

Analysis of Laws, Regulations and Policies Pertaining to the Processing, Possession and Sale of Shell-On Lobster Parts

**A Report by the Division of Marine Fisheries
for the Massachusetts Legislature**

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Marine Fisheries
Commonwealth of Massachusetts



Massachusetts Department of Fish and Game

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I. Executive Summary

Lobster abundance over the past decade has been at an all-time high in the northwest Atlantic (US and Canada). As a result, the marketplace for lobsters has evolved. Seafood dealers and processors are increasingly reliant on processed lobster products (e.g., detached shell-on tails and claws) to effectively handle the abundant supply of lobster, avoid market gluts, and globally distribute this commodity.

Massachusetts' state laws and regulations governing lobster processing were last amended in 2013 to address this evolving lobster market. This amendment to G.L. c. 130 §44 allowed for the in-state sale of processed frozen shell-on lobster tails weighing three ounces or more. In the five years since the above statutory amendment, the lobster market has continued to evolve to favor processed lobster parts. In response to these market trends, the MA Legislature in §88 of Chapter 209 of the Acts of 2018 directed the Division of Marine Fisheries (DMF) to conduct a study of the current American lobster¹ fishery and recommend to the Legislature on the advisability of further liberalizing state law and regulations to allow the in-state processing and sale of other shell-on lobster parts other than frozen shell-on tails weighing three ounces or more (e.g., shell-on lobster claws and unfrozen shell-on lobster parts). This report sets forth DMF's study and recommendation as required by the Legislature.

Based on our study of the lobster fishery, which included interviews with seafood industry leaders, regulators and enforcement officials, DMF recommends a statutory amendment to allow Massachusetts' wholesale seafood dealers to process whole live lobsters into frozen or unfrozen shell-on lobster products – including detached claws - and to import frozen or unfrozen value added shell-on lobster products lawfully processed in other jurisdictions for further processing in Massachusetts. These statutory changes would also allow for the various shell-on lobster parts to be distributed throughout Massachusetts by wholesale and retail seafood dealers for consumption by consumers. DMF recommends that the existing three ounce standard for shell-on lobster tails remain unchanged in the statute to help ensure sub-legal sized lobsters are not processed.

¹ All references to “lobster” in the report refer exclusively to American lobster (*Homarus americanus*), the endemic species in the Commonwealth.

DMF's proposed statutory changes to expand the range of lobster processing allowed in the Commonwealth will result in economic benefits throughout the state's seafood supply chain. Additionally, Massachusetts consumers will have greater access to desirable seafood products available for purchase at local retailers and restaurants, as well as through online distribution. This change would be consistent with what is occurring in other lobster producing jurisdictions, including Maine and Canada. Based on the experience of these other jurisdictions, DMF does not expect its proposed statutory changes will have a negative impact on the conservation of the lobster fishery. This is because the existing regulations and processing requirements provide multiple opportunities for law enforcement to monitor and enforce against violations of lobster conservation regulations.

II. Introduction

Throughout the end of the 20th century and beginning of the 21st century, the lobster market has evolved to favor value-added lobster products, such as shell-on tails and cocktail claws. This has been driven by increased landings in the lobster fishery elevating global supply, supply chain preferences for products that can be efficiently distributed, and consumer preferences for portions that are easy to prepare. This market evolution has ushered in an era of modernizing lobster mutilation laws in lobster producing regions to enhance lobster processing opportunities. Canada took major steps in the late 1980s to build lobster processing infrastructure and Maine amended its laws in 2009 to accommodate the growth of shore-side lobster processing. Over the past twenty years, Massachusetts has also taken several steps to modernize the laws in response to market changes.

In 2012, a report was commissioned by the Legislature to evaluate updating G.L. c. 130 §44 to allow for the in-state sale of frozen shell-on lobster tails. DMF's analysis confirmed that such an update was appropriate, and the statute was subsequently amended. Frozen shell-on tails were the dominant shell-on value-added product available on the market at this time. As a result, the 2012 legislation did not extend to other frozen or unfrozen shell-on products (e.g., claws).

On August 9, 2018 Governor Baker signed into law An Act Promoting Climate Change Adaptation, Environmental and Natural Resource Protection, and Investment in Recreational Assets and Opportunity (Environmental Bond Bill), codified as Chapter 209 of the Acts of 2018. Section 88 of this Act required DMF to complete and publish a study and recommendation prior

to December 31, 2018 on the economic, market, management and conservation impacts of expanding the state's lobster processing laws.

*SECTION 88. Notwithstanding any general or special law to the contrary, the director of marine fisheries, in consultation with the commissioner of fish and game, shall, not later than December 31, 2018, conduct and publish a study of the current lobster fishery and provide a recommendation as to the advisability of enacting statutory and regulatory changes to allow the processing of lobster parts, other than lobster tails weighing 3 ounces or more, for sale in the commonwealth. The study shall include an economic and market analysis of potential impacts and benefits, assessment of potential state and federal law enforcement issues associated with changes in legislation or regulations, an assessment on the impacts of such changes on interjurisdictional fisheries management and a review and analysis of the potential biological and population dynamics of the *Homarus americanus* species as a result of such changes.*

At present, G.L. c. 130 §44 allows for the in-state processing, sale and possession of frozen shell-on lobster tails weighing at least three ounces² and cooked lobster meat. DMF recommends expanding in-state processing and distribution to allow whole live lobsters to be processed into shell-on lobster parts at Massachusetts facilities, for Massachusetts wholesale and retail seafood dealers to become involved in the distribution of these products, and for Massachusetts consumers to be able to purchase highly desirable shell-on products - like cocktail claws - at stores and restaurants. Additionally, DMF proposes that the law allow for the importation of shell-on lobster parts lawfully processed in other jurisdictions (e.g., Maine) for further processing in Massachusetts. Seafood dealers would be able to conduct the initial processing of the whole live lobster at a facility near where live lobsters are pounded (e.g., Maine), thereby limiting the costly transportation of live product; then ship the shell-on processed product to a Massachusetts facility where they could take advantage of the local seafood labor market and infrastructure for further processing (e.g., cooking, meat picking and freezing); and then this final consumer ready product would be distributed globally through Boston, a global seafood hub.

