

# Comparative Analysis *of* State Approaches *to* Regulating Direct Seafood Sales



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## I. Executive Summary

Direct seafood sales contribute to the sustainability of fisheries, aquaculture, and food systems. Selling seafood products directly to consumers can increase harvester and farmer profitability, support local economies, and strengthen community connections. Fish have always been sold off the boat, but direct marketing strategies have grown in recent years to include such things as farmer's market stalls, community supported fisheries, and online sales.

There is significant variability in state legal frameworks governing direct seafood sales. Some states authorize direct sales under commercial fishing and aquaculture licenses, reducing the administrative and economic burden of engaging in direct sales. Others require all seafood sales to be conducted by licensed dealers, which can present financial barriers. Sales of most seafood products require some form of food licensing, which can be complicated and confusing.

To help state policy-makers gain a greater understanding of the legal landscape of direct seafood sales, the National Sea Grant Law Center reviewed the laws of the thirty coastal and Great Lakes states to determine what direct sales activities are allowed under commercial fishing and aquaculture permits. The Law Center also examined the licensing of food establishments in each state. This information provides a foundation from which to identify best practices to provide policy support for direct seafood sales and models for regulatory reform.

### *Key Findings*

*Around one-third of states (12 out of 30) authorize holders of commercial fishing licenses to sell their catch directly to end consumers. Another eight states authorize direct sales through an additional permit/license or by exempting commercial fishers from seafood dealer requirements. Approximately one-third of states require that all seafood sales go through a licensed dealer, meaning licensed commercial fishers must also obtain dealer licenses or work with a licensed dealer.*

*State aquaculture licensing frameworks are generally permissive of direct sales, with the exception of shellfish aquaculture. Shellfish products generally must be sold through licensed shellfish dealers. More than two-thirds of the states (22 out of 30) allow for direct sales of farmed finfish.*

*The sale of seafood directly to consumers often requires a food establishment license in addition to the commercial fishing or aquaculture operational license. In nearly one-third of states (9 out of 30), food establishment licenses are issued on the state level. The remainder of the states delegate all or a portion of the day-to-day duties associated with licensing food establishments to local jurisdictions. This significantly increases the regulatory complexity and results in direct marketers needing to obtain licenses/permits from multiple local jurisdictions.*

## II. Introduction

The route a seafood product takes to get from boat to plate is often quite complex. Conventional seafood supply chains involve a variety of intermediaries that move product from harvester to the end consumer, including processors, wholesalers, dealers, and transporters. In such supply chains, it can be difficult to track individual seafood products from the point of harvest through processing, distribution, and the final retail sale. Conventional seafood supply chains are also vulnerable to fraud and disruptions in global markets, as seen with the COVID-19 pandemic.

Most seafood products purchased at the retail level in the United States are frozen. Sales of fresh products, although smaller by volume, generate more revenue due to higher prices. Some species, such as lobster and trout, are almost entirely sold fresh. Sales of fresh seafood vary by region, in part due to cultural traditions. For example, more fresh crawfish is sold in Louisiana and fresh lobster in Connecticut.<sup>1</sup>

An alternative pathway for harvesters and farmers seeking to increase their earnings and connect more directly with consumers is direct sales. “Direct sales” broadly refers to the sale of products by the producer directly to end consumers without the use of intermediaries, such as wholesale buyers or distributors. There are various ways for a harvester or aquaculture farmer to engage in direct sales. Fish or shellfish can be sold from the vessel, at a stall in the harbor, at a farm shop on private property, at a community farmer’s market, or delivered to homes or restaurants.

Direct marketing can also help seafood harvesters and farmers build the resilience of their business to changing market conditions. The diversification of seafood supply chains through direct sales also improves traceability, supports local economies, and connects consumers with their food sources.

The 2023 American Seafood Harvesters Marketing Practices Survey estimated that about 12% of seafood harvesters nationally engage in direct seafood marketing.<sup>2</sup> Survey data suggest that direct marketing is more common in Alaska, Hawai’i, and the West Coast, than in other parts of the country.<sup>3</sup> Direct marketing is rarer in the aquaculture sector, where USDA surveys estimate only 2% – 6% of farmed fish, mollusks, and crustaceans are sold directly to consumers.<sup>4</sup>

Individuals engaging in direct seafood sales must comply with both state and federal laws and regulations governing the sale of food, in addition to the ordinary licensing requirements to catch or grow their products. Navigating this additional legal landscape can be difficult for harvesters and farmers for informational, organizational, and logistical reasons. Permitting and licensing requirements vary by state and by product. Even within states, requirements can vary depending on where products are sold due to local regulation. Clear guidance from responsible state agencies may be unavailable.

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<sup>1</sup> DAVIS C. LOVE ET AL., AN OVERVIEW OF RETAIL SALES OF SEAFOOD IN THE UNITED STATES, 2017-2019 (2021).

<sup>2</sup> SAHIR ADVANI ET AL., ESTIMATING THE SCOPE, SCALE, AND CONTRIBUTION OF DIRECT SEAFOOD MARKETING TO THE UNITED STATES SEAFOOD SECTOR, 165 MARINE POL’Y 106188 at 5 (Jul. 2024).

<sup>3</sup> *Id.*

<sup>4</sup> U.S. DEPARTMENT OF AGRICULTURE, 2018 CENSUS OF AQUACULTURE, Table 21 (2019).

The legal framework governing direct seafood sales in a particular state influences the costs, structure, and feasibility of a direct sales operation. Burdensome or confusing licensing requirements can create barriers to entry or impose additional costs that prevent harvesters or aquaculture farmers from engaging in direct sales.

Most individuals who engage in direct seafood sales often do so at a local level. According to the 2023 American Seafood Harvesters Marketing Practices Survey, about 77% of direct seafood is sold within 100 miles of where it is caught.<sup>5</sup> Only a small percent of survey respondents, 6% and 8% respectively, sell their seafood directly to markets 100–400 miles, or 400+ miles away from where they are caught.<sup>6</sup> Depending on where they live and fish, a harvester might cross several jurisdictional lines within that 100-mile radius. A harvester based out of Monterey Bay, California would never leave the state, but the East Coast is a different story. Within 100 miles of Gloucester, Massachusetts are Brunswick (Maine), Manchester (New Hampshire), Providence (Rhode Island), Mystic (Connecticut), just to name a few.

