

TITLE 250—DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90—MARINE FISHERIES

SUBCHAPTER 00—N/A

PART 27—Regulations Governing the Administration of Federal Herring Fisheries Disaster Relief Funding Provided to the State of Rhode Island

27.1 Purpose

The purpose of these rules and regulations is to administer Rhode Island's \$238,673 allocation of herring disaster relief assistance funding provided by the 2019 Additional Supplemental Appropriation for Disaster Relief Act (P.L. 116-20) by equitably disbursing funds in the form of direct payments to eligible fishery participants.

27.2 Authority

These rules and regulations are adopted pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), R.I. Gen. Laws Title 20, R.I. Gen. Laws Chapter 42-17.1, and promulgated in accordance with R.I. Gen. Laws Chapter 42-35.

27.3 Definitions

- A. "ASMFC" means the Atlantic States Marine Fisheries Commission.
- B. "Department" means the Rhode Island Department of Environmental Management.
- C. "NOAA Fisheries" means the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.
- D. "RIDEM" means the Rhode Island Department of Environmental Management
- E. "SAFIS" means the Standard Atlantic Fisheries Information System.

27.4 Findings

- A. In 2020, Maine, Massachusetts, New Hampshire, Rhode Island, and New Jersey, made a request to the U.S. Secretary of Commerce for a determination that a fishery disaster occurred for the 2019 Atlantic herring fishery.

- ~~B. On November 22, 2021, the Secretary of Commerce issued a fishery disaster determination for 2019 Atlantic herring fishery.~~
- ~~C. Through the 2019 Additional Supplemental Appropriation for Disaster Relief Act (P.L. 116-20), the federal government provided \$150 million in disaster relief assistance, \$11,247,893 of which were directed to respond to the impacts of the 2019 Atlantic herring fishery disaster in the northeast. Rhode Island was allocated \$241,299 of these funds. The ASMFC took one percent (1%) from the total relief funds to cover administrative costs.~~
- ~~D. On October 17, 2022, Rhode Island submitted to NOAA Fisheries for review and approval a spend plan for distribution of funds to eligible harvesters. The plan was subsequently approved on April 10, 2023.~~
- ~~E. These regulations operationalize the process of disbursing Rhode Island's \$238,673 allocation consistent with the approved Rhode Island spend plan.~~

27.5 Assessment of Administrative Fees

~~The Department will not set aside funds to Rhode Island to cover the administrative costs of developing and implementing the Rhode Island spend plan.~~

27.6 Eligibility

- ~~A. All applicants must meet the flowing criteria:~~
 - ~~1. Must not be debarred from receiving federal funds.~~
 - ~~2. Must not be on the federal government's "do not pay" list.~~
 - ~~3. Must be 18 years of age or older upon date of application.~~
 - ~~4. Must have a valid fishing license in 2022. Vessel owners that experienced disaster relief but do not hold a state or federal license in this year will be ineligible.~~
 - ~~5. Must have a history of landings in Rhode Island during the five-year period (2014-2018) as evidenced by official landings records held by RIDEM or NMFS.~~

27.7 Application Procedures and Required Information, Certification and Documentation

- ~~A. Eligible applicants' payments will be scaled based on the applicants' aggregate reported herring landings in Rhode Island as evidenced by official landings records held by RIDEM or NMFS during the five-year (2014-2018) time period.~~

1. Any applicant whose landings do not reach a threshold of 2,000 pounds will be excluded.
2. If resulting relief funds for applicants results in disbursement less than \$200, those funds will be disbursed to other eligible applicants.
3. If ownership of the permit changed during the reference time period, the most recent owner would be the eligible recipient.
4. If the owner who experienced the disaster during the time period no longer had the permit after the time period, but still has a commercial fishing license, the original owner who experienced the disaster would be the eligible recipient.

B. RIDEM will provide all participants with an Affidavit and Application form, to be completed and submitted to RIDEM for review and validation.

1. RIDEM will establish a firm, 15-day application period. Applications received after the publicly noticed deadline will not be reviewed or considered.
2. Applications may be downloaded from RIDEM's website, or picked up at RIDEM's Marine Fisheries Office in Jamestown, or Coastal Resources Office in Galilee (Narragansett).
3. Applications must be notarized and submitted as a hard copy at RIDEM's Marine Fisheries Office in Jamestown, or Coastal Resources Office in Galilee (Narragansett).
4. RIDEM will require applicants to provide the following information as part of each application:
 - a. Identification information, including but not limited to name or name of business, and relevant permit and fishing license information.
 - b. The amount (in pounds) of Atlantic herring landed in Rhode Island by year.
 - c. Self-certification that the applicant has the records/documentation to support the reported loss, will retain those records for at least three (3) years after the close of the primary grant award to the Atlantic States Marine Fisheries Commission, and will make the records available upon request from the State of Rhode Island, NOAA, or the Office of the Inspector General, if necessary, for purposes of conducting individual or programmatic audits.
 - d. Self-certification that the applicant is in good standing with the RI Department of Revenue, Division of Taxation.

