

Residency as a Factor in Renewing a RI Commercial Finfish License

Discussion Paper

*In association with proposed amendments to the
Rules and Regulations Governing the Management of Marine Fisheries*

DEM

September 2008

Issue

Should the holder of a RI resident commercial fishing license (PEL or CFL), with a restricted finfish endorsement, be able to retain/renew their license if they become a resident of another state?

Options – Proposed Regulatory Changes

1. **Status Quo – Maintaining Residency as a Factor** -- DEM would continue to require all current resident license holders to maintain their RI residency status in order to renew their licenses; and DEM would continue to allow the 111 non-residents who currently hold licenses to renew indefinitely, while anticipating that the pool will eventually shrink to zero as the license holders retire. Practically speaking, the only new licenses available to non-residents, including former resident license holders who moved to another state, would be CFLs w/non-restricted finfish endorsements.
2. **Down-grade provision** – As a precursor to option #3, there needs to be a means for allowing MPL holders to convert to a PEL w/restricted finfish. Even if option #3 were not adopted, the incorporation of a down-grade provision in the licensing regulations makes sense, since some MPL holders might wish to transition into single-sector fisheries, such as quahog or lobster or finfish, and pay the lesser license fee. Accordingly, the following proposed regulatory change should be considered as a stand-alone proposal, as well as a precursor to option #3 below:

Section 6.7-4(c): Applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year; alternatively, applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately prior year may obtain a Principal Effort License with Quahaug (resident only), Soft-Shell Clam (resident only), Other Shellfish (resident only), Lobster (resident only), Non-Lobster Crustacean (resident only), Restricted Finfish, and/or Non-Restricted Finfish.

3. **Residency No Longer a Factor (Policy Shift/No Regulatory Changes)** – DEM would allow all holders of PELs and CFLs w/restricted finfish endorsements to renew their licenses, irrespective of any changes in residency; provided that licenses must be renewed annually; higher non-resident fees must be paid by all non-residents; and reciprocity must be provided by the applicant’s home state. No new regulatory provision needed because statute and regulation already provide for the opportunity in sections 6.7-4 and 6.9. The proposal would therefore be enacted via a policy shift.
4. **Residency No Longer a Factor (Codified via New Regulatory Language)** – Option #3 would be implemented via the following new regulatory provision:

Section 6.7-4(j): Non-resident applicants who were Rhode Island residents as of the immediately preceding year and who possessed a valid Multi-Purpose License or Principal Effort License with Restricted Finfish as of the immediately preceding year may obtain a Non-Resident Principal Effort License with a Restricted Finfish endorsement for the immediately following year.

5. **Residency No Longer a Factor, if Actively Fishing** – Option #3 would be implemented via the new regulatory language set forth in option #4 above, along with an added requirement that the applicant must have been actively fishing:

Section 6.7-4(j): Non-resident applicants who were Rhode Island residents as of the immediately preceding year, and who possessed a valid Multi-Purpose License or Principal Effort License with Restricted Finfish as of the immediately preceding year, and who were actively fishing in the restricted finfish fishery, may obtain a Non-Resident Principal Effort License with a Restricted Finfish endorsement for the immediately following year.

6. **Obtain Statutory Clarification** – In lieu of enacting any change to regulation or policy, and in the interest of obtaining clear guidance in statute, a bill on the issue could be submitted during the 2009 session of the RI General Assembly.

Discussion

Background

Under long-standing state law, commercial licenses for shellfish and lobster have only been available to RI residents. Since multi-purpose licenses (MPLs) allow for the harvest of all marine species, including shellfish and lobster, they too have historically been restricted to RI residents only.

Historically, and for legal reasons, commercial licenses for finfish have been available to both residents and non-residents. A 3-year moratorium on all commercial fishing licenses was enacted by the RI General Assembly in 1995. At that time, some 3,200 RI residents held commercial licenses (of all types), and perhaps 150 non-residents

(exact number unknown) held commercial finfish licenses. In 1998, the General Assembly allowed the moratorium on licenses to lapse, which prompted a flood of new licenses to be issued; however, by 2000, the number of non-resident commercial finfish license holders probably remained at about 150. In 2000, the General Assembly reinstated the moratorium, and called for a comprehensive study leading to a new licensing system. The study was conducted and a new system enacted in 2002.

