

Sec. 26-157c-4. Management of the lobster pot fishery

(a) **Purpose.** The purpose of this section is to implement requirements of the Atlantic States Marine Fisheries Commission's American Lobster Fishery Management Plan by establishing the number of lobster pots authorized to be set each year by licensees of the Department of Environmental Protection and the provisions by which lobster pot tags will be issued to licensees. This section may be amended in the future in accordance with the provisions of chapter 54 of the Connecticut General Statutes.

(b) **Definitions.**

(1) "ASMFC" means the Atlantic States Marine Fisheries Commission, created under the terms of an interstate compact ratified by the State of Connecticut (section 26-295 of the Connecticut General Statutes) and approved by the U. S. Congress (Public Law 539, Chapter 283, Second Session, 77th Congress; 56 Stat. 267, approved May 4, 1942, as amended by Public Law 721, 81st Congress, approved August 19, 1950).

(2) "American Lobster Fishery Management Plan" means the plan and its amendments and addendums approved and published by the ASMFC to manage the interstate lobster fishery.

(3) "Catastrophic pot loss" means the loss, between June 1 of a given year through May 31 of the following year, of:

(A) with respect to a personal use licensee, 10 pots; and

(B) with respect to a commercial licensee, more pots than the number of tags issued to such licensee under subdivision (e)(1) of this section, if such loss is due to one or more events beyond the licensee's control such as an act of God, theft or vandalism.

(4) "Commercial licensee" means any person to whom the Commissioner has issued a commercial license under section 26-142a of the Connecticut General Statutes.

(5) "Commissioner" shall mean the Commissioner of Environmental Protection.

(6) "Effective pots fished" means, for a given calendar year, the smaller value of:

(A) the maximum calculated number of pots derived from LMA 2 qualifying catch records, or

(B) the predicted pots fished derived from LMA 2 qualifying catch records, or

(C) if provided on reports submitted to the National Marine Fisheries Service, MADMF, the NYSDEC or the RIDEM, the maximum number of pots fished in LMA 2 during a year.

(7) "Federal lobster permit" means a federal fisheries permit issued by the U. S. Department of Commerce pursuant to 50 CFR 697.4 for a vessel for taking American lobster by pots from a specified LMA.

(8) "Fish" and "fished" means setting, tending, or hauling a pot, or leaving a pot in the water after setting, tending or hauling it.

(9) "Fishing week" means any calendar week within the qualifying period.

(10) "Fishing year" means the period from June 1 of a given year through May 31, inclusive, of the following year.

(11) "FMP" means the American Lobster Fishery Management Plan.

(12) "Haul" means to lift a pot from the water for the purpose of taking lobsters.

(13) "License" means a license to take lobster issued by the Commissioner under section 26-142a of the Connecticut General Statutes.

(14) "Licensee" means a person to whom the Commissioner has issued a license.

(15) “LMA” means any of the several lobster management areas defined in the FMP.

(16) “LMA 2” means Lobster Management Area 2 as defined in the FMP.

(17) “LMA 2 qualifying catch records” means those records that:

(A) are complete and accurate records of lobster catch, landings, pots hauled, and the soak-time associated with those pots, reported to the Commissioner in accordance of the provisions of section 26-157b of the Regulations of Connecticut State Agencies, or similar such data submitted to the National Marine Fisheries Service, the MADMF, the NYSDEC or the RIDEM, and

(B) represent fishing activity that occurred aboard a vessel that held a federal or applicable state lobster permit for LMA 2 and was conducted between the effective date and expiration date, inclusive, of said permit, and

(C) represent fishing activity that occurred aboard a vessel for which pot tags bearing the LMA 2 designation were purchased for the fishing year in which that activity occurred, and

(D) represent fishing activity that resulted in landings of lobster in Connecticut, Massachusetts, Rhode Island or New York, and

(E) represent fishing activity from any statistical area provided that at least one trip was reported in catch records for the same calendar year that meets the requirements of subparagraphs (A) through (D), inclusive, of this subdivision and that indicates fishing activity in a statistical area that lies in whole or in part within LMA 2 or the LMA 2/3 overlap.

(18) “LMA 2 qualifying period” means the calendar years 2001, 2002, and 2003 or, if applied under reconsideration granted by the Commissioner pursuant to subsection (g)(4)(B) of this section, the years 1999 and 2000.

(19) “LMA 2/3 overlap” means the overlap area between LMA 2 and LMA 3 as defined in the FMP.

(20) “LMA 6” means Lobster Management Area 6 as defined in the FMP, namely those waters of Long Island Sound and any New York territorial waters of Long Island Sound and Fishers Island Sound in which Connecticut residents are authorized by the Commissioner or by the NYSDEC to take lobsters but excluding New York waters on the south shore of Long Island west of 72° west longitude. Unless otherwise specified in this section, LMA 6 includes LMA 6A and the Race.