The 2023 American Seafood Harvesters Marketing Practices Survey found that around 90% of businesses that engage with the seafood market are family owned.<sup>7</sup> Such businesses are often run by couples or a few family members that may have limited financial capacity to purchase additional licenses and time to learn and comply with direct marketing rules. Of businesses surveyed, only 60% of employees worked full-time.<sup>8</sup> Smaller operations that do not have as many full-time employees may not have the personnel needed to maintain required records and ensure compliance with multiple permits.

The survey further revealed that only 19% of employees in the seafood business were women and around 14% of “decision makers” identified as members of BIPOC “black, indigenous, and other people of color” communities.<sup>9</sup> Reducing barriers to enter and participate fully in local seafood markets can help to increase diversity in ownership and employment in the fishing industry, and support more independent or small-scale fishing operations. Increasing diversity in the industry is important in ensuring that the field is representative and reflective of cultural and regional diversity and practices.

In many coastal communities, fish is not only a major food source but also a major economic source. Coastal communities rely on the fishing industry for survival but also for social networks and capital building.<sup>10</sup> By implementing direct seafood sales, coastal communities also have increased food security and perpetuate cultural traditions surrounding their fishing traditions. For instance, in the Chesapeake Bay, Minorities in Aquaculture is working to train members of historically underrepresented communities, mainly young Black people and women of color, to become boat captains in order to grow

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<sup>5</sup> [American Seafood Harvesters Marketing Practices Survey Facts Sheet 3: Direct Seafood Sales](#), LOCAL CATCH NETWORK 2 (2024) [hereinafter Factsheet 3].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2 (finding that of the 14% of decision makers who identified as members of the BIPOC community, 7% self-identified as Asian, 5% as Indigenous or Pacific Islander, and 2% as Black or African American).

<sup>10</sup> Love et al., *supra* note 1.



workplace diversity and ensure that members of the BIPOC community have access to the industry.<sup>11</sup> Historically, there was a thriving community of Black commercial captains in the Chesapeake Bay, however the number of captains have declined as older captains retire and younger ones are not able to enter due to various factors.<sup>12</sup> Direct seafood markets permit communities, like in the Chesapeake Bay, to invest in and support diverse small-scale fishing operations, which in turn support coastal communities both economically and by insulating them from the effects of food insecurity, unexpected pandemics, and natural disasters.<sup>13</sup>

Similarly, for many Indigenous communities, fishing and the consumption of fish connects them to their ancestors and religious/cultural traditions. In the Pacific Northwest, for example, many tribes in and around the Columbia Basin consider salmon an important part of their economy and culture. The Yurok Nation in Northern California has a history of fishing, with salmon being one of their main food sources.<sup>14</sup> Similarly, along the Columbia River in Washington State, salmon is also an important food source and culturally significant species for members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation, with many of them selling their catch directly to consumers at tribal fishing access sites protected by treaties.<sup>15</sup> Barriers to entry and full participation in local fish markets not only make it more difficult for Indigenous communities to sell their seafood products, but also to practice their cultural traditions. Some states, such as Alaska and Hawai‘i, have taken steps to support Indigenous communities by supporting their fishing communities—either through increased partnership or by designating Indigenous managed fisheries. In Alaska, tribal elders serve as members of the North Pacific Fisheries Management Council. As stocks, such as winter crab, continue to drastically drop due to historical overfishing and climate change, establishing partnerships with Indigenous communities ensures that their perspective and knowledge is incorporated into management decisions.<sup>16</sup> Similarly, in Hawai‘i, there has been efforts to reincorporate traditional Hawaiian fishing methods such as rebuilding fishponds (loko i‘a) and designating specific community-based fishing areas in order to better manage these resources.<sup>17</sup> Direct seafood markets support these communities not only by removing barriers to full participation, but also by ensuring that BIPOC communities can continue to fish in a way that aligns with their traditional practices and support their local communities in the face of changing stocks and markets.

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<sup>11</sup> *Revitalizing Maritime Heritage: Minorities in Aquaculture’s (MIA) Pioneering Program for the Next generation of African American Commercial Captains*, CHESAPEAKE BAY FOUND (June 5, 2024).

<sup>12</sup> *About*, MINORITIES IN AQUACULTURE (last visited June 28, 2024).

<sup>13</sup> Love et al. *supra* note 1.

<sup>14</sup> *Our History*, YUROK TRIBE (last visited June 28, 2024).

<sup>15</sup> *Pacific Coast Region*, SMITHSONIAN NAT’L MUSEUM OF THE AM. INDIAN, (Last visited Jul. 1, 2024); *In-lieu/Treaty Fishing Access Sites*, COLUMBIA RIVER INTER-TRIBAL FISH COMM’N, (last visited July 1, 2024); Personal communication with Buck Jones, member of Local Catch Network Executive Committee, Oct. 17, 2023.

<sup>16</sup> Emilie Ellis, *Supporting Indigenous-led Approaches to Protecting marine Resources in the Bering Sea*, FIRST NATIONS (last visited June 28, 2024).

<sup>17</sup> Josh McDaniel, *The Return of Kū‘ūla: Restoration of Hawaiian Fishponds*, SEA GRANT UNIV. HAW. (last visited June 28, 2024); *Hawaiian Fishponds: Providing Physical and Cultural Sustenance*, NOAA FISHERIES (May 28, 2021), *Community-Based Subsistence Fishing Areas*, SEA GRANT UNIV. HAW. (2021).

A greater understanding of the legal landscape surrounding direct seafood sales is needed to inform policy discussions about how to strengthen local and regional seafood systems through direct seafood marketing. This report seeks to contribute to these discussions by identifying and analyzing the legislative and regulatory approaches of the thirty coastal and Great Lakes states to direct seafood sales. The report's analysis is limited primarily to the text of state statutes and regulations, and does not consider the full range of state and local permit conditions that may be imposed in specific contexts or license requirements for federally managed species. As such, this research does not provide guidance on the licensing of individual operations. Rather this research is intended for state policy-makers interested in reducing legal barriers preventing harvesters and farmers from entering direct sales markets.

