



MARYLAND DEPARTMENT OF NATURAL RESOURCES Section 12005 DRAFT Spending Plan CARES Act \$300 Million Recovery Package August 7, 2020

Introduction

Sec. 12005 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorizes the U.S. Secretary of Commerce (Secretary) to provide \$300 million in appropriated funds to assist fishery participants affected by the novel coronavirus (COVID–19). The National Marine Fisheries Service (NOAA Fisheries) used readily available total annual revenue information from the commercial fishing, charter fishing, aquaculture, and processor sectors of coastal states, tribes, and territories to determine funding amounts that will be awarded to Atlantic coastal states. Money for the coastal states will be appropriated to the Atlantic States Marine Fisheries Commission (ASMFC) who will make sub-awards to each state once their state-specific spending plan is approved by the National Oceanic and Atmospheric Administration (NOAA). Pending approval of its spending plan, Maryland is eligible to receive \$4,092,171.

Background

On March 5, 2020, Governor Hogan issued a <u>proclamation</u> that a state of emergency and catastrophic health emergency exists within the entire State of Maryland due to the COVID-19 pandemic. On March 16, 2020, the governor issued an <u>executive order</u> prohibiting large gatherings and ordering restaurants to close to the general public. On March 23, 2020, the governor ordered that all <u>non-essential businesses close</u>, and on March 30, 2020, a <u>stay-at-home order</u> was issued. While these actions were necessary to protect public health in Maryland, the economic impacts have been severe. The closure of restaurants and seafood markets in Maryland and in neighboring states combined with travel restrictions all caused substantial revenue loss for Maryland's commercial seafood harvesters, aquaculture operators, seafood dealers, and for-hire fishing businesses.

Given the stated goals of the President and Congress during the passage of the CARES Act, Maryland has developed this spending plan with the intent of getting relief to those in need as quickly as possible. Maryland recognizes that its total allocation of just over \$4 million underrepresents the total value of Maryland's seafood industries and their losses. To some extent, these losses continue to be incurred, and could be worsened by a relapse in Maryland's pandemic recovery, for those who harvest or deal in oysters, crabs, and finfish or operate a forhire charter fishing business. To that end, this proposed spending plan anticipates that the

impacts of COVID-19 will persist through 2020 by allowing impacted parties to apply until the end of the year without risk of prematurely depleting the funds available.

The Maryland Department of Natural Resources (DNR) estimates that there are approximately 6,600 individuals and business entities (hereafter referred to as a "Potentially Eligible Entity" or "Potentially Eligible Entities") who, as of 2020, hold authorizations issued by the State of Marvland to harvest seafood. Some Potentially Eligible Entities authorized to harvest seafood also hold a seafood dealers license, which authorizes them to sell the catch of other harvesters. Processors, for the most part, would be included in this group. There are approximately 197 Potentially Eligible Entities who hold federal permits to harvest federally-managed species or operate for-hire trips on federally-managed/highly migratory species. There are approximately 11 Potentially Eligible Entities with federal seafood dealer authorizations. There are also approximately 229 Potentially Eligible Entities who hold leased ground for the purposes of aquaculture, some of whom also hold commercial harvest authorizations. Finally, there are Potentially Eligible Entities licensed by the Potomac River Fisheries Commission (PRFC) that are domiciled in Maryland and report harvest to Maryland, some of whom also hold other commercial harvest authorizations. There are many cases where the same Potentially Eligible Entity may have authorizations in two or more of these groups. So the total number of impacted parties is not equal to the sum.

