

Regulatory analysis
Part 4 – Shellfish (250-RICR-90-4)
Public hearing November 12, 2019

1. Purpose of proposed rule: To establish a commercial whelk pot tagging program as a means to enforce compliance of the 300/licensee whelk pot limit. Such a tagging program was originally discussed by the RI Marine Fisheries Council in April 2012 when the commercial pot limit of 300 pots was adopted. At that time, the Council recommended that a tagging program be considered to address pot limit compliance. The matter was recently brought back to our attention again from industry (whelk fishermen) concerned about on-going exceedances of the pot limit.
2. Provide an analysis of the benefits and costs of a reasonable range of regulatory alternatives reflecting the scope of discretion provided by the statute authorizing the proposed rule.

The only other alternative that the Division is aware of by which to manage harvest would be daily possession limits. While a daily possession limit of 35 bushels/day currently is provided in rule, this is not considered an effective management rule, as this daily limit is not reached and may be excessive. This daily limit rule, which pre-dates the pot limit, will most likely be re-visited at some point in the future. From 2016-2018, the highest recorded landings (top 15 licenses) from 2016-2018 average to 1,422lbs (\approx 23 bushels), with no landings over 1,700lbs (\approx 27 bushels). The daily possession limit provides no ability to the Division of Law Enforcement to enforce the 300 pot/licensee limit.

3. Demonstrate that there is no alternative approach among the alternatives considered during the rulemaking proceeding which would be as effective and less burdensome to affected private persons as another regulation. This standard requires that an agency proposing to write any new regulation must identify any other state regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

Daily possession limits would most likely be considered to be more burdensome to industry, and has not been offered as an alternative by the industry. Any such effort to constrain harvest through (reduced) possession limits would be more burdensome to industry. There is therefore no known alternative approach which would be as effective while being less burdensome to affected persons. This is very similar to the commercial lobster fishery, where only trap limits are imposed and not a daily possession limit. The establishment of daily possession limits has been resoundingly rejected by the commercial lobster industry.

The Division does not believe that the adoption of this rule/program would have any appreciable impact to the industry in terms of cost or reduction in activity or harvest. The cost of tags = \$0.14/tag. Cost of 300 tags = \$42.00. Licensees may order any

number of tags up to 300, and have the option to order optional routine loss, gear rotation, and catastrophic replacement tags. If ordering the maximum allowed (330 original tags, 300 gear rotation tags, and 300 catastrophic tags), maximum annual cost/licensee = \$130.20. In calendar year 2017, 137 commercial fishers landed 458,765 pounds live weight of whelk in RI, with a value of \$1,318,210, or an average of \$9,622/licensee (source: 2019 Sector Management Plan).

There is no overlap or duplication with any other state regulation.

4. A determination whether the benefits of the proposed rule justify the costs of the proposed rule.

The Division has determined that the benefits of a tagging program justifies the cost of the proposed rule.

5. With tags, the only legal pot would be a pot with an attached tag issued by the Director. As we will issue no more pots than the pot limit of 300/licensee, the pot limit becomes enforceable. The only alternative is the current lack of program and to not enforce the pot limit.