III. Background on American Lobster Carapace Size Management

In the United States, lobster is managed at the federal, interstate, and state levels. Principal management occurs through the Atlantic States Marine Fisheries Commission

² This three ounce standard was implemented because it approximates the minimum weight of a lobster tail removed from a lobster with a carapace that conforms to the federal and state 3 1/4 inch minimum carapace length.

(ASMFC) and its Interstate Fishery Management Plan (FMP) for American Lobster. Federal law at 16 U.S.C. §§5104 and 5106 requires the Atlantic states manage and regulate their fisheries in compliance with the provisions set forth in the FMP.

The FMP does not enact catch quotas for lobsters, but instead relies on a number of wide ranging input controls to ensure conservation. These input controls include: permit limits; trap limits; trap configuration requirements; and biological measures to protect spawning stock biomass. Among the biological controls are minimum and maximum sizes (carapace lengths).³ These size rules apply to fishermen, and throughout the seafood supply chain. The FMP sets a baseline minimum size of 3 1/4 inch for dealers and fishermen; however, larger minimum size standards (and variable maximum size standards) apply to fishermen harvesting lobsters within certain geographic Lobster Conservation Management Areas (LCMA), depending on the LCMA's conservation program.

In Massachusetts, our state law at G.L. c. 130 §44 corresponds to the baseline minimum size of 3 1/4 inches set forth in the FMP and prohibits any person or entity from possessing any whole lobster (live or dead) that is not at least that size. Moreover, the state law provides the Director of DMF with the authority to increase the minimum size and establish different (larger) minimum sizes, as necessary to comply with the ASMFC's FMP.

Layered on top of these state and interstate requirements is a federal minimum size standard for the possession of lobsters by any person or entity.⁴ The federal minimum size also matches the 3 1/4 inch minimum size baseline set forth in the FMP. However, as it is a federal rule, it applies beyond lobster producing states to all entities within the United States. It is noteworthy that in 1990, a panel representing the US-Canada Fair Trade Agreement (then later under the North American Free Trade Agreement) upheld the federal minimum carapace size standard for live lobsters only and ruled that Canadian imports of non-conforming whole cooked lobsters or processed lobster parts may be legally imported to the US (Norwood et al., 1990).

³ Size standards are a common tool used in fisheries management to protect spawning stock biomass and ensure that some level of reproduction may occur prior to harvest.

⁴ In 1989, the so-called "Mitchell Act" was signed into law by the federal government. This Act allowed the National Marine Fisheries Service to institute a national minimum size (carapace length) for lobster throughout the US. Subsequent federal regulations at 50 CFR 697 established this minimum size as 3 1/4 inches.

To ensure that minimum size rules are enforceable, the above lobster management jurisdictions have effectuated the FMP by enacting laws and regulations that control how lobsters may be mutilated to ensure that the non-conforming sized lobsters are not broken, their carapace discarded and other parts retained for sale. Similarly there are prohibitions on fishermen possessing lobster meats and detached lobster parts.

Also consistent with the FMP, states may allow the processing of lobsters into certain shell-on lobster parts by licensed seafood dealers. While these state laws vary across jurisdictions (see Sections IV and V for further details), they all require that there be an initial sale of a whole live lobster from a fisherman to a licensed seafood dealer, initial processing of lobsters only involve a whole live lobster, and the processed product must be labeled with the processor's information. This regulatory approach allows enforcement officers to inspect lobsters from the time of harvest to the time of processing, thereby providing substantial opportunity to detect non-compliance with conservation regulations. It also ensures the traceability of the lobster parts throughout the seafood distribution chain. Moreover, the substantial economic investment of state licensed seafood processors in their facilities further incentivizes their compliance with the threshold rule of accepting only conforming-sized lobsters for processing. Finally, this strict management of lobster processing has the added benefit of safeguarding consumers from foodborne illnesses, such as *Listeria* infection (CDC, 2012).⁵

IV. Changes to Lobster Processing Laws in Massachusetts

Dating back to the first half of the 20th century, when carapace size standards were first adopted, state law (G.L. c. 130 §44) prohibited the mutilation of any whole live lobster in any manner that would obscure the proper measurement of the carapace to determine if the lobster was of legal size. Therefore, all lobsters landed and sold in Massachusetts were marketed as whole live lobsters, or cooked lobster meat picked from the shell. However, by the late 1980s, lobster markets began to evolve and it became evident that carapace size management needed to adapt to new areas of commerce.

First, in response to the 1990 US-Canada Fair Trade Agreement decision, DMF had to address the importation and distribution of non-conforming Canadian lobster in Massachusetts.

⁵ *Listeria* is a foodborne pathogen that may survive and proliferate in improperly processed lobster products, causing gastrointestinal illness when consumed.

DMF's legal counsel issued an opinion on the importation of non-conforming lobsters from Canada. This allowed non-conforming lobsters and lobster products to be stored at facilities inside Massachusetts for distribution outside of the state, and for them to be transported through the state by common carriers. Consistent with state law, this product was not allowed to be sold in Massachusetts. This legal opinion was later codified in DMF's 2004 Policy Regarding the Interstate Shipment of Non-Conforming Lobster Products (Appendix 1).

In 1997, the Legislature amended G.L. c. 130 §44 to address emerging markets. This amendment authorized DMF to permit wholesale dealers, approved by the Department of Public Health (DPH), to process lobsters into frozen shell-on lobster tails for distribution and sale outside of the Commonwealth. This statutory change was implemented to allow Massachusetts-based seafood processors access to growing domestic and international markets for shell-on lobster tails. However, the 1997 amendment did not allow for the sale of shell-on frozen lobster tails inside Massachusetts, nor did it allow for other shell-on lobster parts to be processed or sold in the Commonwealth.

