

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

PUBLIC NOTICE CONCERNING PROPOSED RULEMAKING

Pursuant to the provisions of Chapter 42-17.1 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws of 1956, as amended, the Director of the Department of Environmental Management (DEM) proposes rulemaking, and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comments will be solicited on the following proposal:

Eligibility Criteria – Groundline Conversion Program – Lobster Management Area 2: Proposed establishment of eligibility criteria for commercial fishers, engaged in the harvest of lobsters with traps in Lobster Management Area 2, to obtain vouchers for the purchase of sinking groundline.

The public hearing will commence at 6:00 PM on **Monday, January 25, 2010** at the University of Rhode Island Graduate School of Oceanography, Corless Auditorium, South Ferry Road, Narragansett, RI. The hearing room is accessible to the handicapped. A tape recording of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 for TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Fish and Wildlife, 3 Fort Wetherill Road, Jamestown, RI 02835, no later than 12:00 PM on January 25, 2010.

The DEM has made the following determinations. The DEM has determined that small businesses may be adversely impacted by the proposed regulations. However, the DEM has considered alternative approaches to the proposed regulations and has determined that there is no alternative approach among the alternatives considered that would be as effective in achieving the requisite goal of the regulatory action while being less burdensome to the potential adversely impacted businesses. The small businesses that have been identified as potentially being adversely impacted are small businesses that are either currently licensed to engage, or those which may in the future seek permission to engage, in the harvesting of lobsters by fixed gear as well as the small businesses that provide services to such industries and small businesses which buy, sell, or produce products or provide services related to the harvesting of lobsters by fixed gear. Any of the above identified businesses are encouraged to comment on the proposed regulations as to how the proposed action can be changed to minimize the impact upon the small businesses adversely affected.

A copy of all the proposed regulations will be available for examination from December 23, 2009 through January 25, 2010 by mail or at the offices of the Division of Fish and Wildlife located at 4808 Tower Hill Road, Wakefield, RI 02879 and at the Marine Fisheries Section, located at 3 Fort Wetherill Road, Jamestown, RI 02835, weekdays from 8:30 AM - 4:00 PM. To contact the office, call (401) 423-1920. Copies of the proposed regulations will also be available on the DEM website at: <http://www.dem.ri.gov/topics/mftopics.htm>

W. Michael Sullivan, Ph.D.
Director, Department of Environmental Management

Eligibility Criteria Groundline Conversion Program Lobster Management Area 2

Purpose

Pursuant to the RI Department of Environmental Management (DEM), Division of Fish and Wildlife's role in the implementation of a grant issued by National Marine Fisheries Service, Northeast Regional Office, titled "Groundline/Exchange Conversion Plan – 2009," the Department proposes the establishment of eligibility criteria for commercial fishers, engaged in the harvest of lobsters with traps in Lobster Management Area 2, to obtain vouchers for the purchase of sinking groundline.

Description

Via the above-noted federal grant, a financial assistance program is available for RI residents who have been actively fishing lobster traps in Lobster Management Area 2. The program is designed to assist Area 2 trap fishermen from RI with regard to the required use of sinking groundlines, as mandated in rules issued by NOAA/NMFS (Final Rule 72 FR 57104 – October 2007) in accordance with the Atlantic Large Whale Take Reduction Plan. Pursuant to the terms of the federal grant, and the proposed eligibility criteria set forth below, each approved applicant will receive a voucher based on the number of traps they have been fishing in Area 2, which can be applied toward the purchase of sinking groundlines.

Eligibility Criteria:

- Must apply to the Commercial Fisheries Research Foundation by [date TBD]
- Must be a RI resident
- Must hold a current and valid 2010 RI state license (Multipurpose License, Principal Effort License with Lobster endorsement, or Commercial Fishing License with Lobster endorsement) and/or a 2009 federal lobster permit for Area 2
- Must have a current and valid Area 2 trap allocation
- Must have purchased lobster trap tags for either the 2009 (6/09-5/10) or 2008 (6/08-5/09) fishing years
- Must have actively fished for lobster during the 2009 or 2008 fishing years (i.e., must have had some activity during at least two months during either year)
- Must have actively fished south of the COLREGS lines and outside of all RI coastal pond inlets.
- For applicants who have fished less than 50 traps during the 2009 or 2008 fishing years: must submit an affidavit certifying that they have fished their traps using trawls and groundline.

