

DEPARTMENT OF MARINE RESOURCES

25.08 Lobster Trap Tag System

A. Prohibitions

(4) Double Tagging in Zone B and Zone C

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.

Basis Statement

Chapter 25.08(A)(4) Double Tagging in Zone B & Zone C

Fishermen in Lobster Management Zone B have voiced concerns that the limited-entry law, particularly the requirement that a person who holds a Class I, Class II or Class III lobster and crab fishing license may not fish a majority of that person's lobster traps in a limited-entry zone unless that person's license identifies that zone as the declared lobster zone (12 M.R.S. §6448(3), effective in 1999) and regulations (Chapter 25.93, effective February 19, 2002) needs to be more enforceable.

This regulation adopts a double lobster trap tagging provision that uses removable tags by lobster license holders who have declared Zone B, who fish in Zone C, when fishing traps in Zone C, and by lobster license holders who have declared Zone C, who fish in Zone B, when fishing traps in Zone B, in order to increase the Marine Patrol's ability to enforce the current 49/51% trap component of the Lobster Zone Limited Entry rules of Zone C and Zone B. This tagging requirement would be effective **June 1, 2010** and only applies to Zone B and Zone C license holders.

Based on comments received during the public hearing and comment period and taking into consideration the Bureau of Marine Patrol's experience and opinions, it is the Department's position, that a double tag system for Zone B and Zone C is the most efficient method to effectively address this enforcement issue.

Summary of Comments

Chapter 25.08(A)(4) Double Tagging in Zone B & Zone C

See separate document for hearing attendees plus the hearing and written comments received.

Summarized comments and Department's responses

1. Zone Lines – State versus Federal or Interstate Management

Comment's indicate:

that the zone lines stop, or at one time stopped, at the 3-mile limit;
that the "federal" Area 1 overrides the state zone lines or should; and
Maine does not have jurisdiction to the Exclusive Economic Zone (EEZ) or 200 mile limit.
NH fishermen shouldn't be allowed to fish outside the 3-mile limit when they cannot.
Why do I bother to buy a federal permit?
Why is fishing in Area 3 off limits now?

Response:

The zone boundaries in regulation initially became effective September 23, 1996. Each boundary line runs from the shore to the Exclusive Economic Zone (EEZ) also called the 200-mile limit. At no time has a boundary line been limited to only inside the 3-mile limit or other point short of the EEZ.

The State's jurisdiction beyond the 3-mile limit to the EEZ to enforce the lobster zone management laws and regulations comes from Maine's participation as a member of the Atlantic States Marine Fisheries Compact in accordance with Maine law (effective 1954, see web link to statute: <http://www.mainelegislature.org/legis/statutes/12/title12ch419sec0.html>); plus subsequent compliance with the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fisheries Management Plan for Lobster, Amendment 3, 1997 (see web link at <http://www.asmfc.org/>); and in accordance with Maine law, 12 M.R.S. §6002 Rules of construction, as a Maine resident who holds a Maine license and land your catch in the State of Maine you must abide by Maine laws and regulations including when they are more restrictive than federal rules (see web link to statute: <http://www.mainelegislature.org/legis/statutes/12/title12sec6002.html>).

Regarding NH fishermen: In short, they must abide by the most restrictive rules for Area 1, not keep oversize, the 800 trap limit, adhere to zero tolerance for v-notches, etc.

Prior to 1996/1997 before lobster management was conducted through ASMFC, the lobster resource was federally managed by the National Marine Fisheries Service beyond the 3 mile limit. Persons who held a federal lobster permit could fish outside 3 miles, take oversize lobsters and lobsters with v-notches that had to be at least a ¼" to be legal, and any small V's were allowed to be taken. Maine fishermen were competing with out of state boats fishing right up to the 3 mile line, who were taking oversize and v-notched lobsters.

A major difference under the ASMFC fishery management plan is that there are eight lobster management areas from New Jersey to Maine, including New Hampshire. (See DMR regulations Ch. 25.07 at this web link: <http://www.maine.gov/sos/cec/rules/13/188/188c025.doc>.) The plan states that federally permitted fishermen are required to designate each area in which they intend to fish, and may not fish in any area not so designated. Fishermen are allowed to place traps in multiple areas, but must comply with the most restrictive management measures of all areas fished. The NH federal permit holder may select to fish in Area 1 outside the 3-mile limit under their federal (permitted) authority, however under the FMP they must now abide by the more restrictive rules for Area 1 than were in place prior to 1997; a Maine resident fishing outside 3 miles with their federal permit must comply with the more restrictive rules, which include Maine's laws and regulations in their declared home lobster management zone.

