

Department of Marine Resources
NOTICE OF AGENCY PROPOSED RULE-MAKING

RULE TITLE: Chapter 25.97 Management Framework for Island Limited Entry Program

CONCISE SUMMARY:

These proposed regulations would establish the procedures under which an island limited entry program could be created, including the petition process, referenda, and adoption procedures. The proposed regulations identify which year-round islands qualify; define residency and residency exceptions for temporary absences from an island for medical or educational purposes; establish the waiting list procedures; establish how the number of licenses to be issued would be calculated; and describe the requirement for an island limited entry program committee for participating islands.

STATUTORY AUTHORITY: [12 M.R.S. §6449](#)

PUBLIC HEARINGS:

July 19, 2010, 6:00 pm*, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth

July 20, 2010, 6:00 pm*, Municipal Bldg, Chamber B, 258 Route 1, Scarborough

July 22, 2010, 6:00 pm*, State Ferry Terminal, Conf. Rm., 517A Main Street, Rockland

*(*The four proposed amendments in Chapter 25 Lobster regulations will be followed by the proposed rule for Chapter 36 Herring, landing definition; see separate rulemaking notices.)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.*

DEADLINE FOR COMMENTS: **August 2, 2010**

AGENCY CONTACT PERSON: **Deirdre Gilbert (207-624-6550)**

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:

Several island communities informed the Department of their concerns regarding the impacts of the limited entry system in the lobster fishery on the sustainability of their communities. In short, licenses not renewed by members of the island community become part of the pool available to the zone, and the next license issued may not be to a resident of the island. This could result in an attrition of licenses from island communities with few employment alternatives, impacting the island economy and the very sustainability of the community. The solution passed by the legislature in 12 MRS §6449 allows island communities to establish a limited entry program that is specific to their needs of their community and the local lobster resource. The proposed regulations would establish the procedures the island communities would follow if they choose to implement an island limited entry system.

Proposed rulemaking – see underlined or ~~deleted~~ text below: Chapter 25 - Lobster and Crab Fishing

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, 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 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.

(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 36 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 by February 1 the number of new island resident licenses that may be authorized. The number of new island resident lobster licenses must be calculated by determining the number of established island resident license holders for the previous calendar year. 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
- (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.