250-RICR-90-00-18

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 18 - Emergency Regulations Governing the Use of Federal Funds Provided to the State of Rhode Island for the Large Whale Gear Modification Assistance Plan

18.1 Purpose

The purpose of these Rules and Regulations is to administer the $227,273 allocation of mitigation relief provided to Rhode Island by NOAA and transferred to the State by the ASMFC by expeditiously and equitably disbursing it in the form of fishing gear contrivances to eligible fishery participants in the Rhode Island Lobster/Jonah Crab fishery to comply with the recently amended Atlantic Large Whale Take Reduction Plan and the subsequent NOAA Fisheries Final Rule (50 C.F.R. §§ 229-697) intended to reduce serious injury and mortality to three species of large whales.

18.2 Authority

These Rules and Regulations are adopted pursuant to R.I. Gen. Laws Title 20, Chapter 42-18.1, and promulgated in accordance with R.I. Gen. Laws Chapter 42-35.

18.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state laws, goals, and policies.

18.4 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.

18.5 Findings

A. Effective date October 18, 2021, NOAA Fisheries amended regulations implementing the Atlantic Large Whale Take Reduction Plan to reduce the incidental mortality and serious injury to North Atlantic Right Whales, Fin Whales, and Humpback Whales in the northeast commercial lobster and Jonah crab trap/pot fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act.

B. Compliance with gear configuration modifications including those changes that require fishermen to modify gear marking, change gear configurations, or modify buoy lines to accommodate new weak rope and weak insertions will be required as of May 1, 2022.

C. Consistent with the requirements of the Atlantic Large Whale Take Reduction Plan, the Department initiated a public process to develop a plan for Rhode Island to distribute gear to lobster and Jonah crab fishery participants. The public process included a series of webinars and workshops to brief stakeholders on the program and solicit input on the development of the revised Rhode Island plan. A total of two workshops were held on October 19, 2021 and November 8, 2021.

D. As a component of the above-described public process, the Department sought and received feedback from stakeholders regarding the enactment of emergency regulations to implement a revised plan for Rhode Island. All stakeholders supported the use of emergency regulations to expedite implementation of the gear distribution program, in recognition that the issues addressed by regulation would be fundamentally the same as the provisions set forth in the plan.

E. These emergency regulations operationalize the process of disbursing Rhode Island's $227,273 allocation from NOAA and the Rhode Island plan.

18.6 Assessment of Administrative Fees

The Department will initially set aside $14,000 from the allocation of funds to Rhode Island to cover the administrative costs of developing and implementing the Rhode Island plan. Actual administrative costs will be determined upon conclusion of the appeal process, as set forth herein under § 18.9 of this Part. This is a maximum administrative cost; no additional amount will be deducted from the allocation of funds to Rhode Island. This results in $213,273 available for end line modifications or replacement.

18.7 Eligibility Criteria

A. All applicants must meet the flowing criteria:

1. Must be a resident of Rhode Island upon date of application;

2. Must be 18 years of age or older upon date of application;

3. Must have an active Rhode Island commercial fishing license that authorizes harvest of lobster or Jonah crab, or a resident landing permit upon date of application;

4. The state license holder or federal vessel permit must have at minimum forty (40) Rhode Island lobster or Jonah crab landings in 2020-2021. In cases where there are less than forty (40) legal Rhode Island landings, and one (1) or more of those landings is associated with a multi-day trip(s), Vessel Trip Reports and days fished from those trip(s) may be used.

18.8 Application Procedures and Required Information, Certification and Documentation

A. Consideration for gear allotment will only be afforded to those who meet the eligibility criteria set forth in § 18.7 of this Part, who apply to the Department pursuant to the application procedures set forth below, and who provide all required information, certification, and documentation.

B. Application:

1. Applicants must complete the application form titled "Large Whale Gear Modification Assistance Plan - Affidavit and Application for Eligible Fishery Participants from Rhode Island," issued by the Department. The application form will be available online at the Department's Marine Fisheries website at: http://www.dem.ri.gov/programs/marine-fisheries/Fisheries-CARES-Act.php.

2. Applications must be completed in full. Applications not completed in full will not be considered eligible.

3. Applications must be notarized prior to submission.

4. Submission. Fully completed and notarized applications must be submitted in hard copy (i.e., hand delivered) or postmarked during the application period, Monday through Friday, 8:30 am - 4:00 pm, to either of the two offices set forth below. Electronic submissions of application forms will not be accepted.

   a. The Department's Division of Marine Fisheries, 3 Fort Wetherill Road, Jamestown, RI 02835; or

b. The Department's Division of Coastal Resources, 301 Great Island Road, Narragansett, RI 02882.