The reason persons buy a federal permit is if you did not hold a federal permit you may not fish outside the 3-mile limit.

The Area 3 question: Area 3 is not off limits. In 1997 the ASMFC FMP for American Lobster, Amendment 3 established a framework for area management including the requirement that all states implement and enforce the management measures in the areas under their jurisdiction. Then in 2002 in accordance with the FMP (section 3.2.1 of Amendment 3) "Fishermen will be required to designate each area in which they intend to fish, and may not fish in any zone not so designated. Fishermen are allowed to place traps in multiple areas, but must comply with the most restrictive management measures of all areas fished, including the smallest number of traps for the areas selected."

2. Source of complaint

Explain where this comes from and those who requested this should have been at the public hearing if they want this.

Response:

The issue has been brought forward from Zone B fishermen in general. According to the Zone B comments there has been a general increase of fishing pressure from Zone C fishermen over the past several years and up to 5 years. This issue was initially discussed by the Zone B council at their April 15,

2008 meeting; and also discussed by the Swans Island local committee at their annual meeting held July 9, 2008. A formal vote to request that the Commissioner go to rulemaking on this matter was taken by the Zone B council at their meeting held April 30, 2009 and was supported unanimously by 8 of the 9 members present (one was absent due to illness), and representing districts 2-7.

The supporting comments from Zone B request that the existing 49/51% law be enforced due to the increase Zone C fishing pressure; and that the most effective means to do this is to require double tagging between Zone B and Zone C as demonstrated to be effective for similar circumstances in Zone F and Zone G.

3. Zone B and Zone C boundary line

The Swans Island Conservation Area is unfair because if you're not in it you can't fish there but they can fish outside of that zone; Swans Island should change from 475 traps to 800 traps.

Outside of the 3-mile limit there is a gentlemen's agreement, which following the 12520 line, to 50 fathoms, Zone C fishermen fish west of that line and the Swans Island Zone B fishermen fish east of the line; comments indicate this has worked well.

This conflict comes from traditional fishing ground that is overlapped offshore between these two zones; there are ~10-20 persons who traditionally fish the Zone B offshore waters from Nov 1 – July 4.

Double tagging will force a shift from west to east creating greater gear conflicts.

Response:

It is correct that persons from Zone C for example, who are not a Swans Island Lobster Conservation Area (SILCA) registrant, cannot fish any of their 800 traps within the SILCA; and a SILCA registrant is allowed to fish 100% of their 475 trap limit anywhere in Zone B. Conversely for comparison purposes the size of the SILCA is small compared to the rest of Zone B and the trap limit of 475 is approximately 60% of the 800 allowed the rest of Zone B. If the members of the SILCA wish to change their trap limit the process for doing so is their choice and they must follow the instructions per the regulations in Chapter 25.90 to make changes in the SILCA.

Regarding the following comments about the gentlemen's agreement, offshore fishing, traditional "winter" fishing grounds, and the boundary line issues versus double tagging creating greater gear conflict, the legality of the situation is that this boundary line has been in effect for 13-14 years, or since 1996. In 1999 the industry was given the option of having limited entry. This is when the Legislature changed the law to use the term "majority" that resulted in the 49/51% law. This was necessary in order to have a means to identify and verify a person to a zone; and this law has been in effect since 1999 and is why persons must declare the "home zone" on their annual license application, or where you fish the majority of your traps. The Department does not have the authority to change statute or law; this requires changes to be made by the Legislature. These are not new rules and the most effective means to enforce fishing the minority of ones traps outside of your declared home zone is by the use of double tags.

Changes to an existing boundary line may be done by working through the zone council process. Similar circumstances have resulted in "buffer zones" between zones. See next section.

4. The Buffer Zone idea

Comments suggest that the fishermen should be allowed to work this problem out among themselves and or have a buffer zone instead and asked how that might be developed.

