

Department of Marine Resources

NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE: Chapter 25.08 Lobster Trap Tag System –Owner Operator clarification

CONCISE SUMMARY: The proposed regulations would provide consistency with a new section of law ([12 MRS §6431-G](#)) that is meant to both clarify *and* strengthen the “owner-operator law” to address a 'loophole' that has been identified by Marine Patrol, which allows certain arrangements of family members with two boats to circumvent the owner-operator law. The proposed regulations were unanimously approved by all members of the Lobster Advisory Council at their meetings held November 17, 2010 and April 20, 2011. STATUTORY AUTHORITY: 12 M.R.S. §6431-G

PUBLIC HEARINGS: July 11, 2011, 6:00 PM*, Yarmouth Town Hall, Community Room, 200 Main St., Yarmouth (**The Zone 1 season proposed rules will be followed by proposed season rules for Zone 2; see separate rulemaking notices.*)
July 14, 2011, 6:00 PM*, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth (**The Zone 2 season proposed rules will be followed by proposed season and reporting rules for Zone 1; see separate rulemaking notices.*)
Following the urchin season hearings for Chapter 26 there will be hearings each night for proposed rulemaking in Chapters 11 (scallops), 25 (lobster), 34 (groundfish) and 2 (seaweed aquaculture), in the order listed, starting immediately upon the conclusion of the hearing for the previous chapter.

DEADLINE FOR COMMENTS: July 25, 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: Col. Joe Fessenden (207-624-6550)
Mail Written comments to: Department of Marine Resources
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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:

In the decade since its inception the Department and the lobster industry have become aware of some successful attempts at subverting the intent of this law. In essence, individuals have found a legal means to utilize the laws to actually fish two lobster vessels and effectively fish double the Zone's trap limit. One variation has been to “set up” a second person with a vessel and traps; make him or her, the owner using the corporation laws of the State, and then actually fish twice the Zone's trap limit by operating both vessels. In accordance with 12 M.R.S. §6431-G it is clear and enforceable that one can only “operate” a lobster vessel that is listed on one's lobster license. Under existing law no one lobster license holder is issued more tags than a Zone's trap limit allows; even though they may list multiple vessels on their lobster license. These changes have also been made in fairness to those fishermen who abide by the trap limits that exist state-wide.

The exemptions for illness and mechanical breakdown that exist elsewhere in the “owner-operator” statute remain in place. A third exemption was added in the law to provide for the sponsor of an apprentice to provide “practical lobster fishing training” to their apprentice in keeping with the intent of the apprentice program.

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

Chapter 25 - Lobster and Crab Fishing

25.08 Lobster Trap Tag System

B. Trap Tags

- (2) ~~Except as approved by the Commissioner, n~~No license holder shall be issued trap tags in an amount or manner that causes a ~~a~~ that license holder or his/her declared vessel to exceed the applicable vessel trap limit established pursuant to 12 M.R.S. ~~A- §6431-A~~ and ~~§6421~~(3-A)(F) or the vessel operation requirements established pursuant to §6431-G. ~~Such approvals~~ The issuance of trap tags shall be consistent with the individual trap limits, zone trap limits, boat trap limits and vessel limitation and vessel operation law and regulation. ~~Except as approved by the Commissioner, n~~No license holder may set, haul, retrieve or take lobsters from a trap unless the trap contains a trap tag issued to that license holder ~~or to another license holder who is then present on the vessel.~~ No license holder may use a vessel to set, haul, retrieve or take lobsters from a trap unless that trap contains a trap tag allocated to that vessel in accordance with the license holder's vessel declaration; except as authorized by the Commissioner pursuant to 12 M.R.S. §6431-G(2)(A),(B) or (C).