

NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Marine Resources

RULE TITLE OR SUBJECT: Chapter 25.04 Lobster Trawl Limits; Chapter 25.97 Management Framework for Island Limited Entry Program. Proposed Rule-making.

PROPOSED RULE NUMBER:

CONCISE SUMMARY: This proposed rule-making addresses two separate lobster trawl limits, one in the vicinity of Kittery and one off Hancock County, and also creates an island limited entry program for the island of Frenchboro.

The trawl limit proposed in the vicinity of Kittery is unchanged from the existing trawl limit in law. The Department is seeking to adopt this trawl limit in regulation for consistency with all other trawl limits, so that it is easier to make changes requested by industry as necessary. The trawl limit in law would subsequently be repealed. The trawl limit in Hancock County is proposed to be amended so that it does not conflict with changes to minimum trawl lengths that will be necessary for compliance with the National Marine Fisheries Service (NMFS) federal vertical line regulations (otherwise known as the "whale rules") published June 27, 2014, and which go into effect in Maine on June 1, 2015. With the new whale rules, there will be a minimum number of lobster traps per trawl based on the different lobster zones and distance from shore to reduce the number of buoy lines in the water column. The measures necessary for compliance with the federal whale rules will be accomplished in a subsequent rule-making in Chapter 75.

This proposed rule-making would also address a recent island limited entry referendum vote for Frenchboro. It would create the Frenchboro Island limited entry program, allowing up to 14 commercial island resident lobster licenses to be issued annually as authorized by 12 M.R.S. §6449.

THIS RULE WILL ___ WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 12 M.R.S. §§ 6171, 6439-A, 6449.

PUBLIC HEARING: February 11, 2015. 6:00 PM, Ellsworth City Hall Auditorium, One City Hall Plaza, Ellsworth.

DEADLINE FOR COMMENTS: February 23, 2015

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: Sarah Cotnoir (207-624-6596)
Mail Written Comments to: Department of Marine Resources, attn: K. Rousseau
ADDRESS: 21 State House Station, Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
FAX: (207) 624-6024
TTY: (711) Maine Relay
Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

DEPARTMENT OF MARINE RESOURCES

Chapter 25 - Lobster and Crab Fishing

25.04 Lobster Trawl Limits

A. Casco Bay

It shall be unlawful to have on any trawl more than 12 lobster traps in waters within the following area: Starting at Martin Point, Portland; southeasterly to the northern end of House Island, Portland; thence southeasterly to the northeast point of White Head, Cushing Island, Portland; thence easterly to the southwest point of outer Green Island; thence easterly to the light at Halfway Rock; thence northwesterly to the Green Island Ledge Buoy; thence northwesterly to Parker Point, Yarmouth.

B. It is unlawful to have on any trawl more than 3 lobster traps in the following areas:

1. West of Cape Elizabeth and east of Kittery. Westerly of a line drawn from the active lighthouse at Two Lights in Cape Elizabeth through the Hue and Cry Buoy and, continuing in a straight line, to the point of intersection with the 3-nautical-mile line, and northerly and easterly of a line running between the Kitts Rocks Whistle Buoy and the West Sister Buoy and extending westerly to the New Hampshire border, and from the West Sister Buoy to the Murray Rock Buoy and thence to and through the lighthouse on Boone Island and, continuing in a straight line, to the point of intersection with the 3-nautical-mile line;
2. Between Pemaquid and Robinson's Points. Between the following lines:
 - A. Beginning at a point 48 miles true north of the lighthouse on Pemaquid Point, Lincoln County; thence true south through the lighthouse to a point of intersection with the 3-nautical-mile line; and
 - B. Beginning at a point 40 miles true north from the lighthouse at Robinson's Point, Isle au Haut, Knox County; thence true south through the lighthouse to a point of intersection with the 3-nautical-mile line; and
3. Off Hancock County. ~~Beginning at Schoodic Point, Hancock County; thence running a True compass course of 159° for approximately 16 miles to latitude 44°04.33' north and longitude 067°54.64' west; thence running along a True compass course of 236° for approximately 11.4 miles, to and through Mt. Desert Rock to latitude 43°57.87' north and longitude 068°08.2' west; thence running in a True compass course of 336° for approximately 4.2 miles to latitude 44°01.65' north and longitude 068°10.55' west; thence running in a westerly direction to a point where that line intersects with the line described in subsection 2, paragraph B, if it is extended to that line.~~

