a separate offense. In addition, if that person is licensed, his or her license shall be revoked for one (1) year.

(RIGL 20-7-12.1)

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

15.18 Landings of lobsters taken by gear or methods other than trap – Limits
Landings by fishermen using gear or methods other than traps (non-trap fishermen) will be limited to not more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips of five (5) days or longer. RIMFC REGULATION [Penalty - Part 3.3 (RIGL 20-1-16)]

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

(a) Mutilation -- (1) No person shall mutilate any uncooked lobster by severing its tail from its body or have in his or her possession any part or parts of any uncooked lobster so mutilated. In any and all prosecutions under this Section, the possession of any part or parts of any uncooked lobster so mutilated shall be prima facie evidence sufficient to convict.

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

(b) Lobster Meat -- Any fishing vessel operating in Rhode Island territorial waters shall not have on board at any time more than one (1) pound of cooked or uncooked lobster meat for each person on board that vessel. Any violation of this Section shall be punished by a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500), and imprisonment for not less than thirty (30) days, or both.

(RIGL 20-7-14)(Penalty 20-7-14-Part 15.17)

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

(d) Notwithstanding the provisions of this section, the Director, upon receipt and approval of application by the land-based processor, may permit the land-based (onshore) processing of whole uncooked lobsters provided that:

(1) possession of lobster tails, claws, or other lobster body parts at sea or in any unlicensed facility shall be prohibited and subject to the provisions of 15.19 (a), and 15.19 (b);

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

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

(e) By applying for this permit, the applicant authorizes Department of Environmental Management agents to inspect the premises where lobsters are processed, packaged, or shipped any time during which the processing facility is receiving, processing, or shipping lobster products, and further by applying for this permit, the applicant agrees to maintain records at the processing facility of lobster purchases, including the license numbers of the sellers, and make said records of lobster purchases available for inspection

and review by Department of Environmental Management agents. These records shall be required to be maintained at the facility for a period of two years.

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

15.20 Additional Management Measures

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

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

15.20.3 ASMFC Lobster Conservation Management Area Management Measures

1. Lobster Conservation Management Area 1 (Inshore Gulf of Maine) –

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

B. Maximum Gauge Size – It shall be unlawful by any person or vessel permitted or declared to fish in LCMA 1 to possess an American lobster with a carapace length of greater than 5 inches (127.0 mm).

C. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in LCMA 1, all lobster traps fished in LCMA 1, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents according to the following schedule:

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

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

D. Maximum Trap Size – It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 1.

E. Zero Tolerance V-Notching Definition – For any person or vessel permitted or declared to fish in LCMA 1, a v-notched female lobster means any female lobster bearing a v-shaped notch of any size in the flipper next to and to the right of the center flipper, as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in such a manner as to hide, obscure, or obliterate such a mark. The flipper to the right of the center flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

F. Mandatory V-Notching Requirements – For any person or vessel permitted or declared to fish in LCMA 1, it shall be required to v-notch all egg-bearing female lobsters caught in the process of lobstering.

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

2. Lobster Conservation Management Area 2 (Inshore Southern New England) –

A. Minimum Gauge Size – Effective January 1, 2003, the minimum gauge size for American lobster in LCMA 2 shall be no lower than the carapace length of 3-3/8 inches (85.73 mm). (RIMFC Regulation 15.11)

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

C. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in LCMA 2, all lobster traps fished in LCMA 2, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents of the following

size:

One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2 inches by 5-3/4 inches	2-5/8 inches

D. Maximum Trap Size – It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 2 (RIMF Regulation 15.12.2).

E. Prohibition on possession of V-Notched female American lobsters – It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 2 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

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

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

H. Area 2 Effort Control Measures:

(1) Minimum Gauge Size:

The minimum size for American lobster in management Area 2 shall be no lower than 3-3/8" Carapace length is the straight-line measurement from the rear of the eye socket parallel to the centerline of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

(2) Escape Vent Size Management Measures:

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

Minimum Gauge Size	Rectangular Vent	Circular Vent
3-1/4"	1-15/16" x 5-3/4"	2-7/16"

3-3/8"*	**2" x 5-3/4"**	***2-5/8"***

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

3. <u>Lobster Conservation Management Area 3 (Offshore Waters)</u> –

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

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

C. <u>Minimum Escape Vent Size</u> – For any person or vessel permitted or declared to fish in LCMA 3, all lobster traps fished in LCMA 3, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular vents of the following size:

One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2-1/16 inches by 5-3/4 inches	2-11/16 inches

D. <u>Maximum Trap Size</u> – It shall be unlawful to possess a lobster trap with a volume of greater than 30,100 cubic inches in LCMA 3.

E. <u>Prohibition on possession of V-Notched female American lobsters</u> – It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 3 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

F. <u>Mandatory V-Notching Requirements</u> – There are currently no mandatory V-notching requirements for any person or vessel permitted and declared to fish in LCMA 3.

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

H. <u>Limits on the Number of Traps</u> –

<u>Qualification Criteria</u> – The trap limit in LCMA 3 shall be based on the historical level of traps fished by a vessel in LCMA 3. To qualify for Area 3 participation, vessels must meet all of the following criteria:

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

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

<u>Maximum Initial Trap Allocation is 3250 Traps</u> – No vessel shall be given an Initial trap allocation of more than 3,250 traps, regardless of previous historical participation.

<u>Vessels Applying for both Area 3 and Additional Area Trap Allocations</u> – Vessels applying for multiple area trap allocations must use the same period to determine their total trap numbers to avoid allocating more total traps to an individual/vessel than that individual/vessel had in the water at any one time. Applicants for Area 3 trap allocations, who are also applicants for trap allocations in other lobster conservation management areas, must meet the same qualifying criteria as defined above.

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

in a *Notice to Permit Holders*.

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

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

J. No Closure between LCMA 1 and LCMA 3 – There shall be no area closure between LCMA 1 and LCMA 3.

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

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

M. Reporting requirements for Lobster Conservation Management Area 3 – For any person or vessel permitted and declared to fish in LCMA 3, it shall be required to fill out multi-species logbooks until a lobster-specific logbook is approved.

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

4. Lobster Conservation Management Area 4 (Inshore Northern Mid-Atlantic) –

A. Minimum Gauge Size – The minimum gauge size for American lobster in LCMA 4 shall be no lower than the carapace length identified in the following schedule. The 2001 year indicated runs throughout the entire calendar year (January 1-December 31). July 1st is the deadline for implementing regulations in years 2002-2004.

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

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

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

C. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in LCMA 4, all lobster traps fished in LCMA 4, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents in each parlor section of the lobster trap according to the following schedule:

YEAR	One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2003	2 inches by 5-3/4 inches	2-1/2 inches

D. Maximum Trap Size – It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 4.

E. Prohibition on possession of V-Notched female American lobsters – It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 4 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

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

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

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

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

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

FIRE ISLAND:

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

MORICHES:

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

SHINNECOCK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN

A (NW)	40° 34.389	72° 27.420	14960 / 43670
B (NE)	40° 35.904	72° 16.223	14890 / 43670
C (SE)	40° 27.997	72° 13.117	Area 3 boundary; 14890 line
D (SW)	40° 23.105	72° 23.782	Area 3 boundary; 14960 line

MONTAUK:

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

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

5. Lobster Conservation Management Area 5 (Inshore Southern Mid-Atlantic) –

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

YEAR	AREA 5	
2001	3-9/32”*	(83.34 mm)
2002	3-5/16”	(84.14 mm)
2003	3-11/32”	(84.93 mm)
2004	3-3/8”	(85.72 mm)

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

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

C. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in LCMA 5, all lobster traps fished in LCMA 5, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents according to the following schedule:

YEAR	One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2003	2 inches by 5-3/4 inches	2-1/2 inches

D. Maximum Trap Size – It shall be unlawful to possess a lobster trap with a volume of greater than 22,950 cubic inches in LCMA 5.

