

2-2019

# Comparative Analysis of State Regulation of Direct-to-Market Sales of Finfish

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## Recommended Citation

Marine Affairs Institute, Roger Williams University School of Law and Philopena, James Jr., "Comparative Analysis of State Regulation of Direct-to-Market Sales of Finfish" (2019). *Sea Grant Law Fellow Publications*. 88.

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# Comparative Analysis of State Regulation of Direct-to-Market Sales of Finfish

Rhode Island Sea Grant Law Fellow Program  
February 2019

Rhode Island commercial fishers are interested in selling their finfish products directly to consumers. “Fresh off the boat” sales shorten supply chains and allow fishers to capture a greater percentage of the value of their catch, while consumers can obtain local, high-quality product and can develop closer relationships with their community. While there are benefits to direct sales of finfish, this activity can raise public health and fishery management considerations. Finfish sales are subject to permitting requirements in order to safeguard public health, ensure compliance with harvest restrictions, and achieve other public policy goals.

This study examines how three states—Rhode Island, Massachusetts, and Alaska—govern direct sales from fishermen to consumers and restaurants. This study highlights how different states have approached the issue of direct sales and identifies options that Rhode Island lawmakers and regulators can consider if policy change on this issue is desired. This study first introduces the permitting requirements for finfish licensing in each state before turning to a comparison of how they apply in specific contexts relevant to potential sales in Rhode Island.

It concludes that Massachusetts and Alaska differ from each other and from Rhode Island in their approaches to direct marketing of finfish. Unlike Rhode Island, both Massachusetts and Alaska have established programs under which fishers can sell whole fish to the public at the dock without a license from the state food safety agency. Further, Alaska allows restaurants and grocers to obtain a variance allowing them to purchase these whole fish at the dock in limited quantities. Finally, Alaska has established a program under which fishers can engage in limited fish processing onboard their vessels, so that they can sell fillets or other similar products directly at the dock. Consideration of the structure and function of these programs may aid Rhode Island in evaluating what, if any, changes may be warranted to its direct marketing programs.

This work builds on *Selling Fish to Restaurants and the Public: A Fisher’s Guide*, which sets out in detail the current permitting structure and practice currently governing direct sales of finfish in Rhode

*This guide is a product of the Marine Affairs Institute at Roger Williams University School of Law and the Rhode Island Sea Grant Legal Program. James Philopena, Jr., Rhode Island Sea Grant Law Fellow, provided research and drafting under the guidance of Read Porter, Senior Staff Attorney. All errors and omissions are the responsibility of the Marine Affairs Institute. This document is solely for informational and educational purposes and does not constitute legal advice.*



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Island.<sup>1</sup> Readers seeking a more detailed consideration of current law should consult that document. In addition, this study has important limitations: (i) it is limited to sales of finfish by commercial fishers; (ii) it assumes that any fisher seeking to sell their catch directly is appropriately licensed and permitted to land that catch, and (iii) it is not legal advice.

## 1 State Regulations and Licensing Requirements

This section examines the state licensing requirements for commercial fishers wishing to sell their product directly to consumers or food retailers, such as restaurants and markets. Licenses may be required to protect public health, to accurately record the fish that are landed, and to collect revenue. This section focuses on food safety provisions, but briefly addresses other requirements where relevant to provide a complete picture of the suite of permits and licenses that may be required.

This section also notes, but does not address in detail, provisions of federal law adopted or implemented by the states. In particular, federal regulations and guidance from the U.S. Food and Drug Administration (FDA), such as the Hazard Analysis and Critical Control Point (HACCP) regulation for seafood, good manufacturing practices (GMPs), and Food Code, will affect the manner in which certain direct sales can occur. Additional detail on these and other relevant provisions can be found in *Selling Fish to Restaurants and the Public: A Fisher's Guide* and other sources.