### III. Approach/Methodology

The NSGLC began by conducting a legal scan of each coastal state to identify the extent to which it has taken legislative or regulatory action to address direct seafood sales. This scan involved an examination of state laws relating to fisheries management, aquaculture, and food establishments. The legal scan was conducted using traditional legal research methods and online databases (e.g., Westlaw, state websites) to identify relevant statutes and regulations for each state. Upon completion of the legal scan, the resulting state summaries were sent to state agency contacts for review to ensure accuracy and completeness. The identification and compilation of the specific statutory and regulatory provisions enacted in each state is an essential first step towards understanding the state of law across the country.

The NSGLC then conducted a comparative analysis of the compiled state statutes, regulations, and policies to identify the range of different approaches taken, as well as similarities and gaps among the states' chosen policy regimes for direct seafood sales. The comparative analysis provides a framework by which the goals, structures, and strategies of state frameworks can be categorized and better understood. A common understanding of the legal landscape is an essential foundation for discussions to enhance interstate consistency and address gaps.

The American Seafood Harvesters Marketing Practice Survey identified five popular direct seafood marketing strategies examined:

- Direct sales to consumers (e.g., off-the-boat, farmer's markets, online sales)
- Direct sales to retail (e.g., grocery stores, fishmongers)
- Direct sales to food services (e.g., restaurants, food trucks)
- Direct sales to institutions (e.g., hospitals, schools, prisons)
- Direct sales to source identified distributors (SID) (e.g., businesses that sell seafood with information about the vessel or harvester).<sup>18</sup>

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<sup>18</sup> *American Seafood Harvests Marketing Practices Survey Fact Sheet 2: Marketing Strategies*, LOCAL CATCH NETWORK 1 (2024) [hereinafter Factsheet 2].

The NSGLC focused its analysis on three of these strategies: (1) direct sales to consumers, (2) direct sales to retail, (3) direct sales to food services. Direct sales to institutions were not examined as less than 5% of survey respondents indicated engagement with this channel. Direct sales to SIDs were not examined as such sales are regulated as conventional seafood sales to processors, dealers, or wholesales. In examining the legal framework governing these three strategies, the NSGLC assumed sale of whole, fresh products. The direct sale of frozen, processed, or value-added products is outside the scope of this report.

The legal regimes with the most relevance to direct seafood sales are those governing the licensing of commercial fishing, aquaculture, and food establishments. As there is overlap within these frameworks with respect to the three direct marketing strategies, the comparative analysis is organized around the licensing framework for clarity. The NSGLC’s findings in each of these categories is detailed below.

### IV. Commercial Fishing Licenses

Commercial fishing licenses authorize individuals to engage in fishing for commercial purposes. Through commercial fishing licenses, states regulate how, where, and when individuals can fish and how much fish they can catch. The license also sets the rules for how a harvester may sell their catch.

With respect to direct seafood sales, state commercial fishing license fall into one of three categories:

- Direct Sales Allowed
- Direct Sales Allowed with Additional License
- Sales Limited to Licensed Dealers

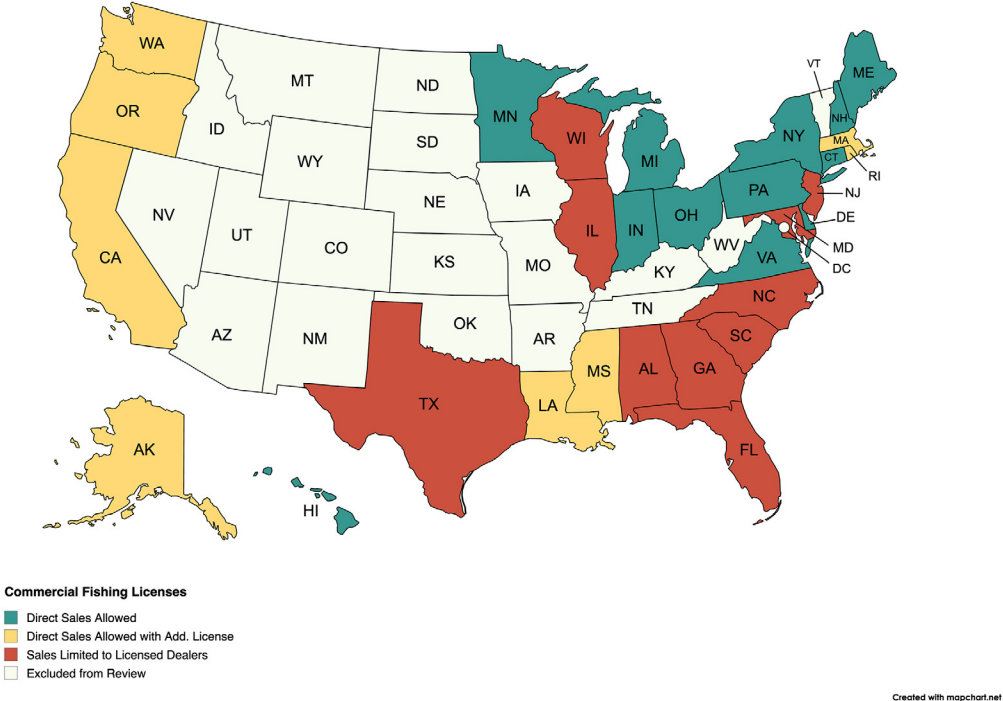


Figure 1. State commercial fishing license authorization of direct seafood sales.



## *Direct Sales Allowed*

Twelve states authorize holders of commercial fishing licenses to sell their catch directly to end consumers or retail customers: Connecticut, Delaware, Hawai‘i, Indiana, Maine, Michigan, Minnesota, New Hampshire, New York, Ohio, Pennsylvania, and Virginia. In these states, no additional license, permit, or authorization is needed from the agency responsible for commercial fishing to engage in direct sales. Data from the 2023 American Seafood Harvesters Marketing Practices Survey suggests that 30% of commercial harvesters are based in these states,<sup>19</sup> although only a small portion may currently engage in direct sales.