Licenses

New Statute

Among the issues considered during the comprehensive licensing study was the issue of residency, and whether the General Assembly could, and should, limit all licenses, including finfish licenses, to RI residents. After analyzing the legal and policy issues associated with residency restrictions, the General Assembly found:

- With regard to ***existing license holders*** (as of 2002): no one should lose their license as a result of the transition to the new program; and, as a corollary, residents and non-residents had to be treated the same – i.e., the program couldn't discriminate against non-residents who already held licenses – provided that there was reciprocity on the part of the non-resident's home state.
- With regard to ***new license opportunities***: 1) new licenses should be controlled, as necessary, to help prevent overfishing and support the economic viability of the industry; 2) new shellfish, lobster, and multi-purpose licenses, when made available, should continue to be limited to residents only; and 3) new finfish licenses, when made available, should continue to be obtainable by residents and non-residents, but preference should be given to resident applicants.

Attachment 1 details the key provisions in the licensing statute that relate to the issue of residency.

New Regulations

In accordance with the new licensing statute, DEM in 2002 promulgated new licensing regulations, which included the following key provisions:

- Finfish (as well as shellfish and lobster) licenses (PELs and CFLs) are to be subject to endorsements. A restricted finfish endorsement allows the licensee to harvest the major quota species – summer flounder, scup, striped bass, sea bass, tautog, and winter flounder.
- All RI ***residents*** who held a multi-purpose, shellfish, lobster, or finfish license in 2002 are ***eligible to renew*** in 2003 by obtaining a new, equivalent license

under the new program – namely, MPL or PEL w/quahog, lobster, or restricted finfish endorsement – and then renew annually thereafter.

- All *non-residents* who held a finfish license in 2002 are *eligible to renew* in 2003 by obtaining a new, equivalent license under the new program – namely, a PEL w/restricted finfish – and then renew annually thereafter.
- *New licenses* are to be issued in accordance with the following prioritization process:
 - First priority goes to: (i) *resident* CFL holders, who have been actively fishing in the same sector; (ii) *resident* PEL holders who have been actively fishing in any sector; and (iii) *resident* crew members who have been actively participating in the same sector.
 - Second priority goes to: (i) *resident* CFL holders, who have been actively fishing in any sector; and (ii) *resident* crew members who have been actively participating in any sector.
 - Third priority goes to any *resident*.
 - Fourth priority goes to any *non-resident*.
- *New licenses* are to be automatically issued to any *resident* who falls into either of the first two priority categories and who is the family member or crew member of a license holder who has been actively fishing and is retiring.
- *New licenses* are to be automatically issued to any *resident* who purchases the vessel and gear of an existing license holder who has been actively fishing and is retiring.

Licenses Renewed Under New Program

In accordance with the new licensing statute and associated regulations, all of the nearly 2,800 individuals who held licenses in 2002 were grandfathered into the new licensing program in 2003. Approximately 2,675 (96%) were RI residents, and about 1,400 of them qualified for and obtained MPLs or PELs w/restricted finfish endorsements. They have all been eligible to renew annually since then, and a total of 1,098 have done so to date.

Of the nearly 2,800 individuals grandfathered into the new program in 2003, about 125 (4%) were non-residents who qualified for and obtained non-resident PELs w/restricted finfish endorsements (some obtained non-restricted finfish endorsements as well). That group of non-residents has been eligible to renew annually since then. A total of 111 have done so to date. They continue to hold PELs w/restricted finfish endorsements. (42 of the 111 hold non-restricted finfish endorsements as well.) The breakdown of currently licensed non-residents holding PELs w/restricted finfish endorsements is as follows: CT (61), MA (36), NY (7), FL (5), NJ (1), and NH (1).

New Licenses Issued Under New Program

In accordance with the new licensing statute and associated regulations, hundreds of new licenses have been issued since 2003 in several categories:

- 518 new quahog licenses have been issued (121 CFLs w/quahog, 185 student shellfish, and 212 over 65 shellfish)
- 16 new CFLs w/restricted finfish have been issued
- 14 new licenses have been issued to purchasers of vessels and gear (10 MPLs, 3 PELs w/quahog, and 1 PEL w/restricted finfish)
- 50 new CFLs w/lobster were issued in 2003
- Hundreds of new CFLs w/non-restricted finfish (up to 261), non-quahog shellfish (up to 323), and non-lobster crustacean (up to 118) have been issued.