In 2013, G.L. c. 130 §44 was amended once again. This statutory change allowed for the in-state sale of frozen shell-on lobster tails that weighed at least three ounces. This enabled Massachusetts seafood dealers, retailers, and restaurants to offer frozen shell-on lobster tails for sale to consumers. Additionally, it increased (however marginally) the global market share for this value-added product by allowing Massachusetts consumers to purchase it. This 2013 amendment to G.L. c. 130 §44 was the most recent change made to the state's lobster processing laws. While it allowed for the in-state processing, possession, and sale of frozen shell-on lobster tails, it continued to prohibit commerce in other processed shell-on lobster products.⁶

V. Changes to Lobster Processing Laws in Other Jurisdictions

As in Massachusetts, the lobster minimum size and processing laws in other lobster producing jurisdictions have evolved in response to an evolving marketplace. Over the past 20–30 years, most of the northern Atlantic coastal states have modernized their laws to allow for the

⁶ Under existing state law, Massachusetts-based processors are de facto required to take those parts of the lobsters that remain after the tails are removed during processing and either cook them and pick their meat from the shell or create a lobster stock, or discard the remaining parts as trash.

in-state processing of lobsters into various shell-on parts and the in-state sale of shell-on lobster parts. However, the extent to which processing and commerce may occur differs by state.

The most important modernization of state lobster processing laws occurred in 2009 when the state of Maine—the largest US lobster producing state— liberalized its laws and regulations governing the processing of lobster parts. Governor John Baldacci’s Executive Order 19 FY08/09 established the Task Force on Economic Sustainability of Maine’s Lobster Industry, with the purpose of enhancing the state’s lobster economy. The Task Force identified the need to expand the state’s lobster processing infrastructure and competitiveness in value-added markets. Specifically, it concluded that existing laws precluding Maine seafood dealers from producing and selling shell-on lobster parts were limiting their market access, and damaging all sectors of the seafood industry (Mosley Group, 2009). In response to the findings and recommendations of the Task Force, Maine amended its lobster processing laws and regulations to allow for seafood dealers to process legal sized whole live lobsters into shell-on lobster parts for sale to in-state and out-of-state retailers and consumers. These changes have resulted in the development of new businesses and the creation of new jobs throughout the seafood processing and distribution chain. Currently there are 18 licensed processors⁷ in Maine that produce detached lobster parts as value-added seafood products.

Other northern Atlantic coastal states similarly accommodate the processing of legal sized whole live lobsters into shell-on lobster parts by seafood dealers (Appendix 2). In addition to Maine, the states of Connecticut, New York and New Jersey all allow for the in-state processing and sale of any shell-on lobster product (e.g., tails and claws). Our neighboring states - New Hampshire and Rhode Island - have rules that are similar to Massachusetts’ current rules and restrict processing or commerce in certain value-added shell-on lobster parts. This lag in modernizing state processing laws in Rhode Island and New Hampshire is likely due to their having smaller lobster fisheries and seafood distribution industries (compared to Maine and Massachusetts) resulting in a lack of demand to accommodate such changes.

It is worth noting that most of the world’s lobster processing capacity is located in Canada. In fact, 60–70% of all lobster from the US is processed in Canada (GMRI, 2014). This Canadian processed lobster is then distributed globally (including back into the US) as a product

⁷ Count of Maine processors obtained through personal communication with Annie Tselikis, Executive Director of the Maine Lobster Dealer’s Association.

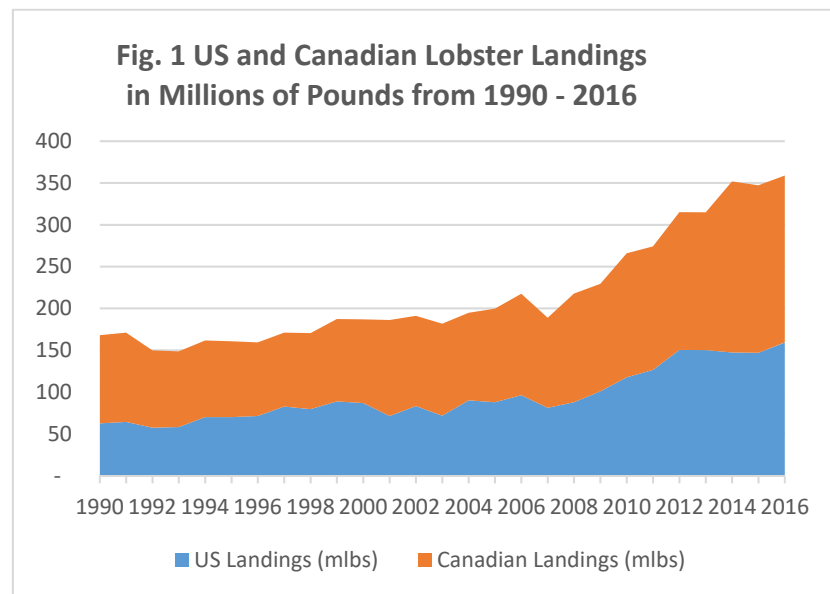
of Canada. Canada's dominance in lobster processing is in part a result of their timely and substantial investment in lobster processing infrastructure during the late 1980s (Lobster Institute, 2004). Their early investment in lobster processing reflects how their fisheries are managed and conducted; short but highly productive seasons generate spikes in supply, followed by periods with no landings and this lends itself to processing as a means of handling and marketing the product.

VI. Overview of Recent Landings of Lobster in the Northwest Atlantic

Lobster is one of the most valuable marine species in the northwest Atlantic. Combined US and Canadian landings reached a high of 359 million pounds in 2016, worth an estimated ex-vessel value of \$1.6 billion dollars USD (Appendix 3 – Table 1). Canada is the largest producer, responsible for 56% of the total 2016 landing, followed by the US's 44%. The US and Canadian lobster fishery is expected to continue to remain at this high level in the near term.

Since 1990, combined US and Canadian landings have more than doubled (Fig. 1). This increase in landings was particularly pronounced during the most recent ten years (2007–2016). During this time series, US landings increased from 81 million pounds to 159 million pounds, Canadian

landings increased from 108 million pounds to 200 million pounds, and US and Canadian



Source: National Marine Fisheries Service and Canadian Department of Fisheries and Oceans

fishermen have combined to land an average of 286 million pounds per year, worth approximately \$1.15 billion USD (Appendix 3 – Table 1).⁸

Over the past ten years, annual US landings have averaged 127 million pounds with an ex-vessel value of \$460M. Within the US, Maine is responsible for about 83% of all US landings. Massachusetts is the second largest US state for lobster landings, responsible for about 11% of the US lobster harvest (and 5% of the global lobster harvest). The other Atlantic coastal states land the remaining 6% of the US harvest (Appendix 3 – Table 2).