Maine law, for example, permits licensed commercial fishermen to transport and sell fish they have harvested themselves.<sup>20</sup> Ordinarily a retail seafood license issued by the Maine Department of Marine Resources is needed to “buy, sell, transport, ship or serve” marine organisms in the retail trade.<sup>21</sup> This exemption from the retail seafood and wholesale license requirement only applies to the license holder and crew members if the fishing license provides for crew members. If someone else is selling on the license holder’s behalf (i.e., family member or staff), that person would need to obtain a Retail Seafood License.<sup>22</sup> In Hawai‘i, commercial marine license holders may sell their catch directly to consumers at retail.<sup>23</sup>

Two states—Connecticut and New Hampshire—require seafood to be sold through licensed dealers (discussed more below), but exempt commercial fishers from these licensing requirements. In Connecticut, for example, the definition of “seafood dealer” includes commercial fishers who sell their own catch of such species to anyone other than a seafood dealer. However, a commercial fisher selling their own catch is not required to obtain a seafood dealer’s license from the Connecticut Department of Energy and Environmental Protection.<sup>25</sup> Similarly, in New Hampshire, licensed lobster and crab harvesters are exempt from the retail dealer’s license requirement ordinarily required to sell lobsters or crabs.<sup>26</sup>

It is important to note that the authorizations discussed above do not extend to the commercial shellfish licenses. Due to public health concerns related to the sale and consumption of raw shellfish, states require shellfish to be sold by or through a certified shellfish dealer in accordance with the model ordinance developed by the Interstate Shellfish Sanitation Conference (ISSC). Holders of commercial shellfish licenses must sell their catch through certified shellfish dealers or become one themselves.

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<sup>19</sup> ADVANI ET AL., *supra* note 2.

<sup>20</sup> ME. REV. STAT. tit. 12, § 6501.

<sup>21</sup> ME. REV. STAT. tit. 12, § 6852.

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

<sup>23</sup> HAWAII REV. STAT. § 187A-1; HAWAII ADMIN. R. § 13-74-1.

<sup>25</sup> CONN. GEN. STAT. § 26-142a(b).

<sup>26</sup> N.H. REV. STAT. § 211:39.

### *Direct Sale Allowed with Additional License*

Eight states allow commercial fishing license holders to engage in direct sales with an additional license or endorsement: Alaska, California, Louisiana, Massachusetts, Mississippi, Oregon, Rhode Island, and Washington. In these states, direct sales are not authorized under a commercial fishing license; an additional license is therefore required. The terminology and authorization mechanism varies among the states, as well as the licensing fees (Table 1). These licensing schemes are intended to provide an easier and lower cost alternative to a seafood dealer license (discussed in more detail below).

*Table 1. State Direct Sale Licenses*

State	Permit/License	Annual Fee
<i>Alaska</i>	Catcher-Seller Permit or Direct Marketer Business License	\$25
<i>California</i>	Fishermen's Retail License (to sell to ultimate consumer) or Fish Receiver's License (to sell to other retail customers)	Fishermen's Retail License: \$130.81
<i>Louisiana</i>	Fresh Products License	\$61 for resident, \$300 for non-resident
<i>Massachusetts</i>	Retail Boat Seafood Dealer Permit	\$65 for resident, \$130 for non-resident
<i>Mississippi</i>	Fresh Products License	\$0 for residents, \$210 for Louisiana resident
<i>Oregon</i>	Limited Fish Sellers Permit	\$102 for resident, \$152 for non-resident
<i>Rhode Island</i>	Dockside Sales Endorsement or Direct Sales Dealer's License	Dockside Sales: \$25 Direct Sales Dealer's License: \$50
<i>Washington</i>	Limited Fish Sellers Endorsement	\$175 for residents, \$560 for non-residents

### *Sales Limited to Licensed Dealers Only*

In the ten remaining states, commercial fishing licenses require the catch be sold to licensed seafood dealers and there are no specific direct marketing licenses available. These states are: Alabama, Florida, Georgia, Illinois, Maryland, New Jersey, North Carolina, South Carolina, Texas,<sup>27</sup> and Wisconsin. In these states, harvesters have no choice but to sell to licensed dealers, or to become a licensed dealer themselves. This can present a significant barrier to harvesters wishing to engage in direct sales as dealer licenses can be expensive, although in some states they are comparable to the alternative licensing frameworks discussed above.

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<sup>27</sup> A Retail Fish Dealer's License is needed to sell aquatic products to a consumer in Texas. The statutory definition of "retail fish dealer" provides that hotels, restaurants, and cafes are not consumers. TEXAS PARKS & WILDLIFE CODE § 47.001. Direct sales to these three types of retail businesses are permitted under a commercial fishing license. However, due to the narrow scope of this authorization, Texas was classified as a dealer-only state for the purposes of this report.

In North Carolina, for example, a fish dealer license costs \$100 per year and is species-specific, meaning holders can only deal in the category specified by the license (e.g., finfish, shrimp, oysters).<sup>28</sup> There is also a \$100 application fee for new fish dealers. A commercial fisher with licenses to harvest both oysters and clams would therefore need to obtain two separate dealer licenses for a total of \$200 per year in fees. There are six categories of licenses, and an individual wishing to deal in all six categories can purchase a consolidated dealers license for \$600 a year.

In Florida, the annual fees for a retail dealer license are \$75 for residents and \$250 for nonresidents.<sup>29</sup> In Texas, the fee is approximately \$100 for both residents and nonresidents.<sup>30</sup> A Tidal Fish Dealer License costs \$250 per year in Maryland; however, Maryland discounts the price for holders of a Tidal Fishing License to \$50.<sup>31</sup>

Seafood dealer fees are higher in other states. In Washington State, the annual license fee for a resident fish dealer is \$400 with an \$105 application fee, for a total cost of \$505.<sup>32</sup> This is more than double the cost of the Limited Fish Sellers Endorsement available to licensed harvesters. Additionally, the holder of a limited fish seller endorsement selling their own catch directly to consumers is exempt from the permitting requirements of the state's Retail Food Code.<sup>33</sup>

Similarly, in Louisiana the annual license fee for a resident Wholesale/Retail Seafood Dealer Business License costs \$550. This is significantly more expensive than the \$62 Fresh Products License available to harvesters. However, Fresh Product License holders may only sell to customers within the state whereas there are no restrictions on who a licensed dealer may sell to.

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<sup>28</sup> N.C. STAT. § 113-169.3.

<sup>29</sup> [Commercial Saltwater License Fees](#), FLA. FISH & WILDLIFE CONSERVATION COMM'N (last visited Jul. 1, 2024).

