

Department of Marine Resources

NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE OR SUBJECT: Chapter 6.03 Lobster Processing, Restrictions and Prohibitions

CONCISE SUMMARY: The proposed regulations would establish the permits, restrictions, shipment labeling, and records requirements for the holder of a Lobster Processor License to process oversize lobster. Such lobster must be legal in the jurisdiction from which they were harvested in accordance with the newly enacted law 12 M.R.S.A. §6431, sub-§6-B Exception; lobster processing.

STATUTORY AUTHORITY: 12 M.R.S. §§6171, 6431(6-B)

PUBLIC HEARINGS:

September 27, 2011, 6:00 PM*, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth

September 28, 2011, 6:00 PM*, Yarmouth Town Hall, Community Room, 200 Main St., Yarmouth

(Two hearings will be held each night for proposed rulemaking in Chapters 6 (lobster processing) and 85 (saltwater fishing registry) with Chapter 85 starting immediately upon the conclusion of the hearing for the previous chapter.)

DEADLINE FOR COMMENTS: **October 11, 2011**

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**

ADDRESS: **attn L Churchill, PO Box 8
West Boothbay Harbor, Maine 04575-0008**

WEB SITE: <http://www.maine.gov/dmr/rulemaking/>

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:

Since the collapse in the boat price of lobster in the fall of 2008, Maine's lobster fishery has struggled to find new ways of doing business that will better support a profitable industry. Last legislative session, the Legislature took an important first step in granting new authorities to Maine's lobster processors. Specifically, processors are now able to deal in products previously only available to their Canadian counterparts, such as claw meat in the shell.

Prior to the passage of last year's bill, there had been some concern that relaxing Maine's "mutilation" laws could create an incentive for illegal lobsters to be taken and processed. Through meetings between processors and Marine Patrol, protocols were established to ensure that this new flexibility did not jeopardize Maine's conservation laws. Under last year's changes, processors were not allowed to process lobsters that were legally taken in other jurisdictions, but which would be considered "oversize" in Maine. The recently enacted law ([Public Law, Chapter 247](#)) grants the additional flexibility to Maine processors to process lobsters above Maine's maximum size with certain requirements and restrictions.

The regulations in [Chapter 6 Lobster Processing](#) would be amended to add permission to process oversize lobsters by the Lobster Processor License holder (LPL) provided that they also obtain the Lobster Import/Export permit in accordance with [Chapter 25.75](#) (also referred to as the reconsignment permit). Clarification would be added to Chapter 6.03(A)(4) that oversize tail meat must remain whole and intact as the new law stipulates that the tail must not be sold within the State of Maine. Containers in which the oversize tails would be shipped shall be labeled (sealed) according to the provisions for shipping by a Lobster Import/Export permit holder. Reporting requirements for Lobster Import/Export permit holders remains the same except they would now also include records for the shipments of oversize tails.

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

Chapter 6 Lobster Processing
6.03 Restrictions & Prohibitions

A. Lobster Processor License

A Lobster Processor License (LPL) authorizes a wholesale seafood license with lobster permit holder to remove lobster tails and parts in the shell from the lobster, only under the following conditions:

- (1) The tails shall only be removed from lobster at the fixed facility name on the LPL.

- (2) The tails shall only come from legal size lobster in accordance with [12 M.R.S. §6431](#) or from [oversize lobster as provided in 12 M.R.S. §6431\(6-B\)](#) as long as those [oversize lobster are in conformance with the provisions of that law and the LPL license holder also holds a Lobster Import/Export permit in accordance with Chapter 25.75.](#)
- (3) Lobster parts: A Lobster Processor License holder may remove lobster parts in the shell other than the tail to be offered for sale. Other lobster parts include the carapace, claws, knuckles, legs and shells.
- (4) Tail meat removed from the lobster shall remain whole and intact except as permitted by waiver in accordance with Chapter 6.03(A)(5). [Tail meat removed from oversize lobster as provided in 12 M.R.S. §6431\(6-B\) shall remain whole and intact, no waiver is allowed.](#)
- (5) Lobster Processing License – Waiver
The Commissioner may grant waivers in writing for specific lobster products when requested in writing by Lobster Processor License holders.

B. Lobster Processor Tails only License

A Lobster Processor Tails only License (LPTOL) authorizes a wholesale seafood license with lobster permit holder to remove lobster tails in the shell from the lobster, only under the following conditions:

- (1) The tails shall only be removed from lobster at the fixed facility name on the LPTOL.
- (2) The tails shall only come from legal size lobster in accordance with 12 M.R.S. §6431.
- (3) The tails removed from the lobster shall remain whole and intact.

C. Lobster Meat Permit

A lobster meat permit authorizes a wholesale seafood license holder or a retail seafood license holder to remove lobster meat from the shell for sale under the following conditions:

- (1) The meat may be removed from the shell only at the establishment named in the permit.
- (2) The meat may come from only legal-sized lobsters in accordance with 12 M.R.S. §6431.
- (3) Tail sections must be removed from the shell whole and intact.

(a) Exception for wholesale seafood license holder

The holder of a wholesale seafood license may, at the license holder's regular establishment, cut up lobster tail sections immediately prior to and for the purpose of preserving, canning or freezing them as processed stews, pies, salads, Newburg's or chowders.

D. Containers and Labeling

- (1) All containers of processed lobster meat, lobster tails, lobster parts or by products must be clearly labeled with the Lobster Processor License, Lobster Processor Tails only License or Lobster Meat Permit number of the packer pursuant to 12 M.R.S. §6851-B(2)(C) and §6857(2)(D) or be identified as lawfully imported from another jurisdiction.

All containers of processed lobster meat, lobster tails, lobster parts or by products must be clearly labeled with a coding system to identify the date of pack/packaging in compliance with 9 CFR 317.8(32) the Maine Food Code and approved in writing from the Commissioner. Address: Department of Marine Resources, Attn: Commissioner/Lobster Pack Code Request, State House Station 21, Augusta, Maine 04333-0021.

[Shipment of all containers of tail meat removed from oversize lobster as provided in 12 M.R.S. §6431\(6-B\) shall convey the oversize lobster tails sealed in accordance with Chapter 25.75 for shipment out of state.](#)

The license or permit number, identification of contents, approved pack/packaging code, and the name and address of license holder must appear in bold capitalized type, be waterproof and durable in indelible print, and must be adhered to the container at all times through to the final consumer sale or until the container is empty. The absence of the license or permit number, approved pack/packaging code, and the name and address of license holder as required by this regulation shall be prima facie evidence of violation of these regulations.

- (2) Container labeling requirements shall not apply to hermetically sealed (12 M.R.S. §6001(19)) containers.

E. Records

Persons who hold a Lobster Processor License or Lobster Processor Tails only License pursuant to 12 M.R.S. §6851-B or a Lobster Meat Permit pursuant to 12 M.R.S. §6857 must maintain records pertaining to all lobster

purchases and shipments received. These records must be made available to the Department upon request and must comply with the following criteria:

- (1) Each license or permit holder must have a business address at which the records are maintained;
- (2) The records must be complete, accurate and legible;
- (3) The records must be sufficient to allow each container of processed lobster, lobster tails or parts to be traced back to the specific incoming source of lobster;
- (4) The records must be maintained in a permanently bound ledger book or other recording method approved by the Department; and
- (5) The records must be retained for a minimum of one year for fresh products and for a minimum of two years for frozen products.
- (6) A LPL license holder who also holds a Lobster Import/Export permit in accordance with Chapter 25.75 shall submit data on forms provided by the Department by January 1st annually.