While Massachusetts contributes nominally to overall global and US lobster landings, the lobster resource is still among the most important commercial fishery resource for the Commonwealth. From 2012–2016, lobster was the single most valuable marine species caught in Massachusetts' waters and the second most valuable commercial fishery to the Commonwealth (Appendix 3 – Table 3).⁹ During this period, the lobster fishery generated approximately \$69M in average annual income for the state's fishermen. Most recently, in 2016, the state's lobster fishery peaked in terms of both landings and value; over 18 million pounds of lobster were landed in 46 ports worth an ex-vessel value of approximately \$82M (Appendix 3 – Table 4). It is noteworthy that the increase in Massachusetts landings is consistent with those seen in the US and Canada. Landings increased from about 51 million pounds to 83 million pounds during the 2007 – 2016 time series. This increase in landings occurred despite the environmental-related decline of the Southern New England lobster stock affecting catch in southern Massachusetts ports.

VII. Evolution of the Value-Added Processed Lobster Market

The development and evolution of markets for value-added lobster products was in part driven by the increase in lobster supply out of the northwest Atlantic over the past 30 years. This dramatic increase in landings drove a shift in marketing strategy. Global markets were incapable of handling this elevated quantity of live product, and this produced a surplus of lobsters that

⁸ The Canadian Department of Fisheries and Oceans publishes its landings value data in the Canadian dollar. Canadian dollar values were converted to United States dollar values using the average annual exchange rates provided by the Organization for Economic Cooperation and Development.

⁹ Scallops are the number one ranked seafood product landed in Massachusetts by ex-vessel value. However, most of the scallops that are landed in state ports are harvested in federal waters.

were instead processed to ensure the commodity could reach consumer markets without perishing. Processed lobsters can be stored and distributed more readily and less expensively than live product. Therefore, these products allow seafood dealers to manage supply and meet demand while stabilizing the price. This in turn benefits fishermen as they can continue to receive a moderately stable and elevated ex-vessel value for the product, particularly during periods of peak supply.

Until the very end of the 20th century, whole live lobsters, and de-shelled cooked lobster meat dominated the seafood marketplace. Then by the early 2000s, as annual lobster landings were increasing, there was a shift towards processed shell-on lobster products. In 2004, the Lobster Institute (a leading international cooperative research institute dedicated to lobster conservation, management, and marketing) reported that more than 75% of the annual US and Canadian lobster harvest was being processed instead of being sold as whole live product (Lobster Institute, 2004). Moreover, much of this processing occurs in Canada where 60–70% of US lobster harvest is processed (GMRI, 2014). This shift towards value-added processed product enabled the seafood supply chain to handle an increasing supply of lobsters, expand the marketplace for the product and better meet consumer preferences and demand.

On the supply side, the distribution of whole live lobsters requires substantial investment in supply chain infrastructure necessary to keep lobsters alive until they are prepared for consumption. Additionally, there is some level of mortality inherent in handling a live product, and any mortality that occurs becomes a sunk cost. These issues are essentially eliminated once the lobster is processed. The processed lobster products are distributed through well-established food distribution chains with other food products, and can conveniently enter markets without substantial additional cost. Accordingly, by processing the product and eliminating high and often prohibitive distribution costs associated with live product, lobster became available to new non-traditional markets (e.g., cruise ships) and additional domestic and international markets. This increased global demand and allowed seafood dealers to better manage an increasing supply of lobster, and in turn stabilized the ex-vessel value paid to fishermen and the market value paid by consumers.

On the consumer side, there is a demonstrated US consumer preference for easy to prepare and eat food, which likely makes processed lobster products more favorable than whole live lobsters. A 2005 report on a survey conducted for the Maine Lobster Promotion Council

found that more than half of the US consumers surveyed believed that lobster was a meal best suited for a special occasion (Mildner et al., 2005). Additionally, nearly half of these consumers did not know how to prepare a whole live lobster; about one-third of consumers strongly preferred not to kill their own food and did not find the appearance of a whole lobster dinner appealing; and two-thirds indicated that they would eat lobster more if it were easier to remove the meat from the shell. This is consistent with USDA findings that show US consumers prefer foods that are easy to prepare and eat and are healthy and sustainable (USDA, 2010). When compared to whole live lobsters, processed lobster parts conform more closely to these US consumer preferences as they are sustainably harvested, healthy to eat, easy to prepare and cooked similarly to other proteins (e.g., grilling and baking), and are not labor intensive to eat.

VIII. Benefits to Further Amending State Law

Modernizing G.L. c. 130 §44 to allow the in-state processing and sale of all shell-on lobster parts, in addition to shell-on frozen tails weighing three ounces or greater, would provide benefits throughout Massachusetts' seafood economy and would reduce the unnecessary trade barriers that are caused by the current laws. These benefits have been described to DMF by industry members across the state's seafood industry, including lobstermen, processors, distributors and retailers.

Such a statutory change would encourage business and job growth inside Massachusetts related to the processing of whole live-lobsters into various value-added shell-on parts, as well as the sale of processed lobster parts. In addition to potentially spurring the creation of new seafood businesses, existing MA seafood businesses may diversify their business models to take advantage of available skilled labor and seafood processing infrastructure in proximity to Boston, a global seafood distribution hub, for the above purposes.

The positive economic outcomes of modernizing the state's lobster laws would be further enhanced by authorizing the importation of shell-on lobster parts lawfully processed in other jurisdictions for further processing in Massachusetts. This allows a seafood processing company to develop or utilize existing processing infrastructure in larger lobster producing regions near where lobsters are pounded (e.g., Maine) for the initial processing of whole live lobsters into shell-on parts, thereby avoiding the costly transport of whole live lobsters from where they were harvested to distant processing facilities. Following this initial processing, the shell-on lobster

product would be cold transported in labeled containers to Massachusetts, where the company could take advantage of abundant seafood processing labor and infrastructure for further processing (e.g., cooking, freezing, picking of meat). Then the consumer-ready product would leave the Massachusetts facility and be further distributed through Boston and other seafood distribution centers to the global seafood supply chain.