With this aid, Maryland intends to cover entities that are licensed by the state, the Potomac River Fisheries Commission and/or the federal government to harvest product or to buy product directly from a harvester and move it to the next step in the supply chain. The definition of Potentially Eligible Entities specifically excludes the following:

- Subsistence and ceremonial fishing: The State of Maryland has no federally-recognized Native American tribal entities.
- Bait and Tackle: Bait utilized in commercial fishing operations in Maryland is largely sourced from other organizations participating in the commercial fishery that would already be deemed a Potentially Eligible Entity. Retail bait and tackle establishments are eligible for other forms of local, state and federal COVID-19 relief. Therefore, this category is excluded from the spending plan.
- Fishing vessel and fishing gear suppliers: As stated above, Maryland intends to cover
 entities that are licensed by the state, the Potomac River Fisheries Commission and/or
 the federal government to harvest product or to buy product directly from a harvester
 and move it to the next step in the supply chain.
- Fishery Observers: Fishery observers are W-2 employees of various business entities and would be eligible to qualify for enhanced unemployment insurance benefits related to COVID-19 relief. The use of fishery observers is very rare in Maryland. Therefore, this category is excluded from the spending plan.

Eligibility

Maryland will determine the eligibility of Potentially Eligible Entities by DNR cross-referencing state records, including, but not limited to, the licensing system, databases and public records of DNR, PRFC and the Maryland State Department of Assessments and Taxation (SDAT).

This proposed spend plan is designed to cover impacted Potential Eligible Entities who have paid into Maryland's licensing system (or NOAA or the PRFC licensing systems if domiciled¹ in Maryland) for the 2020 license year for commercial harvest, the dealing/processing of seafood, the operation of charter or head boats, and the practice of aquaculture.

Therefore, a Potentially Eligible Entity must be:

- A Maryland and/or NOAA-authorized commercial harvester domiciled in Maryland;
- A commercial harvester domiciled in Maryland who has harvested on a temporarily transferred authorization (does not own a license);
- A dealer/processor domiciled in Maryland that is licensed to sell seafood either by the State of Maryland and/or by the federal government;
- An aquaculture business that is domiciled in Maryland and holds valid aquaculture leases in Maryland;
- An entity domiciled² in Maryland that holds federal for-hire permits;
- An entity domiciled in Maryland that holds federal commercial harvest permits;
- A charter or for-hire entity not domiciled in Maryland but that holds a NOAA or Marylandissued authorization and whose businesses are based solely in Maryland;
- An entity licensed by the PRFC that is domiciled in Maryland and reports harvest to Maryland; and/or
- Maryland residents with Federal operator permits.

To be deemed eligible, Potentially Eligible Entities will be required to submit an affidavit attesting that they are:

- At least 18 years of age (if an individual);
- Active in a fishery in the last three years (detailed below);
- In good standing with the federal and state government;
- Not federally debarred³;

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¹ The definition of domicile or "resident" is set forth in § 10- 101(k) of the Tax-General Article, Annotated Code of Maryland1 and Code of Maryland Regulations (COMAR) 03.04.02.01B(7). Briefly stated, an individual is a resident of Maryland if the individual is domiciled in Maryland on the last day of the taxable year or if the individual maintains a place of abode in Maryland for more than six months of the taxable year and is physically present in the State for 183 days or more during the taxable year. For more information on the definition of domicile and residence please see

http://www.comp.state.md.us/forms/Tax Publications/Administrative Releases/Income and Estate Tax Releases/ar it37.pdf

² For businesses operating under federal permits, domicile may be determined by the homeport of the vessel reflected on federal permit applications: Home Port is the city and state where your vessel is moored. Principal Port is the city and state where the majority of your landings occur.

³ Debarment is: Commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal laws, receiving stolen property, an unfair trade practice; violation of antitrust statutes; willful, or a history of, failure to perform; violation of the Drug-Free Workplace Act; Delinquent Federal Taxes (more than \$3,000); Knowing failure to disclose violation of criminal law. If you are debarred, your name will be published as ineligible in the System for Award Management (SAM), a GSA

- Not in debt to the federal treasury;
- Not in debt to the State of Maryland or DNR (owing any fines or penalties);
- In possession of a valid license that is not suspended or revoked
- Not being made more than whole through receiving this funding, any other forms of COVID-19 pandemic-related aid or relief, and/or traditional revenue as compared to the previous (2015-2019) 5-year average annual revenue earned.
- Not a current employee of DNR;
- Required to disclose whether all or some of the authorizations they hold have been leased to another party for all or part of the 2020 calendar year; and
- Subject to audit including by NOAA, the Office of the Inspector General, or other entities.

