

Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 25.08; 25.90; 25.97 Chapter 25.08 Lobster Trap Tag System; 25.90 Swans Island Area Lobster Trap Regulation; Chapter 25.97 Management Framework for Island Limited Entry Program. Proposed Rule-making.

BRIEF SUMMARY:

This proposed rule-making addresses 1) a new requirement for the use of second zone lobster trap tags statewide, 2) the removal of the registration period for the Swans Island Lobster Conservation area, 3) a change in the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600 traps, for consistency with a previous statutory change, and 4) the creation of an island limited entry program for the island for Swans Island.

This proposed rule-making proposes a requirement to use a second zone tag in all traps when fishing those traps in a zone other than their declared lobster zone. The second zone tag will be in addition to their declared lobster zone tag, and is needed to increase Marine Patrol's ability to enforce the current 49/51% trap component of the Lobster Zone Limited Entry rules.

This proposed rulemaking would also remove the deadline for registration for the Swans Island Lobster Conservation Area, allowing individuals to register at any time of the year. In addition, this rulemaking would change the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600, for consistency with existing Maine law.

Finally, this proposed rule-making addresses a recent island limited entry referendum vote for Swans Island. It would create the Swans Island limited entry program, allowing up to 72 commercial island resident lobster licenses to be issued annually, as authorized by 12 M.R.S. §6449.

Date, time and location of PUBLIC HEARING (*if any*):

September 12, 2016, 6:30 PM, Ellsworth City Hall Auditorium, One City Hall Plaza, Ellsworth

September 13, 2016, 6:00 PM, Rockland Ferry Terminal

September 14, 2016, 6:30 PM University of Maine at Machias, Science Building, Room 102

September 19, 2016, 6:30 PM, Lincoln County Communications Center – Wiscasset

COMMENT DEADLINE: September 29, 2016

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): SAME

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): NONE

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §12 M.R.S. §§ 6171, 6431-B, 6446, 6449, 6482

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): SAME

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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DEPARTMENT OF MARINE RESOURCES

Chapter 25.08; 25.90; 25.97 Chapter 25.08 Lobster Trap Tag System; 25.90 Swans Island Area Lobster Trap Regulation; Chapter 25.97 Management Framework for Island Limited Entry Program. Proposed Rule-making.

Rule language

DEPARTMENT OF MARINE RESOURCES

Chapter 25 - Lobster and Crab Fishing

25.08 Lobster Trap Tag System

A. Prohibitions

- (1) No person shall fish with or have on board a vessel a lobster trap unless a valid lobster trap tag issued by the Commissioner is securely attached to the frame of the trap. The lobster trap tag shall be affixed to the bridge of the lobster trap so that the tag information is clearly visible for inspection by a Marine Patrol Officer.
- (2) No person shall fish with, lift, haul, raise, or transport any lobster trap with a tag which has been tampered with or where the tag number is illegible or missing.
- (3) Double Tagging in Zone G and Zone F

This rule will be in effect until June 1, 2017.

Beginning September 1, 2006, all non-Zone G licensees from Zone F fishing traps in Zone G waters west of the western line described in Chapter 25.94(2)(f) must affix a second removable tag to all lobster traps when fished in that zone.

Beginning September 1, 2006, all non-Zone F licensees from Zone G fishing traps in Zone F waters east of the eastern line described in Chapter 25.94(2)(g) must affix a second removable tag to all lobster traps when fished in that zone.

A person who holds a Class I, Class II or Class III lobster and crab fishing license may not fish more than 49% of that person's lobster traps in a limited entry zone unless that person's license identifies that zone as the declared lobster zone.

The tags must be obtained from the Department, which will provide tags to the licensees at cost.

The absence of a second removable tag on traps fished in Zone G, by non-Zone G licensees from Zone F, and in Zone F, by non-Zone F licensees from Zone G, shall be prima facie evidence of a violation of this regulation.

- (4) Double Tagging in Zone B and Zone C

This rule will be in effect until June 1, 2017.