Beginning at Schoodic Point, Hancock County; thence running a True compass course of 159° to latitude 44°9.481'N and longitude 067°57.56'W; thence running in a southwesterly direction to latitude 44 1.335N and longitude 068 13.845W; thence running in a westerly direction to a point where that line intersects with the line described in subsection 2, paragraph B, if it is extended to that line.

C. Beals Island to Libby Island, Washington County

It shall be unlawful to have on any trawl more than 4 lobster traps in waters within the following area: A line starting at the Southeast tip of Kelly Point, Jonesport, thence following a southerly direction on a course of 170 degrees True to the most southern end of Freeman Rock, Jonesport (southwest of Moose Peak Light) as identified on National Oceanic and Atmospheric Administration nautical charts. Thence following a compass course 60 degrees True to the geographic coordinates N 44° 32.6' W 67° 21.1', Datum WGS84 (Loran ~~12009.5-25741.5~~). Thence following a compass course of 305 degrees True to the most southern tip of Cow Point, Roque Bluffs.

D. Kittery

It is unlawful to have on a trawl more than 10 lobster traps in the waters southerly of a line running between the Kitts Rocks Whistle Buoy and the West Sister Buoy and extending westerly to the New Hampshire border, and from the West Sister Buoy to the Murray Rock Buoy and thence to and through the lighthouse on Boone Island and, continuing in a straight line, to the point of intersection with the 3-nautical-mile line. Each trawl set in this area must be marked on each end with at least one buoy with a buoy stick of at least 4 feet in length.

25.97 Management Framework for Island Limited Entry Program

A. Definitions

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

- (1) "Established island resident lobster license holder" means a person who:
 - (a) has a permanent physical place of abode on the island, as demonstrated through payment of property taxes on land and buildings or a signed lease, and
 - (b) holds a current Class I, II, or III lobster and crab fishing license at the time the island limited entry process under Chapter 25.97(B) is initiated.
- (2) "New island resident lobster license holder" means a person who is issued a Class I, II, or III lobster and crab fishing license through the island limited entry program. The person remains a new island resident lobster license holder until they have documented 8 years of residency and lobster landings on the island. To document residency, the person must complete a statement of domicile provided by the Department of Marine Resources, establishing that they are domiciled on the island, including meeting all of the following criteria:
 - (a) has a permanent physical place of abode on the island, as demonstrated through payment of property taxes on land and buildings or a signed lease. Individuals residing with a parent on the island may provide evidence that the parent has paid property taxes or has signed a lease.
 - (b) If registered to vote, is registered to vote on the island where the person has a permanent physical place of abode, if the island is a municipality.
 - (c) has registered their motor vehicle on the island, if the island is a municipality;
 - (d) has provided an island address for their driver's license, if the person holds a driver's license;
 - (e) has registered their boat on the island, if the island is a municipality;
 - (f) has paid their boat excise tax to the island, if the island is a municipality; and
 - (g) has listed an island address as their home mailing address on their Maine Income Tax Return.
- (3) "Year-round island community" means the following islands: Swans Island, the Cranberry Isles, Frenchboro, Vinalhaven, Matinicus, Monhegan Island, North Haven, Isle au Haut, Islesboro, Great Diamond Island, Little Diamond Island, Long Island (Casco Bay), Chebeague Island, Cliff Island, and Peaks Island.

