

Department of Marine Resources
NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE OR SUBJECT: Chapter 25.09 Procedure for Issuing Seed Lobster Permits, and Chapter 25.90(A)(2) & (D)(2) citation correction

CONCISE SUMMARY: The Department of Marine Resources proposes administrative and logistical updates to the Seed Lobster Program regulations. Proposed amendments would include changing the program season to January 1 to November 30; disbursement of funds after December 1; repeal the requirement for applicants to supply an estimate; establish an application deadline; change the seed lobster purchase price to be based on the DMR Landings Program data collected from the previous year; plus technical clarifications in the terms. The proposed amendments have been reviewed by and are supported by the Lobster Advisory Council as noted in the minutes of their most recent meetings. Also, two citations in section 90 would be corrected.

STATUTORY AUTHORITY: 12 M.R.S.A. §6171 & §6451

PUBLIC HEARING: Monday, October 26, 2009, **6:00pm, Natural Resource Service Center, 6 Beech Street, Hallowell (access via the rear entrance) ***Public hearings for multiple proposed rules will be held in chronological order. The second hearing will be held immediately upon the conclusion of the previous hearing, etc. See separate rulemaking notices for the rules not listed in this notice.*

DEADLINE FOR COMMENTS: November 6, 2009

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON: Deirdre Gilbert (207-624-6576)

Mail Written Comments to: Department of Marine Resources, attn L. Churchill

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E-MAIL: laurice.churchill@maine.gov **TEL:** (207) 633-9584 **FAX:** (207) 633-9579 **TTY:** (207) 633-9500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

The proposed amendments would impact lobster pound owners who qualify and are permitted to participate in the Seed Lobster Fund Program. This proposal would update procedures pertaining to the application process, calculation and disbursement of the funds.

The following is an explanation by section of the proposed amendments:

Ch. 25.09(A)(2) Season:

The season would be changed from May 1 – April 30 to Jan 1 – Nov 30 for administrative ease by corresponding the calendar year.

Ch. 25.09(B)(1) Requests for estimates:

To apply to participate in the program wholesale seafood license holders have been required to submit estimates of the amount of seed lobsters they request to move. These figures have not been useful, since nearly every participant estimates the maximum allowable release of 2000 lbs. Therefore this requirement would be removed. The deadline for the application forms to be returned by May 15 would be established for consistency with current policy. The section title would be updated.

Ch. 25.09(B)(2) Set seed lobster purchase price:

Currently, the price is established by developing a statewide average weekly price for the program year, according to a process described in rule. The process does not take into account the volume of lobsters landed at that price, so high price/low volume weeks have the effect of skewing the price upward.

The proposed rules would utilize the DMR Landings Program data which is used to calculate a monthly price corresponding to monthly landings; this landings weighted average would be used to calculate a yearly price. This calculation more accurately reflects the true price of lobsters. If this methodology were used, we would use the average price from the prior calendar year, and would inform potential participants that this is the maximum amount that would be paid during the current year's program. For comparison's sake, below are the prices calculated by each of these methods for the past 4 years:

Seed	Lobster Program	Landings Program
2005	\$5.39	\$4.63
2006	\$4.45	\$4.09
2007	\$5.99	\$4.44
2008	\$5.43	\$3.50

Ch. 25.09(B)(2) Disbursement of funds:

By changing the season to the calendar year the disbursement would occur in December instead of the current practice in January.

Ch. 25.09(B)(3) Allocation of funds:

The Lobster Advisory Council supports retaining the established 2000 lb cap and removing the 1% capacity. The term "pound owner" would be amended to "pound" as there are persons who own more than one pound and in practice the Department has allowed owners to liberate 2,000 pounds from each pound.

Technical corrections would be made to clarify the rules by replacing the term "estimates" with the actual "liberations" or amount of seed lobsters liberated; and to correct spelling errors.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

Chapter 25 Lobster and Crab

25.09 Procedure for Issuing Seed Lobster Permits

A. Definitions

(1) Maine Lobster Pound Owner

For the purpose of allocating funds under 12 M.R.S.A. §6451(2), a lobster pound owner is a person who owns an open air tidal circulated, or cove type facility, that has a minimum capacity of 20,000 pounds of lobsters (exclusive of tank rooms).