This list represents a summary of the criteria for eligibility. Eligibility criteria is discussed in full below. <u>Appendix 1</u> contains a full list of state, PRFC and federal authorizations and permits that could be held by Potentially Eligible Entities. A Potentially Eligible Entity that does not hold one of the listed authorization or permits is not eligible.

The following entities will not be eligible:

- Seafood processors that do not hold commercial fishing/dealing authorizations issued by the State of Maryland and/or by NOAA.
- Entities whose harvest/charter/aquaculture/ dealing activity occurs under the authorization of and in the jurisdiction of another state.

Eligibility Criteria - Harvest and Fees

Maryland law (Md. NATURAL RESOURCES Code Ann. §4-206) requires every entity licensed to catch fish as well as packers and dealers to report their catch to DNR in the manner prescribed by the department. Therefore, Maryland has records of the harvest and dealing activity for every licensed Potential Eligible Entity in our state. In order to apply for relief, Maryland will require some level of activity within a Potential Eligible Entity's respective sector(s) (harvest, charter, aquaculture, dealing) reported to the department in one of the three most recent years: 2017, 2018, and 2019. Harvest/activity reports for the qualifying years must have been submitted to the department prior to the signing of the CARES Act by the President on March 27, 2020. Finally, a Maryland–licensed Potential Eligible Entity must have paid to DNR, all necessary license fees to participate in their respective activity during the September 2019 – September 2020 fishing year prior to March 27, 2020.

Potential Eligible Entities domiciled in Maryland and that report harvest to PRFC may also be eligible for relief if they have a harvest on record in the PRFC system for one of the three most recent years: 2017, 2018, and 2019.

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administered website, and you will be prevented from conducting any business with the federal government, usually up to 3 years in length.

Potential Eligible Entities domiciled in Maryland and reporting harvest to the federal government through the Greater Atlantic Regional Fisheries Office (GARFO) or the Southeast Regional Office (SERO) may also be eligible for relief, if they have harvest on record in the federal system for one of the three most recent years: 2017, 2018, and 2019. Likewise, Potential Eligible Entities domiciled in Maryland that hold federal dealer permits will be eligible, if they show activity during the required years.

Potential Eligible Entities who entered a fishery and paid fees to the department or PRFC, or that have reported harvest to the federal government for the first time in 2020, will be eligible if they have filed a report indicating activity for calendar year 2020 prior to the date of the signing of the CARES Act by the President on March 27, 2020.

Potential Eligible Entities that meet the harvest and fees eligibility criteria are hereinafter referred to as an "Eligible Entity" or "Eligible Entities".

Eligibility Criteria - Revenue Loss

Eligible Entities that qualify for aid based on harvest history and payment of fees will be required to complete an affidavit self-certifying a loss of revenue that is greater than 35% compared to the prior 5-year average (2015-2019). The loss may have occurred over any time period that is 4 consecutive weeks or greater between March 16, 2020 and the time of the application and may not include projected future losses. However, revenue for the remainder of 2020, monetary aid received through this application and through any other COVID-19 assistance programs must not result in a net increase in total annual revenue over the applicant's 5-year annual average (2015-2019). Maryland will be relying on each Eligible Entity's self-certifying loss statement to qualify them for funding. Therefore, Maryland will limit its review of each Eligible Entity's claim to a cursory examination of available harvest records to validate participation in fishing, aquaculture, or seafood dealing/processing activity during the required 3-year period: 2017, 2018 and 2019.

