250-RICR-90-00-15

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 90 – MARINE FISHERIES

SUBCHAPTER 00 – N/A

PART 15 – Emergency Regulations – Direct Sale Dealer License

15.1 Purpose

The purpose of this regulation is to establish a temporary Direct Sale Dealer License to address, on a limited basis, the economic hardship faced by the commercial fishing and seafood industries as a result of the COVID-19 pandemic.

15.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Chapters 42-17.1; 20-2.1, and Chapter 20-2.2, R.I. Gen. Laws § 20-1-4, and in accordance with R.I. Gen. Laws Chapter 42-35.

15.3 Definition

See Part 1 of this Subchapter.

15.4 Application

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

15.5 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.

15.6 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement these regulations shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

15.7 Findings

A. The Department makes the following findings:

1. On or about January 30, 2020, the World Health Organization designated the novel Coronavirus, COVID-19, outbreak as a public health emergency of international concern;

2. Thereafter, the State of Rhode Island had documented cases of COVID-19;

3. Pursuant to Executive Order 20-02, issued on or about March 9, 2020, the State of Rhode Island declared a state of emergency in response to increasing COVID-19 cases documented within the State of Rhode Island;

4. On or about March 11, 2020, the World Health Organization declared COVID-19 a pandemic (the "COVID-19 Pandemic");

5. Thereafter, starting on or about March 16, 2020, the State of Rhode Island has been issuing Executive Orders that created closures and restrictions impacting an evolving number of businesses and industry sectors including the commercial fishing and seafood industry in the State of Rhode Island;

6. As a result of the COVID-19 Pandemic and various Executive Orders, traditional seafood supply chains and markets have been disrupted, severely impacting all sectors of the RI fishing and seafood industry resulting in dire economic hardship for many RI commercial fishermen.

7. As a result of the COVID-19 Pandemic, the Department finds it necessary and in the public interest to make available to resident Rhode Island

commercial fishermen, on a temporary basis, a Direct Sale Dealer License that allows resident Rhode Island commercial fishermen the ability to sell and transport for sale, certain marine species directly to consumers and licensed retail outlets.

15.8 Direct Sale Dealer License

A. General Requirements

1. All direct sale activities shall strictly adhere to all applicable health-safety directives and guidelines.

2. Unless otherwise noticed by the Director, all direct sales shall be conducted in a manner that is compliant with all social distancing guidelines and prevents customers from congregating, as well as any other requirements issued by the Governor. Those conducting direct sales must wear cloth face mask coverings during every transaction.

3. Applicants for a Direct Sale Dealer License shall complete the required forms as required by the Department.

4. The Direct Sale Dealer License shall be available to all resident Rhode Island license and resident landing permit holders who are authorized to harvest and land for sale allowable species under this section.

5. Individuals selling allowable species pursuant to the Direct Sale Dealer License must, at all times, possess and display, upon request, a current and proper license or landing permit as well as a current Direct Sale Dealer License.

6. 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 dockside 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.

7. Licensees/permittees offering allowable species for sale pursuant to the Direct Sale Dealer License must meet all applicable and current Federal and State laws and regulations governing harvest and possession relating to the species being sold.

8. Licensees/permittees offering allowable species for sale pursuant to the Direct Sale Dealer License 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.

9. All direct sale activities must be conducted in a manner consistent with applicable laws, regulations and polices governing port and marina operations.

10. 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. The transfer of species between license holders is expressly prohibited.

11. There shall be no annual fee for the Direct Sale Dealer License during the effective time period of this emergency regulation.

12. The Direct Sale Dealer License is not subject to the application deadline provisions as set forth in § 2.6.7(C) of this Subchapter; as such, the license shall be available at any time during the year to holders of current and proper commercial fishing licenses and landing permits issued by the Department.

B. Federal Permit Holders

Pursuant to federal requirements, anyone holding a federal fishing permit (vessel-based) must sell their catches to federally permitted dealers. For those 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.

C. Direct Sales of Live Lobsters and Crabs

1. Existing dockside sales of live lobsters and crabs shall be conducted pursuant to the existing dockside sales endorsement in § 2.7.6(I) of this Subchapter. In accordance therewith, direct sales of live lobsters and crabs can only occur dockside and can only be to the final consumer (i.e. the individual(s) who will be consuming the product).