Beginning June 1, 2010, all licensees who have declared Zone B fishing traps in Zone C waters west of the western line described in Chapter 25.94(2)(b) must affix a second removable tag to all lobster traps when fished in that zone.

Beginning June 1, 2010, all licensees who have declared Zone C fishing traps in Zone B waters east of the eastern line described in Chapter 25.94(2)(c) must affix a second removable tag to all lobster traps when fished in that zone.

A person who holds a Class I, Class II or Class III lobster and crab fishing license may not fish more than 49% of that person's lobster traps in a limited entry zone unless that person's license identifies that zone as the declared lobster zone.

The tags must be obtained from the Department, which will provide tags to the licensees at cost.

The absence of a second removable tag on traps fished in Zone C, by licensees who have declared Zone B, and in Zone B, by licensees who have declared Zone C, shall be prima facie evidence of a violation of this regulation.

(5) Fishing in a Non-Declared Lobster Zone

By June 1, 2017, all Class I, Class II or Class III lobster and crab fishing license holders must affix a second zone tag to their traps when fishing those traps in a zone other than their declared lobster zone. This second zone tag will be in addition to their declared lobster zone tag.

A person who holds a Class I, Class II or Class III lobster and crab fishing license may not fish more than 49% of that person's lobster traps in a zone other than their declared lobster zone unless that person's license identifies that zone as the declared lobster zone.

The tags must be obtained from the Department of Marine Resources.

The absence of a second tag on traps fished in a zone other than their declared lobster zone shall be prima facie evidence of a violation of this regulation.

25.90 Swans Island Area Lobster Trap Regulation

A. Definitions

The following terms, as used in these regulations, shall have the following meanings:

1. Swans Island Lobster Conservation Area. This is that portion of the waters in the vicinity of Swans Island, bounded and described as follows:

"Beginning at the northern tip of Long Point, Marshall Island, Hancock County, Maine; then northerly to the navigational buoy at the western entrance to Toothacher Bay (located at the intersection of Loran Lines 9960-W-12492.0 and 9960-X-25800.0); then northeasterly to West Point, Swans Island, Hancock County, Maine; then from Phinney Point on the northeastern shore of Swans Island southeasterly to the intersection of Loran lines 9960-W-12445.6 and 9960-X-25780.9 (68° 22.40' W. Long., 44° 08.79' N. Lat.) Hancock County, Maine; then southwesterly to the intersection of Loran lines 9960-W-12468.0 and 9960-X- 25773.0 (68° 23.6' W. Long., 44° 06.4' N. Lat.); then south-southwesterly to the intersection of Loran lines 9960-W-12482.2 and 9960-X-25766.4 (68° 24.01' W. Long., 44° 04.8' N. Lat.); then southerly to the intersection of Loran Lines 9960-W-12493.5 and 9960-X-25758.4 (68° 23.9' W. Long., 44° 03.1' N. Lat.) and the intersection with the Three Mile Limit, as shown on NOAA, National Ocean Survey #13312; then southwesterly along the Three Mile Limit approximately 3.5 miles to a point where a line drawn southeasterly 165° True from the center of Black Ledges intersects the Three Mile Limit at Loran lines 9960-W-12524.5 and 9960-X- 25765.5 (68° 28.6' W. Long., 44° 01.9' N. Lat.); then northwesterly 345° True to the center of Black Ledges; then northwesterly to the most southerly point of Marshall Island; thence along the westerly shore of Marshall Island to the point of beginning."

2. Registrant

A person who registers, under Subsection C of this regulation. All registered persons will be registered ~~until June 1st of the following year~~ from the time of registration until the end of the calendar year and must comply with all of the provisions of this regulation during that time.

3. Sternman

A person who regularly accompanies the registrant on board a lobster fishing boat throughout the period of the year in which this registrant has traps in the water, and who is hired or otherwise retained by such registrant to assist in lobster fishing operations.

4. Local Committee

A local committee composed of the registrants of the Swans Island Lobster Conservation Area that is established to provide advice to the Commissioner on issues affecting the Swans Island Lobster Conservation Area.