<sup>30</sup> [Application for Dealer License](#), TEX. PARKS & WILDLIFE DEP'T. (last visited Jul. 1, 2024).

<sup>31</sup> [Seafood Dealer's License](#), MD. DEP'T OF NAT. RES. (2016).

<sup>32</sup> WASH. REV. CODE § 77.65.280(4).

<sup>33</sup> WASH. REV. CODE § 77.65.280(2).

## **Key Takeaways**

*Around one-third of states (12 out of 30) authorize holders of commercial fishing licenses to sell their catch directly to end consumers. Another eight states authorize direct sales through an additional permit/license or by exempting commercial fishers from seafood dealer requirements. One-third of states require that all seafood sales go through a licensed dealer, meaning licensed commercial fishers must also obtain dealer licenses or work with a licensed dealer.*

*The application and annual fees associated with these licensing regimes vary widely among the states. Many states have higher fees for out-of-state dealers, which may pose a significant financial barrier to harvesters seeking to market their products in several states. Additionally, seafood dealer licenses are fixed, flat fees imposed regardless of the size of the business or volume of sales.*

*In states where direct sales are authorized by commercial fishing licenses, no additional license fees are imposed on harvesters by the fisheries management agencies. In states with direct sale licenses, the annual fees for the required additional license range from zero to around \$200 but are generally less expensive than traditional dealer licenses in those states. The decreased price of direct sales licenses could encourage more commercial fishing licenses holders to participate in direct sales than if they had to obtain a dealers license and comply with associated requirements (e.g., reporting, HACCP certification). Retail seafood dealer license fees are often several hundred dollars per year. This is an added expense that some harvesters may not be able to afford in addition to their commercial fishing license fees, especially if they are a small operation. Direct sales licenses, however, may be more restrictive than dealers licenses regarding type of sales or customers.*

*States must consider a variety of factors when establishing their direct sales policy. Although authorizing direct sales through commercial fishing licenses seems like the most straight-forward approach, it may raise concerns regarding the accurate reporting of harvest landing data, which is often handled by licensed dealers. Depending on its existing processes, issuing separate licenses to direct sellers may help a state to ensure proper reporting and tracking of direct seafood sales. Annual fees for such licenses generate revenue that can help agencies cover implementation costs, which will vary depending on size and capacity of the regulatory staff. On the other hand, direct sale licenses add an administrative layer into an already complex licensing framework which could be avoided by utilizing a simpler legal approach such as exempting commercial fishing license holders from certain dealer requirements.*

## **V. Aquaculture Licensing**

There is significant variation among the coastal states regarding the type of aquaculture allowed. Shellfish aquaculture is authorized in every marine coastal state. Marine finfish aquaculture in coastal waters is permitted in only a handful of states, but land-based culture of freshwater species such as catfish, trout, and tilapia is common in many states. The culture of aquatic plants, such as seaweed, is an emerging industry in several coastal states. Generalizations cannot be made across the licensing regimes for these three species groupings.





All but one of the twenty-three coastal states prohibit the direct sale of shellfish under an aquaculture permit. This is due to the fact that states regulate the harvest of farmed shellfish in the same way they regulate the harvest of wild shellfish to ensure compliance with shellfish sanitation rules. Shellfish farmers, like wild shellfish harvesters, must therefore sell their product through licensed dealers or become a licensed dealer.

Of the seven Great Lakes states, two appear to permit the direct sale of shellfish under an aquaculture permit. Illinois includes a number of mussel and clam species on the state’s approved aquatic species list.<sup>36</sup> In Minnesota, aquaculture means the culture of “private aquaculture life” which is defined as “fish, shellfish, mollusks, crustaceans, turtles, and any other aquatic animals.”<sup>37</sup> No shellfish species are included on the approved aquaculture lists in Indiana, Michigan, Ohio, Pennsylvania, or Wisconsin and culture is therefore presumed prohibited.

### B. Farmed Finfish

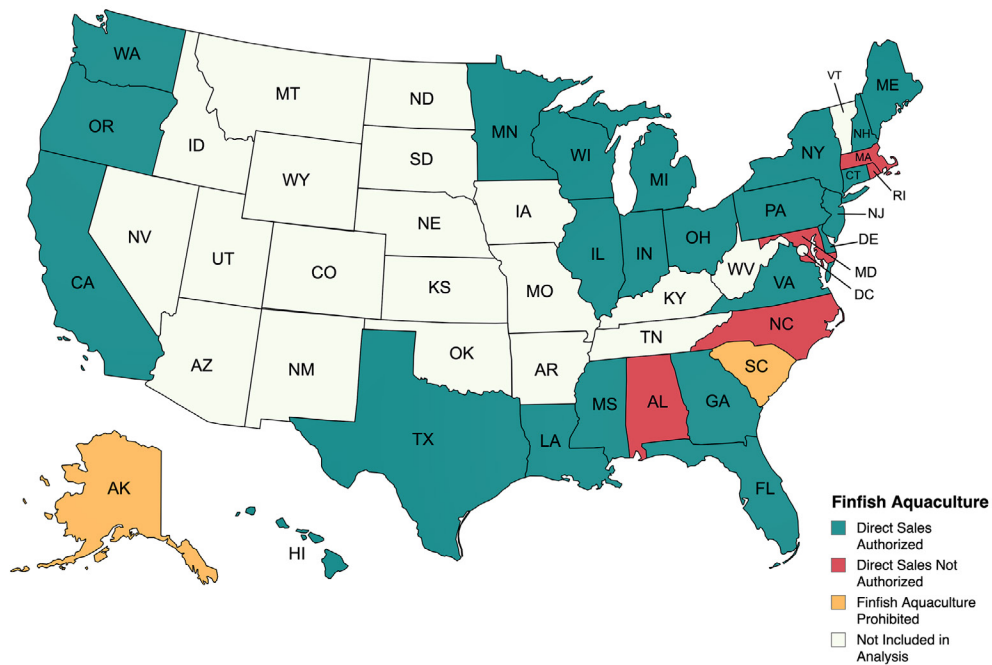


Figure 3. State finfish aquaculture license authorization of direct sales.

