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 GROUNDFISH DISASTER FUNDS – PHASE THREE PROGRAM FOR RHODE ISLAND

EFFECTIVE DATE: _____

ERILD # 8370

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 Three of the Consensus Plan for the Distribution of Federal Northeast Multispecies [Groundfish] Fishery Disaster Funds (hereinafter, the "Phase Three 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 Three Program, the Rhode Island Department of Environmental Management (hereinafter, the "Department") will disburse $705,658 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 titled *Rhode Island State Disaster Assistance Plan – Bin 3*, which was approved by NOAA Fisheries on February 22, 2016 (Grant #NA16NMF4540006).

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

Department: The Rhode Island Department of Environmental Management.

Director: The Director of the Rhode Island Department of Environmental Management.

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

Grant: *Rhode Island State Disaster Assistance Plan – Bin 3*, Grant #NA16NMF454006.

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 codified in the *Rules and Regulations Governing the Administration of Federal Groundfish Disaster Funds – Phase Two Program for Rhode Island,* effective November 15, 2015.

Phase Two Regulations: The Rules and Regulations Governing the Administration of Federal Groundfish Disaster Funds – Phase Two Program for Rhode Island, effective November 15, 2015.

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. For Rhode Island, the Phase Three Program is the program codified in these rules and regulations, pursuant to the above-referenced Grant.

Surviving Spouse: A legally recognized spouse who outlives the other spouse who received a disbursement of funds pursuant to either the Phase One Program or the Phase Two Regulations and is still currently living.

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 Phase Three 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 Three Program. In accordance with the Director's authority, all duties related to the administration of these rules and regulations will be carried out by the Department. All aid awarded by the Department pursuant to the Phase Three Program will 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 AID FOR PERMIT HOLDERS AND CAPTAINS AND CREW

7.1.1 Eligibility Criteria

(A) Aid for Commercial Multi-Species Limited Access Federal Permit Holders

An individual shall be deemed eligible to receive aid under subsection 7.1.1(A) if he or she satisfies one of the following:

1. Is the permit-holder or majority shareholder of any of the forty-three (43) federally permitted commercial vessels, home-ported in Rhode Island, that received aid under the Phase One Program; or

2. Is the Surviving Spouse of a deceased individual who was the sole permit-holder of any of the forty-three (43) federally permitted commercial vessels, home-ported in Rhode Island, that received aid under the Phase One Program.

(B) Aid for Commercial Captains and Crew

An individual shall be deemed eligible to receive aid under subsection 7.1.1(B) if he or she satisfies one of the following:

1. Was one of the sixty-one (61) commercial captains and crew who received aid under subsection 7.1.A of the Phase Two Regulations;

2. Is the Surviving Spouse of a deceased individual who was one of the sixty-one (61) commercial captains and crew who received aid under subsection 7.1.A of the Phase Two Regulations;

3. Meets the eligibility criteria set forth under subsection 7.1.A of the Phase Two Regulations, but did not apply for consideration during the application period established pursuant to the Phase Two Regulations; those criteria being:

   (i) 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 received aid under the Phase One Program, during any of the four fishing years 2010-2013;

   (ii) 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 federally permitted vessels, during any of the four fishing years 2010-2013, via income verification in the form of copies of state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation; and

(iii) Did not have a declared ownership interest in any of the forty-three (43) above-referenced federally permitted vessels as of April 30, 2014, per the permit ownership records on file with NOAA Fisheries.

(C) Limits on eligibility

Individuals who qualify for eligibility under both subsection 7.1.1(A) and 7.1.1(B) will only be entitled to receive one share of aid, under subsection 7.1.1(A).

7.1.2 Application Procedures and Required Documentation

(A) All individuals deemed eligible to receive aid under subsections 7.1.1(A)(1) and 7.1.1(B)(1) will be mailed a pre-approval form within ten (10) days following the effective date of these rules and regulations. The form will be sent, via certified mail, to the mailing address used for the disbursement of disaster aid awards issued under the Phase One Program and the Phase Two Program. Recipients will be required to complete and submit the form back to the Department within thirty (30) days following receipt. Failure to do so will render the individual ineligible to receive aid under this Phase Three Program. The form will serve as the means for determining whether the recipient wishes to receive the additional aid, and whether there has been any change of information pertaining to the individual, such as a change of address or death.

