STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

BUREAU OF NATURAL RESOURCES

DIVISION OF FISH AND WILDLIFE
DIVISION OF LAW ENFORCEMENT

RHODE ISLAND MARINE FISHERIES REGULATIONS

PART 5
Lobsters, Crabs, and Other Crustaceans

December 16, 2016

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

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

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

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

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SUPERSEDED RULES AND REGULATIONS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regulations, and any policies regarding the administration and enforcement of Part XV of these regulations shall be superseded.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

DEFINTIONS
See Rhode Island Marine Fisheries Regulations, "*Part I – Definitions"*.

REGULATIONS

5.1 General pot provisions:

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

5.1.2 No person except the Director shall place, set, keep, maintain, sell, transfer, or have in his or her possession any pot, trap, car, or any other device used in taking or holding lobster or crabs, nor take, remove, or carry away from the beach or shore any pot, trap, car, or other device or line (warp) or buoy without the written permission of the owner. (RIGL 20-7-12.1)

5.1.3 Raising lobster pots at night: No person shall raise or unduly disturb any lobster pot or trap within the territorial waters of this State between the hours of one

(1) hour after sundown and one (1) hour before sunrise. (RIGL 20-7-13)

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

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

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

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

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

5.2 Lobster:

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

(A) License required for the taking of lobster: No person either as principal, agent, or servant shall at any time catch or take any lobster from any of the waters in the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise, or draw in or from any of those waters or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of those waters any pot or other contrivance, designed or adapted for the catching or taking of

lobsters unless licensed to do so. Refer to DEM's "*Commercial and Recreational Saltwater Fishing Licensing Regulations*". (RIGL 20-7-1)

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

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

(2) Non-commercial lobster pots:

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

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

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

(C) Taking of lobsters by commercial fishing vessels: No operator of a Rhode Island registered vessel engaged in trawling for finfish in Rhode Island territorial waters may retain and sell any lobsters taken unless properly licensed by the Department. (RIGL 20-7-2)

(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.

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

(a) Criteria for use of license:

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

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

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

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

(c) 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.

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

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

(E) <u>Minimum and maximum size of lobster:</u>

(1) <u>Minimum size:</u> Three and three-eighths (3-3/8) inches (85.73 mm) carapace length.

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

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

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

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

(I) Lobster pots:

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

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

(a) Minimum escape vent size:

(i) At least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146mm); or two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and five eighths (2-5/8) inches (66.68mm) in diameter; or

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

(iii) 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

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

(v) The vent or gap shall be installed or made in each parlor section on the sides or end panel. Traps equipped with multiple parlor sections and having a central entrance funnel(s) separating the parlor

sections must adhere to the escape vent requirements specified above in each parlor section. Traps equipped with multiple parlor sections that are linked in series ("in-line") must adhere to the escape vent requirements specified in the terminal, or end parlor section.

(vi) 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.

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

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

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

(M) Commercial lobster trap tags:

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

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

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

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

(5) Non-transferability: No person shall transfer lobster trap tags between lobster traps or between individuals or vessels.

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

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

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

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

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

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

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

(11) Trap tag types and issuance:

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

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

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

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

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

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

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

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

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

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

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

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

(ix) 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.

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

(12) 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:

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

(b) Once declared, an LCMA may not be changed until the next fishery year. An LCMA declared to the Director shall be identical to the LCMA declared to the NOAA Fisheries or vessels holding a Federal Lobster Permit on forms provided by NOAA Fisheries concerning the fishing activities during the subject period by the vessel owned/incorporated/partnered by said licensee.

(c) If any discrepancies between the LCMA declared to the Director and NOAA Fisheries are revealed, the NOAA Fisheries LCMA declarations shall govern. Any lobster trap tags issued based on conflicting information provided to NMFS shall become null and void and must be returned to the issuing authority.

(d) Federal (EEZ) waters lobster trap tags shall be distinguishable from RI State waters lobster trap tags by color.

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

(f) 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.

(N) Lobster trap allocation (LTA):

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

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

(3) Issuance of initial LCMA 2 LTA:

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

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

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

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

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

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

(4) Qualifications for initial LCMA 2 LTAs:

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

following:

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

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

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

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

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

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

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

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

(d) <u>Material Incapacitation:</u>

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

(ii) 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):

(a.) 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

(b.) 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

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

(iii) 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.

(iv) 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.

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

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

have established a single lobster fishing history even if that person is a dual federal permit/state license holder.