### 1.1 Rhode Island

Two agencies have primary authority to regulate sales of finfish in Rhode Island. The Department of Environmental Management (RI DEM) manages fisheries in the state and licenses fish dealers to ensure that landed fish are correctly reported for use in management. The Rhode Island Department of Health (RI DOH) licenses food businesses and ensures that their activities are consistent with food safety standards. Fishers in Rhode Island must obtain licenses from both of these departments in order to legally sell fish to the public.

#### 1.1.1 Fish Dealer License

RI DEM prohibits fishers from selling their catch to anyone other than a licensed fish dealer, and only dealers can buy fish directly from a fisher.<sup>2</sup> Fishers can themselves be licensed as fish dealers, which allows them to sell fish to the public.<sup>3</sup> To obtain a license, fishers must maintain a fixed location within the state where RI DEM can inspect transactional records.<sup>4</sup> All licensed dealers are required to maintain and report transactional data regularly to the state.<sup>5</sup>

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<sup>1</sup> Rhode Island Sea Grant Law Fellow Program, *Selling Fish to Restaurants and the Public: A Fisher's Guide* (2018).

<sup>2</sup> 20 R.I. GEN. LAWS § 20-4-1.1(a),(b).

<sup>3</sup> 250 R.I. CODE R. 90-00-2.7.11(B).

<sup>4</sup> 250 R.I. CODE R. 90-00-2.7.11(A)(4).

<sup>5</sup> 250 R.I. CODE R. 90-00-7.7.

### 1.1.2 Food Processor Wholesale License

Fishers must obtain one or more types of food business license from RI DOH to sell fish to the public.<sup>6</sup> RI DOH offers several different food business licenses based on the nature of the operation being undertaken.<sup>7</sup> All fishers seeking to sell to individuals or retailers must obtain a Food Processor Wholesale License.<sup>8</sup> This license is needed because fish sold by food establishments must be obtained from an approved source, which in Rhode Island is interpreted to mean a licensed wholesale food processor.<sup>9</sup> Wholesale food processors cannot receive a license without maintaining a facility meeting certain criteria,<sup>10</sup> and they must comply with the federal HACCP regulations.<sup>11</sup> These requirements cannot be met on board current Rhode Island fishing vessels, so a land-based processing facility is required in practice to obtain this license.

A fisher with a Food Processor Wholesale License can sell to consumers from the processing facility and to restaurants. However, fishers also need a Retail Food Peddler License from RI DOH in order to sell the fish at remote locations other than the processing facility, such as dockside or at a farmers' market.<sup>12</sup> This license does not require compliance with the HACCP rule or a facility (beyond that already required to obtain the Food Processor Wholesale license), but does require that RI DOH review the operational plan to minimize public health risks. Access to a commercial kitchen may be required, and retail peddlers are limited to sales "directly to the consumer."<sup>13</sup> Accordingly, this license does not permit the sale of finfish to restaurants or other food businesses.

## 1.2 Massachusetts

Finfish sales in Massachusetts are regulated by the Massachusetts Department of Public Health (MA DPH) and the Division of Marine Fisheries (MA DMF) within the Executive Office of Energy and Environmental Affairs. MA DMF manages fisheries and maintains landings records, while MA DPH protects food safety. To sell fish directly, fishers must obtain one of several types of MA DMF dealer permits, which in some instances will not issue without an inspection by MA DPH. An applicant also must become a MA DMF-authorized Primary Buyer in order to obtain a dealer permit.

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<sup>6</sup> 21 R.I. GEN. LAWS § 21-27-10(a). The state defines a "food business" as "any establishment or place, whether fixed or mobile, where food or ice is held, processed, manufactured, packaged, prepared, displayed, served, transported or sold." 21 R.I. GEN. LAWS § 21-27-1(8).

<sup>7</sup> See generally 21 R.I. GEN. LAWS § 21-27-10(e).

<sup>8</sup> 216 R.I. CODE R. 50-10-4.2(75).