B. Prohibitions

No person shall place or maintain any trap for lobsters, or otherwise fish for or take lobsters, within the Swans Island Lobster Conservation Area except as provided by and in accordance with the terms of this regulation.

C. Registration

1. Eligibility

The Commissioner ~~may not accept the~~ shall require an annual registration of any person Class I, II or III lobster and crab fishing license holder who is requesting to fish the Swans Island Lobster Conversation Area unless that person registers during the period from January 1st to May 31st of each year and who meets one of the following criteria;

- (a) The person documents to the Commissioner that he or she was registered in the prior season in Lobster Zone B; or
- (b) The person documents to the Commissioner that he or she was registered but did not harvest lobsters due to a medical condition; or
- (c) The person is eligible except for the suspension of their lobster license.

D. Tags

Each lobster trap maintained by a registrant must display a special numbered tag supplied by the Commissioner, ~~and the Commissioner shall designate dissimilar colored tags for commercial and student licenses.~~ Tags shall be replaced annually, when supplied by the Commissioner. Not more than three traps may be attached to a warp and lobster buoy.

A registrant may place and maintain a total of not more than the maximum allowable number of lobster traps indicated below. Each such trap shall bear the appropriate tag.

1. Trap Limit

Maximum Allowable Number of Lobster Traps and Tags ~~475~~ 600

2. Registrant's Presence Aboard

It is unlawful for any person, except the registrant as defined under Chapter 25.90(A)(2) to set, haul, retrieve, or otherwise tend to lobster traps or to take lobsters from the waters of the Swans Island Lobster Conservation Area.

- (a) In the event of an incapacity or other disability occurring during the open fishing season, the Commissioner or the Commissioner's representative, upon receipt of such notice in writing, may allow a properly licensed substitute to fish on behalf of the registrant, but that substitute must use the registrant's vessel.

3. Lost Tag Replacement

The Commissioner, through his representatives, may issue additional tags to compensate for lobster traps and tags lost, up to 10% of the number of tags issued in that year to the registrant. In the event of catastrophic loss, the Commissioner may issue additional replacement tags in excess of this 10% limitation but may require that a hearing first be held in order to obtain satisfactory evidence of such loss.

25.97 Management Framework for Island Limited Entry Program

B. Island Limited Entry Referenda Procedures

(2) Island Limited Entry Referenda

- (a) The referendum question shall be mailed to all eligible license holders identified as established island resident lobster license holders.
- (b) The referendum ballots will include a postage-paid return address at the Department of Marine Resources.
- (c) The interim island committee may submit a proposed island limited entry program to the Commissioner if it is approved by ~~two-thirds~~ a simple majority of those voting in the referendum.
- (d) If a referendum to establish an island limited entry program fails to obtain the approval of ~~two-thirds~~ a simple majority of those voting in the referendum, no further referenda will be approved for a minimum of 24 months from the date that the ballots of the previous referendum were due.

(4) Adoption

- (a) If an island limited entry program is approved by ~~two-thirds~~ a simple majority of those voting in the referendum, the Commissioner may adopt and publish the rules as proposed or may reject the proposed rule if it is found to be unreasonable.
- (b) If rules are adopted to establish a limited entry program for an island, the Commissioner shall, at the end of the licensing year, designate those licenses that are the established island resident lobster license holders, solely for the purpose of determining future entry through the island limited entry program.
- (c) Licenses issued pursuant to 12 M.R.S. §6448 sub-§8 to island residents during the licensing year shall be designated as established island resident lobster licenses, solely for the purpose of determining future entry through the island limited entry program.
- (d) If rules are adopted to establish a limited entry program for an island, no further referenda will be approved for a minimum of 36 months from the effective date of the regulation establishing the program. A change to the number of island resident licenses established through the referendum requires a new island limited entry referendum.