(21) “LMA 6 qualifying catch record” means a complete and accurate record of pots hauled, and the soak-time associated with those pots, submitted to the Commissioner in accordance of the provisions of section 26-157b of the Regulations of Connecticut State Agencies, covering any portion of the qualifying period.

(22) “LMA 6 qualifying period” means the period from January 1, 1995 through June 8, 1998, inclusive.

(23) “LMA 6A” means a portion of LMA 6 comprising the Connecticut waters of Long Island Sound west of the Loran C 26740 line.

(24) “MADMF” means the Massachusetts Division of Marine Fisheries.

(25) “Material incapacity” means an event determined by the commissioner to be beyond the control of a license holder that results in a significant reduction in fishing performance by that license holder. A material incapacity shall include, but not be limited to, a significant

medical condition or active military service, but shall not include the decision of the license holder to pursue others interests.

(26) “Maximum calculated number of pots” means the larger of the following calculated number of pots:

(A) the number of pot-days from the LMA-specific qualifying catch records attributable to a fishing week divided by seven, or

(B) the largest value for pots hauled on any one day from the LMA-specific qualifying catch records within that fishing week.

(27) “NYSDEC” means the New York State Department of Environmental Conservation.

(28) “Permanent transfer” means the sale, barter, trade or gifting of some portion of the number of pots authorized to be fished by a commercial licensee.

(29) “Personal use licensee” means any person to whom the Commissioner has issued a license under section 26-142a of the Connecticut General Statutes to take lobsters for personal use.

(30) “Pot” means any lobster pot, trap or similar device used to take lobsters.

(31) “Pot-day” means the reported number of pots hauled during a day, times the reported soak-time for those same pots.

(32) “Predicted pots fished” means the number of pots, not to exceed 800 pots, calculated using the formula derived for LMA 2 in Addendum VII to the FMP, $P = e^{(a(\ln(L)) + b + (R/2))}$, where P is the predicted pots fished, L is the total annual landings, e is the base of the natural logarithm and \ln is the natural logarithm. The values for a , b , and R are dependent on the calendar year of the total annual landings and are:

(A) for 2001, 2002 and 2003, $a=0.6473$, $b=0.4782$ and $R=0.6525$, and

(B) for 1999 and 2000, $a=0.6221$, $b=0.6163$ and $R=0.5295$.

(33) “Qualifying license application” means the application for a license which the Commissioner issued between December 19, 1994 and June 8, 1998, inclusive, and which application was effective for any of the calendar years 1995, 1996, 1997 or 1998.

(34) “Race” means a portion of LMA 6 comprising commercial fishery statistical areas 6 and 147 as referred to on the forms which the Commissioner provides for submission of fishing reports pursuant to section 26-157b of the Regulations of Connecticut State Agencies.

(35) “Report” or “Reported” means to submit or to have submitted to the Commissioner a complete and accurate qualifying catch record.

(36) “Resident licensee” means a commercial licensee who is a resident of Connecticut.

(37) “RIDEM” means the Rhode Island Department of Environmental Management.

(38) “Soak-time” means the number of days from the date a pot is set in the water until the date it is next hauled.

(39) “Tag” means a tag sold or authorized to be sold by the Commissioner or another state or the National Marine Fisheries Service, to be used to satisfy the requirements of this section.

(40) “Vendor” means a person authorized by the Commissioner or another state or the National Marine Fisheries Service to sell tags.

(c) LMA 6 Lobster Pot Limits.

(1) On and after June 1, 2000, no resident licensee shall fish in LMA 6 any more than

the following number of pots:

(A) whichever of the following three numbers is the greatest:

(i) the number of pots he specified on any one of his qualifying license applications as the maximum number of pots he intended to fish, or

(ii) the maximum calculated number of pots that he fished in LMA 6 during the LMA 6 qualifying period, or

(iii) 200 pots, or

(B) the smallest number of pots which the Commissioner has determined a licensee is authorized under the FMP to fish in any LMA other than LMA 6,

(C) provided that if the number of pots determined under subparagraph (A) of this subdivision differs from the number of pots determined under subparagraph (B) of this subdivision, the lesser of those two numbers shall be the maximum number of pots which such licensee may fish, and

(D) provided further that he may not fish more than 200 pots if he did not report the fishing of any pots during the LMA 6 qualifying period but he:

(i) specified on any one of his qualifying license applications that he intended to fish one or more pots, or

(ii) reported landing lobsters from LMA 6 during the LMA 6 qualifying period, and

(E) provided further that he may not fish any pots if he did not report the fishing of any pots during the LMA 6 qualifying period and he did not specify on any one of his qualifying license applications that he intended to fish one or more pots and he did not report landing lobsters from LMA 6 during the LMA 6 qualifying period.

