NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY:   Department of Marine Resources

CHAPTER NUMBER AND TITLE:  Chapter 25.11 Lobster and Crab Bait Review Process

CONCISE SUMMARY:  This regulation change would enact a mandatory review of all lobster and crab baits to prevent the introduction of contagious pathogens, pests, parasites, or invasive species into Maine waters. This regulation is necessary to protect Maine’s coastal resources, fishermen, and other associated industries.

An individual would apply to the Department of Marine Resources for the review of a bait source on forms supplied by the Commissioner. The Department would provide a written response within 60 days, whether the bait will be placed on the “approved” freshwater list or “prohibited” marine list. A freshwater organism that has been reviewed and not listed as “approved” is prohibited as bait. A marine organism that has been listed as “prohibited” is also prohibited as bait.

This regulation also allows applicants to petition the Department when a bait has been prohibited by the Department. The Department will be required to conduct an annual review of lobster and crab bait sources to update the “prohibited” and “approved” lists as conditions change or new information becomes available. Finally, the change will require lobster and crab bait dealers to have a lobster/crab bait endorsement on their wholesale dealer license, and provide the Department with a list of baits sold the previous year and list of anticipated baits for sale the following year.

EFFECTIVE DATE:   July 25, 2013

AGENCY CONTACT PERSON:  Chris Vonderweidt (207) 624-6558

AGENCY NAME:   Department of Marine Resources

ADDRESS:   State House Station 21
           Augusta, Maine 04333-0021

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

E-MAIL:  dmr.rulemaking@maine.gov

TEL:    (207) 624-6558

FAX:    (207) 624-6024

TTY:     (888) 577-6690 (Deaf/Hard of Hearing)
It shall be unlawful to sell or use any marine or freshwater organism as bait to fish for or take lobsters or crabs that has not been reviewed and approved by the Department of Marine Resources.

An individual may apply for the review of a bait source to the Department of Marine Resources on forms supplied by the Commissioner. The Department will provide a written response within 60 days, whether the bait will be placed on the “approved” freshwater list or “prohibited” marine list. A freshwater organism that has been reviewed and not listed as “approved” is prohibited as bait. A marine organism that has been listed as “prohibited” is also prohibited as bait.

Application forms and lists of “approved” freshwater and “prohibited” marine bait will be made available on the Department’s website at http://www.maine.gov/dmr/rm/lobster/index.htm or by contacting the DMR Lobster Resource Coordinator at (207) 624-6550.

A. Application Process

Applications for approval shall contain the following information about the bait source:

- Name, address, email, and phone number of the applicant;
- Species including scientific name;
- Life cycle stage;
- Body part;
- Farm raised or wild;
- Relevant certifications (disease or pest free, hazard analysis & critical control point, etc.);
- Area of origin;
- Proposed date(s) of removal;
- Intermediate processing location(s) and contact information of processing facility, if applicable and
- Additional information necessary to determine if a bait source is safe for aquatic and human populations.

B. Review

The Commissioner shall evaluate the level of risk associated with the proposed introduction of a bait source into the marine environment by considering the potential impacts to the marine ecosystem and consumers. Each evaluation shall consider the probable effects of the introduction of the bait into the recipient area, including, but not limited to:

1. The effects of any previous introduction of the same or a similar species in Maine or other areas;
2. The relationship of the species of aquatic organism to be introduced with other members of the recipient area ecosystem; and
3. The potential effects of infectious or contagious pathogens, pests, parasites, or invasive species that might be associated with the species of aquatic organism to be introduced upon other members of the ecosystem of the recipient area.
The Commissioner may conditionally approve a bait source by establishing conditions necessary to prevent the spread of infectious or contagious pathogens, pests, parasites, or invasive species to aquatic or human populations. The Commissioner may remove a bait source from either list at any time in response to changed conditions or additional information that merits reconsideration of the initial review.

If a species/location is placed on the “prohibited” marine list or not included on the “approved” freshwater list, the applicant may petition for a permit to import the bait, subject to testing requirements, proof of chain of custody and/or other information as requested by the Commissioner.

The Department shall annually review and update the “approved” freshwater and “prohibited” marine bait lists.

C. Lobster/ Crab Bait Dealer
Any person who purchases lobster or crab bait for other than their own use and then sells the bait as a wholesale or retail bait product, and a harvester who sells lobster or crab bait to an individual(s) for personal use as bait are considered a lobster/crab bait dealer.

D. Lobster/ Crab Wholesale Bait Dealer Permit
All lobster/crab bait dealers shall obtain a wholesale dealer license with bait endorsement issued by the Department of Marine Resources. There will be no additional charge for the lobster endorsement.

Lobster/crab bait dealers are required to provide a list of baits sold the previous year and a list of baits that they plan to sell the following year, by February 1 annually. Detailed records of each shipment of bait imported into the State of Maine shall be maintained by the purchasing dealer for a minimum of 2 years. These records shall be made available to the Department upon request.