C. Island Limited Entry Program Procedures

(2) Licenses Issued

- (a) For islands that have established limited entry programs, in the initial year the Commissioner shall determine the number of new island resident licenses that may be authorized at the conclusion of the rule-making process. The number of new island resident lobster licenses must be calculated by determining the number of established island resident license holders. The number of established island resident lobster license holders shall be subtracted from the number of island resident licenses established through the referendum process. The number of licenses remaining is the number of new island resident licenses that may be authorized.
- (b) In subsequent years, by ~~February~~ April 1 of each licensing year, the Commissioner shall determine the number of new island resident licenses that may be authorized. The total number of established island resident license holders and new island resident license holders

at the end of the previous calendar year shall be subtracted from the number of island resident licenses established through the referendum. The number of licenses remaining is the number of new island resident licenses that may be authorized.

- (c) Once the number of new island resident licenses to be issued has been calculated, a list of authorized new island resident license holders shall be determined from the waiting list pursuant to Chapter 25.97(C)(1).
- (d) Authorized new island resident license holders will be informed in writing, and mailed a license application form by certified mail.
- (e) Authorized new island resident license holders must submit their completed license application, with correct fees and documentation to the Department. The application must be received by the Department within 30 days of receipt by the applicant of the notice described in Chapter 25.97(C)(2)(d) above, or the new island resident will lose his/her authorization to qualify for a new island resident license.
- (f) If an authorized new island resident has not complied with (e) above, the next person on the island limited entry waiting list will be sent a license application and have 30 days to comply in the same manner.
- (g) If a person who is authorized as a new island resident license holder is not an island resident at the time of authorization, he/she will have 120 days to begin residency on the island. That person's new island resident lobster and crab fishing license may not be issued until residency is established. If an authorized new island resident has not established residency within 120 days, the next person on the island limited entry waiting list will be sent a license application.
- (h) New island resident licenses will be designated in a manner suitable to enable the Department to ensure that the license holder is complying with the requirements of Chapter 25.97(C)(3).

E. Islands with Approved Limited Entry Programs

- (1) Cliff Island
The Cliff Island limited-entry program allows up to 12 commercial island resident lobster licenses to be issued annually.
- (2) Cranberry Isles
The Cranberry Isles limited-entry program allows up to 23 commercial island resident lobster licenses to be issued annually.
- (3) Monhegan Island
The Monhegan Island limited-entry program allows up to 17 commercial island resident lobster licenses to be issued annually.
- (4) Frenchboro
The Frenchboro Island limited-entry program allows up to 14 commercial island resident lobster licenses to be issued annually.
- (5) Swans Island
The Swans Island limited-entry program allows up to 72 commercial island resident lobster licenses to be issued annually.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 25.08; 25.90; 25.97

STATUTORY AUTHORITY: 12 M.R.S. §§ 6171, 6431-B, 6446, 6449, 6482

DATE AND PLACE OF PUBLIC HEARING:

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COMMENT DEADLINE: **September 29, 2016**

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

This proposed rule-making addresses 1) a new requirement for the use of second zone lobster trap tags statewide, 2) the removal of the registration period for the Swans Island Lobster Conservation area, 3) a change in the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600 traps, for consistency with a previous statutory change, and 4) the creation of an island limited entry program for the island for Swans Island.

This proposed rule-making proposes a requirement to use a second zone tag in all traps when fishing those traps in a zone other than their declared lobster zone. The second zone tag will be in addition to their declared lobster zone tag, and is needed to increase Marine Patrol's ability to enforce the current 49/51% trap component of the Lobster Zone Limited Entry rules.

This proposed rulemaking would also remove the deadline for registration for the Swans Island Lobster Conservation Area, allowing individuals to register at any time of the year. In addition, this rulemaking would change the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600, for consistency with existing Maine law.

Finally, this proposed rule-making addresses a recent island limited entry referendum vote for Swans Island. It would create the Swans Island limited entry program, allowing up to 72 commercial island resident lobster licenses to be issued annually, as authorized by 12 M.R.S. §6449.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___YES___X___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

These regulations would effectively address the enforcement issue of fishing more than 49% of the trap gear in a second zone. It would also create an island limited entry program for Swans Island.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

(including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

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ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.