

Webinar

Direct Sales: Moving Forward

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October 13, 2020

Introduction

Fred Mattera (Commercial Fisheries Center of Rhode Island, CFCRI) introduces the webinar hosted in partnership with CFCRI's Fish Forward Initiative, Eating with the Ecosystem and Rhode Island Small Business Development Center (SBDC) and co hosted by Rhode Island Department of Environmental Management (RI DEM), Rhode Island Department of Health (RIDOH) and Rhode Island Sea Grant (RISG).

In March, the CFCRI worked alongside the RI DEM to consider adopting the direct sales program which would allow the small in-shore trawlers, gill netters and fish potters an opportunity to pivot their markets to direct sales for fin fish and to increase revenue. The direct sales program was prompted by the pandemic and initiated by RI DEM as an experimental plan in which the direct sales fees were waived. One project, supported by RISG's Dennis Nixon and Azure Cygler, was the FishLine® app which aimed to connect the industry with the consumer. Kate Masury and Mitch Hatzipetro acted as navigators in the process within Newport, Point Judith, Westerly and up the Narragansett Bay to help fishermen set up and gain access to this app via their mobile devices.

Despite the growing pains that have been associated with the direct sales program, including dealing with locations and the 24-hour time restraint, Mattera states that he has "no doubt that we are going to come to positive results in the end". Throughout this process, RI DEM and RIDOH also contacted colleagues in neighboring states to explore the various options presented by Massachusetts, Connecticut and New York.

Presently, the direct sales is in the public comment period which will end on October 25th, 2020. He encouraged comments to be submitted directly to RI DEM or to CFCRI in which his team will provide assistance. Mattera refers to this as "a golden opportunity and it would be a shame not to take advantage of it".

Info for public comment: <https://rules.sos.ri.gov/promulgations/part/250-90-00-2>

https://risos-apa-production-public.s3.amazonaws.com/DEM/REG_11188_20200925104417.pdf [risos-apa-production-public.s3.amazonaws.com]

Setting the Stage from the RI DEM Perspective

Bob Ballou (RI DEM) hosted the next segment of the webinar in which he noted Rhode Island's team of partners who share the common interest in and commitment to supporting the needs and interests of the RI commercial fishing and seafood industry. He begins by stating the overarching principle that seafood sales involve the intersection of two distinct regulatory programs— resource management and protection and food safety. To address these regulatory segments, RI DEM and RIDOH are working closely with the overarching goal to promote and support RI seafood by supporting the interests of the RI seafood industry, consumers and all of those involved in the RI seafood supply chain. Across these segments, the interests lie in access to markets, the ability to sell directly to consumers and obtaining the best value for products. Ballou notes that the thread that runs through all of these segments is food safety and that there are essentially five key pathways that need to be identified to sell RI seafood to consumers with each having their own set of associated issues and sub-pathways. These are stated as 1) harvesters sell directly to consumers and retailers from the boat, 2) harvesters sell to licensed peddlers, 3) harvesters sell to licensed processors/dealers, 4) harvesters become licensed processors/dealers and sell to themselves and 5) harvesters form licensed co-ops. The focus of the webinar is the first pathway in which harvesters sell directly to consumers and retailers from the boat.

Until this past spring, direct sales were “a twinkle in our eyes”— it was an issue that has held long interest; but, one that proved very challenging to address due to various food safety issues seemed to limit if not preclude direct sale opportunities. Ballou says that he is happy to report that they have found a way to clear a path forward via their new program. This Direct Sale Dealer License enables harvesters to sell directly to consumers and retailers from the boat. Ballou discloses the four components of the program with the first being the status. The Direct Sale Dealer License was enacted by RI DEM Director Coit in April 2020 as an emergency response to COVID-19 and has been authorized to extend through the calendar year to December 31st, 2020 and is currently being considered for full adoption through a regulatory process administered by RI DEM. As indicated by Mattera, the public comment period is in process. There was a hearing held the week prior in which no comments were made. On November 2nd, the Rhode Island Marine Fisheries Council will meet to consider the record, including all of the comments, and make a recommendation to Director Coit after which she will make a final decision. Ballou notes that this webinar is a complement to the regulatory process. It is not a part of the regulatory process.

The license allows certain species of finfish and live lobsters and crabs to be sold directly to consumers and to licensed retailers from the boat. Fin fish must be whole or headed and/or gutted. Prohibited species include all histamine producers and striped bass. The license also allows live lobsters and crabs to not only be sold off of the boat; but, to also be transported and sold directly to both consumer and licensed retailers.