(B) Surviving Spouses of deceased individuals deemed eligible to receive aid under subsections 7.1.1(A)(2) and 7.1.1(B)(2) must submit a death certificate naming the applicant as the Surviving Spouse, in addition to the pre-approval form, within thirty (30) days following receipt of the form. Failure to do so will render the Surviving Spouse ineligible to receive aid under this Phase Three Program.

(C) Consideration for aid pursuant to subsection 7.1.1(B)(3) 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 pertaining to eligibility by the close of the application period, as follows:

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

2. Application Package. In addition to the application form, all applicants must submit all information and documentation necessary to determine eligibility, namely: verification of income, showing minimum earnings of twenty thousand dollars ($20,000) attributable to employment aboard one or more of the forty-three (43) home-ported in Rhode Island that qualified for assistance during the Phase One Program, during any of the four fishing years 2010-2013. Such income verification must be in the form of copies of state or federal tax documents, such as 1099, W2, Schedule C, or other such appropriate documentation.

3. Application Submission. Applicants must submit completed Groundfish Disaster Aid Application forms, along with all other required information and documentation necessary to determine eligibility, to the following address:

   RI Department of Environmental Management - Director's Office
   Groundfish Disaster Aid Program
   235 Promemade St.
   Providence, RI 02908

4. Application Period. Applicants must submit completed Groundfish Disaster Aid Application forms, along with all required information and documentation necessary to determine eligibility, during the application period. The application period will extend for thirty (30) days following the effective date of these rules and regulations. The announcement of the effective date will be provided on the website of the Rhode Island Secretary of State. The effective date, and the associated 30-day application period, will also be announced via the Department's Marine Fisheries listserve, and via the Marine Fisheries website at: http://www.dem.ri.gov/programs/bnatres/fishwild/groundfish.htm.

7.1.3 Evaluation, Award, and Notification

(A) For individuals deemed eligible to receive aid under subsections 7.1.1(A)(1) and 7.1.1(B)(1), the Department will undertake no additional evaluations regarding eligibility. The Department will only consider changes in information, such as a change of address or a death, or a request to decline aid payment, submitted during the thirty (30) day period.

(B) For Surviving Spouses of deceased individuals seeking eligibility to receive aid under subsections 7.1.1(A)(2) and 7.1.1(B)(2), the Department will review the pre-approval form, along with the accompanying death certificate, submitted during the thirty (30) day period. Those who submit proper, verifiable information and documentation during that period will be determined to be eligible for aid awards, and notified accordingly. Surviving

Spouses who fail to submit proper, verifiable information and documentation during that period will be determined to be ineligible for aid awards, and notified accordingly. All notifications will be sent to the spouse's mailing address as provided on the pre-approval form submitted by the spouse.

(C) For individuals seeking eligibility under subsection 7.1.1(B)(3) and, the Department will review all completed applications submitted during the application period. Applications submitted, or postmarked, after the application period will not be reviewed and will be deemed ineligible. Those who submit completed applications with all necessary information and documentation during the thirty (30) day application period will be determined to be eligible for aid awards, and notified accordingly. Those who fail to submit completed applications with all necessary information and documentation during that period will be determined to be ineligible for aid awards, and notified accordingly. All notifications will be sent to the applicant's mailing address as provided on the applicant's application form.

7.1.4. Determination of Awards

(A) Commercial Multi-Species Limited Access Federal Permit Holders

All individuals deemed eligible to receive aid under subsection 7.1.1(A) shall be awarded one disaster aid payment, in the form of a *permit holder share*, for each eligible federal permit. The amount per share will be calculated via the process set forth below in subsection 7.1.5(B).