(5) Application for initial LCMA 2 LTA:

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

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

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

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

(6) Determination of initial LCMA 2 LTAs: For each qualified applicant, the Department shall determine initial LCMA 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 LCMA 2.

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

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

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

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

(f) For applicants who qualify for material incapacitation, the Department shall determine initial LCMA 2 LTAs pursuant to this section, except that the years 1999 and/or 2000 will be used in lieu of the years 2001, 2002, and 2003.

(7) Corrections to or revocations of LCMA 2 LTAs:

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

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

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

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

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

(f) Any actions or decisions made by the Department pursuant to this section shall be issued in writing.

(8) Disputes and Appeals:

(a) Upon the issuance of a written decision by the Department regarding an initial, corrected, or revoked LCMA 2 LTA, an applicant may appeal the

decision by submitting a written request for an adjudicatory hearing with the clerk of the RIDEM Administrative Adjudication Division, 235 Promenade Street, Providence, RI 02908. Such a request must submitted by the applicant to the RIDEM Administrative Adjudication Division within thirty (30) calendar days of receipt of the Department's written decision.

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

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

(10) 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 lobster~~s~~ from RI state waters with lobster traps, in order to remain eligible to transfer any portion of their LTA.

(11) LTA transfers:

(a) 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.

(b) 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 RIMFR "*Commercial and Recreational Saltwater Fishing Licensing Regulations*", a licensed fishermen who has been actively fishing his license/permit and wishes to sell his vessel and gear and retire his license may do so, and in so doing, enable the buyer (transferee) to

acquire a new, corresponding license and endorsement. In any such situation, the transaction must include the transfer of all of the seller's (transferor's) Department- or NOAA Fisheries-issued LTA, along with any and all history associated with the license/permit.

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

(c) 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.

(d) 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.

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

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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).

(k) 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.

(12) 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.

(a) 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.

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

(14) LCMA 3 LTA transfers:

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

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

(c) 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.

(d) 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.

(e) 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).

(f) Active Trap Cap for LCMA 3*:

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

* This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years.

(g) 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.

(h) Individual Permit Cap Table for LCMA 3*:

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

* This schedule assumes that NOAA Fisheries will implement a 2,000 trap cap with the next set of federal rules and phase in a 25% trap cut during the next five years.

(i) 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

(15) LTA transfer application:

(a) All transfers of LTAs must be authorized by the Director.

(b) Applications for LTA transfers shall be made on forms prescribed by the Director. All applications must be signed by both the transferor and transferee, and notarized.

(c) Applications for transfers may be submitted from June 1 through November 30 for the following fishing year.

(d) Transfers shall become effective the year following the approval of the application.

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

(16) 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.

(17) LTA reduction schedules:

(a) Active LTA reduction for LCMA 2:

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

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

LCMA 2 – LTA Reduction Schedule:

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

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

LCMA 3 – LTA Reduction Schedule:

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

(O) Lobster Exemption Certificate for Dealers: Dealers wishing to purchase, barter, trade or import lobsters from outside of the state or receive lobsters from LCMA 3 which are less than the minimum size for LCMA 2 must obtain a Lobster Exemption Certificate for Dealers from the Director.

(1) Eligibility:

(a) The applicant dealer must hold a valid commercial dealers license to deal in lobsters in Rhode Island;

(b) The applicant dealer shall provide a copy of a valid dealer's license to purchase, barter, trade or import lobsters in the State of the Rhode Island;

(c) The applicant dealer must maintain a landside facility in Rhode Island with the tanks required to segregate and store separately lobsters not conforming to the LCMA 2 minimum size.

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

(3) Conditions to maintain compliance:

(a) The Certificate holder must notify the DLE by phone between one (1) hour and six (6) hours prior to receiving a shipment. The notification must include the name of the dealer receiving the shipment, the name of the dealer sending the shipment, the transfer time and location of transfer, and amount of lobster to be received, and if a vessel is involved the name of the vessel.

(b) All shipments of lobsters less than the LCMA 2 minimum size as must

be culled out immediately and stored separately on the business premises of the Certificate holder.

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

(d) Lobsters not conforming to the LCMA 2 minimum size may only be exported out of state or sold to another dealer who possesses a Lobster Exemption Certificate for Dealers for export out of state. No lobsters less than the LCMA 2 minimum size may be offered for sale on the retail market in Rhode Island.

