

DEVELOPING BUSINESS PARTNERSHIPS BETWEEN FISHERIES AND TOURISM: LEGAL BARRIERS AND OPPORTUNITIES

EXECUTIVE SUMMARY

Overview

Maine's traditional fishing industries have faced a variety of significant challenges in recent years, including shrinking opportunities in groundfishing, scallops, urchins, and shrimp fisheries. The lobster industry has also been hit hard by low dockside prices and increasing costs. As a result of these and other issues, a growing number of harvesters are looking at tourism as a way to diversify and become financially stable, and to remain working on the water. Tours for lobstering, whale- and bird-watching, coastal fishing trips and visits to aquaculture farms have become more commonplace, as fishermen and aquaculturists begin to use their knowledge, their vessels, and infrastructure as unique assets in the tourist trade. However, obstacles to this diversification do exist, especially those related to licensing, liability and safety, business structure, and contracting with partners.

In 2011, the Maine Sea Grant College Program at the University of Maine received funds from the National Sea Grant Law Center to research the legal barriers faced by fishermen and aquaculturists as they consider engaging in the tourism industry. The legalities regarding those barriers were researched by Scott Gunst, a Sea Grant Fellow and law student in the Marine Affairs Institute at Roger Williams University, in partnership with Rhode Island Sea Grant. The final report identified seven key areas of particular importance for commercial fishermen and aquaculturists interested in diversifying into tourism.

Key Findings

1. Vessel Category: Prospective tour operators will need to understand what *Vessel Category* their boat falls into as they prepare to carry tourists or Passengers for Hire (PFH). Relatively small vessels, up to 100 gross tons, fall into the *Uninspected Passenger Vessel* (UPV) category. Operators of UPVs must be compliant with the "minimal federal standards for safety, navigation, pollution prevention," and operator licenses must be issued by the U.S. Coast Guard. A variety of life-saving equipment regulations apply. Courtesy Vessel Inspections from the Coast Guard are available; these are free of charge, comprehensive, and confidential. For a vessel that was built outside the U.S., the Passenger Vessel Services Act of 1886 may apply as some non-U.S.-constructed vessels are prohibited from carrying passengers. Consulting with the Carrier Rulings Branch of the U.S. Customs Service is recommended.
2. ADA Compliance: The Americans with Disabilities Act declares that vessel owners and operators and aquaculture farms must take steps to accommodate passengers with disabilities, and vessels and related facilities (docks, etc.) must be accessible. While vessel owners may deny transportation or restrict services to a passenger with a disability if "necessitated by legitimate safety

requirements,” vessel owners must take actions that impose the minimum feasible burden or limitation on a passenger with a disability.

3. Captain’s License: A tour operator must obtain and maintain a valid and appropriate *Merchant Mariner Credential (MMC)*, often referred to as a captain’s license, which is issued by the U.S. Coast Guard. There are several types of captain’s licenses and subsequent endorsements. The most common is the Operator of Uninspected Passenger Vessel (OUPV), usually referred to as a “six-pack license,” as it allows the operator to take on up to six passengers. Requirements necessary to receive a Captain’s license are outlined in the full report.
4. Safety and Liability: Tour operators legally have a reasonable “duty of care” to their customers, meaning that they have to take steps to maintain a safe environment for passengers, and must be prepared to deal effectively with accidents or emergencies should they occur. This includes being outfitted with the correct safety equipment as well as conducting a safety review before departing the wharf. Operators may seek to limit their exposure to liability by purchasing insurance. The most common is Protection and Indemnity (P&I) coverage, which covers the liability of the vessel owner or aquaculturist for loss of life and personal injury to tourists and staff. Additional protection can be sought for a broad range of activities, usually referred to as an “umbrella policy.” The use of boarding waivers—a document read and signed by the passenger before departing on the tour—will not usually provide complete protection in a lawsuit, but it can be helpful in demonstrating that the operator has been thoughtful in developing a safety plan, and can therefore help to limit damages.
5. Fishing Licenses: Tour operators who also hold Class 2 or 3 lobster fishing licenses may allow passengers to handle the fishing gear (including bait) or the catch; one person beside the licensee if a Class 2, and two others if a Class 3, and the passengers can rotate as to who the ‘helpers’ are. Under this approach, the licensed fisherman may sell the resulting catch to the customers. Those who do want to allow passengers to help haul a trap, band and handle the lobsters or other catch need to obtain a Marine Harvesting Demonstration License, which carries a 20-trap limit and all catch must be returned immediately to the water. A vessel must be covered either as a Demonstration vessel, or as a commercial fishing vessel, but not used under both scenarios simultaneously, and other requirements apply under the Marine Harvesting Demonstration License.
6. Business Structure: Common business types are reviewed, including: Sole Proprietorships, Partnerships, Corporations, and Limited Liability Companies. *Sole Proprietorships* are strongly discouraged for fishermen or aquaculturists to use in tourism operations, because the personal property of the operator is tied in with the business assets. *Partnerships* may be a General Partnership, Limited Partnership or Limited Liability Partnership. Each has varying degrees of responsibility and liability, and a variety of other differences in taxation and company origination apply. *Corporations*, Subchapter S or Subchapter C, differ

principally in how they are taxed; liability protection is the same for both types. *Limited Liability Companies* (LL's) have been fairly popular in the fishing and aquaculture industries. They offer the limited liability of a corporation, with the same tax structure of a partnership.

7. Working with the Tourism Industry: Approaches that will help the tourism operator find customers and create memorable experiences, including contracting with local restaurants and lodgings, are discussed. Fishermen may partner with existing tourism businesses to facilitate marketing, reservations, and other tasks that are often above and beyond what a fishing operation usually does. The advantages of partnerships are greater visibility, increased income, and best use of respective skill and expertise. The two entities would need to outline specifically who is responsible for which aspect of the product or package that gets delivered to the tourist, and outline issues related to liability and respective business responsibilities.

Accessing the Full Report

The full report is available through Maine Sea Grant by calling 207.581.1435 or online at seagrant.umaine.edu/fisheries-tourism.

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