- e. Self-certification that the applicant is compliant with applicable federal and state fisheries regulations, as determined by RIDEM. More specifically, any applicant with the following non-compliance status will be ineligible to receive assistance.
 - (1) Any applicant whose Rhode Island commercial fishing license or herring permit has been suspended by the State of Rhode Island or NMFS for the duration of the application period.
 - (2) Any applicant who is in default of paying a fine imposed by NMFS violation of federal fisheries regulations, or a fine imposed by a state court for violation of state fisheries regulations. The applicant will become eligible for assistance if the fine is paid in full during the application period.
- f. Consent to allowing RIDEM to use SAFIS data, VTRs, dockside sales records, and other relevant data sources to verify the information provided by the applicant to quantify revenue loss.
- g. Determination as to how each applicant wishes to be notified regarding RIDEM's decision on each application: either via certified mail, or by picking up and signing for the decision letter at RIDEM's Marine Fisheries Office in Jamestown, or Coastal Resources Office in Galilee (Narragansett).

27.8 Evaluation, Award, and Notification

- A. Drawing upon information available from RIDEM's Office of Boating Registration and Licenses and the RI Department of State, RIDEM will validate each application with regard to each applicant's license status, vessel ownership status, and business ownership status.
- B. Upon close of the application period, RIDEM will conduct an expeditious review and validation of all applications. Application information and available records and statistics on the applicants will be used to determine minimum eligibility. Available and independently verifiable sources include RIDEM's commercial license and boat registration database, business records maintained by the RI Department of State, SAFIS dealer reports, dockside sales logbooks, VTRs, and state logbook reports (eTRIPS or paper logbook). Information from these same sources, as well as other information (e.g., tax records) provided by applicants, will be used to verify eligibility.
- C. RIDEM will tally all claims and undertake the following process of determining payment amounts.

1. ~~Applicants with herring landings under 2,000 pounds cumulatively over the five-year time period will not be eligible for funds.~~
2. ~~The percentage of an applicants' cumulative pounds compared to other eligible applicants will be multiplied by the total available relief funds to Rhode Island to determine applicants' prospective award amounts.~~
3. ~~If owners who are eligible for funds do not apply, these funds will be redistributed to other eligible applicants.~~
4. ~~If final award amounts result in awards less than \$200, these applicants will not be considered eligible, and the funds will be redistributed to eligible applicants.~~

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

1. ~~Each letter will include the individual award amount based on the process described above.~~
2. ~~All qualifying applicants may file an appeal to the individual award amounts no later than fifteen (15) calendar days following receipt of the letter of eligibility in accordance with § 27.9 of this Part.~~

27.9 Appeals

- A. ~~Pursuant to RIDEM's review of all applications, those applications not meeting eligibility criteria, or who submit claims that do not align with the data sources used to establish claims, will be issued letters of denial and be afforded a 15-day window of opportunity to appeal.~~
- B. ~~Any applicant who submits an application during the application period, and is deemed ineligible for an award, may appeal that determination to the Director.~~
- C. ~~Any applicant who submits an application during the application period, and is deemed eligible for an award, may appeal the determination of the amount of the award to the Director.~~
- D. ~~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, or the reason(s) the award amount should be different, 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.~~

- E. Appeals shall be filed with the RIDEM Office of Legal Services, Fisheries Disaster Relief Program, 235 Promenade St., Providence, RI 02908.
- F. 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.
- G. 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.
- H. The Director shall provide all applicants/appellants with written notification of the final agency decision.

27.10 Final Awards and Issuance of Payments

- A. Upon completion of the appeals process, RIDEM will make any final adjustments to awards necessary to ensure that the total Rhode Island allocation is fully distributed to all eligible fishery participants.
- B. RIDEM will issue final letters of award, specifying the final amounts of each award, to all qualifying applicants.
- C. At the same time, RIDEM will forward the names, contact information, social security numbers and award amounts of all qualifying applicants to the Executive Director of the Atlantic States Marine Fisheries Commission (ASMFC), pursuant to a Cooperative Agreement between RIDEM and ASMFC that protects the confidentiality of information not subject to public disclosure. In turn, the ASMFC will issue payments to all qualifying applicants in accordance with the award amounts. The payments will be accompanied by 1099 forms, given the taxable nature of the payments.

27.11 Termination of Program

- The activities of this funding program will be completed, and the program will be terminated, once the complete list of all final award recipients has been provided to the Atlantic States Marine Fisheries Commission, the Commission has issued all payments in accordance with that list, the Rhode Island Department of Revenue, Division of Taxation has addressed and fully resolved any tax obligations applicable to any awardees, and at least three years have elapsed since the close of the primary grant award to the Atlantic States Fisheries Commission.