<sup>9</sup> FDA, FOOD CODE §§ 3-201.11, 3-201.14 (2013), *incorporated by reference* 216 R.I. CODE R. 50-10-1.2. See also RIDOH, APPROVED SOURCE (May 2017), <http://health.ri.gov/publications/guidance/FoodProtectionApprovedSource.pdf> ("Food must be approved. That means it must come from a source that meets the law, such as a licensed facility").

<sup>10</sup> 21 C.F.R. §§ 110.20, 117.20, RIDOH, APPLICATION AND INSTRUCTIONS FOR FOOD BUSINESS 2 (Oct. 5, 2018) (noting requirement to submit facility lease with application).

<sup>11</sup> 21 C.F.R. § 123.6(a).

<sup>12</sup> 21 C.F.R. § 123.3(k)(2)(iii).

<sup>13</sup> 216 R.I. CODE R. § 50-10-4.2(63).

### 1.2.1 Primary Buyer Authorization

All seafood dealers, including fishermen selling directly, must become MA DMF “Primary Buyers.”<sup>14</sup> MA DMF will not issue any seafood dealer permit application without an accompanying “Primary Buyer and Quota Managed Species Application Form.”<sup>15</sup> Primary Buyers are required to record all their “primary purchases” and report them to MA DMF.<sup>16</sup> “Primary purchases” are the “first commercial transaction by sale, barter or exchange of any fish...after its harvest.”<sup>17</sup> Primary purchase reporting explicitly applies to “fishermen who have a dealer’s permit and are acting as their own dealer and selling product that they’ve caught, (essentially, they are ‘buying from themselves’, and must report their transactions).”<sup>18</sup> Primary Buyers must maintain a permanent place of business within the state where sales records are stored and made available during business hours to law enforcement officials.<sup>19</sup>

### 1.2.2 Retail Boat Permit

Fishers can sell directly from their boats by obtaining a “Retail Boat” dealer permit.<sup>20</sup> A Retail Boat permit “allows the holder to sell ‘whole’ fish . . . lawfully harvested under the authority of their commercial fisherman’s permit from his/her boat.”<sup>21</sup> The Retail Boat permit does not require any health inspection; rather, permit applicants must sign a “boat waiver” on their application affirming that they will not process their fish or use facilities requiring health inspection.<sup>22</sup> The language of this waiver reads:

I hereby request that the Division of Marine Fisheries issue me a Retail Dealer's Permit for sale from my boat. I certify that my dealer activities will not involve the actual processing or reshipping of finfish or other marine resources, nor will there be any buildings, processing plants or other facilities involved requiring an inspection by any Department of Public Health, local, state or federal. All finfish will be sold as "whole" fish, lobsters and crabs will be sold alive. Only product taken under authority of my commercial fisherman permit may be sold.<sup>23</sup>

### 1.2.3 Wholesale Seafood Dealer Permit

Fishers wishing to sell processed fish must obtain a Wholesale Seafood Dealer permit. Wholesale Seafood Dealers are permitted to “acquire, handle, store, distribute, process, fillet, ship, and sell raw seafood products, whether frozen or unfrozen, whether in bulk or for resale from a single fixed

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<sup>14</sup> 322 MASS. CODE REGS. § 7.07(1).

<sup>15</sup> MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 1 (2019).

<sup>16</sup> 322 MASS. CODE REGS. § 7.07(4)(b),(c).

<sup>17</sup> 322 MASS. CODE REGS. § 7.07(2).

<sup>18</sup> MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 6 (2019).

<sup>19</sup> 322 MASS. CODE REGS. § 7.07.

<sup>20</sup> 322 MASS. CODE REGS. § 7.01(3)(f).