The license has been in effect since April 2020 with currently 77 licenses having been issued and 21 of those active which have drummed up 42,000 pounds of landings valued at approximately \$143k consisting of species: lobsters, crabs, scup, black sea bass, fluke and tautog. The key issues associated with the existing and proposed license are as follows— 1) products sold directly must have been harvested on the same day as the sale and 2) sales of shellfish (including shucked scallops) are prohibited. The key issues associated with only the proposed license are as follows— 1) the implementation of an annual license fee of \$200 to be of equivalent value as a dealer's license, 2) to allow for live whelk to be sold directly and 3)

applicant must secure permission from both the property owner and municipality at the location(s) where direct sales will be conducted and any change in location requires a new application with a reprint fee of \$10. Ballou says that he is aware the efforts to date have not hit the nail on the head for everyone who is interested in being involved in this program; but, notes that we are forging ahead to develop the best tool box possible with the tools that are currently available and welcomes input through this process and the regulatory process that are aimed at improving the program.

From the Perspective of RIDOH

Cathy White (RIDOH & Center for Food Protection) outlines the mission of RIDOH and the CFP as a goal to protect and promote public health and prevent disease by assuring the safety and quality of the food supply. She illustrates that RIDOH is required to play a role in this program because fish are eaten by folks and so that qualifies as the food supply. Further, specific regulations, both in the RI food code and federal regulation, address fish and fishery products. The 2019 Rhode Island General Laws, Title 21 (Food and Drugs Chapter 21-27 and Sanitation in Food Establishments Section 21-27-2) mandates that RI food businesses comply with the outlined provisions in order to conduct their business.

The RI Food Code 216-RICR-50-10-1 is a regulation used to regulate anyone who is selling food to the end user or the consumer. Regulation 216-RICR-50-10-4 adopts the federal Seafood HACCP regulation (21CFR 123.3(k)(1) which is the regulation used when dealing with wholesalers or anyone who is selling to restaurant markets or any other retailers. Within the Seafood HACCP regulation, there is a regulation which is where the direct sales model stems from. It states in definition that processing, with respect to fish and fishery products, refers to everything from handling, storing, heading, shucking, freezing, filleting, manufacturing, holding, etc. However, the exemption essentially says that the regulation does not apply to harvesters specifically those who harvest fish and bring them in to sell directly either at retail or wholesale.

So, which activities of a harvest vessel are exempt from the regulation, under the definition of processing in 21 CFR 123.3(k), and which are not? The FDA answers that specific examples of activities of fishing vessels that are exempt are: a fishing vessel that simply catches the fish or that catches, heads, eviscerates, or freezes the fish onboard the vessel, and then delivers the product to market, whether retail or wholesale. Within that regulation, with the exemption, there comes the ability to start the direct sales program. White notes that this is made possible by the fact that RI has a localized central government which makes it possible to work within different agencies, industry and academia to help the industry while protecting public health. She addresses the aforementioned same day issue noting that it is a state regulation adopted by the FDA. She also addresses the issue of the sale of scallops and other shellfish noting that shellfish are regulated under an entirely different regulation and they are considered to be a very high risk product. Due to the processing that happens at sea (shucking and eviscerating) the health department believes that they are on the same level of risk as fin fish. Lastly, she addresses the issue of those fish that are prohibited under the direct sales license such as histamine-producing fish noting that these are also on another level of hazard.

White also reminds the audience that direct sales is only one of the ways that the industry can resume and continue sales reiterating the options of farmer's co-ops, selling to dealers, becoming a dealer and farmer's markets. White explains that farmer's markets may present an opportunity for fishermen to sell that is not quite as restricted as others. She suggests that fishers sell to peddlers, who are retailers with a license from RIDOH, who are then permitted to

transport the fish to the farmer's market to sell. She goes on to say that a fisherman with a peddler's license could sell their catch to their own peddler entity and then bring that product to market. The key here being that the product would need to be sold from one business to another (fisher to peddler) which could be owned by the same person.

Q&A

Michael Marchetti cycled back to refocus on the scallop issue pointing out that shell stocking is a federally allowable fishery that has been done for a very long time resulting in the bringing in of live product straight to a dealer whereas processing is done at sea to bring in a meat-only product. Would getting our boat's HACCP certified make us able to do what the fishers are doing? Cathy responds that the issue with scallops is that, though they are exempt from the NSS P-model ordinance due to the at-sea processing, they are specifically mentioned in the federal regulation requiring that they are sold to a HACCP certified dealer with a land-based facility that is inspected and licensed by RIDOH. She explains that after years of looking for a way to permit direct sales, COVID-19 finally necessitated the allowance for finfish to be **exempt** because they are so low risk.

Dawn McAlister asked for clarification about whether or not fishermen could sell whole fish only as peddlers at farmer's markets. Cathy responds that pre-landing headed and/or eviscerated product is permitted for peddling at the markets. However, filets are not allowed

Briana James asked for a breakdown of the aforementioned 42,000 pounds of landings valued at approximately \$143k in direct sales to which Ballou provided the following metrics— 28k lbs lobster and crabs, 6k lbs scup, 2k lbs black sea bass, 1500 lbs fluke and 800 lbs tautog. Note: the dockside sale endorsement for the direct sale of lobster and crab off boat but not for transport. Bob "I have a feeling that a large percentage of this number is attributed to this endorsement"

Direct Sale Opportunities in Neighboring States

Ballou presented RIDEM and RIDOH's understanding of what neighboring states allow in terms of direct sales. He notes that gathering this information was not as easy a task as thought out to be as the programs are continuing evolving. Findings indicate that the practices of neighboring states are generally similar to that of RI; but are nuanced to adhere to specific state laws.