Almost two-thirds of the states (22 out of 30) allow for direct sales of farmed finfish: California, Connecticut, Delaware, Florida, Georgia, Hawai‘i, Illinois, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington and Wisconsin (Fig. 3). Two states, Alaska and South Carolina, prohibit the farming of finfish. The remaining states, Alabama, Maryland, Massachusetts, North Carolina, and Rhode Island, do not permit direct sale of farmed finfish under an aquaculture licenses, but allow for farmers to sell their product through a dealer or by obtaining a separate dealer’s license.

<sup>36</sup> *Aquatic Life Approved Species List*, ILL. DEP’T OF NAT. RES. (Aug. 31, 2015).

<sup>37</sup> MINN. STAT. ANN. § 17.47.

Nineteen states are consistent in their policy approach to the direct sale of finfish between commercial fishing and aquaculture. Meaning, commercial harvesters and aquaculture farmers are either (1) both permitted to engage in direct sales by their respective operational licenses or (2) they have to obtain the same additional licenses. But in eleven states, the two regimes are inconsistent.<sup>38</sup> In these states, aquaculture farmers may sell their product under their aquaculture license, but commercial harvesters must obtain additional licenses. Depending on the cultivated species, this may place commercial harvesters at an economic disadvantage to aquaculture farmers.

Even though a majority of states allow aquaculture farmers to sell their finfish directly to consumers, only about 2% of farmed finfish is sold directly to consumers. A larger portion of farmed finfish is used as bait, processed shelf stable fish products, or become part of wild stocks via hatcheries.<sup>39</sup> Thus, even though direct sale of farmed finfish is easily available to many farmers, it is an underutilized market. This could be because farmers make more by selling their finfish to processors or wholesale fish dealers. The 2018 Aquaculture Census by the U.S. Department of Agriculture (USDA) showed that 69% of food fish (farmed finfish primarily meant for human consumption) went to processors, whereas only 2% went directly to consumers.<sup>40</sup> However, like commercial fishers, there are regional differences. The Southeast and West Coast account for the majority of aquaculture sales in 2018. Mississippi was the largest farmed finfish market, accounting for over \$216 million in aquaculture sales, the majority from catfish sales (30% of the state market).<sup>41</sup>

### C. Farmed Aquatic Plants (Seaweed)

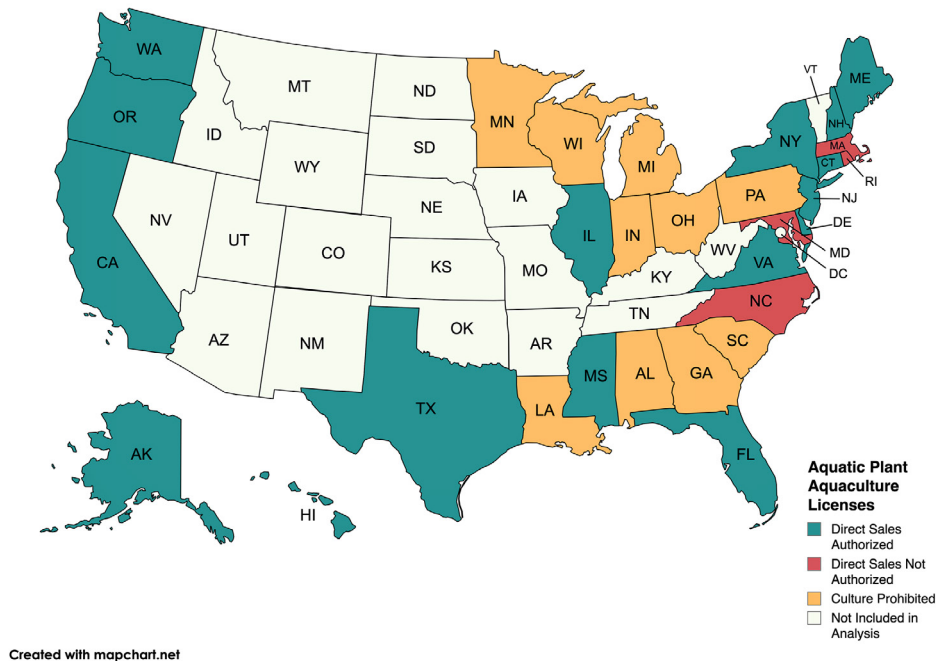


Figure 4. State aquatic plant aquaculture license authorization of direct sales.

<sup>38</sup> California, Florida, Georgia, Illinois, Louisiana, Mississippi, New Jersey, Oregon, Texas, Washington, Wisconsin.

<sup>39</sup> *U.S. Aquaculture: Supporting Sustainable Seafood*, supra note 34 (stating that almost ¼ of salmon caught in Alaska and up to 80% of salmon caught in the Pacific Northwest originated from hatcheries).

<sup>40</sup> *2017 Census of Agriculture Highlights: Aquaculture: Results from the 2018 Census of Aquaculture*, U.S. DEP'T OF AGRIC. (2019).

<sup>41</sup> *Id.*

Seaweed farming is a growing sector of marine aquaculture in the U.S.<sup>42</sup> Farmers across the country grow a variety of seaweed types including dulse, bull kelp, and sugar kelp. As an emerging industry, the state rules governing the sale of seaweed are still in development and are not as clear as those for shellfish and finfish. The analysis is further complicated by passing references to “aquatic plants” in many states’ aquaculture laws without further details about what type of aquatic plants are permitted.

Currently sixteen states allow for direct sale of aquatic plants pursuant to an aquaculture license: Alaska, California, Connecticut, Delaware, Florida, Hawai‘i, Illinois, Maine, Mississippi, New Hampshire, New Jersey, New York, Oregon, Texas, Virginia, and Washington. (Fig. 4). Four states explicitly do not allow for direct sale: Maryland, Massachusetts, North Carolina, and Rhode Island. The remaining ten states—Alabama, Georgia, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and South Carolina—do not list aquatic plants as an approved aquaculture product.

