

**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
DIVISION OF FISH AND WILDLIFE  
MARINE FISHERIES SECTION**

**PUBLIC NOTICE CONCERNING PROPOSED RULE MAKING**

Pursuant to the provisions of Chapters 42-17.1 and 20-3 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes adoption of a regulation entitled **“Rules and Regulations Governing the Administration of Federal Groundfish Disaster Funds – Phase Two Program for Rhode Island”**, and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

The **Public Hearing** will commence at **6:00 PM** on **Wednesday, August 26, 2015** at the University of Rhode Island, Graduate School of Oceanography, **Corless Auditorium**, South Ferry Road, Narragansett, RI 02882. The room is accessible to the disabled. Interpreter services for the deaf and hard of hearing will be provided if such services are requested at least three (3) business days prior to the hearing by contacting the RI Commission on the Deaf and Hard of Hearing at (401) 222-5300; or (401) 222-5301 (TTY); or <http://www.cdhh.ri.gov/>.

Written comments concerning the proposed regulations may be submitted to Robert Ballou, DEM Director’s Office, 235 Promenade St., Providence, RI 02908 no later than 12:00 PM on Wednesday, August 26, 2015.

The public hearing will be immediately preceded by a **Public Workshop**, conducted by the Department, at which interested parties may participate in a discussion and ask questions regarding the proposed regulations. The public workshop will commence at **5:00 PM** and terminate at 6:00 PM on **Wednesday, August 26, 2015** at the University of Rhode Island, Graduate School of Oceanography, **Corless Auditorium**, South Ferry Road, Narragansett, RI 02882.

A copy of the proposed regulations is available for review from July 23, 2015 through August 26, 2015 at the DEM Director’s Office, 235 Promenade Street, providence, RI 02908, and at the DEM Division of Coastal Resources, 301 Great Island Road, Narragansett, RI 02882, or by mail. The proposed regulations have been filed with the Office of the RI Secretary of State and are available for review on the Secretary of State’s website at <http://sos.ri.gov/ProposedRules/>. The proposed regulations are also available for review on the DEM Marine Fisheries webpage at <http://www.dem.ri.gov/programs/bnatres/fishwild/pn082615.htm>.

Janet L. Coit, Director  
Department of Environmental Management

Date posted: 7/23/15

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**DIVISION OF FISH AND WILDLIFE  
Marine Fisheries**

**RULES AND REGULATIONS GOVERNING  
THE ADMINISTRATION OF FEDERAL GROUND FISH DISASTER FUNDS –  
PHASE TWO PROGRAM FOR RHODE ISLAND**

**EFFECTIVE DATE: \_\_\_\_\_**

**AUTHORITY:** These regulations are adopted pursuant to Title 20 and Chapter 42-17.1, and promulgated in accordance with Chapter 42-35 of the Rhode Island General Laws of 1956, as amended.

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## **1. PURPOSE**

The purpose of these rules and regulations is to implement the Rhode Island component of Phase Two of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds (hereinafter, the Phase Two Program). The three-phase Consensus Plan provides economic relief to mitigate losses resulting from the Northeast Multispecies Fishery Disaster declared by the U.S. Secretary of Commerce in September 2012. For this Phase Two Program, the Rhode Island Department of Environmental Management (hereinafter, the Department) will disburse \$519,656 in federal aid to assist those engaged in the Rhode Island groundfish community who were significantly adversely affected by the groundfish disaster. The framework for disbursement, which these rules and regulations codify, is set forth in the grant application titled *Rhode Island Proposal for Groundfish Relief for 2012 Groundfish Disaster Declaration: Bin 2 – State Disaster Assistance Plan* that was approved by NOAA Fisheries on April 29, 2015 (Grant #NA15NMF4540009).

## **2. AUTHORITY**

These rules and regulations are adopted pursuant to Title 20 and Chapter 42-17.1, and promulgated in accordance with Chapter 42-35 of the Rhode Island General Laws of 1956, as amended.

## **3. APPLICATION OF THESE RULES AND REGULATIONS**

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

## **4. DEFINITIONS**

Application: The Groundfish Disaster Aid Application (see Appendix A)

Department: The Rhode Island Department of Environmental Management

Director: The Director of Rhode Island Department of Environmental Management

Cod: *Gadus morhua*

Fishing Year: The federal fishing year commencing on May 1 and ending on April 30 of the following year, annually.

