250-RICR-90-00-7

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 7 – DEALERS

7.1 Purpose

A. The purpose of these regulations is to efficiently manage the marine resources of Rhode Island.

7.2 Authority

A. These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapters 42-17.1, 42-17.6, and 42-17.7, and in accordance with R.I. Gen. Laws § 42-35-18(b)(5), Administrative Procedures Act, as amended.

7.3 Definitions

A. See Part 1 of this Subchapter.

7.4 Applicability

A. No person shall sell, purchase, barter or trade in any marine fisheries species unless having first obtained a dealer's license from the Director.

B. Any person engaged solely in the business of selling seafood to consumers, either directly or through restaurants or other retail outlets, and/or engaged solely in the processing or preparation of seafood, for sale directly to consumers, is not required to be licensed under these Regulations, provided that such person purchases or otherwise acquires said seafood from a dealer.

C. A licensed dealer may transport any marine species otherwise subject to the requirement that a person transporting such marine species carry a Rhode Island commercial fishing license, provided that the dealer can demonstrate by a bill of lading that the fish in question had been sold by a duly licensed person.

7.5 General Provisions

A. Application for a Dealer's License shall be made on forms as prescribed by the Director and contain such information as the Department may require. Applications not completed in their entirety shall not be considered.

B. A license must be signed and sworn to by the party to whom it is issued in order to be valid.

C. All fees must have been paid for the license to be valid.

D. Licenses are valid only for the signed license holder and may not be transferred.

E. A lost or accidentally destroyed license may be replaced for a reprint fee of ten dollars ($10.00), provided that the applicant submits an affidavit to the Department explaining the circumstances of the loss.

F. Notice of change of address. Whenever a license holder moves from the address named in his or her last application, that person shall, within ten (10) days subsequent to moving, notify the Office of Boat Registration and Licensing of his or her former and current address.

G. The license is valid only for the calendar year in which it is issued. Submittal of an application for a new license does extend the validity of any expired license.

H. License renewal: No application for a license renewal will be accepted from a licensee who has failed to submit reports pursuant to this Part.

I. License holders must meet all applicable and current Federal and State laws and Regulations governing harvest and possession relating to the species being sold.

J. License holders must meet all applicable and current Federal, State, and local laws and Regulations governing retail sales operations, including but not necessarily limited to those governing taxation, signage, noise, and hours of operation.

7.6 Finfish Dealer License

A. Applicability: Authorizes the sale, purchase, barter or trade of all wild finfish species that may legally be landed in Rhode Island, but only in the amounts specified by Rule. Licensed finfish dealers may also buy and sell cultured finfish species in accordance with applicable Rules and Regulations.

B. Eligibility: Applicants must demonstrate that they or their registered agent maintain a fixed place of business in the State of Rhode Island at which transaction records will be maintained and made available for inspection during normal business hours.

7.7 Shellfish Dealer License

A. Applicability: Authorizes the sale, purchase, barter, or trade in wild or cultured shellfish that have been:

1. Harvested from or cultured in Rhode Island waters from licensed shellfishermen, licensed aquaculturists, or other shellfish dealers; or,

2. Harvested from waters outside of Rhode Island from a dealer whose shellfish business appears on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL), and tagged in accordance with the National Shellfish Sanitation Program (NSSP) Model Ordinance and Rhode Island Department of Health Regulations, Processing and Distribution of Shellfish (216-RICR-50-10-6).

B. Eligibility: Applicants must demonstrate that they or their registered agent maintain a fixed place of business in the State of Rhode Island at which transaction records will be maintained and made available for inspection during normal business hours.

C. General Requirements

1. Shellfish dealers may not purchase or accept any wild or cultured shellfish from a shellfisherman or aquaculturist without first being presented with a valid commercial fishing license or Aquaculture license issued by the Director.

2. Shellfish dealers must also possess a DOH shellfish business license pursuant to Rhode Island Department of Health Regulations, Processing and Distribution of Shellfish (216-RICR-50-10-6).