One example of the above potential business model is East Coast Seafood, Inc., a major international seafood distributor with headquarters in Topsfield, MA. East Coast Seafood has informed DMF that if G.L. c. 130 §44 were amended as recommended by DMF it would invest in new and/or expanded processing facilities in Massachusetts. East Coast Seafood would process whole live lobsters into value-added shell-on products, as well as ship unfrozen shell-on parts lawfully processed at their processing facilities in other jurisdictions (e.g., Maine) to their facility in Massachusetts where the product would be further processed. East Coast Seafood estimates that the creation and/or expansion in their processing facilities would create about 100 new jobs in the Commonwealth.

A number of US and Canadian seafood dealers and processors (including East Coast Seafood, Inc.) have applied for and received certification from the Marine Stewardship Council (MSC) for their lobster and value-added lobster products. The MSC is an international non-profit organization that assesses, certifies, and ecolabels seafood products to reward sustainable fishing practices and supply chains, and it is a leader in issuing sustainability certifications. Accordingly, amending the law would allow Massachusetts seafood businesses to process and sell this highly desirable MSC-certified sustainable product to Massachusetts consumers.

Chain retailers (e.g., grocery stores and warehouse clubs) and online distributors will be a major beneficiary of such a law change. Many of these retailers currently sell a variety of shell-on lobster parts at their (non-MA) locations throughout the United States. By updating our current law, we will lower the burden of compliance in Massachusetts (consistent with other states) and make Massachusetts more commerce friendly.

The online distribution of these shell-on lobster products is a particularly interesting area of commerce. Under current state law, the shipping of certain shell-on products, such as detached claws, into Massachusetts is unlawful. However, online distributors, as well as the consumers participating in the online purchases, are likely unaware of the Massachusetts law. Additionally, enforcing this prohibition is difficult to accomplish given that these sales are direct from an out-

of-state distributor to a consumer's home. In turn, this puts traditional brick and mortar seafood retailers in Massachusetts at a competitive disadvantage, as they are less likely to engage in selling this non-conforming product since they are readily subject to enforcement inspections.

With greater product availability, consumers would also see immediate benefits. Additional seafood products that are in line with demonstrated consumer preferences, such as shell-on cocktail claws, would be available in commerce and sold by retailers and in local restaurants. It is noteworthy that an estimated 80% of US seafood consumption occurs in restaurants, and value-added items are popular menu items (USDA, 2010).

Lastly, it is expected that lobster landings will remain at elevated levels in the near-term. Providing avenues to address enhanced supply without depressing the commodity's value is critical. This will ensure that market value remains elevated and seasonably stable, benefiting commercial lobster fishermen.

DMF does not expect its recommended changes to G.L. c. 130 §44 will result in increased non-compliance with conservation standards. As discussed earlier in this report, coast-wide requirements that fishermen land lobsters whole and live and that processing may only occur after the initial sale from a fisherman to a licensed seafood dealer provides substantial opportunity for law enforcement to inspect lobsters to determine compliance with conservation laws and regulations. Moreover, requiring that only licensed seafood dealers process lobsters and that all processed product be labeled for traceability purposes further ensures that only legal sized lobsters are being processed. With these controls in place, updating Massachusetts law to allow for the in-state sale and processing of shell-on lobster parts and the importation of lawfully processed shell-on lobster parts from other jurisdictions, including for further processing in-state, will not have a significant negative impact on lobster conservation.

This sentiment is reflected in comments solicited by DMF from Maine's Marine Patrol Deputy Chief regarding enforceability and compliance related to the 2009 change to their lobster processing laws. The Deputy Chief indicated to DMF that while members of the Marine Patrol were initially skeptical about how the law change would impact lobster enforcement and conservation, they have not encountered increased non-compliance with carapace size rules as a result of this law change and do not believe it is negatively impacting conservation objectives (see letter in Appendix 4).

With any processed food product there are also concerns about public health risks—in this case *Listeria*. After conferring with DPH, there is a consensus that sufficient management exists to adequately address public health. To process lobsters, wholesale dealers are required to be inspected by DPH pursuant to G.L. c. 94 § 77G, meet federal standards at 21 CFR 123, and process only live lobsters in accordance with 105 CMR 533.008(G). In addition, 322 CMR 6.32 requires the on-site labeling of all processed lobster product, which includes the processing date and the name, address, and permit number of the processing facility. This provides traceability in the case of any public health related recalls. Labeling requirements also ensure that all shell-on lobster products available in commerce were processed by an authorized processor, thereby promoting compliance with conservation and public health regulations.

IX. Conclusion and Recommendation

In Canada where lobster landings and processing capacity are larger than Massachusetts, the Canadian Lobster Council is continuously researching and working towards developing new markets and products that will improve sales and commercial accessibility (Pinfold et al., 2012). It would benefit the Massachusetts seafood economy to have a similarly progressive approach. Accordingly, DMF recommends the state legislature amend G.L. c. 130 §44 to : (1) allow for the processing and sale of all other shell-on lobster products in addition to shell-on lobster tails weighing 3 ounces or greater; and (2) extend the allowance to include non-frozen shell-on products in addition to frozen shell-on products. Subsequent to any change in statute, DMF would amend its supplemental lobster processing regulations at 322 CMR 6.32. Attached to this report is proposed redline/strikethrough text to amend G.L. c. 130 §44 (Appendix 5).

Such amendments would provide benefits throughout the seafood supply chain and are well supported throughout the seafood industry (from harvesters to retailers) and among seafood consumers. Increasing market access and product availability enhances business opportunities for those entities involved in the processing and distribution of these products. It would also allow restaurants and consumers greater access to desirable, high quality seafood products. Allowing for the possession of non-frozen products will accommodate seafood processors and dealers, specifically those that wish to import or transport this product through Massachusetts to capitalize on the state's seafood processing infrastructure and workforce.

From a conservation standpoint, DMF does not believe that these amendments will affect minimum size enforcement and compliance. Such commerce is accommodated in most other lobster producing states, including Maine (the largest US lobster producing state), and it has not impacted lobster conservation, enforcement or compliance. Accordingly, there is no reason to expect that similar changes to Massachusetts' law would produce a deleterious impact here.