Grant: *Rhode Island Proposal for Groundfish Relief for 2012 Groundfish Disaster Declaration: Bin 2 – State Disaster Assistance Plan*, Grant #NA15NMF4540009.

Groundfish Sector: A self-selecting voluntary group of persons holding federal limited access northeast multispecies (groundfish) vessel permits, formed pursuant to Amendment

16 to the Northeast Multispecies (Groundfish) Fishery Management Plan and operating in accordance with an approved Sector Operations Plan and Agreement.

Haddock: *Melanogrammus aeglefinus*

Phase One Program: Phase One of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds, developed by the Greater Atlantic Regional Fisheries Office of the National Oceanic and Atmospheric Administration and the state fishery administrators from the Northeast coastal states (Maine through New York), dated May 29, 2014.

Phase Two Program: Phase Two of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds, developed by the Greater Atlantic Regional Fisheries Office of the National Oceanic and Atmospheric Administration and the state fishery administrators from the Northeast coastal states (Maine through New York), dated May 29, 2014. For Rhode Island, the Phase Two Program is the Program codified in these rules and regulations, pursuant to the above-referenced Grant.

Phase Three Program: Phase Three of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds, developed by the Greater Atlantic Regional Fisheries Office of the National Oceanic and Atmospheric Administration and the state fishery administrators from the Northeast coastal states (Maine through New York), dated May 29, 2014.

Pollock: *Pollachius virens*

## **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.

## **6. ORGANIZATION AND METHOD OF OPERATION**

The program set forth by these rules and regulations will be administered by the Office of the Director, pursuant to the Director's authority to administer the grant awarded to the Department for the Phase Two Program. In accordance with the Director's authority, all duties related to the administration of these rules and regulations shall be carried out by the Department; such duties shall include the development of program guidelines and application categories; the receipt and review and organization of applications; approval of awards; and the processing of appeals. All aid awarded by the Department pursuant to the program shall be disbursed by the Rhode Island Department of Revenue, Division of Taxation, pursuant to a Cooperative Agreement between that agency and the Department.

## **7. REGULATIONS**

### **7.1 Eligibility Criteria**

#### **7.1.A. Direct Aid for Commercial Captains and Crew**

An applicant shall be deemed eligible to receive direct aid under subsection 7.1.A if he or she submits evidence to establish in the determination of the Department that the applicant satisfies each of the following criteria:

1. Worked as a captain or crew member aboard one or more of the forty-three (43) federally permitted commercial vessels, home-ported in Rhode Island, whose permit holder qualified for direct aid under Phase One of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds, during any of the four fishing years 2010-2013;
2. Earned at least twenty thousand dollars (\$20,000) from commercial fishing as a result of working aboard one or more of the forty-three (43) above-referenced vessels during any of the four fishing years 2010-2013 via income verification in the form of copies of IRS-generated transcripts of state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation; and
3. Was not the permit-holder or majority shareholder of any of the forty-three (43) above-referenced vessels as of April 30, 2014.

#### **7.1.B. Direct Aid for For-Hire Permit Holders**

An applicant shall be deemed eligible to receive direct aid under subsection 7.1.B if he or she submits evidence to establish in the determination of the Department that the applicant satisfies each of the following criteria:

1. Held a for-hire permit for a vessel home-ported in Rhode Island during any of the four fishing years 2010-2013;
2. Undertook at least thirty (30) fishing trips using the above-referenced permitted vessel with a minimum of one cod, pollock, or haddock caught per trip during any one of the four fishing years 2010-2013 as verified via copies of applicable federal vessel trip reports (VTRs); and
3. Was not the permit-holder or majority share-holder of any of the forty-three (43) vessels referenced in subsection 7.1.A(1) as of April 30, 2014.

#### **7.1.C. Direct Aid for For-Hire Captains and Crew**

An applicant shall be deemed eligible to receive direct aid under subsection 7.1.C if he or she submits evidence to establish in the determination of the Department that the applicant satisfies each of the following criteria:

1. Worked as a captain or crew member aboard one or more of the permitted for-hire vessels, home-ported in Rhode Island, whose permit holder qualifies for direct aid under subsection 7.1.B, during any of the four fishing years 2010-2013;

2. Earned at least twenty thousand dollars (\$20,000) from for-hire fishing as a result of working aboard one or more of the above-referenced for-hire vessels during any of the four fishing years 2010-2013 via income verification in the form of copies of IRS-generated state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation; and
3. Was not the permit-holder or majority share-holder of any of the forty-three (43) vessels referenced in subsection 7.1.A(1) as of April 30, 2014.