3. Shellfish dealers shall maintain a record of transaction for all sales of shellfish. The following information shall be maintained at the dealer's place of business and be available for inspection by the Director:

a. Seller's name;

b. Seller's commercial fishing license number;

c. Seller's date of birth;

d. Harvest tagging area where shellfish were harvested;

e. Quantity of shellfish purchased;

f. Species landed;

g. Purchase price;

h. Date and time of transaction;

i. Signature of seller;

j. For transactions of shellfish cultured on an aquaculture lease, the dealer shall maintain complete, accurate and legible records sufficient to document the source of shellfish and permit the contents of the container of shellfish to be traced back to the aquaculture lease site and date of harvest. All transactions shall be recorded by DEM and DOH by a method approved by DEM and DOH.

4. Shellfish harvested from or cultured in Rhode Island waters may only be sold to out-of-State dealers by shellfish dealers whose businesses appear on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL) and are licensed with DOH.

5. Shellfish harvested from or cultured in other than Rhode Island waters may only be sold to dealers in or from Rhode Island by out-of-State dealers whose businesses appear on the U.S. Food and Drug Administration Interstate Certified Shellfish Shippers List (ICSSL).

6. A dealer may possess undersize cultured shellfish crops, excluding bay quahaugs, provided the dealer has obtained said cultured crops from an aquaculturist or dealer.

7. Wet storage of shellfish: No person shall engage in land-based wet storage, as defined in the NSSP Model Ordinance, which is incorporated herein by reference) of molluscan shellfish without prior written authorization from DOH. Open-water wet storage, as defined in the NSSP Model Ordinance, is prohibited.

8. Dealer handling of shellfish: Dealers shall comply with the NSSP Model Ordinance and Rhode Island Department of Health Regulations, Processing and Distribution of Shellfish (216-RICR-50-10-6).

9. Dealer tagging of shellfish: Dealers shall comply with the NSSP Model Ordinance and Rhode Island Department of Health Regulations, Processing and Distribution of Shellfish (216-RICR-50-10-6). Dealer tagging is not required for surf clams or ocean quahaugs for use as bait and not for human consumption, however at a minimum must be labeled and/or designated as bait in a method approved by DEM and DOH.

7.8 Crustacean Dealer License

A. Applicability: Authorizes the sale, purchase, barter or trade of all wild crustacean species, including lobster, that may legally be landed in Rhode Island, but only in the amounts specified by Rule. Licensed lobster dealers may also sell cultured crustacean species in accordance with applicable Rules and Regulations.

B. Eligibility: Applicants must demonstrate that they or their registered agent maintain a fixed place of business in the State of Rhode Island at which transaction records will be maintained and made available for inspection during normal business hours.

7.9 Multipurpose Dealer License

A. Applicability: Authorizes the sale, purchase, barter or trade of all wild marine fisheries species that may legally be landed in Rhode Island, but only in the amounts specified by Rule. Licensed multi-purpose dealers may also buy and sell cultured marine fisheries species in accordance with applicable Rules and Regulations.

B. Eligibility: Applicants must demonstrate that they or their registered agent maintain a fixed place of business in the State of Rhode Island at which transaction records will be maintained and made available for inspection during normal business hours.

7.10 Direct Sale Dealer License

A. Applicability

1. Authorizes the sale, purchase, barter or trade of allowable species of finfish, live lobsters and crabs, and live whelk direct to consumers and/or licensed seafood retailers dockside from the vessel on which they were harvested.

2. Authorizes the transport and sale of live lobsters, crabs, and whelks from the vessel on which they were harvested to consumers and/or licensed seafood retailers.

B. Eligibility

1. Applicants must hold a resident commercial fishing license or a resident landing permit authorizing the harvest and/or landing of species allowable for sale pursuant to this license.

2. Applicants must demonstrate that they or their registered agent maintain a fixed place of business residence or vessel berthed in the State of Rhode Island at which transaction records will be maintained and made available for inspection during normal business hours. Applicants must include with their application, documentation that they have secured permission from both the property owner and municipality at the location(s) where direct sales will be conducted.