E. Prohibition on possession of V-Notched female American lobsters – It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 5 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

F. Mandatory V-Notching Requirements – Mandatory V-notching and immediate release of egg-bearing female lobsters is required for any person or vessel permitted and declared to fish in LCMA 5.
V-notches must be to the right of the center flipper as viewed from the rear of the female lobster when the underside of the lobster is down. The V-notch should be made by the means of a sharp bladed instrument, at least ¼ inch and not greater than ½ inch in depth and tapering to a sharp point.

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

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

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

I. Season Closure – A season closure to the landing of lobsters from February 1 – March 31 annually is required for any person or vessel

permitted and declared to fish in LCMA 5. During the February 1 to March 31 closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season.

6. Lobster Conservation Management Area 6 (New York and Connecticut State Waters) –

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

YEAR	AREA 6	
2004*	3-9/32"	(83.34 mm)
2005*	3-5/16"	(84.14 mm)

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

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

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

PATH 1:

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

***NOTE: Area 6 will implement the above management measures, if**

following an updated stock assessment, it is necessary to meet lobster management plan goals and objectives.

-OR-

PATH 2:

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

D. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in LCMA 6, all lobster traps fished in LCMA 6, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents according to the following schedule. If PATH 2 (see Part C above) is selected for implementation, then all lobster traps in LCMA 6, whether fished commercially or recreationally, must contain at least one rectangular escape vent per trap or at least two circular escape vents according to the following schedule. July 1st is the deadline for implementing regulations in the calendar year indicated below.

YEAR	One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2006*	2 inches by 5-3/4 inches	2-1/2 inches

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

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

F. Prohibition on possession of V-Notched female American lobsters – It shall be unlawful for any person or vessel permitted or declared to fish in LCMA 6 to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

G. Mandatory V-Notching Requirements – There are currently no mandatory V-notching requirements for any person or vessel permitted and declared to fish in LCMA 6.

H. Limits on Landings by Fishermen Using Gear or Methods other than

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

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

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

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

7. Outer Cape Cod Lobster Management Area –

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

YEAR	OUTER CAPE	
2001	3-9/32”	(83.34 mm)
2002	3-5/16”	(84.14 mm)
2003	3-11/32”	(84.93 mm)
2004	3-3/8”	(85.72 mm)
2005*	3-13/32”*	(86.52 mm)
2006*	3-7/16”*	(87.31 mm)
2007*	3-15/32”*	(88.11 mm)
2008*	3-1/2”*	(88.90 mm)

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

B. Maximum Gauge Size – There is currently no maximum gauge size for American lobster in the Outer Cape Cod LCMA.

C. Minimum Escape Vent Size – For any person or vessel permitted or declared to fish in the Outer Cape Cod LCMA, all lobster traps fished in the Outer Cape Cod LCMA, whether fished commercially or recreationally, must contain at least one (1) rectangular escape vent or two (2) circular escape vents according to the following schedule:

> **December 31, 2004 is the deadline for implementing the new circular escape vent size (2-5/8 inches).**
>
> **July 1, 2008 is the deadline for implementing the scheduled escape vent size increases for both rectangular and circular escape vents.**

YR	One (1) Rectangular Escape Vent	Two (2) Circular Escape Vents
2003	2 inches by 5-3/4 inches	2-1/2 inches
2004	2 inches by 5-3/4 inches	2-5/8 inches
2008	2-1/16 inches by 5-3/4 inches	2-11/16 inches

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

E. Prohibition on possession of V-Notched female American lobsters – It shall be unlawful for any person or vessel permitted or declared to fish in the Outer Cape Cod LCMA to possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants. A V-notched female lobster is defined in section 15.20.2 of this section.

F. Mandatory V-Notching Requirements – There are currently no mandatory V-notching requirements for any person or vessel permitted and declared to fish in the Outer Cape Cod LCMA.