(2) No commercial licensee may fish in LMA 6A more than 800 pots.

(3) The Commissioner may authorize a commercial licensee to fish in LMA 6 the maximum calculated number of pots he would have qualified to fish under subsection (c) of this section based on the period January 1, 1992 through December 31, 1994, inclusive, provided that:

(A) he held a commercial license during any of the years 1992, 1993 or 1994, and

(B) he did not fish during the LMA 6 qualifying period due to his own verified and substantiated medical circumstances, and

provided further that he may not transfer any of said pots under the provisions of subsection (f)(2) of this section.

(4) No personal use licensee may fish more than 10 pots. Said pots may only be used in the Connecticut waters of LMA 6 and in LMA 6A.

(5) A licensee may fish pots with the tags of another licensee for as many as 30 fishing trips in a year without the Commissioner's approval. A licensee may fish pots with the tags of another licensee for more than 30 fishing trips in a year only with the Commissioner's written approval, provided not more than one such approval shall be issued to a licensee at any one time. The Commissioner shall deny such written approval unless the licensee applying therefor demonstrates that he is a partner, employer, employee or family member of the other licensee or he is assisting a licensee who cannot fish his own pots due to his own verified and substantiated medical condition.

(6) Under no circumstances may a licensee fish pots with the tags of more than one other licensee.

(7) A licensee may not fish pots with the tags of another licensee unless he carries on his person the written permission of such other licensee.

(d) Tags.

(1) Except as provided in subsection (c)(5) of this section, no licensee shall fish any pot unless it is affixed with a tag issued to him that is valid for the period from June 1 of a given year through May 31, inclusive, of the following year. Tags shall only be fished in LMAs for which they are designated. Possession of untagged pots on the waters of any LMA is prohibited. The Commissioner shall make available the name and address of any vendor authorized to provide tags to licensees.

(2) The fee for a tag shall be the total of the costs of manufacturing, shipping and handling the tag up to a maximum of \$0.20 for commercial licensees and \$0.25 for personal use licensees, plus an additional \$0.03.

(3) The licensee shall affix the tag to the top of the pot, provided he may not affix the tag to any portion of the door or to any cut wire mesh and may not reuse a tag once removed from a pot to which it was originally affixed.

(4) The Commissioner shall authorize for each licensee a number of tags equal to the maximum number of pots the licensee is authorized under this section to fish plus any overages for routine loss as determined according to subsection (e)(1) of this section, all rounded up to the next multiple of 10 tags. The Commissioner shall authorize for use in LMA 6A the number of such tags which is equal to the maximum number of pots the licensee is authorized under this section to fish in LMA 6A, provided the licensee may use in any portion of LMA 6 any of his tags designated for use in LMA 6A. No licensee may use in LMA 6A any of his tags unless such tag is designated for use in LMA 6A.

(5) No person that is authorized to fish lobster pots in more than one LMA shall be authorized to purchase pot tags in excess of the smallest number of pots said person is allowed to fish in each LMA authorized, as specified in the "most restrictive rule" in Addendum IV to Amendment 3 to the FMP.

(6) Residents of Connecticut shall not obtain tags from any source other than the Commissioner, the National Marine Fisheries Service or a vendor as defined in this section.

(7) Resident licensees holding a federal lobster permit to fish in a LMA other than LMA 2 or LMA 6 shall not be authorized to purchase pot tags in excess of the number allowed under the FMP.

(e) Tag Replacement.

(1) The Commissioner shall authorize for each commercial licensee an additional number of tags equal to 10% of the number of tags authorized under subsection (d)(4) of this section for use in LMA 6 or authorized under subsection (g)(3) of this section for use in LMA 2. The Commissioner may also issue to a commercial licensee an additional number of tags, solely for use in the Race, equal to 15% of the number of tags authorized under subsection (d)(4) of this section for use in LMA 6.

(2) A licensee may request in writing that the Commissioner authorize the replacement of tags for pots such licensee has lost due to catastrophic pot loss. If the Commissioner approves such request in writing, the licensee may purchase, as replacement tags, the total number of tags authorized in subsections (d)(4), (e)(1) and (g)(3) of this section. During the time between the date a licensee requests replacement tags under this subdivision and

the date the Commissioner approves such request and the Commissioner or vendor issues such replacement tags, such licensee may, if the Commissioner so allows, fish pots without tags, provided the number of such pots does not exceed the number authorized under subsections (c) and (g) of this section. The licensee shall affix all such replacement tags to his pots within 10 days after issuance and shall remove all original tags from his pots. After said 10-day period, all original tags that were initially issued under subsections (d)(4), (e)(1) and (g)(3) of this section shall no longer be valid.