Questions were asked about the history behind the double tagging regulation that is in effect in Zone F and Zone G; how did it come about, etc.

Response:

The fact that the boundary lines do run offshore to the EEZ since their beginning in 1996, has been a huge issue between Zone F and Zone G. Fishermen from Casco Bay (Zone F) had some degree of historic fishing offshore in Zone G. The request to stop the boundary lines at the 3-mile limit or some distance from the EEZ was voted down 4 times in the Legislature. Eventually working through the council process and procedures outlined in the regulations and by-laws, a buffer zone was established, effective June 19, 2001. A buffer between zones means that within the overlapping area or buffer between the abutting zones persons may fish 100% of their traps from either zone. Working through the council process, if the Zone B and Zone C councils agree to a change in their boundary line the Commissioner could change it, provided there is a near consensus agreement.

Enforcement of the 49/51% law since it started in 1999 has been difficult at best. Enforcement without the double tag means documenting that a fisherman has more than 392 traps outside of their

home zone. In the winter months January – March it becomes even more difficult because the folks from Zone F and or Zone G fish winter bottom at least 25-30 miles offshore. The Zone G fishermen were persistent with this issue voicing their concerns that Zone F fishermen were fishing the majority of their traps over the line in Zone G, and bringing it forth 3 times before it passed as regulation the 4th time, effective September 1, 2006. In the 4th round of rulemaking two changes were made that are viewed as helping it pass: the second tag would be made available at cost to the Department and it would be a removable tag that could be snapped in and out of a trap.

5. Tag cost(s), bad economic time, and inconvenience

Tag costs are too high; the department originally promised tag costs would not go up yet they have; the added expense is unacceptable during these tough economic times. The use of the double tags is an inconvenience as traps are frequently shifted.

Response:

Tag costs over time have been from 1996-2003 \$0.20, 2004-2007 \$0.30, and from 2008-2010 \$0.40. The second removable tag required in Zones F & G since 2006 has been \$0.10 per tag and is the same amount that would be applied to the proposed regulation for Zones B & C. Some increases in costs are unavoidable as demonstrated in the primary tag costs over time. Availability, specifications, timely turn-around, bids, are all considerations taken into account for the contractor used to supply tags. The Department acknowledges there would be an increase.

The Department acknowledges there can be an inconvenience to remove or move the second tag. However, taking this into consideration and the Bureau of Marine Patrol's experience and opinions, it is the Department's position that a double tag system for Zone B and Zone C is the most efficient method for effectively addressing this enforcement issue. As explained by Deputy Commissioner Etnier the fishermen in Zone F hate it and those in Zone G like it; and according to Colonel Fessenden this has worked well in Zones F & G to the point that the compliance rate is very high now, even with persons fishing 25-30 miles offshore.

6. Enforcement issues

Removable tags could be removed by someone else creating more or a different enforcement problem.

Given the difficulty described enforcing the 49/51% law then double tagging should be required for all zones.

Response:

There is always the possibility of someone vandalizing another person's traps, taking the removable tags, cutting tags off, etc. If persons ever encounter this they should contact Marine Patrol immediately to alert Patrol that something potentially is going on.

Regarding enforcement a missing double tag would be an untagged trap violation under proposed Chapter 25.08(A)(4). In accordance with 12 M.R.S. §6174(3) any person who violates a departmental rule (regulation) commits a civil violation. A person with a missing double tag is in violation of the 49/51% law (12 M.R.S. §6448(3)). A missing double tag would be prima facie evidence of DMR regulations Chapter 25.08(D) or proposed 25.08(A)(4) for a missing tag. It is the patterns or repetitive missing tags that would be supportive of a violation of 49/51%.

Regarding the application of double tagging statewide, although comments have been made in support of making this statewide it is the Department's position that to date this particular locale has been only the second area to be the focus of such problems. The Department acknowledges that it was viewed as a pilot program when implemented for Zones F & G. Now this similar problem has developed between Zones B & C, after having tested the efficacy of the second tag in Zones F & G, and found to work well. The 49/51% law in this situation focuses on those who fish in proximity to or crossing a line and not to all zone fishermen. This proposal is still considered most applicable to a localized area at this time. However, the Department acknowledges with this rulemaking for Zone B and Zone C it merits further discussion with the Lobster Advisory Council regarding double tagging statewide.