With one exception, all of the new licenses issued since 2003 have been issued to RI residents. This is because a) non-residents are not eligible to obtain shellfish, lobster, or multi-purpose licenses, b) non-residents are not eligible to obtain new licenses based on the purchase of a licensee's vessel and gear, and c) the priority selection process gives preference to residents and, as a result, all of the 16 new CFLs w/restricted finfish have been issued to RI residents. The only exception is new CFLs with non-restricted finfish endorsements. Of the 240 holders of CFLs w/non-restricted finfish, 33 are non-residents. It is anticipated that the trend of all new licenses (other than CFLs w/non-restricted finfish) going to residents will continue well into the future.

Licenses Retired under New Program

There were 1,529 eligible license holders in the restricted finfish fishery in 2003. There are currently 1,220. Given that 27 new licenses have been issued, the net decline – i.e., number of licenses retired – is 282.

Activity Levels

Data on activity levels for eligible license holders in the restricted finfish fisheries is available for 2007. In that year, there were a total of 1,268 eligible licenses holders, 656 of whom (52%) harvested restricted finfish. Of the 656 active fishermen, 76 (12%) were non-residents.

Summary

- There are a total of 2,384 individuals who currently hold RI commercial fishing licenses – 2,240 of them (94%) are RI residents; 144 (6%) are non-residents.
- With regard to the restricted finfish fishery, there are a total of 1,220 license holders – 1,109 of them (91%) are residents; 111 (9%) are non-residents.

- With regard to activity levels in the restricted finfish fishery (based on 2007 data), 656 of eligible license holders (52%) were active. And of those active fishermen, 580 (88%) were RI residents, and 76 (12%) were non-residents.
- With regard to exit from and entry into the restricted finfish fishery over the past five years, 282 individuals (mostly residents) have retired, and 27 new licenses have been issued (all to RI residents).

Landing Permits

Under the new licensing statute and associated regulations, non-residents are treated differently than residents with regard to the issuance of landing permits for restricted finfish. Any resident who holds a federal license or a license issued by another state may obtain a RI landing permit, applicable to any species. Similarly, non-residents holding federal licenses or non-RI state licenses may obtain any type of RI landing permit, *except a Restricted Finfish landing permit*. To renew or obtain a new restricted finfish landing permit, a non-resident must meet the following terms and conditions:

- To renew a restricted finfish landing permit, a non-resident must show evidence of RI landings of more than 1,000 pounds of restricted finfish landings per year in 4 of the 5 years preceding the application. The practical effect of that provision was to grandfather into the new licensing program in 2003 the handful of non-residents who held finfish landing permits prior to 2003, provided that they could demonstrate activity in 4 out of the 5 years preceding 2003. There are currently 8 non-residents who continue to hold restricted finfish landing permits in accordance with this provision.
- To obtain a new restricted finfish landing permit, a non-resident must show that the landing is to be charged to the quota of the state in which the vessel making the landing is registered or documented; or if the state where the vessel making the landing is registered or documented allows RI residents to land against its quota for that species; or if DEM determines that excess harvesting capacity exists in the in the RI quota for that species. To date, no one has met these terms and conditions, and so no new non-resident restricted finfish landing permits have been issued.

In view of the residency preference provisions of the licensing statute, and in accordance with the above-noted provisions, DEM has denied the renewal applications of former RI residents who held restricted finfish or multi-purpose landing licenses before moving out of state.

Proposal:

A proposal has been offered that would allow all RI residents who are licensed to harvest restricted finfish to retain their licenses if they become non-residents. A caveat is that they should only be able to retain their licenses only if they actively fished in the restricted finfish fishery prior to their change in residency.

Under current law and regulation, the narrow class of non-residents who continue to hold PELs w/restricted finfish (currently 111 individuals) may continue to renew their licenses annually, regardless of where they reside. The fee for their license is 2x the amount paid by residents. Since no new non-resident licenses have been issued since 2003, and none is expected to be issued in the foreseeable future, this non-resident pool will eventually shrink to zero.

Under current law and regulation, the residents who hold MPLs (now numbering 939) can only renew their licenses if they remain RI residents, since state law limits MPLs to RI residents only. There have been instances in which DEM has denied the renewal applications of former RI residents who held MPLs before moving out of state.

Under current law and regulation, there is no explicit standard governing renewal opportunities for residents with restricted finfish endorsements on their PELs or CFLs who move out of state. One set of regulatory provisions (sections 6.7-4(a) and (b)) allow applicants who possessed a valid CFL or PEL w/restricted finfish as of the immediately preceding year to obtain the same license and endorsement for the immediately following year, and that opportunity is not limited to residents only. Another set of provisions (under section 6.9) allow CFLs and PELs w/restricted finfish to be issued to any non-resident who can demonstrate eligibility. Such eligibility includes the holding of a license the prior year (as noted above) as well as a determination that the non-resident's home state provides reciprocity to RI residents -- i.e., that the applicant's state of residence does not prohibit commercial licensing opportunities for RI residents in finfish fisheries for which licensing opportunities are available for residents of that state.

