

Sale of saltwater product

Number: AGO 90-12

Date: September 27, 1995

Subject:
Sale of saltwater product

Mr. Tom Gardner
Executive Director
Department of Natural Resources
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

RE: SALTWATER FISHING--NATURAL RESOURCES, DEPARTMENT OF--sale of saltwater product pursuant to a retail dealer's license may not be used to determine eligibility for restricted species endorsement; only those sales pursuant to a saltwater production license may be considered in becoming eligible for a restricted species endorsement. ss. 370.06 and 370.07, F.S.

Dear Mr. Gardner:

You have asked substantially the following question:

May a person possessing a saltwater products license under s. 370.06, F.S., and a retail dealer's license under s. 370.07, F.S., who derives more than 25 percent or \$5,000 (whichever is less) of his income from retail sales of products taken under the saltwater products license, be issued a restricted species endorsement pursuant to s. 370.06(2)(a), F.S.?

In sum, I am of the following opinion:

Sales made pursuant to a retail dealer's license are not identified in s. 370.06, F.S., as a source of income which may be considered in qualifying for a restricted species endorsement on a saltwater products license. However, a person who derives more than 25 percent or \$5,000 (whichever is less) of their income, as defined in s. 370.06(2), F.S., from sales made *pursuant* to his saltwater products license is entitled to a restricted species endorsement.

For purposes of this opinion, you state that the following facts should be assumed. A person possesses a saltwater products license (SPL) pursuant to s. 370.06(2), F.S., and a retail dealer's license under s. 370.07(1)(b), F.S. More than 25 percent or more than \$5,000 (whichever is less) of this person's income is attributable to the retail sales of saltwater products *taken under the authority* of the SPL. The question arises whether such a person would meet the requirements for a "restricted species endorsement" under s. 370.06(2), F.S.

A "restricted species endorsement" allows a person holding an SPL to sell to a licensed

wholesale dealer those species of saltwater products which the state, by law or rule has designated as a restricted species.[1]

Section 370.06(2)(a), F.S., in pertinent part, requires

"[e]very person, firm, or corporation which sells, offers for sale, barter, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license. Each saltwater products license allows the holder to engage in any of the activities for which the license is required. . . . *This [restricted species] endorsement shall be issued only to those persons, firms, or corporations certifying that over 25 percent of their income or \$5,000, whichever is less, is attributable to the sale of saltwater products pursuant to a license issued under this paragraph or a similar license from another state.*" (e.s.)

The statute clearly requires that the amount or percentage of income necessary to obtain a restricted species endorsement be derived from the sale of saltwater products pursuant to the SPL. Section 370.06(2)(a), F.S., further provides that "[a]ny person who sells saltwater products pursuant to this [saltwater products] license may sell only to a licensed wholesale dealer." It would appear, therefore, that a person holding only an SPL is limited to selling saltwater products to a licensed wholesale dealer and only those sales made pursuant to the SPL are considered in qualifying such person for a restricted species endorsement.

Accordingly, to the extent a person holding only an SPL derives income from the sale of products under that license to a licensed wholesale dealer, such income may be considered in determining whether a restricted species endorsement may be issued on the SPL.

However, s. 370.06(2)(a), F.S., states that "[t]his subsection does not apply to any person, firm, or corporation licensed under s. 370.07(1)(a)1. or s. 370.07(1)(b) *for activities pursuant to such licenses.*" (e.s.) Section 370.07(1)(a)1., F.S., prescribes licensure for a person engaging in activities as a "[w]holesale county dealer,"[2] while s. 370.07(1)(b), F.S., requires licensure as a "retail dealer" for any person selling saltwater products directly to the consumer.[3] This does not appear to eliminate the requirement of an SPL in order to obtain a restricted species endorsement, as the activities allowed under the licenses set forth in ss. 370.01(1)(a)1. and 370.07(1)(b), F.S., do not include activities authorized under an SPL or a restricted species endorsement.[4]

Thus, the express language in s. 370.06(2), F.S., allows a person selling products pursuant to an SPL to sell only to licensed wholesale dealers and requires such person to certify that at least 25 percent or \$5,000 (whichever is less) of his income is attributable to the sale of saltwater products pursuant to an SPL in order to qualify for a restricted species endorsement. It does not appear, therefore, that sales of saltwater products made directly to consumers under a retail dealer's license qualify as sales made *pursuant* to an SPL as prescribed in s. 370.06(2)(a), F.S. To interpret the conditions and limitations imposed under this statute otherwise would render meaningless the distinction between sales made pursuant to an SPL authorized in s. 370.06(2), F.S., and retail sales under a retail dealer's license prescribed in s. 370.07(1)(b), F.S.[5]

In light of the clear language of the statute and in the absence of any legislative or judicial

authority otherwise, it is my opinion that a person who holds an SPL pursuant to s. 370.06(2), F.S., and a retail dealer's license under s. 370.07, F.S., may rely only upon sales made pursuant to the SPL in qualifying for a restricted species endorsement.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Section 370.01(20), F.S., provides "Restricted species" is "any species of saltwater products for which the state by law, or the Marine Fisheries Commission by rule, has found it necessary to so designate. Designation as a restricted species does not confer the authority to sell a species pursuant to s. 370.06 if the law or rule prohibits the sale of the species."

[2] Section 370.07(1)(a)1., F.S., provides "'[w]holesale county dealer' is any person, firm or corporation which sells saltwater products to any person, firm, or corporation except to the consumer and who may buy saltwater products in the county designated on the wholesale license from any person licensed pursuant to s. 370.06(2) or from any licensed wholesale dealer."

[3] Section 370.07(1)(b), F.S., provides "'[r]etail dealer' is any person, firm or corporation which sells saltwater products directly to the consumer, but no license is required of a dealer in merchandise who deals in or sells saltwater products consumed on the premises or prepared for immediate consumption and sold to be taken out of any restaurant licensed by the Division of Hotels and Restaurants of the Department of Business Regulation."

[4] *Cf.* AGO 48-56, 1947-48 Biennial Report of the Attorney General, p. 408 (retail dealers who sell to consumers and also to restaurants, hotels and other public eating places are required to secure both a retail and a wholesale dealer's license).

[5] See *City of North Miami v. Miami Herald Publishing Company*, 468 So.2d 218 (Fla. 1985) (in construing legislation, it should not be assumed that the Legislature acted pointlessly or enacted meaningless legislation).