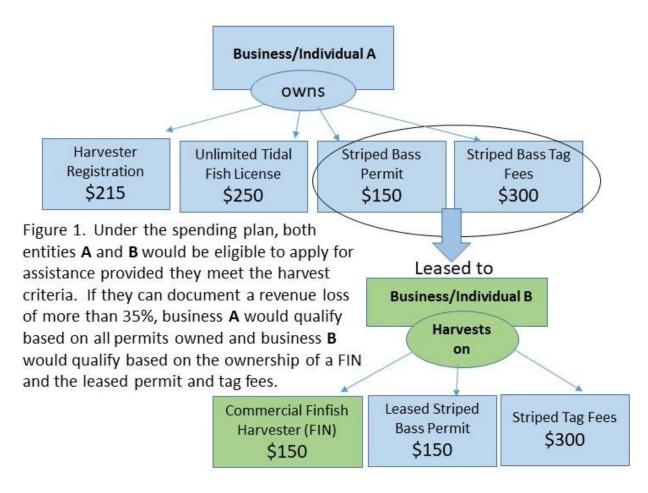
In keeping with the criteria provided by NOAA, the affidavit will also require self-certification acknowledging: The applicant is 18 years or older if an individual person, whether their authorization(s) was/were temporarily transferred during any of the qualifying years, that the applicant is not federally debarred or owes money to the federal treasury, is in good standing with the State of Maryland, that the applicant will not be made more than whole through this funding, other forms of COVID-19 pandemic-related aid, traditional revenue and that they are not a current employee of DNR.

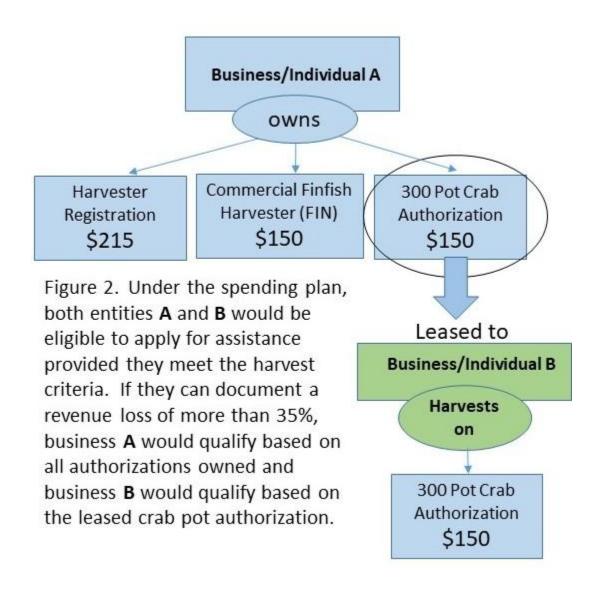
Eligibility Provisions for Leased Authorizations

Maryland law (Md. NATURAL RESOURCES Code Ann. § 4-701) allows for the temporary (annual) transfer of fishing authorizations from one business to another. Therefore, multiple

 $^{^4}$ https://www.fisheries.noaa.gov/feature-story/commerce-secretary-announces-allocation-300-million-cares-act-funding

business models are possible, including where income is derived from leasing authorizations (so called sofa skippers) or harvesting by using an authorization that has been leased on an annual basis. Harvest is recorded under the name of the license owner if the license is leased, not under the actual harvester (lessee). However, we can identify what these lessees harvested through transfer records. Therefore, a single authorization may be associated with two Eligible Entities who qualify for relief: the license owner who leased the license and the harvester who landed the catch. Examples are shown in Figures 1 and 2. The self-certification affidavit will include information on whether all or some of the authorizations held by an individual have been leased or sold to another party for all or part of the 2020 calendar year.





Eligibility Provisions for Potential Eligible Entities Licensed by the PRFC or by NOAA

Potentially Eligible Entities holding commercial harvest authorizations issued by PRFC and/or by NOAA who are residents of Maryland or have domiciled businesses in Maryland will be eligible to apply as long as they meet the harvest and fee criteria described above, although harvest records would reside with and fees would have been paid to PRFC and/or NOAA.

Determining Eligibility

Upon receipt of a completed application and an affidavit, Maryland will use data from existing state, PRFC, and Federal databases to verify eligibility based on harvest and fees before forwarding the application to ASMFC. DNR will not be reviewing personal and/or financial records of applicants. ASMFC will receive weekly transmissions over a secure portal (Ignite) of a database containing the following variables: Payee First and Last name and/or Company

name, Social Security Number and/or Federal Tax Identification Number if Company, Payee street address, Payee phone number, Payee email, and amount to be paid.