Arguably, the above-noted provisions already allow the holder of a CFL or PEL w/restricted finfish to renew their license if they become a resident of another state, provided that they pay the higher non-resident fee. But given the residency preference provisions set forth in the licensing statute, and the importance of preserving state quotas for state residents, the proposed grandfathering of all licensed fishermen, regardless of their residency status, raises an important policy question:

Is it more important to preserve the status of existing finfish license holders, regardless of their residency status, or to maximize new finfish license opportunities for RI residents?

Points to be made *in support* of preserving the status of existing finfish license holders, regardless of residency status:

- Since a small group of non-residents, now numbering 111, was grandfathered into the new program in 2003, and remain eligible to renew regardless of where they reside, the same privilege should be afforded to RI residents, who were also grandfathered into the program in 2003.
- The application of a residency requirement to the renewal of a commercial finfish license may be of questionable legality. (In fact, a case could be made that the application of a residency requirement, or a residency preference, to the issuance or renewal of *any* commercial fishing license is of questionable legality, but that goes beyond the scope of the proposal and this discussion paper.) There is a substantial body of case law, drawing largely upon the Privileges and Immunities Clause of the U.S. Constitution, that prevents discrimination against non-residents who wish to enter another state to obtain any number of benefits, including those associated with commercial fishing (See *Attachment 2*). While RI has enacted state laws that prevent non-residents from accessing the State's shellfish and lobster resources for commercial purposes, and that provide preferential treatment to residents with regard to new commercial finfish licenses, the State's licensing statute explicitly preserves opportunities for non-residents in the finfish fisheries, particularly with regard to license renewals.
- There is nothing in state law or regulation that bars holders of PELs or CFLs with restricted finfish endorsements who were residents of RI from renewing their licenses after becoming residents of another state (as long as they renew annually and pay the applicable non-resident fee; and provided that their new state of residence provides reciprocity).
- Other states, such as Massachusetts, issue finfish licenses without regard to residency status (although non-residents are charged a higher fee than residents).
- Rhode Islanders who have held and actively fished their RI licenses for a number of years have a vested interest in the State's quota, which they helped to secure through their historical efforts.
- Some Rhode Islanders who move to another state and become residents of that state continue to own property in RI and pay RI taxes.
- Some Rhode Islanders lose their residency status based on a short-distance move to a neighboring MA or CT town on or very close to the RI border, and continue to fish out of RI ports.

Points to be made *in opposition*:

- The residency preference provisions scattered throughout the licensing statute reflect a strong interest and intent on the part of the General Assembly to maximize benefits and opportunities in the State's commercial fisheries for RI residents.
- The restricted finfish endorsement qualifies the holder to harvest six species of finfish that are all subject to individual quota restrictions. RI competes with other states in the region for shares of the overall quotas, and the amount of fish allocated to RI becomes, in essence, the State's share of the resource which the State can manage as it sees fit. It follows that the benefits derived from the State's quota should inure primarily, if not exclusively, to the residents of Rhode Island; and that the State should, as a matter of policy and to the extent possible, act in the best interest of its citizens when deciding who should be afforded access to the quota fisheries. A RI resident who moves out of state does so with the understanding that certain privileges associated with being a Rhode Island resident may be lost in the process.
- In contrast to the relatively small pool of non-residents (about 125) who were grandfathered into the restricted finfish fishery on a once-only basis in 2003, the pool of residents who would be grandfathered into the fishery under the current proposal is quite large, and would have a continuous application. Inherent in the proposal is the notion that all current license holders, who are eligible to harvest restricted finfish, should be able to retain their license if they move to another state. That means that all 939 holders of MPLs, as well as the 159 residents who hold PELs w/restricted finfish and the 11 residents who hold CFLs w/restricted finfish (total of 1,109) would all essentially be grandfathered for life (as they are now, if they continue to renew annually), and be able to hold on to their licenses if they move out of state (which, to date, DEM has not allowed). (To make the proposal work, a pathway would need to be created for holders of MPLs, allowing them to first downgrade to PELs and then renew their PELs as non-residents.) It would also mean that all new recipients of licenses, into the future, would be similarly grandfathered.
- It is very difficult to gain entrance into the restricted finfish fishery. Annually, a decision is made on whether to issue any new licenses and, if so, how many. The decision is based primarily on the sizes of the State's quotas for each of the six finfish species, the viability of the existing fishery based on those quotas, and the number of license holders who retire from the fishery each year. Over the past five years, there has been a downward trend in most of the quota categories and increasing restrictions imposed on the fishermen who are licensed to harvest those species. There has been a fair amount of attrition – a total of 282 license holders have retired – but much of that may have involved latent effort. As a result of all of the above factors, over the past five years, only 27 new licenses have been issued in the restricted finfish