(P) Land-based lobster processing permit:

(a) A land-based lobster processing permit is required for the land-based processing of whole uncooked lobsters.

(b) The possession of lobster tails, claws, or other lobster body parts at sea or in any unlicensed facility is prohibited.

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

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

(e) The applicant must possess a State of Rhode Island Department of Health Food Processor's License and a Rhode Island Lobster Dealer's License.

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

(g) The applicant shall maintain records at the processing facility of lobster purchases, including the license numbers of the sellers for a period of two years.

5.2.2 LCMA 1 (Inshore Gulf of Maine):

(A) Minimum size: Three and one-quarter (3-1/4) inches (82.55 mm) carapace length.

(B) Maximum size: Five (5) inches (127.0 mm) carapace length.

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146mm), or two (2) circular escape vents, each measuring not less than two and one half (2½) inches (63.5mm) diameter.

(D) Maximum trap size: 22,950 cubic inches.

(E) Prohibition on possession of v-notched female American lobsters - zero tolerance v-notching definition: No person, including, but not limited to fishermen, dealers, shippers, and restaurants, shall retain on board, land, or possess any v-notched female American lobster. 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: Any person or vessel permitted or declared to fish in LCMA 1 shall v-notch all legal-size egg-bearing female lobsters and return them to the water immediately.

(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 one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

5.2.3 LCMA 3 (Offshore Waters) regulations:

(A) Minimum size: Three and 17/32 (3-17/32) inch (89.69 mm) carapace length.
(B) Maximum size: Six and ¾ inch (6 ¾) inch (171.45 mm) carapace length.

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least

one (1) rectangular escape vent with an un-obstructed opening measuring not less than two and one sixteenth inches by five and three quarter (2-1/16 X 5¾) inches (53.39mm X 146.05mm) or two (2) circular vents, each with an un-obstructed opening measuring not less than two and eleven sixteenths (2-11/16) inches (68.26mm) diameter.

(D) Maximum trap size: 30,100 cubic inches.

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

(F) Mandatory v-notching: There is no v-notching requirement in LCMA 3.

(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 one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

(H) Limits on the Number of Traps:

(1) Qualification Criteria: The trap limit in LCMA 3 shall be based on the historical level of traps fished by a vessel in LCMA 3. To qualify for LCMA 3 participation, vessels must meet all of the following criteria:

(a) A vessel must be able to demonstrate a history of two (2) consecutive calendar-months of active lobster trap fishing in LCMA 3 in any year between March 25, 1991 and November 1, 1997.

(b) A vessel must hold a current federal lobster permit endorsed for traps.

(c) Applicants for an LCMA 3 trap allocation are required to produce sales receipts or records showing the landing of at least 25,000 pounds of lobster from throughout the range of the resource during the year used as the qualifying year and between March 25, 1991 and November 1, 1997.

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

such year not to pre-date the March 25, 1991 control date.

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

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

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

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

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

The LCMA 3 trap reduction schedule is as follows:

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

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

5.2.4 LCMA 4 (Inshore Northern Mid-Atlantic) regulations:

(A) Minimum size: Three and three eighths (3-3/8) inch (85.72 mm) carapace length.

(B) Maximum size: Five and ¼ (5 ¼) inch (133.35 mm) carapace length.

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and five eighths (2 5/8) inches (66.68 mm) diameter.

(D) Maximum trap size: 22,950 cubic inches.

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

(F) Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 4 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately.

(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 one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

(H) Limits on the Number of Traps:

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

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

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

FIRE ISLAND:

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

MORICHES:

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

SHINNECOCK:

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

MONTAUK:

POINT	LATITUDE(°N)	LONGITUDE(°W)	LORAN
A (NW)	40° 43.678	72° 12.521	14850 / 43730
B (NE)	40° 46.053	71° 56.974	17850 / 43730

C (SE)	40° 37.120	71° 53.188	LCMA 3 boundary; 26300 line
D (SW)	40° 30.741	72° 07.616	LCMA 3 boundary; 26300 line

(J) Season closure: A season closure to the landing of lobsters from April 30 through May 31 annually is required for any person or vessel permitted and declared to fish in LCMA 4. During this closure, lobster potters will have a two week period to remove lobster pots from the water and may set lobster pots one week prior to the end of the closed season.

5.2.5 LCMA 5 (Inshore Southern Mid-Atlantic) regulations:

(A) Minimum size: Three and three eighths (3-3/8) (85.72mm) inch carapace length.