Allocation

Maryland intends to work with ASMFC to disperse funds in the form of direct payment to Eligible Entities with speed and transparency, and to maximize the aid to impacted parties by minimizing overhead costs. To that end, an in-depth economic analysis of potential impacts to differing business models will not occur as that would take time and erode available funding through contractual costs that would need to be incurred to complete such an analysis.

Instead, Maryland's allocation proposal begins with reimbursing all fees paid to DNR, PRFC and/or NOAA to participate in the 2020 fishing year. Should any funds be remaining, a second round of aid would be distributed equally amongst all of the Eligible Entities. Thirdly, if any funding remains after the second round of distributions, those funds would be used for programs that benefit stakeholders and the industry broadly.

Round One – license fee reimbursement

DNR will allocate \$3 million of its allotted funding to rounds One and Two of direct payments to eligible entities.

For the 2020 licensing year (September 2019 - September 2020), the department estimates that there are approximately 2,500 Potentially Eligible Entities that would ultimately be deemed Eligible Entities based on the harvest and fee criteria. In aggregate, that represents approximately \$1,538,000 in fees paid to DNR to participate in the 2020 fishing year (see Figure 1). Fees paid range from under \$100 to approximately \$2,500, including individuals licensed under PRFC and those operating under federal permits. Only one application will be necessary for fees paid to participate in multiple fisheries (e.g., striped bass and crabs).

Applications for assistance in Round One would be open from Fall 2020 through February 28, 2021. The exact date when applications will be accepted depends on when this spending plan is approved, the online application created and ready to launch. We have set mid-October as a goal.

The advantage of having an extended application window is that relief can be provided in near real time as applications are approved with no fear of depleting the fund. It also helps account for harvest seasons at different times of year in which economic impacts may have been felt.

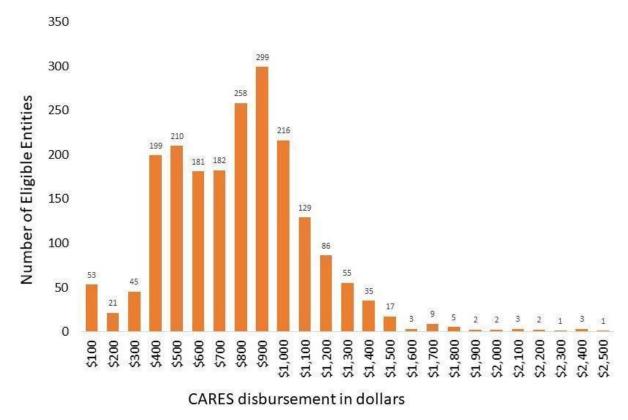


Figure 1. An example of the distribution of round 1 payments based on the potential pool of applicants. Check amounts would range from \$100 to \$2,500 with most parties receiving between \$400 and \$1,200.

Round Two – equally distributed direct payments

Reimbursing license fees to all Eligible Entities will not absorb the entire \$3 million allocated for direct payments and will not cover Eligible Entities that participate in federally-managed fisheries with permits that are free of charge. As such, once the initial application window closes in February 2021, the remainder of the \$3 million will be divided equally and distributed as a second payment to the originally qualified applicants. Round Two distributions would be made in April 2021.

Because it is not possible to determine the exact number of Eligible Entities, we ran scenarios that show the potential payout amount under differing numbers of successful applicants (Table 1). Given this, the online application will include a question that allows applicants to identify a maximum dollar amount that might cause them to be made more than whole by this program.

Table 1. Scenarios for Round 1 and Round 2 payments if \$3 million is set aside for direct payments. Given the distribution of license fees paid (\$100 - \$2,500), the minimum payout would be \$660 and the max would be \$5,860 with most individuals falling in between.