fishery. They have all gone to residents, based on the residency preference provisions that govern new license opportunities. The exact number of residents waiting for the opportunity to obtain new licenses and enter the restricted finfish fisheries is not known (there is no waiting list, per se), but there are likely many hundred. If all currently licensed residents become eligible to retain their licenses if they move to another state, the attrition rate in the fishery will be lower over time, and fewer RI residents will be able to gain entrance to the fishery.

- Over the past five years, DEM has denied the requests of a handful of individuals (DEM estimates there may have been six or so) who sought to renew their PELs w/restricted finfish endorsements after moving to another state. That precedent would conflict with the proposed change. If the proposed change were to go forward, the status of those individuals might need to be revisited.
- The statutory and regulatory provisions governing landing permits establish clear distinctions between residents and non-residents in terms of their eligibility to obtain and renew landing permits for restricted finfish. As with restricted finfish licenses, the statute essentially grandfathered in existing non-resident permit holders and then effectively (but not expressly) barred new non-resident permits from being issued. Indeed, no new restricted finfish landing permits have been issued to non-residents since the new licensing program went into effect.
- Given the absence of any explicit statutory provisions relating to the proposal, it might make sense to postpone any regulatory or policy change and address the issue via a bill, submitted during the 2009 session of the General Assembly.

Actively Fishing Standard

Supporters of the proposal have suggested that it should only apply to those who can demonstrate that they actively fished in the finfish fishery prior to moving out of state. As noted earlier, in 2007 there were a total of 1,268 eligible licenses holders in the restricted finfish fishery, 656 of whom (52%) harvested restricted finfish. Of the 656 active fishermen, 76 (12%) were non-residents. It is not clear how many of the active fishermen would have met the actively fishing standard, but it would have been some subset of the 580 residents who harvested restricted finfish. It is this particular class that would be eligible to retain their licenses after a change in residency, if the actively fishing standard were applied.

There are several different considerations that come into play with regard to this aspect of the proposal:

- If state law and regulation already allows residents holding PELs or CFLs with restricted finfish endorsements to renew their licenses after becoming residents of another state (notwithstanding DEM's policy approach to date), then adding an actively fishing standard imposes a new limitation.
- If RI's licensing program cannot discriminate against non-residents with regard to finfish licenses (notwithstanding DEM's policy approach to date), then adding an actively fishing standard creates an uneven playing field and could be legally problematic.
- On the other hand, if the residency preferences in state law do allow for a higher standard to be imposed upon non-residents, then imposing an actively fished standard upon those who move to another state, as a basis for retaining their licenses, would reduce the pool of eligible candidates and thereby lessen the impact on residents awaiting new license opportunities.

Attachment 1

Key Provisions Relating to Residency in RIGL Chapter 20-2.1

§ 20-2.1-1 Findings. – The general assembly finds and declares:

.....

(5) That the rights and interests of *residents of Rhode Island* to engage in fishing including commercial fishing need to be recognized and protected;

§ 20-2.1-2 Purposes. – The purposes of this chapter are, through a system of licensure that is clear, predictable and adaptable to changing conditions, to:

(1) Preserve, enhance, and allow for any necessary regeneration of the fisheries of the state, *for the benefit of the people of the state*, as an ecological asset and as a source of food and recreation;

(2) *Provide Rhode Islanders* who wish to fish commercially the opportunity to do so and end the moratorium on issuance of new commercial fishing licenses so that new licenses may be issued for the year beginning January 1, 2003, and each year thereafter;

(3) *Allow residents* who have fished commercially to sell their vessels and gear in a manner that first, facilitates up-grading license levels among *residents* already in the fishery; that second, provides lateral movement among *residents* who are holders of commercial fishing licenses to other types of fishing; and that third, enables new entrants into new commercial fishing;

(4) *Respect the interests of residents* who fish under licenses issued by the state and wish to continue to fish commercially in a manner that is economically viable: provided, it is specifically not a purpose of this chapter to establish licensing procedures that eliminate the ability to fish commercially *of any resident* as of the date of enactment who validly holds commercial fishing license and who meets the application renewal requirements set forth herein;

§ 20-2.1-5 Resident licenses. –

.....