<sup>21</sup> MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 2 (2019).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

location.”<sup>24</sup> Wholesale Seafood Dealers can sell to consumers from the processing facility,<sup>25</sup> but sales from other locations require an additional seafood dealer permit, which may be either a Retail Seafood Dealer permit (if selling from a single location) or a Retail Seafood Truck Dealer permit (if selling from a mobile unit).<sup>26</sup>

Wholesale Seafood Dealers require additional authorization from MA DPH. Inspection and written approval by MA DPH is required prior to issuance of a wholesale seafood dealer permit.<sup>27</sup> In addition, a Food Processor License from MA DPH is required to operate any wholesale food processing or distribution business.<sup>28</sup> Food processors, including wholesale seafood dealers, must comply with FDA GMPs<sup>29</sup> and HACCP regulations,<sup>30</sup> as well as state sanitation laws.<sup>31</sup>

### 1.3 Alaska

Alaska has established several types of licenses allowing state fishers to sell their catch directly to consumers, including retailers, in whole and processed forms.<sup>32</sup> Commercial fishers wishing to sell fish directly are regulated by up to three state agencies:

- The Alaska Department of Fish and Game (ADF&G) manages commercial fisheries, including recording of seafood landings.
- The Alaska Department of Environmental Conservation (ADEC) regulates seafood processing to protect public health.
- The Alaska Department of Revenue (ADOR) collects fees and taxes from fisheries businesses.

ADF&G issues two forms of business licenses that enable fishers to sell their products directly to the public and are relevant to Rhode Island: Catcher/Seller and Catcher/Processor. Both of these categories must register for and report fish tickets for catch that is sold directly.<sup>33</sup>

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<sup>24</sup> 105 MASS. CODE REGS. § 500.020(B)(1)(a).

<sup>25</sup> *Id.* § 500.020(B)(1)(c).

<sup>26</sup> MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 2 (2019). These additional permits will require additional inspections and permits, which are not addressed in detail here. *See* 322 MASS. CODE REGS. § 7.01(3)(e) (inspection by local board of health); 105 MASS. CODE REGS. § 500.020(A) (food establishment permit); MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 2 (2019) (Hawker and Peddlers permit from the Division of Standards), *but see* MASS. GEN. LAWS ch. 101 § 15 (“The provisions of this chapter relating to hawkers and peddlers shall not apply to . . . any person who peddles only fish obtained by his own labor or that of his family”).

<sup>27</sup> 105 MASS. CODE REGS. § 500.020(C)(1)(b).

<sup>28</sup> MASS. GEN. LAWS ch. 94 § 305C.

<sup>29</sup> 21 C.F.R. § 110; *see also* 105 MASS. CODE REGS. § 500.020(E)(1).

<sup>30</sup> 21 C.F.R. § 123; *see also* 105 MASS. CODE REGS. § 500.020(F).

<sup>31</sup> *See, e.g.*, 105 MASS. CODE REGS. § 500.020(G) (written Sanitation Standard Operating Procedure, Corrective Action Plan, and product recall contingency plan); *Id.* § 500.020(I),(L) (sanitation, temperature, packaging).

<sup>32</sup> *See generally* Alaska Sea Grant & Washington Sea Grant, FISHERMAN’S DIRECT MARKETING MANUAL, Terry Johnson, ed. (5th ed. 2018) (hereinafter FISHERMAN’S DIRECT MARKETING MANUAL).

<sup>33</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(o)(3),(4).

Catcher/Processors must also obtain a Fisheries Business License from ADOR, which is issued jointly with the ADF&G license through a common application and process. Catcher/Processors are also subject to ADEC permitting (administered separately), while Catcher/Sellers do not need ADEC permits.