### *Key Takeaways*

*State aquaculture licensing frameworks are generally permissive of direct sales, with the exception of shellfish aquaculture. With limited exceptions, shellfish products must be sold through licensed shellfish dealers in part to ensure compliance with the National Shellfish Sanitation Program requirements which apply equally to commercially harvested and farmed shellfish. In contrast to shellfish, more than two-thirds of the states (22 out of 30) allow for direct sales of farmed finfish. Half of the states (16 out of 30) authorize direct sales of aquatic plants under an aquaculture license.*

*The different management needs between aquaculture and fisheries may account for the leniency towards direct sales of aquaculture products. Unlike with harvested seafood products, aquaculture farmers are selling seafood they raised in controlled environments. As such, there is less need for real-time harvesting and landing data to inform management decisions, which is often gathered through seafood dealers in the fisheries context.*

## **VI. Food Establishment Licenses**

Selling food directly to the consumer requires a food establishment license. The Food and Drug Administration (FDA) Food Code defines food establishment as any operation that “stores, prepares, packages, serves, [or] vends food directly to the consumer.”<sup>43</sup> This includes supermarkets, grocery stores, farmer’s and seafood markets, food trucks, and restaurants. One report estimated that about two-thirds of expenditures on seafood occurs “away from home” (i.e., at restaurants) versus seafood purchases for home consumption.<sup>44</sup>

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<sup>42</sup> *Seaweed Aquaculture*, NOAA (Feb. 28, 2024).

<sup>43</sup> U.S. FOOD AND DRUG ADMINISTRATION, 2022 FOOD CODE (2023).

<sup>44</sup> LOVE ET AL., *supra* note 1, at 2.

The food safety system in the United States is incredibly complex. On the federal level, the FDA and USDA issue rules and guidance related to products falling within their jurisdictions, such as raw meat for the USDA and seafood for the FDA. However, primary regulatory responsibility for ensuring that food businesses are operating safely is at the state, tribal, and local level. More than 3,000 agencies across the United States have some authority to regulate food establishments.

Although most jurisdictions adhere to the standards set forth in the FDA’s model food code, states use different terminology and licensing structures. The licensing of retail food establishments (e.g., grocery stores, markets), is sometimes separated from food service establishment licensing (e.g., restaurants, cafes). Additional licensing is often required for mobile vendors, including food trucks and farmer market stalls. The type of food establishment license required to engage in direct seafood sales will vary by state and marketing strategy.

States take one of two approaches to licensing food establishments: (1) vesting authority in a single state agency or (2) splitting authority among multiple agencies. With either approach, states may choose to delegate all or a portion of the licensing responsibilities to local jurisdictions (Fig. 5). Four possible licensing structures are therefore possible (Fig. 6).

- Food establishment licensing handled by one state agency with no delegation
- Food establishment licensing falls within jurisdiction of one state agency, with delegation to local jurisdictions
- Food establishment licensing handled by multiple state agencies with no delegation
- Food establishment licensing falls within the jurisdiction of multiple state agencies with delegation to local jurisdictions

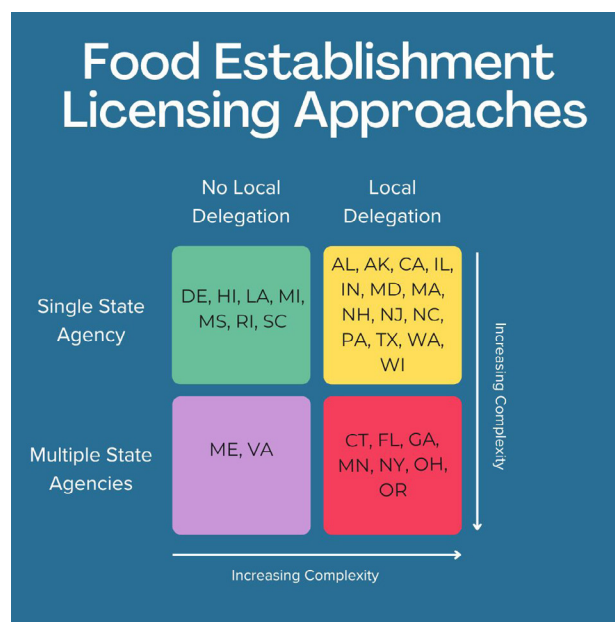


Figure 5. Matrix diagram of state approaches to food establishment licensing

<sup>45</sup> *Retail Food Protection*, U.S. Food and Drug Administration (July 1, 2024).





For individuals selling only in one location, the process would likely feel similar to a state with a single agency/no delegation approach, as they would only need to be licensed by their local department of health or similar entity. However, for individuals seeking to sell in more than one location, they may need to obtain food establishment licenses from each jurisdiction they intend to operate in. Some states seek to minimize these multi-jurisdictional burdens by requiring local jurisdictions to accept licenses issued by other jurisdictions. Connecticut, for example, provides reciprocity for farmers licensed to operate a food establishment for the purposes of participation in a certified farmer's market. Any license issued by a local health department for this purpose is valid for the purpose of operating a food establishment at any certified farmers' market in the state.<sup>47</sup>

### *Multiple Agencies/No Delegation*

Two states split the licensing of food establishments between multiple state agencies but retain that authority at the state level: Maine and Virginia. These states have different licensing frameworks for retail food and food service, splitting responsibility between the state department of agriculture and department of health respectively. A harvester or farmer may need to obtain licenses from two different state agencies depending on their operations and marketing strategies.

In Maine, no person may operate a food establishment, which includes a place where food is sold, without a license from the Maine Department of Agriculture, Conservation, and Forestry.<sup>48</sup> However, this license does not cover operations which prepare and serve food for immediate consumption. Such food service operations require a Health Inspection Program license issued by the Department of Health and Human Services.

In Virginia, a permit is required from the Virginia Department of Agriculture and Consumer Services to operate a retail food establishment. A Virginia Department of Health Food Service Establishment Permit is needed to operate a restaurant or similar food service business.

### *Multiple Agencies/Local Delegation*

The remaining states have the most complex licensing approach. Seven states split the licensing of food establishments between two state agencies and delegate all or a portion of that authority to local jurisdictions: Connecticut, Florida, Georgia, Minnesota, New York, Ohio, and Oregon. As with Maine and Virginia, the common split at the state level is retail food with the department of agriculture and food service with the department of health. The extent of local delegation varies by state. Some states authorize local entities to license all food establishments. Others limit local delegation to only food service establishments. In some states, local jurisdictions may only have the authority to conduct inspections.