By and large, the programs are similar certainly in regards to wholesale and retail too. Massachusetts is the only state with a parallel licensing program called the "retail boat seafood dealer permit" which allows for the sale of whole raw fish with no heading or eviscerating. They also prohibit the sale of histamine-producing species and are currently considering a regulatory or policy initiative similar to what is being done in RI that would clarify the restrictions and issues associated with the permit. They do have a temporary pilot-style letter of authorization program that allows sea scallop harvesters to sell shucked meats directly to consumers. Connecticut allows direct sales with very little specificity associated with their program so determining what is allowed is difficult. New York has an express law written into their state law that allows licensed commercial harvesters to sell fin fish and crustaceans directly to the final consumer but not to licensed retailers, markets and restaurants. This is one instance where RI is more liberal in allowance than NY. Fin fish must also be sold whole and sea scallops cannot be sold directly to the consumer unless the harvester holds a dealers license.

Ballou concludes that all of the states are “growing in the same direction” and essentially trying to do the same thing. The essence of each state’s programs seem to be about the same; and, our neighbors are looking to RI for guidance and leadership on the issue.

Fish Forward

Fish forward is a new initiative, run through CFCRI in partnership with the RI Small Business Development Center, established to provide free and confidential one-on-one business support to fishermen and seafood businesses to help the community recover and thrive in the long term. Services offered include business planning, accounting & bookkeeping and a legal clinic in which team members can sit down with fishermen for free and confidential sessions to figure out what will work, what is legal and other potential avenues to explore. This is funded by the CARES Act money. Learn more about the project here: <https://www.cfcri.org/fish-forward.html>

Dawn McAlister (Fish Forward Direct Sales and Marketing Consultant) introduced herself as having been in industry since 2013 with experience working on a lobster boat, dragger and oyster farm. Working on the lobster boat, she learned about all of the regulatory hurdles associated with selling product at a farmer’s market. She took the HACCP course at URI and developed the HACCP and operational plan necessary to sell oysters directly to restaurants. Through these experiences, she has learned that direct sales adds a whole new division of business management to already busy fishermen workloads. As such, her work through Fish Forward is dedicated to helping fishermen navigate these regulations and operate successfully.

Q&A

1. Dan Torre: Any guidance for selling oysters directly?

Cathy: Oysters are among the shellfish regulated under NSS P model ordinance which requires a whole other level of regulation. The bottom line is that shellfish cannot be sold without a HACCP-certified dealer. Over the past 20 years, RIDOH has worked with about 50 aquaculturists who have become licensed dealers by using their lease as the inspected location. If an oyster farmer wants to get licensed as a dealer, they would again have to sell to themselves similar to fishermen selling to themselves as a peddler. Because they are regulated under the model ordinance, they have to sell to a retailer. This makes it a bit more difficult; but, some folks have developed partnerships with restaurants who sell to retailers as peddlers. There are complex ways but they are not particularly easy.

[Marketing Your Shellfish: A Resource for Shellfish Harvesters and Growers in Rhode Island](#)

2. Fred: What is the difference between coming in and not unloading and holding fish until the next day to take out and sell & holding fish on my boat because I didn’t get the opportunity to sell all of this fish that day?

Cathy: That’s a reasonable question and again goes back to the federal regulations that explicitly say that you cannot hold product and still get the exemption. For what we’re talking about, direct sales is centered around the exemption and it’s not in play if you hold the product.

Fred: So, is this something that we can address in the general assembly?

Cathy: I can't say that I don't see the rationale. Two points— 1) Everything is verifiable. You have to prove what you're doing. 2) It's a federal regulation. The only recommendation I can make is to speak to your rep or senator. Congress enacts these wholesale food rules then the FDA comes up with the way to execute them.

Lori Pivarnik: The big difference is the responsibility for safety. The FDA has shifted the burden of food safety to the land side.

3. John Kourtesis: The bottom line is that the fish need to be harvested and sold. It's a public resource that consumers are entitled to have access to.

Fred: We will try to find the answers to make this lucrative and generate revenue.

4. Michael Marchetti: There's a double standard going on in that boats are being disadvantaged by trip boats. I would like to see a solution not "this is the way that it is" we need a solution.
5. Briana James: Is there any input on whether or not the dealers next season are going to be closing at 3 o'clock again?

Fred: One problem is that there is a direct sales fee of \$200. I will ask for it to be reduced to \$50. I believe next year may be a true year of a pilot program for the Direct Sales License.