### 1.3.1 Fish Ticket Submission

Any fisher selling fish directly must comply with state reporting requirements. Before starting sales, fishers must file an Intent to Operate application with ADF&G<sup>34</sup> and receive a “processor code” that identifies them as the source of the catch.<sup>35</sup> The fisher is then required to report a “fish ticket” to ADF&G within seven days of landing each harvest that is not sold to another fisheries business.<sup>36</sup> The fish ticket must include the processor code, the weight and species caught and delivered, and other information required by ADF&G.<sup>37</sup>

### 1.3.2 Catcher/Seller License

Fishers who wish to sell their catch whole from their vessels at the dock can do so with a Catcher/Seller permit from ADF&G. Catcher/Sellers are limited to selling their own legal catch in whole, unprocessed, and unpackaged form to certain buyers.<sup>38</sup> Catcher/Sellers cannot process or purchase fish under this license.<sup>39</sup> To obtain a Catcher/Seller license, applicants must complete the following certification statement:

I certify that as a catcher-seller I will sell only my own unprocessed and unpackaged catch as described in this application and in 5 AAC 39.130(o)(4) and will comply with the fish ticket reporting requirements in 5 AAC 39.130. If the intent of my operation changes, I will obtain additional permits and licenses as required by the State of Alaska.<sup>40</sup>

Catcher/Sellers do not need an ADEC permit to sell at the dock.<sup>41</sup> However, Catcher/Sellers who wish to transport their finfish products to other locations for sale must obtain a Mobile Seafood Vendor permit from ADEC.<sup>42</sup> Mobile Seafood Vendors must use a permitted facility to wash all raw finfish before sale.<sup>43</sup> A permitted facility can be a seafood processing facility or a commissary with a

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<sup>34</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(a).

<sup>35</sup> *Id.* at § 39.130(c).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(o)(4).

<sup>39</sup> ADF&G, *Catcher/Seller Permits*, <http://www.adfg.alaska.gov/index.cfm?adfg=fishlicense.sellers>.

<sup>40</sup> ADF&G, *Catcher-Seller Permit Application*, at <http://www.adfg.alaska.gov/static/license/fishing/pdfs/1100-539.pdf>.

<sup>41</sup> ALASKA ADMIN. CODE tit. 18 § 34.005(g)(2).

<sup>42</sup> ALASKA ADMIN. CODE tit. 18 §§ 31.020(a), 31.990(16). Alternatively, Alaska issues fish transporter permits, which authorize the holder to transport salmon, herring, and pacific cod for remote sale on behalf of the fisherman. ALASKA STAT. § 16.05.671.

<sup>43</sup> ALASKA ADMIN. CODE tit. 18 § 31.625(a)(2).



food establishment permit from ADEC.<sup>44</sup> Mobile vendors also must have adequate refrigeration or freezing capabilities to properly store and transport finfish.<sup>45</sup>

State law governs who catcher/sellers can *sell* to and who can *buy* their product. Buyers are limited to sales: (i) to the general public; (ii) for bait; (iii) to restaurants, grocery stores, and fish markets; and (iv) by shipment to a licensed, in-state buyer, processor, or exporter.<sup>46</sup> While Catcher/Sellers can sell to food establishments, however, these establishments must obtain a variance from ADEC to buy these fish. The Alaska Food Code requires food establishments (including restaurants, grocers, and markets) to obtain all their food from an “approved source” except in specific circumstances.<sup>47</sup> “Approved sources” of raw seafood are seafood processors permitted by ADEC, which do not include Catcher/Sellers.<sup>48</sup> To authorize these purchases, ADEC has created several exceptions to the “approved source” rule.<sup>49</sup> One such exception allows food service (including restaurants) or market (including grocers and fish markets) establishments to obtain a written variance authorizing them to purchase no more than 500 pounds of whole, unprocessed finfish per week from a commercial fisherman.<sup>50</sup> A variance allows these establishments to purchase from commercial fishers, which they can only butcher, freeze, or cook prior to sale to the end consumer.<sup>51</sup>

### 1.3.3 Catcher/Processor License

Fishers wishing to “change the physical condition of a seafood product” intended for human consumption<sup>52</sup> before selling it to the public can do so by obtaining a Catcher/Processor permit from ADF&G/ADOR<sup>53</sup> and a Seafood Processing Permit from ADEC.<sup>54</sup> Alaska offers three categories of Catcher/Processor permits, including:

- Direct Marketer, which is for vessels less than 65 feet in length;
- Catcher Processor or Floating Processor, which is for vessels more than 65 feet in length; and
- Roe Recovery, which is specifically for recovering roe for human consumption.<sup>55</sup>

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<sup>44</sup> *Id.*; see also ALASKA ADMIN. CODE tit. 18 § 31.020(e)(1).

