



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF THE DIRECTOR
235 Promenade Street, Room 425
Providence, Rhode Island 02908

Response to Comments

Offered During July 23, 2015 – August 26, 2015 Public Comment Period
& August 26, 2015 Public Hearing

Re:

Rules and Regulations Governing the Administration of Federal Groundfish Disaster Funds – Phase Two Program for Rhode Island

Summary – The proposed rules implement the Rhode Island component of Phase Two of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds. For this program, the Rhode Island Department of Environmental Management 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, declared by the U.S. Secretary of Commerce in September 2012.

Comments – A total of fifteen comments were submitted. They pertain to eight issues, as set forth below.

Issue #1: The proposed regulations would allow an individual who qualifies as an applicant under section 7.1.B. (For-Hire Permit Holders) and also qualifies as an applicant under section 7.1.C. (For-Hire Captains and Crew) to receive two direct-aid payments and thereby “double-dip.” It was noted that commercial permit holders, who qualified for direct aid under the Bin #1 phase of the Groundfish Disaster Assistance Program, are expressly precluded from qualifying as an applicant under section 7.1.A., Commercial Captains and Crew (as well as under sections 7.1.B. and 7.1.C.), i.e., precluded from “double-dipping.” Those commenting on this issue all recommended a modification to the proposed regulations to preclude any individual or business from qualifying as an applicant under both sections 7.1.B. and 7.1.C.

Response: The Department concurs. The final regulations have been modified to preclude any individual or business from qualifying as an applicant under both sections 7.1.B. and 7.1.C.

Issue #2: The proposed regulations preclude any commercial permit holder, who qualified for direct aid under the Bin #1 phase of the Groundfish Disaster Assistance Program, from also qualifying as an applicant under the Bin #2 phase of the program. Specifically, under subsections 7.1.A.3., 7.1.B.3., and 7.1.C.3. of the proposed Bin #2 regulations, an applicant cannot be “the permit holder or majority shareholder of any 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 ... as of April 30, 2014.” At the public hearing, an individual questioned whether he would be precluded from

applying under the Bin #2 program if he was a *partner* in the corporation that owned one of the 43 permits, but was not a *shareholder* and did not receive any direct-aid under the Bin #1 program.

Response: The Department recognizes that federal groundfish permits may be owned by individuals or corporations, and that corporate structures may vary. The intent of the proposed regulation is to preclude anyone who owned, or had an ownership interest, in one or more of the 43 federally permitted vessels compensated under the Bin #1 program from qualifying as an eligible applicant under the Bin #2 program. That is, the difference, if any, between being a stakeholder or partner is irrelevant; what matters is whether the applicant did or did not have an ownership interest in any of the permitted vessels for which direct-aid was provided under the Bin #1 program. The Department has contacted NOAA Fisheries on the issue, and determined that NOAA Fisheries maintains records on the names of anyone who had a declared ownership interest in any of the federally permitted vessels (as of April 30, 2014). The records do not differentiate between shareholders, partners, or sole proprietors, nor do they reflect percentage ownership or majority vs minority ownership interests. Because these records constitute the only readily available information pertaining to the permit ownership issue, it stands to reason that the NOAA records should be used to assess eligibility under the Bin #2 program. Accordingly, the final regulations have been modified to reflect “ownership or ownership interest” as the standard for non-eligibility, and reliance upon the federal permit records as the means for applying the standard.

Issue #3: Under section 7.1.B., the eligibility criteria for For-Hire Permit Holders includes a provision that the applicant must have undertaken “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.” Those commenting on this issue felt that the standard is too lax.

Response: The standard is the same as that used by the Commonwealth of Massachusetts for their Bin #2 Program, and was proposed with the intent of taking a consistent approach for for-hire permit holders in the two states. The Department has researched the issue and determined that fewer than four permits meet the standard and are thus eligible for aid. Those who felt that the standard is too lax did not offer an alternative proposal. For all of these reasons, the standard remains unchanged in the final regulations.

Issue #4: Under section 7.3.C.2. of the proposed regulations, each eligible applicant, under section 7.1.B., For-Hire Permit Holders, is entitled to a single direct aid payment of \$20,000, regardless of the number of qualifying years. Most commenting on this issue felt that the award amount for for-hire permit holders should be capped at \$20,000 regardless of the number of qualifying permits they held. In contrast, there was also a comment that the payout for this category should be raised to \$32,500 per qualifying permit, consistent with the direct-aid payments issued to commercial permit holders under the Bin #1 phase of the program.

Response: Under the Bin #1 phase of the program, each qualified commercial permit holder was provided with a direct-aid payment of \$32,500. In some cases, individuals or corporations owning more than one qualified permit were provided with more than one direct-aid payment. With a view to fairness and consistency, the Department maintains that for-hire permit holders under the Bin #2 Program should be afforded the same consideration as commercial permit holders under the Bin #1 program – i.e., the direct-aid awards should pertain to each qualified permit, regardless of the number of permits owned by any one entity. This approach is relatively

consistent with the approach taken by the Commonwealth of Massachusetts for their Bin #2 program. Accordingly, the provision remains unchanged in the final regulations.

Issue #5: Under section 7.3.C.3., the of the proposed regulations, the maximum amount of aid for which an applicant applying under section 7.1.C., For-Hire Captains and Crew, may be eligible is capped at \$20,000. A comment was made that either 1) the cap should be raised to \$32,500, equivalent to the maximum award amount for the commercial crew category; or 2) the income threshold necessary to qualify as an eligible applicant under section 7.1.C. should be lowered by 40% -- i.e., from \$20,000 to \$12,000 -- to reflect the lower cap (which is 60% less).

Response: The Department concurs with the comment. Accordingly, the final regulations have been modified to establish a \$32,500 cap for eligible applicants applying under section 7.1.C.

Issue #6: It was noted that the appeals process should be efficient so that eligible applicants can be notified as soon as possible of their potential award amount.

Response: The Department concurs. Per section 7.3.B. of the proposed regulations, the Department will issue written notifications to all applicants regarding their eligibility for aid. That will occur soon after fully completed applications are submitted, and prior to the close of the application period if the applications are submitted early in the application period. The Department is committed to undertaking an expedited appeals process by addressing any/all appeals on a rolling basis, as they are filed. The Department plans to address all appeals within 45 days following the close of the application period, and issue final award letters soon thereafter. These timeframes are the shortest possible, given the due process provisions afforded all applicants.

Issue #7: It was suggested that if the Department is unable to determine, in advance, how many for-hire permit holders might qualify under section 7.1.B., the amount of funding allotted to that category of award recipients should be capped.

Response: Subsequent to the workshop and public hearing, the Department determined the number of for-hire permit holders eligible to apply under section 7.1.B. As anticipated, it is a very small number.

Comment: It was suggested that, after the public comments are evaluated and any adjustments are made to the regulations, DEM should re-notice the revised regulations.

Response: The major concern expressed at the workshop and hearing was the unknown number of for-hire permit holders who might qualify under section 7.1.B., and the possibility that it could be a large number. The Department now knows that the number is very small, thus obviating the major concern. This document provides adequate notification to the public regarding the few changes made to the final regulations. Re-noticing the regulations would significantly delay the processing of direct-aid payments and thus be counter to the Department's goal of processing the payments as quickly as possible. Accordingly, the Department finds that it is unnecessary to re-notice the regulations.