Fraction of applicants	Number of applicants	\$ paid out to reimburse license fees (Round 1)	Amount left for Round 2 payments	Round 2 payment per person (even distribution)
All potential	2500	\$ 1.6 million	\$1.4 million	\$560
80%	2000	\$1.28 million	\$1.72 million	\$860
60%	1500	\$960 K	\$2.04 million	\$1,360
50%	1250	\$800 K	\$2.2 million	\$1,760
40%	1000	\$640 K	\$2.36 million	\$2,360
30%	750	\$480 K	\$2.52 million	\$3,360

Round Three – projects to support industry COVID impacts

DNR will allocate approximately \$1,092,171 toward marketing and training projects that will provide aid to help the industry recover from COVID-19 impacts. **Maryland would vet these potential projects with a panel of advisors made up of a variety of stakeholders** within the seafood industry and provide a detailed plan to NOAA for approval in January of 2021. Examples of such projects might include:

Enhancing Seafood Marketing:

 Enhancing state and local marketing campaigns already underway to aid in recovery of local markets, including Maryland's "Buy Local" and "Stay Calm and Carry Out" campaigns to encourage people to purchase Maryland seafood from local restaurants

Business Support

- Providing free training programs for seafood-related businesses on how to enhance their marketing and revenue-generating opportunities
- Providing free training and/or financial assistance to watermen seeking to sell direct to consumers or to expand their business model

Timeline

Because of differing harvest seasons for various species and diverse business models, we expect that the financial impacts of the pandemic will continue at least through the end of

calendar year 2020. Therefore, flexibility must be provided so that Eligible Entities can apply throughout the year as losses occur.

- March 16, 2020
 - The starting date for calculating financial loss shall be March 16, 2020 (the date that Maryland restaurants were ordered closed to the general public). The minimum time period for claiming loss is 4 consecutive weeks.
 - The closing date for calculating financial loss shall be the date the application is submitted.
- Fall, 2020 goal is by October 15
 - DNR begins accepting applications.
- November 2020
 - DNR begins meeting with advisors to develop details for marketing and training projects.
- January 2021
 - DNR submits secondary spending plan to NOAA outlining marketing and training project details.
- February 28, 2021
 - Application period closes.
 - Maryland will aspire to process applications (confirm required harvest history, confirm payment of fees and check that the applicant entered a loss amount of greater than 35%) within 30 days of receipt. The applicant will receive a follow up email informing them of the status (qualified, not qualified) of their application within 30 days of submission.
- March 31, 2021
 - o To the greatest extent possible, all Round One checks will be mailed by ASMFC.
 - Begin marketing support and/or harvester training programs.
- April 2021
 - o All appeals settled.
- May 2021
 - All Round Two checks mailed; initial \$3 million expended.
- September 2021
 - o All marketing and training projects complete.

Audits

Eligibility for relief money is based on mandated harvest reports, the payment of fees and on self-certification of other qualifying criteria on a legal affidavit. While state databases and records will be used to cross-reference qualifying criteria, financial records will not be reviewed

by the department as part of this process. Should any entity deem it necessary to audit an application, the department will provide that entity with a copy of the application, the self-certifying affidavit and any other materials submitted by the applicant. The likeliness of an audit will be disclosed to the applicants on the self-certifying affidavit form.

Appeals

The appeal process will require a written letter to the DNR. Appeals shall be limited to the amount(s) of a relief check and may only be based on the following issues:

- A misinterpretation of harvest records present in DNR, PRFC or federal databases during one of the qualifying three years: 2017, 2018, and 2019, which may include issues related to the leasing of licenses.
- Issues of business domicile and/or vessel home port that prevent a business from receiving aid from any state, jurisdiction or territory.

The period to submit appeals will begin the day DNR opens up the application process and will end on April 14, 2021, which is 10 business days after an application filed on the application closing date would be denied (February 28, application period closes, 30 days to process is March 31; Appeal deadline is April 14). Appellant may provide written documentation directly relevant to the two issues listed above that would potentially give rise to a valid appeal. Appellants will be notified of DNR's decision within 10 business days following submission of appeals documentation. All appeals will be resolved before issuing round two relief checks.

The appeal decision issued by DNR will be final.

Appendix 1
Potentially Eligible Entities must hold at least one of the authorizations listed below.