C. General Requirements

1. Only the licensee/permittee, or a regularly employed crew member of the licensee/permittee, may sell allowable species under the Direct Sale Dealer License. To be eligible to conduct such sales, a crew member must first receive written authorization from the licensee/permittee. Such authorization shall be in the form of a type-written statement, signed and dated by the licensee/permittee that expressly authorizes the crew member to act on behalf of the licensee/permittee with regard to direct sales. The statement shall further specify: the name of the crew member, the name of the vessel from which the sales are conducted, and the month and year that the crew member began working on the vessel. The statement shall be kept on the vessel and be available at all times for inspection by Department personnel. A crew member who is acting on behalf of a licensee/permittee must comply with all applicable Regulations governing direct sales, as set forth herein, and the licensee/permittee shall be responsible for any violations of Regulations by the crew member.

2. All direct sale activities must be conducted in a manner consistent with applicable Federal, State, and municipal Laws, Regulations and polices governing port and marina operations.

3. Licensees/permittees offering allowable species for sale pursuant to the Direct Sale Dealer License may only sell allowable species that they legally harvested. Sales may only be conducted by commercial license holders authorized to commercially harvest the species made available for sale or a regularly employed crew member of the licensee/permittee.

4. The transfer of species between Direct Sale Dealer License holders is expressly prohibited.

5. For all species subject to sale, standard harvester reporting is required (i.e. Federal VTR's or State catch and effort reports) in accordance with the requirements set forth in Part 2 of this Subchapter, Commercial and Recreational Saltwater Fishing Licensing Regulations. Harvester reports must be completed in full and be available for inspection by the Director prior to any species being sold pursuant to this license.

D. Federal permit holders: Pursuant to Federal requirements, any person holding a Federal fishing permit (vessel-based) must sell their catches to Federally permitted dealers. For persons wishing to engage in direct sales from Federally permitted vessels, a Federal dealer’s permit must be obtained from NOAA Fisheries. Once a dealer’s permit is obtained, Federally permitted fishermen may sell to themselves, by reporting the catch on a vessel trip report (paper or electronic) and reporting sales through the Federal dealer reporting system.

E. Prohibited Activities

1. The direct sale of histamine producing fish, including bluefish, tuna, mackerel, herring, mahi mahi, bonito, swordfish, marlin, sailfish, wahoo, anchovy, sardines, shad, menhaden; as well as amberjack, escolar, hind, jack, kahawai, milkfish, saury, scad, spearfish, sprat and trevally

2. The direct sale of striped bass

3. The transportation for sale of finfish to consumers and/or retailers. All sales of finfish must be sold dockside from the vessel.

F. Storage and Handling Requirements

1. While on board the vessel, all species to be sold must be protected from contamination, kept shaded, maintained at or below forty-one degrees Fahrenheit (41° F) and/or buried in ice.

2. Knives/utensils and other food contact surfaces used to head, gut or bleed fish must be kept clean.

3. Species for sale must be labeled accurately.

4 Finfish must be sold whole, or may be headed and gutted, and may be bled. No filleting or other processing may be done dockside from the vessel.

5. Lobsters, crabs and whelk must be sold live.

6. Transporting is limited to live lobsters, crabs, and whelk harvested from individual vessels and sold/donated and transported by the individual harvester or affiliated crew members. The name of the vessel and license holder, provided in writing and legible, must accompany all transported lobsters, crabs, and whelk.

7. Direct Sale Dealer License holders shall not engage in processing in accordance with Rhode Island Department of Health Regulations (216-RICR-50-10-4), Good Manufacturing Practices for Food, or Federal Regulations incorporated therein, unless licensed by the Rhode Island Department of Health to conduct such activities.

G. Donations: Direct donations of finfish by licensed commercial fishermen are subject to the same Rules, Regulations, and requirements as set forth herein.

H. Annual fee: Fifty dollars ($50.00)

7.11 Reporting

A. Dealers shall accurately identify all marine species received as categorized in the Standard Atlantic Fisheries Information System (SAFIS).

B. Dealers shall have accounted for the quantity by count, weight and/or volume of all marine species landed at the point of transfer from the harvester.