E. Effective Date
This rule shall become effective upon the issuance of approved and prohibited bait lists following an initial review by the Commissioner of marine or freshwater organisms for use as bait to fish for or take lobster or crabs. The approved and prohibited bait lists will be posted on the Department’s web site. Copies of the lists will also be available from the Department.
Basis Statement
Chapter 25.11 Lobster and Crab Bait Review Process

This regulation change would enact a mandatory review of all lobster and crab baits to prevent the introduction of contagious pathogens, pests, parasites, or invasive species into Maine waters. This regulation is necessary to protect Maine’s coastal resources, fishermen, and other associated industries.

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This regulation also allows applicants to petition the Department when a bait has been prohibited by the Department. The Department will be required to conduct an annual review of lobster and crab bait sources to update the “prohibited” and “approved” lists as conditions change or new information becomes available. Finally, the change will require lobster and crab bait dealers to have a lobster/crab bait endorsement on their wholesale dealer license, and provide the Department with a list of baits sold the previous year and list of anticipated baits for sale the following year.

In accordance with 5 M.R.S. §8052, sub-§5-A a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner’s office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.
Summary of Comments
Chapter 25.11 Lobster and Crab Bait Review Process

Public hearings were held in Wiscasset on June 10, 2013, and in Ellsworth on June 14, 2013. Notice of this proposed rulemaking was given on May 22, 2013 via the following: the DMR website, the DMR rulemaking interested parties e-mail list, the DMR Advisory Council via e-mail, the Secretary of State’s proposed rulemaking website, and the five daily newspapers of the state.

One comment in favor of the proposed rule was received from the Maine Lobsterman’s Association via e-mail:

“The Maine Lobstermen’s Association (MLA) strongly supports the Maine Department of Marine Resources (DMR) proposed Lobster and Crab Bait Review Process. The MLA is Maine’s oldest and largest fishing industry organization whose mission is to advocate for responsible resource management and prosperity for Maine’s commercial lobstermen.

The MLA has closely monitored issues surrounding the safety of the lobster industry’s bait supply in recent years through the Lobster Advisory Council process and the Legislature. The MLA has supported all of the recent legislative changes including regulating the use of alternative baits not originating from the marine environment, giving the Commissioner the authority to pass rules to protect public health, requiring alternative bait companies to label all ingredients, and giving the department the authority to review and develop a list of approved freshwater and prohibited marine baits.

The MLA has supports the Lobster and Crab Bait Review Process rule as proposed. The association believes that this process will help the state achieve its goal of preventing the introduction of contagious pathogens, pests, parasites, or invasive species into Maine waters in order to protect Maine’s coastal resources, fishermen, and other associated industries.

The MLA finds both the proposed application and review process to be reasonable, and strongly support the petition process to further assess baits which don’t qualify. The MLA strongly supports establishing a bait dealer license and the requirement to provide a list of baits sold in the previous year and those planned for sale in the upcoming year.

With the increase in lobster landings coupled with a decrease in the supply of local baits such as herring and menhaden, it is imperative that the state be proactive in ensuring that the baits used in Maine’s lobster fishery are safe for the ecosystem and consumers.

Thank you for your consideration of these comments.”

DMR Response: The DMR concurs with these comments and the rule reflects this.
Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:
Kevin Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine
04333-0021 Telephone: (207) 624-6573; E-mail: kevin.rousseau@maine.gov, Web Address:
http://www.maine.gov/dmr/rulemaking/

CHAPTER NUMBER AND RULE: Chapter 25.11 Lobster and Crab Bait Review Process

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARINGS: June 10, 2013, 4:00 PM, Lincoln County 911
Communications Center, 34 Bath Road, Wiscasset and June 13, 2013, 4:00 PM, Ellsworth City
Hall (Auditorium), One City Hall Plaza, Ellsworth

COMMENT DEADLINE: June 24, 2013

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:
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the introduction of contagious pathogens, pests, parasites, or invasive species into Maine waters.
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associated industries.

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by the Department. The Department will be required to conduct an annual review of lobster and
crab bait sources to update the “prohibited” and “approved” lists as conditions change or new
information becomes available. Finally, the change will require lobster and crab bait dealers to
have a lobster/crab bait endorsement on their wholesale dealer license, and provide the
Department with a list of baits sold the previous year and list of anticipated baits for sale the
following year.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:
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within 60 days, whether the bait will be placed on the “approved” freshwater list or “prohibited”
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prohibited as bait. A marine organism that has been listed as “prohibited” is also prohibited as
bait.

FISCAL IMPACT OF THE RULE:
Enforcement of this rule will require some measurable additional activity in this Agency.
However, no fiscal impact for this rule is anticipated. Existing enforcement personnel will monitor
compliance during their routine patrols.