(B) Maximum size: Five and one quarter (5¼) inch (133.35 mm) carapace length.

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two (2) inches by five and three-quarters (5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents, each with an un-obstructed opening measuring not less than two and one half (2½) inches (63.5mm) diameter.

(D) Maximum trap size: 22,950 cubic inches.

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

(F) Mandatory v-notching: Any person or vessel permitted or declared to fish in LCMA 5 shall v-notch all legal-sized egg bearing female lobsters and return them to the water immediately.

(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 one hundred (100) lobsters per day (based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

(H) Limits on the Number of Traps:

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

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

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

5.2.6 LCMA 6 (New York and Connecticut State Waters) regulations:

(A) Minimum size: Three and five sixteenths (3-5/16) inch carapace length.

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

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than or two (2) inches by five and three-quarters (2 X 5¾) inches (50.8mm X 146.05mm), or two (2) circular escape vents each with an un-obstructed opening measuring not less than two and one half (2½) inches (63.5mm) diameter.

(D) Maximum trap size: 22,950 cubic inches.

(E) Prohibition on possession of V-Notched female American lobsters: No person or vessel permitted or declared to fish in LCMA 6 shall possess a V-notched female lobster. The prohibition on possession of V-notched female lobster applies to all persons, including, but not limited to fishermen, dealers, shippers, and restaurants.

(F) Mandatory v-notching: There is no v-notching requirement in LCMA 6.

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

(H) Limits on the Number of Traps:

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

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

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

5.2.7 Outer Cape Cod LCMA regulations:

(A) Minimum size: Three and one half (3 ½) inch (88.90mm) carapace length.

(B) Maximum size: There is no maximum size for American lobster in the Outer Cape Cod LCMA.

(C) Minimum escape vent size: In each parlor section of the lobster trap, at least one (1) rectangular escape vent with an un-obstructed opening measuring not less than two and one sixteenths inches by five and three-quarters (2-1/16 X 5¾) inches or two (2) circular escape vents measuring two and eleven sixteenths (2-11/16) inches.

(D) Maximum trap size: 22,950 cubic inches.

(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.

(F) Mandatory v-notching requirements: There is no v-notching requirement 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 one hundred (100) lobsters per day

(based on a 24-hour period) up to a maximum of five hundred (500) lobsters per trip, for trips five (5) days or longer.

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

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

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

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

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

5.3 Blue Crab:

5.3.1 License required:

(A) Commercial harvest: No person shall harvest blue crab for commercial purposes without a valid commercial marine fishing license.

(B) Recreational harvest: No license is required for the recreational harvest of blue crab.

5.3.2 Harvest by RI residents only: The harvest of blue crabs by non-residents is prohibited. (RIGL 20-7-15)

5.3.3 Minimum size: Five (5) inches as measured across the shell from tip to tip of spike.

5.3.4 Season: Open all year.

5.3.5 Possession limit: Twenty-five (25) crabs.

(A) Exception: The possession limit is unlimited if harvested by a scoop or crab net, trot, or hand line.

5.3.6 Harvest restrictions:

(A) No person shall take blue crabs from the waters of the State between the hours of sunset and sunrise. (RIGL 20-7-15)

(B) Egg-bearing blue crabs: No person shall take, offer for sale, or possess at any time any female blue crab bearing eggs visible thereon or from which the egg pouch or bunion shall have been removed. (RIGL 20-7-16)

5.4 Horseshoe Crab:

5.4.1 License and permit required:

(A) Commercial harvest: No person shall harvest horseshoe crabs for commercial purposes without a valid commercial marine fishing license and a Horseshoe Crab Harvest Permit obtained from the Director.

(B) Recreational harvest: No person shall harvest horseshoe crabs for recreational purposes without a valid Horseshoe Crab Harvest Permit obtained

from the Director.

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

(D) A Horseshoe Crab Harvest Permit is valid only for the calendar year of issuance.

(E) Reporting:

(1) Reporting of landings is required as described in this section on forms as prescribed by the Director.

(2) Weekly reporting: All permit holders shall provide a report of landings for each calendar week either by telephone or in writing, including reports of no landings. Reports shall be submitted no later than Monday 4:00PM for the previous calendar week's landings.

(3) Monthly reporting: All permit holders shall provide a monthly report in writing including 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.

(4) Reporting compliance: Instances of reporting non-compliance shall result in the following penalties:

(a) First instance: A first offense shall result in a warning being issued to the permit holder.