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Massachusetts Division of Marine Fisheries

Paul Diodati, Director

Policies, Procedures, and Guidelines

Issue: Policy regarding interstate shipment of non-conforming lobster products No: PPG-01

Introduction and Purpose:

Legally caught and processed frozen lobster product from Canada or other states that do not conform with Massachusetts statutes and regulations may be exempt, under specific circumstances, from the provisions of M.G.L. Chapter 130 § 44 and code of Massachusetts regulations, 322 CMR 6.32. Non-conforming lobster products include whole frozen lobsters from Canada and frozen shell-on lobster tails from Canada as well as certain states such as Maine.

Non-conforming product imported may be imported into the Commonwealth and then transferred to a cold storage facility for a temporary period of time for eventual transfer to wholesale or retail outlets outside the Commonwealth as long as the following conditions are met:

1. lobster product shall be frozen;
2. lobster product may not be co-mingled or susceptible to co-mingling with lobsters from the Commonwealth;
3. lobster product shall remain packed, sealed, and labeled with country or state of origin and may not be kept in possession for more than one year;
4. bills of lading, custom documentation, or other papers must be present on the premises;
5. any non-conforming lobster product shipped out of state must be documented to indicate final destination outside of the Commonwealth and the documentation must be kept on the premises for at least 60 days; and
6. non-conforming lobster product may not be sold in the Commonwealth. This means that it shall be unlawful to offer for sale shell-on lobster tails or shell-on body parts of a mutilated lobster within the Commonwealth. A lobster shall be considered mutilated if it has been altered in any way that affects its measurement.

Appendix 2:**Lobster Processing Rules in Atlantic Coastal States from Maine to New Jersey****Lobster Processing Rules in Atlantic Coastal States from ME to NJ**

State	Legal to Process Lobster?	Legal to Sell Processed Lobster Parts?	Details on Authorizations and Prohibitions
ME	Yes	Yes	Authorized dealers may process legal sized lobsters into shell-on lobster parts. Shell-on parts may be sold in-state and distributed out-of-state.
NH	Yes Lobster tails only.	Yes Lobster tails only.	Authorized dealers may process legal sized lobsters into shell-on lobster tails. All shell-on tails processed or sold in NH must weigh at least 3 ounces. The processing and sale of all other shell-on lobster products is prohibited.
MA	Yes Frozen lobster tails only.	Yes Frozen lobster tails only.	Authorized dealers may process legal sized lobsters into frozen shell-on lobster tails. All frozen shell-on tails processed or sold in MA must weigh at least 3 ounces. The processing and sale of all other shell-on lobster products is prohibited.
RI	Yes	Out-of-state sale only. In-state sale is prohibited	Authorized dealers may process legal sized lobsters into shell-on lobster parts. For shell-on lobster tails processed in RI, the dorsal midline length of the sixth abdominal segment must be at least 1 1/16". The shell-on product must be sold out-of-state; in-state sale of shell-on product is prohibited.
CT	Yes	Yes	Authorized dealers may process legal sized lobsters into shell on lobster parts. Shell-on parts may be sold in-state and distributed out-of-state.
NY	Yes	Yes	Authorized dealers may process legal sized lobsters into shell on lobster parts. Shell-on parts may be sold in-state and distributed out-of-state.
NJ	Yes	Yes	Authorized dealers may process legal sized lobsters into shell on lobster parts. Shell-on parts may be sold in-state and distributed out-of-state. For shell-on tails processed or sold in NJ, the dorsal midline length of the sixth abdominal segment must be at least 1 1/16".

Appendix 3:
US and Canadian Lobster Landings for 2012 - 2016

Table 1 – Annual US and Canadian Lobster Landings and Value (2007–2016)

Year	Canadian Lobster Landings (lbs)	Canadian Lobster Landings Value (USD)	US Lobster Landings (lbs)	US Lobster Landings Value (USD)	US/Canadian Lobster Landings (Lbs)	US/Canadian Lobster Landings Value (USD)
2007	107,739,779	\$ 585,712,291	81,039,466	\$ 368,527,642	188,779,245	\$ 954,239,933
2008	130,037,306	\$ 580,553,889	87,749,019	\$ 325,121,865	217,786,325	\$ 905,675,754
2009	128,621,940	\$ 444,262,467	100,774,523	\$ 311,184,204	229,396,463	\$ 755,446,671
2010	148,320,220	\$ 559,215,534	117,573,017	\$ 404,033,800	265,893,237	\$ 963,249,334
2011	147,661,038	\$ 624,482,828	126,253,333	\$ 422,623,296	273,914,371	\$ 1,047,106,124
2012	164,883,530	\$ 698,417,281	150,177,393	\$ 430,833,236	315,060,923	\$ 1,129,250,517
2013	164,654,249	\$ 660,656,311	150,096,525	\$ 462,841,532	314,750,774	\$ 1,123,497,843
2014	204,542,439	\$ 852,039,783	147,271,461	\$ 564,348,614	351,813,900	\$ 1,416,388,397
2015	200,344,843	\$ 921,860,829	146,726,720	\$ 620,643,370	347,071,563	\$ 1,542,504,199
2016	199,791,483	\$ 978,366,792	159,192,901	\$ 669,331,096	358,984,384	\$ 1,647,697,888
Average Annual US/CA Landings (LBS)		286,345,119				
Average Annual US/CA Value (USD)		\$ 1,148,505,666				

Source: National Marine Fisheries Service and Canadian Department of Fisheries and Oceans

Table 2 – Annual US Lobster Landings and Value by State (2007–2016)