(3) If a commercial licensee makes a request for replacement of tags and returns to the Commissioner the tags to be replaced, the Commissioner shall authorize the licensee to purchase tags to replace tags issued under subsections (d)(4) and (g)(3) of this section.

(f) Transferability.

(1) If pursuant to section 26-142b of the Connecticut General Statutes, the Commissioner authorizes the transfer of a license from a commercial licensee to another person, such other person shall be authorized to fish only the number of pots authorized by section 26-142b of the Connecticut General Statutes.

(2) The Commissioner may authorize the permanent transfer of LMA-specific lobster pot allocations, in part or in whole, from one fisherman to another pursuant to provisions of the FMP adopted by the ASMFC that define the specific terms and conditions of such transfers.

(g) LMA 2 Lobster Pot Limits.

(1) No person licensed by and no commercial fishing vessel permitted by the Commissioner under section 26-142a of the Connecticut General Statutes shall fish lobster pots in LMA 2 or land lobsters taken from pots fished in LMA 2 unless such person and vessel combination has been issued an LMA 2 pot allocation by the Commissioner or by any other state that is in compliance with Addendum VII to Amendment 3 to the FMP.

(2) Eligibility. The Commissioner shall issue initial LMA 2 lobster pot allocations only to resident commercial license holders in combination with the vessel or vessels designated by such license holders, provided:

(A) said vessel had a federal lobster permit or applicable state permit for LMA 2 during any year of the LMA 2 qualifying period; and

(B) pot tags bearing the LMA 2 designation were purchased for use by said vessel during any year of the LMA 2 qualifying period; and

(C) said vessel does not have an approved or pending LMA 2 pot allocation in combination with any other person or from any other state; and

(D) LMA 2 qualifying catch records for said vessel were reported for the LMA 2 qualifying period; and

(E) such LMA 2 qualifying catch records shall only be used to qualify a single license holder and vessel and shall not have been used to qualify any other person or vessel for an LMA 2 pot allocation by the Commissioner or any other state; and

(F) for vessels that presently have a federal lobster permit or had a federal lobster permit during the qualifying period, the rules regarding qualification restriction, consolidation restriction, change in ownership, confirmation of permit history and restriction on permit splitting contained in 50 CFR 697.4(a) shall apply.

(3) Allocation. The initial LMA 2 allocation for each resident license holder and vessel

combination shall be the largest of the annual values for effective pots fished as determined by the Commissioner for each license holder and vessel combination for each of the years of the LMA 2 qualifying period, provided such value shall not exceed 800 pots.

(4) Reconsideration. Any resident license holder seeking a reconsideration of their LMA 2 pot allocation shall do so in writing to the Commissioner. Such written request for reconsideration shall be delivered to the Department or postmarked by May 31, 2007. The only grounds for reconsideration that shall be considered by the Commissioner are:

(A) that the Commissioner erred in determining eligibility or in calculating the initial pot allocation, provided the Commissioner shall not consider supplemental catch, effort or landings data submitted with a request for reconsideration or that was received by the Department, National Marine Fisheries Service, or reporting authority of another state more than 60 days after the due date for the last reporting period that occurred in the LMA 2 qualifying period; or

(B) that the license holder had no, or had substantially reduced, fishing performance during the years 2001, 2002 and 2003 due to a material incapacity. Such a request for reconsideration is subject to the following requirements and conditions:

(i) the license holder must present to the Commissioner written documentation of the material incapacity, with such documentation circa the date of the incapacity and notarized at the time the request for reconsideration is presented; and

(ii) the years 1999 and 2000 will be used as the LMA 2 qualifying period for determining eligibility for, and the value of, the initial pot allocation according to subdivisions (2) and (3) of this subsection; and

(iii) the license holder must have reported LMA 2 qualifying catch records for the vessel for which he is seeking an allocation for any year from 1999 through 2003, inclusive.

(5) Limitations.

(A) No person shall land lobster from LMA 2 in Connecticut if they have purchased pot tags in excess of the number of tags authorized by their allocating state under Addendum VII to Amendment 3 of the FMP.

(B) No single person or company shall own, or share ownership of, more than two vessels with LMA 2 pot allocations, except that a person or company that concurrently owned more than two vessels with federal lobster permits for LMA 2 during December of 2003 may retain allocations for that number of permitted vessels.

(6) Allocation adjustments. Addendum VII to Amendment 3 of the FMP specifies that LMA 2 will be managed under an LMA-wide overall pot allocation cap. This cap constitutes the maximum number of pots allocated among all LMA 2 allocation holders. If an FMP amendment or addendum specifies an adjustment to this cap, initial LMA 2 pot allocations shall be increased or reduced consistent with such FMP amendment or addendum.

(Adopted effective June 28, 2000; Amended January 28, 2002; Amended March 1, 2007; Amended September 27, 2007; Amended December 22, 2008)