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

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

In order to control the expansion of fishing effort, an overall total number of traps allowed to be fished in the Outer Cape Cod LCMA has been established from the sum of individual maximum traps reported by each OCLMA lobster fisher on Massachusetts (MA) catch reports in the year 1998. A reduction of this total number of traps by 20% will be implemented and resulting individual trap allotments will be defined accordingly during the stock rebuilding period. The starting trap allotments for each lobster fisher in the year 2002 will be based on MA 2000 catch report statistics. Allotments will be debited thereafter as needed by MA Division of Marine Fisheries (DMF). Participants in the 2001 Outer Cape Cod lobster trap fishery, who received a license through the MA DMF or waiting list provisions during 2001, and as a result, have no prior lobster fishing history (i.e. filed catch reports) in the Outer Cape Cod LCMA, will receive a trap allotment based on proof of documentation of the number of traps they fished during 2001. These allotments will be apportioned from a percentage of the overall trap cap, not to exceed 2% of the total. Those who received a transferred license with an Outer Cape Cod LCMA fishing history will receive a starting trap allotment based on that history.
The annual trap transfer period will be January 1 – March 31. Trap tags may be transferred among OCLMA lobster fishers to allow an individual business to build up or down within the maximum allowable 800 trap limit, however, a passive reduction in traps will occur with each trap transfer event at the rate of 10%. For example, if 100 trap tags are transferred to a lobster fisher, the net transaction received by that lobster fisher will be 90 and the overall Outer Cape Cod LCMA trap cap will be reduced accordingly. The trap cap may be adjusted downward over time through active and/or passive reduction measures until such time that the Fishing mortality rate is reduced to a level below F10%.

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

A trap haul-out period will occur from January 1 – March 31 each year to assist in the enforcement of the trap cap. There will be no lobster trap in the waters of the OCLMA during this time period.

RIMF REGULATION [Penalty - Part 3.3 (RIGL 20-1-16)]

<u>15.21</u> <u>Blue Crabs</u> – <u>Harvest Restrictions</u> -- No person shall possess, take or attempt to take more than twenty-five (25) blue crabs from any of the waters in this State except when taken by a scoop or crab net, trot, or hand line. Taking of blue crabs shall be restricted to residents of this State. No person shall take blue crabs from the waters of the State between the hours of sunset and sunrise. RIMFC REGULATION [Penalty - Part 3.3 (RIGL 20-1-16) *ref* (RIGL 20-7-15)]

<u>15.22</u> <u>Egg-Bearing Blue Crabs [*Restriction*]; and Minimum Size</u> -- No person shall take, offer for sale, or possess at any time any female blue crab bearing eggs visible thereon or from which the egg pouch or bunion shall have been removed. No person shall take, buy, sell, give away, or expose for sale, or possess any blue crab measuring less than five inches (5") across the shell from tip to tip of spike. RIMFC REGULATION [Penalty - Part 3.3 (RIGL 20-1-16) *ref* (RIGL 20-7-16)

<u>15.23</u> <u>Violations as to Blue Crabs</u> -- Any person violating any of the provisions of §§ 20-7-15 and 20-7-16 shall be fined up to fifty dollars ($50) and costs for each offense. (RIGL 20-7-17)

<u>15.24 Horseshoe Crabs</u> – It is illegal for any person to harvest horseshoe crabs, *Limulus polyphemus*, in Rhode Island for commercial purposes without a valid commercial marine fishing license and a Horseshoe Crab Harvest Permit; or to harvest horseshoe crabs for recreational purposes without a Horseshoe Crab Harvest Permit.