C. Dealer weight scales must be certified in accordance with R.I. Gen. Laws Chapter 47-1.

D. Dealers shall maintain a record of transaction for all sales of marine species. The following information shall be maintained at the dealer's place of business and be available for inspection by the Director:

1. Seller's name;

2. Seller's commercial fishing license number;

3. Date of purchase;

4. Species landed;

5. Quantity of purchase;

6. Signature of seller.

E. Dealers shall submit an electronic report to the SAFIS. In cases where a seafood dealer falls under the jurisdiction of both the State of Rhode Island and the Federal government (NMFS), the dealer must comply with the more frequent of the minimum reporting schedules or the more detailed trip level data requirement.

F. Reporting frequency and required trip level data elements

1. Weekly reporting: Trip level data for all species landed shall be reported each week on Mondays and Thursdays, are due no more than five (5) days after the date of purchase, and shall consist of the following:

a. The species common name including market level and grade;

b. The amount landed or purchased including the units the product was measured in (i.e. pounds);

c. The area where product was taken (only applicable to shellfish purchases);

d. The date the product was landed or purchased;

e. The Rhode Island commercial fishing license or landing permit number of the fisherman selling the product to the dealer;

f. The vessel identification number (Coast Guard documentation number and/or State of Rhode Island registration number);

g. The port or location where the catch was landed or purchased; and,

h. When a seafood dealer is purchasing research set aside from a permitted and properly licensed fisherman, the poundage purchased will be designated in the catch source field as “RSA.”

2. Striped Bass reporting: Trip level data for striped bass landed shall be reported each week, and are due no more than twenty four (24) hours after the date of purchase, and shall consist of the following:

a. The species common name including market level and grade;

b. The amount landed or purchased including the units the product was measured in (i.e. pounds);

c. The date the product was landed or purchased;

d. The Rhode Island commercial fishing license or landing permit number of the fisherman selling the product to the dealer;

e. The vessel identification number (Coast Guard documentation number and/or State of Rhode Island registration number); and,

f. The port or location where the catch was landed or purchased.

~~23.~~ Price reporting: Price data for all species harvested shall be reported within thirty (30) days of the landing or purchase date.

~~34.~~ Negative Reports

a. Rhode Island licensed seafood dealers shall submit a negative report to SAFIS for each weekly reporting period during which no seafood product was landed or purchased;

b. Dealers may file negative reports for a maximum of three (3) months in advance.

~~45.~~ Control date: The control date for compliance with this section is March 1, 2006.

7.12 Importation of Non-indigenous (non-native) Horseshoe Crabs

A. No dealer shall import, attempt to import, or possess in the cooked or un-cooked (frozen) state any non-indigenous (non-native) horseshoe crab species within the State of Rhode Island without prior, written authorization by the Department. The only species of horseshoe crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic horseshoe crab.

7.13 Striped Bass Tagging

A. Each striped bass shall be immediately tagged at the point of sale with a striped bass dealer tag issued by the Director. No striped bass may be sold unless it has been properly tagged.

B. DEM may designate tagging agents as appropriate. All designated tagging agents shall keep and maintain the required forms and reports specified by DEM.

C. All tag reports and unused tags must be returned to DEM by January 1 of the following year. Failure to return reports and unused tags may result in the tagging agent becoming ineligible to receive striped bass tags in the future.

7.14 Tautog Tagging

A. No tautog shall be sold, purchased, bartered, or traded in Rhode Island unless a tautog tag issued by the Director has been affixed to the left opercula bone with the tag number displayed.

7.15 Summer flounder

A. Dealers shall receive summer flounder between the hours of 6:00 A.M. to 8:00 P.M. only.

7.16 Lobster Exemption Certificate for Dealers

A. 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. Eligibility requirements are as follows:

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

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

3. 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.

B. Application shall be made on forms prescribed by the Director.

C. Conditions to maintain compliance

1. 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;

2. 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;

3. 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 8:00 A.M. – 4:00 P.M. 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.

4. 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.