(B) Commercial Captains and Crew

All individuals deemed eligible to receive aid under subsection 7.1.1(B) shall be awarded one disaster aid payment, in the form of a single *captain-and-crew share*. The amount per share will be calculated via the process set forth below in subsection 7.1.5(B).

7.1.5 Allocation of Funding Among Categories; Calculation of Per-Share Amounts

(A) The Department will allocate the total amount of federal funding available for this Phase Three Program ($705,658) as follows:

A total of $705,658 will be disbursed in the form of disaster aid payments to eligible Commercial Multi-Species Limited Access Federal Permit Holders, or if deceased to their eligible Surviving Spouses, and eligible Commercial Captains and Crew, or if deceased to their eligible Surviving Spouses, who qualify for aid pursuant to the eligibility standards and application process set forth herein. The amount of the disaster aid payments will be calculated via the process set forth below in subsection 7.1.5(B).

(B) The *permit holder share*, and *captain-and-crew share*, will be calculated as follows:

First, the Department will allocate sixty percent (60%) of the total amount available for disaster aid payments to commercial permit holders, resulting in $423,395 being available for that purpose. The Department will allocate the remaining forty percent (40%) of the total amount available for disaster aid payments to commercial captains and crew, resulting in $282,263 being available for that purpose.

Second, the Department will divide the total amount allocated to commercial permit holders by the total number of eligible permit holders, resulting in the *permit holder share*. Since there are 43 pre-approved permit holders, the permit holder share will be $9,846, unless one or more of the permit holders is deceased, without a Surviving Spouse, or declines aid, in which case the per-share amount will be higher.

Third, the Department will divide the total amount allocated to commercial captains and crew by the total number of eligible captains and crew, resulting in the *captain-and-crew share*. There are 61 individuals pre-approved as captains and crew; there are an unknown number of additional individuals who could become eligible pursuant to the application process set forth in these rules and regulations. The final amount of the captain-and-crew share will therefore not be known until the close of the application period, the review of all applications submitted during the application period, the resolution of any appeals filed pursuant to section 7.2 herein, the determination as to whether one or more qualifying individuals is deceased without a Surviving Spouse, and the determination as to whether one or more qualifying individuals chooses to decline aid.

7.1.6 Letters of Award

Letters of notification specifying final award amounts will be sent to all final award recipients following final resolution of any appeals filed pursuant to section 7.2 herein.

7.1.7 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 the Phase Three Program and the requirements of the Grant.

7.1.8 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 aid payments. Pursuant to R.I. Gen. Law § 44-1-11.1, the Division of Taxation is obligated to off-set the amount of the 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 aid payment.

7.2 APPEALS PROCEDURE

(A) Any applicant who submits a Groundfish Disaster Aid Application during the application period pursuant to subsection 7.1.1(B)(3), or any spouse of a deceased individual who seeks eligibility during the 30-day period following notification pursuant to subsections 7.1.1(A)(2) or 7.1.1(B)(2), 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 subsection 7.1.3(B) and 7.1.3(C).

(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 set forth herein.

(C) There will be no opportunity to appeal a determination of ineligibility if the individual appealed under the Phase Two Program, and upon review, was deemed ineligible pursuant to the eligibility criteria set forth in subsection 7.1.A of the Phase Two Regulations, repeated herein at subsection 7.1.1(B)(3).

(D) Appeals shall be filed at the address provided below:

RIDEM Office of Legal Services
Groundfish Disaster Aid Program
235 Promenade St.
Providence, RI 02908

(E) Appeals shall include a cover letter setting forth the reason(s) the application should have been deemed eligible and any additional or supporting information that the appealing individual thinks may be helpful to their appeal.

(F) 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 regulations, and render final agency decisions based thereon.

(G) The Director shall provide all applicants/appellants with written notification of her/his final agency decision.

7.3 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.

8. EFFECTIVE DATE

The foregoing "Rules and Regulations Governing the Administration of Federal Groundfish Disaster Assistance Funds – Phase Three 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 _____, 2016, 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: May 25, 2016

Hearing held on: June 27, 2016

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

Effective Date: _____

ERLID Number: 8370