> **<u>15.24.1</u> <u>Harvest Permit</u> – Persons harvesting horseshoe crabs from the shoreline or waters in the State of Rhode Island must apply for a Horseshoe Crab Harvest Permit from the Division of Fish and Wildlife. A Horseshoe Crab Harvest Permit is required for all harvesters of horseshoe crabs. Horseshoe Crab Harvest Permits shall be valid only for the calendar year of issuance. The conditions of the permit require a weekly report of landings either by telephone or in writing. In addition, a monthly report in writing is required on forms furnished by the Division of Fish and Wildlife. The report must include the number of crabs taken, locations of harvest, and use (bait, biomedical purposes, or other reasons). These reports shall not be made public and shall be kept only for statistical purposes. Failure to report will result in forfeiture of the Harvest Permit and/or revocation of license and permit as provided for in RIGL 20-4-5.**
>
> **<u>15.24.2 Quota</u> – A total allowable harvest (quota) of horseshoe crabs for the bait fishery and biomedical industry will be established annually. The quota will be the amount allocated to the State of Rhode Island by the Atlantic States Marine Fisheries Commission (ASMFC) or as determined by the R.I. Division of Fish and Wildlife based on the current stock status. The quota**

may only be harvested by licensed, commercial fishermen in accordance with all rules and regulations promulgated by the Rhode Island Department of Environmental Management.

15.24.3 Possession

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

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

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

15.24.4 Harvesting Restrictions

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

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

(DEM - Director REGULATIONS)

15.25 Groundline Conversion Program – This regulation establishes eligibility criteria for commercial fishers, engaged in the harvest of lobsters with lobster traps in Lobster Management Area 2, to obtain vouchers for the purchase of sinking groundline. The program is designed to assist Area 2 trap fishermen from RI with regard to the required use of sinking groundlines, as mandated in rules issued by NOAA/NMFS (Final Rule 72 FR 57104 - October 2007) in accordance with the Atlantic Large Whale Take Reduction Plan. Pursuant to the terms of the

federal grant, and the eligibility criteria set forth below, each approved applicant will receive a voucher based on the number of traps they have been fishing in Area 2, which can be applied toward the purchase of sinking groundlines.

15.25.1 Eligibility Criteria – In order to be determined to be eligible for the issuance of a voucher by the Commercial Fisheries Research Foundation, an applicant must satisfy Subparts 15.25.1 A through G and, if applicable, Subpart H of the following criteria:

- **A. Must apply to the Commercial Fisheries Research Foundation (the "CFR Foundation") by the deadline specified by the CFR Foundation;**
- **B. Must be a RI resident;**
- **C. Must hold a current and valid 2010 RI state license (Multipurpose License, Principal Effort License with Lobster endorsement, or Commercial Fishing License with Lobster endorsement) and/or a 2009 federal lobster permit for Area 2;**
- **D. Must have a current and valid Area 2 trap allocation;**
- **E. Must have purchased lobster trap tags for either the 2009 (6/09-5/10) or 2008 (6/08-5/09) fishing years;**
- **F. Must have actively fished for lobster during the 2009 or 2008 fishing years (i.e., must have had some activity during at least two months during either year);**
- **G. Must have actively fished south of the COLREGS lines and outside of all RI coastal pond inlets; and**
- **H. In addition, satisfying the requirements set forth in Subparts 15.25.1 A through G, any applicants who have fished less than 50 traps during the 2009 or 2008 fishing years must submit an affidavit certifying that they have fished their traps using trawls and groundline.**

15.25.2 Determination of Traps Fished

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

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

15.25.3 Added credit

- **A. Fishermen who responded to the Lobster Trap Fishery Gear Survey conducted by DEM in October/November 2006 and, in response thereto, stated that they were using floating**

groundline, will receive added credit in the form of a 50% bonus added to the total amount of their vouchers.

15.25.4 Proof of Eligibility

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

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

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

Rule 8. EFFECTIVE DATE

The foregoing rules and regulations Rhode Island Marine Statutes and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this ~~19th day of December 19th~~, 2013 to become effective 20 days after filing, unless otherwise indicated below, in accordance with the provisions of Title 20, Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with Chapter 42-35-18(b)(5), Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended.

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Janet L. Coit, Director
Department of Environmental Management

Notice Given: ~~N/A~~ **12/23/2013**
Public Hearing: ~~N/A~~ **01/22/2014**

Filing date: ~~12/19/2013~~
Effective date: ~~12/02/2013~~

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~~Technical Revision~~