B. Island Limited Entry Referenda Procedures

- (1) Petition Process for Initiating Island Limited Entry Referenda
 - (a) An established island resident lobster license holder who wishes to initiate a referendum to create a limited entry system for the island must form an interim island committee, consisting of a minimum of three established island resident lobster license holders.
 - (b) The Commissioner will provide the interim island committee with a list of established island resident lobster license holders for the purpose of determining the number of signatures needed to initiate a referendum.
 - (c) Lobster license holders not included on the list of established island resident lobster license holders who have a permanent physical place of abode on the island may petition the Commissioner for inclusion on the list.
 - (d) The Commissioner will provide the interim island committee with a petition form to collect signatures for the purpose of initiating a referendum. The petition must include both a description of the island limited entry program, and the number of licenses proposed for

the island. The number of licenses proposed for the island may not be smaller than the current number of established island resident lobster license holders.

- (e) The interim island committee must collect a minimum of five signatures of established island residents who are Class I, II, or III license holders, or 10% of the established island residents who are Class I, II, or III license holders, whichever is greater.
- (f) If the required number of signatures is collected, a representative from the interim island committee must present the proposal to the Lobster Management Policy Council of the Zone in which the island is located before the referendum may be conducted.
- (g) Based on the feedback received from the Lobster Management Policy Council, the interim island committee may amend the number of licenses proposed before the referendum is conducted.

(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 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 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.

(3) Voter Qualifications

- (a) Only those individuals identified on the list of established resident island lobster license holders are eligible to vote in the island limited entry program referenda.
- (b) To be eligible to vote, a person must be at least 18 years of age or older.
- (c) Each person eligible to vote in the referendum shall have one vote.

(4) Adoption

- (a) If an island limited entry program is approved by two-thirds 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

(1) Island Waiting List

- (a) The Commissioner shall maintain and make available an island license waiting list of persons who have requested an island limited entry lobster and crab fishing license.

- (b) A person who did not hold a Class I, II, or III lobster and crab fishing license in the previous licensing year and wishes to be a new island resident lobster license holder shall notify the Department by submitting an island waiting list declaration form. The person must be put on the waiting list according to the date on which the form was received. If multiple persons submit forms on the same day, persons shall be placed on the list according to the date the Commissioner determined that the person is eligible for a Class I, II or III lobster and crab fishing license.
- (c) A person who held a Class I, II, or III lobster and crab fishing license in the previous calendar year in a Lobster Management Zone other than the one in which the island is located, and wishes to be a new island resident lobster license holder shall notify the Department by submitting an island waiting list declaration form. The person must be put on the waiting list according to the date on which the form was received. If multiple persons submit forms on the same day, persons shall be placed on the list according to the date their lobster and crab fishing license was initially issued.
- (d) If persons described under both (b) and (c) above submit island waiting list declaration forms on the same day, placement on the waiting list shall be determined through a random lottery drawing.
- (e) A person who is on a Zone waiting list may remain on that list when they make the island waiting list declaration, but they are no longer eligible to remain on the Zone waiting list if they accept a new island resident lobster license.

(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 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).

(3) Requirements of New Island Resident License Holders

- (a) Persons holding new island resident lobster licenses must submit annually proof of lobster landings to the Department, or indicate that they did not fish. This requirement remains in effect until they have documented eight years of lobster landings.
- (b) Persons holding new island resident licenses must confirm annually that they are continuing to meet residency requirements by completing the statement of domicile as provided by the DMR Licensing Division. Pursuant to 12 M.R.S. §6303, any license issued through misrepresentation or misstatement shall be void.
- (c) A new island resident lobster license becomes void when a person no longer meets the residency requirements in accordance with 12 M.R.S. §6449 sub-§2.

(4) Residency Requirement Waivers

- (a) A person who is unable to continue to meet the definition of a new island resident lobster license holder because a substantial illness or medical condition on the part of the person or an immediate family member prevented that person from continuing their residency on the island may appeal to the Commissioner for a residency waiver at the time of license renewal. The person must provide the Commissioner documentation from a physician describing the illness or other medical condition. In the case of illnesses or medical conditions lasting longer than a year, the Commissioner will annually review the circumstances to determine whether or not to extend the residency waiver. The person must demonstrate intent to return to residency on the island in order to be eligible for an extension of the residency waiver.
- (b) A person who is unable to continue to meet the definition of a new island resident lobster license holder because their child is enrolled as a student in a mainland community up to grade 12 may appeal to the Commissioner for a residency waiver at the time of license renewal. The person must provide the Commissioner documentation that their child is enrolled as a full-time student in accordance with 20-A M.R.S. §5001-A. This waiver may be renewed annually for the duration of the child's enrollment.