#### 7.1.D. Direct Aid for Groundfish Sector Administration

An applicant shall be deemed eligible to receive direct aid under subsection 7.1.D if he or she submits evidence to establish in the determination of the Department that the applicant satisfies each of the following criteria:

1. The applicant is a registered agent of an approved groundfish sector;
2. For the 2015 fishing year, at least twenty-five percent (25%) of the membership of the sector includes federally permitted commercial groundfish vessels home-ported in Rhode Island, as verified via copies of the approved sector roster for the 2015 fishing year; and
3. The groundfish sector was authorized and in operation during the 2014 fishing year and remains authorized and in operation during the 2015 fishing year as verified via copies of the approved sector rosters for the two fishing years.

#### 7.1.E. Limits on Eligibility

Applicants who meet the eligibility criteria for both subsection 7.1.A and subsection 7.1.C may apply under both subsections; provided, however, that such applicants may not qualify for more than one share of aid per eligible fishing year.

### **7.2 Application Procedure and Required Documentation**

Consideration for direct aid under this program will only be afforded to those who apply to the Department pursuant to the application process set forth below and who provide all required documentation relating to eligibility as set forth below:

#### 7.2.A. Application Form

1. All applicants must complete and submit the form designated "Groundfish Disaster Aid Application" issued by the Department (see Appendix A).
2. The application forms will be available immediately upon final promulgation of these rules and regulations, and will remain available throughout the application period. The application forms will be available at the Department's Division of Coastal Resources, located at 301 Great Island Rd., Narragansett, RI 02882. The forms will also be available online via the Department's Marine Fisheries website at: <http://www.dem.ri.gov/programs/bnatres/fishwild/groundfish.htm>.

## 7.2.B. Application Package

In addition to the application form, all applicants must submit all information and documentation necessary to determine eligibility, in accordance with the criteria set forth under subsection 7.1, pursuant to the specific subsections for which they are seeking direct aid, as detailed below.

### 1. Required Materials for Subsection 7.1.A Applicants (Commercial Captains and Crew)

Applicants must submit a completed Groundfish Disaster Aid Application along with verification of income, showing minimum earnings of twenty thousand dollars (\$20,000) per fishing year, attributable to employment aboard one or more of the forty-three (43) federally permitted vessels home-ported in RI that qualified for assistance under the Phase One Program, during one or more of the four fishing years 2010-2013. Income verification must be in the form of copies of IRS-generated transcripts of state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation. Applicants who meet the eligibility criteria for more than one of the four years must submit income verification for each year of eligibility in order to be considered for each year.

### 2. Required Materials for Subsection 7.1.B Applicants (For-Hire Permit Holders)

Applicants must submit a completed Groundfish Disaster Aid Application along with copies of applicable federal vessel trip reports (VTRs) establishing trip-level verification -- at least thirty (30) trips with a minimum of one cod, pollock, or haddock caught per trip -- for any one of the four fishing years 2010-2013

### 3. Required Materials for Subsection 7.1.C Applicants (For-Hire Captains and Crew)

Applicants must submit a completed Groundfish Disaster Aid Application along with verification of income, showing minimum earnings of twenty thousand dollars (\$20,000) per fishing year, attributable to employment aboard one or more of the for-hire vessels home-ported in RI that qualify for assistance under Subsection 7.1.B, during one or more of the four fishing years 2010-2013. Income verification must be in the form of copies of IRS-generated transcripts of state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation. Applicants who meet the eligibility criteria for more than one of the four years must submit income verification for each year of eligibility in order to be considered for each year.

### 4. Required Materials for Subsection 7.1.D Applicants (Groundfish Sectors)

Applicants must submit a completed Groundfish Disaster Aid Application along with copies of the approved sector rosters and sector operations plans for the 2014 and 2015 fishing years. Additionally, each applicant must provide a notarized letter stating whether the sector has received, or is expecting to receive, direct aid for sector

administration from the Phase Two or Phase Three programs of any other state, and if so, the amount(s) received or expected.