State Authorizations				
Bait Harvester Permit	Bay & Coastal Charter Boat / 7 Plus			
Bay & Coastal Charter Boat / Up to 6	Black Sea Bass Permit			
Clam Harvester (CLM) License	Conch, Cancer Crab, Turtle and Lobster Harvester (CCTL) License			
Crab Harvester - up to 300 pots (CB3) License	Crab Harvester - up to 600 pots (CB6) Add-on			
Crab Harvester - up to 900 pots (CB9) Add-on	Finfish Hook and Line (HLI) License			
Fishing Guide (FGN) License - Non- Resident	Fishing Guide (FGR) License - Resident			
Harvester Registration	Horseshoe Crab Permit			
Invasive Catfish Finfish Trotline	Limited Crab Harvester - up to 50 pots (LCC) License			
Limited Crab Harvester - up to 50 pots (LCC) License (Male Only)	Master Guide (per vessel)			
Northern Snakehead Bowfishing Bow Fishing License	Oyster Dredge Boat			
Oyster Harvester (OYH) License	Oyster Harvesting Surcharge			
Pound Net Activations	PRFC Pound Net			
PRFC Anchor/ Stake Gill Net	PRFC Commercial Hook & Line			
PRFC Fyke, Hoop, Weir Net	PRFC Haul Seine			
PRFC Fish Trot Line	PRFC Fish Pot			
PRFC Bait Pot	PRFC Eel Pot			
PRFC Bow Fish (Snakehead Only)	PRFC Charter Captain			
PRFC Charter Boat/ Up to 3 Passengers	PRFC Charter Boat/ Up to 6 Passengers			
PRFC Charter Boat/ 7+ Passengers	PRFC Clam Dredge			

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PRFC Crab Pot – 300 pots	PRFC Crab Pot – 400 pots			
PRFC Crab Pot – 500 pots	PRFC Crab Trotline, Dip Net			
PRFC Crab Peeler Trap	PRFC Oyster Surcharge			
PRFC Oyster Tong - Individual	PRFC Oyster Tong – Operator/ Boat			
PRFC Oyster Tong - Assistant	PRFC Oyster Power Assisted Hand Tong			
PRFC Oyster Hand Scrape - Individual	PRFC Oyster Hand Scrape - Boat			
PRFC Oyster Hand Scrape - Assistant	PRFC Oyster Register Buyer			
Seafood Landing License	Seafood/Charter Marketing Surcharge - Dealer			
Seafood/Charter Marketing Surcharge - Dealer	Seafood/Charter Marketing Surcharge - Non-Dealer			
Snapping Turtle Permit	Spiny Dogfish Permit			
Striped Bass Permit (HLI or FIN Add-on)	Striped Bass Permit (TFL Add-on)			
Summer Flounder Permit	Tidal Fish Dealer (Harvester Add-on)			
Tidal Fish Dealer (Not Harvester)	Unlimited Finfish Harvester (FIN) License			
Unlimited Tidal Fish (TFL) License	Yellow Perch Permit			
Federal Harvester Authorizations/Permits				
Bluefish	Black Sea Bass			
Spiny Dogfish	Summer Flounder			
Incidental HMS Squid Trawl	Herring			
Scallop - General Category	American Lobster			
Monkfish	Northeast Multispecies			
NAFO	Ocean Quahog			
Atlantic Deep Sea Red Crab	Scallop - Limited Access			
Scup	Surf Clam			
Skate	Squid/ Mackerel/ Butterfish			
Tilefish	Commercial Dolphin Wahoo			

Charter Dolphin Wahoo	Charter Pelagic species			
Charter Snapper Grouper	Smoothhound Shark			
Shark Directed	Shark Incidental			
Spanish Mackerel	Atlantic Tuna Longline (SERO)			
King Mackerel	Swordfish - directed (SERO)			
Swordfish - Hand Gears				
Federal Dealer Permits				
Bluefish	Black Sea Bass			
Bluefin Tuna	Tuna - Other			
Spiny Dogfish	Summer Flounder			
Herring - Dealer	Herring - Processor			
Lobster	Monkfish			
Multispecies	Red Crab			
Sea Scallop	Scup			
Surf clam/Ocean Quahog Dealer	Surf clam/Ocean Quahog Processor			
Skate	SMB			
Mackerel at Sea Processor	Tilefish			