(2) Season

The Seed Lobster Program shall have an annual season of January 1 to November 30. ~~May 1 to April 30.~~

B. Procedures

(1) Application deadline ~~Request for estimates of seed lobsters available~~

Prior to May 1 of each year, the Commissioner shall notify request ~~request~~ pound owners, who hold current wholesale seafood licenses, of the opportunity to participate in the Seed Lobster Program. Current wholesale seafood license holders must return the application form by May 15 to participate in the program for the current year. ~~to submit estimates to the Department of the amount of seed lobsters expected to be removed from their pounds during the current year.~~

(2) Set seed lobster purchase price

The Commissioner, ~~after consulting with the industry,~~ shall establish the price to be paid for seed lobsters during the current year, pursuant to 12 M.R.S.A. §6451(2). The price shall be calculated based on the prior year's DMR Landings Program records for American Lobster. The price per pound shall be calculated as follows:

(a) Divide the landed value by the live pounds for the average price per pound to be used as the price for the program year. to result in a statewide average weekly lobster price for the program year. For each of the weeks from January 1 through October 31 of the current calendar year (inclusive), calculate the average weekly price as follows:

~~(a) Add the weekly prices for Maine ports based on the North Atlantic Lobster Coalition price weekly report (all lobster types);~~

~~(b) Divide this total by the total number of prices to get an average weekly lobster price for each week from January 1 through October 31 (inclusive);~~

Based on the results calculated by (a) and (b) above; calculate the statewide average weekly price for the program year as follows:

~~(c) Add the average weekly lobster prices for each week from January 1 through October 31 (inclusive);~~

~~(d) Divide this total by the total number of weeks from January 1 through October 31 (inclusive) to get an average weekly lobster price for the program year.~~

Disbursement of Funds will be made after December 1.~~November 1.~~

(3) Allocation of money

- (a) The Commissioner shall establish, with the advice of the Lobster Advisory Council, the amount of money to be expended each ~~fiscal~~ year for the purpose of purchasing seed lobsters from Maine lobster pound owners who are holders of current wholesale seafood licenses.
- (b) Notwithstanding Chapter 25.09(B)(2) above, if ~~liberations by estimates from pound owners exceeds of the amount of seed lobsters available exceed the~~ money allocated for purchase of seed lobsters, each pound owner will be compensated for pounds liberated based on the following formula:
$$\text{Funds available} / \text{Total pounds liberated} = \text{Price per pounds liberated}$$
- (c) ~~No pound owner shall be compensated for more than 1% of their lobster pound capacity. Under no circumstances shall a pound owner be compensated for more than 2,000 pounds.~~
- (d) If ~~liberations by estimates from pound owners~~ are less than the funds allocated for purchase of seed lobsters, the Commissioner may purchase female lobsters by competitive ~~complete~~-bid up to the amount remaining in the seed lobster purchase allocation for the current year.
- (e) The Department shall indicate the condition of the lobsters at the time of liberation. Pound owners will not be reimbursed for unhealthy lobsters.

(4) Permit

- (a) The Commissioner shall issue a permit to pound owners to hold and deliver seed lobsters to the Department in the amount to be purchased.
- (b) Seed lobsters removed from pounds that are in excess of the amount stated in the permit must be liberated immediately or arrangements made to turn the lobsters over to the Department to be v-notched and liberated. The Department will provide a receipt (liberation slip) for all liberated lobsters.

25.90 Swans Island Area Lobster Trap Regulation

A. Definitions

2. Registrant

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

D. Tags

2. Registrant's Presence Aboard

It is unlawful for any person, except the registrant as defined under Chapter 25.90(A)(2)~~(3)~~ to set, haul, retrieve, or otherwise tend to lobster traps or to take lobsters from the waters of the Swans Island Lobster Conservation Area.

If you are unable to attend the hearing persons are encouraged to submit written comments from the receipt or posting of this notice through close of business on the deadline listed.