### 7.2.C. Application Submission

Applicants must submit completed Groundfish Disaster Aid Application forms, along with all other required materials to the following address:

RIDEM Division of Coastal Resources  
Groundfish Disaster Aid Program  
301 Great Island Road  
Narragansett, RI 02882

### 7.2.D. Application Period

Applicants must submit completed application forms along with all other required documentation as set forth in Section 7.2.B during the application period. The application period shall extend for sixty (60) days following the effective date of these rules and regulations. The announcement of the effective date of these rules and regulations shall be provided on the Secretary of State's website and on the Department's Marine Fisheries website at:

<http://www.dem.ri.gov/programs/bnatres/fishwild/groundfish.htm>. The effective date will also be announced via a listserve notice issued by the Department upon the filing of these rules and regulations with the Secretary of State.

## 7.3 Evaluation and Award

### 7.3.A. Evaluation

1. The Department shall review all completed applications that were submitted during the application period.
2. Applications submitted prior to the application period will not be accepted and must be resubmitted during the application period.
3. Applicants who submit incomplete applications during the application period will be notified regarding the deficiencies in their application and be afforded the opportunity to resubmit completed applications prior to the end of the application period.

### 7.3.B. Notice of Determination

All applicants who have submitted completed and timely applications will be notified, in writing, of the Department's determination as to his/her eligibility for aid. Notification will be sent to the applicant's mailing address as provided on the applicant's application.

### 7.3.C. Determination of Awards

#### 1. Aid Awarded Pursuant to Subsection 7.1.A (Commercial Captains and Crew)

Each eligible applicant shall be awarded one share for each fishing year (2010-2013) for which he or she is deemed eligible by the Department, up to a maximum of four shares per applicant. The amount per share will be calculated via the process set forth below in subsection 7.3.D. The total amount of aid for which an applicant may be eligible will be capped at thirty-two thousand five hundred dollars (\$32,500), regardless of the number of shares awarded to an applicant.

#### 2. Aid Awarded Pursuant to Subsection 7.1.B (For-Hire Permit Holders)

Each eligible applicant shall be awarded a single direct aid payment of twenty thousand dollars (\$20,000), regardless of the number of qualifying years.

#### 3. Aid Awarded Pursuant to Subsection 7.1.C (For-Hire Captains and Crew)

Each eligible applicant shall be awarded one share for each fishing year (2010-2013) for which he or she is deemed eligible, up to a maximum of four shares per applicant. The amount per share will be calculated via the process set forth below in section 7.3.D. The total amount of aid for which an applicant may be eligible will be capped at twenty thousand dollars (\$20,000), regardless of the number of shares awarded to any applicant.

#### 4. Aid Awarded Pursuant to Section 7.1.D (Groundfish Sectors)

If, for the 2015 fishing year, at least fifty percent (50%) of the membership of a qualifying sector is composed of vessels home-ported in Rhode Island, and if the sector is not eligible to receive direct aid for sector administration from the Phase Two or Phase Three Program(s) of any other state(s), the sector shall be awarded a single, direct-aid payment for sector administration of thirty-two thousand five hundred dollars (\$32,500).

If, for the 2015 fishing year, at least twenty-five percent (25%) of the membership of a qualifying sector is composed of vessels home-ported in Rhode Island, and if the sector is eligible to receive direct aid for sector administration from the Phase Two or Phase Three Program(s) of any other state(s), the sector shall be eligible for direct aid for sector administration from Rhode Island in an amount equal to thirty-two thousand five hundred dollars, minus the amount received from the Phase Two or Phase Three Program(s) of the other state(s). For any such sector, the Department will coordinate with the state(s) from which the vessels in the sector are home-ported for the purpose of ensuring that the sector receives direct-aid payments totaling thirty-two thousand five hundred dollars (\$32,500) from the Phase Two or Phase Three programs of the respective states, including Rhode Island. No sector will be eligible for direct aid for sector administration from Rhode Island in an amount that would result in that sector

receiving more than thirty-two thousand five hundred dollars (\$32,500) in total aid for sector administration from the Phase Two or Phase Three program(s) of one or more states.

If, for the 2015 fishing year, at least twenty-five percent (25%) of the membership of a qualifying sector is composed of vessels home-ported in Rhode Island, and if the sector is not eligible to receive direct aid for sector administration from the Phase Two or Phase Three Programs of any other state, the sector shall be eligible for direct aid for sector administration from Rhode Island in an amount equal to thirty-two thousand five hundred dollars (\$32,500) times the percentage of the sector membership that is home-ported in Rhode Island.