Year	ME Landings (lbs)	ME Landings Value (USD)	NH Landings (lbs)	NH Landings Value (USD)	MA Landings (lbs)	MA Landings Value (USD)	RI Landings (lbs)	RI Landings Value (USD)	CT - VA Landings (lbs)	CT - VA Landings Value (USD)	Total US Landings (lbs)	Total US Landings Value (USD)
2007	63,959,477	\$ 280,634,455	2,468,811	\$ 12,516,873	10,144,761	\$ 51,258,492	2,293,494	\$ 12,151,127	2,172,923	\$ 11,966,695	81,039,466	\$ 368,527,642
2008	69,863,233	\$ 245,145,913	2,567,031	\$ 12,267,329	10,600,333	\$ 45,417,731	2,772,183	\$ 12,975,738	1,946,239	\$ 9,315,154	87,749,019	\$ 325,121,865
2009	81,179,068	\$ 237,518,767	2,985,166	\$ 11,918,689	11,782,110	\$ 42,731,285	2,840,194	\$ 11,263,575	1,987,985	\$ 7,751,888	100,774,523	\$ 311,184,204
2010	96,246,095	\$ 318,303,893	3,648,023	\$ 14,836,364	12,759,576	\$ 50,329,948	2,928,712	\$ 12,403,816	1,990,611	\$ 8,159,779	117,573,017	\$ 404,033,800
2011	104,922,621	\$ 334,577,201	3,919,189	\$ 16,343,391	13,372,540	\$ 53,302,490	2,754,086	\$ 12,765,219	1,284,897	\$ 5,634,995	126,253,333	\$ 422,623,296
2012	127,237,300	\$ 341,860,593	4,229,234	\$ 17,169,395	14,485,339	\$ 53,357,118	2,706,402	\$ 12,118,598	1,519,118	\$ 6,327,532	150,177,393	\$ 430,833,236
2013	127,755,724	\$ 370,206,893	3,817,642	\$ 16,601,499	15,259,697	\$ 61,661,564	2,155,774	\$ 9,731,980	1,107,688	\$ 4,639,596	150,096,525	\$ 462,841,532
2014	124,217,655	\$ 459,182,943	4,372,768	\$ 20,741,088	15,322,892	\$ 68,375,940	2,412,887	\$ 11,709,412	945,259	\$ 4,339,231	147,271,461	\$ 564,348,614
2015	122,401,538	\$ 501,194,343	4,722,178	\$ 24,546,251	16,450,530	\$ 78,290,126	2,315,716	\$ 12,344,549	836,758	\$ 4,268,101	146,726,720	\$ 620,643,370
2016	132,531,000	\$ 540,335,139	5,781,837	\$ 30,370,906	17,763,586	\$ 82,306,857	2,260,346	\$ 11,889,301	856,132	\$ 4,428,893	159,192,901	\$ 669,331,096

Source: National Marine Fisheries Service

Table 3
Massachusetts' Five Most Valuable Commercial Fisheries by Year 2012-2016

2012			2013		
Species	Landings (lbs)	Ex-Vessel Value	Species	Landings (lbs)	Ex-Vessel Value
Sea Scallops	36,725,267	\$ 364,863,812	Sea Scallops	29,287,337	\$ 334,205,322
Lobster	14,485,339	\$ 53,357,118	Lobster	15,259,697	\$ 61,661,564
Cod	8,983,606	\$ 18,558,036	Surf Clam	20,802,922	\$ 17,488,715
Surf Clam	18,240,911	\$ 16,071,856	Oyster	328,656	\$ 13,896,080
Goosefish	11,582,871	\$ 13,595,655	Herring	74,992,417	\$ 10,749,786
2014			2015		
Species	Landings (lbs)	Ex-Vessel Value	Species	Landings (lbs)	Ex-Vessel Value
Sea Scallops	21,392,034	\$ 271,373,414	Sea Scallop	21,514,646	\$ 264,933,400
Lobster	15,322,892	\$ 68,375,940	Lobster	16,450,530	\$ 78,290,126
Oyster	443,705	\$ 19,575,343	Oyster	593,469	\$ 22,741,520
Surf Clam	19,416,223	\$ 16,762,548	Surf Clam	18,828,455	\$ 17,094,750
Haddock	9,682,269	\$ 10,946,352	Haddock	11,479,861	\$ 12,049,084

2016		
Species	Landings (lbs)	Ex-Vessel Value
SCALLOP, SEA	22,845,729	\$ 281,210,347
LOBSTER,	17,763,586	\$ 82,306,857
OYSTER,	613,247	\$ 22,521,025
CLAM,	19,803,635	\$ 17,939,171
HADDOCK	10,721,452	\$ 12,754,227

Source: National Marine Fisheries Service

Table 4
Massachusetts' 2016 Commercial Lobster Landings and Fishing Effort by Port with Top 12 Ports
Highlighted