<sup>45</sup> ALASKA ADMIN. CODE tit. 18 § 31.625(a)(2)(B).

<sup>46</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(o)(4).

<sup>47</sup> ALASKA ADMIN. CODE tit. 18 § 31.200(a),(b).

<sup>48</sup> ALASKA ADMIN. CODE tit. 18 § 31.990(7)(b).

<sup>49</sup> ALASKA ADMIN. CODE tit. 18 § 31.200. Another variance of potential interest to the fishing industry allows service of sport-caught fish from the sportsman who caught it for service only to that person. *Id.*

<sup>50</sup> ALASKA ADMIN. CODE tit. 18 § 31.200(b)(3); *id.* § 31.930 (form of variance); *id.* § 34.005(c) (exemption from permit requirements for processing under variance).

<sup>51</sup> ALASKA ADMIN. CODE tit. 18 § 31.200(b)(3).

approved source).

<sup>52</sup> ALASKA ADMIN. CODE tit. 18 § 34.990 (defining “processing”).

(B).

<sup>53</sup> ALASKA ADMIN. CODE tit. 18 § 31.990(7)(b) (definition of a

<sup>54</sup> ALASKA STAT. § 17.20.065(a) (seafood processing permits).

<sup>55</sup> See FISHERMAN’S DIRECT MARKETING MANUAL, *supra* note 32, at 61.



The Direct Marketer category is most relevant to Rhode Island, which lacks large floating processor vessels.

ADEC has established specific permitting requirements for Direct Marketers that allow limited processing without meeting the full suite of requirements typically applicable to seafood processors.<sup>56</sup> Direct Marketers can process only their own catch onboard their fishing vessel, at a shore-based facility, or under contract with a custom processor.<sup>57</sup> Direct Marketers can be approved for onboard processing with limited equipment—only a wash-down hose and marine sanitation device or portable toilet are required—provided that they have approved sources of water and ice and conduct all processing while on the fishing grounds.<sup>58</sup> This system allows processing aboard vessels that would not otherwise meet the minimum standards for seafood processing.

To ensure food safety on these vessels, Direct Marketers can conduct only limited processing. Regardless of their processing location, these operations are limited to lower-risk activities of butchering, freezing and packaging finfish.<sup>59</sup> As for all seafood processors, Direct Marketers also must conduct a hazard analysis that may be reviewed by ADEC.<sup>60</sup> If the analysis indicates that hazards are not reasonably likely to occur, Direct Marketers must maintain and adhere to a written cleaning and sanitizing schedule.<sup>61</sup> Finally, Direct Marketers must comply with a range of other, generally-applicable standards for seafood processing, such as quality and packaging regulations.<sup>62</sup> By limiting the types of processing and applying modified standards in other areas, ADEC has set boundaries for this program to avoid higher-risk processing activities that may not present acceptable risks to public health.

## 2 Comparison of Finfish Direct Marketing Programs

This section compares the licensing requirements applicable to the sale of finfish in the three states discussed above. It first considers requirements for catch reporting before turning to the sales of whole fish and processed fish, respectively.

### 2.1 Catch Recording

All three states reviewed here require similar forms of catch recording and reporting. These include Fish Dealer licensing in Rhode Island, Primary Buyer authorization in Massachusetts, and filing of fish tickets in Alaska. In each instance, fishers must report all landings not sold to another licensed

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<sup>56</sup> ALASKA ADMIN. CODE tit. 18 §§ 34.500-34.550.

<sup>57</sup> ALASKA STAT. § 43.75.020(c).

<sup>58</sup> ALASKA ADMIN. CODE tit. 18 § 34.510.