D. Island Limited Entry Program Committee

An island committee composed of resident lobster license holders of the island that has established a limited entry program must be established within three months of the adoption of the regulations establishing the limited entry program, to provide advice to the Commissioner on issues affecting the island limited entry program.

(1) Composition: The Committee shall be composed of five members, as follows:

- (a) Three established island resident lobster license holders, and
- (b) Two new island resident lobster license holders

If there are less than two new island resident lobster license holders, the Committee shall include only one new island resident lobster license holder.

(2) Election: The Committee shall be elected by established island resident lobster license holders and new island lobster license holders. Member(s) shall be elected for two-year terms. Members may be re-elected.

- (3) Meetings of Members: The Committee shall meet at least annually, or more often as needed to address issues of importance concerning the island limited entry program. Committee meetings shall be open to the public.

E. Islands with Approved Limited Entry Programs

- (1) Chebeague Island
The Chebeague Island limited-entry program allows up to 31 commercial island resident lobster licenses to be issued annually.
- (2) Cliff Island
The Cliff Island limited-entry program allows up to 12 commercial island resident lobster licenses to be issued annually.
- (3) Cranberry Isles
The Cranberry Isles limited-entry program allows up to 23 commercial island resident lobster licenses to be issued annually.
- (4) Monhegan Island
The Monhegan Island limited-entry program allows up to 17 commercial island resident lobster licenses to be issued annually.
- (5) Frenchboro
The Frenchboro Island limited-entry program allows up to 14 commercial island resident lobster licenses to be issued annually.

Rule-Making Fact Sheet

(5 M.R.S.A., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Kevin Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021
Telephone: (207) 624-6573; E-mail: kevin.rousseau@maine.gov, web address:
<http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 25.04 Lobster Trawl Limits; Chapter 25.97 Management Framework for Island Limited Entry Program. Proposed Rule-making.

STATUTORY AUTHORITY: 12 M.R.S. §§ 6171, 6439-A, 6449.

DATE AND PLACE OF PUBLIC HEARING: February 11, 2015. 6:00 PM, Ellsworth City Hall Auditorium, One City Hall Plaza, Ellsworth.

COMMENT DEADLINE: February 23, 2015

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

This proposed rule-making addresses two separate lobster trawl limits, one in the vicinity of Kittery and one off Hancock County, and also creates an island limited-entry program for the island of Frenchboro.

The trawl limit proposed in the vicinity of Kittery is unchanged from the existing trawl limit in law. The Department is seeking to adopt this trawl limit in regulation for consistency with all other trawl limits, so that it is easier to make changes requested by industry as necessary. The trawl limit in law would subsequently be repealed. The trawl limit in Hancock County is proposed to be amended so that it does not conflict with changes to minimum trawl lengths that will be necessary for compliance with the National Marine Fisheries Service (NMFS) federal vertical line regulations (otherwise known as the "whale rules") published June 27, 2014, and which go into effect in Maine on June 1, 2015. With the new whale rules, there will be a minimum number of lobster traps per trawl based on the different lobster zones and distance from shore to reduce the number of buoy lines in the water column. The measures necessary for compliance with the federal whale rules will be accomplished in a subsequent rule-making in Chapter 75.

This proposed rule-making would also address a recent island limited entry referendum vote for Frenchboro. It would create the Frenchboro Island limited entry program, allowing up to 14 commercial island resident lobster licenses to be issued annually as authorized by 12 M.R.S. §6449.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: These regulations would amend the trawl limit off of Hancock County, and create an island limited entry program for Frenchboro.

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