2. Holders of a dockside sales endorsement who also obtain the Direct Sale Dealer License are authorized to engage in the additional following activities, subject to all applicable requirements:

a. Selling live lobsters and crabs directly to licensed seafood retailers dockside from the vessel on which they were harvested; and

b. Transporting and selling live lobsters and crabs to consumers and/or licensed seafood retailers from the vessel on which they were harvested.

3. Direct sales of molluscan shellfish are prohibited.

4. Additional Requirements

a. Lobsters and crabs must be kept shaded and cooled and must be alive at point of sale.

b. Deliveries are limited to product harvested from individual vessels and sold/donated and delivered by the individual harvester or affiliated crew members. The name of the vessel and license holder, provided in writing and legible, must accompany all deliveries.

D. Direct Sales of Finfish

1. Holders of a Direct Sale Dealer License are authorized to sell certain species of finfish direct to consumers and licensed seafood retailers dockside from the vessel on which they were harvested.

2. Sales of finfish may include any species of finfish legally harvested except those expressly prohibited pursuant to §§ 15.8(D)(3)(a) through (d) of this Part.

3. Prohibited Activities

a. Direct sale of histamine producing fish is prohibited. Histamine-producing fish include 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.

b. Direct sale of striped bass is prohibited.

c. Direct sales of molluscan shellfish are prohibited.

d. The transportation for sale of finfish to consumers and/or retailers is prohibited. All sales of finfish pursuant to a Direct Sale Dealer License must be sold dockside/from the vessel.

4. Additional Requirements

a. Direct sales of finfish shall be applicable only to whole fish, or fish that are headed/gutted, or live fish. Fish may be bled. No filleting or other processing may be done on the vessel.

b. Direct sales shall be applicable only to fish that have been caught/harvested the same day, that is caught and sold between midnight and 11:59 p.m. on the same day.

c. While on board the vessel, all fish to be sold must be protected from contamination, kept shaded, cooled, and/or on ice.

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

e. Fish species for sale pursuant to the Direct Sale Dealer License must be labeled accurately.

f. Any fish not sold on the day they were caught/harvested cannot be sold thereafter.

g. For sales undertaken pursuant to this authorization, holders of Direct Sale Dealer Licenses are exempt from the requirement set forth in § 7.10(E)(1) of this Subchapter that summer flounder be placed in standard 60- or 100-pound containers prior to their removal from the dealer's premises or from the point of transfer.

h. Direct sales of finfish can only occur dockside and can only be to the final consumer (i.e. the individuals(s) who will be consuming the product) or to licensed seafood retailers.

E. Reporting

1. For all species subject to sale, standard harvester report is required (i.e. federal VTR's or state catch and effort reports), in accordance with the requirements set forth in § 2.7.4 of this Subchapter.

2. Harvester reports must be completed in full and be available for inspection prior to any species being sold pursuant to this license.

3. In addition, all sales made pursuant to this license must be reported to DEM via SAFIS eDR electronic dealer reports in accordance with standard dealer reporting requirements as set forth in § 7.8 of this Subchapter.

15.9 Donations

Direct donations of finfish by licensed commercial fishermen are subject to the same rules, regulations, and requirements as set forth herein.

15.10 Compliance and Enforcement

A. All provision of this authorization will be strictly enforced. Noncompliance may result in the suspension or revocation of the Direct Sale Dealer License as well as the commercial fishing license held by the individual.

B. As set forth in R.I. Gen. Laws §§ 42-17.1-1, 42-17.6-1 *et seq.*, and Title 20, the Director shall have the power to issue enforcement notices, orders, administrative penalties or other requirements to ensure compliance with these rules and regulations. The Director may also provide written or verbal warning of his/her intent to undertake enforcement action, but is not required to do so.

C. Right to Request Administrative Hearing

1. Enforcement Actions: Any person affected by a decision of the Director for an enforcement action pursuant to these regulations may file and appeal within twenty (20) days after the date of receipt of the enforcement action in accordance with R.I. Gen. Laws Chapter 42-17.7 and Part 10-00-1 of this Title, Rules and Regulations for the Administrative Adjudication Division.

2. All requests for hearings on enforcement actions must follow the requirements set forth in the Rules and Regulations for the Administrative Adjudication Division, Part 10-00-1 of this Title.

15.11 Effective Period

A. Direct Sale Dealer Licenses will be valid and effective only for the as long as this emergency regulation remains in effect.

B. The Director has the authority to terminate the Direct Sale Dealer Licenses by notice.

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Governor's Signature

Claire Richards

Signed By

E-SIGNED by Office of the Governor on 2020-04-17 22:50:55 GMT	April 17, 2020
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