<sup>59</sup> ALASKA ADMIN. CODE tit. 18 § 34.500(b),(c) (processing on board vessel); ALASKA ADMIN. CODE tit. 18 § 34.700(b) (shore-based processing).

<sup>60</sup> ALASKA STAT. § 17.20.065; ALASKA ADMIN. CODE tit. 18 § 34.045.

<sup>61</sup> ALASKA ADMIN. CODE tit. 18 § 34.525

<sup>62</sup> ALASKA ADMIN. CODE tit. 18 § 34.500 (listing requirements applicable to direct marketers).

buyer, and all such reports must be made to the state fisheries management agency. Rhode Island's approach is thus consistent with other states with respect to catch reporting.

## 2.2 Sales of Whole Fish

Regulation of the sale of whole, unprocessed fish by commercial fishers to consumers differs substantially by state. Differences include whether the states have established a permit authorizing direct sales to consumers from the dock and whether they allow food establishments to purchase and sell fish bought directly to be sold at retail. The three states are similar, however, in that they do not limit the direct sales of fish species on the basis of their particular health risks.

### 2.2.1 Direct Sale Permit

Massachusetts and Alaska authorize sales of whole, unprocessed fish at the dock without a health permit, whereas Rhode Island does not.<sup>63</sup> The Massachusetts Retail Boat permit allows commercial fishers to sell their own catch to the public from their boat.<sup>64</sup> Similarly, the Alaska Catcher/Seller permit authorizes fishers to sell their own whole, unprocessed, and unpackaged fish at the dock.<sup>65</sup> Neither state requires a health permit or inspection as a condition for authorization of direct sales.<sup>66</sup> Instead, both states use affidavits to limit the allowed activities to lower-risk activities exclusive of processing and limited in location. The limited involvement by MA DPH and ADEC in regulating these activities suggests that state health agencies consider this type of transaction to be an acceptable risk to the public.

Rhode Island's permitting system differs from the other states in that RI DOH authorization in the form of a Food Processor Wholesale License is required for all sales by fishers. This license requires a processing facility, compliance with the HACCP rule, and other requirements that do not apply to fishers operating in other states. Rhode Island thus has established a substantially more stringent licensure regime than other states, including a nearby state where seafood safety risks are likely comparable to those in Rhode Island.

### 2.2.2 Approved Source Requirements

The Retail Boat and Catcher/Seller permits authorize fishers to sell their catch to the public at the dock, but they do not allow retailers such as restaurants or markets to purchase that catch directly for resale. In all three states, approved source requirements mandate that retailers obtain fish from licensed processors to protect public health.<sup>67</sup> Alaska is the lone state to waive this approved source

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<sup>63</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(o)(4); 322 MASS. CODE REGS. § 7.01(3)(f).

<sup>64</sup> 322 MASS. CODE REGS. § 7.01(3)(f).

<sup>65</sup> ALASKA ADMIN. CODE tit. 5 § 39.130(o)(4); ALASKA ADMIN. CODE tit. 18 § 34.005(g)(2).

<sup>66</sup> MA DMF, *Massachusetts Seafood Dealer Permit Application Instructions*, Form DMF-DLR1, at 2 (2019); ALASKA ADMIN. CODE tit. 18 § 34.005(g)(2). Responsibility for issuance of the Retail Boat and catcher/seller permits rests in each case with the state fisheries management agency rather than the seafood safety agency. This organizational structure is unlikely in Rhode Island, where food business permitting is delegated to RI DOH by statute.