(b) Second instance: A second offense shall result in revocation of the permit for the remainder of the calendar year for which the permit is issued.

(c) Third instance: A third offense shall result in revocation of the permit for the remainder of the calendar year for which the permit is issued, and also result in the prohibition to apply for the permit in the subsequent year.

5.4.2 Minimum size: Seven (7) inches prosomal width.

5.4.3 Seasons and possession limits:

(A) Recreational:

(1) Season: Open January 1 through December 31.

(2) Possession limit: Five (5) horseshoe crabs per person per day.

(B) Commercial: A total allowable harvest (quota) of horseshoe crabs will be established annually as allocated to the State of Rhode Island by the ASMFC or as determined by DFW based on the current stock status.

(1) Bait fishery season and possession limit:

(a) January 1 through April 30 annually: 60 crabs per person per day.

(b) May 1 through May 31 annually: Closed to harvest.

(c) June 1 through December 31 annually: 60 crabs per person per day.

(2) Bio-medical fishery season and possession limit:

(a) Season: Open January 1 through December 31 annually.

(i) No person shall harvest horseshoe crabs for bio-medical purposes during the period 48-hours preceding and 48-hours following the new and full moons during the month of May annually.

(b) Possession limit: Unlimited.

5.4.4 Harvest Restrictions:

(A) Harvest by RI residents only: The harvest of horseshoe crabs by non-residents is prohibited.

(B) 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.

(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 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*.

(D) Horseshoe crabs harvested and transported to a biomedical facility for purposes of extracting bodily fluids shall be returned to the waters from which they were taken within 72 hours following the completion of the biomedical procedure, or intended procedure if no procedure was performed. The harvester is responsible and liable for returning the crabs and shall make every attempt to assure their survival. Prior to returning the crabs to the water, the harvester shall report to DEM's Division of Law Enforcement by calling 401-222-3070, and

include the name of harvester, the number of crabs being returned, and location where the crabs will be returned.

5.4.5 A control date of January 6, 2017 is established for the horseshoe crab fishery.

5.5 Jonah Crab:

5.5.1 Recreational:

(A) No license required: No license is required for the recreational harvest of Jonah crab in Rhode Island waters.

(B) Season: Open all year.

(C) Possession limit: Fifty (50) whole Jonah crabs per person per day.

5.5.2 Commercial:

(A) License required: No person shall harvest Jonah crab for commercial purposes without a valid commercial marine fishing license.
(B) Eligibility for participation: Any person who holds a lobster trap allocation (LTA), or any person who does not hold an LTA but can prove participation in the Jonah crab fishery prior to the control date, shall be eligible for continued participation in the fishery. Proof of participation shall be documented by RI Harvester Logbooks and/or SAFIS dealer reports.
(C) Minimum size: Four and three quarters (4.75) inches as measured across the widest point of the carapace.
(D) Minimum escape vent and maximum trap size: Minimum escape vent and maximum trap size for a trap utilized in the taking of Jonah crab shall meet the requirements as specified in section 5.2 of these regulations pertaining to lobster pots.
(E) Season: Open all year.
(F) Possession limit:

(1) For persons holding a Lobster Trap Allocation (LTA): Unlimited.

(2) By gillnet or otter trawl (i.e., non-trap gear): One thousand (1,000) crabs per vessel per calendar day.

(3) By gear types other than gillnets or otter trawls (i.e., non-lobster trap gear): One thousand (1,000) crabs per vessel per calendar day.

(G) Harvest restrictions:

(1) Egg-bearing Jonah crabs: No person shall take, offer for sale, or possess at any time any female Jonah crab bearing eggs visible thereon or from which the egg pouch or bunion shall have been removed.

(2) Only whole Jonah crab may be retained and sold.

5.5.2 Control date: The control date for the Jonah Crab fishery is June 2, 2015.

5.6 Atlantic Rock Crab:

5.6.1 Control date: The control date for the Atlantic Rock Crab fishery is June 1, 2016.

5.7 Violations for non-compliance:

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

5.8 Penalties:

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

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

5.9 Appeals:

5.9.1 Denial of a license or permit: Persons denied a license or permit may request an appeal as provided by RIGL Chapter 42-17.7 and pursuant to DEM's

"*Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters"*

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

EFFECTIVE DATE

The foregoing rules and regulations, after due notice, are hereby adopted 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:	0/14/2016
Public Hearing:	11/14/2016
Filing date:	12/16/2016
Effective date:	01/05/2016

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