#### 7.3.D. Allocation of Funding Among Direct-Aid Categories; Calculation of Per-Share Direct-Aid Amounts for Subsection 7.1.A and Subsection 7.1.C

The Department will allocate the total amount of federal funding available for this Program (\$519,656) as follows:

Following the close of the application period, the review of all applications submitted during the application period, and the resolution of any appeals filed pursuant to Section 7.4 herein, the Department will undertake the following steps:

First, the Department will determine the total number of eligible applicants under Subsection 7.1.B and multiply that number by \$20,000. That amount will be subtotal A.

Second, the Department will determine the total number of eligible applicants under Subsection 7.1.D, the total amount of funding to be awarded to each applicant (\$32,500 maximum), and the resulting total amount to be awarded under Subsection 7.1.D. That amount will be subtotal B.

Third, the Department will add subtotals A and B, and then subtract that combined amount from \$519,656. The resulting amount will be subtotal C.

Fourth, the Department will determine the total number of eligible shares under Subsection 7.1.A and Subsection 7.1.C. The Department will then divide subtotal C by the total number of eligible shares pursuant to Subsection 7.1.A and Subsection 7.1.C. The resulting amount will be the per-share amount for all eligible applicants under Subsection 7.1.A and Subsection 7.1.C.

#### 7.3.E. Awards by the Director

The Director shall have the authority to approve all awards issued pursuant to this Program, and shall exercise such authority pursuant to the terms and conditions of these rules and regulations and consistent with the purposes of this Program and the requirements of the Grant.

### 7.3.F. Letters of Award

Letters of notification specifying final award amounts shall be sent to all final award recipients following final resolution of any appeals filed pursuant to Section 7.4 herein.

### 7.3.G. Issuance of Payments

The Department will provide a complete list of all final award recipients to the Rhode Island Department of Revenue, Division of Taxation, which will be responsible for the processing and issuance of all direct-aid payments. Pursuant to R. I. Gen. Laws § 44-1-11.1, the Division of Taxation is obligated to off-set the amount of the direct-aid payment against any outstanding state tax obligations upon certification of the amount of the tax obligation by the tax administrator which shall be met prior to, or in lieu of, the issuance of the direct-aid payment.

## 7.4 APPEALS PROCEDURE

- 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. Such appeal must be submitted in writing and be filed with the Director no later than thirty (30) calendar days following the applicant's receipt of the written notification provided per Section 7.3.2.
- B. 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.
- C. Appeals shall be filed at the address provided below:  

RIDEM Office of Legal Services  
Groundfish Disaster Aid Program  
235 Promenade St.  
Providence, RI 02908
- D. Appeals shall include a cover letter setting forth the reason(s) the application should have been deemed eligible.
- E. The Director or the Director's designee shall review all appeals, determine whether the applicant/appellant has satisfied his/her burden of proving that the Department's determination was not in compliance with the eligibility criteria set forth in these rules and regulations, and render final agency decisions based thereon.
- F. The Director shall provide all applicants/appellants with written notification of her/his final agency decision.

## 7.5 TERMINATION OF PROGRAM

The activities of this Program will be completed, and the Program will be terminated, once the complete list of all final award recipients has been provided to the Rhode Island Department of Revenue, Division of Taxation for direct aid disbursement, and the Division of Taxation has processed all awards.

### EFFECTIVE DATE

The foregoing “Rules and Regulations Governing the Administration of Federal Groundfish Disaster Assistance Funds – Phase Two Program for Rhode Island,” after due notice and an opportunity for hearing, are hereby adopted and filed with the Rhode Island Secretary of State this \_\_\_\_\_ day of \_\_\_\_\_, 2015, and become effective twenty (20) days after filing, in accordance with the provisions of R.I. Gen. Laws §§ 42-17.1-1, et seq. and §§42-35-1 et seq..

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Janet L. Coit, Director  
Rhode Island Department of Environmental Management

Notice given on: 07/23/2015

Hearing held on: 08/26/2015

Effective: Twenty (20) days after the above-mentioned date of filing with the Rhode Island Secretary of State.

Effective Date: \_\_\_\_\_

ERLID Number: 8152