<sup>67</sup> Rhode Island and Massachusetts have adopted the FDA Food Code, which requires that "food shall be obtained from sources that comply with the law." 216 R.I. CODE R. 50-10-1.2; 105 MASS. CODE REGS. § 590.003(A); ALASKA ADMIN. CODE tit. 18 § 31.200; *see also* FDA, FOOD CODE § 3-201.11(A) (2013).

requirement for purchases of whole fish by certain retailers from licensed Catcher/Sellers.<sup>68</sup> This approved source variance has several important limitations to limit public health risk:

- the waiver must be granted by ADEC in writing;
- only restaurants, fish markets, and grocers are eligible for a waiver;
- establishments with a waiver can purchase only in limited quantities – up to 500 pounds per week;
- establishments with a waiver can only butcher, freeze, and cook the fish; and
- processing of seafood must remain separate from all other food preparation and processing by time or location.<sup>69</sup>

In contrast to Alaska, neither Rhode Island nor Massachusetts has established a procedure to authorize retail sales of whole fish bought at the dock from the fisher. As a result, fishers cannot access these markets without becoming licensed as food processors.

### 2.2.3 Sale of Higher-Risk Fish

Some species of fish may present a particular public-health hazard, but states do not limit the sale of such species by fishers. For example, “decomposition in scombroid toxin-forming species” such as tuna is a food safety hazard that must be considered when conducting hazard analysis.<sup>70</sup> The seafood HACCP rule requires identification of such hazards and development of measures to avoid harm.<sup>71</sup> However, fishers selling whole fish at the dock without a processor permit are not subject to this rule. This study did not identify any state provisions in Massachusetts or Alaska distinguishing among species that may be sold or purchased directly from fishers under Retail Boat or Catcher/Seller permits. This finding suggests that state health agencies have determined that any heightened risk associated with sales of higher-risk species is acceptable from a public health perspective.

## 2.3 Sales of Processed Fish

The three states considered here all require fishers to obtain some form of processor license in order to sell fillets or other forms of processed fish to any buyer at any location.<sup>72</sup> These licenses are uniformly obtained from the public health regulator and involve HACCP analysis and certain facility requirements. Thus, the states uniformly agree on common elements for seafood processing by fishers.

Despite their similar approaches, the three states differ on whether direct marketing of processed fish warrants unique processing standards and practices. Rhode Island and Massachusetts do not

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<sup>68</sup> ALASKA ADMIN. CODE TIT. 18 § 31.200(b)(3).

<sup>69</sup> *Id.*

<sup>70</sup> 21 C.F.R. § 123.6(C)(1)(vi).

<sup>71</sup> 21 C.F.R. Part 123.

<sup>72</sup> 216 R.I. CODE R. 50-10-4.2(75); MASS. GEN. LAWS CH. 94 § 305C; ALASKA STAT. § 17.20.065; *see also* ALASKA ADMIN. CODE tit. 18 § 34.005.

distinguish fishers as processors from other types of seafood processors, so fishers seeking to directly sell fillets or other processed fish must comply with the full suite of facility design and other requirements. Alaska's Direct Marketer program, however, offers a limited menu of processing options with reduced design and operation requirements. Direct Marketers can conduct limited processing—butchering, freezing, and packaging—with limited processing equipment, including vessels equipped only with a wash-down hose and portable toilet. While these fishers must comply with HACCP rules and other seafood safety and quality requirements, the easing of facility restrictions may enable fishers to sell higher-value product directly without obtaining an onshore facility.

### 3 Conclusion

Rhode Island's governance framework for direct marketing of finfish differs substantially from those used by Massachusetts and Alaska. In general, Rhode Island's current approach maximizes public health protection by ensuring that any finfish offered for sale in any form has involved a wholesale processor, but fishers cannot sell directly at the dock in any form or conduct any form of processing unless they meet the full suite of requirements applicable to any food processor. In contrast, both Massachusetts and Alaska have established regulatory systems that allow lower-risk sales of whole fish to the public at the dock without a license from the public health authority. Alaska goes further, allowing restaurants and markets to purchase limited amounts of whole fish directly from fishers and allowing fishers to engage in limited processing onboard their vessels without meeting the full suite of processing requirements otherwise applicable to food processors. The Massachusetts and Alaska programs thus may present useful comparisons for Rhode Island regulators should they consider whether creation of similar programs is warranted and can be accomplished at an acceptable risk to public health.