

# TITLE 20

## Fish and Wildlife

### CHAPTER 20-2.1

#### Commercial Fishing Licenses

##### SECTION 20-2.1-9

**§ 20-2.1-9 Powers and duties of the director.** – It shall be the duty of the director to adopt, implement effective January 1, 2003, and maintain a commercial fisheries licensing system that shall incorporate and be consistent with the purposes of this chapter; in performance of this duty the director shall follow the guidelines and procedures set forth below:

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

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

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

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

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

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

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

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

(i) The effectiveness of the limitation:

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

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

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

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

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

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

(C) The economics of the fishery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) *Matters to be considered in establishing license programs under this chapter.* The director shall be consistent with the requirements of § 20-2.1-2(6) in establishing and implementing a

licensing system in accordance with the provisions of this chapter that shall be designed to accomplish marine fisheries management objectives. The licensing system may limit access to fisheries, particularly commercial fisheries for which there is adequate or greater than adequate harvesting capacity currently in the fishery and for which either a total allowable catch has been set or a total allowable level of fishing effort has been established for the purpose of preventing over-fishing of the resource or the dissipation of the economic yield from the fishery. This authority shall include the authority of the director to:

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

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

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

(5) The director shall by rule, with the advice of the marine fisheries council, develop conservation and management plans for the fishery resources of the state, which conservation and management plans shall be adopted prior to and at the same time as adoption of any license restrictions on effort or catch. In the development of the fishery conservation and management plans, priority shall be given to those resources with the highest value to the state, either for commercial or recreational purposes.

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

History of Section.

(P.L. 2002, ch. 47, § 4.)