

## **250-RICR-90-00-24**

### **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

#### **CHAPTER 90 – MARINE FISHERIES**

##### **SUBCHAPTER 00 – N/A**

PART 24 - Emergency Regulations Governing the Use of Federal Funds Provided to the State of Rhode Island for the Atlantic Large Whale Take Reduction Plan Regulations Including Electronic Tracking Requirements

### **24.1 Purpose**

To administer the \$554,454 (five hundred fifty-four thousand four hundred fifty-four dollars) allocation of mitigation relief provided to Rhode Island by congressional allocation (Consolidated Appropriations Act, 2022, Pub. L. 117-103) and transferred to the State by the ASMFC. Expediently and equitably disburse this allocation in the form of electronic tracking device packages and administrative assistance to eligible fishery participants in the Federal Lobster/Jonah Crab fishery with principal ports in Rhode Island to comply with the recently amended Atlantic Large Whale Take Reduction Plan and the subsequent NOAA Fisheries Final Rule (FR-210827-0171) intended to help to defray the cost of compliance with these new regulations.

### **24.2 Authority**

These rules and regulations are adopted pursuant to the Consolidated Appropriations Act, 2022, Pub. L. 117-103, R.I. Gen. Laws Title 20, Chapter 42-17.1, and promulgated in accordance with R.I. Gen. Laws Chapter 42-35.

### **24.3 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.

### **24.4 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.

### **24.5 Findings**

A. Within increased funding provided, \$14,000,000 (fourteen million dollars) shall be provided to States through the Atlantic States Marine Fisheries Commission to cover costs incurred by the

fishing industry to comply with the final 2021 rule to modify the Atlantic Large Whale Take Reduction Plan (ALWTRP) (FR-210827-0171), as well as additional uses outlined below. This assistance may be used by the relevant States to help defray the cost of compliance with new regulations, including for gear modification, configuration, and marking within the Northeast lobster and Jonah crab fisheries, both in Federal and State waters. Additional eligible uses of the funds may include implementing electronic tracking requirements within the Northeast lobster fishery and research to inform future management actions, including in preparation for potential subsequent modifications to the ALWTRP. Funding to the States shall be proportional to the number of active federally permitted lobster trap harvesters in each State, and no State with at least 20 active federally permitted lobster trap harvesters shall receive less than 4 percent of the total funding.

- B. Rhode Island's share of the \$14,000,000 (fourteen million dollars) was determined to be \$554,454 (five hundred fifty-four thousand four hundred fifty-four dollars) based on the prescribed allocation system devised by the Atlantic States Marine Fisheries Commission (ASMFC) Lobster Board.
- C. Compliance with electronic tracking requirements including those changes that require fishermen to install and have powered on a cellular tracking device at all times will be implemented as of December 15, 2023.
- D. These emergency regulations operationalize the process of disbursing Rhode Island's \$554,454 (five hundred fifty-four thousand four hundred fifty-four dollars) allocation from Congress and the ASMFC and the Rhode Island plan.

## **24.6 Assessment of Administrative Fees**

The Department will initially set aside \$98,735 (ninety-eight thousand seven hundred thirty-five dollars) 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 and distribution processes, as set forth herein under § 24.10 of this Part. This is an estimated administrative cost; additional amounts may be deducted from the allocation of funds to Rhode Island. In addition, the Department will utilize \$220,899 (two hundred twenty thousand eight hundred ninety nine dollars) to hire a Fisheries Specialist I contractor through the ASMFC to serve as a liaison among fishermen, vendors supplying the electronic tracking devices, and the Atlantic Coastal Cooperative Statistics Program (ACCSP). The Fisheries Specialist I will assess and perform quality control on the data received from these devices and perform other duties as needed.

## **24.7 Eligibility Criteria**

- A. All applicants must meet the flowing criteria:
  - 1. Must be 18 years of age or older upon date of application;

2. Must own a federally permitted lobster vessel with an accompanying qualifying commercial trap gear allocation ('one person-vessel entity');

Qualifying commercial trap gear permits include: Commercial Trap Gear Area 1, Commercial Trap Gear Area 2, Commercial Trap Gear Area 3, Commercial Trap Gear Area 4, Commercial Trap Gear Area 5, and Commercial Trap Gear Outer Cape Area.

3. The principal port on the federal commercial trap gear area permit must be in Rhode Island.

## **24.8 Application Procedures and Required Information, Certification and Documentation**

A. Consideration for electronic tracking device package allotment will only be afforded to those who meet the eligibility criteria set forth in § 24.7 of this Part, who apply to the Department pursuant to the application procedures set forth below, and who provide all required information and certification.

B. Application:

1. Applicants must complete the application form titled "American Lobster and Jonah Crab Electronic Vessel Tracking Device Distribution Application" issued by the Department. The application form will be available online at the Department's Marine Fisheries website at: <https://dem.ri.gov/natural-resources-bureau/marine-fisheries/commercial-fishing-dealer-resources/fishery-relief>.

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 May 8, 2023 and ending on May 22, 2023. The application deadline is 4:00 pm on May 22, 2023.

No applications will be accepted or considered if submitted after the application deadline. The Department may reopen the application period at its discretion.

D. Required Information, Certification, and Documentation:

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

a. Self-certification that the applicant is the owner of a federally permitted lobster/Jonah crab vessel with a program eligible commercial trap gear allocation.

b. Selection of the electronic device/service 'package' they will receive upon application approval.

## **24.9 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 NOAA's permit database, the Department will validate each application regarding each applicant's license or permit status, vessel ownership status, and business ownership status.

C. Pursuant to the Department's review of all applications, those applicants not meeting eligibility criteria, 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 § 24.10 of this Part.

D. Until December 31, 2025, if a new program eligible permit is issued with a Rhode Island principal port after the close of the application period, the RIDEM will contact the vessel permit holder to notify them they are eligible for an electronic tracking device package under this funding allocation.

E. The Department will issue letters of eligibility to all qualifying applicants. Each letter will include the electronic tracking device package awarded based on the process described above.

## **24.10 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 provide d 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 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.

### **24.11 Final Awards and Issuance of Gear**

A. The Department will issue final letters of eligibility to all qualifying applicants specifying the electronic tracking device package awarded and instructions for next steps.

B. RIDEM may make adjustments to the Plan to ensure that the State of Rhode Island's \$554,454 total allocation is fully expended. That is, any balances remaining in any budget sub-section (e.g., Administration, Tracker Purchase) will be reallocated to other sub-sections as appropriate to fully utilize available funding in support of ALWTRP compliance measures.

### **24.12 Termination of Program**

The activities of this program will be completed, and the Large Whale Gear Modification Assistance program will be terminated, on December 31, 2025.

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PART 24 - EMERGENCY REGULATIONS GOVERNING THE USE OF FEDERAL FUNDS PROVIDED TO THE STATE OF RHODE ISLAND FOR THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS INCLUDING ELECTRONIC TRACKING REQUIREMENTS

Type of Filing: Adoption

**Agency Signature**

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Agency Head Signature

Agency Signing Date

**Governor's Signature**

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Signed By

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Governor or Designee

Governor Signing Date

**Department of State**

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Regulation Effective Date

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Department of State Initials

Department of State Date