C. Application period: The application period is limited to the fifteen (15)-day period beginning on December 6, 2021 and ending on December 20, 2021. The application deadline is 4:00 pm on December 20, 2021. No applications will be accepted or considered if submitted after the application deadline.

D. Required Information, Certification, and Documentation:

1. All applicants must provide the following information as part of each application:

a. Vessel and gear configuration information to confirm commercial fishing activity and amount of gear fished. This includes but is not limited to permit number, commercial fishing license/landing permit number, lobster trap allocation, and vessel registration information.

b. Consent to allowing the Department to use SAFIS data, Vessel Trip Reports (VTRs), dockside sales records, and other relevant data sources to verify the information provided by the applicant to demonstrate lobster trap allocation and fishing activity; and consent to waive any and all confidentiality pertaining to this such information as it relates to the application.

c. Determination as to how each applicant wishes to be notified regarding the Department's decision on each application: either via certified mail, or by picking up and signing for the decision letter at the Department's Marine Fisheries Office in Jamestown or Coastal Resources Office in Galilee (Narragansett).

18.9 Evaluation, Award, and Notification

A. Upon close of the application period, RIDEM will conduct an expeditious review of all applications.

B. Drawing upon information available from the Department's Office of Boating Registration and Licenses, the Department will validate each application with regard to each applicant's license or permit status, vessel ownership status, and business ownership status.

C. Available records and statistics on the commercial fishing fleet will be used to determine minimum eligibility. Available and independently verifiable sources include the Department's commercial license and boat registration database, dockside sales logbooks, VTRs, state logbook reports (eTRIPS or paper

logbook), and electronic dealer reports. Information from these same sources will be used to verify commercial fishing activity.

D. Pursuant to the Department's review of all applications, those applicants not meeting eligibility criteria, or who submit claims that do not align with the data sources used to establish claims, or who submit incomplete applications, will be issued letters of denial. Those receiving letters of denial may file an appeal to the finding no later than fifteen (15) calendar days following receipt of the letter, in accordance with § 18.10 of this Part.

E. The Department will issue letters of eligibility to all qualifying applicants.

Each letter will include the individual amount and type of gear awarded based on the process described above.

18.10 Appeals

A. Any applicant who submits an application during the application period, and is deemed ineligible for an award, may appeal that determination to the Director.

B. All appeals must be submitted in writing and be filed with the RIDEM Office of Legal Services no later than fifteen (15) calendar days following the applicant's receipt of the written notification from the Department regarding the application. All appeals shall include a cover letter setting forth the reason(s) the application should have been deemed eligible and shall include any/all supporting documentation. The filing deadline may be met by hand delivering a written appeal to the Department, at the address provided below, no later than 3:59 pm on the deadline date, or submitting a written appeal to the Department, at the address provided below, via mail, with a postmark no later than the deadline date.

C. Appeals shall be filed with the RIDEM Office of Legal Services, Fisheries Relief Program, 235 Promenade Street, Providence, RI 02908.

D. There will be no opportunity to appeal a determination of ineligibility if such determination is based on the submittal of an application following the close of the application period.

E. The Director's Executive Counsel, or their designee, will review all appeals, determine whether the applicant/appellant has satisfied his/her burden of proving that the Department's determination was not consistent with the eligibility or award standards set forth in these regulations, and render final agency decisions based thereon.

F. The Director shall provide all applicants/appellants with written notification of the final agency decision.

18.11 Final Awards and Issuance of Gear

A. Upon completion of the appeals process, the Department will make any final adjustments to awards necessary to ensure that the total allocation to Rhode Island is fully distributed to all eligible applicants. That is, if gear requests exceed the amount allocated to Rhode Island, the equipment will be distributed proportionally to qualifying applicants.

B. The Department will issue final letters of award to all qualifying applicants specifying the final amounts and type of gear awarded and instructions for pickup of awarded gear at either the Department's Marine Fisheries Office in Jamestown or Coastal Resources Office in Galilee (Narragansett).

C. In the event there are leftover funds after distribution of equipment to qualifying applicants, funds will be set aside for new assistance programs in response to future phases of the Atlantic Large Whale Take Reduction Plan.

18.12 Termination of Program

The activities of this program will be completed, and the Large Whale Gear Modification Assistance program will be terminated, once all award recipients have been notified and all gear has been picked up by awardees.