(iii) *Availability of new or additional licenses.* New principal effort and multi-purpose licenses that increase the total number of licenses in the fishery may be made available by rule consistent with management plan for issuance effective January 1, in any year, based on status of resource and economic condition of fishery. *Priority for new licenses shall be given to Rhode Island residents.*

§ 20-2.1-6 Non-resident licenses. – Subject to the rules of the department, non-residents may apply for the following commercial fishing licenses:

(1) *Non-resident principal effort license.* (i) A non-resident principal effort license shall allow the holder to harvest, land, and sell in a lawful manner any species of finfish, per endorsement(s), at principal harvest and gear levels and as allowed in a management plan adopted by the department.

(ii) Duly Rhode Island-licensed non-residents in a commercial fishery as of December 31 of the immediately preceding year, shall be eligible to obtain a non-resident principal effort license with a single sector endorsement applicable to the fishery for which they were licensed as of December 31 of the immediately preceding year; provided: (A) that the state of residence of the person affords the same privilege in a manner that is not more restrictive to Rhode Island residents; (B) that those persons apply for the non-resident principal effort license in accordance with § 20-2.1-4(g); and (C) that those persons shall also be subject to any other restrictions that were applicable to the license as of December 31 of the immediately preceding year, which other restrictions may be altered or changed consistent with a management plan adopted by the department.

(iii) Persons not duly licensed as of December 31 of the immediately preceding year, shall be eligible to obtain a non-resident principal effort license, per endorsement, when available, in accordance with applicable qualifying criteria and as allowed in a management plan adopted by the department, provided that the state of residence of the person affords the same privilege in a manner that is not more restrictive to Rhode Island residents.

(iv) The annual fee for a non-resident principal effort license shall be four hundred dollars (\$400), plus one hundred dollars (\$100) per endorsement.

(2) *Non-resident commercial fishing license.* (i) A non-resident commercial fishing license shall allow the holder to harvest, land, and sell in a lawful manner any species of finfish, per endorsement(s), at basic harvest and gear levels and as allowed in a management plan adopted by the department.

(ii) Non-residents age eighteen (18) and over shall be eligible to obtain a non-resident commercial fishing license and, in accordance with applicable qualifying criteria, available fishery sector endorsements, provided that the state of residence of the person affords the same privilege in a manner that is not more restrictive to Rhode Island residents.

.....

(4) New licenses. Any resident of a state that accords to Rhode Island residents commercial fishing privileges that include an ability to obtain a new license to fish for finfish species that are subject to restrictions and/or quotas, may on species specific reciprocal basis be eligible to obtain commercial fishing licenses and principal effort licenses by endorsement as provided in this section, subject to availability and with the priority established in § 20-2.1-5(3)(iii).

Attachment 2

Excerpt from July 18, 2000 Letter from Governor Lincoln Almond to The Honorable RI State Senate, Regarding the Governor's Veto of 00-S-2122, Substitute A, As Amended, "An Act Relating to Commercial Fisheries"

Article IV, section 2 of the Constitution of the United States provides as follows: "The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States." The "Privileges and Immunities" clause provides important protections for non-residents who enter a state to obtain any number of benefits, including commercial fishing. *Toomer v. Witsell*, 334 U.S. 385 (1948) *cited with approval by Saenz v. Roe*, 526 U.S. 489 (1999). In *Toomer*, the United States Supreme Court struck down a South Carolina law which required non-residents to pay a commercial fishing license fee one hundred times greater than the license fee for residents. The Court found that the practical effect of such a disparity was the virtual exclusion of non-resident commercial fishermen from South Carolina's fisheries. *Id.* at 396-97. Similarly, the United States Court of Appeals for the First Circuit struck down a Rhode Island law prohibiting non-residents from catching menhaden in Rhode Island's waters. *Edwards v. Leaver*, 102 F. Supp. 698 (D.R.I. 1952). In striking down the disparate treatment upon non-resident fishermen, the First Circuit noted that the Constitution guarantees to the citizens of each state the right to do business in any other state on terms of "substantial equality" with the citizens of that state. *Id.* at 702.