City / Town	Fishermen		Catch (Pounds)					Effort ¹		
	Number	Rank	Territorial	Non-Territorial	Total	Percent	Rank	Traps	Percent	Rank
Amesbury-Salisbury	7	30	83,075	305,295	388,370	2.12%	16	4,152	1.05%	27
Barnstable	3	44	42,851	296,747	339,598	1.85%	19	2,927	0.74%	32
Beverly	23	13	544,989	230,606	775,595	4.22%	7	13,063	3.32%	10
Boston	40	5	410,514	420,429	830,943	4.53%	6	14,693	3.73%	9
Bourne-Wareham	3	44	*	*	4,809	0.03%	46	650	0.17%	46
Chatham	31	9	103,103	507,433	610,536	3.33%	10	9,027	2.29%	14
Chilmark	10	24	35,741	35,561	71,301	0.39%	33	2,762	0.70%	34
Cohasset	20	15	303,789	86,259	390,048	2.12%	15	9,383	2.38%	13
Danvers	5	37	49,540	0	49,540	0.27%	38	1,680	0.43%	39
Dartmouth	4	41	31,740	0	31,740	0.17%	44	1,031	0.26%	43
Dennis	8	28	103,434	0	103,434	0.56%	28	3,677	0.93%	28
Duxbury	5	37	*	*	14,017	0.08%	45	903	0.23%	44
Eastham-Wellfleet	10	24	122,565	0	122,565	0.67%	27	4,850	1.23%	23
Islands	9	27	23,800	21,015	44,815	0.24%	40	1,585	0.40%	41
Essex-Ipswich	8	28	35,497	415	35,912	0.20%	42	2,270	0.58%	37
Fairhaven	19	16	100,593	108,163	208,756	1.14%	23	7,856	1.99%	17
Falmouth	6	34	1,852	48,901	50,753	0.28%	37	755	0.19%	45
Gloucester	132	1	1,440,039	1,944,019	3,384,058	18.43%	1	63,425	16.10%	1
Harwich	5	37	1,146	91,916	93,062	0.51%	30	1,838	0.47%	38
Hingham	10	24	183,927	16,843	200,769	1.09%	25	4,842	1.23%	24
Hull	17	18	326,379	118,535	444,913	2.42%	14	10,834	2.75%	11
Kingston	3	44	51,657	4,548	56,205	0.31%	36	1,680	0.43%	39
Manchester	18	17	303,044	21,557	324,601	1.77%	20	7,468	1.90%	19
Marblehead	37	6	585,507	20,104	605,611	3.30%	12	17,143	4.35%	6
Marion	6	34	17,721	30,395	48,116	0.26%	39	3,324	0.84%	29
Marshfield	34	8	620,072	339,356	959,428	5.23%	4	22,578	5.73%	3
Mattapoissett	4	41	46,018	18,905	64,923	0.35%	35	2,485	0.63%	35
Nahant	16	19	473,539	0	473,539	2.58%	13	7,430	1.89%	20
New Bedford	49	3	81,504	866,301	947,805	5.16%	5	9,689	2.46%	12
Newburyport	7	30	38,075	30,479	68,554	0.37%	34	2,291	0.58%	36
Orleans	21	14	379,656	1,039	380,695	2.07%	17	8,142	2.07%	16
Plymouth	58	2	1,069,324	218,601	1,287,925	7.01%	3	34,068	8.65%	2
Provincetown	28	10	584,692	21,886	606,578	3.30%	11	14,955	3.80%	8
Quincy	5	37	38,470	0	38,470	0.21%	41	1,380	0.35%	42
Revere-Winthrop	11	22	154,253	0	154,253	0.84%	26	4,578	1.16%	26
Rockport	48	4	764,780	595,798	1,360,578	7.41%	2	19,946	5.06%	4
Salem	7	30	92,211	0	92,211	0.50%	31	2,950	0.75%	31
Sandwich	27	11	459,491	228,036	687,527	3.74%	9	19,200	4.87%	5
Saugus	16	19	303,735	2,854	306,590	1.67%	21	8,458	2.15%	15
Scituate	36	7	432,857	264,406	697,263	3.80%	8	15,172	3.85%	7
Swampscott	11	22	205,189	0	205,189	1.12%	24	5,281	1.34%	21
Truro	6	34	*	*	72,382	0.39%	32	3,130	0.79%	30
Westport	15	21	48,818	310,061	358,879	1.95%	18	7,563	1.92%	18
Weymouth	7	30	57,961	40,768	98,729	0.54%	29	4,830	1.23%	25
Yarmouth	4	41	32,886	0	32,886	0.18%	43	2,900	0.74%	33
Statewide Totals	849		10,786,035	7,247,229	18,361,316			393,852		
Out Of State	25	12	*	*	236,843	1.29%	22	5,008	1.27%	22

¹The number of "Traps" for each city/town represents the sum of each individual's maximum traps fished for the year.
*Confidential Data

**Appendix 4: Letter from Maine's Deputy Chief of Marine Patrol
Regarding 2012 Amendments to Maine's Lobster Processing Rules**



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

January 23, 2018

Dan McKiernan
Mass. Division of Marine Fisheries
100 Cambridge Street Boston. MA 02202

Dear Mr. McKiernan,

In 2010 the State of Maine adopted laws and regulations relaxing the limitations of lobster processing. The new regulations allow properly licensed businesses or persons to engage in processing lobsters and selling an end product, specifically knuckles and claws that are unmeasurable. As an enforcement person, I was opposed to this change. I believed chaos would ensue and a market for illegal claw and knuckles would be created, I was wrong. To date the Maine Marine Patrol has not documented a single violation associated with this new regulation. This is not due to lack of effort.

Maine Lobster Processor License holders have created a new market to move product which in turn is beneficial to lobster harvesters. None of these laws and regulations have had any negative impact on enforcement or the lobster resource.

If you have any further questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rene Cloutier', with a long horizontal stroke extending to the right.

Major Rene Cloutier
Maine Marine Patrol
21 State House Station
Augusta, ME 04333-0021
Office: (207) 624-6555
Cell: (207) 592-2364

OFFICES AT 32 BLOSSOM LANE, AUGUSTA, MAINE
<http://www.Maine.gov/dmr>

PHONE: (207) 624-6550

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G.L. c. 130 s. 44 Sale or possession of short lobsters; mutilation of short lobsters; prima facie evidence

Whoever sells, or offers for sale, or has in possession for a period longer than is necessary for immediate measuring, or for any purpose other than legally disposing of same, a lobster measuring in length less than the minimum size prescribed by this section, alive or dead, cooked or uncooked, measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell, shall be punished for the first offense by a fine of not less than one hundred nor more than five hundred dollars for every such lobster and for a subsequent offense by a fine of not less than five hundred nor more than one thousand dollars for every such lobster or by imprisonment for not less than one nor more than three months or both, and such lobster shall be seized and forfeited, and shall be disposed of by the director to the best interest of the commonwealth.

Beginning on January 1, 1989, the minimum size shall be 3 1/4 inches. Thereafter, the director may, by regulation approved by the marine fisheries advisory commission, increase the minimum size, and may establish different minimum sizes in separate geographic areas, if he determines that such increases are necessary to achieve compliance with the Atlantic States Marine Fisheries Commission Fisheries Management Plan for American lobster.

If the measurement of any such lobster taken from 1 or the other eye sockets is of the required length, such lobster shall be deemed to be a legal lobster. In all prosecutions under this section, any mutilation of any lobster which affects its measurement as aforesaid shall be prima facie evidence that the lobster was or is less than the required length; provided, however, that the director shall, by regulation approved by the marine fisheries advisory commission, allow the on-shore processing in the commonwealth of live lobsters of legal length into **frozen** shell-on lobster **parts tails and the importation shell-on lobster parts for further processing** by wholesale dealers that are licensed by the department of public health under section 77G of chapter 94. Processed **shell-on frozen** lobster **parts tails** may be possessed, sold or offered for sale in the commonwealth by any wholesale dealer, retail dealer or food establishments and such food product may be possessed by a consumer. The processing, possession or sale of **said frozen shell-on** lobster tails pursuant to this section shall be limited to **shell-on** lobster tails weighing 3 ounces or more. The packaging of processed **frozen shell-on** lobster **parts tails** pursuant to this section as a food product shall be labeled in accordance with applicable federal and state laws and regulations. This section shall not apply to common carriers having lobster in possession for the purpose of transportation.