

DEPARTMENT OF MARINE RESOURCES – PROCEDURAL RULES

CHAPTER 3

FOREIGN FISH PROCESSING WITHIN
THE STATE OF MAINE'S INTERNAL WATERS

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DEPARTMENT OF MARINE RESOURCES

Chapter 3 - Foreign Fish Processing Within the State of Maine's Internal Waters

3.01 Definitions.

Unless the context indicates otherwise in this section, the following words shall have the following meanings:

- A. "Department" means the Maine Department of Marine Resources, State House Station #21, Augusta, Maine 04333;
- B. "Fishery Conservation Zone" means that zone established by Section 101 of the Magnuson Fishery Conservation and Management Act of 1976, P.L. 94-265, 16 U.S.C. §1811;
- C. "internal waters of Maine" means all waters within the boundaries of the state except those seaward of the baseline from which the territorial sea is measured;
- D. "fish processing" means the application of preservative means and/or methods to the flesh of fish to maintain quality and prevent deterioration, and includes, but is not limited to, preparation, supply, storage, refrigeration, or transportation of unprocessed fish, "fish processing" does not include the traditional transportation of herring by Canadian herring carriers from Maine's internal waters to Canada;
- E. "adequate capacity" means that U.S. fish processors operating fish processing facilities in Maine have the physical plant capacity and the present determination to use that processing capacity to process all of the United States harvested fish from the fishery concerned that are landed in Maine.
- F. "IWP permit" means a permit authorized by the Governor under section 3.04 for foreign fishing vessels to engage in fish processing in the internal waters of this state pursuant to Section 306, Subsection C of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856).

3.02 Authorization.

A foreign fishing vessel may engage in fish processing within the internal waters of Maine if:

- A. the foreign nation under which it is flagged is a party to a governing international fishery agreement or treaty described in the Magnuson Fishery Conservation and Management Act, as amended, (16 U.S.C. §1821(b)) during the time the vessel will engage in fish processing in internal waters of Maine;
- B. the owner or operator of the foreign fishing vessel or a person representing the owner or operator, applies to the Department for a permit, the Governor approves the issuance of a permit, and a permit is issued for the vessel to engage in fish processing in internal waters of Maine;
- C. all other necessary permits and appropriate fees for permission to conduct fish processing in internal waters have been obtained.

3.03 Application.

A permit application to engage in fish processing in the internal waters of Maine should be submitted as soon as possible prior to the requested date of the beginning of the processing activity and shall state:

- A. the reasons the applicant does not believe that U.S. fish processors within Maine have adequate capacity, or will utilize such capacity, to process all of the United States harvested fish from the U.S. fishery concerned that are landed in Maine, including any relevant documentation supporting such statement;

- B. whether or not the cumulative amount requested will cause catch levels from the management area to exceed the specified total allowable catch (TAC);
- C. a description of the foreign fish processing vessel and other identification information;
- D. the name(s) and description(s) of the vessel(s) from which the applicant expects to purchase fish;
- E. the species and quantity proposed to be processed and processing methods to be used;
- F. the date(s) for which permission is sought;
- G. the specific locations in the internal waters proposed for fish processing;
- H. the existence of a governing international fisheries agreement or treaty as described in 16 U.S.C. §1801, *et seq.*, as amended;
- I. the ability to comply with all applicable laws and regulations of the United States and the State of Maine and any permit conditions;
- J. the ultimate point of sale for the product;
- K. information showing how the fish processing will benefit development of the fish industry in Maine.
- L. whether past over-the-side sales commitments, permit conditions, and other requirements have been met; and
- M. other information as needed or required by the State of Maine.

3.04 Approval.

The Department will make a recommendation to the Governor for approval or denial of the permit, based on evaluation of information provided in section 3.03 and other applicable laws and regulations. The Department may recommend approval of a permit to the Governor if it determines that U.S. fish processors within Maine do not have adequate capacity and will not utilize such capacity to process all of the United States harvested fish from the fishery concerned that are landed in Maine.

In determining whether or not U.S. fish processors within Maine have adequate capacity, and will utilize such capacity to process all of the U.S. harvested fish from the fishery, the Department may consider the following factors:

- A. the availability of harvesting vessels in Maine and the capability of such vessels to take the species in the fishery concerned;
- B. the availability of the labor force, adequacy of processing machinery, freezers, and cold storage facilities of Maine fish processors, and the processors' ability, intent, and current and future plans to process the particular species;
- C. the geographical proximity of harvest areas supplying the foreign fish processor to the facilities of Maine processors;
- D. the Maine processors' claims as to their capacity versus their actual processing performance in any given year;
- E. the potential for Maine processors to compete in foreign markets (e.g., existence of trade barriers; abundance of a competing product in other parts of the world).

3.05 Condition.

- A. The Department may recommend specific times and areas of operations, species and quantities to be processed, and any other conditions of operation determined to be necessary and appropriate including but not limited to consent by the foreign processing vessel to take an observer on board; assisting in the transfer of the observer to and from the foreign processing vessel; and reimbursement for the cost of the observer's presence.
- B. Final approval of a permit is subject to any applicable provisions specified in Atlantic States Marine Fisheries Commission (ASMFC) interstate fisheries management plans.

3.06 Termination.

The Department may recommend termination of the internal waters permit upon written notification if it is determined that:

- A. U.S. processors operating in Maine subsequent to initial issuance of a permit have acquired adequate capacity, and will utilize that capacity to process all U.S. harvested fish from the fishery;
- B. any permit condition has been violated;
- C. or for any other reason deemed necessary to protect the public health, welfare or safety.

3.07 Informational Hearing.

A hearing on an application is not required. The Department may cause an informational hearing to be held at its discretion after notice.

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