Determination of Traps Fished –

- DEM will review trap tag orders for the 2009 and 2008 fishing years, and Vessel Trip Reports (VTRs) or state logbooks for the same years and, on the basis thereof, determine the number of traps fished, per applicant. That number will be the highest number of traps fished in either year.
- The number of traps fished may be equal to, or less than, the applicant's Area 2 trap allocation

Added credit –

- Fishermen who responded to the Lobster Trap Fishery Gear Survey conducted by DEM in October/November 2006 and, in response, stated that they were using floating groundline, will receive added credit in the form of a 50% bonus added to the total amount of their vouchers.

Proof of Eligibility –

- DEM records will be used to verify eligibility with regard to all of the above-noted criteria.
- Applicants must submit, with their application, a copy of their 2010 RI state license or 2009 federal lobster permit for Area 2.
- Applicants who have not yet submitted to DEM copies of their VTRs or state logbooks for the 2009 fishing year (to date) must do so, prior to applying for vouchers. The VTRs or logbooks must be submitted directly to DEM; they should not be submitted to the CFR Foundation, with the application.

Supplementary Information

The following information, drawn from the “Groundline/Exchange Conversion Plan – 2009,” describes the notification and application processes, as well as the procedures for determining the amount of individual vouchers, that will be employed following adoption of the eligibility criteria. This supplemental information is related to, but separate from, the proposed eligibility criteria. The information is being offered in association with the proposed eligibility criteria for the purpose of advising interested parties on how the rope voucher program will be administered, by the Commercial Fisheries Research (CFR) Foundation with assistance from DEM, pursuant to the approved plan, and consistent with the eligibility criteria, following their adoption.

Notification:

- DEM/Marine Fisheries will establish, and provide to the CFR Foundation, a list of all potentially qualified applicants, based on DEM records pertaining to license/permit status, Area 2 trap allocations, trap tag orders, and fishing activity.
- CFR Foundation will notify, in writing, all of the potentially qualified applicants on the list, alerting them to the availability of the financial assistance program and the opportunity to apply.
- The notification regarding the assistance program (i.e., this document), along with instructions and forms for applying, will also be made available for downloading on the CFR’s website for the program at www.groundlineexchange.com. A link to the CFR program website will also be posted on the DEM/Marine Fisheries website (www.dem.ri.gov/topics/mftopics.htm).

Applications:

- Completed applications must be submitted to the CFR Foundation by [date TBD]
- Applications received after the application deadline will not be considered
- Application information will include:
 - Applicant’s name
 - RI license number and/or federal permit number
 - Vessel name
 - Mailing address
 - E-mail address
 - Home and cell phone numbers
 - Estimated number of traps fished in Area 2
 - Diameter of groundline applicant intends to purchase using vouchers
 - Identification of rope supplier from whom applicant intends to purchase groundline

Amount of Individual Vouchers:

- The amount established for individual vouchers will be determined by a formula that will identify a rope cost, on a per-trap basis, using an industry average of spacing between traps, the feet-per-pound of the diameter of the line fished by each fisherman, and the number of traps fished by each fisherman.
- Formula: Total amount of voucher = average feet between traps ÷ feet-per-pound X number of traps fished X the allocated funding rate.
- *Average feet* between traps for Area 2 = 100 feet
- *Feet/pound* based on rope diameters:
 - 3/8” line = 25.5 feet/pound
 - 7/16” line = 18.5 feet/pound
 - 1/2” line = 16.7 feet/pound
 - 9/16” line = 12.9 feet/pound
 - 5/8” line = 9.4 feet/pound
 - 3/4” line = 7.9 feet/pound
- *Number of traps fished* = Highest number of traps fished, per fisherman, for either the 2009 or 2008 fishing years, based on trap tag orders and VTRs or state logbooks.
- Extra 10% rotational and/or catastrophic loss tags will not be considered.

- *Allocated funding rate* will be based on the total amount of funding minus administrative fees divided by the total pounds of rope per all approved applications.
- Fishermen who stated that they were using floating line, per the 2006 DEM gear survey results, will receive added credit in the form of a 50% bonus added to the total amount of their vouchers.
- All available funds will be distributed, via the funding formula and the resulting voucher amounts, to all qualified applicants.
- Each voucher is anticipated to be less than 100% of the total cost of groundline for each eligible fisherman.