Georgia, for example, has separate licensing frameworks for Food Sales Establishments and Food Service Establishments. A license from the Georgia Department of Agriculture is required to operate a Food Sales Establishment. Food sales establishment is defined very broadly and includes any business engaged in the sale of food primarily for consumption off the premises, such as retail and wholesale grocery

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<sup>47</sup> CONN. GEN. STAT. § 22-6s.

<sup>48</sup> ME. REV. STAT. tit. 22, § 2167.

stores and retail seafood stores. Food service establishments are permitted by local health departments. In Minnesota, retail food establishments and mobile food units that primarily sell pre-packaged food to be consumed by the customer offsite are licensed by the Minnesota Department of Agriculture. Most food products that are eaten on-site (e.g., food trucks, restaurants) are licensed by the Minnesota Department of Health. The Minnesota Department of Health (MDH) has a delegation agreement with some local health agencies (city, county) to provide licenses for food and beverage operations.

## Mobile Food Establishments

Seafood harvesters and farmer’s may change the locations at which they are selling their products on a daily or seasonal basis. Some individuals may sell out of the back of a truck in a parking lot or along the road somewhere. Six states have a license specific to seafood sales from a vehicle. (Table 2).

*Table 2. State Licenses for Seafood Sales from Vehicles*

State	License Name	Authorized Activity
<i>Georgia</i>	Mobile Vehicle License	Sale of seafood from a mobile vehicle, which includes both land and water vehicles (vessels)
<i>Maryland</i>	Mobile Seafood or Produce Vendors	Sale of seafood from a location in the right-of-way of any state highway
<i>Massachusetts</i>	Retail Seafood Truck Dealer Permit	Sale of fish or lobsters from a mobile unit
<i>Minnesota</i>	Fish Vendor Vehicle’s License	Sale of fish out of a motor vehicle
<i>Rhode Island</i>	Peddler’s License	Sale of seafood from a vehicle, cart, or other conveyance not registered as a Mobile Food Establishment
<i>Texas</i>	Retail Dealer’s Truck License	Sale of edible aquatic products from a motor vehicle to consumers

Seafood harvesters and farmers may also sell their product directly to consumers at one or more farmers’ markets. Farmers’ market vendors are generally classified as mobile food establishments or temporary food establishments, depending on the operation and how many times the individual vends and where. Although all states have a licensing framework for mobile food establishments, some states have specific licenses or registrations for market vendors.<sup>49</sup> Massachusetts has a seafood dealer permit that authorizes the retail sale of certain raw fish and fish products at a farmer’s market subject to written approval by the Department of Public Health, or the municipal or county board of health.<sup>50</sup> Two states—Virginia and Ohio—exempt certain farmers’ market vendors from retail food establishment licensing.<sup>51</sup>

<sup>49</sup> See, e.g., *SC State Farmers Market Farmer/Vendor Application*, S.C. DEP’T OF AGRIC. 1 (2022).

<sup>50</sup> 322 MASS. CODE REGS 7.01.

<sup>51</sup> 2 VA. ADMIN. CODE 5-585-10; OHIO REV. CODE ANN. § 3717.22.

## On Farm Sales

An alternative direct marketing strategy for aquaculture farmers that parallels off-the-boat sales for commercial harvesters is on-farm stores or markets. Only one state—Maryland—has an express provision that is supportive of on-farm aquaculture sales. The Maryland Department of Health may issue a food processing plant license to an operator of an aquaculture farm to process food in the farmer’s own home or domestic kitchen. An individual licensed in this manner may, while operating a fish farm, clean, weigh, package, label, and sell or distribute raw finfish from the farm that are not associated with histamine intoxication.<sup>52</sup> Although Maine, as discussed above, permits an aquaculture farmer to sell cultured shellfish from their home, they may not live at their farm. On-farm sales are therefore not necessarily authorized by this language.

### *Key Takeaways*

*The sale of seafood directly to consumers often requires a food establishment license in addition to the commercial fishing or aquaculture operational license. In about one-third of states (9 out of 30), food establishment licenses are issued on the state level. The remainder of the states delegate all or a portion of the day-to-day duties associated with licensing food establishments to local jurisdictions. This significantly increases the regulatory complexity and results in direct marketers needing to obtain licenses/permits from multiple local jurisdictions.*

*The process of obtaining a food establishment license can therefore be quite complex, especially if someone is selling seafood in multiple markets or locations. The food licensing requirements and costs will vary depending on how, where, and what product is sold. Reciprocity provisions, such as Connecticut’s for farmer’s market vendors, can reduce costs and streamline local permitting requirements.*

*In recent years, state food licensing reform has focused on reducing restrictions on homemade foods, also referred to as “cottage foods.” The benefits of cottage food licensing are often limited to foods that do not require refrigeration, thereby excluding seafood products. However, policy-makers seeking to reduce barriers to the direct sale of seafood products could learn valuable lessons from the success and approaches of the cottage food movement.*

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<sup>52</sup> MD CODE OF REG. 10.15.04.18(a) & (e).

## VII. Research and Policy Next Steps

Engaging in direct sales can provide numerous benefits to seafood businesses, including diversifying market streams, increasing revenue, and connecting with consumers. As discussed above, the licensing framework for the sale of raw, unprocessed seafood products in many states is complex and presents barriers to harvesters and farmers wishing to sell their products directly to end consumers. The need to obtain multiple licenses and pay high annual licensing fees is common.

State policy-makers should consider undertaking a review of their commercial fishing, aquaculture, and food establishment licensing to identify and address barriers to direct sales. Such a review could be guided by the following questions, among others:

- Are commercial fishing and aquaculture license holders currently permitted to engage, and actually engaging in, direct sales? If not, does the state have a licensing framework for direct sales? Is that framework streamlined and efficient?
- If the state does not have a direct sales licensing framework, are there opportunities to develop one?
- Are the licensing fees appropriate for the scale of businesses and agency administrative costs? Are reporting requirements adequately addressed?
- How are food establishments regulated? If licenses or permits are issued on the local level, are there mechanisms in place to streamline processes for vendors operating in more than one location?

This report examined only one, narrow aspect of direct seafood sales: the sale of raw, unprocessed products. The legal framework grows increasingly complex as harvesters and farmers seek to sell processed or value-added products, or sell to wholesale and institutional customers. Additional research is needed to fully understand the legal framework governing the entire suite of direct seafood sales.